

Vol. 788
No. 83



Monday
22 January 2018

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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

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House of Lords

Monday 22 January 2018

2.30 pm

Prayers—read by the Lord Bishop of Peterborough.

Health: Alma-Ata Declaration Question

2.36 pm

Tabled by Lord Crisp

To ask Her Majesty's Government whether they have plans to celebrate the 40th anniversary of the Alma-Ata Declaration on primary health care.

Baroness Watkins of Tavistock (CB): My Lords, on behalf of the noble Lord, Lord Crisp, and at his request I beg leave to ask the Question standing in his name on the Order Paper.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, achieving universal health coverage, including access to primary healthcare, is a priority for the Government. Our work to deliver the global goal of universal health coverage continues and we welcome the increased international attention on primary healthcare that the Alma-Ata Declaration's 40th anniversary will bring.

Baroness Watkins of Tavistock: My Lords, I thank the Minister for his Answer but to what extent do the Government believe that, in our own four countries, sections IV and VI of the declaration are being achieved—namely, that communities have the right to be involved in planning their services and that primary care should be a central function of the overall social and economic development of the community?

Lord Bates: The assessment of the level to which that is the case is a reflection of the priority which we give to primary care, as 90% of healthcare interventions are through primary care. It is absolutely right that we should have community-based solutions. I recently attended an event for the one-billionth treatment of neglected tropical diseases by Sight Savers. It was interesting to learn there that it had community dispensing people who went round in each community with a small measuring stick, which measured the dosage based on the height of the recipient. Two things were found: first, that it was very quick and efficient but, secondly, that there was greater acceptance and take-up because the people were from within the community and there was therefore greater trust. That is a model of how things ought to continue.

Lord Ribeiro (Con): My Lords, following on from the question about the role of general practice, and mindful of the fact that we recently combined the Department of Health with social care, is it perhaps not time to redefine the role of general practice to

ensure continuity of care between the two sectors and avoid some of the problems we saw in our A&E departments over the Christmas and new year period?

Lord Bates: That coming together of health services is obviously important. We share that knowledge and expertise through international health partnerships with some of the poorest countries in the world so that they can learn from it as well. But my noble friend is absolutely right to say that those first points of contact are essential in a good, functioning primary healthcare system, which was the Alma-Ata aspiration.

Lord Collins of Highbury (Lab): My Lords, building sustainable health systems is clearly critical to address health inequalities. Ebola in Sierra Leone has taught us many lessons. Just how are the Government responding to building sustainable health systems to ensure that the global community can withstand the next round of diseases that will hit it?

Lord Bates: That resilience work is important. We work closely with the World Health Organization and, importantly, with health organisations in the countries concerned. We are certainly putting more money into this than ever before and have made some big commitments: to the Gavi vaccine programme, with £1.4 billion; to the Global Fund, with £1.1 billion; and to the Ross Fund, which will do some pioneering work in researching this area of diseases, with about £1 billion as well. Significant amounts are going in but we need to do more.

Baroness Nicholson of Winterbourne (Con): Since the Alma-Ata Declaration is based on the foundations of the National Health Service, albeit some years later than the foundation of the NHS, does the Minister think that our Government could promote the declaration within the concept of the National Health Service principles a great deal more than we do? It is, after all, the key rulebook of the World Health Organization and something that we helped to create.

Lord Bates: It is the key rulebook of the World Health Organization, but we should also remember that in the intervening 40 years we have had the sustainable development goals. Sustainable development goal 3 on health contains many of the provisions in the declaration. The sustainable development goals, unlike the millennium development goals, apply to all countries that sign them, not just least-developed countries.

Lord Rea (Lab): My Lords—

Baroness Sheehan (LD): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is the turn of the Liberal Democrat Benches.

Baroness Sheehan: Primary healthcare is critical in reducing child and maternal mortality through family planning initiatives, yet DfID has failed to provide funding this year to both the International Planned Parenthood Federation and Marie Stopes International. Should DfID not have safeguarded these essential

[BARONESS SHEEHAN]

programmes for women when remodelling the programme partnership arrangements, particularly in the light of the Trump Administration's global gag rule?

Lord Bates: The noble Baroness particularly mentioned the programme partnership arrangements but we have changed that and distribute the money through a different mechanism to many similar organisations. I must put on record the fact that the UK Government and the people of the United Kingdom can be proud as they have done more in the area of family planning and providing access than any other Government. We initiated the first family planning summit in 2012, and we held the last one in 2017. We have made huge commitments in this area and are the second-largest donor, in overall terms, in this very important area of giving women control over their own lives and futures, which is important not only for the economy but for education.

Lord Rea: The Alma-Ata conference and declaration changed the attitudes of Governments and health planners by demonstrating the cost-effectiveness and humanity of universal primary care as compared with possibly more prestigious but very expensive secondary care hospitals. Is that not relevant to the situation we have in this country today, with hospitals full of patients with chronic diseases which could have been prevented and could certainly be cared for in the community if we had properly funded primary and social care?

Lord Bates: We need to remember that, in Alma-Ata in particular, we are referring to some of the poorest countries in the world. We have the best health service in the world. That is not just my word; that was recognised by the Commonwealth Fund, which produced that statistic saying that we have the best healthcare. It is a tremendous service. In many of the countries that we are dealing with, people have to travel for days or weeks to get any sort of health intervention. We need a priority to ensure that those people are brought into the ambit of the sustainable development goals so that they get the healthcare they need and we save lives as well as being mindful of the important responsibility we have in this country.

Baroness Finlay of Llandaff (CB): Given the excellent public health record that now 91% of the global population has improved water—up from only 76% in 1990—does DfID still recognise that 2.3 billion people do not have access to a decent toilet and that it is important for our own health that the 9 million new cases of tuberculosis worldwide are diagnosed early and managed appropriately? Will DfID undertake to work with those of us in end-of-life care and pain relief to make sure that the 150 countries where there is virtually no access to any pain relief are encouraged to come into line with modern science in pain relief?

Lord Bates: I am very happy to do that. Of course, with these waterborne diseases, clean water and sanitation are important. They come under sustainable development goal 6, which we are committed to as well. We are dealing now with the Rohingya situation in Cox's

Bazar—the diphtheria outbreak there is waterborne. There is a massive outbreak of cholera in Yemen. These are important issues, which is why we are drawing on the resources of British taxpayers and ensuring that they are distributed to the people in need.

Non-Disclosure Provisions

Question

2.45 pm

Asked by **Baroness Stowell of Beeston**

To ask Her Majesty's Government whether they intend to review the legality of non-disclosure provisions in settlement agreements.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, non-disclosure provisions in settlement agreements are allowed by law and can have a legitimate purpose. They cannot prevent any disclosure that is required or protected by law. The Government have committed to look at the structures around non-disclosure agreements and the evidence that is coming forward about how they are being used.

Baroness Stowell of Beeston (Con): My Lords, I am grateful to my noble and learned friend for his commitment to look at this complex area of the law. Although he is right that there are protections for certain kinds of disclosure, we still hear about powerful individuals and institutions using non-disclosure agreements—or “gagging orders”—to cover up wrongdoing or serious management failure. I have two questions for my noble and learned friend. As part of his review into this area, could he also look at the roles and responsibility of the lawyers involved in drawing up these agreements, especially when allegations of unlawful behaviour are made? Secondly, what are the Government doing to satisfy themselves that, in the public sector, taxpayers and licence fee payers are not paying for things to be covered up which they have a right to see exposed?

Lord Keen of Elie: My Lords, the Employment Rights Act 1996 makes any non-disclosure provisions between any employer and employee unenforceable unless the employee has had independent legal advice. The position of the legal profession, to that extent, is monitored. ACAS has a statutory code and practical guidance on settlement agreements which make it clear that no settlement agreement can include clauses that attempt to prevent or restrict an individual from making a protected disclosure. That applies to the public sector as well as elsewhere.

Lord Marks of Henley-on-Thames (LD): My Lords, the noble Baroness raises an important point, because it is wrong that confidentiality, or gagging, clauses in settlements should be used to conceal wrongdoing. But confidentiality clauses do play an important part in encouraging ADR—particularly mediation or arbitration—and in encouraging parties to settle cases rather than fight them in public, all of which we are keen to promote. Will the Government consider further how we might restrict the improper use of such clauses, particularly in employment and sexual cases, without undermining their legitimate use?

Lord Keen of Elie: The Government are conscious of the importance of confidentiality clauses, particularly between employers and departing employees. It may, for example, be important to protect confidential information material to a business. But we are equally concerned to ensure that the limitations are legitimate and that it is not possible to exploit such clauses in order to turn them into what are sometimes termed gagging clauses.

Baroness Chakrabarti (Lab): My Lords, I think all of us, including the Minister, can agree that there are certain clear examples of cases where no court or tribunal should attempt to enforce one of these clauses, because it would be contrary to public policy. For example, the victim of a sex offence should be able to go to the police without anyone enforcing a clause against her. But it gets more complex beyond that. Does the Minister agree that if there are victims who are, de facto, chilled from coming forward, the Government have a role in clarifying and possibly legislating in this area?

Lord Keen of Elie: My Lords, the Government have committed to consider the report of the committee that is looking into this issue, and will then determine what further steps should be taken. We would prefer to react to the outcome of that report rather than anticipating it.

Lord Faulks (Con): My Lords, my noble friend Lady Stowell referred to the problem with lawyers. This is a problem that has emerged particularly in Hollywood, where a very powerful industry, which unfortunately has been responsible for exploiting often young women in particular, has allowed them to obtain at least some form of legal advice, but there has nevertheless been a considerable inequality of bargaining power between the two. Does my noble friend not think that the Government ought to be looking at a presumption that unless there is equality of bargaining power, these sorts of agreements should be unenforceable?

Lord Keen of Elie: My Lords, I am not sure that the introduction of some form of legal presumption is necessary. Thanks to the Employment Rights Act 1996, if an employee is not given independent legal advice, any non-disclosure provision becomes unenforceable.

Deceased Individuals: Allegations

Question

2.50 pm

Asked by **Lord Lexden**

To ask Her Majesty's Government whether they intend to review the law governing the naming of deceased individuals against whom criminal allegations have been made.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, any decision to name an individual where that is considered to be in the public interest will necessarily be specific to the circumstances of an individual case. Accordingly, the Government do not have plans to review the law in relation to this matter.

Lord Lexden (Con): I urge my noble friend to study a recent report by the noble Lord, Lord Carlile of Berriew, into the way in which a group within the Church of England investigated a single uncorroborated allegation of child sex abuse against one of the greatest of all Anglican bishops and a prominent Member of your Lordships' House, George Bell, who died 60 years ago. While the noble Lord was precluded from reviewing the Church's decision to condemn Bishop Bell, it is clear from his report that the case against that truly remarkable man has not been proved, to the consternation of a number of Members of this House including my noble friend Lord Cormack. I ask my noble friend to consider the recommendation from the noble Lord, Lord Carlile, that,

"alleged perpetrators, living or dead, should not be identified publicly unless or until the Core Group has (a) made adverse findings of fact, and (b) it has also been decided that making the identity public is required in the public interest".

Should there not be a legal requirement in all cases to ensure that that is met before anyone, alive or dead, is named publicly? Does my noble friend agree that institutions of both Church and state must uphold the cardinal principle that an individual is innocent until proved guilty?

Baroness Williams of Trafford: I thank my noble friend for that question. I am aware of the report by the noble Lord, Lord Carlile, and the recommendations that it makes. The report itself was commissioned by the Church of England and the recommendations within it are for the Church, so it would not be appropriate for me to comment. However, as my noble friend says, there is a presumption of anonymity. People should not be named unless there is a legal reason for doing so. Of course the principle of innocence until proven guilty is a key tenet of English law, and it is not for me to tell the Church what to do.

Lord Campbell-Savours (Lab): My Lords, does the Minister accept that there may be circumstances in which an accuser may have compensation in mind in making the accusation?

Baroness Williams of Trafford: My Lords, obviously I cannot comment on any individual case but it may well be that that is the motive.

Baroness Hamwee (LD): My Lords, given the difficulty of maintaining in the public's mind the presumption of innocence until proven guilty, especially with the proliferation of social media, is there anything that we can learn from experiences in other countries or jurisdictions that have the same presumption?

Baroness Williams of Trafford: My Lords, what we can certainly do is learn from some of the situations that have arisen in this country. I could not comment at this point on examples from around the world.

Lord Cormack (Con): My Lords, I urge my noble friend to think again on this. It is a deeply shocking case. The reputation of a great man has been traduced, and many of us who are Anglicans are deeply ashamed

[LORD CORMACK]

of the way that the Anglican Church has behaved. This can surely be a spur to the Government to review the law to try to protect the anonymity of people who are accused of something years—decades—after their death with one uncorroborated alleged witness. Please will she take this on board and talk to the Secretary of State about it?

Baroness Williams of Trafford: My Lords, as I said earlier, there is a presumption of anonymity. The report was a report to the Church of England, and it would not be appropriate for me to comment on it.

The Lord Bishop of Peterborough: My Lords, this has been a very difficult case, but Bishop Bell is not the only person whose reputation has been severely damaged by such accusations—some are dead and some still alive. I urge the Minister and the Government to take very seriously the call for a major review of anonymity. In all cases where the complainant has a right to be anonymous, there seems to be a case for the respondent also to be anonymous, and in cases until there is overwhelming evidence to suggest guilt, it seems reasonable for people's reputations not to be damaged in this public way.

Baroness Williams of Trafford: My Lords, I could not disagree with anything that the right reverend Prelate says. We have had many debates on this issue, and the College of Policing recently updated its guidance on naming suspects. Of course, the media have named suspects in the past, and that is another matter altogether, but the guidance has been updated, and the College of Policing is also refreshing its guidance to provide clarity on naming of deceased individuals.

Baroness Greengross (CB): My Lords, does not the Minister agree that there could be a fairly simple rule, which would be not to publicise the name of anybody in such an event and not to accuse somebody until they are charged?

Baroness Williams of Trafford: Until someone is charged, they cannot be accused, only questioned, in my limited knowledge of the law. The noble Lord, Lord Pannick, made an eloquent argument that in some cases anonymity might prevent questioning and interviews from taking place and may be to the benefit of someone who may be guilty.

Lord Blair of Boughton (CB): My Lords, it would be fair to say that this is a pretty knife-edge issue. There are circumstances in which it is appropriate to name a suspect. That is usually when the person is incredibly powerful. The naming of deceased people is a different issue, but I will give your Lordships two examples of live suspects and ask the Minister whether she agrees. The first is at home: Stuart Hall. If there had not been an announcement that he had been arrested, the chances of a number of other victims coming forward would have been very limited. He is now in prison for a long time. The other one, which is quite topical, is Harvey Weinstein.

Baroness Williams of Trafford: I did not hear a question, but I agree with the noble Lord. He better puts the point that I was trying to make on the previous question—it may be in the interests of an investigation to name a person—but there is clear guidance on this.

Lord Sherbourne of Didsbury (Con): My Lords, on the question of Operation Conifer, the investigation into Sir Edward Heath by Wiltshire Police, does my noble friend agree that there has been real public concern about the way that it has been conducted by Wiltshire Police and the chief constable of Wiltshire? What options are available for there to be an independent inquiry into the conduct of Wiltshire Police's inquiry?

Baroness Williams of Trafford: I certainly acknowledge the concern, and in terms of a public inquiry being set up, it would be for the chief constable, in discussion with the PCC, or indeed the PCC himself or herself, to set up an inquiry. I have written to the PCC to inform him of this. I hope that I have clarified the situation on the process for an inquiry.

Police Commissioners *Question*

3 pm

Asked by Lord Greaves

To ask Her Majesty's Government what advice they are giving to police commissioners on (1) whether commissioners should use the opportunity to levy additional council tax of £1 per month, and (2) what criteria should be used when making that decision.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government believe that democratically elected police and crime commissioners are best placed to take these local decisions. It is a matter for them to determine the appropriate levels of council tax precept to apply in each police force area.

Lord Greaves (LD): My Lords, that is not true, of course, because there is a cap on it. To give just one example, in my own county in Lancashire the police are facing £90 million of savings in this decade, and they have already lost 800 police officers. The Government accept that there is a need for more spending, but the only way in which they will allow it, in order to max their cuts in what they are providing in real terms, is by putting up council tax by £12 a year, which would raise a fairly paltry £5 million this year. What advice will the Government give police commissioners in such places? Will they come off the fence and say whether they want the commissioners to stop further cuts in the police? If they do, will they therefore put council tax up by an extra £12 a year?

Baroness Williams of Trafford: My Lords, the reason for a cap is to stop precepts from getting completely out of hand in terms of the amount that local people might be asked to pay. The advice to police is that there are further efficiencies to be made in policing, as acknowledged by HMICFRS. There are investments in technology and things such as shared services that the police can look at across the piece. However, it is

up to the local PCC to determine the best level of funding for the area and what type of investments it wishes to make.

Baroness Smith of Basildon (Lab): My Lords, is this not just another example of the Government passing the buck? The police are under enormous financial pressure, and every county in this country will say that they do not see police officers as often as they used to and that numbers are falling. It is hardly surprising that, after seven years of real-term cuts, we have fewer officers per head of the population today than we have had at any time since records began. Instead of saying that it is a matter for the police force or PCCs, will the Government accept responsibility and give the funding required? When the Minister says that these technologies are needed and investment must be made, we have to put the money in first to see the benefit of investment. Will the Government step up to their responsibilities and adequately fund our police force?

Baroness Williams of Trafford: My Lords, the Government certainly accept their responsibilities. The right honourable Member in the other place, Nick Hurd, visited every police force in England in the run-up to this. The NPCC and the APCC called for £440 million of extra funding in 2018-19, with additional CT funding on top. They called for an extra 5,000 front-line officers for proactive policing by 2020. If all forces delivered the level of productivity benefits of mobile working of the best forces, the average officer could spend an hour a day extra on the front line. That has a potential to create the equivalent of 11,000 extra officers across England and Wales. In addition, the police have reserves of £1.6 billion to invest.

Lord Lexden (Con): Does my noble friend agree that it would be wholly inappropriate for the discredited former chief constable of Wiltshire Police to be given another highly paid job within the police force?

Baroness Williams of Trafford: I think that my noble friend answered his own question. What I will say is that, under the Policing and Crime Act of last year, retiring or moving on to another force—I am not referring specifically to the chief constable—does not absolve a police officer from being answerable.

Baroness Pincock (LD): Four years ago, the Government described council tax payers as “hard pressed”; today, the Government are anticipating, and enabling, the raising of the police precept by police commissioners by 6% or 7%. Does that mean that council tax payers are no longer hard pressed?

Baroness Williams of Trafford: My Lords, when local leaders such as PCCs or local authorities make funding and budget decisions, they should always maintain as low a cost base for the local taxpayer as possible.

Lord Reid of Cardowan (Lab): Will the Minister confirm that we have lost more than 20,000 police officers since the Government came in in 2010, and will she explain precisely how that has helped the fight against crime?

Baroness Williams of Trafford: As the noble Lord will know, overall crime has gone down since 2010. However, I think that everyone will recognise that the types of crime we are now experiencing have changed, and that police forces need to be equipped to deal with the changing face of crime.

Baroness Donaghy (Lab): The Minister said that the police and crime commissioners have £1.6 billion in reserves. What is a reasonable figure?

Baroness Williams of Trafford: I am not sure whether the noble Baroness means a reasonable figure for reserves.

Baroness Smith of Basildon: Yes.

Baroness Williams of Trafford: I thank the Labour Front Bench for answering the noble Baroness's question. I think that 5% of the revenue budget is deemed a reasonable level of reserves. I cannot stand at the Dispatch Box and work that out quickly.

Armed Forces: Investment

Private Notice Question

3.07 pm

Asked by Lord Campbell of Pittenweem

To ask Her Majesty's Government what assessment they have made of the levels of investment in the British Armed Forces, in the light of recent reports of potential cuts in defence spending.

Lord Campbell of Pittenweem (LD): My Lords, I beg leave to ask a Question of which I have given private notice.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, defence spending is rising, not falling. This year the budget is £36 billion, and it will increase by at least 0.5% above inflation every year of this Parliament to almost £40 billion by 2020-21. The UK is proud to be the second-largest defence spender in NATO and the fifth-largest in the world. Recent press speculation about changes to the UK's force structure, and cuts to the budget, has been misleading and unhelpful.

Lord Campbell of Pittenweem: My Lords, is it not unprecedented for the head of one of the armed services to intervene in a debate of this kind? It is made all the more remarkable by the fact that he has been endorsed by the Secretary of State for Defence. Does the Minister agree with the Secretary of State for Defence—whom of course he serves as a Minister of State? If the head of the Army and the Secretary of State have now reached the view that there is insufficient investment in defence, is it not high time that the Government did so as well?

Earl Howe: It is difficult for me to comment on a speech that has not yet been given, but I recognise the sentiment that the noble Lord articulated. The National Security Capability Review is about maintaining agility in this country's security and defence, and staying

[EARL HOWE]

ahead of the curve in terms of the resources we deploy. We must remain agile in a world that is ever changing, and that is why the Government are conducting this review: it is about ensuring that our defence and security policies and plans are as joined-up, efficient and effective as possible.

Lord Tunnicliffe (Lab): My Lords, does this not show the chaos in the whole area of defence? The annual report on SDSR 2015 was due by the end of December. This has somehow been subsumed into the NSCR, a date for which we have not got. Will this review set out the threats and how they are going to be met? If, as the Minister has stated in previous answers, there is no money, what threats are we going to tolerate?

Earl Howe: My Lords, there is no chaos whatever. The NSCR is about analysing, across government, the intensifying threats to national security and considering their impact on the implementation of the 2015 SDSR and national security strategy. In that context, the Ministry of Defence has done a great deal of high-quality work. Once the NSCR has drawn to a close, we will want to build on the elements of the good work that has been done, to explore further the opportunities for modernisation that have been identified.

Lord Trefgarne (Con): My Lords, should it not be remembered that, for every hour of every day and every night, somewhere in the world one of our Trident submarines is on patrol, ready to respond should our supreme national interest so require? Should not any potential aggressor be reminded accordingly?

Earl Howe: My noble friend is absolutely right. However, it is precisely for that reason that the recent speculation, in the press and elsewhere, is unhelpful, because it is inherently unsettling to the men and women of the Armed Forces.

Lord Boyce (CB): My Lords, setting aside potential cuts, there is no speculation about the cuts in train now, particularly those affecting the training of our Armed Forces. Will the Minister comment on this, which is affecting our fighting efficiency and morale?

Earl Howe: The noble and gallant Lord is correct. Some decisions have been taken for the current financial year to decrease the amount of training that certain parts of the Armed Forces will be able to avail themselves of. I emphasise that this is a temporary measure.

Lord West of Spithead (Lab): My Lords, there is no starker illustration of the crisis in defence than that the Secretary of State actually allows a head of service to talk about the fact that it needs more resources. I cannot remember that ever happening before, though admittedly I have been in the Navy only for 53 years. This is a really worrying event and reflects what has been said in this House and the other place about defence.

My question relates to our sailors, soldiers and airmen. This uncertainty, the pressure on resources and the hollowing out that is going on day by day are

affecting the morale of our people. It is causing difficulty in recruiting; people are leaving and it is causing churn because there are fewer people. Is the Secretary of State—or the MoD—going to produce something to tell our people what is going on, what the future looks like, when there will be an SDR, if there is going to be an SDR, and what exactly is happening? At the moment, there is huge confusion and that is bad for our military.

Earl Howe: The noble Lord's central point is, of course, quite correct. I agree with him that uncertainty in any context can be unsettling and damaging. The Government do not wish to prolong this exercise more than necessary. The review is still ongoing and Ministers will consider the conclusions in due course. Any decisions on whether, when or to what extent the conclusions of the work are made public will be made by Ministers separately.

Lord Sterling of Plaistow (Con): My Lords, last Thursday in this House there was a defence debate which I had the honour to lead. The Thursday before there was a magnificent debate in the other House, supported by all Members on all sides of the House in a major way. During those debates, it became clear from those in this House and the other place who are much more experienced than me and who conduct themselves magnificently as a duty to the country, that there is grave disquiet among all Members of both Houses. My noble friend Lord Howe, who has great experience in this area and is always totally courteous, must be aware of this huge disquiet. Would he be prepared to ask the powers that be to allow this House to have a full day's debate on the defence of the realm? The other House debated it for five and a half hours last week. This is a hugely important subject: none of us wants to live to regret not doing our duty.

Earl Howe: My Lords, as my noble friend knows, this House returns to the subject of defence at regular intervals, but I will of course convey his request to the usual channels. I, for one, would be more than happy to take part in such a debate. I am of course aware of the disquiet to which he refers; I have been made aware of it across your Lordships' House over many weeks. However, the exercise that we are doing is very important: it is to make sure that we have Armed Forces that are fit for the future, not the past.

Lord Reid of Cardowan (Lab): My Lords, the Minister declared that the central area in this is agility—those were his words. Agility runs through three essential elements: air mobility, marines and naval mobility, and cyber, which now permeates all defence. Can he therefore guarantee that there will be no cuts to the marines, no cutbacks to air mobility, and that cyber will be an integral part of the first major report rather than a separate issue dealt with by a department other than defence?

Earl Howe: My Lords, as I have made clear in this House, there is no question of this country abandoning its amphibious capability or cyber, quite the opposite: there is a £1.9 billion programme across government to boost our cyber capabilities. However, as I said last Thursday, the NSCR may

result in our reprioritising how we allocate our resources to emphasise the most effective capabilities for the world in which we operate.

Baroness Falkner of Margravine (LD): My Lords, I think the Minister implied that the results of the review may be made public. Will he tell the House why they might not be made public? We are asking not for the evidence but for the results of the review to be made public, so the rest of us can see how the Government have arrived at their conclusions.

Earl Howe: My Lords, the Government always wish their decisions to have maximum transparency but national security considerations may override that.

Lord Robathan (Con): My Lords, my noble friend, for whom I have very great respect, talks about raising defence spending by 0.5% above inflation but the fall in the value of sterling has negated this completely. In addition, the situation has changed so much, particularly with regard to Russia, but we could also mention North Korea, Daesh and whomsoever one wishes. The situation has changed so completely that a lot of people in this House, the other place and indeed the country are hugely concerned about defence.

Earl Howe: My Lords, I am fully aware of that fact.

Higher Education (Access and Participation Plans) (England) Regulations 2018

Motion to Approve

3.18 pm

Moved by Viscount Younger of Leckie

That the draft Regulations laid before the House on 4 December 2017 be approved and that this House takes note of the Higher Education and Research Act 2017 (Transitory Provisions) Regulations 2017 (SI 2017/1145); of the Higher Education (Fee Limit Condition) (England) Regulations 2017 (SI 2017/1189); and of the Office for Students (Register of English Higher Education Providers) Regulations 2017 (SI 2017/1196).

Relevant document: 14th Report from the Secondary Legislation Scrutiny Committee

Viscount Younger of Leckie (Con): My Lords, this marks a particular moment in this House. Following Royal Assent of the Higher Education and Research Act in 2017, the regulations to be discussed here today will bring forward the Government's historic reforms to the higher education sector.

I start by thanking the noble Lords of the Secondary Legislation Scrutiny Committee for their scrutiny of the HERA regulations laid before this House in December and detailed in the 14th report from the Secondary Legislation Scrutiny Committee.

My purpose here today is to speak to the draft access and participation regulations that require approval. They support our aim that anyone with the talent and potential to benefit from higher education should be

able to do so. We have made good progress on this. The latest UCAS data shows that in 2017 disadvantaged 18 year-olds were 50% more likely to enter full-time higher education than in 2009. In addition, 18 year-olds were more likely to enter full-time higher education than ever before. We know, however, that there is more to do. For example, the number of mature students entering higher education has declined and certain ethnic groups are not achieving the outcomes that we would expect given levels of prior attainment. Government will shortly be setting out its priorities for access and participation through guidance to the Office for Students.

Through the implementation of the HERA, we want to make further progress on access and participation. The Office for Students was established on 1 January as the new regulator for higher education. The OfS brings together the previous responsibilities of the Director of Fair Access and the Higher Education Funding Council for England, which everyone knows as HEFCE. This will enable a strategic focus on access and participation activities. It will, for example, allow greater co-ordination of government funding to widen participation with the money that providers spend through their access and participation plans. This should ensure a greater impact on the ground.

The access and participation plan framework set out in HERA builds on existing arrangements for access agreements. These arrangements acknowledge institutional autonomy—one of the hallmarks of our world-class higher education system. Under HERA, the OfS has a duty to protect academic freedom, including with regard to admissions. This is the same arrangement as the Director of Fair Access had under the 2004 Act.

In addition, HERA will mean that all providers that want to charge fees and access student finance above the basic amount must have an access and participation plan approved by the OfS. Under the new system, newer providers of higher education will, for the first time, be able to charge and access student finance for higher-level fees. However, to do so, they must publicly set out and comply with their commitments to improve access and participation to higher education and have these regulated by the OfS.

The legislation places responsibility for access to and participation in higher education on the OfS, and this will be a key part of its remit. The OfS will have a champion for this focus—a Director for Fair Access and Participation. Chris Millward has been appointed to this role.

Noble Lords may remember that during the passage of the Higher Education and Research Bill there was some debate about this role and whether it was sufficiently clear in the legislation. Through amendments debated in this House, and with cross-party support, the expectations for this role were reinforced in the legislation. The Director for Fair Access and Participation, shorted to DfAP, will oversee the OfS's functions on access and participation and will report on performance in this area to the other members of the OfS board. In practice, we expect the DfAP to approve access and participation plans with higher education providers.

[VISCOUNT YOUNGER OF LECKIE]

The access and participation plans will replace access agreements under the 2004 Act and are an important mechanism for ensuring that students from disadvantaged backgrounds and underrepresented groups can access and succeed in higher education. In these published plans, providers set out what they are intending to do to widen access and to support students from disadvantaged and underrepresented groups to participate and succeed in higher education.

Any provider that is subject to a fee cap and wishes to charge tuition fees above the basic amount must, in line with current practice, have an access and participation plan approved by the OfS. Providers are expected to spend an approved proportion of the higher-level fees on activities to support students from disadvantaged and underrepresented groups to access and succeed in higher education.

Access agreements were introduced in 2004 and they have supported and encouraged improvements in widening participation. In 2018-19, universities and further education colleges plan to spend, through their agreements, over £860 million to widen participation. These regulations are important in ensuring that the full legal framework is in place to enable the OfS to approve access and participation plans developed by providers. They do not represent a major change in current arrangements regarding the approval of plans. As I indicated, they largely carry forward an existing way of working.

The regulations provide the detail on the content and arrangements for approving and varying access and participation plans. The regulations provide a framework for the process by which the OfS, through the DfAP, may approve access and participation plans with providers. They also provide for a system of review of approval decisions such as where the OfS is minded not to approve a plan. The arrangements for the approval of access and participation plans are essentially the same as those that have been in place and set out in regulations since 2004. They have worked well over that period and the intention is to retain the process largely as it is.

However, it is always good to review policy and we have taken that opportunity here. Key changes we have made in these regulations which should lead to improvements in access and participation plans include the following areas. Plans will now be required to consider participation, success and preparedness for progression from higher education, as well as access. This support across the so-called student life cycle is important as access is meaningful only if entrants go on to complete their courses and achieve good outcomes. That could include studying for a masters or a graduate-level job. The regulations require the OfS to take account of whether a provider has given its students an opportunity to comment and considered their views when developing its plan. This change was included following representations made during the passage of the Act. We have listened and taken steps to ensure that the views of students will formally be taken into account. The regulations also require that providers evaluate their plans as well as monitoring progress. It is right that providers invest their efforts in identifying the most effective ways of supporting students.

While we have not made dramatic changes to the existing system regarding access and participation plans, the new legal framework for OfS regulation should improve its efficacy. Where there are serious concerns that a provider has not complied with commitments in its access and participation plan, or other conditions of registration, the OfS will have access to a wide and more flexible set of sanctions and intervention measures to tackle these issues with the individual provider than were available to the Director of Fair Access previously. This could include further monitoring, monetary penalties, suspension from the OfS register or deregistering providers in extreme cases.

Let me take a moment to reinforce the benefits the other regulations noted here today will bring. As part of the implementation of HERA they will underpin some of the mechanisms that will allow the Office for Students to operate. Through the January transitional regulations, and further regulations to follow, we will also ensure a smooth passage to the new regulatory framework. The mandatory fee limit condition regulations and the register regulations will provide some of the practical and legal framework underpinning the OfS. They will allow the OfS to begin registering providers from April 2018 and this will allow the full regulatory framework to come into effect from academic year 2019-20. The register regulations will underpin the OfS register as a vital transparency tool, providing standardised headline information about each provider. The fee limit condition regulations will deliver the detailed framework for the capping of student fees for qualifying students and courses at providers registering in the approved fee cap part of the OfS register. The level of those fees will need to be approved through affirmative regulations by both Houses in due course.

It is within this environment, created by HERA powers, that policy objectives such as those on access and participation will be delivered and allowed to flourish. I assure all noble Lords that the instruments noted today do not determine tuition fee limits, nor do they prejudice responses to the extensive consultations undertaken. They are part of the process of bringing the Office for Students into legal existence and enabling it to set up the practical tools, for instance its register of providers, that it needs in order to regulate.

In summary, these regulations provide important detail that allows providers to develop their access and participation plans in line with government priorities. They ensure that the OfS can approve plans in a fair and transparent fashion and I beg to move that these regulations be approved.

3.30 pm

Baroness Wolf of Dulwich (CB): My Lords, I too express my appreciation of the Secondary Legislation Scrutiny Committee, which drew these instruments to the special attention of the House because of the issues of public policy that they are likely to raise. The committee's inquiries confirmed something that I believe noble Lords are well aware of, which is that the OfS has enormous and unprecedented powers to interfere in and directly manage our universities. When during the passage of the Bill we were pressing the Minister and the Government to take a more active interest in a number of areas, in particular an accelerated process

for bestowing a university title, the response was that the regulator must be left to regulate. Professor Stephen Littlechild, who is the godfather of modern regulation, has recently been writing frequently about how much of it has gone wrong because the regulator and the Government seek to manage rather than to regulate. I have to say that the very short history of the OfS inclines me to feel that we are faced not with a Government who want to leave a regulator to regulate but with one who wish to tell the regulator precisely how to manage. Although it is too early to know, there is plenty of scope for doing this in the areas where these regulations are relevant.

Before I move on to my particular concerns, I would like to state for the record my interest as a full-time member of King's College London and as a governor of our Mathematics School, which is very much a part of our current offer agreement. I am enormously proud of my university's record on access. The way we have done it holds many lessons for others, so I pay tribute to that record and will use it to show how important it is for universities to really work at making it possible for young people from all backgrounds to realise their potential and to follow the courses for which they are suited.

However, there is a number of ways in which the current regulations go about changing the status quo ante and which have lurking within them some real risks. The particular focus is on participation by specified groups or those who are underrepresented and on tracking and demonstrating their success. No one could be against talented young people being admitted to university when they are able to benefit from it and do well while they are there, but if you are a timid administrator—most administrators are, by virtue of their position, somewhat timid—it is only too easy to read into this an invitation in effect to have quotas and to look at this as the thing that you have to fulfil in order to get your plan approved. Anyone with any sense of 20th-century history must feel deeply uneasy about this in spite of the Minister repeating, correctly, that at least in principle universities are to remain autonomous in their admissions processes.

I am very concerned about this emphasis, in particular the emphasis on supporting participation by specified students, not even groups but individual people, and the importance for a university to follow through on this. The wording is unnecessary and risky, and it makes me deeply uneasy. I worry that we may lose something which has been a huge piece of progress in my lifetime, which is that assessment is anonymous. This is something that student leaders and students feel strongly about. They feel that they should be marked on the basis of their work without one knowing who it is one is marking. As someone who does a great deal of marking, I think that they are absolutely right because I am always surprised when I find out who got which marks. In spite of the fact that I of course believe that I am objective and expert, it turns out that it is really hard to remove prior conceptions from your assessment if you know who people are. I am really quite anxious about this. I am anxious about the wording and the idea that we will be monitored, and whether we are tracking specified students to ensure that they are successful.

I simply want to lodge that and say that I hope that other legislation and conventions will protect the sector from what seem to be real risks lurking in the way that these regulations go beyond what we had and place far more emphasis not just on access and providing help to people, as we do with our special medical programme. We have a special introductory year. After that they are like everybody else. That is how they want it. I understand that the Government are trying to achieve something entirely worthy, but there are real risks here to which I would like to draw your Lordships' attention.

Lord Addington (LD): My Lords, I thank the Minister for introducing these regulations, particularly for drawing attention to the access and participation plan. It will come as no surprise to him that I will talk about disabled students. During the passage of the Bill and afterwards we had a long interaction about what would happen for disabled students. The Minister might say that this does not apply to disabled students, but they are an underrepresented group. I cannot see why, when we go through the rest of this, disabled students should be excluded.

The only reason might be because there are actions in place, but I am afraid that they are not very good. The noble Baroness, Lady Wolf, and I might be looking at different bits of this, but I think of it as the yin and yang of intervention. Universities now have to take on a far greater role in supporting disabled people who are getting less in the way of grants and support than under the old DSA system. Those with lesser needs are supposed to be dealt with by the institution. So far so good—it fits in with the Equality Act and those going through are paying fees.

The problem is that there is no universal guidance about a baseline or good practice. When we last looked at this, roughly half of disabled students were failing. We are saying that half of them did not have something successful in place. I went to see the wonderfully named disabled students sector leadership group, which prepared nearly a year ago *Inclusive Teaching and Learning in Higher Education as a Route to Excellence*—if ever there was a worse-named document, I have not come across it. When I asked where the guidance and the structure were, as it was taking on something new—remember that this was a year ago, although it was 18 months into the system; they had had a year's warning—I was told, "We thought we'd let the courts sort it out".

Apparently it has not moved on. People have individual programmes, some of which are related to the integrity of the university. We cannot tell them what to do. The Equality Act still applies to them, so how do these two processes combine? We have a group who will have problems completing their courses if we do not take some form of intervention. We know that because we have had a system that gave them individual support as an individual package as opposed to the institutional systems providing them. How do these two sets of approaches work together?

I have been on about this for quite a long time now, and I would like to get a definitive answer. Will the Office for Students take on the role of making sure that individual higher education institutions have a sufficiently good plan? Has it had long enough to

[LORD ADDINGTON]

identify those who are not doing it well? Other institutions have done it. How will it be made to improve things? The institutions risk losing students, and that loses fees. That is the institutions' problem; society's problem is the student with debt, no qualification and a sense of failure. I ask the Minister to give me some guidance today on how the Office for Students will sort this out. If it will not, why on earth is it there?

Baroness Blackstone (Lab): My Lords, I want to raise just one issue. The noble Lord, Lord Addington, has referred to disabled students. The noble Baroness, Lady Wolf, referred to her pride in her institution's access programme for young disadvantaged students. I want to refer to mature part-time students; there has been a huge reduction in the number attending our universities, mainly because of the high level of fees and the huge debt, which older students are not prepared to take on. It is unclear to me—perhaps the Minister will explain it—how the access and participation plans will address this problem. Will they look at it? If so, what will they do in relation to the regulation of the proposals for that specific group? In the past, those drawing up access and participation plans have not been asked to look at this issue. Will they be in the future? What will the Office for Students expect them to cover in relation to trying to recruit more people who are likely to be both disadvantaged and from groups which have been underrepresented in higher education for many years?

Baroness Garden of Frognal (LD): My Lords, I thank the Minister for setting out these regulations in such detail. Debating statutory instruments is frustrating in that we cannot amend or reject them, but these are not controversial and such a debate gives us an opportunity to reflect, review and offer suggestions.

It seems extraordinary that someone might be proposed as an OfS board member whose university credentials had been exaggerated and who was on record as making remarks that could not be consistent with the standards stipulated for public appointments. For many of us, the greater iniquity was the lost opportunity to broaden the base of the board and reflect diversity, in particular the total neglect of the FE sector, which provides a significant number of HE students. The board also lacks known champions of adult and part-time learners—I entirely endorse what the noble Baroness, Lady Blackstone, has just said.

In his reply to my question on this matter a few days ago, the Minister replied with the names of vice-chancellors and other members of the HE sector, none of them known for their expertise nor interest in further education. Is this valuable sector once again to be marginalised and overlooked? How will such students be represented on the board of the OfS?

Just as there are still no active further education sector representatives on the body, so there are no representatives of the National Union of Students nor university or college staff. I am sure that the Minister will remember our concern during the passage of the Bill that the Office for Students seemed reluctant to let any students near its deliberations. These deficits need to be remedied rapidly if we are to have confidence

that, as the regulations are taken forward, they will have input from people on the board who know about the issues that they are supposed to represent.

Will the Director for Fair Access take the lead on these issues? The Minister suggested that he would. Can we be assured that he will not be subordinate to the director of the OfS?

Can the Minister also say whether the tertiary funding review will include part-time and mature students? I come back to them again and again, because they are too critical to be forgotten. These students have been the most adversely affected by student finance changes since 2012. Since 2010-11, part-time participation has fallen by 61% and the number of mature students has declined by 39%. Yet they will be essential to fill the skills gaps and the employment vacancies where the younger generation does not have the numbers, nor indeed the skills, to meet demand. In addition, the part-timers do a great deal to support widening participation.

On widening participation, what steps are being taken to encourage more of those from disadvantaged backgrounds going to university, partly because of the decline in part-time opportunities? We note with concern the decline in the overall number of students from lower participation areas entering HE, which in England has fallen by 15% since 2011-12. Figures for full-time students have risen by 7% but this has been offset by a simultaneous 47% fall in part-time students from those same cohorts. Far more must be done by both institutions and government to ensure that higher education is accessible to all and that we can support students through their studies. Little progress has been made in narrowing the gap between those most and least likely to enter higher education since 2014. The Sutton Trust has pointed out that many of these issues go far back into primary and secondary education as well. I wonder whether the Office for Students will have any interest in talking to and liaising with schools on this.

3.45 pm

My noble friend Lord Addington has spoken of the issues of disability in this respect. The OfS has a key responsibility to protect students from poor-quality, transient and negligent providers. That should be particularly important in the case of disabled students or those needing more support. Student protection plans should be a requirement of all providers and will be especially important when HEIs are taken over. There are ever more examples of universities and HE institutions being taken over by other outside bodies, the latest being BPP earlier this year. What assurances can the Minister give about what will happen to access and participation plans in the event of takeovers? As the noble Baroness, Lady Blackstone, asked, will the Minister confirm that HE institutions should take part-time and mature learners into account in their access and participation plans?

The Minister also highlighted the fact that there is a worrying increase in the number of disadvantaged young students dropping out of university after their first year of the course—we need more regulations to address that. As he also said, there are ethnic differences here. We find that black students are more than 50% more likely to drop out of university than their white and

Asian counterparts. More than one in 10 black students drop out of university in England, according to a report by two charitable universities trusts, the UPP Foundation and the Social Market Foundation. Can the Minister say what action is being taken in respect of these cohorts in deciding on the access and participation plans that are presented to the Office for Students? Can he give us assurances that the new Director for Fair Access and Participation will be able to sustain the work of OFFA in terms of resources and his actual position in the OFS when he takes on these powers? Will he have powers under the Act and the regulations that allow him to be in the driving seat on these issues and will he have enough resources? There should be people on the board with positive experience of disadvantage that will feed into the decision process outlined in today's regulations.

There are a number of other issues. There are issues on senior pay transparency, for instance, where extraordinary packages for some vice-chancellors have raised great concerns. We wonder whether the TEF is positively reflecting teaching, as we did, indeed, when the Bill was going through. There are issues around freedom of speech, where the OfS has a role, and on assurances on institutional autonomy, as the noble Baroness, Lady Wolf, has already highlighted. We had lively debates on all this during the passage of the Bill and I am not sure that all of us are entirely reassured on what is happening at the moment. When we considered the Bill in Committee, the detail on much of this was quite opaque and it remains so even with today's regulations. We shall continue to monitor developments in all these important areas where we expressed such concern during the passage of the Bill. Of course, our deliberations were cut short because of the early election: we might have managed to tease out more of them during the normal process of ping-pong.

Finally, I express appreciation of the former Minister, Jo Johnson. He was assiduous in trying to ensure that opposition voices were heard, and I hope that his successor will equally be in listening mode as the measures in the Act are implemented.

Lord Hunt of Kings Heath (Lab): My Lords, as the Minister explained, these regulations are the start of a succession of statutory instruments that will come before the House in implementing the Higher Education and Research Act. In these opening remarks it is not possible to debate the regulations without reflecting on the general principles behind the Act and the huge changes taking place in our higher education system. We have seen the tripling of fees, the introduction of loans and the ending of maintenance grants, promoted by the Government as market-driven and aimed at putting students at the heart of the system. Unfortunately, as my noble friend Lord Stevenson said at Second Reading, in reality it relied on the all-too-familiar neoliberal ideology which places faith in the unregulated free market as the most efficient allocator of resources, and which of course has privatisation, deregulation and individualism as the so-called engines of economic growth.

If we look at the outcome in practice, what do we see? There is no competition in fees, students are leaving universities with debts of around £50,000—a large

majority will not pay them in full—we have the most expensive undergraduate courses in the world, and there has been a complete collapse in part-time provision and a reduction in home-based postgraduate students. Some vice-chancellors took the Government at their word and paid themselves enormous salaries and perks in the belief that they were FTSE 250 companies. Most worrying is the huge uncovered gap in the public finances. There have been a number of reports on this, including from the Education Policy Institute, which reckoned:

“The contribution of student loans to net government debt is forecast to rise from around 4 per cent of GDP today to over 11 per cent in the 2040s”.

We still have no answer from the Government to what on earth they will do to face up to the issue.

I find it somewhat ironic that alongside the Government's genuflection to free market ideology we have the creation of the OfS, which brings with it the tools of what could be a heavy-handed regulator, determined to micromanage what universities do. I am not an expert in higher education but I know a little bit about the health service, and I could not help reflecting that this is in parallel to what has happened in the health service. We had the Health and Social Care Act 2012, which is full of the language of the market. Indeed, it brings in the Competition and Markets Authority to oversee the activities of NHS providers, with draconian powers of intervention. But, at the same time, Ministers continued to micromanage the NHS and set up a number of other bodies to interfere and intervene in what they do. We have ended up with the worst of all worlds: a heavily top-down micromanaged system within a legislative framework designed to promote a market—the point the noble Baroness, Lady Wolf, made.

It seems that we risk going there in higher education. This tension was seen all too clearly in the character of the last Education Minister. One moment he was extolling the virtues of the market and new private providers, and the next threatening the same institutions with draconian punishments if they did not do what the Minister wanted. Intervention in the pay of vice-chancellors might be justified in the public sector, but it sits rather uneasily in the competitive market that Mr Johnson was so keen on. We now have a change of Ministers; the on/off review of student loans is on again. The Minister should tell us what direction higher education policy is going in.

The key to our concern is whether Ministers, instead of promoting scholarship and encouraging research or a concern for truth, have as their goal turning the UK's higher education system into an even more market-driven one at the expense of both quality and the public interest. It is worth reminding the House that this is not a broken system which needs shoring up and intervention. It is the second-most successful higher education system in the world, with four universities ranked in the top 10. When and how will the Government give us an assurance that they are stepping back from their market-driven obsession and that they intend the OfS to be a sensible, balanced regulator?

Perhaps the OfS has not had the best of starts. The first press release from this new body, issued on 1 January, made depressing reading. It was full of guff about

[LORD HUNT OF KINGS HEATH]

choice and competition, with five prosaic lines from the chairman, Sir Michael Barber—of blessed memory—who managed to split an infinitive in welcoming what he described as outstanding appointments to the board, including a Mr Toby Young. Two weeks later, the very same Sir Michael got up to say how much he welcomed Mr Young's resignation. That is all we have heard from Sir Michael Barber about Mr Young and his appointment. In addition to the debacle over that appointment there is the point raised by the noble Baroness, Lady Garden. This is not a small board but a large one, so how can it be that there are no active further education sector representatives, as confirmed by the Permanent Secretary last week in front of the PAC? Nor are there any representatives of the National Union of Students or university or staff bodies on the board. Will the Government rectify this?

The main SI before us today is the one on access and participation. The recent end-of-cycle report from UCAS offered really concerning statistics, stating that young people from the most advantaged backgrounds are still 5.5 times more likely to enter university with the highest entrance requirement than their disadvantaged peers. As Les Ebdon, the outgoing Director of Fair Access, said in response last month,

"people with the potential to excel are missing out on opportunities. This is an unforgivable waste of talent".

As my noble friend Lady Blackstone said, the statistics and discussion often focus on the number of 18 year-olds, but to me the 61% fall in part-time participation since 2010-11 is alarming, with the number of mature students declining by 39%. Do we have any doubt that this will impact on our economy and the skills agenda? I thought that Birkbeck put it right in its evidence on access and participation. It said:

"The vast majority of our students are aged over 21. Most choose evening study because they work full-time ... Provision for part-time and mature learners is important for social mobility".

What will the Government do to turn this depressing statistic around?

The Minister referred to the role of the Director for Fair Access and Participation, which was of course debated extensively during the passage of the Bill. Can he assure me that that director will be able to sustain the work of OFFA on resources and his actual position within the OfS? Will the director have a direct line to the Secretary of State and not simply report to members of the OfS board and the OfS chief executive?

One of the SIs we are debating, Statutory Instrument 1196, focuses on the register of higher education providers. If Ministers are still going down this route, they presumably want the market to embrace failures. I want to ask the Minister about the failure regime. I refer specifically to the collapse of the London College of Creative Media. Wonkhe's briefing reported that after the college collapsed and entered into recent administration its validating body, the Open University, worked very hard to find a new provider. Despite doing so with a compatible partner, a speedy closed sale by the administrators to a different provider altogether caused considerable shock. That raises a number of questions. How can a provider of higher education be allowed to collapse, apparently without much warning, when strict financial checks are meant to be in place?

As Wonkhe's briefing asked, what does a change of ownership mean for the validating body, and what say can it or regulators have over this? Who ensures that students' interests are protected when debts are owed and providers change hands at breakneck speed?

I fully support what the noble Lord, Lord Addington, said on the disabled students' allowance. The need for proper guidance is clear, with a baseline against which to assess the performance of individual universities.

The health of our higher education institutions is of crucial importance to the UK. We clearly need to do nothing that would cause that position to be at risk. The OfS has a clear role in mitigating that risk but it has to respect the institutional autonomy of our universities and resist the temptation to micromanage every corner of university life. I wish it well but I believe its performance needs to be kept under close scrutiny. Ministers need to step back from their market-obsessed approach and give universities the support that they require.

4 pm

Viscount Younger of Leckie: My Lords, I thank all noble Lords for their contributions. I was given prior warning that this debate on the regulations would turn into a broader debate on a number of issues raised during the long passage of the Higher Education and Research Act, and I welcome that. It is good to go over these issues again, and I hope that I can address all the questions asked by noble Lords. If I do not do so or need to get some more specific detailed answers to noble Lords, I will certainly do so and put a copy of the letter in the Library of the House.

I shall address the issues raised in no particular order. The noble Baroness, Lady Wolf, began by asking about the role of the OfS and the link with government. I think she said there was a danger that the Government might be seen to be telling universities what to do. I reassure the noble Baroness that the OfS is an arm's-length body. The Secretary of State can give guidance or directions to it and, in doing so, they must have regard to the need to protect the institutional autonomy of English higher education providers. HERA sets clear limitations in this context in order to protect academic freedoms and institutional autonomy. For the first time, it also makes explicit that guidance cannot relate to parts of courses, their content, how they are taught or who teaches them, or admissions arrangements for students. The OfS will absolutely be left to do its job as the regulator. I know we had much discussion about this, but I further reassure the noble Baroness that this is the case.

The noble Baroness also raised concerns about specified persons or students. I reassure her that there is no intention to set targets or quotas. To do so would infringe institutional autonomy, one of the hallmarks of our world-class higher education system. The OfS, like the DFA under the 2004 Act, has a duty to protect academic freedom.

Lord Hunt of Kings Heath: It is all very well saying that this body has institutional autonomy, but it is well known that Ministers put pressure on the chairman to appoint Mr Toby Young. That is not a very good sign of autonomy, is it?

Viscount Younger of Leckie: The noble Lord says it is well known, but I have no evidence to show that at all. I would like to see that evidence. There may have been some reports in the press, but I cannot take the noble Lord up on that point.

In continuing the previous successful approach, the intention is that the OFS will agree the targets and benchmarks higher education providers set for themselves, in keeping with the views expressed by the clear majority of respondents to the 2015 higher education Green Paper. The term “specified prospective students” is defined in the regulations and the intention is to target those from underrepresented groups.

I now turn to the points raised by the noble Lord, Lord Addington. I know he feels very strongly about the guidance given to universities—what guidance should be given and where we are with that. He and the House will know that there have been a good few meetings on this subject. He may not particularly like it, but I say again that there is already guidance, published by the Equality and Human Rights Commission, on what institutions should be doing to fulfil their obligations under the equalities legislation. We have thought about this over the past few months and do not believe that prescriptive guidance is appropriate; there is no evidence that institutions want it. Institutions are responsible for making their own decisions about supporting disabled students, and they have information to enable them to do so. That information and guidance comes from a range of other bodies. I cited them the last time we debated this matter, so I will not go through them now.

Lord Addington: Before the Minister leaves that point, I said that about half were failing. A field study shows that the best figure for achievement was 65% and the worst was 42%. There are various aspects to this. Does this not suggest that progress has not been good?

Viscount Younger of Leckie: We still maintain that we want institutions to think imaginatively about the support that individual students might need, and we will support them in that. That is because each institution is different: they have different needs and courses, and are based in different parts of the country. We think it is absolutely essential that they be allowed to decide for themselves how disabled students, including those with dyslexia, are looked after. I know that we and the noble Lord do not agree on this. Institutions vary in size, and within institutions there can be great variation in the way courses are actually delivered. Disabled students vary greatly in the type and level of support they require to complete their course successfully. The sector is moving towards greater inclusivity, but I am also aware that both the sector as a whole and particular institutions need to do more. However, we do not think being more prescriptive is the way forward.

The noble Baroness, Lady Garden, asked why there were no further education representatives on the OfS board. She has written a letter to me about this, and I have promised to reply. I asked today when that letter is due—it is coming shortly. Notwithstanding that, I will try and answer the question. Schedule 1 to the Higher Education Research Act 2017 sets out the desirable criteria for the composition of the OfS board,

which Ministers have to have regard to in making appointments. These criteria were subject to a rigorous parliamentary debate about whether particular representation was necessary to enable the board to operate effectively—for example, a representative from the further education sector. Parliament concluded that there should not be a requirement for specific representation from every single part of the sector that might have an interest in higher education or in the OfS. Instead, the criteria to which the Secretary of State must have regard include the desirability of having members with experience of “providing higher education” and members from,

“a broad range of the different types of English higher education providers”.

We believe that the board as a whole meets these criteria. However, I am absolutely aware of the importance of further education and of the points made by the noble Baroness. The letter may tell us more, but that is the answer I can give at this stage.

Baroness Garden of Frognal: If they are to represent a broad variety of providers, should further education not be within that broad variety?

Viscount Younger of Leckie: That point has already been noted but I will take it back to the department.

The noble Baroness also raised the issue of retention rates, saying that they had worsened recently. This is certainly an issue we are looking at closely, and we have put in place policies to ensure that universities remain focused on it. These regulations extend the remit of access agreements to become access and participation plans, the intention being that they will support both access and student success for disadvantaged groups. The TEF will use non-continuation rates as a core metric when ascribing gold, silver or bronze status to individual universities, although—before a noble Lord intervenes—this method of assessment is going to be subject to a review.

The new transparency condition created by HERA will require many higher education providers to publish their completion rates, broken down by gender, ethnicity and socioeconomic background. Making this data public will shine a light on providers that are underperforming in this area. Transparency is very important.

The noble Baronesses, Lady Garden and Lady Blackstone, and the noble Lord, Lord Hunt, spoke about part-time study. That is very important, as it was in our discussions during consideration of the Bill. We have been taking steps to help those wanting to study part-time by offering financial support in the form of loans to cover fees and maintenance costs. We are working towards launching a new maintenance loan for part-time students studying degree-level courses from August this year. In addition, the Government are looking at ways of promoting and supporting a wide variety of flexible and part-time ways of learning.

For example, we are consulting on how we can help to make accelerated degrees more commonly available, a subject which the noble Baroness, Lady Garden, and I were wholly involved in this morning. Shorter courses offer to students the benefits of lower costs, more intensive study and a quicker return to the workplace.

[VISCOUNT YOUNGER OF LECKIE]

I know that mature and part-time students is a subject of interest here, and it is one of the areas the Government asked the Director of Fair Access to consider in the latest guidance—which, by the way, goes back to February 2016.

The noble Baroness, Lady Garden, asked what happens to an access and participation plan if there is a change to the provider—maybe it is sold or taken over. Under the regulatory framework proposals on which we consulted on behalf of the OfS, we suggest that any provider that is sold or is merging with another provider must notify the OfS as soon as reasonably possible. The OfS will then carry out a risk assessment and review what impact this change will have on the provider's registration status. The outcome will determine whether any further regulatory action is required, such as the imposition of specific registration conditions and perhaps increased monitoring.

The noble Baroness asked what the Government were doing to ensure that more students from BME backgrounds could access and participate in higher education, which is a good point. We have seen record numbers of BME students going into higher education over recent years, and entry rates for all ethnic groups increased in 2017, reaching the highest recorded level. Black 18 year-olds have seen the largest increase in entry rates to full-time higher education over the period, increasing from 27% in 2009 to 40.4% in 2017, a proportional increase of 50%. Gaps in retention between black and white students have also narrowed. However, there is more to do. We are introducing further measures through HERA to tackle equality of opportunity. This includes the transparency condition, which will for the first time require all universities to publish applications, offers and acceptance rates broken down by gender, ethnicity and socioeconomic background.

The noble Lord, Lord Hunt, asked about the Toby Young point. I know we had a debate during an Oral Question not so long ago and I do not think anything has changed. This is an issue that was unfortunate. The process and the due diligence that was gone through for his appointment were absolutely fine up until the point where we were not in a position to look at the 50,000 or so tweets that Mr Young sent. I pledged to the House that we have a “lessons learned” exercise on the go on that. Representation on the OfS board was debated in Parliament, and the make-up of the board complies with the requirements of the criteria set out in the Higher Education and Research Act. At the moment, during the “lessons learned” approach, we have not yet decided when the last position on the board will be decided. That is something we are considering very carefully in the light of what has happened.

The noble Lord also spoke about competition in the sector. He will know that the OfS has duties that are clearly set out in HERA, one of which is to have regard to the need to encourage competition where that is in the interests of students and employers. That is, if you will, a break that has been included. I hope that gives the noble Lord some reassurance on the issue.

The noble Baroness, Lady Garden, asked about the new arrangements for access and participation. Once it is integrated into the OfS—this brings us back to the regulations we are debating today—we expect that bringing resources and expertise from HEFCE and OFFA together in a single organisation, while still having a dedicated champion for widening participation appointed by Ministers, will provide a greater focus on access and participation. HERA ensures that the Director for Fair Access and Participation will be responsible for overseeing the performance of the OfS's access and participation functions, for reporting to other members of the OfS on the performance of its functions.

The noble Lord, Lord Hunt, asked why, as he put it, we cannot get the Russell group or Oxbridge to do more on access and higher education. I have already mentioned that 18 year-olds from disadvantaged backgrounds are entering full-time higher education at record rates, including to the most selective universities. However, the noble Lord is right to some extent: more could and should be done. As I mentioned, in the latest guidance the Government have asked the Director of Fair Access to push hard to see that more progress is made at our most selective institutions via the access agreements, and it is an important point. Prior attainment is obviously a critical factor, and universities have been asked by the DFAP to take on a more direct role in raising attainment in schools as part of their outreach activity.

I am not sure I have entirely covered all the questions that were raised but I hope that, with all those answers to a number of questions, I have helped.

Lord Addington: I asked specifically whether the access plans will cover disability adaptation. If the Minister can clarify that now, either way, it would help with what happens in future.

Viscount Younger of Leckie: They will, but to be able to put some meat on the bones of that, I will write the noble Lord a further letter to provide clarification. I know that this is an important and sensitive area, particularly for him. I beg to move.

Motion agreed.

European Parliamentary Elections (Amendment) Regulations 2018

Motion to Approve

4.15 pm

Moved by Lord Young of Cookham

That the draft Regulations laid before the House on 11 December 2017 be approved.

Lord Young of Cookham (Con): My Lords, I shall speak also to the draft European Parliamentary Elections Act 2002 (Amendment) Regulations 2018. These instruments make changes to the existing procedure for filling MEP vacancies in Great Britain and Gibraltar in order to reduce the likelihood of any costly by-elections in the run-up to us leaving the European Union.

Following the EU referendum, the UK will be leaving the EU. However, while the UK remains a member of the EU, we are obliged to make arrangements

to fill any MEP vacancies that may arise—for example, due to the resignation or death of a sitting MEP. Currently, electoral law provides that in Great Britain and Gibraltar a vacant MEP seat will stay with the party that won the seat at the previous European parliamentary general election and is filled with reference to the unelected candidates on that party's list of candidates at that election in the region where the vacancy arises. If it is not possible to fill a vacant seat from the winning party's list because there is nobody else left on it who is willing or suitable to take up the seat, a by-election is held to fill the vacancy. To date, no by-elections have been needed to fill a vacancy, as it has been possible to fill vacant seats from the relevant party list.

We consider, however, that in some areas there is now a significant risk of a by-election being necessary due to the number and circumstances of the candidates remaining on some party lists. For example, UKIP won a seat in Wales in 2014 and, although there are three persons on its reserve list, we think there may be difficulties, not least following the events over the weekend, in filling any vacancy that may arise, and this could lead to a by-election being necessary. The cost of a by-election in Wales would be about £7 million. Elsewhere, by-elections could cost up to £20 million. Existing MEPs may resign ahead of the end of the Parliament to pursue career opportunities elsewhere. Those lower down the list, drawn up some years ago, may no longer be as enthusiastic as they were.

The Government consider that, in the current circumstances, there is strong justification for taking action to reduce the likelihood of a by-election occurring before the UK leaves the EU. As I have indicated, there would be significant financial costs in holding a by-election, and given that the UK will be leaving the EU, the turnout at such a poll could be low and electors may query the value of holding the poll. These statutory instruments therefore make sensible, precautionary changes to the process for filling vacant MEP seats that will reduce the likelihood of any costly by-elections in Great Britain. The instruments provide that, if a vacancy cannot be filled from the list of candidates for the party that won the seat at the previous round of elections, the party that holds a vacant seat may instead nominate a person to fill the vacancy and be returned as an MEP for that party.

I turn briefly to the details of the proposed changes. The European Parliamentary Elections Act 2002 (Amendment) Regulations 2018 amend the regulation-making powers in Section 5 of the European Parliamentary Elections Act 2002 concerning the procedure for filling vacant MEP seats. Then, using these new powers, the European Parliamentary Elections (Amendment) Regulations 2018 amend the European Parliamentary Elections Regulations 2004, which set out provisions governing the conduct of European parliamentary elections in Great Britain and Gibraltar.

The proposed changes in the European Parliamentary Elections (Amendment) Regulations 2018 address the position where a vacancy has arisen and it is not possible for the regional returning officer—the RRO—to fill the vacant MEP seat from the list of the party that won the seat in the region at the previous election.

Under the proposed changes, where the outgoing MEP stood for a registered party, the RRO will still initially seek to fill the vacancy through approaching in turn the reserve candidates on the party's list of candidates in the relevant region. If the RRO is unable to fill the vacancy from the party list because it is exhausted, this will no longer automatically trigger a by-election. Instead, the RRO must ask the nominating officer of the party that previously won the seat to nominate a person to fill the vacant seat and be returned as an MEP for that party. The person must meet the existing requirements to be an MEP, for example, in terms of age and nationality.

Under the proposed changes, the nominating officer must respond within 28 days to the RRO, giving the name of the person who is to fill the vacant seat. In the event that the nominating officer was unable to nominate a person within 28 days, this would cause a by-election to be held to fill the vacancy. We think it would be extremely unlikely that a party would not be able to nominate a person to fill the vacancy within the specified 28 days and so cause a by-election.

The regulations make similar provision for independent candidates and jointly nominated candidates. The changes are modelled on the process previously agreed by Parliament for filling MEP vacancies in Northern Ireland, and which has been successfully used to fill a vacant seat there. I should explain that the single transferable vote is used for European parliamentary elections in Northern Ireland, which differs from that used in Great Britain. Under STV, there are no party lists, and in the event of a vacancy, the nominating officer of the party that previously won the seat will nominate the person to be the new MEP, who will then be returned to the seat by the Chief Electoral Officer for Northern Ireland.

We have consulted on the instruments with the Electoral Commission and with others such as the Society of Local Authority Chief Executives, the Association of Electoral Administrators and the Government of Gibraltar. We have also consulted with a Parliamentary Parties Panel which advises the Electoral Commission. There is general agreement among those whose views were sought on the instruments that it would be desirable to avoid a European by-election across a region just before the UK leaves the EU.

I should also explain that our law provides that, if a vacancy occurs less than six months before the next European parliamentary general election, the seat remains vacant until that election and it is not necessary for a by-election to be held. We are maintaining this position. Without these changes, there would be a period for almost a year where it would be necessary to hold a by-election if a vacant seat could not be filled from the candidates on the relevant party list.

These statutory instruments make sensible and proportionate changes to the process for filling vacant MEP seats that are designed to reduce the likelihood for any European parliamentary by-elections to be held in Great Britain before the UK leaves the EU. I commend them to the House.

Lord Rennard (LD): My Lords, these regulations are designed to avoid a situation, if possible, that has not arisen before, is most unlikely to occur in future,

[LORD RENNARD]

but which may happen anyway, irrespective of the passing of these regulations. If the Minister knows anything more specific about any political party which may have difficulties of vacancies occurring among its MEPs—including, perhaps, the Conservative Party in Scotland—perhaps he might enlighten us on why it is so necessary to introduce these regulations.

Since the introduction of proportional representation with the closed party list system in 1999, there have been 12 vacancies among our MEPs arising out of a death or resignation. Most of them have been as a result of an MEP being elected as an MP, or appointed as a Peer. All those vacancies for MEPs—five from the Conservatives, four from Labour, and one each from the Lib Dems, the Greens and UKIP, have been filled by someone from the relevant list of party candidates from the previous European parliamentary elections. I was the first person from any party to confirm the filling of a vacancy in this way. As the Liberal Democrats' nominating officer at the time, I confirmed that my now noble friend Lady Bowles would become an MEP in 2005 when a vacancy occurred because she was next on my party's list from the 2004 European Parliament elections. Because of arrangements such as this, there have not been any by-elections for MEPs in the past 19 years.

Some of us still hope that the UK will elect MEPs in 2019. As the Minister said, existing law provides that there would not be a by-election if a vacancy were to occur and a party could not fill it from its list in the six months before European elections were due. So the window in which we are anticipating the possibility of a vacancy and the potential problem of it not being possible to fill it from the existing lists of candidates is between the passage of these regulations into law and some time around December of this year—a very short window. It seems surprising to me, therefore, that they have been considered necessary.

On the longer-term issues, reference is made in the Explanatory Notes to work by the Law Commissions highlighting the need to modernise and codify the entire provisions of our electoral laws. Does the Minister accept the case for doing so, and do the Government intend making progress on this?

Will the Minister also agree in particular that these regulations should be reversed in the event that Britain does not leave, or rejoins, the European Union? Normal democratic provisions should allow voters to choose their representative in a by-election in the event that nobody on a party's list accepts the position. The solution proposed to an unlikely problem may be acceptable in the short term, but such expediency, in which more power is handed to political parties rather than to voters, would not be acceptable in the long run, and it should not be extended or repeated wherever list systems are used.

In the meantime, political parties will of course still have the power to ensure that a European Parliament by-election occurs following a vacancy if nobody on their list is willing or able to accept the position and it refuses to submit a nomination for a substitute. So if the intention of the regulations is to prevent any by-elections for MEPs, they may still not succeed.

This is considered in the Explanatory Notes to be extremely unlikely, but it is a tactic that could be employed by a party to force a by-election—or it may be that a vacancy occurs in an MEP's seat held by a party that during the relevant period is no longer registered with the Electoral Commission. For example, I understand that Ladbrokes today is offering odds of 5-1 that UKIP will not be registered as a political party by the end of the year. Is this perhaps a factor in the Government's thinking on these regulations?

Lord Swinfen (Con): My Lords, I wonder whether my noble friend can help me. I think that I heard him say that the cost of a by-election in Wales is £7 million but that it is very much greater elsewhere—I have a feeling that he gave a figure of either £12 million or £20 million. I do not understand why there is this difference. Can we not learn something from Wales, so that costs can be brought down elsewhere?

Lord Hunt of Kings Heath (Lab): My Lords, we should be told about that one for sure.

The Minister is having an exciting time. On Thursday, he welcomed the President of France to this country on behalf of Her Majesty the Queen. Today he is bringing forward perhaps the only coherent piece of European legislation we can expect from this Government over a long period. However, like the noble Lord, Lord Rennard, I remain to be convinced that it is entirely necessary.

As the Minister explained, under the regulations, when an MEP vacancy arises and it is not possible to fill it within the existing procedure, the party that holds the seat may instead nominate a person to be an MEP, so that a by-election is not required. I can see that, on the face of it, that seems a sensible provision, since a by-election in the short period between now and 2019 might be regarded as a pointless exercise. However, some points need to be made here.

4.30 pm

First, I am always wary of giving too much power to political party machines, and this seems to do that in spades. It is an open invitation to a party to say that it has lost the confidence of the people on the list and to nominate instead whoever the leader of the party wants. The noble Lord, Lord Young, mentioned UKIP, but the Conservative Party has form in this regard. The noble Lord, Lord Rennard, referred to the kerfuffle last summer in Scotland and the north-east when, as I understand it, the Conservative Party passed over the first two people on the list. It was alleged that, in Scotland, this was because that person had opposed Ruth Davidson becoming Scottish Tory party leader. I do not want to intrude on party grief, but I wonder whether the Government's alacrity in bringing forward this order is to save them from any further embarrassment.

The noble Lord, Lord Rennard, mentioned UKIP, which does seem careless in losing its MEPs and leaders, although I note that the current leader of the party—I think he is the current leader—has apparently lost confidence in the national executive committee and intends to remove it. Does UKIP have a nominating officer? If not, what on earth happens? The regularity

with which UKIP MEPs have to resign their positions, for one reason or another, might make this more than an academic point.

More seriously, I have a question about the situation arising when an MEP elected under a party label decides, during his or her term of office, to leave the party or is expelled from it. We have seen an example of this recently. They are expelled from a party, or leave it by their own volition, and become an independent. They subsequently resign as an MEP. What is the position? Does the replacement come from the original party under the banner of which they were elected? Paragraph 4.1 of the Explanatory Memorandum says that the regulations provide for substitutions to be made in the case of independent candidates. Will the noble Lord explain how that works?

Lord Young of Cookham: My Lords, I am grateful to all who have taken part in this debate. I will try to answer the various questions that have been raised.

I start with the relative costs of by-elections. My noble friend was quite right: I mentioned a figure for Wales, where the total cost of a by-election would be £7.1 million. If there was a by-election in the south-east, it would be £19.585 million. The difference is accounted for by expenses for delivery of the poll. In Wales, this would be nearly £5 million, but in the south-east £13.4 million. I suspect that is because there are more electors in the south-east and it has more MEPs than Wales, which has three. There is a slight increase in the cost of relevant services supplied by the returning officer and a significant difference in the cost of delivering the mailings at public expense—£2 million in Wales and nearly £6 million in the south-east. The difference is, basically, related to the number of voters.

The noble Lord, Lord Rennard, asked me a question which he has asked me before about the Law Commission review. I am afraid that the answer is the same as I have given him before: the Government continue to work with the Law Commission on taking forward its review of electoral law.

I return to some of the main issues raised in the debate. I welcome all the contributions. I agree with the noble Lord, Lord Rennard, that this is most unlikely to happen and it is a small window, but it is quite a large sum of money. We therefore believe that this is a proportionate and sensible step to take in order to potentially save a significant amount of public money.

The noble Lord also asked whether a by-election would still take place if the nominating officer was unable to nominate somebody as the list had been exhausted. All the MEPs elected at the last European election represented major registered parties. I think it is most unlikely that a nominating officer would not be able to find anybody from a party to take up a vacancy. I am sure that the Liberal Democrats would be able to find somebody to fulfil that role, and I am sure the same would apply to any other party.

As regards Scotland, I am not that familiar with what happens north of the border, but I understand that due procedure was followed. The noble Lord, Lord Hunt, implied that if we pass these regulations, it would prevent that happening. It would not. We would still have to go through the list member by member

before the provisions in this regulation were activated—namely, having exhausted the list, there would not be a by-election; there would be a nomination.

The noble Lord, Lord Rennard, tempted me to answer a hypothetical question: what would happen if, for whatever reason, we did not exit the EU? That is a hypothetical question which is beyond my pay grade to answer. However, these regulations would remain on the statute book unless they were revoked, which would be an option were that eventuality to arise.

It was implied in some of the remarks that it is undemocratic to allow the party machine—as I think the noble Lord, Lord Hunt, referred to it—to fill a vacant seat. These changes are modelled on the process that his Government agreed to fill MEP vacancies in Northern Ireland, and have been used already to fill a vacant seat there. I am not sure whether allegations of undue use of the party machine were made by the Labour Party at that point.

Another hypothetical question was asked: what happens if UKIP becomes unregistered, or if it does not have a nominating officer? If it does not have a nominating officer, the nominating officer cannot nominate somebody, by definition, and there would then be a by-election. That would happen if the party became unregistered.

I was asked what happens to a vacancy where the MEP has changed party. As I think I said from a sedentary position, the vacancy is filled by the next person on the list of the party that won the election at the previous election. I think that is the right thing to do democratically because that is how people voted at that election—they voted in those numbers for a Conservative Party or Lib Dem candidate. When that candidate is no longer fulfilling that post, I think it is right that the party that got the requisite number of votes at that relevant election should fill the vacancy.

As paragraph 4.1 of the Explanatory Memorandum states, the European Parliamentary Elections Act 2002 is being amended to enable the changes to be made to the 2004 regulations. This is, as it were, a paving Bill, if I can use that term, for the substantive regulations that we are debating.

I detected no fundamental opposition in principle to what the Government are doing. There were a number of very interesting questions which I have done my best to address.

Lord Tyler (LD): My Lords, it would seem from what the noble Lord is saying that we are all prepared to accept a short-term solution to this problem. However, does he accept that in the longer term it could not be a solution? He described the question of my noble friend Lord Rennard as entirely hypothetical. Has he not noticed that an increasing number of people, even Mr Farage, think that Brexit might not happen? It may be, of course, that in his case, since he says he is skint, he is beginning to think that his continuing MEP salary might be rather desirable.

However, can the noble Lord, in his usual fashion, give us an undertaking that, if there is a possibility that this ceases to be a short-term problem and becomes a longer-term one, we should at least expect the Government to produce some form of contingency plan beyond March 2019? He surely must accept that

[LORD TYLER]

this provision before your Lordships cannot be allowed to stand for ever. That is undemocratic. It does not even really meet the requirements that his party has set out in the past for truly democratic representation in the European Parliament. If, this time next year, we find ourselves still not sure whether we are going to be exiting from the European Union, surely a responsible Government should look again at what should be put in place of these regulations.

Lord Young of Cookham: The noble Lord is very plausibly trying to tempt me further down a route that I embarked on, probably ill-advisedly, in responding to the noble Lord, Lord Rennard. I think that I can best shelter behind paragraph 7.1 of the Explanatory Memorandum:

“Following the EU Referendum, the UK will be leaving the EU and it is not expected that the UK will be participating in the next elections to the European Parliament in 2019 (the date of the poll has not been confirmed”).

It then goes on to say that, while we remain a member of the EU, we have to return MEPs. I can go no further than what I said in response to the noble Lord, Lord Rennard—that if these regulations are approved by both Houses, they will govern the position of any vacancies where a party list is exhausted. In that unlikely event, there are European elections next year and the list would be refreshed. However, as the Government’s policy is to leave the EU, I shall venture no further down that path or I will get into real trouble, except to say that these are sensible precautions given that, following the EU referendum, the UK will be leaving the EU.

Motion agreed.

European Parliamentary Elections Act 2002 (Amendment) Regulations 2018

Motion to Approve

4.41 pm

Moved by Lord Young of Cookham

That the draft Regulations laid before the House on 11 December 2017 be approved.

Motion agreed.

Environmental Permitting (England and Wales) (Amendment) Regulations 2018

Motion to Approve

4.41 pm

Moved by Lord Gardiner of Kimble

That the draft Regulations laid before the House on 11 December 2017 be approved.

Relevant document: 15th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I am pleased to introduce these regulations. Air pollution is the biggest environmental risk to public health in the UK. Air quality overall has improved significantly in recent decades. Emissions have

decreased across each of the five key air pollutants—sulphur dioxide, particulate matter, nitrogen oxides, volatile organic compounds and ammonia. We need to ensure that these improvements continue through concerted action by government and local authorities in collaboration with others.

In some parts of our country there are unacceptable levels of air pollution. The Government are committed to tackling this and improving air quality, and are working to make sure that concentrations of nitrogen dioxide come within statutory limits. We are also looking to reduce total emissions of air pollution through legally binding targets for 2020 and 2030. On a local level, authorities across the country are developing local plans to tackle air pollution. The measures they bring forward—including, potentially, clean air zones—will include encouraging the replacement of old, polluting vehicles with modern, cleaner technologies. It is also important that we look to encourage the replacement of the most polluting forms of energy production.

The regulations before your Lordships relate to medium combustion plants and generators. These are a largely unregulated, significant source of emissions of air pollutants. For example, emissions of nitrogen oxides from diesel generators are on average more than six times higher than emissions from gas engines.

These regulations will implement the medium combustion plant directive, in adherence to our membership of the EU. Emissions from small-scale, highly polluting generators have also caused concern. The Government are looking to take robust action to tackle this source of emissions by introducing further domestic measures that impose additional emission controls on these generators.

These regulations are highlighted in the 25-year environment plan, launched earlier this month. They will encourage a shift to cleaner technologies and will assist in meeting the requirements of the ambient air quality directive and the revised national emission ceilings directive. Subject to your Lordships’ consent, they will make a valuable contribution to improving air quality, thereby protecting human health and the environment.

Emissions from plants over 50 thermal megawatts are already regulated under the industrial emissions directive. These regulations bring into scope medium combustion plants, which are in the 1 to 50 thermal megawatt range and are used to generate heat for large buildings such as offices, hotels, hospitals and prisons. They are also used in industrial processes, as well as for power generation. Implementing the medium combustion plant directive, commonly referred to as the MCPD, will help to reduce air pollution by introducing emission controls for these combustion plants.

As well as transposing the requirements of the MCPD, these regulations will impose new domestic requirements on the operators of low-cost, small-scale flexible power generators. There has been a rapid growth in the use of this type of generator in this country in the last few years. The recent growth of mainly diesel generators is a cause for concern. These generators emit high levels of pollutants such as nitrogen oxides compared to other medium combustion plants, and they are not currently subject to emission controls.

This growth has a negative impact on local air quality as well as on our ability to meet future emission reduction targets on a national scale.

The MCPD requirements are not sufficient in themselves to tackle emissions from the increased use of these generators. The proposed regulations will subject generators to permitting and a nitrogen oxides emission limit. As a result, the regulations will ensure that diesel generators reduce their emissions to the same level as gas generators.

These regulations will provide an estimated 43% of the sulphur dioxide emissions reduction, 9% of the reduction for particulate matter and 22% of the nitrogen oxides emissions reduction needed to meet our 2030 targets. They are supported by organisations including the British Heart Foundation, the British Lung Foundation and the Royal College of Physicians. The regulations will encourage the use of cleaner plants and generators and will require those which pollute more to have technology fitted to bring their emissions within the specified limits.

Clean air is one of the most basic requirements of a healthy environment for us all to live, work, and bring up families. Clearly there is a strong case for action and we have a clear ambition and policy agenda to achieve this. These regulations will make a real impact and are a further demonstration of our commitment to improve air quality in this country. I beg to move.

Lord Jones (Lab): My Lords, as ever, the Minister has made helpful and succinct introductory remarks to this statutory instrument, for which I thank him. Can he confirm that recently there have been changes at the top of the natural resources body for Wales? Is there a new director and a new chair? Are there any details he can give, either now or at a later date, about the principles of the chair and the director of that body in Wales? What is the extent of the contact and co-operation between the Environment Agency and Natural Resources Wales, bearing in mind that we now have devolved government operating in Cardiff? Can he say what his department's experience is of dealing with our Government in Cardiff?

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I am grateful to the Minister for his helpful and constructive introduction to these regulations. As has been said, they bring into line medium combustion generators with larger ones. However, in applying these regulations to 1 to 50 megawatt generators, it has to be said that 50 megawatts would be capable of powering up to 8,000 homes. That is not a small undertaking and is therefore, quite rightly, worthy of regulation. This size is typical of the generators used, as the noble Lord has said, for a range of purposes including electricity generation, domestic and residential heating and cooling, providing heat and steam for industrial processes and so on. Generators of this capacity are inherently diesel or gas powered, and these regulations bring diesel down to the level of gas-powered generators.

The Government are rightly attempting to reduce the level of emissions in this country. Poor air quality is the largest environmental risk to public health in the UK. However, they are presently 10 years late in

meeting air quality standards. Public health is at risk and there is no time to lose if the NHS is not to be overburdened with patients with respiratory problems. Government estimates show that in 2008, the number of deaths attributable to fine particulate matter—that is, poor air quality—was 29,000. In 2016, the Royal College of Physicians estimated that the cost of the health impacts of air pollution to the UK was £20 billion.

There are approximately 143,000 medium combustion plants in the European Union, with an estimated 30,000 in the UK. The increase in the use of such generators has been identified as a source of avoidable increases in national emissions. Many generator farms have been set up solely to sell electricity back to the national grid. While this is very enterprising, it is having an effect on the nation's health. The National Audit Office identified in 2017 that the Government will not achieve compliance with EU limits on nitrogen dioxide until 2021, some 11 years later than the deadline of 2010. In 2016, more than 85% of air quality zones in the UK, 37 out of 43, did not meet EU nitrogen dioxide limits and government estimates show that all 43 air quality zones will not be compliant with the limits until 2026. The measures being taken today are a step in the right direction, but there is still much more to do, and faster.

While I am happy with agreeing to the regulations, I would like to raise a point about flooding. In paragraphs 7.9 and 7.10 of the Explanatory Memorandum, the regulations indicate that the Environment Agency can use enforcement undertakings for a number of activities. In those areas of the country prone to continual flooding, such as the Somerset Levels, householders and businesses are often flooded to varying degrees of depth. Many have standby generators to pump water out of their premises when levels do not subside in an acceptable timescale, and often much larger generators have to be brought in to ease widespread flooding. Will the Minister give a reassurance that in such cases, enforcement action would not be taken if the generator in use did not comply with the regulations we are approving today?

I fully support the move to improve air quality as indicated in the air quality strategy and agree that tackling the most polluting generators must come into line first. However, an FOI request in October 2017 revealed that the Government had spent £370,000 in unsuccessfully challenging two court claims that their plans to tackle air pollution were “illegally poor”. Was this a wise use of money and could it not have been better spent on tackling air pollution itself? It is important to ensure that enforcement powers not only continue to remain available to tackle pollutants, but that the culture shift we are beginning to see in government from defending flawed environmental policy to enabling and adequately funding the means to safeguard air quality moves ahead at a much faster pace. These regulations are a welcome step in the right direction and I support them.

Lord Grantchester (Lab): My Lords, I thank the Minister for his introduction to the regulations before your Lordships' House. I am also grateful to him for facilitating a meeting last week with his officials, Sejal Mahida, Andrew Baxter and Katie Doubleday, who

[LORD GRANTCHESTER]

explained many of the technical details and issues behind the regulations and the medium combustion plant directive.

Poor air quality is the biggest public health risk facing the UK. The Government's slow and inadequate response to the situation has led to several infraction proceedings in the courts, brought by ClientEarth. As the noble Baroness, Lady Bakewell, has said, 29,000 people suffer prematurely due to problems from breathing poor-quality air. Children are also bearing the brunt of this air quality crisis, as the worst pollution hotspots often occur around schools due to the concentration of diesel fumes from vehicles discharging at idling speed at a low height, at which children are vulnerable.

The European Commission has recognised the seriousness of the situation and, from its review, published in 2013 the clean air package. It has issued various emissions directives concerning different sizes of plants. It is from the Government's failures to meet air quality standards that ClientEarth has secured court rulings that the Government must bring forward and implement clean air strategies. It can be argued that this experience has highlighted the need to create an effective enforcement agency to assist Governments to meet their environmental responsibilities. It is to the Government's credit that they have finally accepted this and will bring forward proposals for this new governance structure. Perhaps the Minister could say how the Government are developing their thoughts, what their proposals are and whether they will be ready by the time the UK leaves the EU.

It is to be recognised that the Government have consolidated previous amending instruments into the 2016 regulations. These regulations will continue the process of bringing these amendments into a single set of regulations. They will apply to combustion plants and generators, some of which will feed into the grid. There are 23,000 such plants and generators, which have proliferated in recent years.

Labour has been very critical of the Government for allowing polluting diesel to bid into the capacity market as this could be said to have contributed to the problem. Notwithstanding that Labour may not have allowed access to the capacity market, bearing in mind that both BEIS and National Grid are confident that there will continue to be sufficient liquidity and security of supply will be unaffected by this supply, it is nevertheless accepted that these amendment regulations fall outside the capacity market's regulations and rules, and so are not strictly a relevant consideration and allow the capacity market the stance of technology neutrality. In allowing this diesel technology, it must comply with all the directives concerning emissions and air quality.

The important point highlighted by your Lordships' Secondary Legislation Scrutiny Committee is that old and new combustion plants and generators must comply with the emission standards by the end of December 2018. This will avoid the unintended consequence that older diesel plants will not receive a competitive advantage from unabated emissions that new modern equipment has to adhere to. Labour supports the Government in that operators bidding for new agreements will need to

meet the same emissions controls, irrespective of whether they are existing or new generators. In that sense it will be a level playing field.

I support the regulations before your Lordships' House and welcome the early implementation of the higher standards being imposed from 2019. Indeed, from 2019 emissions will have to be reduced to the extent that emissions from diesel plants and generators will be on a par with gas. These amendment regulations will result in new agreements signing up to higher standards sooner. Existing and older plants will have to clean up sooner. It is recognised that the greater polluters—existing plants—are being tackled first to meet the standard achieved by newer plants.

While recognising that this will have an impact on several stakeholders, the explanatory documents underline the greater public benefit of air improvements, with savings to the National Health Service welcomed by several foundations including the heart and lung foundations. For this reason, we endorse the shorter timeframes coming into play and recognise that they will be significant in helping the UK meet its 2030 reduction targets.

5 pm

However, I have one or two questions for the Minister and would be grateful if he addressed them. Can he set out the Government's plans to provide more environmental information to the public, especially regarding the results of emissions monitoring, which should start to show reductions? Will further regulatory action be triggered for any failures?

Secondly, can the Minister set the regulations against the context of the Government's clean air strategy? How far will compliance with them take the Government towards their objectives? The Explanatory Memorandum refers to another enforcement undertaking—in respect of the Environment Agency and flood risk activities. The memorandum states merely that the regulations revoke certain paragraphs of the 2016 regulations to allow the regulator to accept offers from offenders to repair damage caused, as an alternative to criminal proceedings. This seems slightly extraneous to the general run of the regulations, but in light of the flooding occurrences this weekend is nevertheless important. What issue lies behind this rather cursory couple of paragraphs? Why are they included in the regulations and what is the Government's objective?

I note that my noble friend Lord Jones asked questions in relation to Wales. Meanwhile, I confirm approval for the regulations.

Lord Gardiner of Kimble: My Lords, I am most grateful for the general endorsement of these very important regulations to ensure that we and future generations have better air quality in this country. On that basis, I take great encouragement from our unity of purpose.

The noble Lord, Lord Jones, mentioned Wales. I will need to write to him with the details on the personnel there, but in England the regulator will be the Environment Agency and in Wales it will be Natural Resources Wales. However, we have worked very closely on the development of the regulations. They have been

worked on in conjunction with the Welsh Government and NRW so that this is a composite statutory instrument—indeed, the regulation will be debated in the Welsh Assembly tomorrow. It is an example of how collaboration between England and Wales is very strong in areas such as this. Scotland is already working on its measures, as is Northern Ireland. So as a United Kingdom we will be working on including these measures in legislation.

More than 23,000 new and existing plants will come within scope of these regulations by 2030. We are strongly of the view that positive environmental outcomes will come through regulation. As the noble Lord, Lord Grantchester, said, we will tackle the greater polluters first so that we gain the biggest dividend and the public health benefit is profound. I agree with your Lordships that there is more to do. These measures are in the context of the £3.5 billion of investment in air quality, investment in cleaner transport and the new clean air strategy, which we will bring forward this year. I say in direct reply to the noble Lord, Lord Grantchester, that the clean air strategy, the 25-year environment plan, the regulations which come in through the EU directive and our own domestic regulations are all designed to be co-ordinated to improve air quality and the environment, and they should be seen in that context.

In response to a very important point made by the noble Baroness, Lady Bakewell, we clearly want to advance air quality. However, we also need to ensure, in emergencies—I am well aware of what happened on the Somerset levels—the use of pumps across the country where difficulties are presented by flooding, as we saw with the use of emergency pumps over the weekend in north Devon, for instance. We do not intend that onsite emergency pumps are in the scope of these regulations. In fact, mobile generators are also not in scope, unless they are connected to an electricity transmission system or are performing a function that could be performed by a generator that is not mobile. In other words, I hope that these regulations are about common sense prevailing. In emergencies, of course we want to ensure that generators can be used. The overriding task of us all is to be using advances in cleaner technology but not, of course, stopping the use of current pumps for emergency purposes: I want to record that.

The noble Lord, Lord Grantchester, and the noble Baroness, Lady Bakewell, referred to flooding. I should perhaps put this into context. Enforcement undertakings are currently unavailable for flood risk activities. In order to ensure consistency across environmental permitting schemes, we are proposing to revoke Paragraph 1(2) of Schedule 26 of the EPRs so that enforcement undertakings will become available for offences relating to flood risk activities in England only. This was an opportunity to use that but I emphasise what the noble Baroness, Lady Bakewell, said about flooding and the use of emergency pumps: this was not the intention; it was making use of an opportunity.

The noble Lord, Lord Grantchester, mentioned the environment enforcement body in his closing remarks. We will be issuing a consultation later this year on the scope of an environmental enforcement body which,

of course, the Secretary of State has already announced. There is a governance gap that we need to address and that will be the subject of consultation. We are also consulting on environmental status principles. It is very important to register that.

The noble Lord, Lord Grantchester, also mentioned the monitoring of emissions, which is very important. There are some interesting details on the considerable emissions reductions there have been since 1970—and, indeed, since 2010—but I entirely recognise that we need to do more. Air quality data is already published in UK-AIR. The regulations provide that the regulator can consult the public if there is concern regarding local air quality. On the strategy, I mentioned the reduction in the elements of air pollution that the regulations will include; that too is very important. I will write to noble Lords on any further detailed points that need addressing.

These are important regulations that will set us well on track not only through the EU directive but through our domestic arrangements. They are a force for good for the environment, and undoubtedly for the health of everyone in this country. I beg to move.

Motion agreed.

Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017

Motion to Approve

5.09 pm

Moved by Lord Bourne of Aberystwyth

That the draft Regulations laid before the House on 29 November 2017 be approved.

Relevant document: 13th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the Government value the private rented sector. It is an important part of our housing market, housing 4.5 million households in England. We want to support good landlords who provide decent well-maintained homes and avoid unnecessary further regulation of them. Most private landlords provide a decent service to their tenants, respect their rights and comply with the obligations and legal requirements imposed on them. We know, however, that a small number of landlords and property agents do not meet their legal obligations, sometimes exploiting their tenants by renting out substandard, overcrowded or dangerous accommodation. These landlords and property agents often do not respond to legitimate complaints made by tenants. Some would even prefer to be prosecuted rather than maintain their properties to a decent standard. Let me be clear: these practices damage the reputation of the sector and have no place in modern Britain.

The Government brought in tough measures to enable local authorities to target such rogue landlords under the Housing and Planning Act 2016. In April 2017, we introduced civil penalties of up to £30,000 as an alternative to prosecution and extended rent repayment

[LORD BOURNE OF ABERYSTWYTH]

orders to cover a wider range of housing offences, including illegal eviction and failure to comply with a statutory notice. Banning orders, which are the subject of these regulations, are an important part of the package, which will enable local authorities to take effective enforcement action against rogue landlords.

It may be helpful to noble Lords if I briefly outline the purpose of a banning order. A banning order is defined under Section 14 of the Housing and Planning Act 2016. A person subject to a banning order may be prevented from: letting housing in England; engaging in English letting agency work; engaging in English property management work; or a combination of these. Section 15 of the Act enables a local housing authority to apply to the First-tier Tribunal for a banning order against a person who has been convicted of a banning order offence. A banning order must last for a minimum of 12 months, and there is no upper limit. If a landlord breaches a banning order, they will face enforcement action.

Noble Lords may also be aware of our intention to introduce a database of rogue landlords and property agents. Any landlord or property agent subject to a banning order will be entered on to the database, which will be used by local housing authorities to target their enforcement activity effectively.

We also want to ensure that tenants who live in a property rented by a landlord subject to a banning order are adequately protected. A banning order does not invalidate any tenancy agreement held by tenants in a property, regardless of whether the agreement was issued before or after the banning order was made. This is to ensure that tenants do not lose their rights under the terms and conditions of their tenancy agreement. The Act therefore provides that, in certain circumstances, the management of a property can be taken on by the local housing authority following the making of a banning order.

Banning orders target the most prolific offenders who have been convicted of serious housing, immigration and other criminal offences connected to their role as landlords. They will prevent rogue landlords and property agents earning income from renting out properties or engaging in letting agency or property management work, forcing them either to raise their standards or to leave the sector entirely.

Noble Lords will be aware that we did not include specific banning order offences in the Housing and Planning Act 2016. During the passage of the Act, concerns were raised about the nature and scope of banning order offences. In response we held a public consultation on which existing criminal offences should be regarded as banning order offences. We also amended the Act to ensure that the regulation-making powers were subject to the affirmative procedure to enable full scrutiny of the proposed offences by Parliament.

The regulations before the House today specify which offences will constitute banning order offences under Section 14 of the Act. I will summarise briefly the offences set out in the schedule to the regulations. All the offences listed in the regulations are existing criminal offences. By making the offences “banning

order offences”, we are not introducing new offences but simply introducing a new sanction for pre-existing criminal offences.

Broadly speaking, there are three types of offences in the regulations. The first type is housing offences relating to a breach of existing requirements under the Housing Act 2004 and other housing-related legislation, provided the person convicted of the offence has not received an absolute or conditional discharge. This condition is in place to ensure that banning orders remain a proportionate sanction. We want to target only the worst offenders, who have been convicted of serious housing offences.

Offences include failure to comply with an improvement or overcrowding notice, failure to comply with houses in multiple occupation licensing and selective licensing of other privately rented properties, and offences relating to fire and gas safety. They also include the unlawful eviction of tenants or violence or harassment towards tenants by the landlord or letting agent. Such offences are serious and directly impact on the health and safety of tenants at a property. These offences are directly related to the offender’s role as a landlord, and it is right that they are included as banning order offences.

5.15 pm

The second type of offence is an immigration offence under Part 3 of the Immigration Act 2014. For a banning order to be made against a landlord, that landlord would need to be convicted of offences including letting a property to an illegal immigrant. Where the original immigration offence is prosecuted it would generally be for serious offences that may be associated with the wider exploitation of migrants, so it is appropriate that offenders could be banned.

The third type of offence is a serious criminal offence with a connection to the housing or the tenant on the part of the landlord. A banning order may be sought where a person has been convicted in the Crown Court of a serious criminal offence including fraud, misuse of drugs or sexual offences. We restricted these offences to becoming banning order offences after conviction in the Crown Court to ensure that only the most serious offenders can be subject to a banning order and that it remains a proportionate sanction. The Government consider it appropriate to include these serious criminal offences as banning order offences where there is a clear link between the offence and the offender’s role as a landlord. It is for this reason that the offence is linked to property being rented out and/or the tenants at the property.

The banning order offences regulations were the subject of a consultation held over an eight-week period between 13 December 2016 and 10 February 2017. We received responses from local housing authorities, landlord organisations, tenant groups, housing charities and representatives of letting agents. We published our response to the consultation on 28 December 2017. There were 223 responses in total and a high level of support for the proposals. Overall, 84% of respondents agreed that the proposed banning order offences were the correct ones.

In addition, we have included a range of further offences in the regulations that were suggested by respondents during the consultation because we consider

that they are offences which are most commonly committed by rogue landlords against their tenants. These additional offences, listed as items 10 to 14 of the schedule to the regulations, include offences relating to the Proceeds of Crime Act 2002, harassment, anti-social behaviour, criminal damage and theft.

The vast majority of landlords and agents who comply with their responsibilities will not be affected by these regulations. Indeed, they will benefit from them, since standards and compliance with the law across the sector will be set on a level playing field, while good landlords who work hard for their tenants and comply with the law will cease to face unfair competition from rogue landlords who ignore the law and their obligations. Ultimately, it will be for local housing authorities to determine whether to apply for a banning order in any given circumstance. The department will produce comprehensive guidance for local housing authorities on using the powers. I commend these regulations to the House.

Lord Jones (Lab): My Lords, I thank the Minister for his exposition and I support the draft regulations, which are surely an improvement. He had a distinguished tenure in the Welsh Assembly—indeed, he had a leader's role. He clearly stated that the regulations relate entirely to England but, given his considerable Welsh insights, can he in passing indicate whether there are similar and effective arrangements in Wales or, at least, arrangements that are the equal of those in England?

Baroness Greender (LD): My Lords, I thank the Minister for his explanation of the banning orders. This is one part of the Housing and Planning Act 2016 where we agreed with the Benches opposite, regarding the need to introduce measures to address rogue landlords. Where we parted company—although we would still like to pursue the argument—was about the need to ensure that if there were a register or database of rogue landlords, it should be transparent and made available to prospective tenants. There is still a danger of the attitude that tenants in the UK are second-class citizens. The Government are introducing lots of measures on this issue and we on these Benches are delighted with them. I am personally delighted—following my Private Member's Bill—that the banning of letting fees is now in a draft government Bill. Nevertheless, a growing number of people are tenants. Some should not be in the private rented sector at all but on a social rent, while others need to be advocates for themselves and strong consumers. The best way for them to do that is to have as much information as possible. If the register of rogue landlords is simply held as a DCLG database and not made available to tenants, we think that that would be a missed opportunity.

By 2021, nearly one in four people will be renting, and a quarter of those will be families with children. The Minister rightly talked about how many responsible landlords there are. Indeed, there are many responsible tenants. Just under 80% of tenants pay their rent on time and in full. That is why I am delighted to support the Creditworthiness Assessment Bill proposed by the noble Lord, Lord Bird, which is about trying to even up attitudes about private lending to tenants. These tenants are having real difficulty, and there is a significant gap in the way they are treated by the private sector.

In both the consultation and the Government's response some opposition was expressed about immigration issues in terms of the banning orders. I ask the Minister to look at that again. As there is a danger that the attitude of landlords will be that non-UK nationals are a risk, non-UK nationals could be pushed into the properties of more unscrupulous landlords. One of the case studies in the consultation presented a terrible scenario where there were 40 beds in a set of properties. Quite rightly, the Government described that as an unacceptable form of accommodation. With immigration banning orders, there is a danger that people will be pushed into even worse accommodation. We all know some of the stories. We have heard about people renting sheds in back gardens and that sort of thing. Although we support the principle, is there something else that can be done so that they are not driven into a kind of underworld?

In the consultation case studies I was also struck by the issue of electrical safety. Will the Minister update us on that? There is a reference to gas safety, but we are still waiting for the mandatory electrical safety checks that we discussed. The working group on electrical safety checks concluded in 2016 that such checks should be mandatory, but we are still waiting for them to be introduced. I would have thought that this moment and these regulations would be a perfect moment to include them. As the Minister will be well aware, 70 people are killed in the UK through contact with electricity every year, while carbon monoxide poisoning, gas leaks, fires and explosions are responsible for 18 deaths. We believe that mandatory electrical checks are extremely urgent, and I am sure the Minister will agree.

I conclude with enforcement. We often debate on these Benches how local authorities can enforce the rules given their reduced resources—we all agree, across the House, that local authorities have had their resources reduced. As banning orders such as these come in, there is other legislation already in place that is not being fulfilled. Why not? Because the resources to enforce it at local authority level are so reduced. That brings me back, again, to this issue about the transparency of the register. If local authorities are so underresourced that they cannot enforce this, surely the Government need to change their mind and allow tenants to have access to the information about who the rogue landlords are in their area, so they do not have to rely on the local authority for enforcement every step of the way. The Government changed their mind on letting fees, which was the right thing to do for the growing number of people who are renting. It would be great if the Government could also change their mind on this issue.

Lord Beecham (Lab): My Lords, I join others in supporting what the Government are doing in this rather difficult area, but I have a number of questions about the detail of the regulations. First, I make it clear that I entirely support the noble Baroness on the points that she has raised about the need for access to information on the register, about the way that immigration is dealt with and, in particular, about access to information for those tenants or would-be tenants seeking accommodation.

[LORD BEECHAM]

It seems to me that the provisions fall within the new burdens doctrine, as this will involve a new, or at any rate additional, function for local authorities. Can the noble Lord confirm that this will be taken into account when it comes to funding? The doctrine requires the Government to provide financial support for additional responsibilities.

I am not in any sense criticising the approach taken by the regulations, but I have a number of questions seeking clarification of some of the wording. For example, item 7 in the schedule of offences, relating to the Fraud Act, refers to, "Possession etc."—I do not quite know what is meant by *et cetera*—

"of articles for use in frauds".

I simply do not know what the Government are aiming at there, and perhaps the noble Lord would explain what articles the regulations are purporting to cover. Also in item 7, there is a reference to, "Obtaining services dishonestly". Again, I do not know what that means, and it would be helpful if the noble Lord would clarify that. Similarly, there is curious wording in item 9, where it talks about:

"Prohibition of certain activities relating to opium".

What does that mean? The following provision talks about:

"Prohibition of supply etc. of articles for administering or preparing controlled drugs".

What does *et cetera* add to the wording? Further down, I question whether "the use of properties for the purposes of prostitution" should not be included in the list of prohibitions; I am not sure where that would be validated by existing legislation but it is surely a matter of some concern. The curious issue to me, and possibly to other noble Lords, about the list of 14 separate offences is that as far as I can see there is nothing about violence—previous convictions for violent behaviour, for example. That strikes me as an anomaly, unless it is covered in some other legislation.

5.30 pm

I have some more questions to ask about the Explanatory Memorandum. Paragraph 3.3 says:

"A banning order may be made against a person ... for the purpose of banning them from letting housing in England or from engaging in ... letting agency work".

I am not quite clear about what happens with limited companies, whether directors of such a company would be individually involved as well as perhaps the company itself, and what the status is of any employees of such a limited company in the event of any misconduct or breach.

I appreciate that these are the Explanatory Notes, not the text of the actual regulations, but I find the wording of paragraph 7.1 curious when it says:

"The purpose of a banning order is to enable local authorities to tackle the most serious and prolific offenders by preventing them from being involved".

What constitutes the most serious? For that matter, how often does an offender have to have breached the law to be described as prolific? It looks like rather generalised language, which does not really help us to understand fully how the order, commendable though it is, could be applied.

Meanwhile, there might be a typing error in paragraph 7.2 but it says, "Someone"—again, one might ask who, in the light of the previous questions—"subject to a banning order can be banned from: Letting housing in England; Engaging in English letting agency work; Engaging in English property management work, or; Doing two more of those things".

I do not understand that. Is it meant to be "two or more"? If it is, why does it have to be two? Why would one not suffice? It is somewhat odd, to put it mildly. Then there is a reference to the consultation outcome. The document says,

"we have included a range of further offences that were suggested by respondents during the consultation exercise"—

that is very welcome—

"because it is considered that they are offences which it is likely that a rogue landlord may commit against their tenants".

I hope the order will assist in those matters, but I have a more fundamental question: why will the Government not take steps to provide the power and the funding for local authorities to promote selective licensing schemes? Selective licensing schemes take an age to implement from the start of a process. In my ward—I declare my interest as a Newcastle city councillor—we have a selective licensing scheme. We are looking for an extension and I am told that it will probably take two years to get such a scheme on its feet, if it happens at all. I wonder whether the Government should not revisit the whole issue of selective licensing, which surely must be seen as a potential tool to deal with the problems that these regulations very properly seek to deal with. Again, if we are to make progress in that way, appropriate resources will have to be diverted to it and, given the difficulties that local authorities are currently experiencing on the financial side, that means some increased funding from the Government to allow the perfectly acceptable and welcome objectives set out in these regulations to be implemented in practice.

Lord Shipley (LD): My Lords, I remind the House that I am a vice-president of the Local Government Association. I support the points made by my noble friend Lady Grender and those made by the noble Lord, Lord Beecham, on selective licensing schemes. I hope that we all agree that it should not take two years to adopt selective licences.

However, I support the statutory instrument. I note that it has commanded broad support during consultation, which is important. I also note that the consultation has led to several additions to the list of offences, which confirms the value of consultation. That is because it is one thing to have banning orders and another to ensure their effective implementation, as has been made clear. There is a resources issue for local authorities, which I hope that the Minister will be willing to comment on when he replies, because resources need to be there for banning orders to be implemented properly.

The Minister referred to the statutory instrument being part of a package. It is indeed only one reform that we need to the private rented sector. We need action on letting fees for agents and capping of up-front deposits—about which a great deal has been said—but also an improvement in minimum standards for private rented tenants. Mention was just made of electricity safety checks, which are fundamental to get right.

It is vital that private rented tenants feel secure. It would therefore help to have a system for tenants and potential tenants to access a database of rogue landlords. If there is a list, it needs to be transparent and available to tenants and prospective tenants, otherwise how do they know that their prospective landlord is rogue? Of course, that person would in law have been banned, but it is important that tenants know who those people are.

Twenty per cent of all homes in the United Kingdom are now privately rented. The proportion has risen by half in the past decade. As the Minister knows, I believe that we must build more social homes to rent to reduce public dependency on the private rented sector, where heavy demand has led to high rent and to 750,000 private rented homes—one in six of the total—containing, according to the English Housing Survey, a hazard representing a serious risk to personal health and safety.

This number is unacceptable. It is too high. I hope that the Minister can confirm that the Government will continue to take the necessary action to support private rented sector tenants having decent, secure accommodation.

Lord Campbell-Savours (Lab): My Lords, a number of us spoke at some length on this matter when we were dealing in 2015 with what became the Housing and Planning Act 2016. This offers us the opportunity for a further canter around the course. I shall speak briefly because in principle, like most of the House, I support the regulations. I am trying to work out how effective they will be. One stat which would be helpful would be to know to what extent local authorities have, let us say, over the past 12 months or couple of years, prosecuted landlords with the offences defined in the regulations, because they already have the power to prosecute, which brings me to my second point. If they have that power to prosecute, and they do not do so—for all sorts of reasons, which I shall come to in a moment—the chances of them using a banning order are substantially reduced. The prosecution comes first, and the banning order comes second. I stand to be corrected if I am wrong. It is absolutely dependent on whether local authorities are prepared to prosecute.

Let us take a specific example. Slough is a town notorious for the number of sheds in gardens, most of which are there illegally. The local authority is in difficulty. I presume it knows that it could say to the shed owner, “Close the shed because you are in breach of the law”. On the other hand the local authority may say, “We want to ban that particular landlord”, but it is not prepared to do so because by prosecuting him it will create a homeless situation and it will have to step in and rehouse the family concerned. I am arguing that there may well be a hesitation within local authorities to prosecute and introduce banning orders in the knowledge that they may have to take on responsibility for the tenants. That might apply equally to unfit, overcrowded housing, which is covered under a contravention of overcrowding notice, or fire and gas safety standards offences. The local authority would have to have all that in mind if it decided to prosecute and get a banning order.

If one is dependent on the other and there is a hesitation to prosecute, to what extent will that influence the preparedness of a local authority to introduce the banning order? Unless there is housing into which to place people, or the local authority is prepared to take on the property, which in itself means expenditure because it has been through the legal process, the measure being introduced here might well not work in the way Ministers intend. What we need is more houses: more houses to rent and more houses at a sensible price. That would ease the whole process whereby local authorities would feel freer to proceed and close down property, with the obvious implication for rehousing families.

What stats do we have on the preparedness of local authorities to prosecute and place landlords in a position whereby ultimately, under these regulations, they will be subject to banning orders?

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in the debate on these regulations and I will do my best to deal with the various points in the order in which they were made.

First, I thank the noble Lord, Lord Jones, for his kind words. Wales does indeed have provisions; they are not identical to these. I will write to noble Lords who have participated, covering the issues raised, and I will endeavour to give the noble Lord full details. He will know that in a devolved context, things are slightly different but there is legislation there and, I believe, in Scotland as well, which I will also seek to cover.

I thank the noble Baroness, Lady Grender, for her general welcome for these regulations. She made points about transparency, which were echoed elsewhere. The noble Lords, Lord Beecham and Lord Shipley, talked about the regulations being cast in a way that would mean tenants could look at potential landlords to find out the position by having a register that is open to the public. Noble Lords will appreciate that that is not possible under the main legislation, which was discussed and passed. The Housing and Planning Act 2016 does not permit that. This is a register for local authorities to use. It is not a ministry of housing—to use our new title—register; it will be a national register for local authorities which will contain these details. In addition—although I am not an expert in this area of the law—there are considerations under the Data Protection Act as to what can be disclosed in such situations. Again, I will endeavour to give chapter and verse on that when I respond in more detail.

5.45 pm

The noble Baroness referred to the letting agents' fees legislation that she was highly instrumental in bringing to the House. Once again, I congratulate her on that. It will be open to us when that legislation is cast for there to be a banning order offence in relation to letting agents' fees. I checked this to ensure that, in future, we will be able to add instances, perhaps as new offences come on stream. Indeed, if we consider it appropriate, existing offences could be added to the schedule of offences that are subject to banning orders. This perhaps addresses some of the points that the noble Lord, Lord Beecham, made.

[LORD BOURNE OF ABERYSTWYTH]

I will say something else that relates to points made by many noble Lords in the debate. We are producing—ahead of the regulations, so they will be available—guides for tenants on how to rent and guides for landlords on how to be a good landlord. I am paraphrasing what they will be called, but that is the essence of the guidance. There will also be guidance for local authorities.

I think that it was the noble Baroness, Lady Greender, who made the point about the potential for discrimination in relation to some of the immigration provisions. This is a very fair concern that was echoed, if I am not mistaken, by the noble Lord, Lord Beecham. Obviously, illegal acts in relation to breaches of legislation in relation to equal rights and racial and religious discrimination and so on will be met with the full rigour of the law. Recently, for example, in November of last year, an injunction was granted against a landlord for discriminating against certain groups. That breach was met with the full rigour of the law: an order was made against the landlord.

On the point about gas and electrical safety—again made by the noble Baroness, Lady Greender—we will bring forward legislation in due course. Once again, offences in those particular areas could be added to the list, and there are some already on the list that relate to fire safety.

The noble Lord, Lord Beecham, made points with a lawyer's eye on the interpretation of different offences. I will try with a lawyer's response to deal with some of the matters he referred to relating to offences in the schedule. I will pick them up as I go along. In so far as I do not cover them fully, I will certainly make sure that we do that in the response. For example:

“Possession ... of articles for use in frauds”,

refers to Section 6 of the Fraud Act 2006, and I would be very surprised if that section does not set out possession and perhaps bailment and so on in relation to each of the matters the noble Lord referred to. In short, the description is shorthand for what would be in the section referred to in the list. I think that that would be true of some other points that the noble Lord raised—but, as I said, I will refer to them in the letter that I write.

The noble Lord asked about the position in relation to companies. This is dealt with in paragraph 2 of the regulations, if I am not mistaken, which states that,

“‘associated person’ has the meaning given by section 178 of the Housing Act 1996”.

Once again, I will try to pick that up in my written response if I may.

The noble Lord also asked for some examples of regulations that relate to violence. The Protection from Eviction Act covers unlawful eviction and harassment of an occupier. The Criminal Law Act 1977 covers the offence of using violence to secure entry. There may well be other, less obvious regulations: again, I will see whether I can pick up on that as I go through if I may. In relation to the two-or-more matter, I referred in my opening speech to the fact that the regulations were, essentially, seeking to prevent somebody being involved in various activities, or a combination of them. I suspect, therefore, that it refers to letting housing and so on, but I will pick that up in writing.

One or two noble Lords raised points about licensing. We are, of course, moving forward in due course with licensing of houses in multiple occupation, but the question was more widely cast. I will, once again, pick that up in my letter on selective licensing schemes so that noble Lords are aware of where we are on it. The noble Lord, Lord Shipley, gave a general welcome to the legislation, for which I thank him. He, too, picked up the licensing issue, which I will cover in my letter. He also asked about the open register, which I have dealt with. More than one noble Lord raised the new burdens doctrine. The Explanatory Memorandum says that the impact on all sectors is not significant, but I will cover in my letter the point that the recent legislation, to which I referred, allows local authorities to keep civil fines up to £30,000. That is a not insignificant point to bear in mind.

Lastly, the noble Lord, Lord Campbell-Savours, made the fundamental point about the need to build more houses, with which I—and I think all noble Lords—agree. He asked how considerable the impact of this is in relation to enforcement and what local authorities are doing at the moment. He cited Slough: I am not familiar with that case but, commenting on the generality, local authorities are, on the whole, very good at enforcing the existing law against rogue landlords. For obvious reasons, we are not setting a target for local authorities to come up to but we anticipate that there will be about 20 banning orders per local authority. We also anticipate, and this will be covered in the advice we are giving, that local authorities would be able to give information about a particular landlord if they were asked for it by a tenant. Without prescribing it, we anticipate that good authorities would want to do just that. Although it is not an open register, this would not prevent a local authority giving information in response to a question from a tenant.

I hope I have dealt with the generality of issues that were raised. I will try to pick up the specifics, and any issues that I have missed, when I write to noble Lords. In the meantime, I thank noble Lords for their general welcome for these regulations, notwithstanding some concerns, and commend them to the House.

Lord Beecham: Before the Minister sits down, can he clarify that he will deal in writing with the point I raised about paragraph 7.1 of the Explanatory Memorandum, which talks about tackling, “the most serious and prolific offenders”?

Lord Bourne of Aberystwyth: I am grateful to the noble Lord. I had unintentionally missed that point in summing up. As I said, we will certainly be making guidance available to local authorities in a booklet. I will give more detail on that in my letter.

Motion agreed.

Private Sector Pension Abuse

Statement

5.54 pm

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer given by my right honourable friend the Secretary of State for

Work and Pensions to an Urgent Question in another place on private pension schemes. The Statement is as follows:

“The vast majority of employers do the right thing by their pension schemes and members can expect to receive the pension benefits they have paid for throughout their working lives. The Pensions Regulator and the Pension Protection Fund were set up in 2004 to provide pension scheme members with a safety net to ensure that their pension benefits received some protection when things go wrong—it is a fact that some businesses will fail. This PPF approach has been supported on a cross-party basis since 2004. To prevent irresponsible employers offloading pension liabilities to the PPF, the Pensions Regulator was given a wide range of powers, including the ability to recover significant assets where employers had failed to take account of the scheme. There are around 6,000 defined benefit schemes and cases like these are few and far between.

It is the responsibility of the Pensions Regulator to strike a balance between protecting members and PPF levy payers, and minimising any adverse impact on the sustainable growth of an employer when it comes to the regulation of defined benefit funding. The Pensions Regulator does not have the power to stop businesses paying out bonuses to executives or dividends to shareholders. However, if it sees a situation where it believes a scheme is not being treated fairly, the Pensions Regulator will investigate to see whether use of its powers is appropriate. However, this Government are clear that where sponsoring employers are able to meet their pension promises, they should, and must, do so, and that is why we have suggested ways that the current system could be strengthened to enable the Pensions Regulator to be more proactive.

In February 2017, we published our Green Paper, *Security and Sustainability in Defined Benefit Pension Schemes*, which included suggested measures that would strengthen the powers of the Pensions Regulator by introducing punitive fines for actions that harm a pension scheme. We also set out powers to enhance the regulator’s ability to demand information to ensure effective governance and spot issues before damage is done.

Our June 2017 manifesto reaffirmed this intent by proposing to give the regulator the power to impose a punitive fine alongside a contribution notice so that pension scheme members are fully protected. The details of the fine would be worked through with all relevant stakeholders but it would represent a significant strengthening of the deterrent.

Also we intend to make certain corporate transactions subject to mandatory clearance by the Pensions Regulator, but we must take care to ensure that these measures do not have an adverse effect on legitimate business activity and the wider economy.

I should also tell colleagues that we have received 800 responses to the Green Paper, and these are currently being reviewed by the department. The White Paper is in progress and will be published this spring.

Effective regulation is dependent on a prompt flow of information between parties concerned and compliance with rules and processes. Following the publication of the White Paper, we will introduce new legislation to

ensure that the regulator gets the information it requires to conduct investigations and casework effectively and efficiently. It remains the case that this Government support free markets and capitalism but this has to be conducted responsibly”.

5.58 pm

Lord McKenzie of Luton (Lab): My Lords, I thank the Minister for repeating the UQ asked in the other place. Yesterday, the Prime Minister chose to announce via the media that, in part in response to the collapse of Carillion, the Government plan to introduce tough new rules to stop private sector pension abuse—so we are to play catch-up again, it seems, following the pensions freedoms debacle. Carillion had 13 defined benefit schemes in the UK, with some 27,500 members and a combined pensions deficit of some £600 million.

We know that, according to its chief executive, Carillion had been on the radar of the PPF “for some time”, and it was on the watch-list by autumn 2017. Carillion gave its first profit warning in July of that year and its second on 29 September. The Pensions Regulator reported the close monitoring of risks and that it had had “heightened engagement” with the company since July’s profit warning. It apparently had some discussions with Carillion on a regulated apportionment arrangement but these came to naught.

Given the level of engagement and knowledge, which particular tightening of the regulatory framework are the Government considering? Precisely what additional powers for the regulator are contemplated, and what difference does the Minister think these would have made in the Carillion circumstances now faced?

More generally—I think that the Minister has confirmed this—in accordance with the Work and Pensions Select Committee recommendations, there will be a number of recommendations concerning mandatory clearance powers for corporate activities that put pension schemes at risk and new powers to fine those who act in an irresponsible manner. If the Government support those recommendations, how quickly does the Minister consider they will reach the statute book?

Baroness Buscombe: I am grateful to the noble Lord for mentioning that the Prime Minister clearly takes this situation extremely seriously. He reiterated that we intend to strengthen the regulator’s powers. Importantly, we have done that with care, introducing a Green Paper last year, and we have committed to the publication of a White Paper in the spring. Although the Pensions Regulator and the Pension Protection Fund manage the process of company insolvencies, and while most pension schemes are managed successfully and very robustly, we accept that there are instances where it might be possible to improve and strengthen the powers. We have received more than 800 responses to the Green Paper. The department is analysing these and will bring forward proposals as quickly as possible.

It is important to emphasise—I sense that the noble Lord opposite appreciates this—that it is hypothetical to suggest that a different set of powers for the Pensions Regulator, such as the ability to clear corporate activities, would have necessarily made a material difference to the pension schemes. Having said that, there has been strong communication between the regulator and Carillion

[BARONESS BUSCOMBE]

since the middle of last year, when a profit warning was announced. But of course, a profit warning is a warning as opposed to a transaction, so it was not necessarily a sign that the company overall was in such difficulty.

It is important to stress that we are very keen to strengthen the powers but, at the same time, we need to ensure that the new measures we introduce build on existing measures that to a large extent have worked extremely well since 2004, as I said before. However, we want to strengthen the Pensions Regulator's anti-avoidance framework and information-gathering powers.

I am afraid that as yet, I cannot be certain about when legislation will be forthcoming. Obviously, we will look forward to and welcome the consultations and responses to the White Paper.

Lord Kirkwood of Kirkhope (LD): My question is further to the important one raised by the noble Lord, Lord McKenzie, about timing. Whereas the Statement is correct to say that big insolvencies happen infrequently, when they do happen they strike at the confidence among employees about occupational pension savings altogether. I hope the Minister shares the House's concern about the indirect impact this may have on auto-enrolment. As the Minister knows, some important steps are being introduced in the next phase of auto-enrolment in the near future but, if there is a White Paper in March, it may be 2020 or 2021 before the regulations are available to regulators, auditors and others. Will the Minister undertake to do everything in her power to push forward proper and sensible consideration of the regulations to be introduced, with as much dispatch as it is possible to muster?

Baroness Buscombe: I thank the noble Lord for his question. I share his concerns about the direct impact this might have on those who have pension plans and on those who are retired and in receipt of their pensions. Our drive on auto-enrolment has been extremely successful thus far. More than 9 million people have enrolled, via the auto-enrolment scheme, up to the end of last year. We will push this issue with as much dispatch as is sensible. Having said that, at the same time we do not want a knee-jerk reaction. We will publish our White Paper in the spring. We want to be sure that we make the right decisions and do not compromise the established, robust and, to a large extent, successful scheme that exists for the current powers of the Pensions Regulator. Yes, we must do all that we can. I am pleased to say that, as I speak, colleagues in another place are now debating the Second Reading of the single financial guidance body Bill, which I hope will support giving people advice and good counsel. The Pensions Advisory Service and others are already working on the Carillion issue. We are looking all the time to improve the system, to reassure people and to give them good advice and guidance on their pensions. We will legislate to do the right thing as soon as we can.

Lord Cotter (LD): I am a non-expert in the field—a member of the public, if you like. The Statement talks about a, “significant strengthening of the deterrent”,

and states that,

“employers have failed to take account of the scheme”.

As an outsider, I am concerned about those two important aspects of the Statement.

Baroness Buscombe: I agree with the noble Lord. It is important that we strengthen the deterrent to the best of our ability. That will be a signal to the behaviour of those who are charged with the responsibility of protecting the interests of their employees with regard to pension schemes. We must do all we can to reassure them. That said, it is important to emphasise that the system is—and must be—independent of government. There is a limit to what we can do to ensure that the right thing is done once the framework is in place. Indeed, I think that noble Lords opposite will agree that the introduction of the Pension Protection Fund in 2004 has gone a long way to reassuring people and has been incredibly effective in protecting people's pensions, both current and into the future. But in response to the Carillion case, we take seriously the need to do what we can to improve or increase the deterrent. However, we must do that with care so as not to fetter the ability of business to be a successful, effective and important part of building our economy.

Financial Assistance Scheme (Increased Cap for Long Service) Regulations 2018

Motion to Approve

6.10 pm

Moved by Baroness Buscombe

That the draft Regulations laid before the House on 18 December 2017 be approved.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, these regulations will increase assistance payments for members of the Financial Assistance Scheme who may have been disproportionately affected by the cap on the amount of assistance payable to an individual member under the scheme. The cap is set at age 65 and is currently £34,229, reduced if a member opts to receive their assistance early. The cap helps to limit the costs of the Financial Assistance Scheme, which is funded by general taxation.

Individuals accrue high pensions for two reasons. Some were high earners, in which case they have generally had opportunities to secure alternative savings for retirement. Others have worked for a significant proportion of their working life to build up a pension with their employer and, consequently, may have little or no other private pension savings to offset against the shortfall between the capped assistance and what they had expected from the scheme. This change will benefit the second group of people.

Plainly put, these regulations will make changes to legislation to increase the current Financial Assistance Scheme cap for those with long service in a single eligible pension scheme. The provisions increase the cap by 3% for each full year of pensionable service over 20 years, subject to a new maximum of double the standard Financial Assistance Scheme cap. The

new provisions will ensure that Financial Assistance Scheme members with long service will receive assistance which reflects a higher proportion of their accrued pension benefits.

It is estimated that 290 FAS members will benefit from the introduction of the regulations over the lifetime of the Financial Assistance Scheme. Although that is not many people, it is a significant proportion of the 500 people estimated to be affected by the cap. The change is expected to be widely welcomed by Financial Assistance Scheme members with long service, and their families.

Around £1.5 trillion is held under management in defined benefit pension schemes, which helps to fuel the UK economy through investment in UK government bonds, corporate bonds and equities. The pensions provided by these schemes are on average £7,000 per annum, which can be a vital source of income for around 11 million current and future pensioners. The majority of nearly 6,000 defined benefit pension schemes are run effectively, and we are fortunate to have a robust and flexible system of pension regulation in the UK. However, recent events affecting a number of high-profile schemes have shown that, while a robust system is in place, schemes can fail, and it was right to implement the regime of pension protection provided by the Financial Assistance Scheme and the Pension Protection Fund.

The Pension Protection Fund provides compensation for pension scheme members whose employer became insolvent on or after 6 April 2005; the Financial Assistance Scheme provides assistance to members of schemes that started to wind up before that date. From its commencement, the Financial Assistance Scheme was criticised for providing less generous support than the Pension Protection Fund. However significant improvements have been made to the scheme by successive Governments.

On 6 April 2017, provisions for a long service cap were implemented in the Pension Protection Fund, and these regulations introduce a similar long service cap to the Financial Assistance Scheme. We estimate that the long service cap will increase the overall cost of the Financial Assistance Scheme payments by approximately £1.2 million per year in the first eight years before starting to slowly decrease over the following years. Unlike the Pension Protection Fund, which is funded by the residual assets topped up by a levy on pension schemes, the Financial Assistance Scheme is funded by general taxation.

6.15 pm

The introduction of the increased Financial Assistance Scheme cap for long service gives rise to one-off administrative costs for the Financial Assistance Scheme, estimated in the Explanatory Memorandum to be between £500,000 and £700,000, but I am glad to say that the current cost estimate has fallen to £400,000. While the costs may seem high for the benefit of relatively few scheme members, there is a great deal of work to do to go back through records and identify the relevant members and their data. We believe the cost is justified because the long service cap is the right thing to do.

In conclusion, we remain committed to the principle of providing protection for members of pension schemes in the event of employer insolvency. The Government have listened carefully to stakeholders and the pension industry, and these regulations show that we are meeting our commitment to protect pension scheme members and make reforms where necessary. In my view, the provisions of the Financial Assistance Scheme (Increased Cap for Long Service) Regulations 2018 are compatible with the convention rights. I commend these regulations to the House.

Lord McKenzie of Luton (Lab): My Lords, I thank the noble Baroness, Lady Buscombe, for her clear introduction to these regulations. As we have heard, they will amend the legislation to allow the Financial Assistance Scheme to pay a higher amount of assistance to capped FAS members who have long service in a single pension scheme. They allow an increase in the cap by 3% for each year of pensionable service over 20 years up to a maximum of double the standard cap. This is in addition to the inflationary increase in the amount of the cap. As we have heard, a parallel change has been made to the PPF, although not by the use of regulations, with effect from April 2017 in line with the policy to align the two systems and following a government Statement on 15 September 2016.

FAS and its follow-up, the PPF, have been important mechanisms—I think this is a view that we share—to improve confidence in defined benefit schemes. They protect some 11 million in the UK who belong to such schemes. For FAS to be involved, a scheme must have commenced wind-up between 1 January 1997 and 6 April 2005; after these dates, individuals would look to the PPF. We introduced these schemes when in government and continue to support them.

FAS would generally meet 100% of entitlement for those having reached retirement age when wind-up commences; for those who have not done so, members would generally receive 90% of the expected pension accrued at the point that the scheme began to wind up, subject, of course, to the cap. From recollection, the expected and actual pension amounts for these purposes would not always coincide with scheme definitions. Could the Minister comment on how they might diverge at the current point?

Notwithstanding the 6 April 2005 date, we know that there can be a considerable lead time between commencement of wind-up assessment and entry into FAS. According to the most recent accounts—the Minister might be able to confirm this—in the year to 31 March 2016 there were still some 23 schemes that completed wind-up, with a total of £141 million of assets transferred to the Government. Incidentally, could the Minister remind us how the receipt of scheme assets, employer contributions and FAS payments are dealt with in the government accounts?

As we have heard, the PPF took over responsibility for the management of FAS in 2009. By the end of 2015-16, it had completed the transition of 1,027 schemes, with 155,000 individuals entitled to FAS assistance. This is an impressive level of support, without which thousands of individuals would have received or be entitled to little or nothing at retirement. At a time when we are debating in general the merits or otherwise

[LORD MCKENZIE OF LUTON]

of outsourcing, FAS is a worthy example of the state stepping in to support failures of private pension provision.

It was announced that, in 2016, FAS would be closed to new applications. While this would keep the scheme open some 10 years longer than originally planned, have the Government made any assessment of the number of individuals who would lose out as a result of such a decision and what the Government's saving would be? Failure to access FAS might be laid at the door of trustees or scheme administrators, but any loss would be suffered by members. Is that fair? Would failure to seek access to FAS cause any restriction on access to social security benefits?

We have seen a copy of the Government's response to the consultation on the increased cap proposals. One issue arising is whether there should be a definition in the regulations of pensionable service, as it would help avoid confusion where service was under another scheme and would be disallowed. The Government say that they are content to rely on information from trustees about pensionable service based on the definition of pensionable service contained in individual scheme rules, but one bugbear of the scheme, at least initially, was the poor quality of some of the data held by various schemes. What is the current situation in this regard, and what confidence is there across the board that scheme data are now more robust? In how many cases has the FAS scheme manager had to issue guidance to individual schemes, and on what points?

It seems that, despite the original intent, periods of service accrued in a member's own right are to be aggregated with those arising under pension credit arrangements in determining long service. We do not oppose this, but, for the record, perhaps the Minister would expand on the potential stumbling block referred to in the documentation should the alternative position have been adopted. Further, we support the potential inclusion in the long service cap of those in receipt of a survivor's pension but who do not have any pensionable service of their own.

The Explanatory Memorandum draws attention to the reference to the European Court of Justice in the case of *Grenville Hampshire*. This is a matter engaging EEC directive 80/987 and whether in the event of an insolvency every employee should, *inter alia*, receive no less than 50% of their expected pension benefits. From recollection, this matter has been around for a little while. Perhaps the Minister would update the House on the current state of affairs. The risk would be where the current cap is in play and would, I presume, be ameliorated by these regulations. Should the Secretary of State or the board of PPF not prevail, what are the consequences?

The caps on both FAS and the PPF were a mechanism to limit costs and to guard against excessive risk-taking, the latter potentially arising where decisions could risk insolvency of a company where there was no chance of a diminution in executive pensions because they would be wholly underwritten by FAS or the PPF—that is, the moral hazard position. In amending this approach, we are asked by the Minister to recognise the unfairness for those whose long service has been in a single pension scheme and where, without raising the cap by

length of service, they would be in no better position than someone with equivalent pension entitlement levels but who could secure additional benefits in a new scheme. We recognise that position.

It is noted that no impact assessment is offered for these regulations, although reference is made to the impact assessment for the Pensions Act 2014. Will the Minister say why no such assessment has been prepared, particularly given that, for FAS, after asset transfers and recovery the net cost is met by the public purse? Under PPF, it is met by the levy on other DB schemes. A phone call to officials suggested an annual cost of £1.2 million a year—indeed, the noble Baroness confirmed that figure—and that some 290 members would benefit. Given the stop on further FAS transfers, this is a finite population. Other things being equal, we might question whether this is a priority at the present time, but alignment with PPF, prior deliberations and fairness lead us not to oppose but to support these provisions.

Having recognised the principle, the question arises as to the quantum of the relaxation—in other words, the 3% for each full year of pensionable service over 20 years, subject to the limit of double the standard cap. Will the Minister remind us of the basis on which this 3% is computed? It should be noted that, for the PPF, the increased cap for long service could increase levy payments by some £139 million in the period to 2030. Will the Minister tell us how many recipients are likely to be involved over that period?

These regs are about FAS, but we should not let the moment pass without making a general point about the pensions environment and the PPF. Not only has it to deal with BHS but, as the result of last week's events, also Carillion. It is to be welcomed that the PPF is in robust health, with, I think, £4.1 billion in reserve, but there is obviously a limit to the strain it can take. Subject to all this, I support the regulations.

Lord Jones (Lab): My Lords, like my noble friend at the Dispatch Box, the Minister is a master of detail and I thank her for her helpful introduction. However, since they refer to Wales as well as the rest of Britain, have these draft regulations any relevance to the steel-workers of Port Talbot at the previous Tata company? Indeed, do they in any way impinge upon the pensions entitlement of the remnant of the steel industry across Britain? It is not that one expects steel pensions to be sky-high, which the cap might anticipate. If the Minister can in any way make reference to the beleaguered steel industry, and in particular those steel-workers in the great Port Talbot works who are very anxious about their pensions, that would be helpful.

Baroness Altmann (Con): My Lords, I congratulate the Government on introducing these very important regulations. I spent years of my life helping the victims of failed pension schemes under the previous system, which had no insurance protection for lost pensions, despite the workers in those schemes having part of their state pension and their entire private pension savings included in their pension scheme as they were not allowed to have any other pension savings. Having been assured by the Government that their pensions were safe and protected by law, they found that it

turned out that they could lose their entire pension. Indeed, many of them did, including steel-workers in south Wales at the time.

It is 10 years since the Financial Assistance Scheme was extended to mirror the Pension Protection Fund. It took a parliamentary ombudsman inquiry, a Public Administration Select Committee inquiry and then a case in the High Court, followed by a case in the Court of Appeal—where the victims were forced to take the then Government to court—to ensure that the Financial Assistance Scheme, which at the time was designed to help only a few of those who had lost their pensions and to replace only a small portion of the pensions they had lost, was extended to mirror the PPF. As the noble Lord, Lord McKenzie, rightly said, it is only right that the continued mirroring of the scheme should be followed, and having extended the Pension Protection Fund cap, it is essential that the Financial Assistance Scheme cap must also be increased. I congratulate the Government on doing so.

6.30 pm

With great respect, I remind my noble friend that this is not just funded by taxation. The assets from the failed schemes which had not already been committed to annuitisation have all been passed to the Treasury, and the DWP budget has to bear the cost of the ongoing funding for the Financial Assistance Scheme.

I also congratulate the Pension Protection Fund on taking over the administration and on its robust management of the Financial Assistance Scheme and, indeed, of the Pension Protection Fund itself. Given the news of the Carillion situation, this is a timely reminder of how important our system of pension protection and insurance for failed pension schemes is, compared to the dreadful situation that existed in this country not that long ago. We just had the 10th anniversary of the extension of the Financial Assistance Scheme to mirror the PPF. I support these regulations.

Lord Kirkwood of Kirkhope (LD): My Lords, it is a pleasure to follow the noble Baroness, Lady Altmann, who has devoted her lifetime to working in this area. It is much to the benefit of the House that she is able to contribute to these debates. I agree with much of what has just been said, both by her and by the noble Lord, Lord McKenzie.

These regulations are welcome as far as they go. I agree strongly with the parity position the Government have taken between the PPF and the Financial Assistance Scheme. That makes me ask why there has been this delay in getting this statutory instrument brought forward, because last year we dealt with the PPF in a similar set of regulations, and I cannot understand why the two sets of regulations were not done at once. That might sound nit-picking, but it is symptomatic of the way the Financial Assistance Scheme can be treated as a poor relation of the PPF rather than as having full parity.

I declare an interest, although it is with a small “i”, because I am a member of the Secondary Legislation Scrutiny Committee, which looked at these regulations quite carefully. We got some assistance from the DWP, for which we are grateful, and the responses now appear in appendix 3 of the committee’s 15th report.

A number of questions were raised when the committee looked at this issue. The noble Lord, Lord McKenzie, mentioned it, but although the Hampshire case has been going on for a long while and is now in the Court of Appeal and subject to the European Court of Justice, it has a bearing on this. We are entitled, at the very least, to an update on where the Government are. I know that the matter has been referred by the Court of Appeal for some further advice to the court in Europe, but the implications for these regulations would be quite direct and could be dramatic. It is therefore only right that the House should ask for what further update is available to the Minister this evening.

I will also ask some questions about the administrative costs. It is music to my ears that the costs of the IT system that is being introduced have been cut by nearly half—except I wish I believed that that happened in the real world. If we are talking about 290 continuing members—it is essential financial support for them—and the total cost of the scheme is £1.2 million a year for the next eight years or thereabouts, the Scotsman in me thinks, “Is there not a cheaper way of doing this?”. We are spending a lot of administrative money which might be made available to the 290 members currently in receipt of support from the FAS.

With the help of some clever actuaries—who do exist, and can come up with creative solutions—I wonder whether, in a closed scheme, some of the liabilities that the FAS has taken on could not be capitalised to the advantage of the members of the scheme. I see the noble Baroness, Lady Altmann, who I call my noble friend, having a long look down her nose at that suggestion. That may conceivably not be possible but my point is that we have a lot of administrative work in taking these liabilities seriously, as we should. But does common sense not give us an opportunity to look at a cleaner, long-term way? It might mean a payment up front to deal with it but we could then close the book on a full and final settlement, which would be to everyone’s advantage.

The proposal is that the DWP will have to bring in these uprating orders for the FAS of plus 3%, or whatever it is, for the next eight to 10 years. I do not understand why they are not valorised in some way to CPI. I know that some elements of it are but it seems something of an administrative sledgehammer to crack a nut to go through regulations to do this, when it is obvious that it is in parallel with the PPF scheme. We all know what is going on. Why is it not automatic and set at a rate that everybody understands, to prevent us having to do this in future?

Finally, on a powerful point made by the noble Lord, Lord McKenzie, in my experience, when there are requests for information on which some of these calculations are made, the data that some pension trustees produce are dodgy if not fake. The Government need to be careful that they address that problem properly because, if they do not, inaccurate calculations are being made in a way that could prejudice the members of the scheme, who are not in a financially advantageous position. It is in everyone’s interest to make sure that they get what is due to them. Having said all that, I am happy to join others in supporting these regulations.

Baroness Buscombe: My Lords, I thank all noble Lords who have taken part in this brief debate. What I sense is a general welcome for these regulations. I shall do my utmost to try to respond to a number of questions that were put forward, particularly by the noble Lord, Lord McKenzie. I am not sure whether my pen could work fast enough for me to respond to all the questions and if there is anything I leave out, which I suspect there may be, I will endeavour to write to all noble Lords to fill in the detail.

Perhaps I may reiterate that the important thing about the regulations is responding to the policy, which, importantly, is to treat members of the Pension Protection Fund and the Financial Assistance Scheme as consistently as possible, where possible. The long-service cap for the Pension Protection Fund came into force on 6 April 2017. These regulations will introduce an equivalent long-service cap for the Financial Assistance Scheme. This cap applies to any pension that is in payment or will be paid. For example, if a member's pension from their scheme was £39,000 a year and that scheme could not pay anything, the Financial Assistance Scheme would work out as 90% of that £39,000, which is £35,100. As the Financial Assistance Scheme cannot pay more than the cap amount which applies to the member, the member in this example would receive £34,229.

Following the introduction of the long service cap, Financial Assistance Scheme members will have their cap increased by 3% for each full year of pensionable service above 20 years when they first become entitled to payments from the Financial Assistance Scheme, subject to a new maximum of double the standard cap. Only a full year of pensionable service will be counted. Part years will not be included in the calculation.

The increase is applied to the cap amount in place for the member at the time assistance is first put into payment. The increase is not backdated and takes effect from the member's first payday on or after the regulations come into force, currently expected to be implemented on 6 April 2018. From 1 April 2018, the basic cap amount will be increased to £35,256.

In response to the noble Lord, Lord McKenzie, it is important to emphasise that all members of the Financial Assistance Scheme will receive 90% of the maximum, while PPF members who are already in retirement will receive 100%. The assistance is calculated differently.

I was asked to comment on the difference between actual and expected pensions. The Financial Assistance Scheme is not intended to meet all pension costs; it is 90% of pension costs subject to the cap. I will write to the noble Lord to give some detail on the difference between actual and expected pensions.

I hear what my noble friend Lady Altman says about the assets of an insolvent company being passed to the Pension Protection Fund, which administers both schemes, but the Financial Assistance Scheme is funded through general taxation. The long service cap will increase the overall cost of Financial Assistance Scheme payments by approximately £1.2 million a year in the first eight years before starting to decrease slowly. The actual costs will depend on a number of factors, including pensioner deaths and the fact that the Financial Assistance Scheme closed to new schemes in September 2016. The actual costs in future years

may be lower than the £1.2 million quoted. The Financial Assistance Scheme has paid £1.1 billion to March 2017. The assets are passed to the PPF.

The noble Lord, Lord McKenzie, asked why 3% was chosen as the escalation amount. It was chosen because we believe it is sufficient to lift a substantial number of the target group out of the compensation cap entirely, while still being affordable for the taxpayer. Lower percentages did not achieve this outcome. Of the 500 people affected by the cap, 290 will benefit from this measure.

On the Hampshire legal challenge going to the Court of Justice of the European Union, the noble Lord, Lord Kirkwood, is correct. A hearing in the European Court of Justice is set for 8 March 2018. For the benefit of all noble Lords, this legal challenge by Mr Hampshire contends that article 8 of the EU insolvency directive requires the UK to ensure that every pension scheme member gets at least 50% of their accrued benefits in the event of the insolvency of the sponsoring employer.

It is possible for the capped amount of compensation or assistance to be less than 50% of the member's accrued pension, for example where a member has a large pension due to a high salary and/or long service within the same pension scheme. However, we believe the numbers affected to be very low. Only around 400 PPF and 500 FAS members are currently affected by the cap, which represents around 0.3% of the total membership of both schemes as at April 2017. We estimate that a very small proportion of these capped members are not receiving at least 50% of their accrued pension, and the increased FAS cap for long service will further reduce the number of members affected.

6.45 pm

The Government's concerns regarding the position for which Mr Hampshire argues relate to both the potential costs and the undermining of the principle of the cap. The impact on government, the PPF and pension schemes more generally in the event of an adverse decision would depend on the precise terms of the judgment, but the implications are likely to be significant. Even with relatively few scheme members affected, any requirement to ensure that every member of every scheme receives no less than 50% of their original scheme entitlement could, depending on the terms of the judgment and the nature of any legislative changes made in response, significantly increase the costs for both the FAS, which is funded by the taxpayer, and the PPF, which is funded via a levy on eligible pension schemes. We await judgment in the case in due course, and of course the Government will carefully consider it.

The noble Lord, Lord McKenzie, asked about poor data from FAS and how many times FAS schemes have had to issue guidance. I regret to say I do not have that information to hand, but I will write to noble Lords to confirm it. The noble Lord also asked why no impact assessment was prepared for the FAS long-service cap regulations. An impact assessment was completed on the policy in preparation for the Pensions Act 2014. As for what other compensation cap options the Government considered, we considered doing nothing, treating the FAS members as early retirees and paying

100% of the pension, reducing the actuarial reduction for early retirees, raising the cap for all, and finally providing a specified minimum per cent of the original pension accrued. However, having a compensation cap that rises according to length of service was the chosen option: 20 years and a 3% increase for each full year of service were selected.

The noble Lord, Lord Jones, asked about the impact on British Steel. There is no impact: these regulations do not impact on Tata or British Steel. The noble Lord, Lord McKenzie, also asked about the schemes left to transfer. FAS applies only to pension scheme members whose employers became insolvent before the existence of the PPF in April 2005, so the 2016 deadline still gave more than 10 years to transfer into FAS, which I hope noble Lords will agree is some considerable time.

Lord McKenzie of Luton: What struck me when I looked at the data was that for the last year, up to March 2016, there were still some 23 schemes transferred into FAS, notwithstanding that it was 10 years or more since the obligation to commence winding up. If I understand correctly and there were 23 schemes for that period, how many were left out of the subsequent period and have been chopped off? This is particularly an issue if the failure—if it is a failure—to pick up that detail was with the trustees or the scheme administrator, because the consequence would fall on the individual member of the scheme.

Baroness Buscombe: I understand the question posed by the noble Lord; indeed, when I was discussing this with officials, I was amazed that it took 10 years. To begin with, I could not understand why the scheme closed to new entrants as late as 2016. I cannot say whether the figure of 23 schemes is correct for the final year but I will check and respond to the noble Lord; I shall seek to find out how many were left out and how many individuals might thereby have lost out. I also have a little more information regarding Tata: because this provision applies to schemes wound up before 2005, it is relevant not to Tata but to the PPF scheme.

The noble Lord, Lord Kirkwood, asked why the Government have taken so long to introduce the long service cap. There have been significant reforms to pension legislation over the last few years, and the introduction of the FAS long service cap is the latest change in a programme of work to treat members of the FAS and PPF schemes more consistently. I hope the noble Lord will accept that pension legislation is complex. It was important that we consulted on draft FAS long service cap regulations to ensure that the legislation operated as intended and did not have any unintended consequences. As a result, December 2017 was the earliest that we could lay the regulations. I appreciate that members of the FAS will be frustrated by the perceived delay but we had a legal obligation to consult on the regulations. The public consultation helpfully identified some small changes that were required to ensure that the regulations operate as intended for eligible FAS members.

We also had to ensure—I think this brings us on to the next question posed by the noble Lord—that the costs were proportionate and to structure the long

service cap to ensure that no further costs would be incurred. The noble Lord was very concerned about the administrative cost. I share that concern; it seems like an enormous amount of money for the relatively few people affected. At least I can confirm that the costs are less than had first been forecast. It would be fair to say from the department's perspective that we are continually looking at where costs can be kept to a minimum, not least because those costs fall on the taxpayer.

While in the past there has been much criticism and scepticism around the introduction of digital systems to support more effective, efficient and cost-effective systems for the administration of such schemes, it is fair to say that systems are proving more robust as technology advances and becomes more understood by users. However, it is incumbent on all of us to keep an eye on that in terms of ensuring that we do all that we can to reduce costs. The trouble is that we are talking about checking records of individuals. That takes time and sometimes it is easier to do manually for such a small number of people. I accept the noble Lord's point: in some ways, one might question whether it is simpler and more cost effective to do it manually. I take very much on board what he has said.

With regard to transaction costs, going on from what I have just said—sorry to string this out—the PPF, which administers the FAS, is currently in-sourcing member data from Capita. The FAS data is currently out of date, incomplete and often paper-based, requiring manual processing and checking, and that is not a one-off cost. We should continue to look at that and encourage those who administer the scheme to do the same, although I am sure they are cognisant of these considerable costs.

The regulations will ensure that individuals who have worked hard for a single employer for many years are not penalised by the cap. This group of savers have built up a large pension pot, not because they are high earners but because they have worked for one employer for the majority of their working lives and, as a result, will not have had the opportunity to secure additional income in retirement.

The decision to increase the total amount of assistance that this group can receive has not been taken lightly, as the Financial Assistance Scheme is funded by the taxpayer. As my noble friend Lady Altmann said, a considerable amount of consultation, lobbying, and so on, was undertaken to encourage the Government to introduce the regulations. But to leave the situation unchanged would create an inequitable situation where those with long service in the Pension Protection Fund were treated more favourably than those in the Financial Assistance Scheme and break our commitment made in another place on 15 September 2016.

I reassure all noble Lords that no new funding commitments have been or will be made in respect of the scheme. Since 2005, employer insolvencies have fallen under the jurisdiction of the Pension Protection Fund. Unlike the Financial Assistance Scheme, the Pension Protection Fund is mainly funded by an industry levy and is therefore not reliant on the public purse.

I believe that the correct balance has been struck between securing meaningful income in retirement for members compensated by the Financial Assistance

[BARONESS BUSCOMBE]

Scheme and the cost to the taxpayer. I have outlined in detail the issues that the regulations will address and why the Government have decided to act. Now is the right time to correct this problem, and I ask that the Motion be approved.

Motion agreed.

Armed Forces Act 2006 (Amendment of Schedule 2) Order 2017

Motion to Approve

6.56 pm

Moved by Earl Howe

That the draft Order laid before the House on 29 November 2017 be approved.

The Minister of State, Ministry of Defence (Earl Howe)

(Con): My Lords, the instrument that we are considering today is the Armed Forces Act 2006 (Amendment of Schedule 2) Order 2017.

The Armed Forces Act 2006 established a single system of service law that applies to the personnel of all three services, wherever in the world they are operating. The Act provides nearly all the provisions for the existence of a system for the Armed Forces of command, discipline and justice. It covers matters such as offences, the powers of the service police, and the jurisdiction and powers of commanding officers and of the service courts, in particular the courts martial.

The draft instrument amends Schedule 2 to the 2006 Act. Schedule 2 lists serious service offences to which special rules on investigation and charging apply. The offences listed in that schedule are commonly referred to as Schedule 2 offences. They include serious disciplinary offences, such as mutiny and desertion, and serious criminal offences, such as murder, manslaughter and certain sexual offences.

The 2006 Act imposes a special duty on commanding officers with respect to the investigation of allegations of Schedule 2 offences and of circumstances which indicate that a Schedule 2 offence may have been committed by someone under their command. Under Section 113 of the 2006 Act, a commanding officer who becomes aware of such allegations or circumstances must ensure that the service police are aware of them as soon as reasonably practicable.

The Act also imposes a duty on members of the service police forces with respect to the investigation of Schedule 2 cases. Under Section 116 of the 2006 Act, the service police must refer a case to the Director Service Prosecutions if they consider that there is sufficient evidence to charge a person with a Schedule 2 offence. The offences listed in Schedule 2 include all offences under Part 1 of the Sexual Offences Act 2003, except: sexual assault, voyeurism, exposure and sexual activity in a public lavatory.

There has been much debate in recent years about whether these four offences should be listed in Schedule 2. Indeed, this House was instrumental in making the case for change. At the heart of those debates was the question of whether a commanding officer should have a role in the investigation of any allegations or

circumstances which would indicate to a reasonable person that one of these offences has, or may have been, committed by a person under their command.

For the avoidance of doubt, I want to make clear what the Armed Forces Act 2006 requires of a commanding officer who becomes aware of allegations or circumstances which indicate that a service offence other than a Schedule 2 offence has or may have been committed. The commanding officer may ensure that, as soon as reasonably practicable, the matter is reported to the service police. Alternatively, he or she may ensure that the matter is appropriately investigated. An investigation other than by the service police will in some cases be appropriate because service offences include all offences which may be committed by service personnel under the 2006 Act, including the less serious disciplinary offences.

7 pm

The *Manual of Service Law* gives special guidance to commanding officers about allegations of the four offences to which I have referred—sexual assault, voyeurism, exposure and sexual activity in a public lavatory. The manual requires that a commanding officer who becomes aware of an allegation of one of these offences must take legal advice on whether it would be appropriate to call in the service police. Access to such legal advice is available 24 hours a day, seven days a week. The manual also makes it clear that there is a presumption that allegations of such offences will normally be reported to the service police, and the Armed Forces have policies in place which require all allegations of sexual offences to be referred to the service police. So it will rarely be appropriate for the commanding officer not to report an allegation of sexual assault to the service police.

I recall, however, the strength of feeling with which noble Lords argued, during the passage of the Armed Forces Act 2016, that our existing policies and procedures did not go far enough. Recognising the importance of this issue, the Government decided that the time was right to take a fresh look at whether the four offences to which I have referred should be listed in Schedule 2. That review happened and the then Minister for Defence Veterans, Reserves and Personnel announced in November 2016 that the offences of sexual assault, voyeurism and exposure should be included in Schedule 2 to the Armed Forces Act 2006. This will mean that a commanding officer who becomes aware of an allegation or circumstances which indicate that any of these offences has or may have been committed must refer the matter to the service police.

As I have said, this happens already as a matter of policy, but the instrument we are considering today will ensure that it must happen as a matter of law. I am sure noble Lords will welcome this change. Perceptions about how we fulfil our obligations are just as important as the mechanisms we actually have in place to do so. We recognise the great courage it takes to come forward and report a sexual offence, which is precisely why the Armed Forces have extensive support in place for those affected. Steps are being taken to provide better education. Helplines, awareness campaigns and training presentations around sexual consent are helping to ensure that service personnel know how to report

concerns and what support is available to them. It is therefore right that the Government have listened to the concerns of Parliament and others to make sexual assault, exposure and voyeurism Schedule 2 offences.

For completeness, I should also say something about the fourth offence to which I referred earlier. The offence of sexual activity in a public lavatory is a public order offence which covers a very wide range of activity, including consensual activity. It also applies only to activity in a lavatory to which the public have access and therefore it is likely to be prosecuted as a civilian offence, not a service offence. For these reasons, we do not believe that it would be appropriate to add the offence of sexual activity in a public lavatory to Schedule 2.

In conclusion, we are continually looking for ways to enhance our processes and to make sure that the service justice system continues to be relevant and as effective as it can be. The order that we are considering today contributes to that effort. I beg to move.

Lord Tunnicliffe (Lab): My Lords, I have considered the Motion and concluded that this is almost a tidying-up order that is compatible with public opinion. I was convinced of its value before I heard the Minister, and he failed to unconvince me. So I have just a couple of questions, and to some extent he has answered them.

On service law instruments, I always worry about the level of consultation. When one reads what the consultation has been, it seems—how can I put it?—top-heavy. Clearly, many heads have been consulted. I have two questions. One is about the extent of consultation in the chain of command. Are commanding officers seeing in this change any problems that have not been brought out in the Explanatory Memorandum? Secondly, with service law there is always a question about the extent to which the service personnel concerned have been consulted. We know about the very atmosphere of the military. There are no trade unions or consultative systems. I wonder whether the Government should think more about this area. At the end of the day, this piece of law is about how day-to-day soldiers, sailors and airmen behave towards one another.

Finally—perhaps this has been partially answered—the issue of sexual assault now has more saliency, which has the benefit that people have a higher propensity to report it, with the result that, for those who commit these offences, there is a higher likelihood of punishment under the law. But the object of the exercise is not to have the offences in the first place. That seems to go to the other side of the equation. The Minister talked about making sure that personnel were advised of their rights. We know that the complex area of sexual behaviour can vary between President Trump's definition of what is not a sexual assault through to the more modern attitude that our young people in the forces are likely to have. As part of the ongoing relationship with our service personnel, is there training, first, in what service law says on the matter, and, secondly, in what I call the almost ethical issues behind sexual behaviour, and in particular the concept of mutual respect? If one could create an overall atmosphere of mutual respect among individuals, where they think more about the impact of their behaviour on others, it would be helpful in every way in service life, and

would be particularly helpful in this area. With those very minor comments, we on this side support the order.

Lord Thomas of Gresford (LD): My Lords, I give a very hearty welcome to this statutory instrument. It follows on from our debates in Committee and on Report on what became the Armed Forces Act 2016—and, in particular, on an amendment moved by the noble Lord, Lord Touhig, and my noble friend Lady Jolly. I, too, spoke in that debate. At that point the Minister was not prepared to accept the amendment because he said that the wide ambit of the concept of sexual assault could even include putting your arm around someone's shoulders. However, he told us that the Service Justice Board was taking a fresh view in light of the arguments and concerns expressed by outside bodies, including in particular Liberty. This is the excellent result.

Military life has its own constraints: there is a very enclosed, if important, society within the Armed Forces. There is an atmosphere in which people do not want to make complaints. As a result, there is a reluctance to complain of and report offences of this nature. It is interesting to look at the American experience. Some noble Lords may recall that I spoke of an inquiry about the CO's role in military justice in the United States. I gave evidence in September 2013 at a Department of Defense hearing in Washington on what the law was in this country. It was a privilege at that time to hear Senator Kirsten Gillibrand, the junior senator for New York, give evidence. She has been engaged in a campaign to remove military commanders from prosecuting decisions in the United States, as they have been in serious offences in this country. Although she was not successful at that time, she has pursued the matter and brought forward a number of Acts to Congress. Although the Military Justice Improvement Act has bipartisan support, it has been filibustered out of Congress twice. However, she is still pursuing the matter. Her description of the Act is worth quoting because it highlights the problem:

"The carefully crafted Military Justice Improvement Act is designed to professionalize how the military prosecutes serious crimes like sexual assault, and to remove the systemic fear that survivors of military sexual assault describe in deciding whether to report the crimes committed against them. Repeated testimony from survivors and former commanders says that the widespread reluctance on the part of survivors to come forward and report is due to the bias and inherent conflicts of interest posed by the military chain of command's sole decision-making power over whether cases move forward to a trial".

She very much looks to the British example and the way we handle it in this country and points out that, in the most recent report in America, 6,000 sexual assaults were reported in the military, which was thought to be only 30% of all assaults committed. Importantly, 60% of the people who made those 30% of reports complained of further retaliation and reprisal after their complaint was made. It is important that we are aware in this country of the possibility of reprisal and retaliation within that closed community. One has only to think of the tragic case of Anne-Marie Ellement, who committed suicide after charges she brought against two members of the Military Police were dismissed, because of the bullying she received for having made the complaint in the first place. I am sure things have

[LORD THOMAS OF GRESFORD]

improved, but this is an important matter that I hope the Minister and the Ministry of Defence in this country will think about.

Another matter discussed while the Bill was going through in 2016 was the production of statistics. That has been followed through, as the Minister promised at the time, and we see from the statistics produced that there were 104 investigations in 2016. I am sure that is only a tiny minority of the actual assaults that have taken place. Again, this is because of the atmosphere that prevents reporting within the military community.

So far as the United States is concerned, only 9% of the 6,000 complaints of assault led to a conviction. Indeed, Senator Gillibrand concluded that a victim was 12 times more likely to suffer retaliation and reprisal than to see the person about whom they had complained convicted. I hope that is not the position in this country. The importance of dealing with sexual assaults is very much at the forefront of life today. In the military context, it is very important from the point of view of recruiting and retaining military personnel. I am very grateful to the Minister and to the Government for taking this important step in this statutory instrument.

7.15 pm

Lord Lea of Crondall (Lab): My Lords, I pick up a point arising from the two speeches from these Benches and the Liberal Democrat Benches respectively. It is a long time since I did my two years' national service, but I was for 35 years after that a trade union official. I pick up a point made by my noble friend Lord Tunnicliffe—namely, the services should reflect that in some respects service life is becoming more like civilian life, and is not just in a separate silo. For example, a lot of people deal with technical work, sitting in front of computers like everybody else. The long-standing civilian arrangements, which include a mandatory grievance procedure on the one side and a disciplinary procedure on the other, may be applicable to service personnel on a charge. Having been on a charge, I add that little twist to the matter. It is interesting to note the cultural changes that have occurred in the services. Women now hold senior ranks. I do not know what the most senior rank is that is held by a woman. For example, I do not know whether there is a female general, but women hold very senior ranks, including that of commanding officer. It would be interesting to get some feedback on how much the culture in the services has changed. Formerly, in any consultation where a parliamentarian was present, a senior officer would say, "Private, you agree with that, don't you?", and the reply was, "Yes, sir". The point made by my noble friend Lord Tunnicliffe, and that made in a wider context from the Lib Dem Benches, are pertinent to the change in that culture.

Earl Howe: My Lords, I am very grateful for the continued interest noble Lords have expressed in these matters. Lest there be any doubt, the Government have always made it clear—as have the services themselves—that there is no place for sexual offending in the Armed Forces. We have listened to the concerns raised in this House. I hope noble Lords are reassured

by the steps we are taking today; it is indeed true that the Armed Forces take any allegation of any type of sexual offence very seriously. I noted with interest the comments of the noble Lord, Lord Lea of Crondall, on this subject. He is right: there is no doubt that since he undertook national service there has been a dramatic change of culture in all sorts of ways. One change is that there is now zero tolerance of this type of unacceptable behaviour. As to whether the increasing presence of women and women officers has made a difference in that regard, I would not hazard a guess, but it can only have been a beneficial influence, if there was any such influence from that quarter.

The noble Lord, Lord Tunnicliffe, asked me a number of questions, the first of which was whether we have consulted the service chiefs in drawing up this order. Our proposals to amend Schedule 2 to the 2006 Act have been agreed by the Service Justice Board, which includes the Second Sea Lord, the Deputy Chief of the General Staff and the Air Member for Personnel. The service chiefs collectively are of course absolutely clear that there is no place for sexual offending in the Armed Forces.

As to whether we have consulted the rank and file personnel of the Armed Forces, the answer is: not specifically at ground level. Each of the services is involved in the policy-making process and guidance will be issued by the chain of command to let people know of the changes being made. However, it is important to remind ourselves that the changes that we are making today already happen as a matter of policy—policy which the services themselves introduced.

I think the noble Lord's concern on that aspect of the issue can be addressed in part by the measures that the Armed Forces are taking to prevent sexual allegations and offences arising in the first place—the subject of his third question. I assure him that the Armed Forces are committed to addressing sexual harassment and sexual assault through a range of actions, including awareness campaigns and training presentations around sexual consent. The Chief of the General Staff has made permanent cultural and behavioural change one of his priorities. To that end, there have been poster campaigns and training packages to better educate personnel on social norms, as well as on what is expected of them arising from Armed Forces rules and regulations. The noble Lord, Lord Thomas of Gresford, cited the experience of the United States armed forces in this context.

As regards the potential bias or perception of bias that can arise in cases of this kind, we recognise the great courage that it often takes to come forward and report a sexual offence. To ameliorate the tendency that some would have to refrain from coming forward, we strive to ensure, through training and awareness campaigns, that personnel know how to report any inappropriate behaviour and what will happen should they do so. It is to be hoped that these measures are gaining traction.

As the noble Lord is aware, we publish annual statistics on sexual offences in the service justice system on the GOV.UK website. Statistics are currently available for 2015 and 2016 for cases where the service police have been the lead investigating agency and where the service justice system has retained jurisdiction of a

case throughout. Information for 2017 will be published in the spring. I remind noble Lords that data are drawn from the three main components of the service justice system: the service police dealing with the investigation of a crime; the service prosecution authority dealing with cases referred; and the Military Court Service, which lists the cases and reports on outcomes. Our annual statistics are in accordance with the requirements of the Office for National Statistics.

I hope that covers the questions that noble Lords have put to me.

Motion agreed.

Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2017

Motion to Approve

7.25 pm

Moved by Lord Bates

That the draft Regulations laid before the House on 6 December 2017 be approved.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the statutory instrument that I will discuss today follows the reforms introduced by the Government in 2015 to modernise and streamline the insolvency process. Those reforms were commenced in stages and these regulations cover the application of the 2015 reforms that came into effect in April 2017. The regulations will amend the financial sector insolvency regimes to take account of the April 2017 reforms.

For the benefit of noble Lords I will briefly set out where these regulations fit within the context of general insolvency law. As a starting point, insolvency law is based on the 1986 Insolvency Act which has been amended various times, including by the tranches of Government reforms instigated in 2015. This broader legal framework has been subsequently modified into specific insolvency regimes for different sectors, including for financial services. The insolvency regimes for financial services exist because general insolvency procedures are not always suitable for failed financial institutions. This is because general insolvency law does not necessarily reflect the complex nature of financial institutions and the impact that can arise from their failure.

I will now provide more detail on the 2015 reforms, explaining the genesis of the regulations before the House today. The 2015 reforms resulted in wide-ranging changes to the UK's general insolvency regime, which broadly affected all sectors. These reforms were implemented in several stages: in May 2015, October 2015, April 2016 and the final tranche in April 2017.

The April 2017 reforms did multiple things. First, they removed the default requirement to hold a physical meeting of creditors as the decision-making mechanism in an insolvency proceeding. Instead, a deemed consent procedure has been introduced which allows actions to be taken in an insolvency unless the creditors oppose the action. If 10% or more of creditors object to the proposal then the office holder will use an alternative decision-making process, such as a virtual meeting,

correspondence or electronic voting. These changes remove unnecessary burdens and enable the greater use of technology to reduce the cost of administering insolvency proceedings. Secondly, they enable creditors to opt out of certain notices for both company and individual insolvency. This reform reduces the expense of sending notices for the office holder and similarly reduces for the creditor the expense of dealing with unnecessary and unwanted notices. The regulations before the House today apply the reforms of April 2017 to the specific financial services insolvency regimes where appropriate.

I will now set out further detail on who the regulations will affect. For companies, partnerships or individuals carrying on insurance or other financial activities, the regulations work to align those specific regimes with the April 2017 reforms. By aligning the insolvency proceedings for these kinds of financial firms with the April 2017 reforms, the amended regulations ensure that the benefits of the broader 2015 reforms to UK insolvency law extend to the financial sector.

However, in the case of modified insolvency regimes for financial institutions which are not companies, partnerships or individuals, and specialised regimes such as those for banks and building societies, the regulations do not apply. Instead, the regulations keep the legislation as it was prior to the April 2017 reforms coming into force. Due to the considerable volume of legislation affected by the 2015 reforms, this approach is necessary while the impact of the reforms on these types of institutions is further assessed and decisions are made about their implementation.

These consequential amendments are required to update and maintain consistency in legislation that governs the insolvency regimes for financial sector firms. The Government are committed to improving public and business confidence in the insolvency process. Having clear legislation that governs this process is fundamental in achieving this confidence. I beg to move.

7.30 pm

Baroness Burt of Solihull (LD): My Lords, I am grateful for that thorough and clear explanation by the Minister of what these regulations do. It took me a while to ponder them in order to reach the same kind of conclusion. It seems that everything in the instrument is technical and is required to smooth out the problems that can arise when there is insolvency in relation to financial services. I can understand how the legislation will benefit institutions with many creditors, such as a building society, a mutual or, indeed, a bank.

I have two questions for the Minister. No impact assessment has been produced for the regulations. I would be interested to know the reasons for that because if removal of the requirement for physical creditors' meetings and allowing creditors to opt out of certain notices was explored in the insolvency red tape challenge, surely the conclusion must have been that this would make savings, otherwise why would you do it? Secondly, there are no plans to review these amendments. My question is this: how will the Government know that they have done their job and whether they are working? I have a bit of a bee in my bonnet about that because we should always look back at legislation to see whether it has in fact done

[BARONESS BURT OF SOLIHULL]

its job. To some degree we have built in things like sunset clauses where it is clear that legislation is no longer required. If we are seeking to reduce red tape, I point out that assessing whether our legislation is working is a good way of enabling us not to have any extra red tape. There is plenty of it in HM Treasury, that is absolutely for sure. I would be grateful for the Minister's comments on those points.

Lord Tunncliffe (Lab): My Lords, before I start I should apologise for what is going to be a rather scrappy and rambling speech. The reason for that is that rather lazily I started to look at this instrument only on Saturday, and I have to say that I pretty much regret that I did so. I had great trouble in trying to understand it, particularly the Explanatory Memorandum. Either these regulations are important or they are a trivial tidying-up exercise, but I could not work out which. They seem to centre on meetings and notices. I shall quote from the Explanatory Memorandum:

"insolvency law reforms enacted in sections 122 to 126 of, and Schedule 9 to, the Small Business, Enterprise and Employment Act 2015".

Paragraph 7.4 sets out what the principal changes are. As the Minister said, they concern the removal of physical meetings for creditors and allowing them to opt out of receiving certain notices. That seems unobjectionable until one reads, together with paragraph 7.5, paragraph 7.6:

"This instrument therefore takes a staggered approach to the amendment of the Treasury's financial services legislation, disapplying the reforms for the majority of its special insolvency regimes".

The special insolvency regimes are enormously important. They culminate in the Bank of England's approach to resolution, which is a combination of several Acts. I see the noble Lord, Lord Young, in his place. We have battled over the bits and bobs of these Acts—well, battled is not quite fair, but sought to understand them and how they fit together. Of course, the consequence of the Bank of England's approach is that banks do not become insolvent. They are resolved before that. It is already quite complicated.

I thought, "Well, why don't I break the normal rule and look at the regulations?". It is pretty desperate when you have to look at the regulations because they are, as usual, pretty indecipherable, especially as they run to several pages, despite an apparently simple purpose of disapplying something in a particular place. Since it was so long I thought I would pick on something that I think I know a little about. That took me to page 5 of the regulations on the Banking Act 2009. Regulation 6(3)(a) requires that,

"the entry for section 141, in column 3 at the beginning insert ... 'Ignore the amendment made by paragraph 36 of Schedule 9 to the 2015 Act'".

This is a form of legislation that I have never come across before. I am used to instruments changing the law and so on, but to say to disapply a law, or to read it as though it has not been amended, which is what this says, creates immediate problems. You can get into the Small Business, Enterprise and Employment Act and find out what is to be disappplied, but you then have to try to find what disapplying the Act means. It means going back to the Insolvency Act 1986 to see which particular amendments to that Act were in force before

April came along and it was changed to something that these regulations want to change it back to. I failed. I could get a copy of Section 141 as enacted in 1986 and I could look up the section that now exists until these regulations become active. It proved why I am not a lawyer: while the words are different, I could not find any difference in the meaning.

It seems that the essence of this is: what is the damage if we do not approve? I hope that smiling and shaking of the head from the Minister means that he will write to me rather than try to answer me. I would like an answer to this in writing if the Minister cannot provide it tonight: what damage to the insolvency regime—particularly in the Financial Services and Markets Act 2000, the Banking Act 2009 and the other Acts mentioned in the regulations—would occur if we were not to approve these regulations? If the damage is trivial, that is fair enough. If the damage is that it puts in doubt the working of the special resolution regimes which the Treasury has developed and put into law, it is very serious. If those regimes are seriously damaged, the resolution approach which the Bank of England thinks it has may be at risk

One problem with bank resolution is that it is something that one never does. The trick is for the industry to know about it and think, "That is going to be so painful, we will be careful enough not to get into that position". So we do not have any case law. However, we nearly had some case law: the Co-op Bank was within a whisker of going broke. The resolution regime worked in that the creditors, those who were owed money by the bank, thought that they would get an even worse deal under the resolution regime than by putting together their own deal, so they put their own deal together within hours of the point at which they would have run out of money. The resolution regime therefore worked by virtue of its existence, but is it fatally flawed until we approve this instrument?

If that is the case, it means that the 2015 Act contains a serious flaw, and we need to know how that happened. Was there not proper consultation in developing the Act? I assume that the original parent of the Act was BIS, as it was known then. The developer of the special resolution regimes is the Treasury. It seems to be either some trivial tidying-up or a serious mistake, for which I would look to the Minister to apologise. One thing I think I can ask him to apologise for is the Explanatory Memorandum. As a politician of average intelligence—you might call that a bear of little brain—I found it impossible to work out just how important this instrument is or is not.

Lord Bates: I am grateful for those contributions and for your Lordships displaying your usual assiduousness in these matters, which, as I outlined in my opening remarks, are technical in nature.

Lord Tunncliffe: We should be clear that "technical" does not mean "trivial". "Technical" can be at the essence of whether the law is working.

Lord Bates: I absolutely agree with that. Often in legislation we deal with the overarching principles and leave the technical aspects, which are not trivial but very significant, to be worked out through secondary legislation, which is the purpose of our discussion here.

I shall come on later to the points raised by the noble Lord but want first to address those made by the noble Baroness, Lady Burt, who asked about the general genesis of the regulations. Due to the considerable volume of legislation affected by the 2015 reforms, this approach is necessary while the impact of reforms on these types of institution is further assessed and decisions are made about implementation. In many ways, that is about trying to learn as we implement so that we do not overcorrect what we seek to introduce. Today's regulations are consequential amendments to the financial sector insolvency regimes to take account of the April 2017 reforms. Given the limited amount of parliamentary time available, there are currently no plans to consolidate the legislation. Stakeholders who are directly affected by the legislation and therefore need a more granular understanding will be able to purchase consolidated versions of it from commercial providers.

I come to the point raised by the noble Baroness about impact assessment. BEIS carried out an extensive consultation before bringing forward the insolvency reforms. BEIS received information in this consultation which refined the policy, and it helped the impact assessment process to quantify the cost of these regulations. BEIS further undertook a full impact assessment for the changes brought in by the wider reforms and for the impact on the economy as a whole. It is a very important part of those principles that that is considered in that way.

7.45 pm

Baroness Burt of Solihull: I am interested to know, since the Minister says that BEIS did quantify the costs, why that quantification was not included in the legislation itself, in this instrument.

Lord Bates: I shall double-check, but my feeling is that those impact assessments were published earlier in the sequence of legislation and reforms that I mentioned. I shall double-check but if that is not the case, impact assessments are normally a matter of public record and they will therefore be made available. The noble Baroness also asked how the financial sector will benefit from these changes. Where these regulations apply the reforms, firms in the financial sector will benefit from a modernised and streamlined insolvency process. The benefits include removing unnecessary burdens, such as requiring a physical meeting of creditors. Financial institutions will not be directly affected by these. As to the impact these regulations will have on the financial sector, these regulations apply the reforms where appropriate, ensuring that the benefits of the reforms are extended to the financial sector. Where the regulations do not apply the reforms, there will be no impact on the financial sector. As I mentioned, an impact assessment was undertaken.

I come to some points raised by the noble Lord, Lord Tunncliffe. He focused on recalling the impact of the Banking Act 2009 and asked what the impact might be on the Bank of England's resolution of banking problems to ensure smooth working. The insolvency regimes for financial sector firms that we are discussing today sit alongside the Bank of England's powers under the special resolution regime established

by the Banking Act 2009. Today's regulations are required to update and maintain consistency in the legislation that concerns these special insolvency regimes. The regulations do not affect or amend the Bank of England's powers under the special resolution regime.

The noble Lord also asked about the drafting of the statutory instrument, basically saying that it is not acceptable because you need to see the Banking Act 2009 before it was amended. Today's regulations are consequential amendments that amend the financial sector insolvency regimes to take account of the April 2017 reforms. Given the limited amount of parliamentary time available, as I mentioned earlier, there are currently no plans to consolidate the regulations.

Lord Tunncliffe: The thing that worries me is that the language the Minister uses suggests a progressive improvement while in fact this instrument disapplies—it does not update; it “undates”, for want of a better term, although I do not think that there is such a word. It suggests that the conclusion has been reached that the application of the 2015 Act in the area of financial services is actually doing harm. Nobody is going to disagree with the 2015 Act to the extent to which it reduces bureaucracy, but this instrument says, if I have read it properly, that it will not apply in these circumstances. It seems a very unusual instrument for that reason, and the only logic for it is that there is harm in it applying—unless I have totally misunderstood the instrument and the Explanatory Memorandum.

Lord Bates: The noble Lord has not misunderstood it, but in my opening speech I said that what is proposed here is to disapply while application of the other measures referenced went ahead. I would have thought that that could be supported. I accept the noble Lord's point that it is perhaps unusual to do it in that way. However, it has been done in consultation with the businesses that are affected, which believe that this is an effective way forward. Clearly, that is why we are legislating in this way.

Lord Tunncliffe: May I press the Minister just a little more? I recognise that we will not resolve this tonight—and, of course, as ever, we will not cause a constitutional crisis and vote against it. However, I would be grateful if I could have a detailed response by letter from the Minister setting out what would happen if this instrument were not passed. What harm is being done by the fact that the 2015 Act currently applies and has to be disapplied to the position before the Act in a set of particular circumstances, with particular reference to the Banking Act and the resolution regime?

Lord Bates: I am happy to do that. I will write in detail to set this out, and I hope that that will be helpful for the record. I am also happy to copy that to the noble Baroness, Lady Burt, as some comments were made about the Explanatory Memorandum, which I hope will be covered as well.

I reiterate that the impact assessments have already been published, and I will provide in my letter to the noble Lord, Lord Tunncliffe, a copy of—or more probably a link to—that impact assessment. I hope

[LORD BATES]

that, with those reassurances and the commitment to write, noble Lords will accept these regulations, which I commend to the House.

Motion agreed.

Policing and Crime Act 2017 (Maritime Enforcement Powers: Code of Practice) Regulations 2017

Motion to Approve

7.52 pm

Moved by Baroness Williams of Trafford

That the draft Regulations laid before the House on 16 November 2017 be approved.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Policing and Crime Act 2017 provides police officers and other law enforcement with certain powers in the maritime environment so that they are able to prevent, detect, investigate and prosecute criminal offences that take place on vessels where the courts in England and Wales have jurisdiction. These provisions close a gap in enforcement powers, ensuring that law enforcement officers are capable of functioning effectively to tackle crime on sea as on land. This is because Section 30 of the Police Act 1996 places a geographical restriction on the exercise of police powers, limiting these to England and Wales and the adjacent waters; that is, the territorial waters which extend to 12 nautical miles.

The maritime provisions, once commenced, will give the police and other law enforcement at sea similar powers to those available to enforcement officers in relation to drug trafficking and modern slavery. The difference is that these powers cover all offences under the law of England and Wales. In summary, these are: the power to stop, board, divert and detain a vessel; the power to search a vessel and obtain information; and the power to arrest and seize any relevant evidence.

The Policing and Crime Act enables law enforcement officers to use these powers in relation to certain ships in international and foreign waters as well as the territorial waters of England, Wales and Scotland. Principally, the vessels will be UK flagged, but law enforcement will also be able to act on non-flagged vessels and foreign ships in certain circumstances in international waters as well as territorial waters. These powers are important because crimes such as rape, murder, firearms offences and grievous bodily harm can take place on UK-registered ships beyond the territorial waters limit, just as they can within those waters or on UK soil. There are other crimes specific to the maritime context, such as illegal fishing, unsafe vessels, piracy and marine theft, which the police must be able to tackle just as effectively as when the crime is committed on land.

Before these new powers are brought into force, a code of practice issued under Section 94 of the Policing and Crime Act will need to be put in place for English and Welsh law enforcement officers to follow when arresting a person under Section 90 of the Act. The code must set out certain rights and entitlements of

persons arrested under Section 90, particularly the information to be made available to them on arrest. The Government have now prepared this code of practice, and it was placed before the House on 16 November 2017, together with these regulations. The regulations are necessary to ensure that the code of practice will be in force at the same time that the maritime powers in the Act are commenced.

The code provides guidance as to the information that should be given to a suspect at the time of their arrest. It makes it clear that suspects should be provided with a summary of their rights and warned if it may take more than 24 hours to bring them to a police station. The code will ensure that law enforcement officers provide suspects with information; this includes ensuring that those detained understand what is said to them. Officers will also be obliged to make arrangements to safeguard the health and welfare of arrested persons.

To ensure that the code will be practical and effective, the Government have consulted the law enforcement agencies that will use this code, representatives of the legal profession, devolved Administrations, other external organisations and interested government departments.

Police Scotland is currently drafting equivalent but non-statutory guidance concerning the exercise of its maritime enforcement powers, and we are working closely with the Scottish Government to ensure that this guidance is appropriately aligned. The Northern Ireland provisions will also be covered by non-statutory guidance. The Northern Ireland maritime provisions will be commenced separately to those of England, Wales and Scotland, at a date determined by the Northern Ireland Executive.

The maritime powers in the Policing and Crime Act are essential if we are to ensure that our police and other law enforcement are equipped to be effective at tackling criminality, to enforce the law and to protect the public. However, when these powers are used, it is vital that they are used properly, particularly when a person's liberty is restricted as under the power of arrest, and that is why the code of practice and these regulations are so important. I ask noble Lords to support the new code, and I commend the regulations to the House.

Lord Paddick (LD): My Lords, I thank the Minister for introducing these regulations. I am not sure how illegal fishing is to be enforced against just as effectively as if it was committed on land, but I accept the general point.

We raised concerns during the passing of the primary legislation regarding the extent of these powers, bearing in mind that, as the Minister has said, they allow a law enforcement officer to arrest a person for anything that is an offence in England and Wales on a United Kingdom ship in British waters, in foreign waters or even in international waters. I raised the prospect during those debates that there could be a special constable on a cruise ship pulling out of Southampton who gets into an argument with someone who pokes him in the eye, and who then decides to arrest that individual and orders the "Queen Mary 2" to return to Southampton. The regulations and the power in the Act would allow that. There is nothing in the guidance

to officers on the use of discretion, or indeed on whether the powers should be restricted to more serious offences.

The other slightly worrying issue in the draft code is the reference to the Act including,

“a power to require a person on the ship to provide information about themselves and about anything on the ship. The purpose of this is to enable law enforcement officers to take control of the ship”.

I hope that the special constable will not be steering the “Queen Mary 2” into Southampton, with his common assault suspect.

More seriously, in addition to those concerns about the rank of the officer who is using these powers, there is the seriousness of the offence. While I accept that the sorts of offences that the Minister mentioned—rape, murder, firearms and grievous bodily harm—are very serious offences, it is not an exclusive list.

8 pm

Another concern is that, while I accept that an arrest of somebody for an offence on a British ship in foreign or international waters has to be with the consent of the Secretary of State, the person could potentially be under arrest and in detention for some time before they arrive at a place of detention within the United Kingdom, which is when the Police and Criminal Evidence Act clock starts. That clock is designed to prevent the police detaining people for such long periods that they might do anything to escape from custody, such as make false confessions and so forth. There is nothing in the guidance to say what is to be done to ensure that a suspect's rights are upheld, as the Police and Criminal Evidence Act is designed to do.

We accept that it is important that, for what are very serious offences, people should not be able to escape justice just because they are on board a ship, but the elements that we were concerned about when we debated the primary legislation are not contained in the code of practice, and that is of concern to us. We support the regulations as far as they go, but we fear that they do not go far enough.

Lord Kennedy of Southwark (Lab Co-op): My Lords, as we have heard from the Minister, the code before the House this evening deals with the practice to be followed by law enforcement officers when arresting a person under the powers conferred by Section 90 of the Policing and Crime Act 2017. The powers may be exercised with the authority of the Secretary of State for specific situations on UK ships, ships registered in the Isle of Man, the Channel Islands or overseas territories, foreign ships and ships without a nationality in UK waters. I have no issue with the code as far as it goes, but the noble Lord, Lord Paddick, has made a number of important points on which I look forward to the Minister's response.

However, I suggest that the Government should consider a wider group of issues and seek to extend these powers further to protect the UK economy and to protect seafarers from employment abuses, particularly around the national minimum wage. While there has been significant progress on land, the position of seafarers remains insecure. The payment of wages below the national minimum wage in the UK

merchant shipping industry should not be tolerated, and nor should the scandal of nationality-based pay discrimination. There is also the emergence of modern slavery in work in the waters around the UK, which must not be tolerated. Every action should be taken to eradicate it.

The merchant shipping industry and the fishing industry are very important to the economy of the United Kingdom, and we all want to see these industries being profitable and maintaining the highest of standards. The fact is that some people and some companies in these industries are not playing by the rules, and the enforcement action taken so far by the Government is not good enough. So will the Minister agree to meet me and representatives of the RMT union? Alternatively, will she arrange for us to meet another Minister if that is more appropriate? The RMT is the union for seafarers, and these are serious issues which need to be looked at.

I am aware that the Department for Business, Energy and Industrial Strategy has published guidance on seafarers and the national minimum wage and that the national minimum wage has been referred to, for the first time, in guidance to the Border Force working to prevent modern slavery on the seas. I know that there is a Department for Transport-led working group including the RMT, Nautilus, the UK Chamber of Shipping and the Department for Business, Energy and Industrial Strategy looking at enforceable regulations around the national minimum wage for seafarers working between UK ports and between UK ports and the continental shelf.

These are important issues that need to be looked at seriously, and I am pleased to have been able to raise them today. They are perhaps not the subject of these regulations, but I hope the Minister will agree to my request for a meeting so that we can work together to find a solution to these issues.

Baroness Williams of Trafford: I thank both noble Lords for the points that they have made. On the first series of points from the noble Lord, Lord Kennedy, I just underline again that these powers cover all offences under the law of England and Wales. Clearly, not abiding by the minimum wage is an offence; were that to be extreme, one could say it falls into the modern slavery category. I am very happy to meet with the noble Lord and the RMT, and look forward to doing that.

The noble Lord, Lord Paddick, made a point about an incident where someone was poked in the eye out at sea. Law enforcement officers will need to ensure that their use of these new enforcement powers is both necessary and proportionate, just as they would on land. Although it might be possible for the powers to be exercised for a minor crime on board a ship, such as for a poking in the eye—I recall that in that previous debate the example given was of the theft of a Mars bar—we expect that the powers will be used sensibly and proportionately by officers, just as they use their powers under PACE. Given the need for proportionality, we would not expect that forces would obtain Section 8 PACE warrants to raid domestic premises at the crack of dawn to investigate an allegation of a poking in the eye, and it is for that reason that we would not expect these maritime powers to be exercised to stop, board,

[BARONESS WILLIAMS OF TRAFFORD]

divert and detain a ship at sea to investigate such an allegation. Instead, we expect that they will be used to investigate allegations of more serious crime. I am sure the noble Lord would agree and that that is the point he is getting at.

The noble Lord also talked about exceeding the 24-hour detention period. He is right to raise that. However, we need to recognise the exceptional nature of the maritime environment, where conditions are different to those on land. The powers can be used anywhere in the world, subject to the agreement of the Secretary of State, and to the agreement of other states where their vessels and waters are involved. If we put in place a strict time limit, this would undermine our ability to use the powers globally as intended. It is intended for the suspects to be brought to a police station as soon as reasonably practicable and that they will be warned if this could take more than 24 hours. While the detainee is on board the vessel, the law enforcement official would explain to the detainee the maximum length of time that is anticipated will elapse before the person is brought to shore, and they will be reminded that the caution given to them at arrest continues to apply while they are detained. As for the welfare of the individual concerned, the code ensures that the detainees are told how long they are likely to be held before arriving at the police station or other authorised place of detention and are provided with a summary of their rights.

I think that is it. I do not have the answer to the question about rank of officer, but I will get it for the noble Lord.

Lord Kennedy of Southwark: I was pleased to hear that this applies to all potential infringement of legislation, as we heard when we had a meeting outside the Chamber. The issue is that I do not know whether guidance will be issued for when a ship is boarded on matters such as the rates of national minimum wage paid there. Are those issues that the officers boarding the vessel will look at? Obviously, an HMRC national minimum wage officer would look at that, but they have not got these powers. Can the noble Baroness say now that the police or other officials boarding a ship would have it in the back of their mind that these are issues they should be looking at as well?

Baroness Williams of Trafford: I do not disagree with the noble Lord. Perhaps I should write to him with greater detail, and obviously if necessary we can meet up.

Motion agreed.

Transfer of Responsibility for Relevant Children (Extension to Wales, Scotland and Northern Ireland) Regulations 2017

Motion to Approve

8.09 pm

Moved by Baroness Williams of Trafford

That the draft Regulations laid before the House on 7 December 2017 be approved.

Relevant document: 14th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, in bringing forward this secondary legislation the Government are seeking to extend the scope of the national transfer scheme for unaccompanied asylum-seeking children to Wales, Scotland and Northern Ireland. The scheme, which the Government launched on 1 July 2016, makes it easier for local authorities to transfer legal responsibility for unaccompanied asylum-seeking children to another participating local authority. The scheme is designed to encourage a fairer distribution of unaccompanied children in local authorities across the UK so that a small number of local authorities are no longer asked to look after a disproportionate number of unaccompanied children and safeguard the best interests of the children concerned.

The national transfer scheme is underpinned by provisions in Part 5 of the Immigration Act 2016. Section 69 of the Act creates a mechanism in England to transfer the responsibility for caring for unaccompanied children from one local authority to another. Section 70 enables the Secretary of State to direct local authorities to provide information about their support to children in their care. Section 71 enables the Secretary of State to direct a local authority that refuses to comply with a request to accept an unaccompanied asylum-seeking child, with written reasons explaining its refusal. Finally, Section 72 enables the Secretary of State to require local authorities to co-operate in the transfer of unaccompanied children from one local authority to another.

These provisions currently apply only to English local authorities. This has meant that local authorities in Wales and Scotland and health and social care trusts in Northern Ireland have not participated in the scheme so far. In extending the scope of the transfer provisions in the Act, this statutory instrument provides the legal framework for local authorities in Wales, Scotland and Northern Ireland to accept transfers under the scheme.

I want to make it clear that the national transfer scheme was designed as a voluntary scheme and we hope that local authorities in Scotland and Wales and health and social care trusts in Northern Ireland will feel able to participate. My officials have worked closely with their counterparts in the devolved Administrations and the local government associations in Scotland and Wales to take account of the unique circumstances in each nation.

As I have already mentioned, there are provisions in the Act for the Secretary of State to mandate the scheme. The Government want the scheme to remain a collaborative effort between central, local and devolved government, and it is in that vein that we have worked with partners across the UK to develop proposals to extend the scheme.

The national transfer scheme has made significant progress since it was launched in July 2016, and we are grateful for the support provided by local authorities that are looking after unaccompanied children. Up to the end of September 2017, 555 unaccompanied children had successfully been transferred. That is a significant achievement but obviously there is more to do. There are still more than 4,500 unaccompanied children in

English local authorities, and a handful of local authorities continue to look after a disproportionate number. If we are to achieve a fairer distribution of caring responsibilities across the UK, we need local authorities from all parts of the UK to be able to participate in the scheme so that all children can be afforded the best possible care and support.

We know there is support for the national transfer scheme across the country. That is why it is so important for this legislation to come into force: so that we can build on the excellent work of local authorities in every part of the UK in caring for asylum-seeking and refugee children, and ensure that the national transfer scheme is truly national. I beg to move.

Baroness Walmsley (LD): My Lords, we on these Benches support the national transfer scheme. We believe it is only fair that it should be extended, preferably on a voluntary basis, to the devolved Administrations, particularly since they have been widely consulted. We thank and congratulate those local authorities that have accepted children. Often it is a significant burden, particularly to certain local authorities because of their geographical location, so it is only right that the burden should be spread.

However, I have some questions. How many unaccompanied asylum-seeking children have already been received by the devolved Administrations under the voluntary scheme? What representations have been received from the devolved Administrations about the adequacy of the financial support available to them? How well are families who look after asylum-seeking children supported? There are considerable language and cultural issues with which they need support.

What about the social workers and, preferably, guardians who are needed to steer the children through the process of giving statements to solicitors and to the Home Office? They need advice on the meaning of, for example, “leave until 17 and a half”, which actually means the refusal of an asylum application although it does not sound like it. They need proper professional advice. Lastly, under the present circumstances, what will be the effect on these regulations, if any, of the lack of a power-sharing Administration in Northern Ireland?

Lord Dubs (Lab): My Lords, of course, the transfer scheme has been necessary. There has been more pressure on Kent and Croydon than on other parts of the country, so no one questions the necessity of the scheme. Therefore, it is good to bring Scotland, Wales and Northern Ireland within its scope. I am a little puzzled as to why that has not been done sooner. The scheme has been going for some time. Either it was unnecessary earlier, in which case the Minister will tell us, or there is some other reason. Perhaps she could also tell us how some children have been transferred to Scotland without being part of the scheme, which did not then exist.

I notice from the Explanatory Memorandum that the Government intend to review the funding to be provided for local authorities. I know that the Explanatory Memorandum is not an integral part of the regulations, but it is nevertheless interesting that it has been stated there, and I very much welcome it.

I also welcome the reference to the safeguarding strategy. Can the Minister assure us that the strategy, which was agreed some time ago, will apply equally to Scotland, Wales and Northern Ireland? I think that was the intention, but I am not sure it has happened.

Will the Home Office set up a new consultation to deal with the process of getting children to Scotland, Wales and Northern Ireland? I assume that it has some method of contacting the local authorities there directly—perhaps the Minister will confirm that—so that they can respond immediately; or will this be done through the Scottish Government and the Welsh Assembly? In any case, as the noble Baroness, Lady Walmsley, said, there is also the question of what will happen specifically in Northern Ireland.

We have discussed before the adequacy or otherwise of previous Home Office consultations with local authorities, and we need a new one. If we are to have another consultation on children covered by the transfer scheme, could it not also address other unaccompanied asylum-seeking children dealt with under the new agreement reached between the Prime Minister and President Macron a few days ago? The Home Office could have one wider consultation covering local authorities’ possible responses to the new children coming in, and to those who are the subject of the transfer scheme. This is not the occasion fully to discuss the Sandhurst agreement. All I would say is that, as far as it goes, it is very welcome.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I am happy to support the regulation before the House and declare an interest as a local councillor in the London Borough of Lewisham and a vice-president of the Local Government Association.

I first pay tribute to Kent County Council, members and staff, who have for many years worked very hard to deal with the issue of asylum seekers, particularly vulnerable unaccompanied children. Kent’s proximity to France and mainland Europe, and its ports of Dover, Folkestone, Ramsgate and other ports and harbours has meant that it has had to carry a heavy load. We are very grateful for that, as we are to all the other local authorities that have taken unaccompanied children in recent times.

All of local government should play a full role in looking after children fleeing conflict and there is no excuse for any local authority not to do so. So I welcome the Government taking these powers. It is right that they should be extended UK-wide, as this is a national response to a human tragedy. I hope it will not be necessary to use these powers as I hope every local authority in the UK will be willing to step up and play its part.

That is not to say that I do not have some criticism of the Government’s handling of the child refugee crisis. Despite votes being won in this House, pledges given and legislation amended, the Government’s response can sometimes be seen as mean-spirited in respect of children, and that is a matter of much regret. More should and could be done to protect vulnerable children who are fleeing persecution. We could take more children if we were minded to do so.

[LORD KENNEDY OF SOUTHWARK]

That means not only children in northern France but those in Italy and Greece who are also vulnerable. My noble friend Lord McConnell could not be here. He had another engagement and could not wait, as business has gone on a bit longer than we thought it would today. I know that he had some positive discussions with officials from the noble Baroness's department. He was going to raise the issue of discussions between Ministers in the UK Government and Ministers in the Scottish Government, and whether there had been correspondence between them. If so, could that correspondence be published?

The noble Baroness, Lady Walmsley, and my noble friend Lord Dubs raised important points, and I look forward to the response to them. Having said that, I support the instrument and think it is a positive step forward.

Baroness Williams of Trafford: I thank all noble Lords who have spoken on this statutory instrument. The noble Baroness, Lady Walmsley, asked about the numbers in the devolved authorities. According to our management information, at the end of July 2017 there were 124 unaccompanied asylum-seeking children in the care of Scottish local authorities, the majority of whom are in the care of one Scottish local authority—Glasgow—while Edinburgh has 22. According again to our internal management information, at the end of July 2017, there were 55 unaccompanied asylum-seeking children in the care of Welsh local authorities.

The noble Baroness asked whether the number of children being transferred would be affected by the power-sharing agreement. I do not think so. Power sharing is a huge matter, but in Northern Ireland it is power sharing that has been argued over, not this issue. On the same note, the noble Lord, Lord Dubs, asked why some children went to Scotland even though the secondary legislation is not in place. There was never any reason why they could not go to devolved authorities. Some went directly from countries abroad and never came into England; they went directly to Scotland, and to Wales, I think. The noble Lord asked why we have not brought this instrument forward sooner, but it is for that very reason. It could always have happened, but the devolved Administrations were unsure of their position. In many ways, this clarifies the position and puts it beyond doubt.

The noble Baroness, Lady Walmsley, talked about funding for local authorities, which is a very important point. It has been a key concern raised by local authorities and local government partners. To coincide with the launch of the NTS in July 2016, the Government significantly increased the funding they provide to local authorities for unaccompanied children below the age of 16. We increased it by 20% so that local authorities now receive over £41,000 a year. For those aged 16 and 17, who account for more than 60% of newly arrived unaccompanied children, we increased the funding by 28% so that local authorities receive £33,215 per annum. In addition, we increased the funding we provide to local authorities for former unaccompanied children who go on to attract leaving-care support by 33%. Local authorities now receive £200 per week.

The noble Baroness, Lady Walmsley, asked about social workers and guardians. The Home Office and the Department for Education have been working closely with local government's Association of Directors of Children's Services to ensure that guidance is available to local authorities on immigration outcomes. All unaccompanied asylum-seeking children are referred to the Refugee Council's children's panel and are entitled to legal advice.

Further to the point made by the noble Lord, Lord Dubs, about bringing forward secondary legislation, we are looking for parliamentary time to allow it. He also asked whether we would consult the Scottish and Welsh Governments and the Northern Ireland Executive. As the noble Lord knows, we consulted the devolved Administrations in developing these regulations and will continue to do so. In operating the scheme, we will work very closely with regional strategic migration partnerships in the devolved Administrations with a view to identifying suitable placements. I hope that I have answered the noble Lord's questions.

Motion agreed.

Small Business Commissioner

Question for Short Debate

8.26 pm

Asked by Lord Mendelsohn

To ask Her Majesty's Government what progress they have made in establishing the role of the Small Business Commissioner; and what further action they are taking to support small and medium-sized enterprises, including tackling the issue of late payments.

Lord Mendelsohn (Lab): My Lords, I thank everyone who is going to participate in this debate, and thank everyone for their endurance. It is nice finally to be at the moment when we start. I thank the House of Lords Library, too, for an excellent briefing that I hope has been of help to noble Lords. From these Benches I thank the Institute of Directors, which has kept us constantly informed with a lot of very useful detail and data.

I hope that we will have a very constructive debate, and I hope to make some general observations for the Minister to consider. I hope that he will not feel that we are criticising, hectoring or boring him, and I hope that he understands that I am trying to make the point that late payments, and support for small businesses, matter, and that across this House we should be united in making an effort to try to achieve some progress.

I make two basic assumptions. The first is that the Government are to be credited not just for the small business Bill, and not just for establishing the requirement for notification of payments, but for the establishment of the Small Business Commissioner. These things are important steps, and important strategic anchors for what can be achieved in the long term.

I also say that the Government have made an excellent choice in the Small Business Commissioner, Mr Paul Uppal. He is a 20-year veteran owner of small businesses, including in the property sector, and a former Conservative MP for Wolverhampton South

West who is now based in Birmingham. He is absolutely first class and an excellent appointment, and I wish him and his colleagues great success. We on these Benches have been invited to visit the Small Business Commissioner and we look forward to doing that. In him we have someone who will try to do his very best.

However, he faces a real challenge to make a difference. A survey in a trade magazine asked what faith companies had in the Small Business Commissioner to improve payments. Only 3% had “a decent amount”, 21% had “a little” and 76% had “none at all”. This reflects a much broader concern about some of the issues we have around late payment. The first is that there is not enough weight—and there are not enough levers—behind the Small Business Commissioner to make a real difference on late payments. I also think, in the context of the role of the Small Business Commissioner, that it is a huge opportunity, particularly if we learn some of the lessons and apply some of the models that others have, to achieve a huge amount for small businesses.

The purpose of this debate is to ask the Government to do three things. The first is to remain committed and to look for ways to continue to add pressure through the system to encourage a resolution of late payments. The second is for the Government to be open to review early and to consider additional actions and resources in the interim, while these institutions are gaining their feet. The third is for the Government to be sympathetic to the opportunities that the Small Business Commissioner may present as he starts going about his work, learning lessons and receiving a great deal of experience.

The problem of late payments is still quite large. Most surveys put it somewhere between £40 billion to £50 billion; a few have it as larger and only one as smaller. There are various breakdowns between small and large but, in general, taking the figure of £45 billion, we know that the extent is significant. Interestingly, a number of surveys put a bit more flesh on the bones of some of the problems and challenges we are facing. The Dun & Bradstreet survey has found that this is putting the future at risk for 58% of SMEs. Cash flow, profitability and future trading capacity are all being hit. This research revealed an average late payment amount of £63,881 for each SME, with 11% owed between £100,000 and £250,000. This withholding of payments brings about cash-flow difficulties for 35% and delayed payments for 29%. Some 51% say late payments are more of a problem than they were three years ago, and 51% of SME owners are using personal savings to cover the shortfall from late payments. Manufacturing was the sector most affected, closely followed by retail. Robert Blackburn, from Kingston University's Small Business Research Centre, has also stressed that these late payments seem,

“to worsen during difficult economic times”,

and the uncertainties of the moment may well be adding to that.

The Sage survey released in December 2017 made the stark point that the UK's late-payment culture is the worst in the world. Alan Laing, the managing director of Sage, made a number of strong points. In particular, UK businesses spend an average of 15 working days chasing late payments. That is a higher level of wasted time than in any other country in the world.

The survey went further in naming the UK as the world capital of late payment, finding that 18% of all invoices paid to SMEs in the UK were late, a total matched only by Singapore, and that almost 10% of invoices become bad debts. This is extremely difficult. This was a significant survey of 3,000 businesses around the world.

There is another damaging trend which I cannot account for. I would be grateful for the Minister's view—I am not blaming him for it. Research by MarketInvoice, in which 80,000 invoices were studied, found a very peculiar situation. Almost three-quarters of invoices sent by UK businesses to EU firms were paid late in 2017. This figure represents a huge increase from the 40.4% of invoices that were paid late the year before. This significant increase is not just with EU firms. United States firms have also extended their payment dates and have a higher proportion of late payments. I do not know, and cannot account for, the reason, but that is a significant shift. Overdue invoices from the US have also risen from 40.4% to 71%. This is of great concern.

Last year, the insolvency body R3 said that more than 20% of business failures had been caused by late payment or the domino effect of other business failures. With the recent collapse of Carillion we saw that it had extended payments to 120 days, even though the Government said they tried to compel it to pay on time. There is, of course, no mechanism to highlight to anybody that the period has been extended to this point. Indeed, the whole public sector—late-paying councils, trusts and government departments—are outside the scope of the Small Business Commissioner. The public sector pays small businesses late over 62% of the time, and that is a huge concern.

There are things in place to try to encourage payment, some of them long standing, such as the Late Payment of Commercial Debts (Interest) Act 1998, amended and supplemented by the Late Payment of Commercial Debts Regulations 2002. These allow one to claim interest and debt recovery costs if another business is late in paying for goods and services, if a time is not agreed and it becomes due after 30 days. The percentage is the base rate plus 8%, so the interest due on a £10,000 debt over 90 days is £205. This is, and has been, insufficient to make any material change. I would be interested to know whether the Government have ever had any data on how many late payments have been made. For example, they should know how many interest payments have been made to small suppliers in the public sector. I would also be interested in that figure. However, that in itself was insufficient to make a huge change in this area so the Government introduced the Prompt Payment Code, which has approximately 2,087 members. It is an attempt to encourage suppliers to pay promptly. Like Ronseal, the code does what it says on the tin. Unfortunately, it does not.

I would be grateful for the Minister's observations on companies' duty to report under the Prompt Payment Code. It appears that they are probably not paying on the due date. The Sage survey makes the most important point—namely, that the Prompt Payment Code addresses the wrong thing. This is not about people paying; it is about making sure that they are chased for the money

[LORD MENDELSON]

they owe. We have a cultural problem in that in the UK it has become unacceptable to chase people for money. We have to change that culture so that it is reasonable to expect late payments to be chased.

I am getting into the swing of this. In Australia, where the concept of the small business commissioner was first invented, the purpose was to change the small business environment for the better. It was not about late payment. In fact, Australia's experience is that soft measures are not sufficient. People in Australia are campaigning for legislation to allow electronic payments to be tracked and all the other significant measures that we have discussed. I hope the Minister considers that in the future we should be alive to the opportunities that others are creating and the initiatives that others are introducing to ensure not just that we tackle late payments more effectively but that the role of the Small Business Commissioner is to improve the business environment and the capacity of small businesses to access justice as regards information and trading. Those are the proper tasks for the commissioner. I hope that the Government are alive to those opportunities.

8.37 pm

Lord Cope of Berkeley (Con): My Lords, I was surprised when I saw that the noble Lord, Lord Mendelsohn, had tabled this Question for Short Debate.

Given that the Small Business Commissioner has been in place such a short time, I wondered whether the noble Lord was trying to help publicise his existence. That would be a worthwhile by-product of this debate. I did not believe that the noble Lord would try to undermine the commissioner given the tremendous welcome that he gave to the former's appointment on 6 December, which he repeated this evening. Like the noble Lord, Lord Mendelsohn, I believe that he will make an excellent commissioner and look forward to that fact becoming obvious in the future. After all, he has been in post only a short number of weeks.

The commissioner published the website on 20 December, just a few weeks after we debated the regulations setting up the post of commissioner on 6 December. It is an excellent website in my opinion, full of advice for businesses struggling with payments. It offers good advice to not only small businesses but any business that finds itself in this position. It is refreshingly practical and comparatively free of government jargon and is to be found at www.smallbusinesscommissioner.gov.uk. It offers straightforward advice on monitoring late payments, as the noble Lord has just mentioned, and on how to encourage improvements in the payment record of customers. I have no doubt that the Small Business Commissioner will improve the website in the light of comments from small businesses, but it is an excellent start.

It is important to make the point that the website will become progressively more valuable as the months go by because the reports on the payment practice of large firms, which are required under separate legislation and are to be signposted on the website, will soon be available and will come thick and fast. They will apply to large firms with financial years from 7 April last.

As the noble Lord, Lord Mendelsohn, indicated, the commissioner is concerned only with late payments in the private sector. It is important to make it clear that there are stiffer requirements for the public sector, policed by the Cabinet Office body called the Crown Commercial Service. Anybody who has a complaint about any public body—or, for that matter, about somebody operating under a contract as a subcontractor for the Government—can complain to the Crown Commercial Service if they are receiving late payments. I am glad that this is being handled by the Cabinet Office. It leaves the commissioner, Paul Uppal, to concentrate on his job without having his efforts spread too widely. After all, there would be no point in duplicating the services and advice.

This is all about changing the payment culture in this country, which, as the noble Lord, Lord Mendelsohn, set out in summary, has proved to be a very stubborn problem. Cultures change slowly, and the forces that lead to companies paying late are strong. A company of any size that finds itself stretched financially—and who does not at some stage, certainly in these times?—can improve its cash flow by slowing down payments, and Carillion was one obvious example. In a case such as that where there have been profit warnings and warnings of late payment, obviously some creditors and potential creditors will have reviewed their position and minimised their exposure to Carillion. However, others will not have been in a position to do that.

Small suppliers frequently tend to do worst when a company goes under. I am afraid that there is a certain inevitability about that. Some of the others—the employees and so on, and, for that matter, the Government in the form of the taxman—are preferred creditors and take precedence, but they may suffer in other ways. The employees in particular are liable to lose their jobs and their pensions will be affected, but the small suppliers are at the back of the queue. The banks and the other big lenders will no doubt have protected themselves with agreements.

Late payment is a stubborn problem and one which has been around for a long time. Not only the noble Lord, Lord Mendelsohn, but the rest of us will be watching the Small Business Commissioner with interest to see how he gets on with trying to alter this part of our commercial culture. The silver lining of this debate is that it will help—admittedly in a very small way—to publicise the existence of the commissioner and the fact that he has begun work in a vigorous and energetic manner.

8.44 pm

Baroness Maddock (LD): The noble Lord, Lord Mendelsohn, has introduced a timely debate, not only with the appointment of the Small Business Commissioner but in the week after Carillion went down. Also, I have read in the past few days a number of pieces in newspapers about how the Royal Bank of Scotland has treated small businesses in the past. In my remarks I will dwell on the plight of small builders in particular, and reflect a little more widely on the importance of small businesses in our communities and our country.

Access to finance and late payment of bills are major factors in the failure of many of our small businesses. Last week, in a debate in the Commons, we

heard yet again about the Royal Bank of Scotland's treatment of small businesses. There it was claimed that, since 2008, 16,000 small businesses had been put into GRG—the bank's global restructuring group—and the vast majority ended up being liquidated.

My right honourable friend Sir Vince Cable referred to allegations over the restructuring group to the City watchdog four and a half years ago and has questioned why the regulator is still withholding its full report into what many people recognise as a scandal. Does the Minister have any information on that?

As we have heard, access to finance is a particular problem for small and medium-sized builders and I am grateful to the Federation of Master Builders for its briefing. In 2017 its survey of housebuilders showed that 54% of its members cited access to finance as a barrier to enabling them to build more homes; 14% reported a deterioration in lending conditions in the past year; and 45% said they were involved with sites that had stalled for financial reasons.

In addition, the late payment practice of larger firms affects the small builders who work in the supply chain. We have seen this particularly in the case of Carillion recently. Again I am grateful to the Federation of Master Builders for its briefing, which states:

"The case of Carillion is a significant one, as this highlights structural issues associated with contracts and payment practices within the supply chain".

It continues by stating that one member of the Federation of Master Builders,

"who is involved in a number of Carillion contracts explains that when firms like his contract to work for Carillion, they are essentially investing in Carillion's business and projects because they invest significant amounts of resources upfront in these projects. However, due to payment practices"—

as we have heard today—

"and in particular retentions, most of their profit is not realised until sometime afterwards. Yet if these smaller specialised businesses want to undertake specialist work on larger projects, they often have no choice but to work for, and invest in, major contractors, while having no say as to who those contracts are awarded to".

It is clear that late payments and the withholding of payments are a matter of course for major contractors. However, the greatest barrier for small firms is that it is difficult for them to take part in public and private sector supply chains. As we have heard, small firms operate on much smaller margins and this state of affairs makes it difficult for them to survive, let alone grow and prosper. This has resulted in the major housebuilders cornering the market. I took part in a debate in this House a couple of weeks ago about the role of the major housebuilders, who have cornered the market and yet are still not providing more homes. We are grateful to small builders, who we know can sometimes produce better results, particularly on small sites.

The Federation of Master Builders believes that Carillion's liquidation should act as a wake-up call for the Government. Again I quote from the federation, which suggests:

"Government should now begin to look harder at new approaches which seek to spread its risks better by opening up public sector construction contracts more to small firms by breaking larger contracts down into smaller lots, and exploring where it might be more efficient to work directly with Tier 2 contractors on some

contracts. Applying this logic to the Sector Deals would also improve a strategy which appears to be overlooking small firms for the most part".

The issues we are debating are not new. In my view, the Government have contributed to the state of affairs we find ourselves in. Government spending departments continue to use the "cheapest is best" approach to main contractors. Some seven years ago, Ian Taylor, the former chief executive of Balfour Beatty, told a government-sponsored conference that contractors were winning public sector business by offering the lowest tenders and finding ways to make them profitable. At the time the Government put forward an alternative strategy and urged departments to run pilots as part of it. Apparently only one pilot came forward and I gather that there has been little further change since.

Small businesses are an important part of any national industrial strategy. They are the seed corn for larger businesses and important for international players. I know of one firm that grew from being a small ironmonger's in the ward I represented when I was first a councillor on Southampton City Council. The business was owned by two gentlemen, one called Mr Block and the other called Mr Quayle. That was the start of B&Q, which ended up with Kingfisher, which I think now belongs to something even larger. Many small businesses will not develop in this way but they will be major players in local economies. They help to shape our local communities. They provide jobs and, as employers and owners, they play an important part in the civic life of many of our towns and cities. We see businesses sponsoring all sorts of things such as Christmas lights and flowers. Those who run businesses are often involved in local chambers of commerce, which are important to the vitality of our towns. Moreover, although not so much these days, I recall when I was first in local government many businesspeople were elected on to local councils. The climate today means that many people find that very difficult to do.

Small hotels, bed and breakfasts, cafes and restaurants are run by small businesses, all of which are very important for attracting tourists. The tourist economy is an important contributor to the economy of our country. I understand that small and medium-sized enterprises train two thirds of all apprentices, so the Government intervening and investing to protect small and medium-sized businesses must be a good way of spreading economic growth more evenly throughout the United Kingdom.

I welcome the fact that we now have a Small Business Commissioner, but it is obvious from my comments that if we really want to support small businesses, there are many more things that the Government could put in place to create the right environment. I look forward to hearing from the noble Lord, Lord Henley. I have been in this House for 20 years now and I have heard the noble Lord reply to many debates. He is always optimistic about what the Government are doing and tries to convince us that all is well, but it is quite obvious that all is not well for many small businesses. I look forward to some reassurances from him when he winds up the debate.

8.53 pm

Baroness Rock (Con): My Lords, I too congratulate the noble Lord, Lord Mendelsohn, on securing this important and extremely timely debate. On this side of the House we are often referred to as “the party of business”. From some this is a compliment while from others it is less so. Certainly, when we are portrayed as the party of only big business, it is the latter. But I say that we support businesses of all and any size that have a contribution to make to the UK economy. We encourage and support disruptors, entrepreneurs, start-ups, scale-ups and high-growth innovators. What we really support is a functioning market, competition and a sense of fairness for all. That is why we must do everything we can to support our small and medium-sized enterprises. They have the ideas and the growth potential, and they can create more jobs by succeeding.

What further action can be taken? First, I commend the appointment of Mr Paul Uppal as Small Business Commissioner. Late payments remain a scourge on the business landscape, with too many larger businesses in the supply chain exploiting their position not to pay promptly. The Federation of Small Businesses has said that 30% of all payments to small businesses are late. This is unacceptable. But now those on the receiving end have somewhere to go to seek redress. I wish Mr Uppal every success as commissioner.

I also commend the Government on the appointment of Andrew Griffiths as the Minister for Small Business. With his background in working for his family business he will understand well the concerns of stakeholders. These appointments give ongoing confidence to entrepreneurs that the UK is the best place to start a new business. I also commend the continuing success of Small Business Saturday. Having now completed its fifth year, it remains an invaluable campaign for showcasing successful small businesses, as well as encouraging consumers to shop more at local businesses.

What more can be done? I will focus briefly on the two great challenges facing small and medium-sized businesses, especially high-growth ones: access to finance, as the noble Baroness, Lady Maddock, mentioned, and access to talent. On the first, we should not underestimate the commitments made in the Budget—a plan to drive over £20 billion in investment in innovative and high-potential businesses over the next 10 years. This includes a £2.5 billion investment fund, run by the British Business Bank, which will unlock a further £7.5 billion in private sector investment to help businesses gain the access to capital that they need to scale up. There will also be a further £1 billion for the enterprise capital funds programme, encouraging and backing Britain’s leading venture capitalists to operate in parts of the market where smaller businesses are not able to access the capital they so desperately need. I am also encouraged by the focus on looking at ways to tackle the barriers faced by female-led businesses in accessing venture capital.

Making sure that finance reaches smaller businesses in every corner of the UK is vital to deliver growth. On talent, though, we have further to go. I am encouraged that the domestic skills pipeline is improving. The Government have already recognised that more needs to be done, particularly for digital skills, which are

essential for technology businesses. I welcome the announcement in the industrial strategy that an additional £406 million will be invested in maths, digital and technical education. As a member of the Select Committee on Artificial Intelligence, I know that we have heard much about the importance of investment in these skills.

However, on visas for the talent we need to supplement our domestic skills there is more that can be done. In a 250-page document representing a comprehensive plan for the future of our economy, visas are mentioned only twice. This is not encouraging. Perhaps the Minister can persuade me that this is not indicative of how the Government take the issue. Much of the feedback that I hear is that the regime remains too cumbersome and many businesses simply rely on applicants who already have the “right to work”, rather than engage with the visa process. This is a great shame. We need much clearer communication that highly skilled, digital and technically skilled migrants will continue to be welcome in Britain and that more will be done to reduce the cost of recruiting them, particularly for smaller businesses, which do not have the time or the resource to dedicate to it.

Everyone is in favour of supporting small and medium-sized businesses. That is the easy part. The question is what we actually do to support them. The Small Business Commissioner is a great start. I urge the Government to supplement his work with a focus on talent and capital to ensure that our high-growth businesses, which can contribute the most to our economy, have nothing standing in their way.

9 pm

Lord Popat (Con): My Lords, I, too, thank the noble Lord, Lord Mendelsohn, for initiating this important and timely debate. Small businesses have always been the backbone of our economy. As we prepare for life after Brexit, they will be key to our economic success. More than 99% of businesses are small to medium-sized. That is much more than just a statistic; it is the future.

Having spent 30 years in SMEs, I want to talk generally about what support the Government can give to help SMEs in the UK. Since 2010, progress has been made in making life easier for them, including the appointment of a Small Business Commissioner. It was somehow three years late, but better now than never. In the past seven years, a large number of reforms have taken place, including initiatives such as the new enterprise allowance, which will help unemployed people start their own business. There has been a reduction in the rate of corporation tax and a number of other good initiatives taken by the Government. My noble friend Lady Rock described them so well, so I shall not repeat them.

For my part, in 2012 I initiated the House of Lords Select Committee on Small and Medium Sized Enterprises, chaired by my noble friend Lord Cope, to see what the Government could do to help SMEs export more. The committee published an extensive report. Since then, there have been two debates in the House, but the Government have not updated us on their progress since 2014. I ask the Minister whether the committee’s recommendations are still being monitored.

As I said, there has been progress. The number of SMEs has doubled to 5.7 million and we are recognising more and more that if we want businesses to thrive we need to cultivate a climate that is favourable for them to succeed. However, I am going to be frank: we have not gone far enough; we have not been creative enough; and we have not been outward-looking enough. Businesses continue to face a number of obstacles with which we are all familiar. They suffer from late payment and banking support is limited, especially when it comes to opening a bank account, which can take as long as two months. Essentially, underwriting a loan application is also time consuming. Our planning system is simply appalling. We are too heavily regulated. The previous Chancellor, George Osborne, had a one-in, two-out policy on regulations. Is this still in place?

There are other problems too. For the past four decades, we have run a trade deficit because, quite simply, we do not have enough exports to pay for our imports. As I have said in this Chamber many times, our export base is too weak, particularly within SMEs. Our economy's reliance on services is too strong, and our manufacturing sector is weak and leaves a lot to be desired. While the Government have spoken of rectifying the imbalance, the statistics do not make happy reading. Only 5% of our companies manufacture, compared to the service industry which accounts for 74% of businesses. Only 10% of our SMEs export, compared to a country such as Germany which exports in excess of 30%. Productivity is poor—it takes us five days to produce what Germany can do in just four. Against this backdrop, it is no surprise that exports account for 28% of the UK GDP compared to 46% for Germany. This is not good enough. If we do not produce, we cannot export. If we cannot export, how can we expect to place Britain at the heart of the global economy, as we have repeatedly professed to want to do? Ambitious words are not enough; we need bold actions.

In about one year, we are leaving the European Union. We will be entering uncharted territory. In order to foster the global exporting culture that will be so vital for our future economic stability and strength, businesses must be able to forge new partnerships, make new links and gain access to new and diverse markets in untapped parts of the world, not least in Africa. This is where the UK falls desperately short, not because we lack the connections or the abilities but because our world views are not keeping up with the pace of change. I admit that, like many of my colleagues and friends, I was trapped in a Eurocentric bubble for the longest time, but since Brexit and since I started my work as the Prime Minister's trade envoy to Uganda and Rwanda, that bubble has burst. My eyes have opened to the tremendous opportunities that are out there.

Of course, being Ugandan-born, Africa holds a special place in my heart, but I am also a businessman. I know a good opportunity when I see it. I recently took an oil and gas delegation to Uganda to explore \$15 billion-worth of opportunities. Two of those British companies, Fluor and CB&I, have been shortlisted to build an oil refinery to the value of \$2 billion. Another British company, Colas UK Ltd, has secured a deal to build a new international airport in Uganda with the

largest UK Export Finance loan to Africa. Africa is a continent brimming with potential. In fact, I believe Africa is the emerging continent. Six out of 10 of the world's fastest growing economies are African. The continent is rich in natural resources, innovative cities and, importantly, a fast-growing, young, educated population. It is more democratic, more self-sufficient and more prosperous than ever before.

However, instead of refocusing our energies in Africa, the UK is sitting idly by, allowing countries such as China to have the upper hand. Worse still, not only has trade deteriorated from 25% only a few decades ago to less than 4% today, but we have seen an exodus of British brands, such as British Airways and Barclays, from some parts of Africa. What kind of message are we sending out? The irony is that we should be first in line. We have an historic advantage, given our deeply rooted bonds with the continent. Furthermore, we have fantastic soft power in Africa, but what good is that soft power if we have no hard cash coming in?

First, we need to change the story we tell about Africa to our SMEs and large corporations. Historically, we have focused too much on aid and not on trade. Until we see it as a continent of promise rather than poverty, we will not stimulate the interest and investment that is needed.

Secondly, trade and export needs to be at the heart of the Government's strategy. This will require a joined-up approach across many policy areas, from trade to transport. It is essential to have the right infrastructure in place. We could start by overhauling our aviation policy, which is decades behind where we need to be. Everywhere I look, countries around the world are building airports; we cannot even build an extra runway at Heathrow or Gatwick—ideally, we should do both. In an age of global connectivity we are projecting insularity and inefficiency. There used to be a bridge between the UK and Africa; now we can barely catch a direct flight to a capital city. How are SMEs supposed to pursue links in Africa if they cannot travel with ease? Although I have helped secure one direct route to Kigali, one swallow does not make a summer. We need more routes, more landing slots and greater aviation capacity to allow our SMEs to take off.

The challenges facing the SME sector are very different from those in the larger corporations, but the rewards are potentially much greater. As my right honourable friend Dr Liam Fox has pointed out, businesses that start exporting will grow on average by a third in two years.

As we shift our gaze from Europe to our Commonwealth family and indeed the rest of the world, our strategies must shift too. I hope the upcoming CHOGM will help us kick-start the overdue process of re-engaging the business community—and in particular the SMEs—with our Commonwealth partners. With vision, audacity and openness, we can do it. There is no time to waste.

9.10 pm

Baroness Burt of Solihull (LD): My Lords, we have had a good and knowledgeable debate. I, too, congratulate the noble Lord, Lord Mendelsohn, on securing the debate tonight.

[BARONESS BURT OF SOLIHULL]

Our Small Business Commissioner starts at a difficult time. This debate takes place on the day when Jaguar Land Rover has announced that it will reduce some of its production at Halewood, blaming, among other things, the increasing uncertainty we face with Brexit. A number of noble Lords talked about Carillion, to which the Government gave contracts despite its terrible reputation. I know that Paul Uppal, the ex-MP for Wolverhampton, would know Carillion well, because it operates in that area. Unfortunately, this fact bolstered confidence among small businesses to trade, and, sadly, they suffered arguably the most.

The noble Lord, Lord Cope, mentioned that Carillion eased its cash flow on the backs of small business, and the Federation of Small Businesses has reminded us that a third of payments to small businesses are late. According to the federation, this has been unchanged since 2011.

We see poor payment practices such as supply-chain bullying, retrospectively changing payment times without notice, querying payment on the very last day, so that the payer has another full period before they need to pay up, and long pay periods. Today I heard a new one: when a supplier queried non-payment, the company said, "It's 90 working days, not calendar days".

My noble friend Lady Maddock talked about the plight of small builders. I very much appreciated her constructive—if your Lordships will pardon the pun—suggestions, such as, for example, breaking contracts down, and other useful ideas. She also talked about the importance of small businesses being at the very heart of our communities. What would they be without small businesses?

The noble Lord, Lord Rock—or is it the noble Baroness, Lady Rock?

Lord Taylor of Holbeach (Con): Lady Rock.

Baroness Burt of Solihull: I am so sorry. My sincere apologies—I am blushing. The noble Baroness talked about finance and other initiatives, and about female-led businesses. I would add the importance of diverse businesses generally, which look like the communities they serve. I totally agree with her on the importance of getting talent and the assiduous use of the visa system to ensure that where we do not have the talent to hand in this country, we do not cut off our noses to spite our faces by not importing it.

The noble Lord, Lord Popat, talked about the obstacles and how poorly our performance compares with other countries in the EU. He told us all about Africa and some of the opportunities that exist for us outside Brexit. He is absolutely right; we must get out there and use the talent that we have. The Government are clearly already employing diverse talent, in the form of the noble Lord himself, to go out there and talk to African companies. He also talked about regulation and the one-in, two-out mantra. Let me say to him: be careful what you wish for because one in, two out is more difficult than it looks. The vast majority of regulation is put there for a purpose and, very often, it is for the protection of business.

It is not all gloom and doom. I would like to mention the late payment Act, as another noble Lord did, and the ability to charge interest on late payments.

However, so many small businesses are too reticent to do that because of the potential loss of good will and future business. The Prompt Payment Code was mentioned, which is very good as far as it goes, but because it is voluntary it tends to be only the more conscientious companies signing up to it. However, the new duty to report introduced in October 2017 on payment practices and performance will make a difference. One big construction company that I spoke to today said that it had caused that company to look carefully at its payment practices, a lot of which were down to systems and not to a deliberate desire to delay. The company is fundamentally changing the way it conducts its payment systems.

The noble Lord, Lord Cope, reminded us that this provision applies only to the private sector. Yes, I think the Small Business Commissioner probably has enough to cope with in the private sector, without having to try to take on what happens in the public sector, which aspires to have commendable payment periods but falls down in some departments.

I very much welcome Paul Uppal to the role of the Small Business Commissioner. I knew him when I was a Member of Parliament in the other place but he needs a great deal of support. One really good aspect is the fact that he will not divulge the name of a complainant, except with the specific permission of the complainer. That will very much strengthen his hand. In our debate last year the noble Lord, Lord Mendelsohn, talked about the commissioner's operating costs being only £1.4 million. He queried how far that would go in terms of the commissioner's ability and efficiency in the face of tackling a huge problem. Will the commissioner have enough leverage to make a difference?

The Small Business Commissioner's job seems a little restricted, a point I think the noble Lord, Lord Mendelsohn, made. Yes, he is handling complaints but he is potentially in quite a powerful position. I hope he will use that position to promote changes and recommendations to government policy—and make a big noise, because small business in this country has never needed a Small Business Commissioner more than it does today.

9.20 pm

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, the noble Baroness, Lady Maddock, accused me of having been giving optimistic answers at the Dispatch Box for the past 20 years. I assure her that it has been for only the past eight years; before that, I was a natural pessimist along with the best of them. I suppose that at least I can be grateful that the noble Baroness got my sex right, unlike my poor noble friend Lady Rock, who became Lord Rock briefly, but I am sure she understands that mistakes can be made.

Like other noble Lords, I thank the noble Lord, Lord Mendelsohn, for introducing this debate. It has been very useful, even if, as my noble friend Lord Cope made clear, it is somewhat early days yet to judge how effective the Small Business Commissioner is likely to be. The noble Lord, Lord Mendelsohn, made three points: first, that we should remain committed to dealing with the problem of late payments for small

businesses; secondly, that we should consider additional opportunities; and thirdly, that we be sympathetic to what the Small Business Commissioner learns and be ready to act. I hope I have got the noble Lord right on that. Those will certainly be, in effect, our guiding principles in these matters.

The noble Lord mentioned earlier legislation. He mentioned 8% plus the base rate and the Prompt Payment Code and asked whether we had any data, particularly on how effective that earlier legislation was, and whether we want to learn from the Australian experience. Australia is another country, but there will certainly be lessons to learn from its experience, and it would be arrogant in the extreme to say that we are not going to learn them. We will certainly want to look at them. Whether I can provide him with any further data on how the earlier legislation worked is another matter, but I will have a look at it, see what there is and what we can make available.

The noble Lord also mentioned, as did other noble Lords, what we have learned about Carillion's payment practices. It is too early for me to comment on it, but 120 days seems excessive, and we understand that other companies are operating the same system, although the noble Baroness, Lady Maddock, said that she has already noticed signs that there is some improvement in that sector. There are things that we want to learn on that.

I ought to add a little about the Government's performance in this sector because it is very important. We all understand that the Small Businesses Commissioner will not be dealing with public sector payments, but we have regulations to make it clear that the public sector must abide by fairly strict rules. The Public Contract Regulations 2015 introduced a requirement for public sector buyers to publish data annually on their performance against paying undisputed invoices in 30 days. As most noble Lords will know, central government has gone further. In March 2015, we restated the long-standing policy of paying 80% of undisputed valid invoices within five days and the remainder within 30 days, and I assure noble Lords that the Government are reaching that target. In the 2016-17 financial year, my department, BEIS, paid 99.4% of undisputed invoices within 30 days. I do not know what happened to the 0.6%, but if the noble Lord would like me to make further inquiries I will be more than happy to do so.

Although the debate is specifically about the Small Business Commissioner and his role, which I will get on to in the small amount of time that I have available, I want to make it clear that removing all barriers to growth is a key part of creating the dynamic market economy which is at the heart of the Government's ambitious, modern industrial strategy, which we debated in this House only a couple of weeks ago. Our industrial strategy aims to make Britain the best place to start and grow a business, and sets out our long-term plan to boost the productivity and earning power of people throughout the United Kingdom. I can assure my noble friend Lady Rock and all other noble Lords that small and medium-sized businesses have a key role to play in this. As we all know, they account for 99.9% of all private sector businesses and 60% of all private sector employment in the United Kingdom. I want to

give that assurance to the House, particularly to the noble Baroness, Lady Maddock, who talked about the problems of access to finance as well as late payment. We wish to see them supported and I refer her to the speech by my noble friend Lady Rock, in particular my noble friend's comments on various matters in the Budget designed to help those small businesses.

We recognise the importance of providing SMEs, which are the backbone of our economy, with an environment in which they can thrive, thus enabling them to grow and create jobs. Tackling the late-payment culture and driving a change in payment practices are vital for this to happen. Whatever the size of the late-payment debt that is facing small and medium-sized businesses—we have seen figures quoted from £14 billion up to £44 billion—it is completely unacceptable. That is why we have taken the steps we have to tackle this, in both the public and private sector, and why we will want to learn further from what happens and how the Small Business Commissioner gets on.

I start by giving a short update on the work that the Small Business Commissioner has completed in his office in the month or so since it was set up. Since last month's debate on the Small Business Commissioner (Scope and Scheme) Regulations 2017, which I think the noble Lord, Lord Mendelsohn, remembers from just before Christmas, significant progress has been made. The House will be aware that we launched the Small Business Commissioner on 20 December, upholding a commitment to launch the service by the end of 2017. That followed the appointment of Paul Uppal to the role in October last year—again, I am very grateful for the fact that that appointment was welcomed by the noble Lord, Lord Mendelsohn, as echoed by other noble Lords in the course of the debate today and repeated by the noble Lord himself. Mr Uppal will play an important role in supporting small businesses to resolve their payment disputes with larger businesses, providing advice and helping to bring about a culture change in payment practices and how businesses deal with each other.

The commissioner has begun an extensive programme of stakeholder engagement. He has met a number of interested parties to discuss the role of the office in the future, including the Federation of Small Businesses, the Association of Independent Professionals and the Self-Employed, and the Forum of Private Business, to name but a few. Mr Uppal has also met the former Minister for Small Business, my honourable friend Margot James, who since the reshuffle has moved on to other things, and plans are being made for him to meet with her successor, my colleague Mr Andrew Griffiths. As the noble Lord, Lord Mendelsohn, said, he met Mr Uppal last November, and I believe he plans to go again to Birmingham in the near future.

The commissioner has been talking to individual small businesses about their difficulties in working with larger partners, building up evidence of poor practice and making sure that small businesses understand the role of the commissioner. His office is undertaking communications and marketing activities to ensure that small businesses are aware of its service. This includes several interviews and briefings with trade bodies, sector specialist publications and the national press.

[LORD HENLEY]

The commissioner also provides general advice and information to business through a website, signposting businesses to existing support and dispute-resolution services. The website has been specifically developed so that it is fit for purpose, and it provides an information service that small businesses told us they need. I am told that the website has already attracted something in the region of 1,200 hits since its launch in mid-December. The commissioner also handles complaints about payment issues between small business suppliers and their larger customers.

The Small Business Commissioner is just one of the steps being taken by the Government to tackle late payment. The noble Lord, Lord Mendelsohn, mentioned the Prompt Payment Code, which provides the gold standard of payment practices and continues to play a role in turning round the culture of late payment. We will continue to promote and support it. In April last year we introduced a statutory duty on the UK's largest businesses to report on their payment practices, policies and performance to increase transparency and provide small business suppliers with better

information about those that they intend to trade with. To date, over 300 reports have been received.

Looking wider, we want to do all that we can to support SMEs where we can. My noble friend Lord Popat asked about earlier debates and asked what has happened since then. I can give him the assurance that we have published our White Paper on the industrial strategy, in which we set out how the Government will support small businesses in gaining access to international markets. He mentioned driving up exports and taking advantage of the opportunities of Brexit as part of our industrial strategy.

In the time available, I cannot deal with all the other questions that noble Lords have asked, but I hope I will be able to write to them and deal with the more detailed questions. In particular, I shall see if there are answers to some of the detailed questions from the noble Lord, Lord Mendelsohn. However, I can give an assurance that we remain committed to supporting all SMEs in continuing to grow and thrive, and to taking action to tackle the issue of late payments.

House adjourned at 9.32 pm.