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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Monday 15 January 2018

2.30 pm

Prayers—read by the Lord Bishop of Durham.

Introduction: The Lord Bishop of Chichester

2.37 pm

Martin Clive, Lord Bishop of Chichester, was introduced and took the oath, supported by the Bishop of Norwich and the Bishop of Chelmsford, and signed an undertaking to abide by the Code of Conduct.

Brexit: Customs Procedures

Question

2.41 pm

Asked by ***Lord Berkeley***

To ask Her Majesty's Government what are the plans, timescale and budget of Her Majesty's Revenue and Customs to develop and implement paper-free customs procedures for just-in-time freight between the European Union and the United Kingdom after Brexit.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the Government have been clear that their priority is to ensure that international trade can move as freely and be as frictionless as possible after we depart the European customs union. Precise arrangements are a matter for negotiations. The Government recognise that many business sectors operate complex supply chains that are sensitive to administrative burdens and delays and are exploring the implementation of a technology-based solution that would allow trade to flow more smoothly across borders.

Lord Berkeley (Lab): I am grateful to the Minister for that Answer. He will recall that a few weeks ago Monsieur Barnier told representatives of the industry that they should prepare for a cliff-edge Brexit even if that did not happen because it would be prudent to do so. I heard the same message from him earlier in the year. Is the Minister aware of 77 different examples of industry sector data that come from Customs? I have put a copy in the Library in case the Government do not have that information. Surely, alongside industry helping itself, it needs to have detailed discussions with the Government on each sector and each means of transport, particularly for the time-sensitive stuff, so that when this happens there is no hold-up. I hope the Minister can give us some confidence that that will happen.

Lord Bates: I can certainly give noble Lords that confidence. As one would expect, the Treasury and HMRC have had over 300 meetings with trade bodies and officials about preparedness. We have our own customs data service—the electronic response that we believe will be ready by January 2019 to take the strain. There is also potential for a back-up system alongside the existing chief system that is in operation. We believe that a lot of work has been done. There is a lot of work for the ports to do as well in terms of their own inventory systems. But as 99% of customs declarations are done electronically at present, there is a great opportunity for us to advance that part of the way we do business to ensure a frictionless way of transacting business going forward.

Lord Bradshaw (LD): The logistics industry is one of the most efficient parts of our economy, mainly in road haulage but also in warehousing just-in-time distribution. Industry would be severely handicapped if supplies did not arrive at the factory gate or in the shops absolutely on time. Have the Government had detailed discussions with the Freight Transport Association, the Road Haulage Association and the ports authority to work out what would happen if things do not work as the Government hope they will?

Lord Bates: Those are exactly the types of conversation we are having. Noble Lords would expect us to have those conversations and we are having them. We have a cross-government border planning group planning for that type of evaluation. But on just-in-time, a lot of the goods come from outside the European Union area. The UK has had great success and has been a prime target for foreign direct investment into the European Union because of the efficiency and speed with which those goods are cleared. We need to ensure that that is now extended to goods coming from within the EU as well.

Viscount Waverley (CB): My Lords, in declaring a pending declaration, is it anticipated that the UK's system will be capable of integration into a wider, regional or global single window and of preventing fraudulent declaration of shipping data from third-party sources within global supply chains?

Lord Bates: That is a really good idea. There are some opportunities coming here. The noble Viscount will be aware that HMRC is moving to a making tax digital platform for VAT declarations. That type of joining up of the customs data with VAT will be something that could augment further trade with the rest of the world.

Lord Hamilton of Epsom (Con): Will my noble friend confirm that the United States is a major export customer for this country with which we have no free-trade deal? There seems to be no hold-up in sending goods to America.

Lord Bates: Some 18% of our goods go to the United States. It is a very important market for us. Also, we are seeing significant investment from the United States into the UK. In the technology sector, Apple is coming here. Bloomberg is expanding its operations here, as is Facebook. There is a great opportunity for Britain to have a lead in technology and trade.

Lord Davies of Oldham (Lab): My Lords, is the Minister aware that Parliament needs to be kept very fully informed about developments in this area? There is no way that Parliament can speak on behalf of industry and the workers in industry without a clear understanding of where the Government are at on these issues. Will he therefore recognise that there is an element of concern that the cross-border trade Bill, which is at present before the other House, may well be defined, in the way the Government have drawn it up, as a money Bill? Therefore, this House, with its expertise, will have a very limited ability to express its views on such matters.

Lord Bates: As the noble Lord will know, those are technical matters; it is officially for the Speaker in the other place to determine what is a money Bill and what is granted a certificate. On the importance of that Bill and debating it, he is certainly right. In the other place, the Treasury Select Committee and the Public Accounts Committee have been looking at and probing the system's readiness, as they should. We published a trade White Paper, which had a tremendous amount of feedback that we have incorporated and learned from. We have also published working papers on future partnerships that we have shared with our European colleagues because we want to make sure that the borders work well together.

Lord Newby (LD): My Lords, the Minister implied in his Answer that because additional requirements were to be dealt with online, there would be no additional cost. Those of your Lordships who have done things online find this a somewhat dubious assertion. Does he accept that for small businesses even doing business with Norway now, which is inside the customs union, involves a significant amount of additional time and that if we are not within the customs union, and certainly being outside the EU, small businesses will need to spend much more time filling in customs forms online? For many, that will make the difference between trade being viable and not viable.

Lord Bates: We have to try to reduce that. The fact that manufacturing output is now in its fastest growth period for 23 years and unemployment at its lowest level for 42 years shows that businesses—the majority of which in this country are small businesses—are doing well in this environment. This was a particular consideration of the making tax digital discussion that we had: obviously, we believe that technology does not impinge on small businesses to a degree that reduces their competitiveness. We believe technology can enhance competitiveness, not reduce it.

Apprenticeships: Disabled Students

Question

2.48 pm

Asked by ***Lord Addington***

To ask Her Majesty's Government whether only students with education, health and care plans are regarded as having the need for support when undertaking an apprenticeship; and if so, why.

Lord Addington (LD): I beg leave to ask the Question standing in my name on the Order Paper and draw the House's attention to my declared interests.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, ensuring that apprenticeships are open to people from a wide range of backgrounds is a priority for this Government. We provide specific financial support and flexibility for apprenticeships with education, health and care plans. We also provide support to care leavers, 16 to 18 year-olds and those in disadvantaged areas. In addition, training providers can access additional learning support for a wider group of learners with learning difficulties and disabilities.

Lord Addington: My Lords, I thank the Minister for that Answer. Is he aware that the British Dyslexia Association is discovering that only those who have the plans are having training provided for them and that all the training units that are going through are being concentrated on this group? The plan itself is designed for about 3% of the population who are taking this, and 12% have learning disabilities of some description. That means that 9% of those taking this are not getting support. Is this sensible?

Lord Agnew of Oulton: My Lords, there is a range of broader supports available to apprentices with learning difficulties who are not necessarily on an education, health and care plan. There are four particular areas that are broader: they are not just for apprentices but are appropriate for apprentices. First, there is a legal duty on employers and providers to take account of any reasonable adjustments, such as extra time needed in exams. There is additional learning support, initially of £150 a month, but this can be increased through the earnings adjustment statement, up to £19,000 a year, assessed by the training provider and approved by the ESFA. There is a programme called Access to Work which involves, in particular, a letter from the Department for Work and Pensions given to the individual with a disability to give to his or her employer, and this can provide financial support of up to £42,000 a year to help with holding down a job.

Baroness Hollins (CB): My Lords, apprenticeships are in many ways perfect for people with learning disabilities, because they provide a chance for someone to show what they can do with a supportive employer. Indeed, Mencap has recently taken on seven such apprentices. However, barriers persist, including the English and maths part of the qualification. Does the Minister agree that we need to ensure that the appropriate flexibilities apply here, too, as so many people will not be able to meet those requirements?

Lord Agnew of Oulton: My Lords, we are taking a flexible approach to these areas and we have recently announced, for those with learning disabilities and difficulties, that there will be additional time allowed for specific subjects including maths and English. We will also take into account the lower level of attainment needed, as long as it does not impinge upon that particular apprenticeship.

Lord Watson of Invergowrie (Lab): My Lords, care leavers are among the most vulnerable groups of young people in the country, with 40% not in education, employment or training by early adulthood. Part of the reason, notwithstanding what the Minister said about support for care leavers, is the inadequacy of proper support to enable them to take up training opportunities. Care leavers can get a bursary if they attend university—but not if they undertake an apprenticeship. Will the Minister acknowledge the need for an apprenticeships bursary to provide additional support for care leavers and at the same time give a government commitment to parity between higher education on the one hand and further education and apprenticeships on the other?

Lord Agnew of Oulton: My Lords, through the SEND reforms we have introduced since 2014 we have made available more than £220 million to help. This includes a package of £20 million for councils, £9 million to establish local supported internship forums and £4.5 million for parent carer forums. In the Children and Families Act 2014 we included the FE sector in a single SEND system. We put four duties on to the sector: to have regard to the SEND code of practice; to use best endeavours to meet special educational needs; to co-operate with the local authority; and to admit a young person if the college is named by the local authority.

Baroness Manzoor (Con): My Lords, can my noble friend say how the Government are monitoring and evaluating the quality of apprenticeship schemes? How are women and ethnic minorities being encouraged into the higher-paid and better-trained apprenticeship schemes?

Lord Agnew of Oulton: My Lords, at the heart of the reforms that we have introduced over the past year has been listening to the needs of employers: they have a strong voice in the way in which the apprenticeship courses are created. We now have a system of standards that has a much higher level of rigour than existed beforehand. We have end-point assessments, which mean that employers are able to see that the quality of individual apprenticeships is to a standard that meets their needs. This is assisted by the new institute that we have created, the Institute for Apprenticeships, which has a direct mandate to listen to employers. In relation to disadvantaged groups in society, one of the most impressive statistics is that there are 530,000 more disabled people in work today than in 2014.

Lord Foulkes of Cumnock (Lab): My Lords, do the Government provide any apprenticeships for Ministers before they are appointed to the Lords?

Lord Agnew of Oulton: My Lords, unfortunately not—and I speak from experience. More broadly, the Government have mandated that 2.3% of all employees who go into government should come from apprenticeships, and are leading the charge in the programme. I was not one of them, unfortunately.

Baroness Garden of Frognal (LD): My Lords, there seems to be some inconsistency between the theory of the Minister's replies and the practice that we are hearing about from those who work with these people. As the noble Baroness, Lady Hollins, said, many who find English and maths difficult have the practical skills that we really need in apprenticeships, and the country has an acute skills shortage. Will the Minister say what is being done by the Government to address the inconsistencies in support for these people across the country?

Lord Agnew of Oulton: My Lords, we are very conscious that many able people struggle with maths and English. I come from a family of seven children; only two of us managed maths O-level, so I am very sympathetic on that. But we have made available additional skills training. There are individual courses where additional funding of up to £471 a course is available. As I mentioned earlier, there is the facility to have extra time in exams. Through some of the areas of support that I referred to in response to the supplementary question of the noble Lord, Lord Addington, there is additional funding for things such as equipment needed for British Sign Language, for example, or more technical equipment for other disabled apprentices.

Commonwealth Summit: Faith Leaders

Question

2.57 pm

Asked by ***Baroness Berridge***

To ask Her Majesty's Government how they will ensure the engagement of faith leaders in events around the Commonwealth Summit in April.

Baroness Berridge (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and draw attention to my registered interests.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, we look forward to hosting the Commonwealth Heads of Government Meeting in London in April this year, when faith leaders, civil society, business leaders and young people will come together to debate, celebrate and renew the Commonwealth. I shall engage fully with faith leaders in encouraging them to hold side events and to participate directly in activities in the run-up, because it is important that we offer important faith perspectives on ensuring a fairer and more secure, prosperous and sustainable Commonwealth.

Baroness Berridge: My Lords, I thank my noble friend the Minister for his Answer but only a few weeks after the summit we will celebrate 70 years since the arrival of MV "Empire Windrush". The Commonwealth migration that took place then has transformed many of the UK's own faith communities. What plans do Her Majesty's Government have to support the Commonwealth Secretary-General's faith in the Commonwealth initiative, in particular to meet those UK faith leaders who are of Commonwealth heritage or whose communities are of Commonwealth heritage to promote the fact of the summit and outline how they can engage practically?

Lord Ahmad of Wimbledon: I assure my noble friend that we are working directly with the Secretary-General and the Commonwealth Secretariat on the very important point that she raises about faith communities. I believe that we all would acknowledge—indeed, celebrate—the fact that over the decades and centuries we have seen diaspora communities contribute incredibly to Britain. The faith communities are part and parcel of that. I look forward to working with them in the run-up to the Commonwealth summit, during the summit and, indeed, afterwards, when the UK has the chair for two years.

Lord Collins of Highbury (Lab): My Lords, I very much welcome what the Government have been doing to ensure that civil society is fully engaged in the Commonwealth summit. Certainly, the fora are very important. The Minister's predecessor, the noble Baroness, Lady Anelay, undertook to meet the TUC to ensure that all aspects of civil society are fully engaged. Can he update the House on what further meetings have taken place to ensure that civil society in the broadest sense is represented in all the fora?

Lord Ahmad of Wimbledon: I assure the noble Lord that, as the Minister for the Commonwealth, I have been engaging in various round tables with civil society leaders across the piece in all elements of ensuring that civil society is fully engaged. Most recently, I met the organiser of the Commonwealth People's Forum to ensure diversity of participation, both in terms of those participating but also in that the agenda reflects the important priorities of all people represented through civil society across the Commonwealth.

Lord Singh of Wimbledon (CB): My Lords, does the Minister agree that the presence of faith representatives should go beyond the side events to actual opportunities to discuss human rights conditions and infringements of religious liberty in different Commonwealth countries, and engage with representatives of the countries concerned?

Lord Ahmad of Wimbledon: I assure the noble Lord that faith representatives will play a key role. I would add that, as I am sure he recognises, when we talk about the Commonwealth 52 there is a wide representation of people of different faiths and strong convictions, who will of course participate in all elements of the discussion around the Heads of Government Meeting and the surrounding fora.

Lord Chidgey (LD): My Lords, I declare an interest as the co-chair of the Commonwealth All-Party Parliamentary Group. Does the Minister recognise the support and leadership given by Members of this Parliament to parliamentarians throughout the Commonwealth? Will the Government therefore explore opportunities which would enable Members of both Houses to become involved with the UK CHOGM process? In particular, will the Government consider how best the CPA UK members can engage with delegates registered with the various forums that will support the CHOGM themes?

Lord Ahmad of Wimbledon: I would of course be delighted to work with the noble Lord in this respect but, as he will be aware, I have already written directly on a couple of occasions to all parliamentarians across both Houses. I have met on a systematic and periodic basis with all the chairs of the various APPGs leading on the Commonwealth, including the chairs of the Commonwealth APPG, and we will look to host specific parliamentary events during the week of CHOGM.

Lord Howell of Guildford (Con): My Lords, I declare my interests as in the register. Will my noble friend accept that the move by the Government to engage business, civil society and other interests in the forthcoming summit is extremely welcome but that the need now is to begin to focus on outcomes and positive results from the summit, not just on prosperity and trade, security and defence, the promotion of human rights and gender equality but in a variety of other areas, particularly those which benefit the United Kingdom itself?

Lord Ahmad of Wimbledon: My noble friend speaks with great experience and I totally agree with him. The Government, along with the secretariat and the Secretary-General—and, it would be fair to say, member states across the Commonwealth—are focused on ensuring that the summit's outcomes will drive the agenda for the UK's two-year chairmanship.

The Lord Bishop of Durham: My Lords, the Minister may not be aware of the initiative of the lord-lieutenant of County Durham in having a schools conference in the lead-up, which will end up in Durham Cathedral. Will the noble Lord commend the work in schools, cathedrals and other major places of worship to engage in such things to enhance the Commonwealth conference?

Lord Ahmad of Wimbledon: I was not aware of the event that the right reverend Prelate points out but I welcome it and congratulate all its organisers. I open up this invitation: where events are happening, please let us know. They can be reflected as part of the Commonwealth timetable and I will be writing shortly to all leaders of local government across the UK to ensure that we celebrate Commonwealth Day on 12 March appropriately.

Baroness Afshar (CB): My Lords—

Baroness Uddin (Non-Afl): My Lords—

Lord Hughes of Woodside (Lab): My Lords—

Noble Lords: Cross Bench!

Baroness Afshar: Are the Government aware that faith representation is highly gendered and that, on the whole, women are not represented? Is any care taken to ensure that women, who have a very different perspective on religion, are also represented?

Lord Ahmad of Wimbledon: The noble Baroness raises an important point and I assure the House that, along with the rest of the Government, I am committed to that objective. In respect of that, a specific women's forum will take place as part of the four fora during the Commonwealth summit.

Lord Hughes of Woodside: Has the Minister had meetings with the British Humanist Association and other non-religious groups?

Lord Ahmad of Wimbledon: The importance of freedom of religion and belief is a priority for this Government. As the Minister responsible I am meeting with all groups, including people of no faith and the humanist society, to ensure that the agenda at the Commonwealth summit and the programme for the UK's two-year chairmanship of the Commonwealth reflect those priorities.

Pollution: Vehicle Emissions

Question

3.05 pm

Asked by ***Baroness Rawlings***

To ask Her Majesty's Government what steps they are taking to reduce levels of pollution caused by vehicle emissions in London and other larger cities.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, we have committed £3.5 billion for air quality and cleaner transport, including investment to support the uptake of ultra-low emission vehicles and to reduce bus emissions. We are implementing tougher real driving emissions tests and helping local authorities to tackle pollution hotspots. We work closely with the mayor, who is responsible for air quality in London, and we will publish our plans for the pathway to zero-emission road vehicles and a new clean air strategy later this year.

Baroness Rawlings (Con): My Lords, I thank the Minister for her encouraging Answer, but why is pollution still so bad? According to King's College London, 9,400 people die a year and thousands more suffer lung diseases caused by traffic congestion. Average speed has slowed down from 12 miles per hour to seven miles per hour, which is hardly progress. Does the Minister agree that disastrous traffic management is causing not only pollution but mental stress and loss to, for and of business? Perhaps despite their worthiness, there is a need for better qualified planners on TfL and local councils. Will Her Majesty's Government, who are ultimately responsible, encourage the new Minister, Jo Johnson, to put a black cab driver, who would understand traffic problems, on the board as his brother Boris did years ago?

Baroness Sugg: My Lords, air pollution poses the biggest environmental threat to public health, and it is a particular threat to the elderly, the young and those with existing health issues. My noble friend makes a very sensible proposal to have a black cab driver, an expert in roads and routes, on the TfL board. I will certainly pass that suggestion on to the new Minister for London. I know he is looking forward to working closely with the mayor on many issues, including how to tackle air quality.

Lord Snape (Lab): My Lords, does the Minister feel that pollution in London and our major cities is being improved or made worse by the Government's decision to freeze fuel duty for the past seven years, while public transport fares in London, as in other major cities, have increased during that period by between 15% and 50%?

Baroness Sugg: My Lords, many drivers obviously welcome the freeze in fuel duty, but we have seen an increase in cars on the roads. Air quality has improved significantly, but there is increasing evidence of impacts on public health. We are investing in vehicle retrofitting, ultra-low emission vehicles, cycling and walking and are implementing tougher real driving emissions tests. Later this year, we will publish our clean air strategy to outline how we can tackle air pollution more widely.

Lord Cormack (Con): My Lords, will my noble friend herself meet with some black cab drivers? If she does, will she listen very carefully to what they say has been the result of reducing the lanes on our major roads in London, caused very largely by the creation of cycle lanes?

Baroness Sugg: My Lords, I would be happy to meet some black cab drivers with my noble friend. The construction of bike lanes and bus lanes and the pedestrianisation of many roads has reduced the available space. Of course, cycle lanes are welcome in order to protect cyclists and encourage cycling. I understand that they have increased congestion, but we want to encourage people to cycle.

Baroness Howe of Idlicote (CB): My Lords, is the Minister certain that all vehicles pay a sufficiently high road tax when driving in large cities? Is this tax geared to the size of the vehicle involved?

Baroness Sugg: My Lords, vehicle excise duty was reformed on 1 April 2017 in order to make it fairer to motorists, to strengthen the incentives to buy the cleanest cars and to ensure that those who can afford a premium vehicle pay more. To encourage manufacturers to bring the next generation of diesels to the market quicker, we have introduced a temporary levy on diesel cars.

Baroness Randerson (LD): My Lords, the Government are being sued for the third time over the failure of their plans to tackle the air quality issue as fast as possible. The current plan requires no action in 45 of the local authorities that have identified illegal levels of air pollution. Does the Minister accept that every local authority with air pollution problems should be required to take urgent action to reduce the pollution caused by traffic?

Baroness Sugg: I agree that every local authority must do what it can to reduce pollution caused by traffic. The noble Baroness is right that although we meet the vast majority of targets, we are one of 17 EU member states that are not meeting the nitrogen dioxide limits. The main reason for that is the lower than expected reduction in emissions from diesel vehicles. We have a plan for tackling the roadside nitrogen dioxide concentrations, which we published last year, and have issued directives to 28 local authorities outside London. They are already drawing on the £255 million fund which we have made available to try to bring improvements as quickly as possible.

Lord Winston (Lab): My Lords, to come back to the question not only of taxi drivers but of all motor traffic, the reduction of lanes which traffic can travel down means that more cars are taking longer journeys than ever before at slower speeds. The evidence is of course that the internal combustion engine is less efficient and pollutes more at slow speeds, particularly when it is idling. Can the Minister give us government figures on the evidence of pollution being greater before bike lanes are introduced than afterwards? This is an important issue in the future planning of our cities.

Baroness Sugg: I am afraid I do not have those figures to hand but I will certainly see if they are available and write to the noble Lord. On combustion engines, we have committed to support the uptake of low-emission vehicles and are investing in alternative fuels. We have also introduced a clean air fund to target areas which need that help.

Sanctions and Anti-Money Laundering Bill [HL]

Report (1st Day)

3.12 pm

Clause 1: Power to make sanctions regulations

Amendment 1

Moved by ***Lord Pannick***

1: Clause 1, page 1, line 8, leave out "it is appropriate" and insert "there is a reasonable need"

Lord Pannick (CB): My Lords, Amendment 1, which is in my name and that of the noble and learned Lord, Lord Judge, the noble Baroness, Lady Northover, and the noble Lord, Lord Collins of Highbury, is provoked by the very wide discretion which Clause 1 confers on Ministers to make regulations when they think it "appropriate" to do so for defined purposes. It seeks to impose a degree of rigour and control by substituting a test of "reasonable need".

I am very pleased that the Minister has tabled his own Amendment 9, to which I have added my name. That amendment recognises that apart from those cases where the United Kingdom has a UN or other international obligation, the Minister can make regulations only where he considers there are good reasons to do so and that the imposition of sanctions is a reasonable course of action to take. Amendment 9 would also require the Minister to lay a report before Parliament explaining his reasoning when making the regulations. I am satisfied that this will impose a real discipline on the Minister, backed up of course by the prospect of judicial review, for which I was delighted to see over the weekend that the Government have a new enthusiasm.

The distinction between the requirements in Amendment 9 and a test of reasonable need is more theoretical than practical. The noble and learned Lord, Lord Judge, and I have had a number of productive meetings with the Minister and the Bill team since Committee on this and other issues. I thank them for their patience, courtesy and flexibility in responding to the issues that we raised in Committee and that are the subject of amendments today and on Wednesday.

This group includes Amendment 3 in the name of the noble Lord, Lord Collins of Highbury, to which I have added my name. It identifies further purposes for which sanctions regulations may be made, particularly—and I think importantly—to promote respect for human rights, democracy, the rule of law and good governance. I hope the Minister can be persuaded by the noble Lord, Lord Collins, to accept Amendment 3. There is a reasonable need for it, or at the very least it is appropriate to include that provision in the Bill, if only for its symbolic value that these admirable goals should be recognised in the Bill. To do so would of course not commit Ministers to making any regulations; it would simply give them the power to do so. I look forward to hearing the noble Lord, Lord Collins, explaining the case for Amendment 3. If he decides to test the opinion of the House, he will have my support. I beg to move.

Lord Judge (CB): My Lords, the noble Lord, Lord Pannick, speaks for me. I am afraid that if I spoke too much today I might have a party political conference problem, so I shall say no more.

Baroness Northover (LD): My Lords, I support what the noble Lord, Lord Pannick, said. I welcome, as did he, the moves from the Government in this part of the Bill. I shall speak to Amendments 2 and 5 in my name as well as supporting Amendment 3 in the name of the noble Lord, Lord Collins, myself and the noble Lord, Lord Pannick. Our criticism of the Bill in Committee focused on the way in which Ministers were being granted wide powers unchecked by Parliament. The Minister has made moves to address this at certain points in the Bill but we still do not think that the sanctions for foreign-policy objectives are tightly drawn enough. We made the case in Committee as to how this might be abused, and we still seek reassurance. An amendment that would undoubtedly help is Amendment 3 on the definition of the purpose of sanctions, which has been very effectively summarised by the noble Lord, Lord Pannick. We feel this very strongly, and it is surprising that such a definition is not already in the Bill. In our view it is also important that the purpose should include preventing the violation of sanctions regulations, and that is the other amendment here. As the noble Lord, Lord Pannick, has indicated, if the noble Lord, Lord Collins, chooses to vote, we will support him.

Lord Collins of Highbury (Lab): My Lords, I am particularly grateful to the noble Lord, Lord Pannick, for his comments. He has set me a test here: normally I rely on his powers of persuasion and arguments rather than my own, but on this occasion I will take up the challenge and hope to persuade the Minister why Amendment 3 is important. I was rather hoping that the noble Lord, Lord Faulks, would jump up before me; I am sure he will jump up after me, because he made comments about this in Committee.

I stress that this is not just about adding words for words' sake; it is not just about being nice, kind and positive. These words are very important in one

vital respect. The Bill—we have heard much criticism of this—is heavily reliant on regulation and the Executive taking powers. We have received many assurances from the Minister that they will use these powers wisely and that Parliament will anyway have the opportunity properly to scrutinise secondary legislation.

These words are important because, when Parliament scrutinises secondary legislation, it must know what it is judging the Government's actions against. It cannot have vague definitions. I heard what the noble Lord, Lord Faulks, said in Committee: that we do not want to limit the powers of the Executive when it comes to foreign policy matters. These words do not limit, they enable. They enable Parliament to do its job of properly scrutinising regulations proposed under the Bill. Is it meeting the clear objectives that we set ourselves, which we all share, particularly, as the noble Lord, Lord Pannick, said in relation to human rights?

The Minister assured the Committee that the Government,

"do not take their human rights responsibilities lightly … the UK has been a bastion and a beacon for human rights. That should and will remain a cornerstone of British foreign policy in years to come".—[*Official Report*, 21/11/17; col. 123.]

That is a powerful argument why we should include these words, because it is about being consistent in future. If I were to be slightly partisan—and I am not usually in these matters, as the Minister knows—there have been doubts about the Government's commitment, and certainly that of the Conservative Party, to the European Convention on Human Rights, and I want to put it beyond doubt that we are wholeheartedly committed to this vital element of our foreign policy. It is, as the Minister said, the cornerstone. I very much hope that he will think hard about accepting the amendment. It would not cause too much pain, because he is already committed to the principle. It is about how these words can help future scrutiny. If he is unable to accept the amendment, I will certainly wish to test the opinion of the House.

Lord Faulks (Con): My Lords, I do not want to disappoint the noble Lord, Lord Collins, by not intervening, albeit briefly, in this debate. My difficulty comes not with the way that the noble Lord and others have expressed their various objectives, which one would expect to be part of the Government's approach to sanctions generally. I am concerned by the fact that the noble Baroness, Lady Northover, wants to exclude the specific reference to a foreign policy objective. I return to what I said in Committee, which was that it is important that we accept that foreign policy does not remain entirely stable and standing: there are always changes in the world and foreign policy objectives may vary from time to time. The danger of including these albeit admirable objectives is that there might conceivably be a construction placed on the relevant provision which is that foreign policy is not adequately reflected by the provisions.

I prefer the way the Bill is expressed, which gives the necessary flexibility. While I do not differ on the objectives, I differ on the amendments.

Lord Howell of Guildford (Con): Can I just ask my noble friend a question, and apologise to your Lordships that I was not involved in earlier stages of this legislation? Was there ever a time when, in deciding on sanctions policy, we did so other than in alliance with other nations? Unilateral sanctions can always be evaded, and even collective sanctions, when they are only from the west, can be nullified by actions by China, Russia and other Asian powers, for instance. Is not the practical situation one in which we have to take account of our allies and the broad consensus of agreement with them on whether sanctions are justified, or are there individual unilateral instances that I may have missed?

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, first, before I go any further, as I said in Committee on the Bill—and I shall come on to the specific question from my noble friend in a moment—I am genuinely grateful for the constructive engagement that we have had on all sides of the House on this very important Bill. The set of government amendments that I tabled last week reflects proposals through discussions and meetings that we have had with Peers and representatives from across the House, from the Opposition Benches and, indeed, from the Cross-Bench Peers. I am also pleased that the noble and learned Lord, Lord Judge, and the noble Lord, Lord Pannick, also felt able, after our constructive discussions, to put their names to some of the government amendments, including the one that I shall present in a moment. It also reflects very strongly that, at a time of great challenge internationally, we reflect the finest traditions of your Lordships' House, in that we are able to practically demonstrate co-operation across the House in ways to improve legislation.

I fully recognise that sanctions involve significant restrictions and should not be imposed lightly. The standard to be applied by a Minister when introducing sanctions regulations is therefore one of the most important parts of this Bill. I assure noble Lords that I have listened very carefully to the range of views on exactly what that standard should be, with a view to finding the right balance between the Government's ability to impose sanctions when the relevant conditions are met and the need to guard against excessive use of these powers. I have therefore tabled Amendment 9, which introduces three additional requirements when a Minister is considering making sanctions regulations for a purpose beyond compliance with a UN or international obligation. First, the Minister must have good reasons to pursue that purpose; secondly, the Minister must be satisfied that the imposition of sanctions is a "reasonable course of action" for that purpose; and finally, when making regulations, the Minister must lay a report to Parliament explaining how the above two tests have been met.

These requirements are picked up again in Amendment 6, which is a technical drafting point consequential on Amendment 9. The requirement for the Minister to lay a written report before Parliament when making sanctions regulations reflects Amendment 7, proposed by the noble Lord, Lord Collins, and I am grateful for his suggestion. The principle that unites us here is that sanctions need to form part of a wider political strategy that is properly articulated to Parliament and the wider public. Amendment 9 aims to provide the House with the requested reassurance that sanctions

[Lord Ahmad of Wimbledon]
will not be imposed lightly, while at the same time ensuring that the UK can continue to play an active and constructive role in international affairs. On that basis, I hope that noble Lords will be persuaded not to press Amendments 1 and 7.

Amendments 2 to 5 refer to the purposes for which sanctions regulations may be created. The current list of purposes in the Bill is designed to ensure that we can continue to implement sanctions across the full range of purposes currently pursued by EU sanctions. The EU can adopt sanctions for any of the purposes of its common foreign and security policy. The reference to "foreign policy objectives" in subsection (2) seeks to maintain this same scope for the UK when we have left the EU.

In Amendment 2, the noble Baronesses, Lady Northover and Lady Sheehan, propose to remove the ability to impose sanctions for the purpose of advancing a UK foreign policy objective. The amendment would restrict the flexibility of future UK Governments, potentially preventing them from using sanctions, and putting the UK out of step with our international partners, including the European Union. That was a point made well by my noble friend Lord Howell—and again, I appreciate his international experience in this regard. As I have said previously, and noble Lords have acknowledged, sanctions are at their best when they are acting in unison and in co-operation and co-ordination with partners.

3.30 pm

Amendment 3, in the names of the noble Baroness, Lady Northover, and the noble Lords, Lord Collins and Lord Pannick, proposes to add a more detailed set of purposes for which sanctions could be imposed. I fully recognise the importance of these additional purposes. In fact, they are all purposes for which sanctions regulations are currently, or could be, implemented by the UK, based on decisions by the UN or EU. I assure the noble Lords that it is certainly our intention to be able to maintain sanctions for such purposes after we leave the EU. As the Bill is currently drafted, the proposed requirement for a Minister to explain in writing the "good reasons" for imposing sanctions would ensure that the relevant foreign policy objectives were properly articulated and explained.

As my noble friend Lord Faulks mentioned, we cannot predict all the foreign policy challenges that may confront future UK Governments. Attempting to specify all future possible purposes in the Bill may restrict the circumstances in which sanctions can be used and, as we all recognise, limit the Government's ability to act in lock-step with international partners. I recognise that Amendment 3 is about adding more clarity and specific purposes and would not restrict the UK's ability to use sanctions for other foreign policy objectives. However, it is a concern that too much detail on the face of the Bill could result in a list that quickly becomes out of date and begs questions about why some valid purposes have been omitted. Specifically articulating some of the purposes of sanctions, but perhaps not all of them, risks creating confusion.

In Amendment 4, the noble Lord, Lord Collins, has proposed adding a purpose related to the prevention of serious organised crime and trafficking. While I agree that this is a valid purpose of sanctions, I question the need to include it explicitly in the Bill. Should serious organised crime or trafficking affect our national security, should we wish to tackle it as a matter of foreign policy, or should we be under an international obligation to do so, the powers in the Bill are already wide enough to allow the use of sanctions for this purpose.

Finally, in Amendment 5, the noble Baronesses, Lady Northover and Lady Sheehan, have proposed adding a purpose related to preventing the violation of sanctions. The Government take sanctions compliance very seriously. The Policing and Crime Act which passed through this House last year included new penalties for those who breach financial sanctions. However, other parts of the Bill provide all the powers we need with respect to sanctions enforcement and thus I do not believe that this amendment is necessary.

As I said at the start, I welcome the fact that all Peers have engaged in constructive dialogue with the Government and that they appreciate we have moved forward. I hope I have illustrated that the Government have demonstrated this through their amendments, and that the Bill is in a much better place than when we discussed it in Committee. Equally, I hope I have articulated the reasons why the Government cannot accept the amendment in the name of the noble Lord, Lord Collins. I understand its spirit and the basis on which it was tabled, but I hope the noble Lord will also recognise that the scope of the Bill, as currently drafted, subject to the amendments put forward by the Government, would allow the purposes that he intends to also be achieved.

Lord Pannick: My Lords, I am grateful to the noble Lord for his contribution to what he called the "constructive dialogue". I am not persuaded by the too-much-detail response to Amendment 3. There is no dispute about the validity and importance of the purposes set out in the amendment and there is considerable symbolic value in adding such important purposes to a Bill that addresses sanctions. I beg leave to withdraw Amendment 1.

Amendment 1 withdrawn.

Amendment 2 not moved.

Amendment 3

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

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

"( ) promote the resolution of armed conflicts or the protection of civilians in conflict zones,

( ) promote compliance with international humanitarian and human rights law,

( ) contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction, or

( ) promote respect for human rights, democracy, the rule of law and good governance."

Lord Collins of Highbury: My Lords, I welcome the Minister's response. He has been incredibly positive on a number of concerns that noble Lords have raised and we have tried to co-operate. This amendment sets

out very clearly our country's values in respect of the new situation we will be in—and it is a new situation. It is vital that we send out the message not only to our parliamentarians but to our communities and all countries that we remain firmly committed to these values. The amendment would not restrict the Government's foreign policy objectives and, in my opinion, would certainly not go out of date. These values have been at the core of our foreign policy activity for many years and it is my hope—and, I know, the hope of all noble Lords across the House—that they will remain so. Therefore, in the light of the noble Lord's comments, I wish to press the matter and test the opinion of the House.

3.35 pm

Division on Amendment 3

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Amendment 3 agreed.

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3.51 pm

Amendments 4 and 5 not moved.

Amendment 6

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

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

"( ) Section (Additional requirements for regulations for a purpose within section 1(2)) contains additional requirements in relation to regulations stating a purpose within subsection (2) above."

Amendment 6 agreed.

Amendment 7 not moved.

Amendment 8

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

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

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

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

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

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

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

Lord Collins of Highbury: My Lords, this issue is going to be picked up in a later group, so I do not want to detain noble Lords too much on this particular group. Suffice to say that what we have responded to, following Committee, is the concerns of a number of NGOs in relation to their ability to undertake humanitarian work. What the NGOs are seeking from the Government is clarity. We have had discussions with UK Finance, and the amendments under group 9 are where we should focus the debate. Rather than detain the House with comments on this group, I will reserve them until we come to the later group. I beg to move.

Baroness Northover: My Lords, indeed this deals with some of the complexities faced by those operating for good reasons in areas where sanctions bite, and we

will be returning to these issues in a later group. We will then talk about guidance and how to ensure that it is easier for financial institutions to derisk.

Amendment 39 in my name is about the mutual recognition of licences and streamlining humanitarian licensing, while Amendment 42 deals with the problems that NGOs may run into if multiple authorisations are required. Amendment 43 is about reporting, because if there is a requirement for parliamentary reporting, that assists in terms of highlighting the issues that NGOs are running into. As I say, we will be returning to these issues in a later grouping.

Lord Ahmad of Wimbledon: My Lords, the Government are well aware of the concerns in this House about the humanitarian impact of sanctions, and we are committed to finding constructive solutions through close engagement with NGOs and other humanitarian actors. Indeed, I would like to thank the noble Lord, Lord Collins, and the noble Baroness, Lady Northover, for the engagement we have had directly with representatives from NGOs between the Committee and Report stages.

As noble Lords will be aware, in 2016 the UK secured amendments to the EU's Syria sanctions regime to provide a specific exemption for fuel purchases by humanitarian organisations. This assisted such organisations to carry out their operations in Syria while ensuring that they were still sanctions compliant. Provisions in the Bill as it is currently drafted enable the Government to include humanitarian exemptions in sanctions regulations and to issue licences for legitimate activity that might otherwise be prohibited by sanctions. Currently, EU case law limits our ability to issue so-called general licences for the humanitarian sector, but, as I have said before, the Bill has been drafted to enable us to issue these licences and thus provide greater flexibility. We will also publish additional guidance and ensure, through continued engagement with the humanitarian sector, that any additional sector-specific guidance addresses its concerns.

The process of issuing licences is best handled administratively on a case-by-case basis to respond efficiently to fast-moving events. That means we are cautious about putting too much detail in the Bill. However, I can assure noble Lords that the Government make every effort to prioritise urgent and humanitarian licence application cases where there is a risk of harm or a threat to life, and we will continue to do so going forward. Once sanctions are in place, the Government will remain alert to any unintended consequences for humanitarian operations and make adjustments where appropriate, as we did for Syria.

I turn briefly to the amendments in this group. Amendment 8, proposed by the noble Lord, Lord Collins, would require the Government to publish a detailed, stand-alone humanitarian impact assessment both in advance of sanctions regulations being made and at subsequent points thereafter. There is no precedent for this approach in the EU or among other western countries with national sanctions legislation. It could hamper the UK's ability to deploy sanctions quickly and make multilateral co-ordination more challenging. It may also have the unfortunate effect of facilitating sanctions avoidance—if we give advance warning that we are considering sanctions, we create the ability for sanctions targets to remove their assets from the UK before sanctions bite. That having been said, I can assure noble Lords that the report that the Government would lay before Parliament when making or amending sanctions regulations, and the guidance issued in respect of those regulations, would explain the approach to mitigating humanitarian impacts, including through exemptions and licensing, which was a concern expressed by NGOs and noble Lords.

Amendment 39 proposes a system whereby licences from other jurisdictions would be recognised in the UK where more than one jurisdiction is involved. While I have sympathy with the desire to simplify compliance procedures for those operating across borders, I am afraid that this amendment poses real difficulties. Licences issued by our international partners may not necessarily align with UK policy objectives or work within UK systems. This is simply because other licensing authorities will not need to consider UK policy, UK law or practicalities before they issue such a licence.

Further, the amendment risks creating legal uncertainty. It is not clear what other jurisdictions may be within scope or which jurisdiction would enforce the sanctions when a licence is breached. Nor is it clear whether a licence issued by an overseas jurisdiction would be recognised by financial and other institutions in the UK without some form of validation by the UK licensing authority. The Government believe that the UK authorities remain best placed to interpret UK sanctions regulations and to determine when and in what circumstances activities or transactions may be licensed.

Amendment 40 calls for the Government to establish a fast-track process for dealing with requests for exceptions and licences for humanitarian purposes. As I have just said, the Government make every effort to prioritise urgent and humanitarian licence application cases and will continue to do so. However, establishing a specific fast-track process could have unwelcome effects in relation to other types of licences. Some other categories of licences, such as those aimed at meeting "basic needs", may not be strictly humanitarian by definition but may have very serious consequences if not prioritised. The amendment could result in certain humanitarian applications that are not urgent being prioritised over non-humanitarian applications that do require an urgent response.

Amendment 41 would require a consultation to be undertaken on an overarching framework for exceptions and licences. As noble Lords will know, the White Paper consultation that preceded this Bill sought specific feedback on exceptions and licences, and we have considered all the comments very carefully. We will publish an initial framework for exceptions and licences in the near future and will continue to consult interested parties before the Bill enters into force. This will inform the approach that we take to exemptions and licensing provisions in the regulations that set up each individual sanctions regime. I am not convinced of the need to undertake a further consultation after the commencement of the Bill. By then, the relevant sanctions regulations, with the appropriate exceptions and licensing provisions, will have already been made and scrutinised by Parliament.

4 pm

Amendment 42 calls for the government departments that provide the majority of funds for a humanitarian programme to arrange for a licence to be issued for the duration of the project. While I can see the logic here, the Government are concerned about the risk of this provision overlapping with the existing requirement for a licence to cover funded activities that fall within the scope of sanctions prohibitions. To mandate a licence in all circumstances, including those that would breach our compliance with UN requirements or which would be inappropriate, would undermine the sanctions themselves. The only way to square this circle would seem to be to remove government funding, and we do not want to do that.

However, the Government will consider, with interested parties, whether implementation of government-funded projects could be included in regulations either as an exception or as a basis for issuing licences on a case-by-case basis. We think that this will protect the spirit of this amendment, retain the flexibility that we need, and can be done without any express provision on the face of the Bill.

Amendment 43 would require the Government to provide detailed annual reports to Parliament on their use of humanitarian exemptions and on licences issued for humanitarian purposes. I have no difficulty with this in principle. However, licences issued for humanitarian purposes are likely to constitute a relatively small proportion of all licences issued under sanctions regulations. It would be better, in my view, to address this area in the round as part of the written report to Parliament that the Government will present after each annual review of sanctions regulations.

I hope that I have reassured noble Lords that humanitarian concerns are recognised and catered for by the Bill as drafted, and would accordingly ask noble Lords not to press these amendments. In doing so, I want to put on record my thanks to both the noble Lord, Lord Collins, and the noble Baroness, Lady Northover, for the constructive engagement that we all had with the NGOs themselves. We should continue to engage with them in that spirit as the Bill progresses.

Lord Collins of Highbury: My Lords, I thank the Minister for his response. He is right: this is a complex issue. The amendments that we tabled represented the genuine concern of a range of NGOs about the need to seek clarity over a complex situation. But in the light of the Minister's remarks and his commitments, and because we will return to the question of guidance, which I hope will improve the situation in terms of clarity, I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Amendment 9

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

9: After Clause 1, insert the following new Clause—

"Additional requirements for regulations for a purpose within section 1(2)

(1) This section applies to regulations under section 1 any of whose purposes (as stated under section 1(3)) is a discretionary purpose.

In this section "discretionary purpose" means a purpose which is not compliance with a UN obligation or other international obligation but is within section 1(2).

(2) An appropriate Minister may not decide that it is appropriate to make regulations to which this section applies unless, in respect of each discretionary purpose stated in the regulations, that Minister—

(a) has considered whether there are good reasons to pursue that purpose and has determined that there are, and

(b) has considered whether the imposition of sanctions is a reasonable course of action for that purpose and has determined that it is.

(3) In subsection (2)(b) "sanctions" means prohibitions and requirements of the kinds which are imposed by the regulations for the purpose in question (or both for that purpose and for another purpose of the regulations).

(4) In relation to any regulations to which this section applies, the appropriate Minister making the regulations ("the Minister") must at the required time lay before Parliament a report which explains in respect of each discretionary purpose stated under section 1(3) in the regulations—

(a) why the Minister considers that carrying out that purpose would meet one or more of the conditions in paragraphs (a) to (d) of section 1(2),

(b) why the Minister considers that there are good reasons to pursue that purpose, and

(c) why the Minister considers that the imposition of sanctions (within the meaning given by subsection (3)) is a reasonable course of action for that purpose.

(5) Nothing in subsection (4) requires the report to contain anything the disclosure of which may, in the opinion of the Minister, damage national security or international relations.

(6) In subsection (4)"the required time" means—

(a) in the case of regulations contained in a statutory instrument which is laid before Parliament after being made, the same time as the instrument is laid before Parliament;

(b) in the case of regulations contained in a statutory instrument a draft of which is laid before Parliament, the same time as the draft is laid."

Amendment 9 agreed.

Clause 2: Financial sanctions

Amendment 10

Moved by ***Lord Pannick***

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

Lord Pannick: My Lords, Amendment 10 is in my name and those of the noble and learned Lord, Lord Judge, and the noble Baroness, Lady Northover. The amendments in this group are concerned with the powers that the Bill confers for the Minister to make sanctions regulations relating to a person connected to a specified country or to make sanctions regulations that allow for designation of a person by description rather than identification.

I am persuaded by the points made by the Minister in meetings and correspondence on the need to have a power to designate by connection with a specified country. I am sure the Minister will want to say more about that when he replies to this short debate. Designation by description is a more troubling issue. The concern

is that if designation is by description, banks and others who have to comply with the designation will find it difficult to identify who is covered by it. Obviously designation by membership of al-Qaeda would be problematic since you cannot find a membership list published on the internet. The concern is that, when persons are designated by description, banks and other institutions will inevitably adopt a cautious approach. Those who then find that their funds are frozen will have great difficulty securing legal redress because the banks and other institutions have, in general, no contractual obligation to maintain a relationship with a client or potential client. That is the problem.

Again, I am most grateful to the Minister and the Bill team because they have responded positively to this concern. Government Amendment 34, to which I have added my name, confines the power to designate by description to those cases where the description is such that "a reasonable person" would know whether a particular individual falls within the description, and that,

"at the time the description is specified, it is not practicable for the Minister to identify and designate by name all the persons falling within the description at that time".

That government amendment meets my concerns. I am grateful to the Minister and the Bill team for considering this difficult problem and responding so positively.

I find it very difficult to envisage that there will be many circumstances, if any, where it is not practicable for the Minister to designate by name and a reasonable person would know from the designation by description whether a particular person fell within it. It seems there will be very few cases where designation by description can occur, but I am very content with the government amendment. Therefore, I beg to move.

Baroness Northover: My Lords, I too am very glad that the Minister listened to the debates in Committee and engaged, with his team, so effectively with the noble Lord, Lord Pannick, and others. I was slightly amused that, in his letter to us, the Minister described his amendments as technical in nature. I thought that was a phrase he might have avoided, given the trouble he ran into on it before. That aside, I welcome the amendments.

Lord Hain (Lab): My Lords, I shall speak to these amendments, on which the noble and learned Lord, Lord Judge, and the noble Baroness, Lady Northover, made some persuasive and consensual points about how we uphold our international obligations. I will focus on sanctions in the related context affecting UK-based companies. I would be very grateful for some leeway from your Lordships in this so that we can make progress on the whole Bill, especially on Wednesday, when time will be short.

It should be a matter of shame that companies headquartered here in the UK have so far evaded sanctions for aiding and abetting money laundering, corruption and state capture in South Africa, including Bell Pottinger, KPMG, McKinsey, SAP and banks such as HSBC, Standard Chartered and Baroda, in total betrayal of Nelson Mandela's legacy. I have just referred Hogan Lovells, the international law firm headquartered here in London, to the Solicitors Regulation Authority—the SRA—for enabling a corrupt money launderer to be returned to his post as second-in-command of the critically important South African Revenue Service, SARS. I have asked the SRA to withdraw Hogan Lovells' authorisation as a recognised body and to examine what other disciplinary action can be taken against its leading partners, including withdrawing their permission to practise as solicitors.

Hogan Lovells spared two of the most notorious perpetrators of state capture in South Africa, Tom Moyane, head of SARS, and his deputy, Jonas Makwakwa, from accountability for their complicity in and cover up of serious financial crimes. In so doing, Hogan Lovells are complicit in undermining South Africa's once revered tax-collection agency and thereby effectively underpinning President Jacob Zuma and his business associates, the Gupta brothers and others, in perverting South Africa's democracy, damaging its economy and robbing its taxpayers. When Hogan Lovells was engaged by the corrupt Moyane in September 2016, it was well known that he and Makwakwa were synonymous with President Jacob Zuma's capture of the state. Hogan Lovells could therefore not plead ignorance as they walked right into that web of corruption and cronyism for a fat fee.

To help protect himself from 783 counts of corruption, fraud, racketeering and money-laundering levelled against him when he came to power in 2009, President Zuma systematically dismembered and manipulated the once highly functional South African Revenue Service and the National Prosecuting Authority. Zuma's key man in this process was his long-time comrade, Tom Moyane, whom he appointed as head of SARS, as commissioner, in 2014 and who, from day one, loyally set about obliterating all its investigative capacity, with the assistance of his deputy, Jonas Makwakwa. These two turned the institution, which under the leadership of the highly respected Pravin Gordhan had consistently overdelivered on revenue collection, into one now facing a 51 billion rand, or £3 billion, revenue shortfall.

Makwakwa's unethical behaviour was quickly exposed in May 2016 when South Africa's financial crime regulator, the Financial Intelligence Centre, ordered SARS to establish whether several "suspicious and unusual cash deposits and payments" into the accounts of Makwakwa and his lover, a low-level SARS employee, Kelly-Ann Elskie, were "the proceeds of crime and/or money laundering". About 1.7 million rand—about £100,000, a lot in South African purchasing power—had been paid into their bank accounts over a six-year period. The FIC noted that the amounts flowing out of Makwakwa's account,

"are of concern as they originate from unknown sources and undetermined legal purpose".

However, when the FIC reported these suspicious transactions to Moyane, he tried to ignore the request by keeping it a secret. At the same time, the FIC reported the suspicious transactions to the police, known as the Hawks, to investigate the alleged criminality associated with the transactional flows and they opened a case.

Four months later, in September 2016, news of the FIC's report to Moyane was exposed by investigative journalists and he begrudgingly suspended Makwakwa and later Elskie. This is when Hogan Lovells entered

[Lord Hain]

the picture. Moyane appointed the law firm to conduct "an independent investigation" into the Financial Intelligence Centre's allegations to ensure "transparency, independence and integrity", and then to recommend and independently facilitate necessary action, including disciplinary action. Hogan Lovells was therefore appointed to investigate the allegations contained in the FIC report and to conduct disciplinary proceedings against Makwakwa on behalf of SARS. To that effect, Hogan Lovells drafted the terms of reference for the engagement, a seven-page roadmap signed and adopted by SARS. However, Hogan Lovells failed to investigate the very reason the firm was appointed; the allegations contained in the FIC report. Hogan Lovells deviated so materially from its own terms of reference, allowing itself to be blindly led by Moyane, who redefined the terms of reference as and when it suited him, that a respected investigative journalist described the outcome as being, "so tailored that it borders on the realm of being cooked". What an indictment of a leading international firm, Hogan Lovells, and its role.

The allegations against Makwakwa involved layers of possible transgressions; these being, first, tax law breaches, linked to whether he declared the transactions; secondly, criminal breaches, linked to whether the suspicious transactions were predicated on corruption or money laundering; and thirdly, whether internal SARS policy breaches had occurred. Moyane also mandated PricewaterhouseCoopers to analyse Makwakwa's tax compliance, with regards to the "suspicious and unusual" money flows through his accounts. The Hawks were simultaneously investigating the criminality. Hogan Lovells's mandate was, according to its terms of reference, to institute an independent investigation, partly using the findings of these other processes, to assess the veracity of the FIC allegations against labour and administrative law, and institute a disciplinary process.

But then two things happened. First, SARS declined to provide Hogan Lovells with the PricewaterhouseCoopers investigative report into Makwakwa, citing taxpayer confidentiality—an inaccurate interpretation of the law, which Hogan Lovells accepted without question. Secondly, Hogan Lovells never made contact with the Hawks to assess the status of their investigation—information which would logically be crucial to its assessment of Makwakwa's fitness as a senior SARS employee. Equally puzzling is that around that time, South Africa's Parliament got interested in Moyane's puppet mastery of Hogan Lovells, prompting a parliamentary question about the nature of the engagement between the two organisations.

4.15 pm

In Moyane's reply, which is a matter of public record, he said that Hogan Lovells had been mandated to investigate contraventions of tax laws and money laundering allegations, and that it would assist the criminal authorities, where necessary, in investigating these transgressions. It would also deal with the SARS disciplinary process. In a press statement released weeks later, Hogan Lovells toned down this interpretation, saying that the scope of the investigation conducted by the firm was, "limited to identifying whether any misconduct had been committed by Makwakwa and Elskie as employees of SARS. It did not seek to directly investigate the financial transactions identified by the FIC".

If noble Lords are confused, it is because they should be. This obfuscation is precisely what Moyane set out to achieve, and to which purpose Hogan Lovells was either a willingly gullible or malevolent accomplice.

The end result is that the firm issued an incomplete, fatally flawed whitewash of a report, which ultimately cleared Makwakwa, despite reams of evidence to the contrary. Most damning of all, Hogan Lovells failed to include crucial evidence from the PwC report and the status of the Hawks investigation in its own report. That meant that Makwakwa has answered to only a fraction of the allegations levelled against him—a serious deviation from Hogan Lovells' mandate. It is beneath contempt that Hogan Lovells subsequently tried to justify its work by hiding behind various complex legal provisions, sections and subsections—explanations which have been described by legal experts as "utter nonsense". Hogan Lovells' cover-up led directly to the corrupt Moyane exonerating his corrupt deputy Makwakwa and welcoming him back on 30 October 2017—to continue their looting and dirty work of robbing South African taxpayers.

Hogan Lovells must stand indicted by the Solicitors Regulation Authority, which should seek and publish answers to the following questions. Why did Hogan Lovells accept this mandate while knowing about Tom Moyane's corrupt Zuma/Gupta agenda? Why did Hogan Lovells allow itself to be controlled by Moyane, including allowing him glibly to alter the terms of reference to suit his agenda at various points in this sorry saga? Why has Hogan Lovells failed to release its documents—including the original terms of reference, its final report and any other relevant documentation which would help clear its name—to the South African Parliament? What has it got to hide? How much money did Hogan Lovells get from SARS for this investigation? Will Hogan Lovells pay back that fee, if not to SARs then at least to South African charities combating the poverty it has helped deepen? What is the relationship between the South African chair of Hogan Lovells, Lavery Modise, and the commissioner of SARS, Tom Moyane? Why has Hogan Lovells allowed itself to be used to undermine South Africa's revenue collection agency? Some of the suspicious transactions received by Makwakwa were in US dollars. What onus does this place on regulatory authorities in the US—and, indeed, Hogan Lovells, as a firm that is also based in the US—to report and investigate?

Hogan Lovells has ducked and dived over its responsibility for and complicity in propping up state capture, corruption, cronyism and money laundering in South Africa. I trust that the SRA will sanction it, and that the British Government will issue an edict that no British-based firms should do any business whatever with any member of President Zuma's family, or with any member of the Gupta family, and that any work for any state agency or state-owned enterprise in South Africa must be undertaken only with total integrity, not connivance in criminality such as Hogan Lovells has been guilty of. I thank noble Lords for their indulgence.

Lord Lennie (Lab): My Lords, in relation to the clause on financial sanctions, I add my gratitude to the Minister for the way that he has engaged with us, the Cross-Benchers and those in other parties. We have turned what the noble and learned Lord, Lord Judge, described as a lamentable Bill into something approaching an acceptable Bill. There are some problems with it, but this will not be one of them. The three pre-conditions that the Minister has laid down will make it wholly exceptional that someone can be designated under the sanctions regime without identification, so the Maltese grandchildren that the noble and learned Lord referred to in Committee should feel fairly safe in their beds from here on in. We welcome the concessions made and support this part of the Bill.

Lord Ahmad of Wimbledon: My Lords, once again I thank the noble and learned Lord, Lord Judge, and the noble Lord, Lord Pannick, for their constructive engagement on understanding and then coming forward with appropriate amendments in this regard.

The group of amendments in front of us focuses upon the description of persons who can be subject to sanctions by way of sectoral sanctions and individual designations. Before I come to the main thrust of the amendments—and I use this term advisedly, notwithstanding the contribution of the noble Baroness, Lady Northover—there are two technical government amendments to Clause 2. These amendments will ensure that sanctions regulations can prevent the procurement of funds or economic resources, as well as receiving such funds or economic resources. This will help prevent sanctions being evaded and thus improve their overall effectiveness, which I know is the intent of all noble Lords in respect of the Bill. I hope that this small and technical change will be deemed non-controversial, and would be grateful if your Lordships would support the amendments and enable us to further enhance the Bill's provisions.

I turn to the amendments tabled by noble Lords, which seek to stop the Government from being able to impose sanctions on persons "connected with" a prescribed country. As I have assured your Lordships during previous stages of the Bill, while I understand the concerns in this respect, I believe the Government have acted to address them where we can and there are good reasons why these provisions are needed. I totally understand the concern raised by the noble and learned Lord, Lord Judge, in Committee that a Minister would be able to define the connection to a country by regulations, and do so in ways that were unacceptable. I assure him that there are safeguards to prevent this power being misused.

As set out in the Bill, sanctions measures can be made in line only with the purposes for regulations set out in Clause 1. The definition of "connected with" must therefore be appropriate for the pursuit of the said purpose. It would not be reasonable or appropriate to create sanctions measures relating to persons that have only a very loose connection with a sanctioned country.

The noble and learned Lord, Lord Judge, said in Committee that it surely makes sense for the Government to define connection now, in primary legislation, rather than at some point in the future. We have considered this suggestion carefully and looked at a couple of types of possible approaches in this respect. The first approach would be to list the connections that sanctions currently impose, but this poses two problems. First, the list would be very long, as there are a great deal of different types of connections. Secondly, an exclusive list would not give us the flexibility that we will need in future when new types of connections need to be made. It is worth remembering that the context of international policy is changing rapidly. This is perhaps best typified by the sanctions regime on North Korea, which has changed three times in the last six months alone. We do not know how much further we will be obliged to act on North Korea; unpredictable world events could make it necessary to have new regimes with measures of increasing complexity.

We also considered whether it might be possible to restrict the power by making sure that certain types of loose connections could not be specified. Again, the vast number and shifting type of these connections make drafting such provisions prohibitively difficult. The situation also changes in each case. I agree with the noble and learned Lord, Lord Judge, that a connection based on familial connection might be very loose and unjustifiable in many circumstances, but in the context of misappropriated wealth spread through the close family of a former head of state, such a connection might be required. I therefore request noble Lords not to press their amendments in relation to connected persons for the reasons that I have given.

On designation by description, I have listened closely to the concerns of noble Lords who spoke in Committee, including those about the practical difficulty that this would present for banks and others responsible for complying with such sanctions. I noted in Committee that it is important for the Government to have the power to designate by description in some circumstances, such as where we do not have the names of members of a terrorist group. I have accordingly sought to strike a balance here by placing restrictions on the use of this power to ensure that it can be used only in limited circumstances.

Based on the debate in Committee, I have tabled government Amendments 33 to 35 to ensure that the use of this power is tightly constrained, as the noble Lord, Lord Pannick, acknowledged. With this amendment in place, the Government must impose sanctions on an individual by name if we have access to their name, as the power to designate by description cannot be used when we do. The description must also be sufficiently detailed that a person can apply it to themselves and decide whether they are subject to sanctions. For example, if we wished to sanction all Ministers of a certain state, we would designate as many as possible by name and would then be able to designate any others of unknown name by the description "Ministers of that state". A Minister of that state will clearly know that the sanction applies to them, and UK persons, such as banks, will be able to ascertain the position in relation to their own business dealings. This enshrines the Government's commitment to use this power only when it is not practicable to designate by name, thus easing the compliance burden on industry. I thank the noble Lord, Lord Pannick, for his acknowledgement of the government amendments in this respect.

[Lord Ahmad of Wimbledon]

The noble Lord, Lord Hain, raised a specific issue relating to the work of Hogan Lovells for the South African Revenue Service. The noble Lord has raised various matters during the passage of the Bill, and I am grateful to him for bringing this information to our attention. I assure the noble Lord that, on this matter and the matters he has raised previously, the Government continue to be concerned about the allegations of corruption in South Africa. I further assure him that the British high commission continues to monitor this issue very closely. As the noble Lord said, he has already brought this issue to the attention of the Solicitors Regulation Authority and awaits its reply. Once he has heard from it on that subject, any correspondence could be copied to the Government, although I am sure we will already be informed. It has been helpful to have his interventions in this respect.

We have listened very carefully to the various elements and concerns raised in Committee. I once again thank noble Lords for their engagement in reaching the position that we have on these amendments. As I said at the start of Report, and during Committee and Second Reading, the guiding principle that I have adopted in this regard is that I believe very passionately that legislation is not just made more effective and more practical but enhanced in your Lordships' House. Through the co-operation we have had on this group of amendments, we have seen that level of constructive engagement.

On the basis of that explanation, I hope I have been able to persuade all noble Lords to support the government amendments and would ask them to withdraw or not move their amendments.

Lord Pannick: I am very grateful to the Minister, who has shown exemplary constructive engagement throughout discussions on the Bill. I am sure all parts of the House are very grateful to him and the Bill team for that.

Amendments restricting Ministers' powers to designate by description are far from technical, and I simply point out one matter in response to the Minister. I think he suggested that, in relation to government Amendment 34, the issue would be whether the individual himself or herself would be able to identify from the description whether they were covered. In fact, government Amendment 34 goes a lot further than that, because the test under it is whether, from the description, a reasonable person would know whether the individual falls within the description. That is the test. But I am very grateful to the Minister and beg leave to withdraw Amendment 10.

Amendment 10 withdrawn.

Amendments 11 to 19 not moved.

National Security Capability Review

Statement

4.32 pm

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I shall now repeat in the form of a Statement the Answer given earlier this afternoon in another place by my right honourable friend the Secretary of State for Defence on defence and the national security capability review. The Statement is as follows:

"In the 2015 strategic defence and security review, the Government identified four principal threats facing the UK and our allies in the coming decade: terrorism, extremism and instability; state-based threats and intensifying wider state competition; technology, especially cyber threats; and the erosion of a rules-based international order.

As the Prime Minister made clear in her speech to the Lord Mayor's banquet late last year, these threats have diversified and grown in intensity. Russian hostility to the West is increasing, whether through weaponising information, attempting to undermine democratic process or increased submarine activity in the North Atlantic. Regional instability in the Middle East exacerbates the threat from Daesh and Islamist terrorism, which has diversified and dispersed. Iran's well-known proxy military presence in Iraq, Syria and elsewhere poses a clear threat to UK interests in the region, and to our allies.

I have, as other Members have, seen much of the work that our Armed Forces continue to do in dealing with these threats. It is because of this intensifying global security context that the Government initiated the national security capability review in July. Its purpose is to ensure that our investment in national security capabilities is joined-up, effective and efficient.

As I said in Oral Questions, since becoming Defence Secretary, I have asked the department to develop robust options for ensuring that Defence can match the future threats and challenges facing this nation. Shortly, when the national security capability review finishes, the Prime Minister with NSC colleagues will then decide how to take forward its conclusions, and I would not wish to pre-empt that decision.

While the detail must wait until after the NSCR concludes, I can assure the House that as long as I am Defence Secretary we will develop and sustain the capabilities necessary to maintain continuous at-sea nuclear deterrence, a carrier force able to strike anywhere on the globe, and the Armed Forces necessary to protect the North Atlantic and Europe and to ensure that we continue to work with our NATO allies. The Prime Minister, the Chancellor and I will be doing all that we can to ensure that we have a sustainable budget so that we can deliver the right capabilities for our Armed Forces".

That concludes the Statement.

4.35 pm

Lord Tunnicliffe (Lab): My Lords, I thank the Minister for repeating the Statement. I may regret this but I am almost tempted to welcome it—however, I had better be careful to understand it first. It seems to say that this review will define the threats. I think its implication is that the Ministry of Defence will not do its normal thing of muddling through, and that when the defence needs for the threat are defined, the money will be found. Is that a reasonable précis?

Earl Howe: Certainly, my Lords, there is no intent for us to muddle through. The threats we face are ones we believe we correctly identified in the 2015 SDSR.

What we did not sufficiently predict was the intensification of those threats that we have seen over the last two or more years. So, the capability review is designed in part to ensure that we have the right capabilities for the threats we face and expect to face but, as the noble Lord is aware, it is also a response to the EU referendum turning out as it did and the pound sterling depreciating to the extent that it did. We must therefore be realistic in the way we configure our budget over the next few years.

Lord Campbell of Pittenweem (LD): As far as I am concerned—and perhaps this is in the mind of others—the word "realistic" conveys a certain ambiguity. I appreciate that the Minister is unable to go into detail about what the defence proposals may amount to, but I ask him as a matter of principle to agree three things: that it is necessary in a defence review, first, to state clearly your foreign and defence policy objectives; secondly, to determine the military resources needed to meet those objectives; and, thirdly, to provide the funding to ensure that those military resources are delivered. It is being said that the defence review is fiscally neutral. If that be so, how can all three of those principles be met?

Earl Howe: My Lords, the capability review has indeed been fiscally neutral in its approach, but we are addressing the challenges we face—I would not disagree with the three factors the noble Lord articulated—by ensuring that the policy and plans that support the implementation of the national security strategy are as joined-up, effective and efficient as possible. That may mean that we enhance the resources that are channelled towards certain capabilities and, as the noble Lord might expect from that, that we reduce the resources we are currently devoting to other capabilities.

Lord Robathan (Con): My Lords, I am prepared to give this review a welcome but if, as the Minister said, many of the threats are getting greater, we need to look at enhancing the amount of money we spend on defence. If the threats are greater, our defences must be greater as well.

Earl Howe: My Lords, from many of our debates on this topic I am well aware of the feeling of the House—that many noble Lords believe we should be spending more on defence. However, that is not currently the reality we are working with in the context of this review. As I say, we have a budget. We want to ensure that we are spending it intelligently in the context of the threats we face, and of our overall foreign policy.

Lord West of Spithead (Lab): My Lords, my blood runs cold when I look at the various options that seem to be being floated about cuts to defence. The Minister and I have both been involved with government and Whitehall long enough to know that these things do not just pop out of the undergrowth; it means that people are genuinely looking at options like that. If any of the options I have seen so far are implemented, the Conservative Government will have overseen a reduction of 50% in our military capability since 2010—quite an extraordinary figure. I ask the Minister to confirm that none of the measures said to be under consideration—the Government say that nothing at all is on the table—have actually been looked at. Or are they being looked at, and are we really thinking of making such a major reduction in our military capability?

Earl Howe: The Government have not reached the point where they are thinking of doing anything along the lines the noble Lord suggested. I am well aware of the press reports to which he refers. I must emphasise again that they are speculation. Ministers have not had a formal set of options presented to them, and that is the point at which there will be a decision-making process. Until then, I fear that I cannot comment on any speculation.

Lord Sterling of Plaistow (Con): My Lords, I welcome the Statement, particularly the last words, "deliver the right capabilities", and the word "ensure". We may at last have a Defence Secretary who will fight our corner. When we talk about threats, many of those who are much more knowledgeable than me through their days in defence will say that it is the unknown threats that we have to be prepared for. The known threats are much more straightforward; the unknown requires a different capability entirely.

The debate in the Commons last Thursday was one of the finest debates I have come across since I have been in Parliament. If any noble Lord has not read it, you should. This coming Thursday, we will have our own debate, as some noble Lords will be more than aware. When will the Government come to a viewpoint and state the way forward? Will it be in March or April, because time is not on our side?

Earl Howe: My Lords, my noble friend is absolutely right that there is no merit in delaying the announcement on this subject longer than we need to, but I am glad that he picked up the tone and tenor of the Statement. The main purpose of the review is to ensure that we have a full suite of national security capabilities, from hard power to soft power, to achieve the security goals, the economic goals—the goals that depend on our national influence around the world—set in the 2015 strategy and in the context of our exit from the European Union.

Lord Trefgarne (Con): My Lords, my noble friend just confirmed the Government's continued adherence to continuous at-sea deterrence. Will he further confirm that that means four submarines, no less?

Earl Howe: My Lords, yes, that is the conclusion that we and previous Governments have reached as the minimum practicable and credible force required to deliver continuous at-sea deterrence.

Baroness Smith of Newnham (LD): My Lords, the Secretary of State makes a commitment to protecting the north Atlantic. Is he also concerned about the south Atlantic, or should the Falklands be concerned?

Earl Howe: Yes, my Lords, and nothing I said should be taken as any indication that we will cease to keep a firm eye on the defence of the Falkland Islands, which we will continue to do.

Lord Robertson of Port Ellen (Lab): Does the noble Earl realise that the continued delay in making key decisions about future capabilities is simply paralysing decision-making inside the Ministry of Defence and encouraging our opponents outside? Our allies in NATO will also be dismayed at the fact that these decisions are still pending, still waiting and seem to be kicked further down the road. Is he not concerned that this is affecting the security of this country?

Earl Howe: As I said, we certainly want to make our announcement as soon as possible, but I would have thought that it would be even worse if I were to stand here and noble Lords were accusing the Government of making snap decisions, as I have heard criticism to that effect in relation to the 2010 SDSR. We are not in the business of making unconsidered judgments.

The Lord Bishop of Leeds: My Lords, would the Minister agree with me that it is important in any public statement that the people of this country are properly apprised of the fact that, if we say yes to and prioritise some elements of our defence capability, we are inevitably saying no to others, and that we are given a proper appraisal of what our capability actually is? In this country, particularly in some of our newspapers, we still hear statements that imply almost that Britannia still rules the waves. Our rhetoric and prioritising ought to match the reality of the situation in which we find ourselves.

Earl Howe: The right reverend Prelate is correct. We need to tailor our capabilities to what is affordable, certainly, but we also need to bear in mind that the importance of the UK acting with its allies will not diminish. As I have said many times, NATO is the bedrock of our national security, and will continue to be so.

Carillion

Statement

4.46 pm

Lord Young of Cookham (Con): My Lords, with the leave of the House, I shall repeat an Oral Statement made by the Chancellor of the Duchy of Lancaster in the other place. The Statement is as follows:

"Mr Speaker, I wish to make a Statement to update the House on the situation relating to Carillion plc. Today the directors concluded that the company is insolvent and that it is going into liquidation. The court has appointed the official receiver as liquidator. It is regrettable that Carillion has not been able to find suitable financing options with its lenders, and I am disappointed that the company has become insolvent as a result. This is the failure of a private sector company, however, and the company's shareholders and lenders will bear the brunt of the losses. Taxpayers should not, and will not, bail out a private sector company for private sector losses or allow rewards for failure.

I understand that members of the public and employees will have concerns at this time. The Government are doing everything possible to minimise any impact on employees. Let me be clear: all employees should continue to turn up to work in the knowledge that they will be paid, and to support the staff we have set up a helpline using Jobcentre Plus, through its rapid response service. The Government are also doing everything they can to minimise the impact on subcontractors and suppliers, who will continue to be paid through the official receiver. The action that we have taken is designed to keep vital public services running, rather than providing a bailout on the failure of a commercial company. The role of the Government is to plan and prepare for the continuing delivery of public services that are dependent on these contracts; that is what we have done.

The cause of Carillion's financial difficulties is not, for the most part, connected with its government contracts but with other parts of its business. Private sector contracts account for more than 60% of the company's revenue; the vast majority of the problems the company has encountered come from those contracts, rather than the public sector. Our top priority is safeguarding the continuity of public services, and we have emphasised this to the official receiver. We are also laying a departmental minute today notifying the House of a contingent liability incurred by my department in indemnifying the official receiver for its administrative and legal costs.

The official receiver will take over the running of services for a period following the insolvency of the company. The Government will support the official receiver to provide these services until a suitable alternative is found, either through another contractor or through in-house provision. The court appointment of the official receiver will allow us to protect the uninterrupted delivery of public services, something which would not have been possible under a normal liquidation process.

The official receiver is under a statutory duty to investigate the cause of failure of any company, and it is under a duty to report any potential misconduct of the directors to my right honourable friend the Secretary of State for Business, Energy and Industrial Strategy. My right honourable friend has asked that the investigation look at the conduct not only of the directors at the point of its insolvency, but also of any previous directors and whether their actions may have caused detriment to its creditors; this includes detriment to any employees who are owed money. It will also consider whether any action by directors has caused detriment to the pension schemes.

Carillion delivered a range of public services, across a number of sectors, including health, education, justice, defence and transport. In most cases, these contracts had been running successfully. We have been monitoring Carillion closely since its first profit warning in July 2017. Since then, we have planned extensively for the current situation and have robust and deliverable contingency plans in place. These are being implemented immediately to minimise any disruption and to protect the integrity of public service delivery. Other public bodies have been preparing contingency plans for the contracts for which they are responsible. The majority of the contracts awarded after the company's July profit warning were joint venture, where the other companies are now contractually bound to take on Carillion's share of the work.

I recognise this is also a difficult time for pension holders. The Pensions Advisory Service has set up a dedicated helpline for staff and pensioners who have concerns about their pensions. Those already receiving their pensions will continue to receive payment from the Pension Protection Fund. For those who have started an apprenticeship programme with Carillion, the Construction Industry Training Board has set up a task force to assist apprentices to seek new employment, while working with the Education and Skills Funding Agency to find new training placements. The official receiver will be in contact with all apprentices. Companies and individuals in the supply chain working on public sector contracts have been asked to operate as usual. Normally in the event of a company going into liquidation, the smaller firms working for it move across to the new contractor which takes on the work.

The private sector plays an important and necessary role in delivering government services, something recognised by this and by previous Governments of all political parties. Currently, 700 PFI and PF2 contracts reflecting capital investment of approximately £60 billion are being delivered successfully. Furthermore, we have a number of service provision contracts being delivered successfully by a range of companies. These contracts allow us to leverage the expertise of specialist providers and deliver value for money for taxpayers.

I would like to reassure the House that we are doing all we can to ensure the continuity of public services that were provided by Carillion and to support an orderly liquidation of the company. I shall write to Members today to summarise the situation and inform colleagues of a helpline for the use of Members and their staff, to provide answers to any constituency problems that may arise.

Along with other ministerial colleagues, I shall keep the House updated on developments as the official receiver starts to go about its work, and I commend this Statement to the House".

My Lords, that concludes the Statement.

4.52 pm

Lord Hunt of Kings Heath (Lab): My Lords, I thank the Minister for repeating the Statement. However, I have to say that it seems remarkably complacent in the face of the catastrophic failure of Carillion. Millions of pounds of public money is threatened, hundreds of thousands of public service users are vulnerable and tens of thousands of jobs are at risk—yet the Government could have ameliorated the crisis. The Statement claims that the Government have been closely monitoring the company since last July—some monitoring. Remarkably, contracts worth £2 billion were awarded during this period, when no fewer than three profit warnings were given by Carillion. Why was that, and why was a consortium of which Carillion was a part so recently given a lucrative deal to work on the HS2 line?

Why did they leave vacant the position of the Crown representative—responsible for helping a company in a situation such as Carillion's—from August to November during a crucial period of the company's difficulties? That was surely a gross neglect of their responsibilities to monitor the company? Does the Minister plan an investigation into the Government's handling of the matter? The Statement refers to the official receiver's statutory duty to investigate the cause of failure in any company. That will not cover the action of Ministers—and they have their fingerprints all over this debacle. Who will investigate their conduct?

The outcomes of this liquidation will be wide-reaching. Carillion ran 50 prisons, almost 9,000 schools, 200 operating theatres and 11,800 hospital beds. What assurance can the Minister give that none will be affected? The information the Government have released through the Insolvency Service makes no reference to their plans for the ongoing delivery of public services. Will the Minister commit to inform the House about this as soon as possible? Will he act quickly to bring these public sector contracts back in-house?

The Statement says that taxpayers will not bail out this company, but is that believable? The Government have form: there is a pattern of the taxpayer being asked to pick up the pieces of wildly irresponsibly bidding and grotesquely high pay and perks for executives, with the Government using yet more public money, as in the case of the east coast main line, to bail out these failing companies. It is vital that shareholders and creditors are not allowed to walk away with the profits from profitable contracts while the taxpayer bails out loss-making parts. Will the Minister commit to make sure that that does not happen?

Carillion employs almost 20,000 people, with far more in its supply chain. The Minister referred to them, but will he confirm that the pay and conditions of these workers will be the Government's priority in any financial assistance? The workforce will have turned up today not knowing whether their jobs and pay are safe. Will the Minister commit to doing everything in his power to protect the jobs of those working on public sector contracts? My understanding is that in a compulsory liquidation the contracts of all employees are automatically terminated. Will he say whether that is so? Will the Redundancy Payments Service pay out huge sums for redundancies, arrears of wages, holiday pay and protective awards?

The Minister mentioned pensions. Can he tell us how much the Pension Protection Fund will have to put aside to cover the deficit in Carillion's defined benefit pension schemes? He also mentioned the supply chain. Lots of SMEs and workers in the supply chain will be threatened, and contracts with large companies are clearly their lifeblood. What will the Minister do to safeguard jobs and workers in Carillion's supply chain?

The Government are guilty of being too cosy, too incompetent and too profligate: too cosy with the companies; too incompetent in leaving the position of the Crown representative vacant for three months and awarding more contracts to a company that they knew was in severe crisis; and too profligate in handing over public money to the private sector as a result of their dogmatic belief that it should profiteer from our schools, hospitals and public services no matter what its performance.

Lord Stunell (LD): My Lords, I thank the Minister for repeating the Statement. The collapse of the second-largest construction company in the country and a major provider of public services across the country is cause for concern and regret, not least for those employed by that company and those who depend on it because

[LORD STUNELL]
they are part of a long supply chain in many different industries, particularly the construction industry. The official receiver has been appointed and the Statement says that one of his duties will be to hold an inquiry. Can the Minister say something about the status of staff and employees working on public sector service provision and those working on private sector contracts? What is their future? What do the Government intend to do to protect them?

There is, of course, anger on the part of many of those working for and with the company that the warning signs were not quickly followed up by the Government after the alert in July—not least that a Crown representative was not appointed when good practice and ministerial guidelines say that that should have happened. I hope that the Minister will say something about that. If the official receiver's inquiry does not cover such issues, I will certainly join the noble Lord, Lord Hunt, in calling for a wider inquiry.

In view of Carillion's role in delivering numerous large-scale infrastructure projects, what are the implications of its collapse on those projects and their timetables, and what impact may it have on the Government's industrial strategy? We should bear in mind that construction and construction training were key elements of that strategy and that many apprentices are employed not just by Carillion but by those in the supply chain, whose continuing apprenticeships are clearly at risk. Can the Minister help us on that? What are Ministers doing to minimise damage to public services and the capacity of the construction industry? Subcontractors face a very difficult time. It is one thing to say that contracts can be transferred to their partners—for instance, on HS2—but what about the backlog of unpaid bills that Carillion will owe them? Will that be coughed up by their new partners? Is that part of the deal that was arranged when the partnerships were set up, or is it more likely that the subcontractors will be expected to bear the loss?

Finally, what does the Minister have to say about the governance of that company and the way that the warning signs were there? Even the chairman has some form from times past. What exactly do the Government believe is the right governance structure for a major contractor for public services so that in future there will be protection for the public, for employees and for the country?

Lord Young of Cookham: I am grateful to both noble Lords for their interventions, and of course I understand the anxiety shared, I think, on all sides of the House, about the future for the employees and for those in receipt of the services provided by Carillion. To put it into perspective, if one looks at the current live contracts held by Carillion, roughly one-third were let before 2010, roughly one-third were let between 2010 and 2015, and roughly one-third were let between 2015 and now.

On the point about taxpayers' money being at risk, as a matter of principle, money is transferred from the Government to contractors in return for work that has been undertaken. Looking ahead at the money we are going to pay for services, it would have been paid to Carillion for the relevant services, and obviously it will now be paid through the official receiver. The Government will look to the official receiver to sell off, if that is his decision, those profitable operations to get some resources in.

Reference was made to the statutory obligations of the receiver to look at the conduct of the company. I understand that the Select Committee on Public Administration and Constitutional Affairs in another place has already announced that it will make an inquiry. The National Audit Office and the Public Accounts Committee may also take an interest in this—that is a response to the point made by the spokesman for the Opposition as to how the Government will be held to account; there is a variety of means by which that can happen.

On contingency plans, before Christmas the Government made local authorities, academy trusts and others aware of the financial problems confronting Carillion and advised them to put in place contingency arrangements. From what I have heard so far today, most of the contingency arrangements are working satisfactorily—although, as I said, there may continue to be some difficulties.

As regards the loss, obviously the shareholders have been wiped out and the banks advanced substantial sums of money to Carillion, so the primary losers here will be, as I said, the shareholders, the banks, and any others who have lent money to Carillion.

On pay and conditions, I understand that for the time being they remain the same; the official receiver will continue to pay and employ them. There is a distinction to be made at some point between those carrying out public sector work and those doing private sector work for Carillion—a point raised by the spokesman for the Liberal Democrats. On contracts held by Carillion not with the Government but with private sector companies, I understand that the official receiver is allowing a period of up to two days for those companies to decide whether they want to take over the contracts. So far as the public sector contracts are concerned, as I said, the Government's top priority is continuity of service. The official receiver will continue to make resources available to fund the public services.

The noble Lord asked about terms and conditions. I am very reluctant to give an off-the-cuff reply about whether TUPE and similar things will apply, and I hope that he will understand if I take advice on that rather than try to answer it.

On the pension fund, I think that there are 14 schemes under the Carillion umbrella, some of which may be in surplus and others of which are not. The Pension Protection Fund will carry out an assessment. If the schemes are not viable, they will be taken in-house by the PPF, together with the assets of the scheme. Those already receiving their pension will continue to get it. Those who are yet to retire will get, I think, 90% of their entitlement, subject to a cap of somewhere around £35,000.

On the supply chain, it is important that the subcontractors continue to turn up. The official receiver has the necessary resources to continue to pay them.

On the question of apprenticeships, I understand that the CITB, the Construction Industry Training Board, is aware of the issue and will try to find other

companies to take on those apprentices who have been displaced by Carillion or the subcontractors, and indeed those who are hoping to take up employment with them.

I think that I have answered most of the questions that I am able to. I am conscious that I have not answered all of them but my right honourable friend will keep the House of Commons updated on developments as the official receiver starts to go about his work, and I am sure that that applies to your Lordships' House as well.

5.06 pm

Lord Lawson of Blaby (Con): My Lords, the opposition spokesmen have called for inquiries into the Carillion affair, but the Minister has pointed out that one or two inquiries are likely to take place anyway. However, perhaps I may suggest to him that the time has come for a thorough, independent inquiry into the whole PFI—private finance initiative—process.

This idea, I think, originated in Australia and it came to me when I was Chancellor 30-odd years ago. My Treasury officials were keen on it but I refused to have anything to do with it. Subsequently, my successors—particularly, but not exclusively, Mr Gordon Brown—were enthusiastically in favour of it. Its purpose, in the eyes of the Treasury officials who tried to persuade me to take it up, was that it enabled you, at least in the short term, to dress up considerable amounts of public expenditure and put them off the public sector balance sheet. That is not a good reason for adopting something which, in my judgment, does not give good value for money for the taxpayer, and it introduces a degree of moral hazard, which we see very much in the Carillion affair—and there have been other examples. It is important that we take stock at this juncture and decide whether the whole PFI scheme should be proceeded with further. We have now had enough evidence that it is not good value for money and therefore not sensible from the point of view of the taxpayer.

Lord Young of Cookham: I am grateful to my noble friend. I agree with the first half of his question but I would not go quite as far as he did in the follow-up. It is important not to condemn all PFIs. This initiative has enabled the country to invest in infrastructure at a faster rate than if the investment were wholly funded by public borrowing, thereby enabling us to improve productivity. There are many very successful examples of PFI.

My noble friend's first point was about a review. A review of PFI, which I read last night, was carried out in 2010 by the NAO, which stood back and looked at the lessons learned. It came up with a number of conclusions—for example, that the public sector should make sure that it had adequate negotiators to deal with the very skilled negotiators in the private sector. It is beyond my pay grade, but my noble friend's suggestion that we should take this opportunity to stand back and look at the PFI model to see whether there are any improvements to be made in the light of the Carillion and other affairs seems wholly worth while. However, I hope that the Government do not go quite as far as he implied; namely, that we should rule out this form of partnership for ever and a day.

Lord O'Neill of Clackmannan (Lab): My Lords, is the Minister aware that the supply chain is of some significance here? Is he also aware that many of the companies engaged in that supply chain at the second and third-tier levels employ fewer than 10 people? I should say that I have declared my interests in the register. Given the payment structure which Carillion adopted, many companies in the supply chain have completed the work but are still waiting to be paid because of the 120-day period between completion of the work and payment being made for it. From what has been said today, these people seem to have been forgotten about. They have done their duty under their contracts with Carillion and have now been left hanging with no prospect of payment or of getting any kind of money for the supplies they have utilised and the workforce they have engaged.

Lord Young of Cookham: The noble Lord asks a very good question—so good that I asked it myself when I met officials earlier today. It is a serious issue that there may be circumstances where Carillion has been paid but the money has not filtered down the supply chain. I have made inquiries about this. The priority of the official receiver is to maintain continuity of service and I gather that there is provision within the resources available to the receiver, in the circumstances that the noble Lord has just mentioned, for the payments that have not filtered through to be made, in order to ensure that continuity of service is provided.

Lord Trefgarne (Con): My Lords, I am aware that the Ministry of Defence had important business with Carillion. Can the Minister say how that will be affected?

Lord Young of Cookham: The Government have been in touch with a range of government departments which have an interest, including the Ministry of Defence. The top priority is to make sure that the catering, cleaning and maintenance services provided by Carillion continue to run effectively, and I have been assured that the contingency planning carried out by the ministry means that there will be minimal impact on service personnel and their families as a result of what has happened today.

Baroness Randerson (LD): My Lords, the ongoing relationship with Carillion is yet another example of poor judgment at the top of the Department for Transport. Carillion is the second-largest supplier to Network Rail and, as has already been stated, the contract with HS2 was signed after early profit warnings for the company were issued. Can the Minister now assure us that the Government will review the guidelines for and operating procedures of departments across government so that concerns about financial stability are taken into account before contracts are awarded, and so that no firm can be awarded a contract unless it can demonstrate its financial viability?

Lord Young of Cookham: My Lords, I am grateful to the noble Baroness. It is worth making the point that of the seven contracts that were let post July, six were joint ventures; in other words, there was joint and several liability to undertake the work if one of them collapsed. In the case of HS2, which was the largest at

[Lord Young of Cookham]
£1.4 billion in total, Kier has already announced this morning that it has put in place contingency plans to ensure continuity of service. The two MoD contracts were joint ventures, as were the two HS2 ones, and so was the Network Rail contract to Carillion Powerlines. Only one relevant contract was not a joint venture where Network Rail is now transferring the work to another framework contractor.

However, the noble Baroness has made a good point. When one assesses who has won a tender, one has to do it against a number of set and published criteria. If you do not, you are up for judicial review. One of those criteria is financial stability. Clearly, whatever the test was back in July, it was passed. It relates to a point made by my noble friend Lord Lawson, which is whether one should take this opportunity just to stand back and look at whether the criteria used for assessing financial stability are correct and robust enough or whether they need firming up.

Lord Lea of Crondall (Lab): My Lords, is not a picture emerging of some prima facie creative accounting going on? The noble Lord, Lord Lawson, makes a fair point when he suggests that not every contract should come directly from the Government. The picture now is that in almost everything done by Wimpey, Costain and so on, they are called subcontractors, and that applies to the workforce as well. Does the inquiry not need to cast a beady eye over how far the culture of subcontracting everything—much more so than was true previously in the construction industry—is part of the background to this problem because no one can take an overall view of what is happening on the balance sheet?

Lord Young of Cookham: That is quite a complicated question. One can make a good argument for having subcontractors—namely, people who specialise in a particular discipline and compete against each other for contracts, rather than one company trying to cover the whole spectrum of services. Many very successful industries are built on a structure of contracts and subcontracts. Noble Lords need look only to the airline industry to see a whole range of contracts: companies lease the aeroplanes and subcontract baggage handling and catering and so on, and, on the whole, it is a satisfactorily run industry. I would not want to get drawn into conclusions about what structure is the right one for a particular industry. On the question of accounting, I should have said that the FCA and the FRC are both conducting their respective inquiries—one, I think, into audit, and the other into statements that were made or not made about the company's prospects. These particular aspects are being looked at by the relevant authorities.

Lord Elystan-Morgan (CB): On the issue of pensions, is it not the case that the statutory body that will be reimbursing loss will do so not to the tune of 90% but 85%? If I am wrong in that, I am very happy to be corrected. However, in any event, and whatever the figure, do the Government accept a moral responsibility in this matter to ameliorate so far as they possibly can the loss that many people will feel in respect of quite modest pensions?

Lord Young of Cookham: I am trying to find the appropriate information—and I have now found it. It says that it is likely that the majority of pension schemes will transfer into the PPF with a consequential effect on members' benefits. Pensioners receive 100% compensation and non-pensioners receive 90% of their accrued pension, subject to an overall cap, which is what I think I said in response to an earlier question. If by any chance this briefing is wrong, the person who wrote it will be writing very quickly to the noble Lord. On the broader issue, the Pension Protection Fund is funded by a levy on all pension funds, and I am confident that it has the resources to take on board the liabilities it is likely to inherit from Carillion. The PPF will, of course, get the assets of the scheme, which, at the time of the last audit, were worth £2.267 billion.

Lord Higgins (Con): My Lords, following up the point on pensions, clearly a heavy burden will fall on the Pension Protection Fund. If I understand what my noble friend says, there are a number of individual pension funds involved. What is the position of the trustees of each of those, and will an inquiry be made into the extent to which they have fulfilled their obligations?

Lord Young of Cookham: That is a very good question and I hope that whoever has the responsibility for making sure that the trustees do their job—it is probably the Pensions Regulator—takes my noble friend's question on board. There are 14 separate defined benefit pension schemes involved, which the Carillion group acquired as it expanded. Overall, there is a significant pensions deficit of £523 million as at 2013—some estimates indicate that it is now up to £1.6 billion. Perhaps I could write to my noble friend about the responsibilities of trustees, because I do not want to imply in any way that they have not been conscientious in discharging their responsibilities.

The Lord Bishop of Durham: My Lords, I note the comments already made about apprentices, but it is often those at the beginning of their careers who are most affected and most quickly forgotten. Carillion itself committed to creating 5,000 apprenticeships by 2019, and its website states that around 2,000 students are in training as part of an apprenticeship programme across 13 centres at any one time, so we are not talking about a small number. How can the Minister assure us that those apprentices and students—because some are on student schemes—will be given serious consideration to ensure that their careers are not affected?

Lord Young of Cookham: I am grateful to the right reverend Prelate. I said in my opening statement that the official receiver will be in touch with all of the apprentices with a view to finding alternative placements for them to continue their work. I also identified a role for the Construction Industry Training Board. The right reverend Prelate raises a crucial point and I will write to him with more detail about exactly how we will pursue the issue of making sure that the apprentices continue their apprenticeships and that new apprentices have somewhere to go now that they cannot go to Carillion.

Lord Berkeley (Lab): Can the Minister possibly explain something? In the last five years, contracts such as for the railways, HS2 and maybe others have become more and more complex. Therefore, the cost of responding to them can, I am told, be £10 million or £20 million. These companies are not making a lot of money, so if they lose a contract they have lost that £10 million or £20 million. This may happen to rail franchises as well. If this goes on, I worry about who will be next. It is getting more and more complex, the cost is greater and the companies do not really make that much profit to get a reward. I would be interested in the Minister's comments.

Lord Young of Cookham: That goes slightly wider than the Statement. There are a few limited circumstances where the Government have undertaken to reimburse people bidding for a contract for the costs of tendering. As a general principle, the Government do not pay—nor does any customer pay—for people to produce a bid. Obviously, there would be consequences for public expenditure if we went down that road. At the moment, it is not such a deterrent that we are failing to get good competition for contracts. If it appeared to be a serious deterrent, we would look at it again, but at the moment I do not think that that is the case.

Lord Birt (CB): My Lords, the Carillion share price crashed in July and pretty much overnight lost 75% of its value, leaving a company with £900 million worth of debt, a pension deficit of £600 million, a market cap of £60 million and three major public sector contracts of considerable value seriously overrunning. As the Minister said, subsequent to July, seven contracts were awarded by the Government or the public sector. Was that wise? Surely, the noble Lord, Lord Lawson, is right. We must look again at the ways that contracts are awarded, and frankly at the competence of the Government in managing such contracts.

Lord Young of Cookham: I said a few moments ago in response to another question that, of those contracts let since July, six were joint ventures where the exposure to Carillion was substantially reduced by having other contractors underwriting Carillion if it were to withdraw. The Government can take some credit for making those precautions available. On the noble Lord's general point, which reinforced what my noble friend Lord Lawson said, I indicated in response to an earlier question that if the assessments made of the robustness of Carillion in July ticked all the boxes in the tender document and they had to be adhered to, I agree with my noble friend Lord Lawson that this is something that we should have another look at.

Lord Fox (LD): My Lords, I do not believe that the role of the auditors has been mentioned. Auditors clearly have an important role in assuring the security of companies such as Carillion. Does the Minister agree that the official receiver, which is one of the small number of companies that conduct audits in this country, may not be entirely dispassionate or capable of making the right sort of assessment of this service?

Lord Young of Cookham: I think I said a few moments ago that the Financial Reporting Council had taken an interest. Again, if I am wrong I will correct myself, but I think that is the body that looks at whether auditors have correctly discharged their responsibilities. I am sure that they will be taking an interest in this case.

Lord Naseby (Con): My Lords, is my noble friend aware that the depth of his response is greatly welcomed by your Lordships' House? I re-emphasise the importance of reminding the official receiver that the payment of subcontractors is vital, because this is not the first time this happened. I have worked in the construction industry, and it was fairly common knowledge 12 months ago that Carillion was in considerable difficulty. Will my noble friend look at who in Her Majesty's Government keeps a watch on these major contracts across departments? That question needs to be asked.

Lord Young of Cookham: On my noble friend's first point, the Government subscribe to the Prompt Payment Code. Indeed, we honour that in our payments to Carillion. We would expect the official receiver to abide by the same terms in making payments on the Government's behalf. Was his second point about the robustness of the assessment?

Lord Naseby: If I may help my noble friend, many of us in the industry were well aware 12 months ago that this particular company was in considerable difficulty.

Lord Young of Cookham: Again, that underlines a point made by a number of noble Lords, which I certainly take to heart. We should see whether the method of assessing the financial viability that we have to undertake when we award a tender needs to be reviewed in the light of what has happened to Carillion.

Sanctions and Anti-Money Laundering Bill [HL]

Report (1st Day) (Continued)

5.27 pm

Amendments 20 to 22 not moved.

Amendments 23 and 24

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

23: Clause 2, page 4, line 2, after "received" insert ", procured"

24: Clause 2, page 4, line 3, after "received" insert ", procured"

Amendments 23 and 24 agreed.

Amendment 25 not moved.

Clause 9: Designation powers: general

Amendment 26 not moved.

The Deputy Speaker (Lord Palmer of Childs Hill) (LD): I must advise the House that if Amendment 27 is agreed, I cannot call Amendments 28 and 29 because of pre-emption.

Amendment 27

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

27: Clause 9, page 9, line 36, leave out subsection (3) and insert—

"(3) Regulations under section 1 which contain a designation power must provide that where an appropriate Minister—

(a) has made a designation under the power, or

(b) has varied or revoked a designation made under the power (see section 18),

that Minister must without delay take such steps as are reasonably practicable to inform the designated person of the designation, variation or revocation.

(3A) The regulations may include provision, additional to that required by subsection (3), as to steps to be taken as regards notification or publicity where a designation has been made under the designation power or a designation made under the power has been varied or revoked.

(3B) The regulations need not require a person to be notified of an intention to designate the person."

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, I thank all noble Lords again for their constructive engagement on this group of amendments. The government amendments I have tabled have been heavily influenced by the discussions we have had. Amendment 28 would require regulations to include provisions on notifying a person once designated and how to publicise designations. I am happy to say that government Amendment 27 does exactly that. When a person has been designated, or had their designation varied or revoked, the Minister must, without delay, take such steps as are reasonably practicable to inform the person. Sanctions regulations may also include further provision as to the specific arrangements for notification or publicity. In this regard, I am extremely grateful to the noble and learned Lord, Lord Judge, and the noble Lord, Lord Pannick, for their assistance.

Amendment 29 would require a person to be informed of their designation and to be given the fullest possible account of the reasons for designation and the steps required to address the concerns. Amendment 30 covers similar ground, while also requiring that the designated person be given the evidence underlying the designation or a gist of any evidence that is withheld for reasons of national security. In response, government Amendments 32, 37 and 59 make provision across the Bill to provide a statement of reasons to designated persons. When a person is designated, the Government will be obliged to provide a statement of the matters that the Minister knows, or has reasonable grounds to suspect, have led to the designation. I am sure noble Lords will appreciate that the Minister's statement may exclude some matters, for reasons which I know noble Lords will understand and respect, such as when it is in the interests of national security. If a challenge is made in court, on those rare occasions when sensitive information is used to underpin a designation, the closed material procedure will apply. The courts, such as in the case of AF (No. 3), have long required the gist of sensitive material to be disclosed to enable an individual to understand the case against them. We accept that this is and will continue to be the case and the Bill does not seek to make any changes to the existing disclosure burden on the Government in such cases.

Amendment 38 would insert a new clause into the Bill requiring the appropriate Minister to exercise the power to designate only to the extent that it is proportionate to do so, having regard to the purpose of the designation and the impact on the person concerned. The government amendments I have tabled in response—Amendments 31, 36 and 58—use very similar language. They would require Ministers to consider that a designation is appropriate, having regard to the purpose of the regulations and the likely significant effects of the designation on the person concerned. I am again grateful to the noble Lord, Lord Pannick, and the noble and learned Lord, Lord Judge, for supporting these government amendments. While there seems to be a meeting of minds on this important issue, it may also be helpful if I briefly explain the thinking behind the Government's revised language.

First, the European Convention on Human Rights entrenches individual rights, obliging the Government to consider the impact on an individual's rights when making certain decisions. Section 6 of the Human Rights Act 1998 further ensures that the appropriate Minister must act in line with those convention rights, as informed by Strasbourg case law. We consider that this includes satisfying himself that the designation is proportionate, where convention rights are engaged, and I have been clear on this in relation to this Bill, including in Committee. Secondly, given that the Human Rights Act already requires proportionality to be considered where convention rights are engaged, a court might interpret the use of the word in the Bill to mean something different. Our amendments have tried to preserve the spirit of the intention underlying this amendment, without creating any difficulty of interpretation. As a result, the government amendments provide for a balancing test for designations between the purpose of the regulation and the impact on the individual, while avoiding an explicit reference to "proportionality".

Amendment 50 requires the Government to provide specific guidance produced by the Crown Prosecution Service about the prosecution of sanctions breaches. The Government wholeheartedly support and have publicly committed to producing clear and accessible guidance on sanctions implementation and enforcement, both in this House and throughout our consultation on the White Paper. The Crown Prosecution Service already publishes guidance on how the public interest is taken into account in any decision to prosecute and this test is the same one that will be applied in decisions to prosecute sanctions offences. The procurator fiscal in Scotland and the Public Prosecution Service for Northern Ireland publish similar guidance. The Government's view is that no additional public interest guidance is necessary simply for a sanctions prosecution decision.

The Bill will provide for the Government to issue guidance on the content and implementation of sanctions. Clause 36 requires Ministers to issue guidance about any prohibitions and requirements imposed by sanctions regulations. There will be a mandatory requirement to provide comprehensive guidance for all those affected by sanctions implementation. Clause 36 is a more comprehensive duty than that specified in the amendment to Clause 16 which I have said is unnecessary. It has

been drafted so as to allow comprehensive guidance on all sanctions prohibitions and requirements to be prepared and consulted on by the appropriate sources of expertise. For financial sanctions, the Office of Financial Sanctions Implementation has already published a comprehensive guidance document setting out its general enforcement approach. This will be fully updated to reflect the new sanctions Bill regime.

Amendment 53 requires the Minister to respond,

"as soon as reasonably practical"

to a request to vary or revoke a designation. Government Amendments 56 and 61 are fully in line with this proposal.

Finally, government Amendments 51, 52, 57 and 60 make technical changes consequential on these changes, and I hope they will be accepted. I beg to move.

Lord Pannick (CB): My Lords, I have tabled, with the support of the noble and learned Lord, Lord Judge, the noble Lord, Lord Collins of Highbury, and the noble Baroness, Lady Northover, a number of amendments in this group on the subjects of procedural fairness and proportionality. The Minister acknowledged in Committee that these were topics that he and the Bill team would need to consider before Report. Given the adverse consequences of being designated, the Bill must provide for procedural fairness and the provisions must be applied in a proportionate manner. Again, I thank the Minister and the Bill team for some very helpful meetings on these subjects, and for tabling these amendments, which address my concerns.

In particular, government Amendments 31, 36 and 58 will require the Minister to be satisfied that any designation is appropriate, having regard to both,

"the purpose of the regulations … and … the likely significant effects of the designation",

on the person concerned. That addresses the substance of my Amendment 38 on proportionality. It does not use the word "proportionality" but that does not matter. It contains the essence of proportionality and I am grateful to the Minister for confirming in his opening remarks that that is indeed the purpose of these government amendments.

Government Amendments 32, 37, 59 and 61 are also very important in placing in the Bill a requirement of procedural fairness; that is, that the person designated is entitled to a statement of the reasons why he or she has been designated. That is absolutely fundamental to any fair sanctions procedure. I recognise that the government amendments exclude any right to information the disclosure of which would harm interests such as national security, but they rightly provide that these exclusions will not allow the Minister to provide no statement of reasons. I would be grateful if the Minister could confirm that the intention here is to ensure that a person who is designated will always be entitled to at least a statement of the essence of the reasons for the designation, albeit that details which affect national security or other protected interests cannot be disclosed.

In the light of these government amendments, I am satisfied that the Bill now makes it clear that procedural fairness and the substance of proportionality are part of the administrative machinery. The Minister made it clear in Committee that this was always the intention and he made it clear—and I respectfully agree with him—that the courts would in any event hold Ministers to such basic standards of the rule of law. I am pleased that the Minister has recognised that it is appropriate to include these matters in the Bill and I thank him.

Baroness Northover (LD): My Lords, I apologise if I caused hiccups by not moving Amendment 20. That was deliberate on my part. I did not mean to cause any hiccups, though. I thank the Minister for engaging with these issues. This is yet another example of co-operation right around the Chamber on this part of the Bill.

Lord Lennie (Lab): My Lords, I am also grateful to the Minister. Clearly, he has listened a lot and has provided a lot of change from the initial version of the Bill. There is a meeting of minds—there is no question about that—but the one issue that I am not sure he addressed was about the requisite steps that persons are expected to take to address the concerns which led to the designation in the first place. I would like the Minister to comment on that, but we support the changes.

Lord Ahmad of Wimbledon: My Lords, again, I thank noble Lords. The noble Lord, Lord Pannick, asked me to confirm that the Bill makes no provision to change the ability of the designated person to be given the reasons for their designation and to be supplied with an irreducible minimum of the evidence against them. The only issue is that we have always said there would be national security elements. The amendment specifically says that,

"the regulations may not authorise the Minister to provide no statement of reasons",

which I am sure the noble Lord has noted.

5.45 pm

On the opportunity for the designated person to challenge their listing, which I believe the noble Lord also raised, currently designated persons and entities can challenge their designation and the content of the sanctions in EU courts. There are currently around 100 sanctions-related cases before EU courts. Those persons and entities designated under UK sanctions regulations made using the powers in the Bill will be protected by the ability to request an administrative reassessment of the Government's decision at the time they are designated or re-designated. Designated persons under UK sanctions will also be able to challenge their designation in the High Court. The court will then have the ability to order the Government to think again and, if necessary, make declarations of unlawfulness and, in some cases, award damages.

I trust that with those two clarifications, noble Lords are minded to support the government amendments.

Amendment 27 agreed.

Amendments 28 to 30 not moved.

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

Amendments 31 and 32

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

31: Clause 10, page 10, line 10, leave out paragraph (b) and insert—

"(b) considers that the designation of that person is appropriate, having regard to—

(i) the purpose of the regulations as stated under section 1(3), and

(ii) the likely significant effects of the designation on that person (as they appear to the Minister to be on the basis of the information that the Minister has)."

32: Clause 10, page 10, line 31, at end insert—

"(7) The regulations must, in relation to any case where the Minister designates a person by name, require the information given under the provision made under section 9(3) to include a statement of reasons.

(8) In subsection (7) a "statement of reasons" means a brief statement of the matters that the Minister knows, or has reasonable grounds to suspect, in relation to that person which have led the Minister to make the designation.

(9) The regulations may authorise matters to be excluded from that statement where the Minister considers that they should be excluded—

(a) in the interests of national security or international relations,

(b) for reasons connected with the prevention or detection of serious crime in the United Kingdom or elsewhere, or

(c) in the interests of justice

(but the regulations may not authorise the Minister to provide no statement of reasons)."

Amendments 31 and 32 agreed.

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

Amendments 33 to 37

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

33: Clause 11, page 10, line 33, leave out "authorise" and insert "grant a power for"

34: Clause 11, page 10, line 35, at end insert—

"( ) The regulations must contain provision which prohibits the exercise of that power except where conditions A to C are met.

( ) Condition A is that the description of persons specified is such that a reasonable person would know whether that person fell within it.

( ) Condition B is that, at the time the description is specified, it is not practicable for the Minister to identify and designate by name all the persons falling within that description at that time."

35: Clause 11, page 10, line 36, leave out from beginning to "the" in line 37 and insert "Condition C is that"

36: Clause 11, page 11, line 1, leave out paragraph (b) and insert—

"(b) considers that the designation of persons of the specified description is appropriate, having regard to—

(i) the purpose of the regulations as stated under section 1 (3), and

(ii) the likely significant effects of the designation (as they appear to the Minister to be on the basis of the information that the Minister has) on persons of that description."

37: Clause 11, page 11, line 5, at end insert—

"(3A) The regulations must, in relation to any case where the Minister provides that persons of a specified description are designated persons, require the information given under the provision made under section 9(3) to include a statement of reasons.

(3B) In subsection (3A) a "statement of reasons" means a brief statement of the matters that the Minister knows, or has reasonable grounds to suspect, in relation to persons of the specified description which have led the Minister to make the provision designating persons of that description.

(3C) The regulations may authorise matters to be excluded from that statement where the Minister considers that they should be excluded—

(a) in the interests of national security or international relations,

(b) for reasons connected with the prevention or detection of serious crime in the United Kingdom or elsewhere, or

(c) in the interests of justice

(but the regulations may not authorise the Minister to provide no statement of reasons)."

Amendments 33 to 37 agreed.

Amendment 38 not moved.

Clause 14: Exceptions and licences

Amendments 39 to 41 not moved.

Amendments 42 and 43 not moved.

Clause 16: Enforcement

Amendment 44 not moved.

Amendment 45

Moved by ***Lord Judge***

45: Clause 16, page 14, line 13, leave out paragraph (a)

Lord Judge (CB): My Lords, I am going to add to the trumpet sounds of praise for the Minister and thank him for everything he has done so far. However, I do not want to damage his ministerial career further by not taking him on. I am taking him on in relation to Clause 16.

In the days when there were no regulations but the King thought that he would like to rule the country by proclamation and to create criminal offences by proclamation, the response of Parliament was that it is,

"the indubitable right of the people of this kingdom not to be made subject to any punishment … other than such as are ordained by the common laws of this land, or the statutes made by their common consent in parliament".

The King sought to be able to make criminal offences by proclamation and Parliament told him he could not. That is a principle to which we should have adhered. We have not. I am not going to try to turn back the last 25 years of history but this is quite a significant moment. Parliament was prepared to tell the King—who could have sent you off to prison and did send people to the Tower when he disagreed with them—that this would not do. My submission to the House is that this current provision simply will not do. I acknowledge that the clause is improved to some extent by the proposed government amendments but it provides a vivid example of what has become unacceptable, for this very simple reason: it vests vast powers in a Minister of the Crown.

In discussions with the Minister, I have been able to understand that he has clearly conveyed his wish to ensure that where sanctions of whatever kind are currently and lawfully in existence, particularly those which emanate from our membership of the EU, they should continue. I agree with him: the EU and our current relationship with it is why we have sanctions against Syria and Russia. I do not for one moment wish to diminish the possibility of those continuing. They should not lapse just because we would cease to have any international obligation with the EU, but I simply do not understand why we cannot make provision to deal with such a situation. I am not trying to row back. I accept the need for sanctions to be continued against Russia and Syria, and against whomsoever we have sanctions, but it should be capable of amendment. This provision, I agree, would do that but it would also do much more—and my concern is with the much more, which is quite unnecessary.

The starting point is that the entire system envisaged in the Bill is about government by regulation. There is in truth no primary legislation here; all of it is regulations. I call it a bonanza of regulations and your Lordships might use any word you like to describe it, but that is what the Bill consists of. In addition, we have two perfectly good provisions for dealing with UN sanctions and sanctions based on our obligations under international law, under treaty. Then we have a whole lot of new regulations to deal with the prevention of terrorism, the interests of national security, the interests of international peace and security, the furtherance of a foreign policy objective of the Government of the United Kingdom and, as a result of today's debate, four more provisions. All those are domestic issues. The issues relating to UN resolutions or sanctions, EU resolutions and treaty obligations are fine, so far as they go. But as to the rest of it, it is all domestic.

We will end up with a situation in which provision will be made by regulation to enable the Minister to decide what offences should be created to deal with what are in truth domestic matters, which it is unlikely would not be at least matters of controversy. Foreign policy is a matter of controversy. What is "national security"? How should counterterrorism work? These are all issues which we have to grapple with on a daily basis. We would end up with a Minister, by regulations based on regulations, being able to create an offence which would send you to prison, presumably on conviction, for 10 years. That is a major provision.

I can deal with this briefly; I have said my piece more than once in this House on it. This clause is devolving enormous powers. I have no hesitation or worry about it devolving enormous powers to this Minister but we do not know who the next Minister will be, or the Minister 10 or 20 years from now. The Bill will continue in force for 10 or 20 years; I suspect the hope is that it will continue indefinitely. In the wrong hands, these powers are not merely enormous but dangerous. There is no need for them. So my objection to this clause, and the provisions I am addressing, is simply this: we are allowing an accretion of alarming power to a Minister of the Crown—to the Executive. That power in relation to the matters I am raising, which is to say not the United Nations issue or the international treaty issue but all the other issues, should not be dealt with by regulation. I beg to move.

The Deputy Speaker (Lord Brougham and Vaux) (Con): I must advise the House that if this amendment is agreed to, I cannot call Amendment 46 and that, in the same grouping, if Amendment 47 is agreed to I cannot call Amendments 48 or 49 due to pre-emption.

Lord Pannick: Perhaps I may add one brief point to what was said so powerfully by the noble and learned Lord, which is to remind the House of what was said by your Lordships' Constitution Committee, of which he and I are members. The committee's eighth report of this Session, which was on the Bill, stated in paragraph 21:

> "We are deeply concerned that the power in clause 16 may be used to create an offence for which a sentence of imprisonment for up to 10 years may be imposed, and that rules on the evidence to demonstrate that the case is proved, and defences to such charges, are subject to ministerial regulation. We consider that such regulation-making powers are constitutionally unacceptable and should not remain part of the Bill".

The Minister has dealt in Amendment 46 with the second part of that criticism, which is the quite extraordinary suggestion in the original Bill that a Minister, by regulations, should have power to alter defences to charges and to address rules on evidence, such as the burden and standard of proof. This was a quite extraordinary suggestion and I hope that the House will never again see such a provision presented in a Bill by Ministers. However, to his credit the Minister has accepted in Amendment 46 that that provision should be removed. What remains is the suggestion that Ministers should have the power to create offences for which a sentence of imprisonment of up to 10 years is imposed—and on that I entirely agree with what the noble and learned Lord said.

Lord McNally (LD): My Lords, perhaps I may intervene here as a non-lawyer because I see our lawyers fluttering into their places, rather like that scene in Hitchcock's "The Birds". I would like to make a wider point to the House, which is one I have made over the last 20 years in Parliament. It is that one of the crucial roles of this Chamber is to defend the constitution and, above all, to defend it in terms of the relative powers of the judiciary, the Executive and the legislature.

Just over 10 years ago I was on the Cunningham committee, which looked at conventions between the two Houses. If I left a mark on that committee, it was in the clause that states and retains the right of this House to say no. It is the most important power that this House has. It is a nuclear power and something not to be used very often, but it makes the other place come into dialogue and it makes Governments think again. What worries me about the process now under way is that because of the sheer volume of Brexit legislation that will come our way, with a whole flotilla of Bills, it is quite clear that the members of whatever team is looking at this in the Cabinet Office have said, "We can only do this by using secondary legislation and Henry VIII powers on an unprecedented scale". If they were successful in doing this we would, in my

[LORD MCNALLY]
submission, tilt the balance away from the legislature to the Executive in a way that was not intended—and certainly not intended by those who argued for Brexit as a way of returning power to this Parliament.

This is one of the early tests of it. Funnily enough, the earliest test was in the little-noticed Space Industry Bill where there was a whopping great Henry VIII clause which, after the intervention of the noble and learned Lord, Lord Judge, the Government withdrew. By voting for and carrying this amendment today, right at the start of this process, we will send a message that will make the Government think again—and think more imaginatively and more constitutionally—about how they are going to deal with this legislation without adopting these practices, the dangers of which the noble and learned Lord, Lord Judge, and the noble Lord, Lord Pannick, so eloquently explained.

It is a real danger. If we are forced in Bill after Bill to carry amendments, the House of Lords will be accused of exceeding its powers. I do not think that we are exceeding our powers. We are doing what Lord Hailsham referred to almost 40 years ago: trying to avoid the dangers of a democratic dictatorship where the other place simply argues that we must obey. We must not just obey, particularly with clauses such as this which tilt the balance away from the way in which law, and in particular criminal law, is made, in a quite unacceptable way. By voting for this amendment tonight, we will send a message which will avoid a constitutional car crash further down the road.

6 pm

Lord Lester of Herne Hill (LD): My Lords, it is a great pleasure on this occasion to speak after my noble friend Lord McNally and to agree with him. I am very glad to do so. Although he does not think much of lawyers, he would make a wonderful lawyer—and I mean that as a compliment.

So far as this amendment is concerned, although the noble and learned Lord, Lord Judge, went back to the proclamations in explaining its origin, I shall add this from my own memory. When I was a student of history, not law, at Cambridge University, my mentor told me to read *The New Despotism* by Lord Hewart, the Lord Chief Justice, and, especially, Harold Laski and the other members of the Donoughmore committee on Ministers' powers, which reported in the late 1930s. Anybody who reads those two historic documents will understand perfectly why the amendment moved by the noble and learned Lord, Lord Judge, needs to be supported. It is a matter of the rule of law and of parliamentary democracy. Therefore, I very much hope that the whole House and the Minister, in particular, will be able to accept the amendment. If not, I will certainly be delighted to vote in its favour.

Lord Deben (Con): My Lords, I remind the House that I was fortunate enough to take part in the Space Industry Bill on exactly this basis. That is the reason I come to this amendment. I hope that my noble friend will recognise that this is about not just this amendment in this Bill but a whole range of ways of looking at taking into our domestic legislation the things that we have to. I choose to speak on this simply because this is not an issue on which I can be accused of having a parti pris position—although I will be perfectly happy to be accused of that when we have the withdrawal Bill, on which clearly I take a very strong view.

On this, I am talking about an amendment to a Bill which has a great danger. If you produce a Bill called the Sanctions and Anti-Money Laundering Bill, it is very easy to put almost anything in it and feel that it is perfectly reasonable to support what you have put in—because none of us is in favour of not having sanctions and all of us are opposed to money laundering. Therefore, this is the moment in which I always become particularly careful. I am worried about this because it seems to be an area in which lawyers have taken a major part. That always worries me, and I feel that one has to make sure that one is not being led astray down some legal path that is other than sensible.

On this occasion, I think that what is being proposed is not acceptable within the constitution. As the noble Lord, Lord McNally, said, this is a constitutional matter. If we are here for anything—and I believe that we are here for a very good purpose—dealing with the constitution is clearly the central part of it, and dealing with it in the detail that we can, when the House of Commons is unable to deal with it in that detail, makes this even more important.

I cannot believe that my noble friend really intends to say that Ministers should have these powers. I know that I have said it before, but I was a Minister for 16 years and I have to tell him that I should not have been given those powers. I do not agree with the noble and learned Lord, Lord Judge, that it does not matter because of the excellence of the Minister. In a sense, it matters more because of the excellence of the Minister. It is very important as a Minister to recognise that there are restrictions on any Minister, however good. In a sense, that is when I particularly want those restrictions to be strong.

I say to my noble friend that there is a reason why this amendment is very important, and it is a constitutional reason. But there is a practical reason, too. It is that we do not want to feel that the Government are not prepared to understand the distinction between constitutional propriety and the urge and necessity to change the law in order to face up to the regrettable effects of Brexit. This is an opportunity for us to say that this is not about this issue; it is about the constitutional concern. I hope that my noble friend will be able to give the House some reassurance that, now that this has been pointed out to him, he will look again at the debates on the Space Industry Bill, think forward to the debates that we will have over the Trade Bill and the withdrawal Bill, and recognise that perhaps this is a moment to find a way of accommodating a very serious criticism.

Lord Collins of Highbury (Lab): My Lords, I thank the noble and learned Lord and noble Lords for their contributions. I agree wholeheartedly with their comments in relation to the thrust of this legislation. We are here because of another decision. We are here because we are being forced to take action speedily because of the precipice that we will be facing.

I said at Second Reading and will say now that we support this Bill because we are required to have a proper and full sanctions regime. I completely share

the concerns expressed by your Lordships' Constitution Committee. But, as I said in Committee, your Lordships' Delegated Powers and Regulatory Reform Committee examined these clauses in some detail and did not quite share the view of the Constitution Committee. It referred to its previous memorandum on the subject and said that the reason for this clause related to the enforcement of the prohibitions and requirements set out in the regulations. In Committee, the Minister said that the Government were replicating existing enforcement regimes. He said:

"To be clear: these types of offences already exist".—[*Official Report*, 21/11/17; col. 165.]

In Committee, I said that if that was the case, and the Minister was hearing us in terms of the concerns over principles, I hoped that he would come up with something better to address the concerns of the Delegated Powers and Regulatory Reform Committee. I am afraid that, as the noble and learned Lord, Lord Judge, said, I do not think that the Minister has come up with adequate provisions to address these concerns. They are limited, as the noble and learned Lord said, to some of the all-embracing powers such as determining evidence and the process for evidence. I welcome those changes but I do not think that the Government have gone far enough in terms of being very clear how these wide-ranging powers will be dealt with. If the noble and learned Lord presses this issue, I hope that the House will support him.

Lord Ahmad of Wimbledon: My Lords, first, I thank the noble and learned Lord for tabling his amendment. Again, I also thank him for the extensive discussions we have had in this respect.

The amendments seek to remove the ability to make provision in sanctions regulations creating offences for breaches of sanctions. I say from the outset that I sympathise with the concerns that noble Lords have expressed during various parts of the debate, not just today but in previous stages. I am sure noble Lords will also acknowledge that we have done a lot of work to try to respond to these concerns. I have tabled some government amendments in this area, which the noble Lord, Lord Collins, acknowledged.

The powers in question enable offences to be created for breaches of sanctions, in line with our current practice when implementing EU legal acts. They also enable other enforcement tools to be used, such as deferred prosecution agreements or serious crime prevention orders. Having the power to punish individuals and entities for breaching sanctions deters non-compliance and ensures the measures are robust. Sanctions without teeth, as I am sure noble Lords acknowledge, are essentially meaningless. Indeed, we debated earlier an amendment that would have included preventing,

"the violation of sanctions regulations",

as one of the explicit purposes to be set out in Clause 1. Although I argued against that amendment on technical grounds, I agree with the spirit.

EU sanctions against countries such as Russia and Syria are imposed through EU legal acts that require member states to put in place enforcement measures at a national level. In line with that requirement, the UK routinely creates criminal offences for breaches of sanctions by way of statutory instruments made under powers in the European Communities Act 1972, as well as other legislation such as the Export Control Act 2002 and the Policing and Crime Act 2017. Other EU member states implement similar enforcement measures through their national legislation.

As foreshadowed in the White Paper consultation before this Bill was introduced, the Government want to be in a position to maintain continuity in this area. Whatever one's views on Brexit, I think there is wide support for the principle that the UK and EU should remain closely aligned on sanctions policy. If the UK's future sanctions regime against Russia was stripped of any enforcement provisions, I am sure noble Lords would agree that this would send a very unfortunate signal to our EU partners and to other close allies. Amendments 45 and 47 would mean that breaching a sanctions regime would not be an offence. If they are passed, as existing criminal offences in EU retained law fall away when new UK regimes are introduced, we would be unable to replicate those offences in the new regimes.

We have covered some of these issues previously, and I hope that what I have said will persuade the noble and learned Lord to withdraw his amendment. As I have said, I understand the concerns that have been expressed, including today, about the scope of these powers and will set out in a moment the government amendments that I have tabled in response. But the abolition of offences from sanctions regulations clearly undermines the purpose of the Bill and would make the UK a weak link in broader international implementation of sanctions, which I am sure is not noble Lords' intention. I know and totally accept that this House is concerned about the creation of criminal offences through secondary legislation, a point eloquently made by the noble and learned Lord, Lord Judge, the noble Lord, Lord McNally, and my noble friend Lord Deben. I can provide this House with the following reassurances.

6.15 pm

First, the powers in Clause 16 would be used only to create offences within categories of offences that already exist in relation to sanctions. The categories are: offences for breaching prohibitions and requirements contained in sanctions regulations made under the Bill—for example, breaches of the prohibition on exporting items to North Korea—and offences relating to prohibitions or requirements imposed under regulations made under the Bill, such as breaches of or the circumvention of licence conditions.

The powers would not—indeed, could not—be used to create any new terrorism offences other than those relating specifically to sanctions. The Bill repeals the sanctions regime under Part 1 of the Terrorist Asset-Freezing etc Act 2010 and aligns counterterrorism sanctions with other sanctions. This was of course first proposed in the White Paper. The government response to the consultation made it clear that consolidation of all counterterrorism powers was beyond the purpose of the Bill, the primary objective of which was to allow the Government to implement UN sanctions and impose UK autonomous sanctions after the UK leaves the EU. It indicated that the sanctions Bill would sit alongside other extant counterterrorism legislation, providing specific counterterrorism powers in relation to sanctions only.

[Lord Ahmad of Wimbledon]

I assure your Lordships that the powers in Clause 16 are accordingly limited to enforcement in relation to sanctions made under the Bill: the Bill does not give Ministers the powers to create any wider terrorism offences, nor does it change or repeal any other legislation dealing with terrorism offences. The Bill and the counterterrorism sanctions made under it will work alongside the other legislation that operates in this sphere.

Secondly, an appropriate Minister could not use these powers in a way that was incompatible with the basic and fundamental rights of people subject to UK jurisdiction. Section 6 of the Human Rights Act 1998 forbids it.

Thirdly, we do not intend to create offences with maximum penalties higher than those currently set out in existing legislation. The existing maximum sentences for breaches of trade and financial sanctions will be based on existing primary legislation. These are 10 years for trade sanctions, based on the Export Control Act 2002, and seven years for financial sanctions, based on the reforms made by the Policing and Crime Act 2017. We are well aware that imposing criminal offences and setting penalties is a serious matter not to be undertaken lightly. In addition to the protections already built into the Bill, I have therefore tabled government amendments that offer additional safeguards in relation to Clause 16.

Amendment 46 deletes the wording "defences and evidentiary matters" and replaces it with "including provision creating defences". This retains the Government's ability to create defences in regulations, including any defences that already exist for sanctions offences in the current law, while removing their ability to make provision for unspecified evidentiary matters. I recognise this has been a focus of criticism in your Lordships' House, and I hope that the new drafting makes it clear that the Government are not removing defences or protections in the rules of evidence.

Amendments 48 and 49 would make clear in the Bill "the maximum permitted period" for prison sentences in the cases of different prohibitions and requirements. For breaches or circumvention of licence provisions and information provisions, the maximum permitted sentence will be two years' imprisonment, and for breaches of sanctions prohibitions and requirements, up to 10 years. These reflect existing maximum sentences established through primary legislation, which would be unaffected by this Bill.

Together with the reassurances I have offered, I hope that these government amendments will go further to convince noble Lords that sufficient safeguards are being put in place regarding the creation of offences through sanctions regulations, which I know has been a primary concern for the noble and learned Lord, Lord Judge. Preserving these provisions is crucial to ensure that the Bill achieves its purpose and that the UK can continue to implement and enforce sanctions in lock-step with the European Union, the US and other close allies.

The noble and learned Lord, Lord Judge, said there was no need for these powers. I stress again that without this power we would have no offences for sanctions such as those relating to Russia and Syria, which currently emanate from the EU. These sanctions would not fall within international obligations after the UK leaves the EU. Moreover, as the noble Lord, Lord Collins, alluded to, the Delegated Powers Committee acknowledged in its report that it was appropriate to use secondary legislation to legislate for sanctions and the powers that need to be widely drawn to cater for the broad range of circumstances in which they need to be applied.

I have said that I have listened, and I continue to listen. I appreciate the time and concern that the noble and learned Lord, Lord, Lord Judge, in particular, has taken, and the detail into which he has gone. The Government appreciate the concerns that have been raised. I give a commitment that, as the Bill proceeds through this House and the other place, we are willing to work with noble Lords further to explore this area. In particular, we would like to explain further some of the difficulties—we have had some of these discussions with the noble and learned Lord—associated with the suggestion that an offence in the Bill could safely and coherently apply to a prohibition contained in sanctions regulations yet to be written. I therefore hope that noble Lords, particularly the noble and learned Lord, Lord Judge, and the noble Lord, Lord Pannick, will take up the offer of a further meeting. I was seeking to confirm this not only with the Bill team but with parliamentary counsel to ensure that we can explain the difficulties and challenges. I know that the noble and learned Lord acknowledges the complexity of what is proposed.

With those reassurances, qualifications, checks and balances, and in the light of the government amendments that have been tabled, I hope the noble and learned Lord is minded to withdraw his amendment.

Lord Judge: My Lords, I appreciate the way in which the Minister has put these matters. He has expressed his sympathy for our concerns and he understands them. We are talking about a basic, simple constitutional position. We do not for one moment think that sanctions should not exist, or that there should be some kind of break in the ability to enforce against breaches of sanctions where they currently exist—that is not the purpose of the amendment. Nor is it beyond parliamentary counsel to find a way of making sensible provision to meet the Government's requirements. If it does, the Government will bring this matter back to the House on Third Reading or take it to the Commons. As it is, we are being asked to sanction a provision that is constitutionally dangerous.

Therefore, although I am willing—assuming that the House agrees with my view—to meet the Minister and indeed parliamentary counsel at any time to discuss how the issues should be addressed, I propose to invite the view of the House on this amendment. I add that I have been addressing the House on the basis that Amendments 45 and 47 run together. That has plainly been the understanding of everyone who has participated in the debate, but for the moment we are concerned only with Amendment 45. If it is carried, I will move Amendment 47 formally. I should like to test the opinion of the House.

6.23 pm

Division on Amendment 45

Contents 209; Not-Contents 192. [The Tellers for the Not-Contents reported 192 votes; the Clerks recorded 191 names.]

Amendment 45 agreed.

Division No. 2

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6.38 pm

Amendment 46 not moved.

Amendment 47

Moved by ***Lord Judge***

47: Clause 16, page 14, line 17, leave out subsection (4)

Amendment 47 agreed.

Amendments 48 to 50 not moved.

Clause 18: Power to vary or revoke designation made under regulations

Amendments 51 and 52

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

51: Clause 18, page 16, line 2, at end insert "(reading that provision, so far as made under section 10(2)(b), as if references to the designation were references to leaving the designation in place)"

52: Clause 18, page 16, line 4, at end insert "(reading that provision, so far as made under section 11(2)(b), as if references to the designation were references to leaving the designation in place)"

Amendments 51 and 52 agreed.

Amendment 53 not moved.

Clause 20: Periodic review of certain designations

Amendment 54

Moved by ***Lord Pannick***

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

Lord Pannick: My Lords, Amendment 54 is in my name and that of my noble and learned friend Lord Judge, the noble Baroness, Lady Northover, and the noble Lord, Lord Collins of Highbury. It proposes that the obligation under the Bill on Ministers to review a designation every three years should be reduced to one year.

I have reflected on this matter in the light of very helpful meetings with the Minister and the Bill team. In the light of the right of the person concerned to request a review if there are new significant matters and of the duty on Ministers under Clause 26, to be amended by government Amendment 55 in this group, themselves to review regulations every year and to place a report for Parliament, I shall not pursue Amendment 54. Simply to enable other noble Lords to participate in this short debate if they so wish, I beg to move.

Baroness Northover: I am glad that to some extent the Government have moved in this area and I hope that, in the light of the vote that we have just had, that spirit of co-operation around the House will extend to other sections of the Bill that still need addressing.

Lord Ahmad of Wimbledon: My Lords, I thank the noble Lord for his amendment. As he has already indicated, it would oblige the Government to conduct a re-examination of each designation on an annual basis. I agree completely on the need for sanctions designations to be based on solid evidence. The UK has pushed hard for that in the EU, and that is widely recognised—for example, in the recent report of the House of Lords EU Committee. We are committed to maintaining these high standards.

The Bill as drafted includes a robust package of procedural safeguards, which will be further reinforced by the government amendments I have tabled, including Amendment 55. The combined package will provide a

high level of protection for designated persons, at least as strong as current EU standards. The Government would review all sanctions regulations annually and present the results in a written report to Parliament. Amendment 55 makes that clear on the face of the Bill; I know that noble Lords raised that point. If the report concluded that there were no longer good reasons for maintaining a UK sanctions regime, we would lift it. Any changes made to the equivalent sanctions regimes of the EU or other international partners would be examined closely as part of the annual review.

Alongside the annual review of the regulations, the Bill requires the Government to put in place a dynamic process to reassess designations upon request; the triennial review is not the only opportunity. A designated person can request a reassessment of their designation at any time, and a further reassessment when there is a significant matter that has not been previously considered by the Minister. I take the point that a designated person, once they had requested a reassessment, challenged it in court, and failed to establish any unlawfulness, would not have a further review until either there was a significant new matter or a triennial review. But what would the purpose of a further review be when the designation has been established to be lawful and nothing has changed since then? If there are new arguments to be tested, or if the passage of time has changed the situation, a further reassessment can be requested. If not, there is no need to do so.

In response to feedback from noble Lords in Committee, I am proposing to strengthen these safeguards through government amendments. The Minister would have to deal with a request for reassessment as soon as reasonably practicable, and inform the person of the decision and reasons as soon as reasonably practicable after a decision had been made. Ministers can also instigate a reassessment at any time—for example, if the person concerned has been delisted by the EU. Ministers would have every interest in initiating reassessments proactively, both in the interests of justice and to minimise the risk and cost of legal challenges. In any case, when the EU decided to revoke the designation of a person also designated in the UK, I would certainly want to reassess the corresponding UK designation.

Taken together, these provisions will ensure that UK sanctions are under constant scrutiny and the Government are obliged to respond swiftly to new information and challenges. The triennial review then provides a further backstop, ensuring that each and every designation is looked at afresh on a regular cycle. This aligns with current practice in Australia and would put us ahead of countries such as the United States and Canada, which have no such process. It does not prevent more frequent reviews, and we have mechanisms in place that oblige us to do so when appropriate. Requiring the Government to conduct these reviews every year would be extremely resource-intensive; we have had those discussions in the bilateral and constructive meetings with the noble Lord. There are finite government resources, and the noble Lord appreciated that that would take away from other important areas. However, the amendments that we have tabled ensure that the protections the noble Lord was after have been afforded. I am thankful for his co-operation in that regard.

Lord Pannick: My Lords, I am grateful to the Minister. I beg leave to withdraw the amendment.

Amendment 54 withdrawn.

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

Amendment 55

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

55: Clause 26, leave out Clause 26 and insert the following new Clause—

"Review by appropriate Minister of regulations under section 1

(1) Subsection (2) applies where any regulations under section 1 are in force.

(2) The appropriate Minister who made the regulations must in each relevant period review whether the regulations are still appropriate for the purpose stated in them under section 1(3).

(3) If a purpose so stated in any regulations under section 1 is a purpose other than compliance with a UN obligation or other international obligation, any review of those regulations under this section must also include a consideration of—

(a) whether carrying out that purpose would meet any one or more of the conditions in paragraphs (a) to (d) of section 1(2),

(b) whether there are good reasons to pursue that purpose, and

(c) whether the imposition of sanctions is a reasonable course of action for that purpose.

(4) In subsection (3)(c) "sanctions" means prohibitions and requirements of the kinds which are imposed by the regulations for the purpose in question (or both for that purpose and for another purpose of the regulations).

(5) An appropriate Minister who has carried out a review under this section must lay before Parliament a report containing—

(a) the conclusions of the review,

(b) the reasons for those conclusions, and

(c) a statement of any action that that Minister has taken or proposes to take in consequence of the review.

(6) Nothing in subsection (5) requires the report to contain anything the disclosure of which may, in the opinion of that Minister, damage national security or international relations.

(7) For the purposes of this section each of the following is a "relevant period" in relation to regulations under section 1 —

(a) the period of one year beginning with the date when the regulations are made;

(b) each period of one year that begins with the date when a report under this section containing the conclusions of a review of the regulations is laid before Parliament."

Amendment 55 agreed.

Clause 27: Procedure for requests and reviews

Amendment 56

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

56: Clause 27, page 19, line 15, at end insert—

"( ) Regulations made under this section in relation to a request under section 19 , 21 , 23 or 25 must require—

(a) the decision on any such request to be made as soon as reasonably practicable after the receipt by the appropriate Minister dealing with the request of the information needed for making the decision, and

(b) the person who made the request to be informed of the decision and the reasons for it as soon as reasonably practicable after the decision is made.

( ) The regulations may authorise matters to be excluded from the reasons given for the decision where the appropriate Minister who made the decision considers that those matters should be excluded—

(a) in the interests of national security or international relations,

(b) for reasons connected with the prevention or detection of serious crime in the United Kingdom or elsewhere, or

(c) in the interests of justice

(but the regulations may not authorise that Minister to provide no reasons)."

Amendment 56 agreed.

Clause 29: Directions under section 28: further provision

Amendments 57 to 60

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

57: Clause 29, page 20, line 6, leave out "the appropriate" and insert "that"

58: Clause 29, page 20, line 10, leave out paragraph (b) and insert—

"(b) considers that it is appropriate to give the direction, having regard to—

(i) the purpose of the EU provision which relates to persons in that list (see subsections (4) and (5) below), and

(ii) the likely significant effects of the direction on the person to whom it relates (as they appear to that Minister to be on the basis of the information that the Minister has)."

59: Clause 29, page 20, line 40, at end insert—

"(7A) Regulations made under subsection (7) must, in relation to any case where a direction under section 28 has been given, require the appropriate Minister who gave the direction ("the Minister") to take without delay such steps as are reasonably practicable—

(a) to inform the person to whom it relates that the direction has been given, and

(b) where the direction is under section 28(3)(a), to include with that information a brief statement of the matters that the Minister knows, or has reasonable grounds to suspect, in relation to that person which have led the Minister to give the direction.

(7B) The regulations may authorise the statement required by virtue of subsection (7A)(b) to exclude matters where the Minister considers that they should be excluded—

(a) in the interests of national security or international relations,

(b) for reasons connected with the prevention or detection of serious crime in the United Kingdom or elsewhere, or

(c) in the interests of justice

(but the regulations may not authorise the Minister to provide no such statement)."

60: Clause 29, page 20, line 42, leave out "any such direction" and insert "a direction under section 28 "

Amendments 57 to 60 agreed.

Clause 30: Rights of person on EU sanctions list

Amendment 61

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

61: Clause 30, page 21, line 24, at end insert—

"( ) Regulations made under subsection (5) in relation to a request under this section or section 31 must require—

(a) the decision on any such request to be made as soon as reasonably practicable after the receipt by the appropriate Minister dealing with the request of the information needed for making the decision, and

(b) the person who made the request to be informed of the decision and the reasons for it as soon as reasonably practicable after the decision is made.

( ) The regulations may authorise matters to be excluded from the reasons given for the decision where the appropriate Minister who made the decision considers that those matters should be excluded—

(a) in the interests of national security or international relations,

(b) for reasons connected with the prevention or detection of serious crime in the United Kingdom or elsewhere, or

(c) in the interests of justice

(but the regulations may not authorise that Minister to provide no reasons)."

Amendment 61 agreed.

Clause 32: Court review of decisions

Amendment 62

Moved by ***Lord Pannick***

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

"( ) In relation to a decision under subsection (1)(c) concerned with the designation of a person by reason of an obligation of the United Kingdom under a UN Security Council Resolution, the court must proceed in the following manner—

(a) if the court concludes that it would otherwise be appropriate to set aside the decision of the Minister, it must give judgement explaining its reasons and make a declaration to that effect but grant no other relief at that stage;

(b) on the making of such a declaration, the Minister must use his or her best endeavours to secure that the person's name is removed from the relevant UN list as soon as reasonably practicable;

(c) if the Minister's best endeavours under paragraph (b) fail to succeed within a reasonable time, the court must then have power to set aside the decision of the Minister."

Lord Pannick: My Lords, Amendment 62 in my name and the names of the noble and learned Lord, Lord Judge, and the noble Baroness, Lady Northover, raises an important and difficult issue about the rule of law. The Bill provides, by Clauses 21 and 32, that if a person is designated in this country as a result of being placed on a UN sanctions list, the only remedy that the person concerned can obtain from the courts of this country is to require the Secretary of State to use best endeavours at the UN to have that person removed from the UN sanctions list. If those best endeavours fail, the domestic court has no power to quash the domestic designation, however strong the arguments are by the person concerned that she is the victim of procedural unfairness because the UN will not say why her name has been added to the UN list, or however strong the person's argument that the UN has made a serious error of substance in adding her name to the UN list—for example, by confusing her with another Baroness Northover.

The exclusion of the powers of the domestic court to quash the domestic designation in such circumstances is very troubling. To be designated under this legislation will have a very damaging effect—devastating, indeed—on the life of the person concerned and their family. A number of noble and learned Lords are in the House, as well as a number of noble Lords with an expertise in law. I for my part cannot think of any other comparable context where there is no judicial review remedy in this country to quash action taken by Ministers which is directed at, and imposes a serious detriment on, a specified individual. This is all the more troubling because the person concerned has no remedy before any judicial body, or indeed any quasi-judicial body, at the UN, except in terrorist cases. There is no judicial system at the UN to which you can take your plea. The remedy for procedural unfairness or an arbitrary decision will depend, in almost all cases, on political pressure. The justice of the individual case may not—I put this point as politely as I can—be a matter of the highest priority for the UN. Let us be realistic. We are, after all, talking about an organisation whose Human Rights Council includes Saudi Arabia.

The Minister will say—and there is force in the point—that this country is committed to international law and that, if a person's name is on the UN sanctions list, this country must faithfully abide by such a ruling until it is changed at international level. The Minister will also say, and again there is substance in the argument, that we need to be very careful indeed about suggesting to other countries that they can pick and choose whether to implement UN resolutions on sanctions. I recognise all of that, and that is why this issue is so difficult.

My answers to these points are as follows. First, under this amendment, a conflict between the UN ruling and the domestic court will occur very rarely indeed; I would hope never. The amendment provides that, if the court here concludes that the listing is a breach of the rule of law, the court in the first instance can do no more than so declare. The Minister will then use best endeavours at the UN to secure change. Only if that fails will the court have a power—I emphasise, a power not a duty—to quash the domestic listing.

Secondly, the very existence of judicial power in this country will help the Minister in using best endeavours at the UN. The risk of a judge here quashing the domestic listing will ensure that the rule-of-law concerns are given proper consideration in the political forum of the UN. Thirdly, the European Court of Justice in the Kadi case asserted its jurisdiction to quash a listing under EU law even though it was based on a UN resolution. I see no reason why the judges in this country should be denied a power which the Court of Justice in Luxembourg enjoys, especially when the very purpose of the Bill is to create domestic procedures to replace EU ones when this country leaves the EU.

Fourthly, the court in this country will take fully into account the importance of complying with international law. It would only be in a very plain case that a domestic designation based on a UN listing would be quashed by our judges. If there is a case where our judges are persuaded that a person has been designated by Ministers in this country because of a UN listing which is in defiance of basic rule-of-law standards of fairness and rationality, the judges of this country must have power to provide a remedy for the domestic designation. Your Lordships' Constitution Committee, of which I am a member, so recommended in paragraph 27 of its 8th Report of this Session.

It comes to this: the Minister's reliance on international law cannot take priority over the rule of law. The rule of law in this country cannot be subcontracted to the political processes of the United Nations. I beg to move.

Baroness Northover: My Lords, given that I have been named here and therefore have a key interest, I ought to address this in case I get sanctioned in the place of another Baroness Northover. I am sure my kids would think that was an extremely interesting situation for me, but I am not sure that I would. The noble Lord, Lord Pannick, has made a very powerful case on this matter, as he did in Committee. If an error is made with a designation as a result of UN sanctions being imposed then, as he said, the ECJ could, at the moment, protect that person within the EU and allow it to be challenged. There clearly should be a way of doing this. As the noble Lord said, it is a matter of the rule of law.

We have been told that the rights of British citizens will not be lessened if we leave the EU. This protection should, therefore, be carried over into British law. I clearly have an interest here and I support the amendment in the name of the noble Lord, Lord Pannick.

Lord Faulks (Con): My Lords, I was present in the Chamber and listened to the debate when this matter was debated in Committee, although the amendment has changed slightly. Since then, I have read and considered the arguments. At the time, I was persuaded that, on balance, the noble Lord, Lord Pannick, was right and the absence of such a power as is envisaged by the amendment was a real risk of injustice. However, I have changed my mind. It is, of course, fundamentally important that we respect our treaty obligations, particularly Article 103 of the UN charter. What higher obligation could there be?

The UN, in common with all international institutions, is not infallible. For example, we know that the European Court of Justice, which we must obey, and the European

[LORD FAULKS]
Court of Human Rights are not infallible. However, sometimes there is a need to subsume individual, national needs into the need for an overall, international understanding. It is vital that we respect the decisions on sanctions that have been made by the UN. As a permanent member of the Security Council, we can influence those. The Human Rights Council, to which my noble friend referred, can of course make mistakes, but it is undesirable that individual countries can pick and choose which sanctions they want to follow. I look forward with interest to hearing what the party opposite says about our relationship with the UN.

The Secretary of State can, and should, use his best endeavours in appropriate circumstances to try to influence matters, and can be told to do so by the court, but this goes further. Although the amendment has precursors to the exercise of the power, it does ultimately give the court the power to set aside the decision of the Minister. The noble Lord, Lord Pannick, says that this is a rule-of-law issue. It is indeed; it is a rule of international law and international comity, so I am afraid I cannot support the amendment.

Baroness Kramer (LD): My Lords, I have no legal background, but I want to intervene quickly to pick up an issue which has been treated as almost in passing. I understand that the United Nations entirely accepts that the European Court of Justice can provide the kind of protection that the noble Lord, Lord Pannick, has described as being contained within the amendment. If I happen to be Russia, China or some country that wishes to abuse a correct designation by the United Nations, I have the European Union and the ECJ as my example of an entity that does take upon itself the right to provide protection where it believes the UN is in error. Allowing citizens of the United Kingdom to have that same protection adds no particular strength to any such position that might be taken by some other power. We have heard a deep commitment from the Government that exiting the European Union will not reduce the rights and protections that have been provided to British citizens through the mechanism of the ECJ. There can, therefore, be no challenge to the appropriateness of the measure which the noble Lord, Lord Pannick, has put before this House.

7 pm

Lord Elystan-Morgan (CB): My Lords, the arguments have been put clearly and attractively by the noble Lords, Lord Pannick and Lord Faulks. Indeed there can, apparently, be a conflict between two very important and sovereign authorities of law—international law and domestic law. However, one has to favour the argument of the noble Lord, Lord Pannick; in other words, however much the attitude of the rule of law in Britain might respect international comity, it would be morally ultra vires to be prepared to perpetrate an injustice in the name of that loyalty. That would be utterly wrong. That, I think, is the answer to the whole question. In other words, as regards the point made by the noble Lord, Lord Faulks, our respect for international comity is very considerable but is not absolute. It is ameliorated and qualified by that condition, save and in respect of a situation of perpetrating a blatant injustice. That would be beyond our authority ultra vires.

Lord Mackay of Clashfern (Con): My Lords, this is an extremely difficult question which amounts to whether or not the courts of this country have an authority to set aside a decision of the United Nations. We are under a clear obligation to follow a sanction decision imposed by the United Nations. However, I wonder whether the courts of this country, without absolutely challenging the decision of the United Nations, could give force to the Secretary of State's attempt to change that decision: in other words, a system could be adopted under which the fault that is found with the United Nations procedure is endorsed by our courts in a way which reinforces the attitude of the Secretary of State in seeking to set aside that sanction rather than just going ahead with a decision which seems to fly in the face of our international obligations under the treaty to which my noble friend referred. I would like to believe that it might be possible for our Secretary of State to go to the United Nations in a case of this kind, with support from the courts of this country, to say that, so far as they can see, the decision of the United Nations is incorrect according to the circumstances narrated in a judgment of the courts here. That might be a way of handling this situation.

I understand the position so far as Europe is concerned. I am not sure whether this situation has ever arisen in that context. That can be looked at but I think there is a question about that. A slightly different situation arises for a group bound by treaty—as the European Union is—as against that for single nations, because if we can do it, who else cannot? We do not necessarily think that the rule of law is observed in the same way in every other country in the world but we cannot make a judgment on that point as a justification for this move. I wonder whether something of this sort should not be done.

Lord Collins of Highbury: My Lords, the noble Lord, Lord Faulks, said accurately that there was a balance to be struck here, and there is a debate to be had. I am not legally qualified and therefore wish to address the political and moral issues that have been raised. The noble Lord, Lord Pannick, said that this is an extremely rare situation and that we cannot pick and choose. The noble and learned Lord, Lord Brown of Eaton-under-Heywood, said in Committee:

"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."——[*Official Report*, 29/11/17: cols. 703-4.]

The Opposition are concerned about the signal we would send if we adopted the amendment of the noble Lord, Lord Pannick. I hear his comments about the United Nations but this Parliament must uphold international law and the supremacy of the United Nations. It should not undermine that. If we adopt the amendment, we would send the signal to other countries, which may flagrantly flout decisions of the United Nations, that we insist that they should. We judge other countries by our own standards. The noble

and learned Lord, Lord Mackay, is absolutely right that there should be provision for the British courts to consider a decision of the Secretary of State. However, ultimately they should support the Secretary of State and the United Nations, not say to the United Nations, "We are not going to accept that decision". We cannot pick and choose; that is the fundamental point. Therefore, while I totally understand the power of the arguments put forward by the noble Lord, Lord Pannick, and have a lot of sympathy with them, there is one point that trumps all else—I use that word advisedly—namely, we must uphold the decisions of the United Nations.

Lord Ahmad of Wimbledon: My Lords, as Minister for the United Nations, among other things, I echo the sentiments of the noble Lord, Lord Collins, about our commitment to the United Nations. As a permanent member of the UN Security Council, the UK is at the heart of shaping the UN's response to crises around the world, as we have seen. I know that all noble Lords respect that. The United Kingdom takes this role very seriously, including in our approach to sanctions in the UN Security Council. We are one of the leading voices for UN sanctions where there are good reasons for them, as recently to constrain North Korea's nuclear programme. At the same time, we place great importance on the need for sanctions to be used responsibly, with proper respect for due process and the rule of law. It is important to remember that as a permanent member of that Security Council, the UK exercises real authority over which sanctions are and are not adopted by the UN.

I thank all noble Lords for their comments, to which I listened carefully. The noble and learned Lord, Lord Mackay, made important points. We have exercised authority by committing that we would never support in the UN Security Council a designation that we considered unlawful. Put another way, we would not support a designation unless we had reasonable grounds to suspect that the person met the relevant criteria. Not only is this the right thing to do, it also reduces the risk of the UK being obliged to implement a UN designation that might be vulnerable to challenge in court.

The Bill recognises that persons designated by the United Nations must have a right of redress, including the ability to bring a legal challenge against the Government in the UK courts. The Bill accordingly contains the ability for such a person to have access to the court, and to obtain a remedy for any unlawfulness that the court uncovers. If the court were to consider the UN designation unlawful, the court could instruct the Minister to use best endeavours to secure a delisting at the United Nations. This is a significant remedy not to be underestimated. As a permanent member of the UN Security Council, the UK is particularly well placed to make representations that a designated person should be delisted.

The Government recognise there may be rare cases in which the Minister's best endeavours are not sufficient to secure a delisting at the UN, as we discussed with the noble Lord, Lord Pannick, between Committee and Report. The question then is whether the UK courts should have the power to quash a UN designation and thus leave the Government in breach of their obligations under the UN charter. Our view is that this cannot be right.

First, the Bill recognises that the UK is under a duty in international law to designate those persons designated by the UN, and this proposition has not been criticised. Secondly, failure to implement a UN designation would damage the UK's reputation as a country that stands by its commitments under international law—a point well made by the noble Lord, Lord Collins. Thirdly, it would restrict the ability of the UK to call out other states where they were falling short of their obligations under international law. If it was open to the UK not to implement our legal obligations, irrespective of whether it were following a court decision, it would be impossible to criticise other states where they were not implementing their obligations.

I take the point the noble Lord made that the EU court has very rarely quashed EU legal acts which implement a UN designation on procedural grounds. However, it has never done so where that would leave the EU member state itself in breach of its UN obligations. We should bear in mind that the EU itself is not bound by the charter, but EU states are. The noble Lord mentioned the case of Kadi, which has frequently been cited. In that case the UN had, in fact, delisted the person concerned by the time of the judgment, so EU member states themselves were spared the choice between respecting a decision of the EU courts and abiding by their UN obligations. Had they been forced to choose, I am confident that they would have prioritised their UN obligations as required—as a number of noble Lords mentioned—by Article 103 of the UN charter, which makes it clear that where there is a conflict between obligations under the UN charter and obligations under any other international agreement, the obligations in the UN charter shall prevail. The United Kingdom and all other EU member states are bound by that charter, even if the EU itself is not. That too is part of the rule of law—upholding those international laws where they bind the United Kingdom.

The United Nations has many flaws, but it is crucial to maintaining international peace and security. To allow the UK courts to stop the Government implementing sanctions agreed by the UN Security Council is not the right approach for a country such as ours that seeks to lead by example at the United Nations. I sincerely believe that any Minister, regardless of political persuasion, would share this view. I also believe we are in agreement that by continuing to make the UK's support for UN designations conditional on fair procedural standards, we can and should do all we can to prevent this problem arising. However, in the unfortunate event that such a case arises, I remain of the view that a "best endeavours" obligation is the right way to square this difficult circle.

I deeply respect the noble Lord's position. Again, we have had constructive discussions on this, although on this occasion we did not reach agreement. However, I hope that with the reassurances I have given, the noble Lord will be minded to withdraw his amendment.

Lord Pannick: My Lords, I am grateful to the Minister. I recognise, as I said in opening this debate, the force of the arguments in favour of the Government's approach. However, we have to be clear about what it comes down to. Justice for the individual who is designated, in circumstances where the High Court of Justice in this country regards the designation as arbitrary or as in conflict with the rule of law, must be sacrificed to the interests of the UN, our participation in the UN and the international legal order. There is no right answer to that question. I happen to believe that to obtain justice for the individual in that case, if and when it occurs, who is being designated in this country and who is suffering the consequences—their bank account is frozen, they cannot travel, and they are experiencing whatever the other adverse consequences are—they must have a legal remedy. There is no legal remedy available to them through the UN. There are political processes but there is no judicial procedure and no quasi-judicial procedure other than in terrorism cases. How can this possibly accord with the human rights principles and with the principles of the rule of law, which I know the Minister respects and which the Government are so keen on promulgating, and rightly so?

7.15 pm

Of course we want to encourage other countries to comply with international law. However, that should not be at the expense of justice for the individual who is designated if that individual can persuade the independent judge of the High Court that his or her designation is an outrage and that it is in defiance of the rules of procedural fairness or if it is arbitrary.

Noble Lords who have spoken against the amendment have emphasised the conflict between international law and the rule of law. They have to accept that there is no other context—certainly none has been mentioned in this debate—where an individual who is subject to such a damaging decision has no legal remedy in this country other than the hope and the expectation that the Minister will do his or her best on their behalf, and if the Minister fails the court can do absolutely nothing about it. I suggest that to maintain the rule of law and to allow the court in exceptional circumstances to grant an effective remedy after the best endeavours have failed—and only after they have failed—will assist the Minister in best endeavours. The UN will recognise that if it does not take action to remedy the injustice, the court in this country may take action. That will focus the mind of the UN and will make it far less likely that there would be any conflict between international law and the rule of law. In other words, to allow the domestic court to have power in this context will ensure that the Minister does not, as it were, go legally naked into the UN conference chamber.

I hope this matter will be taken up when the Bill travels through the other place. As noble Lords will appreciate, I feel strongly about this. It is a fundamental question of justice, principle and the rule of law—respecting, as I do, the opinions expressed by the Minister and by other noble Lords. It is a difficult issue, but I take a different view from the Minister. However, I beg leave to withdraw the amendment.

Amendment 62 withdrawn.

Clause 36: Guidance about regulations under section 1

Amendment 63

Moved by ***Baroness Northover***

63: Clause 36, page 26, line 20, at end insert—

"( ) Where regulations under section 1 make provision as to the meaning of any reference in the regulations to a person "owned" or "controlled" by another person pursuant to section 50(3), the appropriate Minister must issue guidance."

Baroness Northover: My Lords, I will also speak to Amendment 64. I note the departure of a number of noble Lords at this point. Indeed, we have been considering some important constitutional issues this afternoon, and right now we are returning to the normal fare of legislation in the Lords: the routine matter of improving legislation. So your Lordships are safe to depart. We have been assisted here by UK Finance, for which I am grateful, and we are also grateful for the engagement of Bond and other NGOs. We visited this subject briefly in an earlier amendment.

We are all agreed that it is appropriate to have sanctions regimes in certain countries, and we are agreed that these should be in place against the regime in Syria, for example. We are also agreed that we want to enable humanitarian organisations to be able to operate in places of conflict, as most notably Syria is, where half of the population have been displaced, injured or killed over the last few terrible years. We also realise that it is important to have licence regimes to prevent, as far as is possible, funds deliberately or inadvertently going to groups whom we wish to sanction. However, this is where we can encounter problems. Banks are understandably risk-averse and may not wish to handle funds where they fear that they will not be able to defend their actions. The tightening of legislation in the US and the EU—including the UK—has had beneficial effects in countering corruption and money laundering, for example, but we need greater clarity for the banks. They do not have to assist NGOs, and often they do not.

The Government set up a group to consider this and other issues, but it has met briefly only once, and none of its sub-groups, which will be carrying forward its work, has been set up. That is why we are asking not that the Government "may" issue guidance but that it "must" do so and that it must cover certain areas. The Bill indicates that guidance accompanying new sanction regimes must be issued, but there is no certainty regarding what it will contain, because the Bill specifies "may" include rather than "must" include.

The Office of Financial Sanctions Implementation has recently issued guidance in respect of NGOs and their sanctions obligations, but this guidance deals with legal obligations at a general level and is not regime or programme specific. For example—to me, this is astonishing—to date no guidance has been issued that specifically deals with regimes such as Syria, where broad-based financial sanctions are in place alongside a major humanitarian situation. Since 2012, the banking sector has proactively, and unsuccessfully, called for guidance to help address the very significant challenges of sending funds to Syria in support of humanitarian activity. Considering the billions

of international humanitarian funds mobilised to date in support of the Syrian population, the ability to find safe, transparent and dependable banking and payment channels that cover the whole of Syria has become an international imperative priority, and it is astonishing that that situation has not yet been addressed.

Within a situation such as Syria, guidance becomes utterly imperative and vital. It is incredibly encouraging that the banks themselves are seeking this guidance so that they are able to assist the humanitarian organisations and ensure that they are not associated with the kind of risk that currently prevents their involvement.

At this point, I want to return to some of the things that the Minister said on the second group of amendments. I am not sure why, but we sped through that group at great speed. I welcome the fact that reporting to Parliament will cover humanitarian aspects, and I hope that NGOs and the banking industry can engage with the Minister and his department on what this might consist of. However, I thought that his attitude to streamlining licences was not helpful. We are talking here of working with like-minded countries. We usually work in concert with other countries, so it is pretty limiting to seem to indicate that they would not have our foreign policy objectives, for example. If we are working in concert with them—and that is what we are talking about here—they clearly will.

Earlier today, the noble Lord, Lord Howell, made the point that it would be pretty ineffective for us to have sanctions by ourselves. Therefore, I hope that the Minister will rethink this issue with an open mind. Where Governments have aligned objectives that have led them to impose sanctions on a given country, we should ensure that the mutual recognition of humanitarian licences is possible. For example, at the moment processing a humanitarian transaction with Syria is likely to include some type of exposure to multiple sanctions authorities across the EU and the US. If we leave the EU, an option that the Government may wish to consider is a mutual co-operation agreement with agreed EU competent authorities. If we were aligned in that way then, for example, if the French were to issue a licence for a payment under EU sanctions, the UK bank or NGO could rely on the French licence and need not seek a similar licence from UK authorities.

The noble Lord was also doubtful about licences for a whole project, and, again, this needs further thought. The NGOs and UK Finance are concerned about this. Looking at the UK's and DfID's role, we often see major humanitarian programmes being majority funded by DfID, but no thought has been given to how the relevant programme will be granted authorisations. For example, a water and sanitation project in Syria is likely to require multiple licences to cover engagement with the ministry of health, Syrian government officials and the export of dual-use parts from the EU to Syria—for example, drilling pipes and payment authorisations for funds moving into Syria. A licence might be issued at the inception of the project, which could save NGOs having to apply for multiple licences.

As Bond has made clear, we need the Government to work to a greater extent globally on licences, to be clearer and to have licences for the duration of the project. Of course, the Government need the tri-sector group, which the Minister mentioned before and which was mentioned in meetings—the group that has met only once and as yet has no sub-committees—to engage, to meet and to work out what the guidance must say, and to give clarity to organisations, including banks, in this area. I beg to move.

The Earl of Dundee (Con): My Lords, while supporting this amendment, I welcome and recognise the Minister's continuing resolve to issue guidance—thus the text to that effect, as is already within the Bill. Yet there is no certainty about it, as subsection (2) specifies only what such guidance "may" rather than "must" include.

Also to be welcomed is the recent guidance given by the Office of Financial Sanctions Implementation to NGOs about their sanctions obligations. Nevertheless, this focus is upon general legal obligations. It is not regime or programme specific. So far, it appears that there is no official guidance which deals with regimes such as Syria, where financial sanctions coexist with a major humanitarian situation. Since 2012, the banking sector has repeatedly urged that guidance should be given to address all the many complications in sending funds to Syria in order to assist humanitarian activity. As we know, and as the noble Baroness, Lady Northover, has just said, the process is not working nearly well enough. Therefore, it is now a priority for humanitarian agents and their banks to find safe, transparent banking and payment channels.

It may be objected that the issuing of too much specific guidance might enable sanctions to be evaded by criminals and terrorists. At the same time, appropriate guidance can only help to ensure that the vast humanitarian sums entering Syria are not diverted instead to benefit those who are sanctioned. This can be prevented by a shared view between government, banks and NGOs on how best to risk-manage such payments, and by them as well through a shared identification of viable avenues to make sure that funds arrive safely where they are intended to go.

The Government are also to be commended for setting up a tri-sector group comprising government departments, NGOs and banks. Yet, while supporting that development, all the same we should perhaps appreciate that such arrangements rarely produce the type of outcome that the amendments seek. In fact, as the noble Baroness, Lady Northover, has observed, this particular group has had only one short meeting and none of the sub-groups has as yet met at all. Moreover, as government officials move their positions rather frequently, it can be notoriously difficult to ensure proper traction.

Lord Collins of Highbury: My Lords, I shall be very brief. I have added my name to this amendment and support everything that the noble Baroness, Lady Northover, and the noble Earl, Lord Dundee, have said. Here, we are trying to acknowledge what the Minister has committed to in terms of guidance and ensuring that the licence regime operates efficiently. However, we know from the NGOs that there is still great uncertainty. Certainly, as the noble Baroness, Lady Northover, said, banks are risk-averse, and often urgent humanitarian aid gets halted and is extremely

[Lord Collins of Highbury]
difficult to implement. On the other hand, we have to balance the need to create certainty with the need to maintain an effective sanctions regime. We do not want to see the sanctions regime undermined by any system of licensing. That is why it is important that the Government should move speedily on the guidance situation, which I know the noble Lord is committed to.

7.30 pm

Lord Ahmad of Wimbledon: My Lords, I thank all noble Lords who have participated in this short debate, and in doing so I thank once again the noble Baroness, Lady Northover, and the noble Lord, Lord Collins, for their constructive engagement on this important issue. I agree with the point just made by the noble Lord, Lord Collins, on the importance of balance, but as noble Lords will acknowledge, the Government already publish guidance on the definition of "owned and controlled" and they will continue to do so. That duty is enshrined in Clause 36. We feel that there is no need to make it explicit, as Amendment 63 would require, and that doing so would prompt unhelpful questions about why other aspects of the guidance are not referred to in the Bill. We do not wish to limit the ability of Clause 36 to provide guidance in any of these areas.

I turn now to Amendment 64. It would greatly broaden the scope of guidance to areas such as establishing effective banking and payment corridors, which are clearly beyond the remit of the Government to provide. For example, we cannot require banks to make payments on behalf of particular customers or to open new payment channels. The whole issue of how banks operate and the derisking that we have seen in certain parts of the world is reflective of that. A requirement to provide such detailed guidance would therefore be highly problematic.

However, I do take on board some of the points raised by noble Lords about assuring that we will publish guidance at the earliest opportunity, and I hope that I can offer some degree of further reassurance. While we cannot force banks to make commercial decisions one way or the other, we can certainly encourage them to do so. We can do that through clearly drafted humanitarian exemptions, general licences, guidance and the ability to prioritise flexibly appropriate applications. I assure noble Lords that all of these can be delivered under the Bill as drafted.

If I heard the noble Baroness, Lady Northover, and indeed my noble friend Lord Dundee correctly—I thank my noble friend for his support for the Government's actions in this regard—they referred to how the Government "may" issue guidance. I can assure noble Lords that Clause 36 makes it clear that the Minister "must issue guidance". As I said earlier, in the near future we will publish an initial framework for the exceptions and licences.

Perhaps I may make a final point on the issue of NGOs and the humanitarian aspects. I for one have found our dialogue to be extremely constructive on a cross-party basis with NGOs. In that spirit, I certainly look forward to working with both the noble Baroness and the noble Lord to take this matter further. With those assurances, I hope that the noble Baroness will be minded to withdraw her amendment.

Baroness Northover: I thank the noble Lord and others who have taken part in this debate. Yes, he is right: the Bill states that the Minister "must issue guidance", but the problem is that underneath that phrase it states that the guidance "may" include this, that and the other; in other words, it is not sufficiently specific. However, I thank the noble Lord for his response and his promises; I am sure that both the NGOs and the banking sector will see them. I hope that will move things forward and that the specific guidance enabling the banks to become involved—of course, the Government cannot instruct them to do so—is issued. If the Government are clear about what they are expecting, that is what the banking sector needs, while the NGOs need that clarity so they can get on with their work. I am sure this issue will be discussed further in the Commons, but in the meantime, I beg leave to withdraw the amendment.

Amendment 63 withdrawn.

Amendment 64 not moved.

Clause 38: Revocation and amendment of regulations under section 1

Amendment 65

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

65: Clause 38, page 27, line 1, leave out subsections (2) and (3) and insert—

"(2) The condition referred to in subsection (1)(b) is that the appropriate Minister making the new regulations—

(a) considers that the regulations being amended will, as amended, be sanctions regulations within the meaning given by section 1(4) that are appropriate for the purpose stated in them under section 1(3), and

(b) if any purpose stated in the regulations being amended is a purpose other than compliance with a UN obligation or other international obligation, considers in respect of each such purpose—

(i) that carrying out that purpose would meet one or more of the conditions in paragraphs (a) to (d) of section 1(2),

(ii) that there are good reasons to pursue that purpose, and

(iii) that the imposition of sanctions is a reasonable course of action for that purpose.

(2A) In subsection (2)(b)(iii) "sanctions" means prohibitions and requirements of the kinds imposed by the amended regulations for the purpose in question (or both for that purpose and for another purpose of those regulations).

In this subsection "the amended regulations" means the regulations being amended as those regulations will be when amended."

Lord Ahmad of Wimbledon: My Lords, government Amendments 65 and 68 build on the new requirements for making sanctions regulations that we have already debated. They extend these requirements to situations where a Minister is amending sanctions regulations that are not based on a UN or international obligation.

In this regard, I am grateful to the noble and learned Lord, Lord Judge, and the noble Lord, Lord Pannick, for co-signing these government amendments. When amending regulations, the Minister would have to ensure that they continue to meet the relevant purposes, that there are good reasons to pursue those purposes, and that sanctions are a reasonable course of action. The Minister must also lay a written memorandum explaining why these tests have been met.

Government Amendments 67 and 102 are technical in nature—I use that word again—and enable us to implement the obligations more efficiently. I can assure the noble Baroness, Lady Northover, that they reflect the fact that UN sanctions regimes are often based on a series of Security Council resolutions. I hope noble Lords agree that these amendments are uncontentious and feel able to support them. I beg to move.

Baroness Northover: We welcome the Government's move.

Amendment 65 agreed.

Amendments 66 to 68

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

66: Clause 38, page 27, line 7, leave out "The purpose stated" and insert "Except as permitted by subsection (4A), the purpose stated under section 1(3)"

67: Clause 38, page 27, line 10, at end insert—

"(4A) Where the purpose stated under section 1(3) in any regulations under section 1 is or includes compliance with a specified UN obligation or other international obligation, regulations made by virtue of this section may amend that purpose so as to—

(a) add a reference to a UN obligation, or other international obligation, to which the United Kingdom is for the time being subject,

(b) substitute such a reference for another reference to a UN obligation or other international obligation, or

(c) remove a reference to a UN obligation, or other international obligation, to which the United Kingdom is no longer subject.

(4B) The requirements of section 1(1) and (3), section (Additional requirements for regulations for a purpose within section 1(2)) and section 26 do not apply in relation to regulations made by virtue of this section."

68: After Clause 38, insert the following new Clause—

"Report where regulations for a purpose within section 1(2) are amended

(1) This section applies where—

(a) by virtue of section 38 regulations under section 1 are amended by further regulations under section 1 ("new regulations"), and

(b) the regulations being amended state under section 1(3) a purpose other than compliance with a UN obligation or other international obligation.

(2) The appropriate Minister making the new regulations must at the required time lay before Parliament a report which explains why that Minister is of the opinion mentioned in section 38(2)(b).

(3) Nothing in subsection (2) requires the report to contain anything the disclosure of which may in the opinion of that Minister damage national security or international relations.

(4) In subsection (2) "the required time" means—

(a) where the new regulations are contained in a statutory instrument which is laid before Parliament after being made, the same time as the instrument is laid before Parliament;

(b) where a draft of a statutory instrument containing the new regulations is laid before Parliament, the same time as the draft is laid."

Amendments 66 to 68 agreed.

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

Amendment 69

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

69: Clause 39, page 27, leave out line 16 and insert—

"(a) which are not for the time being authorised by Chapter 1 (ignoring section 7), but

(b) which are kinds of prohibition or requirement that the United Kingdom—

(i) has any UN obligation or other international obligation to impose, or

(ii) has at any time had any UN obligation or other international obligation to impose."

Lord Ahmad of Wimbledon: My Lords, Clause 39, to which this group of amendments refers, has been included to allow the UK to impose new types of sanction measures in response to new, unforeseen circumstances. Let me summarise why we think it is needed and then explain the government amendments that I have tabled. I note that this was one of the issues highlighted in the report of the Delegated Powers and Regulatory Reform Committee, and I know that several noble Lords have received and considered carefully my letter of last week specifically responding to the committee's recommendations.

The familiar types of sanctions include asset freezes, travel bans, arms embargoes and prohibitions on aviation and maritime transport. These types of sanctions are included in the Bill. It is not possible to predict all the types of sanctions which may in the future be useful or necessary. We all know that as technology advances and those who wish to do us harm find ever more sophisticated ways of doing so, we may need to be able to react in an agile manner. The Government intend to continue to play a leading role in the development of sanctions as a foreign policy tool. Wherever possible we will do this through the UN to ensure that the measures have global impact. On occasion, however, we will need to work with like-minded partners outside the UN framework and may need to adapt our own sanctions toolkit to keep pace with allies. On both Iran and Russia, for example, transatlantic co-operation resulted in sanctions that were substantively different from anything previously agreed.

The power in Clause 39 is designed to provide the necessary flexibility in cases where we are acting outside the UN framework. Regulations under this clause would be subject to the draft affirmative procedure as befitting a Henry VIII power of this kind. However, having listened to the concerns expressed in this House and having reflected carefully on them, I have tabled government Amendment 69, which would further restrict

[Lord Ahmad of Wimbledon]
the use of this power by stipulating that it may be used to create new types of sanctions only where the UK is or has been subject to an international obligation to put in place sanctions of that type. This means that the new types of sanctions created by this power can only be those developed by the international community. This power, as amended, will no longer enable the UK unilaterally to put new types of sanctions in place, which was a concern that was expressed.

Government Amendment 70 also makes it clear, as requested in Committee, that Clause 39 cannot be used to alter the purposes of the sanctions regulations specified in Clauses 1 and 2. We think that this was the effect of the original drafting, but we are happy to make it explicitly clear in the Bill. I believe that this is a substantial move forward on the Government's part, and I hope noble Lords will acknowledge this and support it. I beg to move.

Lord Pannick: Again, I am very grateful to the Minister and the Bill team. Government Amendments 69 and 70 respond positively to the concerns that I and others expressed in Committee. Therefore, I will not move Amendment 71.

Amendment 69 agreed.

Amendment 70

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

70: Clause 39, page 27, leave out lines 22 and 23 and insert—

"( ) For the avoidance of doubt, regulations under this section may not add to or amend the purposes mentioned in section 1(1) or amend section 1(2)."

Amendment 70 agreed.

Amendment 71 not moved.

Consideration on Report adjourned.

Water Abstraction Regulations

Motion to Regret

7.40 pm

Moved by ***Baroness Jones of Whitchurch***

That this House regrets that the Water Abstraction (Specified Enactments) Regulations 2017 (SI 2017/1042), the Water Abstraction and Impounding (Exemptions) Regulations 2017 (SI 2017/1044), the Water Abstraction (Revocations etc.) (England) Order 2017 (SI 2017/1046), and the Water Abstraction (Transitional Provisions) Regulations 2017 (SI 2017/1047) have missed the 2012 deadline set in the European Union Water Framework Directive which has required Her Majesty's Government to explain their general implementation of the legislation to the European Commission; notes that the Regulations draw on a consultation exercise originally carried out in 2009 and then repeated in 2016; and considers that the delays cast doubt on the ability of the Department for Environment, Food and Rural Affairs to handle the volume of secondary legislation that will result from the Brexit process.

Relevant document: 10th Report from the Secondary Legislation Scrutiny Committee.

Baroness Jones of Whitchurch (Lab): My Lords, I pursue this Motion to Regret the four water abstraction regulations that have been tabled for three main reasons: first, the policy implications contained therein; secondly, the pattern of delays in Defra dealing with regulations; and, thirdly, the wider capacity issues within the department to deal with future legislation.

The background to the Motion is the excellent report of the Secondary Legislation Scrutiny Committee, which was published on 16 November 2017. As ever, the committee has carried out its responsibility with scrupulous attention to detail and to the public policy implications of the regulations. The report describes how the four sets of regulations have the combined effect of ending exemptions from the requirement to obtain a licence to abstract water. This has significant environmental implications as, in the past, unfettered water abstraction—for example, in the use of irrigation—has impacted on the flow of water available for other users further downstream. As the Defra Explanatory Memorandum makes clear, currently 5,000 significant water abstractions are exempt from licensing, compared to 20,000 that do have to have a licence. This creates an unfair playing field and allows unlicensed abstractors to put pressure on the environment and other water users.

Given the environmental importance of this issue and our understanding of the need for careful management of water catchment areas, particularly in the light of recent flooding crises, I would have thought that the Government would have been keen to act. Sadly, the opposite has been the case. As the Secondary Legislation Scrutiny Committee has highlighted, these regulations have been tabled 14 years after the requirement to do so in the Water Act 2003, and five years after a deadline set by the EU water framework directive. Not only is this negligent but it put us at odds with our EU obligations, which could have led to the Commission bringing formal proceeding against us, which, in turn, could have led to taxpayers funding the Government's defence. I have to ask: why did it take so long to act on this issue?

Over this period, the Government carried out two consultations on proposals to remove the licensing exemptions. The first was instigated in 2009, resulting from the Labour Government's decision to consult on the need to comply with the EU directive. Not surprisingly, those who already had licences and those concerned with the environment supported the regulations, and, again not surprisingly, those who did not have licences were resistant to the proposals. When the new Government came in in 2010, they failed to implement the changes required as they decided that the business concerns were more important than the environmental concerns. It then took another six years for the Government to decide that a new consultation was necessary. As the SLSC report makes clear, this proposed a,

"light-touch, risk based approach to licensing … which is now being taken forward".

Indeed, the impact assessment concentrates its concerns on the cost to business of making these changes. As the SLSC report concludes:

"It is clear that Defra's concern to mitigate the impacts on business has been an important cause of the protracted timescale for removing these licensing exemptions".

My first reason for pursuing this Motion to Regret is to highlight our concerns that business interests are being put before environmental interests and before the need for fair play between those who are already in compliance and those who seem to want to continue to act outside the system. Is this the way that the Government are going to go forward? If it is, it rather contradicts everything that the Secretary of State has said about putting the environment first, and the rather lofty ambitions of the 25-year environment plan, which will require some hard choices, considerable behaviour change and potential costs on the part of business. It would be helpful if the Minister could clarify whether the Government's policy in the most recent consultation, based on prioritising business needs over environmental objectives, remains the same.

Secondly, I would like to raise the inconceivable delay in bringing forward these regulations. We are now 12 years past the Water Act 2003 and five years past the deadline for compliance with the EU directive. How can the Minister justify this delay? I raise this with particular concern, because it is not a one-off event. This is not the first time that the SLSC has criticised Defra's treatment of secondary legislation. In July, the SLSC noted that the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017, which transposed three EU directives, missed the transposition deadline of 1 January 2017. The Commission issued a formal notice to the UK in late January and, in response, the department set a revised transposition deadline of June. In the same week, the committee also noted that the Single Common Market Organisation (Emergency Aid) (England and Northern Ireland) Regulations 2017 were based on a short, two-week consultation in September and October 2016. That was done for good reason, but the committee questioned why, given the early October consultation deadline, it then took six months for the regulations to be laid.

In March, the committee noted that Defra's answers to its questions on the Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) (Amendment) Regulations 2016 had misrepresented the position of user groups. The committee wrote to the Minister to bring the case to his attention. In his response, he acknowledged that the department may have given the committee the wrong impression. I would be grateful if the Minister could explain why these delays and mistakes are taking place and what is being done to address these failures. The prompt and accurate processing of secondary legislation is an essential part of legislative scrutiny and I hope he can confirm that it will be taken more seriously in the future.

Finally, I want to raise the wider issue of the department's capacity to handle forthcoming legislation. We already know that 80% of legislation affecting Defra is derived from the EU level. The European Union (Withdrawal) Bill will give ongoing legal effect to the directly applicable legislation, which the UK will of course take on board. At the same time, the technical details, in the form of statutory instruments, will need to be crafted accurately and in a timely manner.

The noble Lord will know that the January 2017 House of Commons Library briefing found there are 922 regulations relating to agriculture, 1,122 to fisheries and 527 in the field of environment, consumer and health protection. While not all of these will be relevant to the UK, it is clear that Defra will have a significant amount of extra work to carry out between now and March 2019. At the same time, we already have promises for an animal sentience Bill, a fisheries Bill and an agriculture Bill—all of which are expected this year.

In November 2015, RSPB and Wildlife Trusts economists said that cuts to Defra's budget would be equivalent to 57% in real terms over the course of two Parliaments. I accept that this has been partially mitigated as, in October, the Government confirmed extra funding for Defra in order to prepare for Brexit. At the time, the department said that it expected to hire an additional 1,200 civil servants to cope with its extra workload. However, a National Audit Office report published this month suggests that only half this number of posts had been filled as at November, and of course these posts are only intended to cover the work of Brexit, not the wider day-to-day running of the department. Is the Minister satisfied that Defra now has the resources necessary, at the right level of knowledge and training, to process the huge workload linked to Brexit, as well as the day-to-day work such as preparing primary and secondary legislation and rolling out the 25-year environment plan?

I look forward to the Minister's response on these three challenges—the Government's approach to regulating business in the context of environmental priorities, the need to address the delays and errors in the processing of secondary legislation, and the overall capacity of the department to deal with the upcoming workload.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I am very grateful to the noble Baroness, Lady Jones of Whitchurch, for putting down this Motion to Regret. I am able to support all of her arguments in this vital matter. The use and retention of water is key to the way in which the country is able to function, both in terms of domestic properties, farming and business.

As the noble Baroness said, the 10th report of the Secondary Legislation Scrutiny Committee back in November made it very clear that the Government have taken an exceedingly long time to reach the point where they feel they can move forward with secondary legislation—some 14 years after the parent Act. Currently around 5,000 significant water abstractions are exempt from licensing, while some 20,000 abstractions have licences. There does not appear to be any substantial reason why licences should not apply to all abstractors. This is clearly inequitable.

Keeping our rivers flowing must be a priority as overabstraction is damaging diverse wildlife populations. It would seem, from the Prime Minister's speech last Thursday, that the Government have now woken up to this fact. Analysis shows that the economic and social costs of drought far exceed the costs of addressing the problem and that the rate of return on investment of improving river health is high.

[Baroness Bakewell of Hardington Mandeville]

Nearly a quarter of rivers in England are at risk from unsustainable water abstraction, with 14% classified as overabstracted, meaning that water removal is causing rivers to drop below levels required to sustain wildlife. Some 9% are overlicensed, meaning that the river would be overabstracted if licence-holders took all the water they were entitled to. This situation is critical and should not have had to wait 14 years to be addressed.

As we heard, the Government conducted a consultation in 2009 and then again in 2016. I wonder if having consulted in 2009, the incoming Government did not like the responses and shelved the document. I have looked at the responses to the 2016 consultation. Farmers and the mining and quarrying industries were the highest responders, but some responders did not reply to all questions, as they did not all apply to them. Somerset has farming, mining and quarrying industries that are highly dependent on water abstraction. I found the responses of the water level management contributors most interesting, as I live close to the Somerset Levels. The internal drainage boards are only a small section of responders, but they are extremely important.

I was also interested in the response to Question 3 on excluding compensation provisions for future abstractors, with all six environmental groups agreeing with the proposal and all seven in the quarrying and mining sector disagreeing. I understand the Government's dilemma in trying to please everyone. But water, as we know, needs to be both harvested and protected for the environment. The Government must transpose the water framework directive in full, establishing mechanisms and sanctions to enforce its implementation, even if we leave the EU. The 2027 deadline to increase the proportion of water bodies in good ecological status should be upheld.

The Government's Brexit White Paper guaranteed that this important piece of legislation and its 2027 deadline would be transposed into UK law. Will the Minister now confirm that this will happen? In its *Water for Life* White Paper, Defra set out its intention to reform the abstraction regime to ensure sufficient water for wildlife and economic growth. The resulting legislation to make this a reality was due this spring. But in April 2017, the Minister confirmed that new legislation was on hold due to insufficient parliamentary time to take it forward.

In 2016-2017, Britain experienced the driest winter and early spring for more than 20 years according to the Met Office. But Parliament appears not to have been able to allow time for the Government to implement the vital legislation covered in the *Water for Life* White Paper.

As well as wildlife and biodiversity, water abstraction featured in last week's 25-year environment plan. The Government aim to amend licences in cases of unsustainable abstraction; encourage water trading and storage; introduce more low-flow controls to protect the environment; and replace seasonal constraints to allow extra abstraction at high flows. They will be extremely busy and it will be good if all that comes to pass.

In many parts of the country, severe drought is a real issue, but in others, the problem is flooding. Managing water flow, storage and movement is key to all those areas affected. Not taking action on the directive for 14 years seems to these Benches to be dilatory in the extreme. I look forward to the Minister's response on this important matter.

Baroness Byford (Con): My Lords, I should perhaps declare an interest as a farmer in Suffolk. I do not think that we use any irrigation on our crops because the land is pretty heavy and wet—but I will correct that in the future if I am wrong.

Tonight is a slightly odd circumstance for me and for the noble Lord, Lord Whitty, who is in his place opposite. He and I took the Water Bill through the House back in 2003. I remind noble Lords who are contributing today that one of the things that we did with that Bill was to exclude small businesses from having to have a licence control certificate if they took less than 20 cubic metres a day. I think that that is still the position today.

I, too, pay tribute to the Secondary Legislation Scrutiny Committee. When I was in the same position as the noble Baroness, Lady Jones, as shadow Minister with the agriculture brief for 10 years, I relied on the committee a lot and I was very grateful to it for bringing certain things to my attention. The delay that it referred to at the end is certainly accepted as far as I am concerned—and I am sure will be by my noble friend the Minister when he comes to respond.

I will refer to one or two things within the section that we are dealing with. In fact, the Act came into being in 2003. If one were casting aspersions at the present Government taking a long while, I cannot remember why on earth in 2003 we did not move it on quicker and have the consultation earlier. Perhaps the noble Lord, Lord Whitty, will be able to remind me. There was quite a long time between the Act coming into being and going out to consultation in the first place. Again, the noble Baroness, Lady Jones, or the noble Lord will have more information than I do.

8 pm

Anyway, the consultation went out. I gather that the 2009 consultation had 41 responses, which reflected on the complexity and the reasons why there was a need for further delay. Interestingly, the 2016 consultation had 86 responses. I am quite intrigued to know from the Minister the kind of responses that they had. The noble Baroness on the Liberal Benches referred to many responses being from the farming community—you can understand that—but also from other businesses. The noble Baroness, Lady Jones, suggested that it was from businesses, but my understanding is that some of those responses and concerns came from navigation authorities, canal and river trusts and internal drainage boards, along with the minerals industry, which I know we dealt with at the time. So clearly there have been more responses this time, which may be why the Government—although I am not defending them—took longer to try to make sure that we get the right piece of legislation before us.

I too welcome the 25-year environment plan. It raises the whole issue of the earth's natural resources, whether water or soil. It does not really matter what it is; they are very precious commodities. Looking back 10 or 20 years ago, we were aware of them but not to the degree that they are really so relevant today. I am grateful to have the opportunity to speak in this debate and raise one or two issues.

The length of time for consultation in 2009 obviously brought back feedback. As I said, there were 86 responses in 2016. I understand from the latest consultation—perhaps the Minister will be able to tell me—that the Government are looking at flexibility on the volume limits, at flow controls and the benefits to the wider conservation values, and to reflect business needs, particularly in dry circumstances. That would particularly apply to farming.

I hope that in bringing this Motion to Regret the noble Baroness is not wishing not to allow these statutory instruments to go ahead, because clearly we have reached an important stage. It is very easy to say that it should have happened earlier. I would agree, but if we get a better outcome than we might have done earlier, perhaps the wait has been has been worth while. From my point of view, the importance is of soil and therefore of water. Some areas, such as the south, are so dry at times that they are nearly as dry as it is across in Africa. I know that my noble friend Lady McIntosh, who is sitting behind me, has had recent experience of heavy flooding. There is no one size that fits all. Clearly, the way we use water, irrigation and the way we conserve water in this country is hugely important. I look forward with interest to hearing what my noble friend has to say.

Baroness McIntosh of Pickering (Con): I am delighted to contribute to this debate. I welcome any opportunity to speak about the environment, in particular its relationship to agriculture. My most relevant interest to the debate is the work I do with the Water Industry Commission for Scotland and the fact that I am an honorary vice-president of the Association of Drainage Authorities.

I agree with everything that my noble friend Lady Byford said. I will make some additional points. The noble Baroness, Lady Jones of Whitchurch, said that this was a long time. Fourteen years is indeed a long time, but seven of those years were under the stewardship of a different Government, who had every opportunity from 2003 to 2010 to bring forward the regulations. It would be interesting to know for what reason they did not have the chance to do so. The noble Baroness also said that she felt that the Government were placing more importance on the business community than environment concerns. I disagree. The statutory instruments before us clearly show the extent to which business interests, the various uses of water and the environment are intrinsically linked.

I will follow up one of the questions the noble Baroness raised with my noble friend the Minister as to what the position is on abstraction policy, in the sense that the Government made a very clear commitment when I was in the other place. We need to set out our stall as to what the abstraction policy will be. As my noble friend Lady Byford said, there have been stresses. The number of licences that have already been issued in East Anglia show how they are more subject to water stress, as opposed to areas such as Yorkshire where we seem to go from lots of flooding one minute to near drought the next. It is incumbent on the Government to come forward with a revised abstraction policy.

I would also be interested to have confirmation that the 25-year environment plan also covers the farming and agricultural aspects. It was of real concern to farmers and agricultural industrialists that there would be two separate plans competing with each other. It would be very neat if all the farming issues could be addressed under the 25-year plan.

I particularly welcome the fact that the Government have stated that the regulations comply with the requirements of the water framework directive but without gold-plating. I do not know whether my noble friend is in a position to say this, but I am very exercised as to what the arrangements will be when the water framework directive and other daughter and sister directives that are currently being revised are approved before or just about the time we propose to leave the European Union. Is there any way the department can let the House know before the agriculture and environment Bills come through? That will be very helpful indeed. My take on this is that we will comply with the new commitments, but my concern is that Ofwat will agree a price review before that time that will apply for the next five years from 1 January 2019. If we are to sign up to these new commitments we ought to give the water companies the chance to put this in their five-year plans. I note that the cost of introducing and applying the regulations will be £89.6 million, with the benefits estimated at only £15.3 million. The costs are substantial.

I have a particular question on the impact assessment. With drainage boards being so prevalent across North Yorkshire, this is of particular interest to me. On page 34, paragraph 6.44 says that Defra is in,

"ongoing discussion with IDBs about their abstraction and none of these discussions has led us to believe that there will be curtailment".

So it goes on, but it says that there is a certain degree of "uncertainty" owing to the "complexity". At this late stage, it would be very helpful to know exactly how the regulations will impact internal drainage boards. If it is possible to know that today, that would be very helpful indeed. It would be helpful to know on what date the statutory instruments will come into effect. With those remarks and those questions to my noble friend the Minister, I would give swift passage to these statutory instruments.

Lord Whitty (Lab): My Lords, I congratulate my noble friend on raising this issue and on the forensic way in which she approached the analysis of the regulations before us and the history of how we got to this position.

I also thank the noble Baroness, Lady Byford, who was my opposite number for a large number of years. I was responsible for taking the 2003 Act through this House, in the teeth of her forensic analysis, and we came to a compromise, in effect. I asked my officials at the time why on earth there were still licences which

[Lord Whitty]
provided for unrestricted abstraction and why there were significant exemptions. Logically, neither of those should have existed if we were going to have a rational approach to the management of water, particularly in the upstream areas which have such a dramatic effect downstream, both in relation to agriculture and to droughts and floods.

The answer was that, as far as the exemptions were concerned, there were relatively small companies—farmers, miners and quarriers—who would be very severely affected by removing the exemption. We accepted that argument, and we also accepted at the time that there was the possibility of technological solutions, in particular in mines and quarrying but also in relation to farming, primarily if the Government could be somewhat more encouraging of storage of water for those parts of agriculture which were likely to be hit by shortage of water at particular times of year and where the intensity of water use, unfortunately, usually coincided with the least precipitation and the least access to water—namely, the summer months.

While the mines and quarries, I am informed, have actually restricted and reduced their use of water, and some farmers have restricted their use of water and some storage has existed, actually, government policy never, under any Government, came closer to encouraging, as part of an agri-environment scheme or whatever, that storage of water would be provided. This was particularly important for the horticulture sector, and it has not happened.

The reason we did not immediately move to consult on ending the exemptions after the passage of the Act was principally that we needed time for those changes to take place. The Labour Government did, of course, consult in 2009, and part of the result of that consultation was that not enough had changed for the industry to be prepared to accept the change.

Most of the House will have completely forgotten this, but for one very brief period during the coalition Government I sat on the Front Bench when water legislation was being introduced at that time. That was mainly about introducing competition within the water industry, which has not gone quite as smoothly as it might have done and as we all hoped it might at the time. At that time, we also received assurances from the Government that we would have a strategic approach to abstraction. Indeed, there was some hope of new measures at the upstream end of water, which might involve water trading and possible trading of licences, so that we could gain efficiency at that end in the same way that we are trying to gain efficiency by introducing a degree of competition at the retail end. None of that has happened either, as the noble Baroness, Lady Bakewell, has just said.

Effectively, the coherent approach to abstraction reform has been put well and truly on the back burner. All we have, therefore, is these regulations to do the easiest bit of it, albeit that it is a slightly painful bit for some abstractors—namely, to end exemptions. It seems to be sensible that we do that. It is, however, now 14 years on, as people have said, and we have also missed the deadline under the water framework directive.

Generally speaking, the water framework directive is regarded as a good exemplar of European legislation because effectively it is outcome related and is not overprescriptive, but it is a relatively good piece of European legislation, one which we would have thought we would be very happy to comply with. We have actually failed to comply with it in a number of important respects, some of which are being put right by these regulations tonight.

8.15 pm

The problem before us is that there has been delay. Some of that delay has been justified. I would argue that, even under the Labour Government, we took too long to get back to it, and we have had another 10 years—or seven years—since then, which has led to even further delay. The bigger point is that we are only doing a tiny bit of what is needed for abstraction reform; we are only tinkering with the management of water upstream that is going to be needed, and we have a clear indication from the Government that that has actually been put back for a number of years because of the legislation which will arise as a result of Brexit and the burden that that puts on Defra. It seems to me that that is worrying.

The final clauses of my noble friend's Motion indicate that the way this is being dealt with shows a lack of capacity in Defra to deal with the post-Brexit regulatory framework. I have some sympathy with the Minister because, clearly, he is representing a department which is under great strain and which covers the largest single batch of regulations that are going to be transposed in the withdrawal Bill, which we will shortly have the pleasure of considering in this House. It will therefore have to decide which of those regulations will be transposed and, crucially, how they will be enforced. Hitherto, although in this context the Commission did not really threaten infraction proceedings, they have been enforced by European legislation. We will need to know what the new body that Michael Gove proposes is going to look like. I hope we will know that fairly soon. Moreover, we will need to know and be confident that, when it comes to the regulations in this field and the interrelated field of the CAP—water management is potentially a major part of agricultural and land management policy in terms of catchment management in the future—we have a department and agencies which are able to get round to having a coherent and holistic approach to the water system, particularly in this context to abstraction reform.

We have three issues. The first is delay. The second is: why have we put water reform on the back burner? The third, and probably most crucial, is whether the Minister is able to convince us—and, indeed, all stakeholders in this area—that Defra will be able to deal with the wider problem of regulations that will need to be transposed and the new systems of enforcement and monitoring that will need to be established post Brexit. I fear that Defra is not in a position to do that. It is not the fault of Ministers or civil servants in Defra or the agencies which report to Defra; it is that, unfortunately, Defra is pretty low down the pecking order in Whitehall. I heard the figure quoted today of 57% of Defra's resources in terms of staff and finances being cut. It has a major job in inventing, post Brexit,

a new English, and potentially British, agricultural policy, and it has this whole backlog of regulations to deal with before the regulations are transposed under the withdrawal Bill.

I say to the Minister that I greatly enjoyed being a Minister in Defra. I would not enjoy it now or in the next few months—and years. I hope, however, he will be able to assure me that I am wrong, that Defra does have the capacity and if it does not have it now, the Treasury will be generous in providing it, and that as soon as practicable it will be going back to the issue of holistic reform of the abstraction system. If I get that from the Minister tonight, I will go home happy.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, first, I declare my farming interests, although I rather think that in the Vale of Aylesbury we have never needed a water abstraction licence or otherwise. I acknowledge the vigour with which the noble Baroness, Lady Jones of Whitchurch, set out her concerns, and I value the contributions from noble Lords across the House. I agree with the noble Baroness, Lady Bakewell of Hardington Mandeville, that water is one of our essential natural resources. Our ambition for clean and plentiful water for both the environment and people is a key goal of the Government's 25-year environment plan. I say to my noble friend Lady McIntosh that with 75% of the land in this country farmed, surely it is the case that farming and an enhancement of the environment are mutually compatible. That is how we see the way forward.

It is the Environment Agency's task to ensure that water is managed and used effectively and sustainably. Managing water abstraction is particularly important in times of dry weather to manage the impacts of drought. The abstraction licensing system is one of the agency's key tools to manage water resources and to secure the amount of water available for businesses and the environment.

The vast majority of abstraction has been licensed since the 1960s. This has meant that about 20,000 significant abstractions and those with the most potential to damage the environment were already licensed. This includes abstractions used by the water companies, industry, the energy sector and most of the agriculture sector. We are therefore largely compliant with the water framework directive requirements regarding prior control of abstractions. The noble Baroness, Lady Bakewell, rightly spoke of sustainability. Since 2008, the Environment Agency has changed more than 270 of these abstraction licences to prevent more than 30 billion litres of water per year being removed from the environment where this abstraction is unsustainable.

Through the statutory instruments we are discussing, we are commencing and implementing some provisions in the Water Act 2003 to remove abstraction licence exemptions for some further activities. Hearing the Minister and the shadow Minister who dealt with the Water Act 2003 speaking about it as if it was yesterday shows the great importance of hearing the experiences of those times, as well as why your Lordships' House is an important place. The work that we are undertaking now will ensure that we more fully capture all significant abstraction in the licensing regime. This will mean about 5,000 comparably less damaging abstractors will be licensed. I was interested in what the noble Lord, Lord Whitty, said about the issues that came up in 2003 about mines, quarries and agriculture, highlighting the importance of proper deliberation on these matters.

I accept that we and previous Governments—I can say this because the previous Governments are represented here—could have made a more expeditious advance on these instruments. I am sure the noble Baroness, Lady Jones, will not mind me referring again to this—I think it was already referred to—but it was the Labour Government who, during that seven-year period after 2003, had their initial consultation only in 2009. But I will not dwell on that because I should take this opportunity to explain some of the reasons why it has taken some time to complete this complex legislation. The noble Lord, Lord Whitty, indicated some of these issues.

These changes are part of an evolution of complex water abstraction legislation, stretching back to the 1960s, which affect existing lawful entitlements. Bringing them into regulation while avoiding disproportionate and unnecessary business impacts needed careful implementation. I say to your Lordships that central to all this is ensuring the wise use of water—that we regulate only where it is necessary for environmental protection or enhancement—and being equitable to all abstractors. We did not want to find ourselves in a situation where we were unnecessarily regulating businesses that contributed strongly to the economy of our country, but which could then not function because they did not have access to the water they needed.

To begin with, we had insufficient knowledge about these abstractions because they were not regulated. Different sectors had varied concerns. We worked with each sector on an individual basis to develop a policy that met our primary requirements for the protection of the environment, through a fair abstraction licensing regime, while allowing these businesses time to adapt and continue. My noble friend Lady Byford, with her considerable experience on these matters, will identify that the sectors affected ranged from navigation authorities such as the Canal & River Trust to farmers using trickle irrigators and the mineral industry, which removes groundwater from mines, quarries and large engineering works so as to extract minerals safely without groundwater seeping into its works. The Government have also made changes to the internal drainage boards that will benefit them. The work we have done with them has borne fruit and is very helpful.

The instruments bring these sectors and others into the abstraction licensing regime, which will allow the Environment Agency to manage all the water in a catchment. It is important that we look at these things on a catchment basis. The first cycle of river management plans required by the water framework directive were published in 2009. This is what showed us that we needed to know more about the exempt activities and how they contributed to overall abstraction pressures. We did research to identify the numbers and locations of these activities, consideration of how the policy proposals impacted on businesses and the environment, and further economic appraisal of the policy changes that arose following the initial consultation in 2009.

[Lord Gardiner of Kimble]

A key policy change was the Government's initiative in relation to dealing with cases of serious environmental damage caused by abstraction. This required consultation in 2012 and the development of new guidance to facilitate the changes. We then included a commitment in the 2015 river basin management plans to remove the exemptions and we consulted further in 2016. To ensure that the final approach was proportionate, time was also required to develop the policy and legislation to allow abstraction exemptions to continue for numerous low-risk activities. For example, provisions in these instruments continue abstraction exemptions for small-scale temporary construction works. Had we introduced the legislation without making this exemption, there would have been substantial business impacts on the construction sector. We estimate that 20,000 of its abstractions per year would have had to be licensed, without benefit—I emphasise, without benefit—to the environment.

My noble friend Lady McIntosh and the noble Lord, Lord Whitty, referred to further plans. Removing abstraction licence exemptions is indeed only part of the story, so I hope that I might enable the noble Lord to return home with a certain amount of cheer. The Government recently published their updated approach to managing water resources. This abstraction plan explains how we will implement reform of the abstraction licensing system over the coming years. The plan outlines three main approaches. We intend to make full use of existing regulatory powers and methodologies to address abstraction that prevents us meeting environmental objectives; we will develop a stronger catchment focus to protect the environment and improve people's access to water; we will also digitise and move the abstraction service online, and bring regulations in line with other environmental permitting regimes.

I hope noble Lords will be reassured that the Government are taking action to improve the abstraction licensing system and wanted to take the right time to get the balance right between avoiding unnecessary regulation and ensuring environmental protection. I emphasise to the noble Baroness, Lady Jones of Whitchurch, that the top priority is environmental protection.

8.30 pm

I confirm to the noble Baroness, Lady Bakewell of Hardington Mandeville, that the 2027 deadline to achieve good ecological status in water bodies under the water framework directive is transposed into domestic regulation and that these regulations will be preserved under the European Union (Withdrawal) Bill after exit day.

The noble Baroness, Lady Jones, has broader concerns about the department's ability to deliver EU exit legislation. The noble Lord, Lord Whitty, enjoyed his time in government, and I echo that it is an enormous privilege to be a Minister of Her Majesty's Government, but it is also a continuing privilege to be a Minister in a department which has so many affairs and interests that affect the daily lives of everyone in this country. Wrestling with those challenges and seeking to do the right thing is an enormous privilege. I can give him comfort tonight that the whole of the ministerial team and all officials are working extremely hard and effectively on the nation's behalf.

The noble Baroness took me and the department to task, and that is her right. There is always room for improvement, but I think that we generally have a good track record on regulation, although she mentioned a number of things that I will give closer scrutiny to. We have made good, strong progress in identifying legislation that will be required to deliver EU exit. The Secretary of State has already written to the chairman of the Environment, Food and Rural Affairs Select Committee setting out the principles under which the Defra programme to make the necessary corrections to all EU-related legislation under the withdrawal Bill prior to EU exit is being developed. He indicated in that letter that this will require around 95 SIs to correct 854 existing core pieces of legislation. I acknowledge that that is a considerable task.

I say to noble Lords, particularly the noble Lord, Lord Whitty, and the noble Baroness, Lady Jones of Whitchurch, that as of 31 December, Defra has recruited around 950 additional staff, including fixed-term appointments and interims, to support its comprehensive EU exit programme of work, of whom more than 800 have already taken up their post with the remainder progressing through our pre-appointment process. I am extremely proud to work in a department with outstanding officials in all the policy areas that I personally have responsibility for. As your Lordships know, as the only Defra Minister in the Lords, I have to seem to be extremely knowledgeable on all matters in the department, as the noble Lord, Lord Whitty, will well remember. All the officials that I have the privilege of meeting and working with are exceptional. I acknowledge that there is an enormous amount of work for Defra. It is my intention to keep the noble Baronesses, Lady Jones and Lady Bakewell, abreast of all the developments that I can possibly discuss so that they are aware of the issues that we are seeking to wrestle with.

I thank noble Lords for their contributions. I know the noble Baroness, Lady Jones of Whitchurch, will not be satisfied with all that I have said, but I hope that with the interventions from the noble Lord, Lord Whitty, and my noble friend Lady Byford there is a background to all of this. There is continuing work to do. The Government have a plan on water abstraction and significant plans in the 25-year environment plan.

I should emphasise again the 25-year environment plan, because it has come up so many times. This is a continuing task—it is not about arriving in 2041 and suddenly deciding we need to fulfil the plan. The plan will be worked on day in, day out, as we work to leave the environment in a better place. Clearly, the good custodianship of the water supply is one of our prime duties and something that the Environment Agency has responsibility for. The agency is working extremely hard, and we in turn are working with it. I am most grateful to the noble Baroness for this opportunity.

Baroness Jones of Whitchurch: My Lords, I thank all noble Lords for their contributions, and in particular the noble Baroness, Lady Bakewell, and my noble friend Lord Whitty for their wholehearted support of

the position that I put forward. All noble Lords owe a debt of thanks to the noble Baroness, Lady Byford, and my noble friend for a very enlightening history lesson going back to 2003. I absolutely agree with the Minister's comments that it is very helpful to have people who were there at the time to put us straight on a few things when we look back in history and try to understand what happened.

I also agree with my noble friend Lord Whitty that the end result of all that was that over and again a coherent approach to abstraction was put on the back burner. We had the opportunities to take the issue forward and to have a more holistic view of water extraction and water management in the round—but time and again we did not find the time or make it a priority to take that forward. I will also say—and I think the contributions this evening have echoed this—that we are now far more aware of the importance of water management than perhaps we were back at that time. It is not just something for the experts: there is a much wider public concern about what is happening in terms of water management in the UK. We have been given examples of floods and droughts—we all see it, know it and feel it, which I think focuses our mind on the fact that we really need to be doing more about it.

We will have opportunities to debate this going forward, and I welcome some of the issues that the Minister mentioned. He mentioned the new abstraction plans that are coming forward, which are contained in the 25-year environment plan. I mentioned that I was concerned about the overemphasis in delays on business interests. Some people queried whether or not that was true. I would only pray in aid on all that the analysis of the Secondary Legislation Scrutiny Committee, which said:

> "While the Department clearly had to consider the way in which businesses would be affected by the changes proposed, we see no reason why its reflection on the consultation process in 2009 needed to take the best part of a decade to be turned into detailed implementation".

I share that analysis at the end of the day, despite what the Minister said about the environment being put first. The party opposite says that regularly, and we all want to believe it, but we also have to look at its actions as well as its words, and the proof will be in the telling as time goes by. So the Minister did not exactly reassure me on that—but maybe he said as much as he was able to.

I also thought that he was rather grudging in his acknowledgment of the fact that there had been a delay. I think he said that there could have been more expeditious progress. Well, that is a bit of an understatement of the facts. I think that everybody can see and acknowledge that there is no justification for the delay, whatever the reasons, and that it could have been dealt with more speedily.

The Minister sought to reassure me on the issue of capacity, but I am concerned that the recruitment now taking place is focused on Brexit. The department has taken a big hit in terms of staff reductions in the last 18 months. The new recruits are very welcome and I look forward to working with them, but they will be focused on Brexit rather than the bread-and-butter stuff that we are dealing with here, which is some of the business-as-usual work that still needs to take place. The Minister said he would go away and look at why some of the other delays that I mentioned had taken place. We need to keep our foot on the accelerator to ensure that the work is kept up to date.

The Minister said at the end that he did not think I would be satisfied by all that he had said—and, unsurprisingly I am not. Nevertheless, I welcome the dialogue and discussion, and I think that he gave fair and honest answers. With that—and bearing in mind the lateness of the hour, since I know we are going to be debating these issues for many months to come—I beg leave to withdraw the Motion.

Motion withdrawn.

House adjourned at 8.40 pm.