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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Thursday 1 February 2018

11 am

Prayers—read by the Lord Bishop of Derby.

Death of a Member: Lord Sutherland of Houndwood

Announcement

11.06 am

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of the noble Lord, Lord Sutherland of Houndwood, on 29 January. On behalf of the House, I extend our condolences to the noble Lord's family and friends.

Dental Care

Question

11.06 am

Asked by ***Baroness Kennedy of Cradley***

To ask Her Majesty's Government what action they are taking to improve dental care in England.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, the Government are committed to increasing access to dentistry and improving oral health outcomes, particularly for disadvantaged children. Across England, access to NHS dentistry is improving. We are also reforming the current dental contract to increase dentists' focus on preventing, as well as treating, disease and oral ill health. Alongside this, NHS England's Starting Well scheme will help children in high-need areas to access appropriate dental care.

Baroness Kennedy of Cradley (Lab): I thank the Minister for that reply, but dental care in England is in crisis. Charities now provide emergency dental care. A quarter of all five year-olds have tooth decay. More than half of dentists plan to leave the NHS within five years and government spending on NHS dentistry has fallen by £170 million since 2010, meaning that patients pay more and more. The NHS dental contract that the Minister mentioned needs urgent reform—something that Labour recognised back in 2009. Why, despite running pilots since 2011, are the Government now saying that they need more time—a couple of years, perhaps—before wider rollout can even be considered? By what date, therefore, do the Government expect to deliver reform to these urgently needed NHS dental contracts?

Lord O'Shaughnessy: I am afraid I do not recognise the picture that the noble Baroness paints. She is quite right that 25% of five year-olds are not decay-free; obviously, that is not good enough, but that figure has been increasing over the past 10 years. I should also point out that there are more dentists practising in NHS dentistry than ever.

The noble Baroness is quite right that a pilot has been going on in 75 dentists' surgeries. An evaluation report will be produced by the deputy Chief Dental Officer in the next few months. That will set out the path toward the full reform of the dental contract.

Lord Colwyn (Con): My Lords, dental care would be improved by the addition of fluoride to the water supply. This has been agreed by my noble friend and his department, but not all water authorities are prepared to take this step. In the last decade, dentists' average earnings have gone down by a third in real terms. This is of great concern to dentists, who do not receive any government funding and have to cover all costs—equipment, staffing and training—unlike medical general practitioners. I declare an interest as vice-president of the British Fluoridation Society. According to a recent BDA survey, more than half of all dentists intend to leave NHS dentistry in the next five years. Perhaps my noble friend could start by looking at the current salary structures and contractual arrangements.

Lord O'Shaughnessy: We have talked about fluoridation a lot in this House recently. My noble friend knows the position: it is up for local areas to come forward with proposals. On his particular issue about dentists, they are doing a fantastic job in the NHS. We have more of them than ever. I want to point out that the 1% cap that was applied—we know that was because of the fiscal retrenchment that has had to take place in this country—no longer applies; indeed, we are waiting for dental review bodies to report on it so that we can arrange future payments for dentists.

Lord Hunt of Kings Heath (Lab): My Lords, I remind the House of my presidency of the British Fluoridation Society. The noble Lord says that we have talked a lot. We have not quite talked enough, because the problem is this: fluoridation would deal with a lot of the areas with high numbers of oral health issues. The local authority is responsible for this and for paying the revenue costs, but the benefit falls to the health service. The cost annually for an average local authority is £300,000. Would the noble Lord be prepared to convene a discussion between himself, NHS England and Public Health England to see whether there could be a way to find some resources to help local authorities implement schemes?

Lord O'Shaughnessy: I recognise the benefits of fluoridation that the noble Lord has pointed out. There is no question about that. But we know that this is a very difficult and vexed issue locally—there are strong feelings either way. That is why the position was reached in the 2012 Act. The noble Lord's idea of a discussion is a good one. I should point out that it is not a policy area on which I lead so I will have to speak to my colleague in the department, but if we can get that going and think about ways to encourage more action it would be a very clever thing to do.

Baroness Hollins (CB): My Lords, I am sure that the Minister is aware that adults with learning disabilities are also at considerable risk of tooth decay, in part because of difficulties in maintaining their dental health. What measures are being taken to improve their dental

[Baroness Hollins]
health? I declare an interest here because I published a book on the subject. I am concerned too about excessive sugar consumption as a major cause of tooth decay. This is a risk for children and adults with learning disabilities. Will the Government consider introducing a ban on advertising high-sugar products on television before the watershed?

Lord O'Shaughnessy: The noble Baroness might send me her book so I can get her ideas on reaching adults with learning difficulties. Most adults with significant learning difficulties are likely to be on a range of benefits. That means that their dental care is free, if not for all, I suspect, then for some. She is absolutely right to point to sugar. We now have the sugar levy, which has had a really big impact. About 50% of drinks that would have been affected have been reformulated to either reduce or remove the application of that levy. That is a really good impact. On her point on advertising, we have very tough advertising rules in this country, including the banning of advertising of sweet drinks, sugary products and so on in children's media. That is one of the reasons why we are seeing some hopeful signs on, for example, the number of extractions falling in primary care year on year.

Baroness Janke (LD): My Lords, is the Minister aware that 41.5% of children have not visited the dentists for the year up to September 2017 and that many of these children are in the poorest communities of the country, many of which, as the noble Baroness, Lady Kennedy, said, are now dependent on charity for dental care? What action will he take to ensure that all children have proper access to NHS dentistry, wherever they live throughout the country?

Lord O'Shaughnessy: The noble Baroness is right. About 59% of children have seen a dentist in the last two years, but of course that leaves 41% who have not. I have to say that that is an improving picture. On her two particular issues, there is NHS England's Starting Well programme, which is targeted on 13 local authorities that have the worst oral health outcomes for children. The range is really quite dramatic from one area to the next. It has also developed a core offer to help every local authority commission better dental health for children.

Baroness Hayman (CB): My Lords, is not the issue of fluoridation of water just like the issue of adding folic acid to fortified flour, about which even more overpoweringly conclusive evidence was published this week? The Government need to take a more robust attitude towards public health.

Lord O'Shaughnessy: I return to the point that I have made: I do not think there is any doubt about the evidence on the benefits of fluoridation, but it is important to do it in a way that brings local people with you. I should also point out that a big programme of fluoride varnishing is going on for children's teeth as well, so we are getting fluoride into children in other ways too.

Royal Navy: Warships

Question

11.15 am

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

To ask Her Majesty's Government whether the work being undertaken by the National Security Adviser has led to any changes to the planned paying off of any Royal Navy warships.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, no, it has not. As the noble Lord will be aware, the national security capability review will be published in late spring. Meanwhile, we have launched the modernising defence programme to make sure that our Armed Forces are able to meet the intensifying threats that this country faces.

Lord West of Spithead (Lab): I thank the Minister for his reply. I have to say that I am rather surprised, because the whole reason for the review was that the threat is greater and more diverse than it was before. When one adds to that Brexit and its implications for our territorial seas and exclusive economic zone, it would seem that making any decisions about paying off ships that have already been decided would be rather foolhardy, not least because of the recent NAO report on the MoD equipment plan showing that there is no money there at all for the five frigates that have been much trumpeted. Would it be possible to go back to the MoD and look at the possibility of not paying ships off and selling them but rather holding them in reserve until we have finally come to a conclusion about the threats and what is required, so that in an emergency they could be regenerated and used by our nation?

Earl Howe: My Lords, I understand the point that the noble Lord is making, but he will recognise that putting any equipment, whether ships or not, into mothballs carries a cost with it. If he is referring to HMS "Ocean", I am afraid that the decision not to extend her life has been taken and she will decommission this year as planned. But the noble Lord is right in substance: the aim of the modernising defence programme is to make sure that defence across the piece is sustainable, affordable and configured to address the threats that we face—and I am sure that he shares those aims.

Lord King of Bridgwater (Con): Does my noble friend agree that in the modernisation programme it is extremely important that close attention is paid to recruitment? Will he confirm that that is being given high priority in the work that is being attended to at the moment?

Earl Howe: Yes, my Lords. As my noble friend is well aware, there are concerns about recruitment in all three armed services. There is no single reason for that. Some of it is attributable to the buoyant employment climate in the economy as a whole, but that is not the whole reason. This is a matter of constant attention by the service chiefs.

Lord Campbell of Pittenweem (LD): My Lords, perhaps I might press the Minister on the points raised by the noble Lord, Lord West. If the integrity of the modernisation is to be preserved, no decisions can be taken that will affect capability between now and the conclusions of that review. Should not the principle of "nothing is decided until everything is decided" rule the Government's position here?

Earl Howe: No, my Lords. The Ministry of Defence will continue to take decisions in parallel with the programme that is now in train. Where significant decisions need to be taken, their impact on the modernising defence programme and their relationship with it will of course be considered.

The Earl of Cork and Orrery (CB): My Lords, the Navy is in the process of taking delivery of five Batch 2 offshore patrol vessels. These will displace four earlier vessels, one of which, HMS "Severn", has already been decommissioned. She is only 15 years old. Will the Minister undertake to examine future uses for these versatile vessels, which might include Border Force or Royal Naval Reserve duties to augment our coastal and fisheries protection?

Earl Howe: I am grateful to the noble Earl for those suggestions, which I am sure will be noted by the department. But the modernising defence programme that is now in train is the body of work that will settle the specifics of what we require to meet our defence needs. As I have said, its aim is to ensure that we have defence that is sustainable, affordable and configured to address all the threats that we face.

Lord Howell of Guildford (Con): My Lords, can the Minister say what discussions his colleagues have had with Commonwealth navies about the building, deployment and operation of warships? Does he accept that, while frigates are very valuable to our powered defence strength, they are also a major transmission of our influence and soft power across the globe?

Earl Howe: My noble friend is entirely right. We have regular discussions with our Commonwealth partners in particular and also with our NATO allies, in the light of the national shipbuilding strategy which, as he knows, is designed to ensure that we once again a competitive and vibrant shipbuilding industry in this country.

Lord Tunnicliffe (Lab): My Lords, we have had report after report and promise after promise. Why should we have any faith in any of them? Yesterday, fortuitously for me—but not for the Minister—the National Audit Office produced its annual Ministry of Defence equipment plan report. Amyas Morse, head of the National Audit Office, said:

"The Department's Equipment Plan is not affordable. At present the affordability gap ranges from a minimum of £4.9bn to £20.8bn if financial risks materialise and ambitious savings are not achieved".

When reading the report, I got as far as page 14, on costs not included in the plan:

"As a consequence of the Strategic Defence and Security Review 2015, the Department introduced a number of new equipment commitments into the Plan. The Department was unable to demonstrate that all equipment requirements are now included within the Plan. We"—

that is, the National Audit Office, the highest analysing body in the land—

"have established that the Plan does not include the costs of buying five Type 31e frigates".

If there is an error of that order of magnitude in the plan, how can we have any faith in anything that comes out in the next few weeks or months?

Earl Howe: My Lords, we have been quite open about the pressures that we face. The defence equipment plan summary, published yesterday, acknowledged that the equipment plan emerging from the MoD's current year budget contains a high level of financial risk and an imbalance between cost and budget. It is exactly those risks and imbalances that we aim to resolve in the programme that is now under way.

Baroness Jones of Moulsecoomb (GP): My Lords, is the Minister aware that, in answer to a parliamentary Question in the other place from SNP MP Ronnie Cowan, the Ministry of Defence said that it had spent more than £100 million on a study to explore options for a potential future warhead and whether to refurbish or replace? The noble Lord, Lord West, told me that he would have done it for much less money. Did the Ministry of Defence consider that option?

Earl Howe: I am sure that the Ministry of Defence could well have done with the advice of the noble Lord, Lord West, in this context—which we, too, are always keen to have. But I can assure the noble Baroness that, in all work undertaken by my department, cost-effectiveness and affordability are key.

United Nations Sustainable Development Goals

Question

11.23 am

Asked by ***Lord McConnell of Glenscorrodale***

To ask Her Majesty's Government when they intend to publish the Voluntary National Review of the United Kingdom in relation to the United Nations Global Goals for Sustainable Development.

Lord McConnell of Glenscorrodale (Lab): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and, in doing so, I welcome the noble Baroness, Lady Stedman-Scott, to her place to answer her first Question today—though I add that we are all delighted that the noble Lord, Lord Bates, will be back in his place soon, having withdrawn his resignation.

Baroness Stedman-Scott (Con): My Lords, I thank the noble Lord. I am sorry that noble Lords have me today, but I am thrilled to say that it is not a permanent arrangement. I am sure that this is going to be the longest seven minutes of my life. Nobody more than me wishes to see my noble friend the Minister back in

[Baroness Stedman-Scott]
his usual place soon. However, I was able to take advice from him yesterday. He said two things: "Answer the Question, and don't be late".

The Government intend to present the UK's voluntary national review of progress towards the sustainable development goals, or SDGs, in 2019. The Government are committed to delivering the goals, both at home and internationally, and departments are embedding them in their single departmental plans. High-level summaries of current plans were published on GOV.UK in December last year, together with examples of how government policies are contributing towards the SDGs.

Lord McConnell of Glenscorrodale: I thank the noble Baroness for that reply. Two of the key SDGs on which the Government will report next year are SDG 4 on quality education and SDG 17 on partnerships. Tomorrow in Dakar, Senegal, the Government will be represented at the financing conference for the Global Partnership for Education, where commitments will be made that will help to achieve these goals, particularly on quality education, over the coming years. Will the Government increase their contribution to the Global Partnership for Education? Will the noble Baroness take this opportunity from the Front Bench to join me in urging the Secretary of State to make a substantial contribution?

Baroness Stedman-Scott: I thank the noble Lord for his question. He is trying to lead me down the path of committing to provide extra money as I answer my first Question, but I am not going there. However, I will answer the question. The world has taken great strides forward in recent years on access to education: 89% of children are now in school. However, major problems remain with teaching quality, and in developing countries 90% of children are not learning even the basics of literacy and numeracy. We are proud to be a strong supporter of global education. Between 2011 and 2015, the UK supported 11.3 million children into primary and lower secondary education. The UK has been a strong supporter of the Global Partnership for Education from the outset. The Secretary of State for International Development will attend the replenishment conference tomorrow, and there will announce the size of the UK pledge as well as setting out DfID's priorities for global education support.

Lord Chidgey (LD): My Lords, I welcome the noble Baroness to her role on the Front Bench and commiserate with her on the unexpected adventure that she faces. Nevertheless, I hope that she will be aware of the vital role that Parliament will play in advance of any United Kingdom voluntary national review. That being the case, what measures are the Government preparing to enable Parliament to scrutinise this review in advance of its presentation to the high-level political forum in the UN? Will these measures include holding the Government to account through passing enabling legislation and approving the necessary budgets?

Baroness Stedman-Scott: I thank the noble Lord for his question. I love surprises. We still need to finalise the scope and process of the national review but expect to start it later this year. We will ensure that all interested parties have an opportunity to contribute their views. However, I am not able to answer the question about whether legislation will be involved. If I find that out, I will certainly let the noble Lord know.

Baroness Anelay of St Johns (Con): My Lords, does my noble friend agree that the process of the voluntary review gives the Government the opportunity to showcase the work already carried out in supporting girls' education, particularly on numeracy? For example, a DfID-supported project I witnessed in northern Nigeria which instilled basic numeracy skills meant that young girls could start micro-businesses.

Baroness Stedman-Scott: My noble friend Lady Anelay makes a very good point. In her previous role she will have seen this type of very important work at first hand. We should be proud as a country and a Government of the things that we have achieved, and definitely of what we have achieved through education. That is critical. Between April 2015 and 2017, we supported 7.1 million children to gain a decent education. While that is good, that and better will do.

Lord Collins of Highbury (Lab): My Lords, what makes the sustainable development goals an incredibly powerful tool for change is the fact that they are universal. We are not simply saying to other countries, "Do this, do that"; we are judging the actions of other countries by the actions in our own country. The key to change is not only parliamentary scrutiny and engagement but the fact that all government departments—this is not a matter confined to DfID—should take their roles and responsibilities seriously. I hope that the noble Baroness will pass the following question on to the Prime Minister: will the Government please ensure that there is Cabinet responsibility for implementing the SDGs?

Baroness Stedman-Scott: I thank the noble Lord very much for his question. The SDGs are critical, and there is no better way to demonstrate commitment than by leading from the front on this. Our Government were absolutely at the front of designing and developing the goals, and we were the first to sign up to them, so your Lordships should be in no doubt that we are right behind this. The fact that they are universal, so that we can all be measured against the same things, makes people focus on what they are trying to do and deliver on their promises. The way in which this is structured means that, internationally, DfID will lead on this, the Cabinet Office will have a co-ordinating role, and everybody in each department will know exactly what is expected of them. We long for them to deliver.

Rough Sleeping

Question

11.30 am

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what is their response to the *Rough Sleeping Statistics Autumn 2017, England*, published on 25 January, which demonstrate the largest number of people sleeping on the streets of England since those statistics were first compiled in 2010.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and in doing so I refer the House to my relevant registered interests as a councillor in the London Borough of Lewisham and a vice-president of the Local Government Association.

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 are providing over £1 billion of funding to combat homelessness and rough sleeping, implementing the Homelessness Reduction Act and piloting a housing-first approach for rough sleepers with complex needs. We are committed to halving rough sleeping by 2022 and eliminating it altogether by 2027. To achieve this, we have established a task force to drive forward a cross-government strategy. It will be supported by a panel of experts, who met for the first time this morning.

Lord Kennedy of Southwark: My Lords, these are shocking figures, and come less than a month on from when I asked the noble Lord in this House about the number of families who were homeless over the Christmas period. Rather than our usual debates on these matters, could the noble Lord tell the House what discussions have taken place with ministerial colleagues in the department and whether other departments have been spoken to, as homelessness can be solved only with cross-departmental working and seeking to address the root causes and avoid the problems of working in silos? The tragedy of homelessness needs to be addressed, but actions in the noble Lord's department have been undermined—for example, by housing benefit cuts delivered by the DWP.

Lord Bourne of Aberystwyth: My Lords, the noble Lord is absolutely right about the need to avoid silo thinking, which is why the homelessness task force, which will meet shortly, is a cross-government approach. He will appreciate that we announced that recently. As I say, the advisory committee is meeting for the first time this morning and includes representatives of Crisis and Shelter, such as Polly Neate, and mayors such as Andy Burnham and Andy Street. That, too, will be vitally important. This is a complex problem. The figures in the noble Lord's own Borough of Lewisham, for example, have gone up 30% over the last period, according to the most recent statistics we have, but other boroughs are doing a good job, such as Cambridge, which is Labour-controlled, and Staffordshire, which is Conservative-controlled. So the housing-first approach that they are adopting is a very good one.

Baroness Grender (LD): My Lords, will the Minister consider a small, simple and immediate step, which is to reverse the cut in housing benefit for 18 to 21 year-olds? The cut was snuck in on a Friday afternoon by secondary legislation, and the savings are negligible. If just 140 young people are homeless out of the 10,000 affected in one year, it will start to cost the state more, not less. It is a simple measure that could be immediately changed. Why not get on with it and do it?

Lord Bourne of Aberystwyth: My Lords, this is precisely why we have the task force and the advisory committee, which, as I say, met this morning. To give an instance of how multifaceted it is, statistics produced yesterday by the GLA and St Mungo's show that over 40% of people who are rough sleeping have alcohol problems, over 40% have drug problems and 49% have mental health problems. So it is not just about finance, although that is important. That is why we are looking at it across the piece, and why it is important that we take this forward with a cross-government approach.

Lord Spicer (Con): How many empty dwellings are there in this country, and how many unused hostel beds?

Lord Bourne of Aberystwyth: My Lords, it will not be a surprise to noble Lords to hear that I do not have that figure at my fingertips. However, it is not just a question of how many empty properties there are; it is also a matter of matching them with the homeless, and they are not always in the right place. That is part of the issue and it is why local authorities now have the power to charge a premium on council tax for empty buildings. That will be part of the solution but, as I said, it is a multifaceted issue.

Lord Hylton (CB): My Lords, the noble Lord, Lord Kennedy, is quite right to raise this issue because it is a sensitive indicator of far deeper problems. Does the Minister agree that a dramatic increase in the building of social housing is absolutely necessary if endless waiting lists are to be abolished?

Lord Bourne of Aberystwyth: My Lords, the noble Lord, Lord Kennedy, is right to raise this—it is a serious issue—but the noble Lord, Lord Hylton, is I think addressing homelessness rather than rough sleeping. They are somewhat different. However, I am certainly on record as saying, and say again, that we need more social housing for rent. That is part of the issue regarding homelessness but, as I said, that is different from rough sleeping, which is much more complex.

Lord Harris of Haringey (Lab): My Lords, the Minister told us proudly that the Government have set themselves the target of halving the number of rough sleepers by 2022. That would bring it back down to the number they inherited from the Labour Government in 2010. Whose fault is the doubling in the number of rough sleepers? Is it a consequence of government policy on housing benefit and of other cuts in social care and mental health provision?

Lord Bourne of Aberystwyth: I am not really interested in a knockabout. The statistics were previously produced on a very different basis, so that is one factor to be taken into account. I am also on record as saying that it is a very complex issue. It is a problem across Europe, with the exception of Finland, and we have a Finnish adviser on the advisory committee. The Secretary of State has been to Finland to study what is happening there so that we can get to grips with what is a very serious problem across the country. It is also a problem in Wales and Scotland, which, the last time I looked, were not controlled by the Conservative Party.

Select Committees

Deputy Chairmen of Committees

Membership Motions

11.36 am

Moved by ***The Senior Deputy Speaker***

Privileges and Conduct, Procedure, Selection and Services

That Lord McAvoy be appointed a member of the following Committees, in place of Lord Bassam of Brighton: Privileges and Conduct, Procedure, Selection and Services.

Deputy Chairmen of Committees

That Lord McAvoy be appointed to the panel of members to act as Deputy Chairmen of Committees for this session.

Motions agreed.

Investigatory Powers (Codes of Practice) Regulations 2018

Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018

Investigatory Powers (Review of Notices and Technical Advisory Board) Regulations 2018

Investigatory Powers (Technical Capability) Regulations 2018

Motions to Approve

11.37 am

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

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

Relevant document: 16th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I am pleased to be given the opportunity today to debate these important regulations, which are all being made under the Investigatory Powers Act 2016.

That legislation brings together powers available to our law enforcement and security and intelligence agencies to obtain communications and data about communications. I make it quite clear that these powers are vital to the protection of our citizens. They ensure that our agencies are able to bring to justice serious criminals, including terrorists and paedophiles; they enable plots that threaten our national security to be investigated effectively; and they make sure that our agencies can locate and safeguard vulnerable and missing people.

The Act also ensures that these important powers are subject to rigorous safeguards and oversight. It has introduced a double lock, such that any decision to use the most intrusive powers in the Act must be approved by a judge, and it has created a powerful new Investigatory Powers Commissioner to oversee the use of these powers. That post is held by Lord Justice Fulford, who, as noble Lords will be aware, brings a wealth of experience in the judiciary and expertise in matters of law that will be crucial in carrying out this vital role.

The Act received Royal Assent in November 2016 following comprehensive scrutiny in this House as well as in the other place. The detail of that scrutiny has ensured that the Act provides a world-leading legal framework regulating the exercise of these crucial powers. The regulations that we are debating today form an important part of that legal framework and are all intrinsically linked to the Act's implementation.

I make it clear that the regulations do not, of course, create any new powers. However, they ensure that a number of important powers in the Act can be exercised and they set out how a number of those provisions will be used. Collectively, they also create additional safeguards on top of the already rigorous controls that are contained in the Act itself.

We debate four sets of regulations today. First is the Investigatory Powers (Technical Capability) Regulations 2018. These regulations set out the obligations that may be imposed on a telecommunications or postal operator in a "technical capability notice". Such a notice will require the relevant operator to maintain the necessary capabilities and infrastructure to ensure that when a warrant or authorisation is served on or given to them, they are able to provide assistance in giving effect to it quickly and in a secure manner.

The Act itself makes it clear that a telecommunications operator may be required, as part of maintaining a technical capability, to retain the ability to remove electronic protection from communications that they have themselves applied. The regulations do not change this position. They simply set out that such an obligation could be included in a technical capability notice, as well as making it clear that the obligation itself may only require any steps to be taken to remove encryption that are reasonably practicable.

The use of technical capability notices is subject to very strong controls and safeguards set out in the primary legislation. The Secretary of State may decide to give a notice only where it is necessary and proportionate and that decision must be approved by a judicial commissioner. In addition, before giving a technical capability notice the Secretary of State must consult the operator to whom it is to be given and must also take into account a number of factors, including the technical feasibility and likely cost of the operator complying with it. Further, before the notice is given, the Secretary of State must also consider the public interest in the security and integrity of telecommunications systems.

The Act also ensures that telecommunications operators have an effective right of redress where they have been given a technical capability notice or, indeed, a national security notice or data retention notice. Specifically,

the Act makes it clear that the relevant operator may seek a review of that notice by the Secretary of State. When conducting such a review, the Secretary of State must consult the Technical Advisory Board—a non-departmental public body—as to the technical feasibility and cost of the notice, as well as a judicial commissioner in relation to its necessity and proportionality.

The second set of regulations that we debate today, the Investigatory Powers (Review of Notices and Technical Advisory Board) Regulations 2018, set out the circumstances in which such a review may take place and how the Technical Advisory Board must be constituted.

The third set of regulations is the Investigatory Powers (Codes of Practice) Regulations 2018. This instrument brings into force five codes of practice under the Act. The codes relate to the interception of communications; equipment interference; the bulk acquisition of communications data; national security notices; and the intelligence services' retention and use of bulk personal datasets.

Each of the five codes sets out processes and safeguards governing the use of these vital powers. They give detail on how the relevant powers should be used, including examples of best practice. They provide additional clarity and will ensure the highest standards of professionalism and compliance with the Act's provisions.

The codes are primarily intended to guide those public authorities that are able to exercise powers under the Act, as well as telecommunications operators that might be required to provide assistance in giving effect to its provisions. They provide detailed information on the processes for applying to use each of the powers, as well as in relation to the renewal, modification and cancellation of warrants and authorisations. They set out detailed safeguards in relation to the obtaining, retention, handling and destruction of information obtained in the exercise of the Act's provisions, and they include detailed requirements on public authorities in relation to record-keeping and error reporting to aid the Investigatory Powers Commissioner in carrying out his oversight functions. The codes are detailed and comprehensive, and together include more than 400 pages of guidance and best practice, ensuring that the use of these important powers is subject to the most stringent safeguards.

The final set of regulations that we are debating today is the Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-Keeping Purposes) Regulations 2018. As under pre-existing law, the Act makes it a criminal offence to intercept communications in the absence of lawful authority. It also makes it clear that lawful authority includes interception by businesses or other bodies where it is a legitimate practice. These regulations set out what conduct that includes. Such activities might be, for example, call centres recording telephone calls for training purposes, companies scanning their computer networks to detect cyberattacks or businesses ensuring that their systems are not being used for unauthorised purposes. These regulations simply ensure that companies can undertake these important routine activities without falling foul of the offence of unlawful interception.

In summary, the regulations we are debating today relate to provisions already set out in primary legislation and ensure that the provisions can be implemented effectively. They make it clear how a number of powers in the Act will operate and establish additional safeguards to the already rigorous controls set out in the primary legislation itself. I commend the regulations to the House.

11.45 am

Lord Murphy of Torfaen (Lab): My Lords, I am happy to support the Minister in everything she has said about these regulations. A few years ago I had the privilege of chairing the Joint Select Committee on the draft of the Investigatory Powers Bill. The committee made around 80 recommendations which were all accepted by the Government, and I think that few Bills in the past couple of Sessions have been subject to as much scrutiny as this one. It was considered for many days in this House and in the other place, as well as in the Joint Committee. It was right that that was the case because the powers given by the Bill to the intelligence agencies are very wide and deep—rightly so, but safeguards have been built into the Act and now, of course, they are built into the regulations as well. That is necessary because we have to strike a balance between the liberty of the individual on the one hand and the safety of our citizens on the other.

I welcome in particular the regulations on the codes of practice, which were central to the thinking of the Joint Committee. The Minister in the other place, Mr Ben Wallace, indicated that they are "user friendly" in terms of their language, and certainly they are more user friendly than the regulations themselves, which are phrased in gobbledegook, to say the least. The Technical Advisory Board, something that the committee recommended, has now been set up. It is an important development along with, as the Minister has said, the appointment of the new Investigatory Powers Commissioner, Lord Justice Fulford. On behalf of the Opposition, my successor as the Member of Parliament for Torfaen, Nick Thomas-Symonds, supported these recommendations and I do not doubt that my noble friend Lord Kennedy is likely to do the same. As a former chair of the Intelligence and Security Committee, I support them too because these regulations are vital to implementing the Act. I also congratulate the services on their work in ensuring that our children are safe from paedophiles and our citizens are safe from terrorists.

Lord Paddick (LD): My Lords, if the House will allow me, I should like to make a few comments about what happened during Oral Questions yesterday. Perhaps I may say that the decision of the Prime Minister, the right honourable Theresa May, to refuse the resignation of the noble Lord, Lord Bates, was one of her better decisions. I also commend the noble Lord, Lord Taylor of Holbeach, on how he picked up the loose ball and ran with it. It just shows what the Government can do if they work together rather than against each other. The noble Baroness, Lady Smith of Basildon, reflected the views of the overwhelming majority in the House in indicating genuine respect and affection for the noble Lord, Lord Bates. We are very pleased that he is

[LORD PADDICK]

having a couple of days of well-earned rest before he resumes the fray. However, I fear that is the end of me being nice.

I thank the Minister for introducing these regulations, which, if the House will allow me, I will take in the order set out on the Order Paper rather than in the order in which the Minister spoke to them. The regulations have been introduced against a background of two linked and significant matters. First, the 16th report of the Secondary Legislation Scrutiny Committee states:

"Because bulk interceptions in particular have the potential to include communications of people who are not suspects as well as those who the security services are targeting, this legislation is likely to be of interest to the House".

In other words, this important committee of the House has given these regulations a red flag, not least because the codes of practice run to several hundred pages. Again I quote:

"We were therefore disappointed with the obscurity of the original Explanatory Memorandum which gave the reader no indication of the potential effects of these Codes."

Secondly, the Home Office is having to make late changes to the Investigatory Powers Act in an attempt to comply with the European Court of Justice ruling on the UK's mass surveillance powers following the decision of the Appeal Court this week. We had long debates, as the noble Lord has just said, during the passage of the Investigatory Powers Bill. We on these Benches argued that the bulk acquisition of communications data treated everyone in the UK as a suspect. We drew a distinction between mobile phone data that is routinely kept by communications services for billing purposes—such as where was the call made and where was the person calling, so that the person can be charged the right amount on their bill—and new communications data that CSPs do not routinely collect; for example, so-called internet connection records, where CSPs will be required to keep a record of the first page of every website that every user of the internet in the UK visits on a rolling 12-month basis. The Investigatory Powers Act allows police and other organisations to self-authorise access to such data. The Appeal Court ruled on Tuesday that the Data Retention and Investigatory Powers Act 2014, many of the powers in which are incorporated in the Investigatory Powers Act, is inconsistent with EU law because of a lack of safeguards and the absence of a prior review or an independent administrative authority.

Noble Lords may wonder what this has to do with the regulations before the House today. The Investigatory Powers (Codes of Practice) Regulations 2018 include a draft code of practice on bulk acquisition of communications data. My understanding is that the Government claim that the judgment does not affect bulk acquisition of communications data because this is limited to the intelligence services—the Security Service, the Secret Intelligence Service and GCHQ—and that these organisations are concerned with national security, which is outside EU data protection law. The first problem with this is that GCHQ, in particular, is involved in accessing data in relation to serious crime; for example, working jointly with the National Crime Agency on child sexual exploitation, which is not within the normal definition of a national security issue.

The second problem is that, after Brexit, the UK will be treated as a third-party country by the EU 27. National security issues will no longer be exempt from scrutiny and compliance with EU law if the UK wants to continue to exchange data with the EU 27. Will the Minister explain what impact the UK's need to secure an adequacy certificate from the EU in relation to compliance with EU data protection standards once we exit the EU will have on the bulk acquisition draft code of practice? Will she also explain what advice Ministers are receiving about the likelihood of success of Liberty's other challenge to the Investigatory Powers Act, due to be heard in the High Court later this year, and what effect that will have on these codes of practice? The bulk acquisition draft code of practice also talks about communications operators receiving public funding and support to ensure that they can provide an effective and efficient response to the security services' requests for data. Can the noble Baroness tell the House how much public funding will need to be provided, particularly in relation to ICRs that are not collected and stored at the moment?

On the second code of practice, in relation to equipment interference, we pointed out in debate on the Investigatory Powers Bill the anomaly that while requests from the security services for equipment interference—downloading the contents of a mobile phone or exploiting weaknesses in software to enable remote accessing of a computer, for example—had to be authorised by a Secretary of State, requests by law enforcement agencies for equipment interference could be self-authorised by a law enforcement chief. The interception of communications warrants, covered by the third code of practice, has to be authorised by a Secretary of State whether the request comes from the security services or law enforcement agencies, but a Secretary of State's authority is not required in the case of equipment interference warrants for law enforcement agencies. Surely, in the light of the decision of the Court of Appeal, such self-authorisation should no longer be permitted.

Targeted equipment interference warrants can be issued against equipment belonging to or in the possession of an organisation or equipment in a particular location. Can the Minister explain, if warrants allow interference with the equipment of innocent people within that organisation or at that location—collateral damage, if you will, in pursuit of the real criminals and terrorists—how that is compliant with the ruling of the High Court and the ECJ?

The Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations are straightforward and we support them. The Investigatory Powers (Review of Notices and Technical Advisory Board) Regulations deal with appeals against technical capability notices, national security notices and data retention notices, which include consultation with the Technical Advisory Board. These regulations set out the composition of the TAB and the process and timing of appeals. We support these regulations as well.

Finally, we come to the Investigatory Powers (Technical Capability) Regulations, setting out what may be contained in technical capability notices, which impose obligations on a relevant operator in order that the operator can

deliver what is required if served with an interception warrant, equipment interference warrant, or warrant or authorisation for obtaining communications data. In the tech sector, techUK represents 900 companies, employing about half of all those employed in that sector in the UK, and it has raised concerns about technical capability notices arising from these regulations.

Clearly, communication service providers must have the technical capability to be able to comply with lawfully authorised warrants. But these regulations also require CSPs,

"to notify the Secretary of State, within a reasonable time, of—

(a) proposed changes to telecommunications services or telecommunication systems to which obligations imposed by a technical capability notice relate;

(b) proposed changes, to existing telecommunications services or telecommunication systems, of a description specified in the notice, and

(c) the development of new telecommunications services or telecommunication systems".

In her opening remarks, the Minister said that these regulations do not create new powers. But techUK claims that these notifications of innovation were not listed on the face of primary legislation, albeit that the primary legislation states:

"The obligations that may be specified in regulations under this section include, among other things".

I emphasise "among other things". It goes on to express concern that these provisions could force tech companies half way through development to notify the Home Secretary about what they were doing and that the Home Secretary could then come back and demand changes, extending the tight deadlines under which they operate and risking information about commercially sensitive developments being made public to the benefit of competitors. These provisions could be a barrier to innovation and drive tech companies overseas beyond the reach of these regulations. Can the Minister provide some reassurance to the House that these additional provisions will not stifle innovation and drive tech companies overseas?

Noon

Baroness Jones of Moulsecoomb (GP): My Lords, it would be a pleasure to follow the noble Lord, Lord Paddick—except that he has covered everything I was going to cover, and more, and in much greater depth. So all that is left for me to say is that I am untrusting of this legislation—to put it mildly. I am offended by definitions that are not definitive. I am offended by the fact that some of the data collection is indiscriminate. For example, on the bulk personal datasets, on a typical travel route, if you are interested in one or two people, all the passengers will have their datasets collected. That is unreasonable and I deeply regret the regulations.

The Minister said that this is world-leading legislation, and it is in its draconian reach. Innocent people are going to be affected by this as their data is going to be collected. Whether people are migrants, journalists or innocent bystanders, they will be affected and their lives could be affected afterwards. That is unforgivable. We are being asked to approve these regulations. I do not approve of them; I think they are dreadful. I very much hope that the Government have got it right on the way to curb any excess by the security services. It is a real shame that this has happened. I thank the noble Lord, Lord Paddick, for covering this much more effectively than I have.

Lord West of Spithead (Lab): My Lords, I agree completely with my noble friend Lord Murphy. As the Investigatory Powers Bill went through, it was quite remarkable to see that so many of the suggestions that were made by the committee were accepted—every single one, I think—and that there was such prolonged debate. I am not aware of any legislation or any normal practice in any other country in the world that pays so much attention to the rights of the individual.

Lord Judge (CB): My Lords, I declare an interest as former Chief Surveillance Commissioner. The regulations which are proposed today seem to be entirely consistent with the primary legislation, and the primary legislation has increased the level of supervision, particularly in relation to the judicial commissioners and the responsibilities that are imposed on them by the legislation.

Lord Butler of Brockwell (CB): My Lords, having had the privilege of serving on the investigatory powers pre-legislation committee under the chairmanship of the noble Lord, Lord Murphy, and on the Intelligence and Security Committee, and having long experience of the operation of GCHQ and the other intelligence agencies, I start from a different position from that of the noble Baroness, Lady Jones. I start from a position of believing that these agencies operate to very high standards and that the detail of these codes of practice, which have taken some time to produce, are an indication of that.

I have two questions for the Minister which may have been covered by the noble Lord, Lord Paddick, but in which I am interested. The cost of requiring providers to keep records of IP addresses which they would not normally want to keep in the course of their business was an open issue when the committee served. I would be interested if the Minister could tell us—as the noble Lord, Lord Paddick, asked—how much the Government estimate that that cost will be.

I would also like to know whether the codes of practice on the retention of records are consistent with the judgment of the European Court of Justice in the case brought by Mr David Davis and Mr Tom Watson, and whether that problem has been solved.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the noble Baroness, Lady Williams of Trafford, for her explanation of the regulations before the House today. Like my noble friends Lord Murphy and Lord West of Spithead, I support these regulations.

These are important and serious issues, and the Government and Parliament have to balance the rights of individuals to privacy and protection from unwarranted intrusion on the one hand with the rights of us all to be protected and for the authorities to have proportionate powers to help them in the fight against serious crime.

As we have heard, the Investigatory Powers Act makes it a criminal offence to intercept the communications of a person in the UK without lawful authority and sets out what constitutes that lawful authority. I am clear that the warrants can be issued only where it is

[Lord Kennedy of Southwark]
proportional and necessary on one or more of three statutory grounds: in the interests of national security; for the prevention and detection of serious crime; and in the interests of the economic well-being of the United Kingdom. Furthermore, the decision to issue an interception warrant will be subject to approval by a judicial commissioner.

In respect of the targeted interception warrants which would be used as an investigatory tool against individuals or small groups—and in particular points 5.81 and 5.82 of the *Interception of Communications Draft Code of Practice*, which covers urgent modifications of targeted warrants—can the noble Baroness, when she responds to this debate, tell the House what particular oversight and protections there are? When the senior official makes urgent modifications from the intercepting authority, it must be approved by a senior official in the warrant-granting department within three days, and then both the Secretary of State and the judicial commissioner must be notified as soon as reasonably practical. When you consider that this particular provision could relate to a terrorist incident, or a large quantity of drugs that is going to enter the country imminently, the oversight seems to be quite slow and not in step with the seriousness and urgency that were the reason why the original modification was sought.

Points 4.13 to 4.18 of the *Intelligence Services' Retention and Use of Bulk Personal Datasets Draft Code of Practice* deal with confidential information relating to members of sensitive professions. Can the noble Baroness, when she responds, say something on how the code will protect journalists, and in particular their sources, from being identified? Investigative journalists play an important role in exposing corruption and wrongdoing, which can lead to serious criminal charges against individuals, and they provide an important public service. Can the noble Baroness also say for the record what she sees as "due regard" in respect of point 7.13 in the same code?

Section 9 of the *Bulk Acquisition of Communications Data Draft Code of Practice* covers "General safeguards". Can the noble Baroness say something on how the safeguards on the copying of data, and on the destruction of the data when it is no longer required, will be managed? When data is acquired and copies taken, I can see the risk of losing track of all the copies and then having to ensure that all copies are properly destroyed in a timely manner when they are no longer needed. Can the noble Baroness, in her response, also make specific reference to the processes in place for complaints and for dealing with errors, including serious errors, and can she confirm that she is satisfied with the robustness of the procedures and what procedures are in place to review that robustness?

In respect of the Investigatory Powers (Technical Capability) Regulations 2018, can the noble Baroness explain why the figure of 10,000 customers was chosen as the one below which these types of warrants cannot be issued?

The noble Lord, Lord Paddick, made reference to the Appeal Court ruling. It would be useful to hear a response from the noble Baroness to the points he raised. With those questions, I am very happy to support the regulations before the House today.

Baroness Williams of Trafford: My Lords, I thank all noble Lords who have spoken, particularly the noble and learned Lord, Lord Judge, the noble Lords, Lord Butler and Lord Murphy of Torfaen, and of course the noble Lord, Lord West of Spithead, for in a nutshell outlining what these regulations do, which is to complement the primary legislation. This legislation was thoroughly scrutinised by the committee and all the recommendations that it made were accepted by the Government.

It is absolutely right that the most rigorous safeguards are in place. In introducing the Act, the Government struck a very clear balance between liberty and safeguarding the people of this country. It is not about undermining the work of journalists: it never was about undermining the work of journalists. As I said in my opening speech, these powers are absolutely necessary to prevent terrorism and intercept paedophiles and serious organised criminals. The aim of the legislation was never towards journalists.

The noble Lord, Lord Kennedy, asked about oversight. The oversight function is by the commissioner, as I think he suspected. Yes, the codes of practice are lengthy, but they are user-friendly. It is such a complex area, but that was the intention behind the codes of practice.

Before I turn to the numerous questions that the noble Lord, Lord Paddick, asked, I absolutely echo his words about my noble friend Lord Bates yesterday. He is a wonderful man, a wonderful Minister, and we are very glad that in a few days he will be back. My noble friend Lord Taylor picked up the Question. I do not know how well he answered it, but I am sure in his inimitable way he answered it pretty well, he is such a professional. Yes, I commend the words of the noble Baroness, Lady Smith. This was obviously a spontaneous event and those who responded spontaneously in your Lordships' House were very generous and kind. I thank everyone who was there at the time.

The first question of the noble Lord, Lord Paddick, was about the Explanatory Memorandum to the codes. The committee made clear:

"At our request the Home Office has now replaced this"—

the Explanatory Memorandum—

"with one that sets out more clearly what the Codes do and why, which should aid the House in its scrutiny of the way the system is to operate".

The noble Lord also asked about bulk communications involving those who are not suspects—innocent people. I reiterate what I said in my opening speech: there are extremely stringent safeguards in the IP Act regulating the use of bulk powers. A bulk warrant may be issued by the Secretary of State only where it is necessary and proportionate—they are the two key words here—and where the decision to issue it has been approved by a judicial commissioner. The bulk powers are available only to the intelligence services, and a bulk warrant may be issued only where it is necessary in the interests of national security.

Every bulk warrant must specify each of the operational purposes for which the data obtained may be subsequently examined. Examination may not take place for any purpose other than those specified in the warrant, and the Secretary of State and judicial commissioner must be satisfied when they issue the

warrant that those purposes are necessary. Examination of bulk data itself may take place, again, only where it is necessary and proportionate. In practice, the safeguards mean that only a tiny fraction of the data obtained will ever be accessed.

Lord West of Spithead: Does not the Minister agree that the collection of bulk data does not assume that everyone in our population is a suspect, as the noble Lord, Lord Paddick, said, any more than the camera systems on our public transport assume that everyone on that bus is a suspect? Rather, it highlights and spots the person who sticks a knife in someone.

Lord Paddick: I am very grateful to the noble Baroness. The question I was asking, reflected by another noble Lord during the debate, was: what is the impact of the Appeal Court ruling this week and the decision of the European Court of Justice on these very issues? The expression I used was one that came from that judgment rather than being one I was adopting as my own.

12.15 pm

Baroness Williams of Trafford: Sometimes the problem with interventions is that you do not get around to saying what you were going to say. Perhaps noble Lords will be patient. The noble Lord, Lord West, put it very succinctly and illustrated what we mean by bulk data.

Where the content of a communication is to be examined when it is of a person known to be in the British Isles, a separate targeted examination warrant must be obtained, which is in itself subject to approval by the Secretary of State and a judicial commissioner. The codes of practice that I have been outlining today provide additional safeguards on the use of bulk powers relating to filtering data, the training that must be obtained by those examining it and how bulk data should be handled, retained and destroyed.

The noble Lord, Lord Paddick, also asked if warrants allowed interference with devices of innocent people and asked how that was compliant with the ECJ ruling—the question on everyone's lips. Equipment interference is subject to stringent safeguards and any warrant must be necessary and proportionate and must be approved by a judicial commissioner. This House has, of course, approved those strong safeguards.

I see the noble Baroness, Lady Chakrabarti, looking quite interested, because the noble Lords, Lord Paddick and Lord Butler, asked about the Liberty challenge to the IP Act and the Government's response to it. The judgment handed down by the Court of Appeal on Tuesday this week—I presume that that is the one that they are referring to—relates to the challenge brought against the DRIP Act. It has now been replaced by provisions in the Investigatory Powers Act, and therefore the judgment relates to legislation that is actually no longer in effect. The provisions in the Act challenged by Liberty, which will be heard at the end of February in the High Court, relate to targeted communications data and, therefore, are not relevant to the debate today.

I move on to the technical capability regulations. I was asked whether they would stifle innovation. To be clear here, none of the regulations that we are discussing today in and of themselves place any burden on industry. To suggest that the Investigatory Powers (Technical Capability) Regulations 2018 would damage companies operating in this country is to misunderstand what the provisions in those regulations actually do. Those regulations do not themselves impose any requirements on telecommunications or postal operators. Rather, they set out what obligations could be imposed on an operator through a technical capability notice. The power for the Secretary of State to give such notice is set out in the Investigatory Powers Act itself, and has therefore already been approved by Parliament. There are stringent safeguards in the Act regulating the use of technical capability notices to minimise the impact on businesses, including that the notice must be necessary, proportionate and approved by a judicial commissioner. As I have already said, before giving a technical capability notice to a relevant operator, the Secretary of State must consult that operator. In addition, the Secretary of State must consider a number of factors before deciding to give a notice. Those factors include the technical feasibility and likely cost to the operator complying with the notice, which goes to the heart of ensuring that a notice does not damage a company's interests.

The Act also makes it clear that the Secretary of State must ensure that arrangements are in force for securing that relevant operators receive an appropriate contribution in respect of their costs incurred in complying with the Act, as the Secretary of State deems appropriate. Such costs include those incurred in relation to complying with a technical capability notice. The Government's policy is that the appropriate contribution is calculated on a case-by-case basis to ensure that the operator makes neither a loss nor a gain from complying with the Act. A number of the draft codes of practice that we have debated today include an entire chapter on technical capability notices, giving further information about their use, including details of the cost recovery process and the sorts of activities it is anticipated that the Government would fund as part of an operator maintaining a capability.

I may be repeating myself here, but the noble Lord, Lord Butler, asked about making sure that the codes of practice on retention records are made consistent with this week's ruling. The judgment related to the retention of communications data by telecommunications operators is not being debated today. The CJEU ruling was not about safeguards for equipment interference or for access to bulk communications data. The IP tribunal considered the specific issue of whether the CJEU judgment applied to bulk communications data and has made a further reference to the CJEU on this very point and on whether the bulk communications data regime is within the scope of the judgment's safeguarding requirements.

Lord Paddick: My Lords, I realise that I am intervening a bit late, but I did not want to interrupt prematurely, as I did before. Will the Minister comment on techUK's specific suggestion that the regulations impose an additional aspect to the technical capability notice, in that the Home Office will be alerted to changes in innovation in systems and development? I do not think that the noble Baroness has addressed that specific issue.

Baroness Williams of Trafford: I do not think that they do, but I will write to the noble Lord, if I may, on that specific point.

The noble Lord, Lord Butler, asked about the cost of providers keeping IP addresses. The Act makes it clear that companies will be provided with an appropriate contribution to their costs of complying with the Act. The noble Lord will appreciate that I do not have the detail of that to hand, but I am happy to write to him.

The noble Lord, Lord Kennedy, asked about the processes in place for dealing with errors. There are entire sections of the codes of practice setting out the processes for reporting errors to the IP commissioner, including the timeframe for when it must be reported and what might constitute an error. The commissioner has broad and comprehensive powers to investigate such errors.

I think I have answered everything apart from the question from the noble Lord, Lord Paddick.

Motions agreed.

Capita
Statement

12.23 pm

Lord Young of Cookham (Con): My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer given by the Cabinet Office Minister, Oliver Dowden, to an Urgent Question in the other place. The Statement is as follows:

"Mr Speaker, I have been asked to comment on the stock market update issued by Capita plc yesterday and its potential impact on the delivery of public services. I completely understand that this is a matter of significant interest to many in the House, following the recent failure of Carillion, but I can assure Members that this is a different situation.

To be clear, this announcement was primarily a balance-sheet strengthening exercise, not purely a profit warning, and, indeed, as has been widely reported, the company has significant cash reserves on its balance sheet. We do not believe that Capita is in any way in a comparable position to Carillion. Further, Capita has a different business model.

The issues that led to the insolvency of Carillion will come out in due course, but our current assessment is that they primarily flowed from difficulties in construction contracts, including overseas. In contrast, Capita primarily is a services business and 92% of Capita's revenues come from the UK. We regularly monitor the financial stability of all our strategic suppliers, including Capita. As I have said, we do not believe that any of them are in a comparable position to Carillion. The measures that Capita has announced are designed to strengthen its balance sheet, reduce its pensions deficit and invest in core elements of its business. Arguably, these are measures that may have prevented Carillion from getting into the difficulties that it did. Of course, the impact of this has been to reduce dividends and shareholder returns in favour of others: evidence of shareholders—not the taxpayer—taking the burden.

My officials met with senior executives of Capita yesterday to discuss the impact of the announcement. We continue to work closely with the company to monitor the execution of its plan, and, of course, to ensure the continued delivery of public services. We continue to engage with all of our strategic suppliers and make continuing assessments as appropriate as well as contingency plans where necessary. It would not be appropriate to discuss in any further detail contingency plans associated with particular contracts due to issues of commercial sensitivity.

The priority of the Government is the continued delivery of public services. This is exactly what we achieved with Carillion. In respect of the collapse of Carillion, there has been minimal disruption to the provision of public services following its liquidation. We are continuing to make sure that public services continue to be delivered and that has happened".

12.26 pm

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to the Minister for repeating the Answer. Clearly, this is a matter of concern in the light of the failure of Carillion. The Minister said that the Government do not believe that any of their strategic suppliers are in a comparable position, including Capita. I wonder whether he can tell me what risk assessments have been undertaken and whether the Government will publish their criteria? Can he also say which contracts the Government are in the process of considering granting to Capita and its offshoots at the moment? Has a Crown representative been appointed to the board of Capita?

I understand that Capita was given 154 contracts last year, and that only last week, in the light of the Carillion collapse, contracts were being brokered to Capita, even though the firm is clearly facing challenges. That given, is the Minister really assured that the current outsourcing programme and restriction, essentially, of contracts to a very small number of companies does not deserve a fundamental review? Can he give assurances about the workforce? Is he confident of the viability of Capita's pension scheme? He will know that Capita runs a lot of public sector pension schemes, including Teachers Assurance; I remind the House that my wife is a teacher. Are the Government confident that, in the event of Capita failing, the pension schemes that it runs will not be affected?

Finally, I want to ask the Minister about the impact on SMEs—and I should declare that my stepson and brother-in-law both run SMEs that contract for government contracts. The Minister will know that many SMEs were badly affected by Carillion's collapse. I looked at the study published by the NAO last year. It showed that, partly because of the cuts in departments' commercial capacity, but more generally because departments would prefer to contract with a limited number of large suppliers, SMEs will essentially get contracts only as part of a supply chain managed by the prime contractor. Given that SMEs can be particularly vulnerable in those circumstances, I wonder whether the Government felt that they responded adequately to the NAO report and whether they are changing their procurement practices.

Lord Young of Cookham: I am grateful to the noble Lord for his questions.

There are two levels of risk assessment. One is at the point at which a particular contract is let. A risk assessment that is obviously proportionate to that contract is made at that point, making sure, for example, that there are adequate cash reserves to see the contract through. Then, at a slightly broader level, one monitors continuously the broad health of the company concerned. On that point, there is a Crown representative in Capita and has been throughout the period in question.

In a moment, I will come on to the question of diversity of supply. On pensions, we do not believe that there is a risk to the pension funds that are administered by Capita. We think that that is perfectly safe. On Capita's own pension scheme, its deficit in June 2017, I think, was £381 million. A triennial review is going on. The outcome is widely anticipated to be a lower deficit. Part of the announcement yesterday was on further resources being put into the pension fund.

The important issue that the noble Lord raises on trying to broaden the base of contractors that work for the Government is a priority. We have a target of allocating I think 30% of public sector contracts to SMEs. Work is ongoing. There is a good question as to whether work that is subcontracted by a major contractor to smaller contractors scores or whether the smaller contractor should be, as it were, the prime contractor. This work is ongoing, but we take the point. We want to see a greater proportion of work going to SMEs.

On SMEs, Capita's record on prompt payment is quite good. Capita generally paid 70% to 90% of all subcontractors within 30 days. It has introduced a new payment system and aims to pay 100% of subcontractors within 30 days. I hope that that will be of some reassurance.

On the comparison with Carillion, I tried to make the point at the beginning that the steps that Capita announced yesterday were perhaps steps that Carillion should have announced earlier. They were designed to strengthen the balance sheet, reduce dividends and make sure that the fate that befell Carillion does not happen to Capita. Of course, Carillion was exposed to some major construction contracts. Capita's business model is quite different. If I have not answered all the noble Lord's questions I will drop him a line.

Lord Adonis (Lab): My Lords, does the noble Lord think it appropriate that Capita is paying any dividends, given the huge stress that it is currently under? Will he tell your Lordships whether the Crown representative, who is currently on the board of Capita, has been continuously in post for the last 12 months?

Lord Young of Cookham: On the first question, I understand that dividends have been suspended. That was part of the announcement. That, together with the rights issue of some £700 million, will mean that there will be some additional £900 million available in cash to the company. I will write to the noble Lord. I have asked about the Crown representative. I was assured that one had been in place. I will drop him a line on the specific question of 12 months, but there has been, and indeed is, a Crown representative on the board.

Baroness Kramer (LD): My Lords, I hope that the Government will understand that they now have a very strong warning sign from both the Carillion and Capita events that they have been concentrating their outsourcing on far too small a group of companies, but also companies that, partly through their concentration, are too complex not just to manage, but to audit, or for the analysts or the credit rating agencies to get a grip on them. Will the Government strengthen the assessment capability for central and local government, and other parts of the public sector, so that they can comprehend the risk far more accurately at the prequalification stage, when contracts are to be let, and during the period of supervision? Picking up on diversification, which is certainly crucial to small entities, does he understand that diversification in and of itself is necessary to break the systemic risk that comes with overconcentration?

Lord Young of Cookham: On the noble Baroness's first point about it being too complex, I believe that the chief executive officer himself, Jon Lewis, said yesterday that it is too complex and he wants to streamline it, hence the asset disposal and the streamlining of the operation.

I know that more personnel have been recruited within the Cabinet Office to beef up the Government's capacity to supervise these contracts. I take on board the point that the noble Baroness made about making sure the Government have the resources to monitor the contracts we have placed with private sector companies.

We are at one on her final point. We would like to reduce the concentration of these big contracts to a small number of companies. We would like to broaden the base and see more companies bidding for these contracts and winning them.

The Viscount Thurso (LD): My Lords, further to the answer that the Minister has already given about SMEs, now that we know the risks of a small number of contracts with some very big companies, will he accept that it is the procurement process that drives people to tier 1 contractors? Will the Government look at improving the procurement process so that SMEs have a better chance to get contracts?

Lord Young of Cookham: I agree entirely with the point that the noble Viscount has just made. If we are to hit our 30% target, we will indeed have to look at the procurement process in order to ensure that smaller companies are able to bid for and win these contracts.

Lord Mackay of Clashfern (Con): In construction contracts, is a guarantee given by an insurance company or some other sufficient guarantor for the performance of contractual arrangements?

Lord Young of Cookham: I will need to write to my noble and learned friend on that. Basically, the Government pay for work that has been undertaken, so we do not pay in advance. Before a contract is let, though, detailed questions are asked about the financial

[Lord Young of Cookham]
ability of the company to carry out the contract. Whether they are actually underwritten and guaranteed by an insurance company is a more detailed question, the answer to which is not in my folder.

Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (General Council of the Bar) Order 2018

Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2018

Motion to Approve

12.36 pm

Moved by ***Baroness Vere of Norbiton***

That the draft Orders laid before the House on 19 December 2017 be approved.

Baroness Vere of Norbiton (Con): My Lords, while these statutory instruments are in the name of the General Council of the Bar, they relate to the functioning of the Bar Standards Board. In accordance with the Legal Services Act 2007, the Bar Council has delegated its regulatory responsibilities to the BSB. At their heart, the statutory instruments are designed to ensure that the BSB can regulate more effectively and efficiently. I confirm to the House that the Legal Services Board has consulted on and considered the proposals and made formal recommendations to the Lord Chancellor that these orders are made.

The first order is being made under Section 80 of the Legal Services Act 2007 and makes provision enabling the First-tier Tribunal to hear and determine appeals in relation to decisions made by the BSB in its role as a licensing authority. This is a straightforward matter. The BSB was made a licensing authority in February 2017, and on a temporary basis an appeal route to the High Court was established. However, it is accepted by all interested parties that it is more appropriate that the First-tier Tribunal determines any appeals against the BSB in its role as a licensing authority. The First-tier Tribunal has a jurisdiction in the General Regulatory Chamber and judges with experience in considering regulatory appeals. Similar orders have been made in the past in respect of the Council for Licensed Conveyancers, the Chartered Institute of Patent Attorneys, the Chartered Institute of Trade Mark Attorneys and many more.

The second order is being made under Section 69 of the 2007 Act and modifies the functions of the BSB in six main ways. It gives the BSB the power to make regulations or rules allowing for appeals to the First-tier Tribunal; this is in effect the counterpart to the Section 80 order already discussed. It gives the BSB, in its role as an approved regulator, the same intervention powers that it has as a licensing authority. And it gives the BSB powers to make rules in relation to information gathering; disciplinary arrangements, practice rules on engaging disqualified individuals; and compensation arrangements. These provisions will place the BSB's regulation of barristers on a statutory footing. Currently there is no statutory basis for much of the regulation of individual barristers or entities by the BSB. Barristers are regulated under a non-statutory regulatory regime, with barristers in effect consenting to be bound by the BSB's rules, thus establishing a contract between them. This arrangement is underpinned by a series of agreements between the Bar Council, the Inns of Court, the Bar Tribunal and Adjudication Service and the BSB.

In an ever-changing legal services market, a contractual mechanism of regulation is not sustainable in the long term. The legal services market continues to evolve with innovative businesses—with different and novel business models—entering the market at a rapid rate. Since February 2017, the BSB has been able to license alternative business structures, in addition to regulating barrister entities and individual barristers. As of today, the BSB regulates 80 barrister entities and seven alternative business structures. The LSB and BSB believe that the interests of consumers and the public would be better protected if many of the BSB's arrangements for regulation were placed on a statutory basis, as it would enable the BSB to react more effectively and efficiently to the rapidly changing nature of the market.

Furthermore, the LSB has concluded that, while a contractual basis for regulation may be appropriate for arrangements where the regulator and the regulated person are in alignment, it may not be appropriate in other areas, such as when enforcement action is needed. Remedies exist in the current contractual arrangements, but they may be difficult to enforce and may become increasingly difficult as new business models emerge.

I am aware that, when the LSB consulted on the draft Section 69 order in 2016, concerns were expressed by the Council of the Inns of Court, the Institute of Barristers' Clerks and the Bar Council. The BSB has taken time to consider these concerns carefully and has committed to working with interested parties to ensure that regulations are proportionate and in keeping with the eight statutory objectives in the Legal Services Act 2007. I note that, while the Section 69 order enables the BSB to make rules and regulations in a number of important areas, the BSB cannot make changes to its regulatory arrangements without first obtaining the approval of the LSB. The LSB has strict criteria under which it considers applications for amendments to regulatory arrangements, including an expectation that appropriate consultation has been undertaken. As the LSB has demonstrated previously, it will not approve changes unless it is satisfied that the changes are necessary and will promote the regulatory objectives. In summary, the powers sought are proportionate and there are appropriate checks in place.

In conclusion, these statutory instruments are necessary to enable the BSB to carry out its role as a regulator more effectively and efficiently, and to better regulate in the consumer and public interest. I commend them to the House.

Lord Thomas of Gresford (LD): My Lords, I really have no objection to the first statutory instrument; it seems quite appropriate that, where there are appeals relating to licensing authority decisions, they should

be made to the First-tier Tribunal. I note that, when there was a consultation on these provisions, the only response was from the Bar Council, which agreed that the draft order was appropriate. Another point is that the number of appeals is very low—it is planning for appeal volumes of less than 10 cases per year, which is a very small part of the work for the First-tier Tribunal.

The order on modification of functions, however, is of a very different nature. We were discussing yesterday—and will be discussing for the next couple of months—the problems of delegated legislation and, in particular, the ability to have tertiary, not secondary, legislation; that is, the power to make rules and regulations delegated to a body outside the ambit of parliamentary scrutiny. The Bar Services Board in particular will, I believe, be outside statutory oversight by this Parliament. Therefore, one has to look very carefully at what it proposes to do. Will the Minister confirm that the Bar Standards Board has said that it wants these powers but is not going to exercise them? That appears to be the nature of what is said in the policy background and in the papers supplied in connection with this application.

The powers granted to the Bar Standards Board to make rules and regulations—tertiary legislation—are very extensive. Article 3 of the order deals with appeals. Article 4 is concerned with intervention powers that would permit the Bar Standards Board to enter premises, seize relevant papers and prevent a person practising. These are significant powers. Article 5 allows the Bar Standards Board to introduce rules and regulations that will require an authorised person—an individual barrister—to provide information and documents for the purpose of ascertaining whether any rules, regulations or code issued by the Bar Council are being complied with. In other words, it is a power to seize documents and to make a person respond to questioning about the nature of those documents. Article 6 is just out of this world. It gives the Bar Standards Board power to make disciplinary arrangements, which include the possibility of imposing fines not exceeding £50 million. Could an individual barrister have to pay a fine of £50 million? What sort of world is the Ministry of Justice living in? After the cuts it has inflicted on the Bar over many years, it is now lashing out £50-million fines and fines not exceeding £250 million for entities. These are just ridiculous figures.

Article 8 allows the Bar Standards Board, under the aegis of the Bar Council, to make practice rules requiring the formulation of a list of disqualified persons. The order allows the Bar Council, through the Bar Standards Board, to make compensation arrangements. It simply disregards the fact that members of the Bar are not allowed to hold clients' money in any way at all, yet there are extensive compensation provisions in Article 9 of this proposed order. It seems to me that these powers are way over the top. If the Bar Standards Board is just saying, "We would like these powers but do not intend to use them", the whole exercise is complete nonsense.

12.45 pm

Lord Beecham (Lab): My Lords, I approach this matter as a mere happily retired solicitor. I defer to the noble Lord's long experience in these matters. I certainly share some of his misgivings, particularly in relation to the ludicrous amounts of compensation which might be involved. However, I congratulate the Minister on sticking to her brief and delivering it very effectively. I take some comfort—perhaps she will, too—from the absence, apart from the noble Lord who has spoken and the noble Baroness who has just entered the Chamber, of others who practise at the Bar, or who have practised at the Bar, and many Members of your Lordships' House are in that position. It suggests that perhaps there is no great concern about these arrangements among those who have served at the Bar. That is some comfort.

However, I am not entirely clear about another aspect of the compensation fund. It is not clear whether that relates, as the noble Lord implied, to moneys handled by the members of the Bar or to compensation for negligence claims—which, I fear, solicitors are from time to time involved in and for which, of course, they are insured. The Minister may be able to clarify that.

On the role of the LSB with regard to the Ministry of Justice, the Explanatory Memorandum says that the compensation fund,

"cannot be implemented unless the LSB grants approval".

Will the Ministry of Justice have any say in that process or will it be left entirely to the LSB to determine?

However, the thrust of the order—subject to some of the questions which have been raised, particularly by the noble Lord—seems to be in the right direction and ought to give confidence to those involved in the legal system. Perhaps the Minister could indicate whether the MoJ will in due course seek an update on how matters are progressing in, say, two or three years' time, to see whether things are working satisfactorily or whether it might wish to suggest to the Bar Council that the situation might be reviewed.

Baroness Vere of Norbiton: I thank both noble Lords who contributed to the debate today for their questions. It is helpful to consider the issues that have been raised. Of course I completely understand the position of the noble Lord, Lord Thomas, and his concerns, which I hope to be able to allay this afternoon.

He began by talking about the nature of the delegated powers, so to speak, that will be created in due course under these orders. I suppose that to some extent he is right, but of course these powers will not be unique; in many instances barristers and other similar organisations will just be falling into line with what happens with other legal services organisations. The LSB—this relates to comments made by the noble Lord, Lord Beecham, as well—is an independent body from the Ministry of Justice. As with these sorts of bodies, the board members and the chair are appointed by the Lord Chancellor in consultation with the Lord Chief Justice. These are ministerial appointments and, as noble Lords would expect, these public appointments go through the process that is regulated by the Commissioner for Public Appointments.

The Legal Standards Board is of course tasked with looking at the rules and regulations of all the organisations in its field of responsibility. In these circumstances, any rules and regulations that are put in place by the Bar Standards Board will have to go to the LSB for approval, which is very important in making sure that the process is robust. The LSB has

[Baroness Vere of Norbiton]
strict criteria on what the regulations and rules can set out for all its organisations. This is definitely not a rubber-stamping exercise. For example, in 2014 the LSB rejected a request from the Solicitors Regulation Authority to reduce its professional indemnity insurance limit—so there are still more than adequate safeguards to ensure that the rules are proportionate.

On intervention powers, which, again, the noble Lord, Lord Thomas, raised, under Schedule 14 to the Legal Services Act 2002 the BSB already has intervention powers in its role as a licensing authority that licenses alternative business structures. This order simply gives the BSB the same powers in regulating barristers and barrister entities. I am very keen that we understand that this simply also creates a level playing field as the innovative nature of legal services moves on and the number and type of organisations increase.

The BSB would intervene only in very rare circumstances if it were necessary to protect consumer and public interest—for example, if an entity were about to go bankrupt. The powers include seizing papers and closing down an entity. Of course, there is a right for the person affected to appeal to the High Court. We are very clear that the intervention powers will be used as a last resort, and after other sanctions, where there is an urgent need for protection.

The noble Lord, Lord Thomas, also asked why the BSB is seeking these powers if it is apparently not going to use them. To a certain extent we have to look at the types of organisation that we have at the moment but we also have to future-proof our regulatory regime against what might happen in the future. The regulated legal services market is evolving very rapidly at the moment and we must be prepared for what may come in the future. For example, where there might currently be no need for compensation arrangements, this may change in the future. The draft order enables the BSB to take a proportionate and, importantly, consistent approach to regulation by being able to decide to whom the obligations should apply.

The noble Lord, Lord Thomas, raised a point about fines. The maximum levels of fines may appear to noble Lords to be very high, as indeed they do to me—I cannot conceive of having that much money—but we must understand that some of the alternative business structures in particular will contain significant amounts of capital and may grow quite large, involving not just legal services but other types of businesses. It is important that we have the right incentives to make sure that people do not contravene the rules. The amounts are absolute maximums and it will be for the BSB to consider and consult on what fining regime and fine levels it should have in the future. As with all proposed rules, the fining regime will need to be approved by the Legal Standards Board. This safeguard keeps coming back: the Legal Standards Board has to approve the issues that we are talking about today.

Lord Thomas of Gresford: My point is that nobody other than the Legal Services Board will ever look at the possibility of effectively an offence being introduced by the Bar Standards Board with a maximum fine of £50 million—or £250 million if it is an alternative business structure. What is the need for that?

Baroness Vere of Norbiton: My Lords, I think that I have already explained the need: we do not know now where these legal services companies are going to go. I am sure that noble Lords will be aware that many legal services companies have a great amount of wealth. These are maximum figures. They are not figures that will necessarily end up in the regulations but they are there to future-proof these orders so that we make sure that we have a system that will work in the longer term.

The noble Lord, Lord Thomas, also talked about looking for evidence for change and asked why the changes were necessary. Despite the prohibition on holding client money, the BSB has, for example, recent experience of a situation where it felt that it would have benefited from an intervention power. Given the changing legal services market, it is clear that the BSB is asking for these powers because it feels that they will be used in the future.

If I have not covered any points, I am sure that we will pick them up afterwards and I will write to noble Lords.

The Legal Services Act 2007 established a new regulatory framework with the overarching aim of putting the consumer at the heart of legal services, and these orders are a further step in that direction. The BSB believes that a consensual, non-statutory regulatory regime is not appropriate, particularly where there is disagreement between it and those that it regulates. It is therefore in the public interest for it to have clear statutory powers with clear judicial safeguards.

Motions agreed.

Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2018

Motion to Approve

1 pm

Moved by ***Lord Bourne of Aberystwyth***

That the draft Regulations laid before the House on 21 December 2017 be approved.

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 are committed to delivering a fair and effective appeals system for business rates that provides an efficient means for ratepayers to challenge the valuation of non-domestic properties. That is why in April 2017 the Government introduced significant reforms to the appeals system, through the new "check, challenge, appeal" framework that is being delivered by the Valuation Office Agency and Valuation Tribunal for England. I hope that noble Lords agree that the system in place before April 2017 was clearly in need of reform.

Penalties for the provision of false information, which are the subject of the regulations we consider today, are an important part of these overall reforms. They will act as an important deterrent to providing false information that will help to maintain the integrity of the appeals process and the wider business rates system. Under the "check, challenge, appeal" framework,

ratepayers are required to provide information to the valuation officer. This is both at the check stage when the underlying facts are confirmed and agreed, and throughout the challenge stage with the exchange of more detailed evidence. In line with other parts of the tax system, penalties will be an important mechanism to support the submission of accurate information. Specifically, the regulations will, if approved and made, provide the Valuation Office Agency with the power to impose a penalty on a person who provides false information knowingly, recklessly or carelessly.

The regulations specify the level of the penalty, which will be set at £200 for small businesses and £500 for all others. It may be helpful to remind noble Lords that the £500 maximum penalty reflects the level that was specified in the Enterprise Act 2016, which provided the enabling powers for penalties in the business rate appeals system.

The Government recognise that there may be cases where a person wishes to challenge the imposition of a penalty. The regulations therefore also provide a right of appeal. Any person who is subject to a penalty may, within 28 days of receiving a penalty notice, appeal to the independent Valuation Tribunal for England. Where the tribunal finds in favour of the appellant they will then be able to order the valuation officer to remit the penalty in full. Clearly, it is important that there is no financial incentive for the valuation officer to impose a penalty. The regulations therefore also require that any sum received by the Valuation Office Agency by way of a penalty must be paid into the Government's Consolidated Fund. This will ensure that the Valuation Office Agency does not benefit financially from the imposition of penalties.

As part of the wider consultation on draft regulations for the new appeals system, the Government sought views on the proposed approach on penalties. The consultation received over 280 submissions, and the Government's response was published in March 2017. As set out in the government response, there was clear support for the introduction of penalties from local government. Many businesses also accepted the need for a penalties framework, but expressed concern that penalties could be imposed where ratepayers have made a genuine mistake. Some respondents suggested that the level of penalties should be linked to rateable value, to ensure that they are an effective deterrent for large businesses.

In light of the concerns raised, the government response confirmed that the Valuation Office Agency would provide clear guidance to support ratepayers with the provision of information and on the application of penalties. Where ratepayers feel that a penalty has been unfairly imposed, as I have already outlined, they will have a right to appeal to the independent valuation tribunal. While these are important provisions to support a fair system, the consultation also confirmed the Government's clear view that ratepayers have a duty to take reasonable care in providing information on their tax affairs.

Noble Lords will no doubt be aware that the wider reform to the appeals system is not without its critics and that the concerns of some noble Lords were discussed at length on a Motion to Regret late last year. Given that discussion, I do not propose to revisit those concerns in detail today. Suffice it to say the Government remain clearly of the view that the reforms were an important and necessary step to fixing what was clearly a flawed and inefficient system for all involved. I reiterate that we expect the Valuation Office Agency to continue to work closely with ratepayers to ensure that the system is meeting our objective of a more efficient and effective system.

For the purposes of today's debate and the specific regulations at hand, I hope that noble Lords agree that it is entirely right that the system is supported by appropriate powers to penalise the provision of false information, and that these are accompanied by appropriate safeguards, such as the right of appeal, to ensure the system operates fairly and effectively. I commend these regulations to the House.

The Earl of Lytton (CB): My Lords, I first declare a professional interest as a property consultant and a member of bodies concerned with business rates, as a vice-president of the LGA and, from time to time, as a non-domestic ratepayer. It will be no surprise, and I am sure that the Minister will understand, that I am coming at this somewhat from the ratepayer standpoint.

My concerns are with the penalty for inaccurate information under new Regulations 9A to 9D. I entirely accept what the Minister has said: the system needed a thorough going over. But I have a question surrounding the terminology of "knowingly, recklessly or carelessly" providing false information in new Regulation 9A(2)(b).

Penalising deliberately providing misleading information is absolutely fine in principle. I make no observation about the quantum of the fine either or, for the most part, the mechanisms for imposing it and appealing it. But if the process of "check, challenge, appeal", as I perceive it, involves systemic complexity and a requirement for information from a ratepayer that they are unlikely to possess and probably cannot verify, the risks of infraction become unreasonably high. It is the working environment rather than purely the penalties that I will concentrate on.

We know that the intention is to discourage false information and that there was a problem about that in the past. All too often, it was perpetrated by so-called business rates consultants, who were, sadly, on a number of occasions, proven to be neither professional nor honest. But rather than tackle them—they were known firms and bodies—it seems to have been decided to scapegoat by design every appellant ratepayer. I do not accept that approach.

Noble Lords will also be aware that new arrangements for "check, challenge, appeal" mean that most of the proposals to alter entries in the rating list must be made via a government portal. That requires an individually named person to register by giving a lot of personal information. For example, for an SPV that has no employees and no land with buildings for development, that is clearly unworkable. I am also told that a number of local authorities are finding this difficult as well. If you do not have a UK passport or UK national insurance number it has to be done manually. If you register but then forget your password, I understand that there is no reset provision. If you have multiple properties, each must be individually

[The Earl of Lytton]
linked to the person registering and the details re-entered for each one. If you appoint an agent, he or she has to go through this again once they have received a formal notification through the system that they have been appointed. Annoyingly, if as sometimes happens the agent does not get the notification, I am told that the only advice the Valuation Office Agency was able to give was that the ratepayer should deregister. In other words, they must reverse the entire process and re-enter the whole lot de novo. That cannot be right.

Once the registration has been done, the check stage comes in. As the Minister has said, that is the point at which a lot of information needs to be put in about the property. Some of the requirements are a little opaque, shall I say, such as how many floors the property has. Apparently one can select from minus nine to plus 55, which is mathematically slightly Quixotic but also happens to rule out the Shard. One may also be asked about the eaves height, for which the Shard would also be a non-qualifier. At other times people have been required to provide a net internal floor area for a property customarily measured and valued on the basis of gross externals. This is beginning to look a little problematic for the ratepayer. One may then be asked when the last refurbishment took place; as if the tenant would necessarily know that. The choices go back in tranches as far as 1900 on the online system. There is also a rather risible suggestion that the lease details or the local planning office might have information on refurbishment. In any case, a refurbishment undertaken 30 years ago is likely to be totally worthless in modern valuation terms.

I do not wish to poke too much fun because actually this is a very serious business. Let us remember that in the middle of all this there is a ratepayer trying to fill in an online form for which there is a potential liability for inaccuracies. The point I want to make is that the architecture is deficient and the system makes unnecessary and time-wasting demands on ratepayers as well as putting in place tripwires that really should not be there.

I note the answer given by the Financial Secretary to the Treasury to the Delegated Legislation Committee in the House of Commons on 29 January in answer to the honourable Member for Oxford East concerning rating appeals:

> "The technical problems we have had with the system some months ago have largely been resolved".—[*Official Report*, Commons, First Delegated Legislation Committee, 29/1/18; col. 6.]

That is not quite the message I am getting through the trade, if I may term it thus. In reality, although the digital platform may have improved, the environment in which it operates has not.

My concerns are the lack of clarity or definition over what will constitute a culpable error. I noted the noble Lord's comment that guidance was to be provided. I am not aware that guidance has been provided, but I am aware that rating professionals have been asking the VOA whether it will produce anything to clarify the circumstances that constitute a culpable error, but I have been told that it does not propose to do so. This seems a rather one-sided situation, and the decision to impose penalties seems to be in the hands of a party to the matter even though they do not benefit financially. The process is a touch inequitable and asymmetric as a way of dealing with public administration.

I want to ask the Minister what proposals there might be to address some of these continuing problems, in particular the absence of a proper definition and guidance. By "guidance" I do not mean some general comment into which one can read anything, but how this will be dealt with and how individual business ratepayers will be protected from an honest error, because it is not clear how that will be done. In particular, I want to know what further steps the Minister feels could be taken to establish greater confidence among business ratepayers about the CCA system, because it seems to be still distinctly lacking.

1.15 pm

Baroness Pinnock (LD): My Lords, the noble Earl, Lord Lytton, has just made a forensic dissection of the process of business rate valuations and appeals, and I could not possibly add to that detail. However, I have some general points to share with noble Lords. I draw attention to my registered interests as a vice-president of the Local Government Association and an elected councillor in the borough of Kirklees.

It is totally acceptable for the Government to require accurate information for any appeal against business rates, but as the noble Earl, Lord Lytton, has drawn attention to, I am concerned about the use of the word "carelessly" in the regulations. What is the definition of the word and how will it be judged? I understand the use of "recklessly" and "knowingly", but "carelessly" is not a word that is best used in regulations because I wonder how it will be defined.

The penalties being proposed seem to be appropriate and in line with penalties elsewhere in the system. However, the Government have a responsibility to review their actions in regard to the need to adhere to the timetable for rate reviews so that businesses are not subject to massive increases, as has happened with the latest review which was delayed by two years. It is totally unfair on businesses if the timetable is not kept up with and suddenly they find themselves facing significant increases in business rates.

Secondly, the Government must reconsider their approach to business rates. Ministers have rightly emphasised the importance of vibrant town centres, along with the changing nature of those centres, especially in smaller towns and villages where small businesses are likely to be paying a far greater proportion of their business income in rates than out-of-town concerns operating via online trade. This must be addressed in order to devise a more equitable business rate scheme between businesses serving their communities and gigantic out-of-town warehouses. I look forward to some positive news from the Minister on that score. It is not the first time that I have raised this issue and I shall keep on doing so until we make some progress.

My third point is to ask the Minister to explain the part that local authorities will play in this new regime. As he is aware, currently local authorities collect business rates and provide within their budgets for successful appeals via a grant from central government. The grant may or may not be sufficient to cover those appeals. From the local authority's perspective, the existing

regime for providing for successful appeals is not the most efficient that could be devised. Will the Minister consider producing a more effective and efficient regime that would suit businesses, the Valuation Office Agency and local authorities—and indeed the Government? All the money that is set aside for appeals is nominally from central government and in theory could be used more effectively in the provision of local services.

In general the approach is fair, but I look forward to the Minister's responses to my questions.

Baroness Donaghy (Lab): I have two very small questions. The first concerns the Explanatory Memorandum. Point 3.2 states:

"This entire instrument applies only to England".

However, point 5.1 states:

"The extent of this instrument is England and Wales".

Have I misunderstood the headings or is that a typo?

My question on guidance follows from the questions of the noble Earl, Lord Lytton, and concerns Paragraph 9.1. I would be grateful for some clarification. It states:

"The Department does not intend to issue formal guidance".

That is fair enough, if it does not want to, but how will the department satisfy itself that the system is working? Will there be consultation with the VOA or will there be other mechanisms in the absence of formal guidance? It goes on:

"The VOA may issue internal guidance to their staff, in relation to the reforms to the business rates appeals system. As above"—

I am not quite sure what the phrase "as above" applies to—

"the VOA intends to provide specific guidance on the provision of information by ratepayers, and internal guidance on the application of penalties".

I find that all a bit confusing, to be honest. Which is going to be transparent and available to the public, which is going to be an internal office one? I would be grateful for some clarification.

Lord Kennedy of Southwark (Lab Co-op): My Lords, as we have heard, the regulations before your Lordships' House this afternoon provide for the imposition of financial penalties for giving false information in respect of a proposal and also provide for an appeal against the imposition or the amount of a financial penalty. I am happy to support these proposals, and in doing so draw the attention of the House to my relevant interests in the register, namely being a councillor in the London Borough of Lewisham and a vice-president of the Local Government Association.

Many years ago, in the 1980s, I was a member of a rating appeals tribunal and I agree with the Explanatory Notes, which state in paragraph 7.3 that little supporting evidence was supplied, what came in came in late, and most appeals,

"did not result in either an appeal hearing or a change to the rating list".

That was what used to go on in the appeals I used to attend—it was certainly my experience serving on a tribunal in London. Looking at the papers there seem to be only two levels of fine. I thought that the purpose of any fine is to provide an element of deterrent. I am not convinced that these levels actually do that: perhaps a sliding scale would have been better, or some link to a rateable value, as I think the noble Lord, Lord Bourne, made reference to. I do not think that any large corporation will be the least bit worried about a £500 fine.

Paragraphs 8.1 and 8.5 of the Explanatory Notes refer to the number of responses to various consultations. Will the noble Lord give the House some more information about the range of responses received, as the notes have only such phrases as "the majority of respondents recognised", and "many businesses accepted". A bit more clarity would be useful for us to understand the range of responses that the department actually received. I accept the point, as set out in paragraph 8.6, that,

"in line with other parts of the tax system, ratepayers have a responsibility to take reasonable care when providing information in relation to their tax affairs",

but coming back to my earlier point, I am not sure a £500 fine helps in any way to focus the mind of a large company or corporation in that respect. I am sure that all companies do these things properly, but if one were to decide that it could gain some advantage by not doing so, it might risk taking a punt. The worst it could get would be a £500 fine but if it got away with it, it might gain many thousands of pounds in a reduced business rate bill. Will the noble Lord address that?

I assume, since there is nothing about it in the papers, that there is no link to inflation, so these figures will wither on the vine, as it were, until the regulations are brought back here in a few years to be uprated. So I am not convinced that the sanctions are strong enough. Having said that, I support them in principle and I look forward to the noble Lord's response.

Lord Beecham (Lab): My Lords, I endorse what other noble Lords have said, particularly my noble friend on the Front Bench. I do not dissent from anything that has been said—I certainly endorse his views about the frankly ridiculously low levels of penalty for failing to comply with the requirements, given the amount of rates that will necessarily be involved in so many cases. My question is about the system more generally. There is well known to be a huge backlog of appeals across the country. That is difficult for local councils to manage because dealing with these issues requires expenditure in its own terms. What are the Government doing to speed up the process of dealing with appeals? Will they make resources available to local authorities to do that? It is an injustice to the local community if these decisions are delayed and is actually not very good for businesses anyway, because they ought to be clear what the position is. Yet for many years delays have taken place and proceedings are very costly.

I ought to remind the House of my local government interests, as a local authority member and, like several Members of this House, an honorary vice-president of the Local Government Association.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in the debate on these Non-Domestic Rating (Alteration of Lists and

[Lord Bourne of Aberystwyth]

Appeals) (England) (Amendment) Regulations 2018. I turn first to the noble Earl and thank him very much. We engaged on an earlier set of these regulations, on the "check, challenge, appeal" procedure. Picking up a point just touched upon by the noble Lord, Lord Beecham, the reason for that procedure was mainly to deal with the backlog of appeals, which, the noble Lord will know, was growing. I thank noble Lords for their general support for that procedure: it was felt that reform was greatly needed.

The noble Earl made two specific points. I know that he has requested a meeting with the Minister in the Commons. The Minister has indicated that he is very happy to talk further about some of these issues with the noble Earl but in the meantime I will deal with a couple of the specifics he raised. First, on the registration and verification process, which, as he said, appears in many regards to be unnecessarily wieldy, the Valuation Office Agency is working with businesses and agents to review the registration process to see what might be done to minimise any burden. I am very happy to write to the Valuation Office Agency again to ensure that that is being done—the noble Earl highlighted some areas where it clearly could be done.

The noble Earl secondly touched upon the issue of guidelines in relation to penalties and procedures: the noble Baroness, Lady Donaghy, also dealt with this. Some guidance is touched upon in paragraph 9.1 of the Explanatory Memorandum, as the noble Baroness said. I can confirm that the guidelines are being worked upon by the Valuation Office Agency, and I have ensured, in discussion with the Valuation Office Agency, that these guidelines will be issued ahead of any penalties being levied. They will be available and I will make sure that they are circulated to noble Lords who have participated in this debate and a copy is placed in the Library; that seems entirely reasonable.

The noble Earl and other noble Lords raised the definition of carelessness. This is a well-established definition in law. I refer noble Lords to many taxing statutes and other regulations where carelessness is defined. It is also true, although in fairness the issue was not raised, in relation to "knowingly" and "recklessly". "Carelessness" would obviously require a much lower standard of proof than would be required for "knowingly" or "recklessly", but it is a well-established principle in law.

1.30 pm

Turning to the noble Baroness, Lady Pinnock, I recognise that she understandably always uses such an opportunity to canter round the whole area of business rates, rather than the specifics. I think I have dealt with the specifics she raised on the regulations—the issue of carelessness, for example. But she also raised a matter that she will know we are looking at: the business rates process more broadly, in relation to out-of-town premises and warehouses. I have indicated that in the spring, we will be part of an international process looking at this issue. I think noble Lords from all parts of the House recognise that it is an issue but it is of course much broader than these very specific and focused regulations. As I say, we are looking at that process in the international context in the spring, and more widely later.

The noble Baroness, Lady Donaghy, raised a specific and fair issue, which I checked myself because I, too, noticed that the regulations are specific about being England-only but that there is also a reference to England and Wales. I am told that it is only technical because the mothership of the main legislation is for England and Wales but these regulations will be specifically England-only, and no wider than that.

The noble Lord, Lord Kennedy, also raised a valid point, particularly in the light of the £50 million or £250 million we just saw in relation to the previous set of regulations. The rather low level of the deterrent here was partly as a result of the consultation, but the point is well made and we will certainly keep it under review. We will look at it to make sure that it is acting as a deterrent. In relation to carelessness, it would perhaps not seem inappropriate but in relation to "knowingly", we would want to make sure over time that it was appropriate. He referred to inflation not being taken account of here. I say two things to him: first, as he will be well aware, the level of inflation is rather low—I know he is supportive of that—but, secondly, it is general that there is no inflation element built into fines. The point is well made and perhaps when we review this, it may also need to be looked at.

Lord Kennedy of Southwark: I accept that inflation is low, which is good news for everybody, but I made that point because these charges are potentially very small. I think the cost of a parking ticket in London is about £120, just for parking in the wrong place. This provides for a £500 fine for a corporation that may, recklessly or knowingly, put in a submission and benefit by many thousands of pounds. I am glad that the Minister will look at it again; that is needed because that level is totally inadequate.

Lord Bourne of Aberystwyth: My Lords, I undertook to keep it under review rather than to look at it again, which is perhaps slightly different, but I thank the noble Lord for his intervention. The point is well made: parking meters are making a lot more money than a lot of individuals on an hourly or daily basis. We are aware of that.

If I may come back to the noble Baroness, Lady Pinnock, I missed the point she raised about the business rate revaluation. As she will know, at Budget 2017 the Government committed to increase the frequency of revaluation to every five years from the next revaluation, which is due in 2022. However, I understand her point.

Perhaps I could also mention at this juncture that we are looking to local authorities, which have the funds because we have made them available, to ensure that they pay out to public houses, where appropriate, and to businesses that secure a revaluation the money that is rightly theirs. I encourage local authorities to do that. The Government have got the money out of the door and are really looking to local authorities to ensure that they carry that forward.

I think I have dealt with the point about the backlog raised by the noble Lord, Lord Beecham. He also quite rightly made a point about the low penalty, which I have picked up, but if I have missed any points I will write to noble Lords. There were some particularly

valid points from the noble Earl, Lord Lytton. I thank him for declaring his interest but that also means he is very expert in this field, which I am happy to acknowledge. With that, I commend these regulations to the House.

Motion agreed.

Co-operative and Community Benefit Societies Act 2014 (Amendments to Audit Requirements) Order 2017

Financial Services Act 2012 (Mutual Societies) Order 2018

Building Societies (Restricted Transactions) (Amendment to the Prohibition on Entering into Derivatives Transactions) Order 2018

Motions to Approve

1.34 pm

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

That the draft Orders laid before the House on 4, 19 and 20 December 2017 be approved.

Lord Young of Cookham (Con): My Lords, these three orders relate to the mutuals sector, which encompasses co-operatives, community benefit societies, credit unions and building societies. In the mutuals sector the interests of members, not shareholders, are paramount. Mutuals are an important part of Britain's diverse and resilient economy, and we wish to keep it that way. Recognising this, the Government have brought forward a package of measures to provide further support for the sector and level the playing field between mutuals and companies.

There are nearly 7,000 co-operatives in Britain today, which together contribute more than £36 billion to the UK economy. They employ over 200,000 people and are part-owned by 13.6 million members of our society. The Government recognise the value of co-operatives and want to ensure they are not saddled with unnecessary administrative burdens. Since 2012, small companies have enjoyed an exemption from the requirement in the Companies Act 2006 to have their accounts fully audited.

The first statutory instrument, the Co-operative and Community Benefit Societies Act 2014 (Amendments to Audit Requirements) Order 2017, will increase the thresholds at which co-ops are required to appoint a professional auditor from £2.8 million in assets and £5.6 million in turnover to £5.1 million in assets and £10.2 million in turnover, in line with those for companies. While this proposal is deregulatory, noble Lords can be confident that appropriate controls remain in place. Members must vote to apply the exemption and the regulators can still demand a full audit if they have concerns over the management of a co-operative. Furthermore, co-operatives which disapply the requirement to appoint a professional auditor will still be required to prepare a less onerous audit report.

The second of the three orders before the House is the draft Building Societies (Restricted Transactions) (Amendment to the Prohibition on Entering into Derivatives Transactions) Order 2018. Building societies serve over 20 million UK customers and are an integral source of loans to first-time buyers. In order to offer fixed-rate mortgages, building societies must hedge against the risk of interest-rate changes and may do so by buying derivatives. The European markets infrastructure regulation of 2012 requires all derivatives to be centrally cleared. This means that building societies must either become direct members of a clearing house or clear through third-party members.

However, as it currently stands, the legislation prevents building societies complying with the membership rules of the main UK clearing house. The specific rule which we are concerned with requires that, in the event of a member defaulting, other members must bid for a portion of the defaulted member's derivatives portfolio. Under current legislation, building societies cannot take part in this process because they are prohibited from trading derivatives for any purpose other than to hedge balance-sheet risk. As a result, building societies must clear indirectly through third parties which are members, placing them on an uneven footing as compared to banks. Clearing through third parties incurs expensive broker fees and makes building societies dependent on clearing-house members continuing to offer this service.

This SI will amend the Building Societies Act 1986, which I believe I put on the statute book, to allow building societies to trade derivatives not just to hedge their balance-sheet risk but for the purpose of complying with the membership rules of a clearing house. The Government have consulted representatives of the building societies and the Prudential Regulation Authority in developing these proposals, and they are content.

The last order before the House concerns mutuals in Northern Ireland including, for this purpose, credit unions. Under the Financial Services and Markets Act 2000, mutuals in Great Britain are registered with and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. As noble Lords will recall, prior to the appointment of the FCA as the primary financial services regulator, this function was performed by the Financial Services Authority. Following the failure of Presbyterian Mutual in October 2008, at a cost to the taxpayer of £50 million, Northern Ireland Ministers and HM Treasury agreed that responsibility for regulating Northern Ireland credit unions and other mutuals should transfer to the FSA. Responsibility for regulation was transferred in 2011. The aim of this transfer was to provide members of those mutuals with access to the Financial Services Compensation Scheme and the Financial Ombudsman Service, among other benefits.

It was intended that the registration of Northern Ireland's mutuals should follow in due course, once the establishment of the new Financial Conduct Authority and Prudential Regulation Authority was completed.

[LORD YOUNG OF COOKHAM]
It is clearly logical for registration and regulatory oversight to lie with a single authority. The Northern Ireland registering authority, the Department for the Economy, also supports the move. A good deal of preparatory work has now taken place, and Department for the Economy and FCA officials are working closely to ensure that Northern Ireland's mutuals are supported during the transfer of registration, which is set to occur on 6 April this year. Societies previously registered with the Department for the Economy will not have to re-register; their records will simply be transferred to the FCA.

I trust that the Members of the House will agree that these orders represent a welcome update to mutuals legislation across the country for the wider benefit of the sector. I commend the orders to the House.

Baroness Kramer (LD): My Lords, I have a few questions to ask the Minister on these orders, although I cannot see anything major wrong with them. The first order the Minister described lifts the threshold at which point a co-op is required to have a professional audit. I have two questions on that. Looking through the attendant paperwork, I notice that responses to the consultation came from different co-operative societies. It is no surprise that they would wish to be on a level playing field with their various competitors which are privately owned companies, so I perfectly understand why they feel it is unfair that they should carry a cost burden which their competitors of the same size do not. But there is a difference between a private company and a co-op, which is that the membership of the co-op, which in effect is its ownership, is typically much more widely cast and made up of a large number of people who may not have a great deal of financial sophistication, whereas the owners of a privately owned company may have much greater awareness of the financial structure and happenings within that company. So I wonder to what extent the Government in their consultations took into account the exposure of relatively small people to losses that might seem quite small to those who have very large incomes but might be significant to those who are part of the membership of a co-op. It is the first area of concern.

Secondly, I am curious to understand the choice of benchmark. From the outside, it looks slightly random. I wonder whether it was done on a percentage of size within the industry or whether there was some structural characteristic within the industry that led to the choice of that benchmark.

The second issue the Minister addressed was the provision of the order that would allow building societies to be members of clearing houses. I think that all of us in this House agree that it is crucial that interest-rate swaps are cleared through a central counterparty—in the UK that would usually be the London Clearing House—and that it is very frustrating for building societies and mutuals to have to go the agency route and pay a brokerage fee, usually through an existing member which, quite frankly, is fairly disinterested in the service that it provides to that building society, never mind charging for it—so I am entirely on board. Can the Minister strengthen his confirmation that this provides no capacity for building societies to engage in speculation? It seems to be very clear that it does not. We all recognise that anyone providing a fixed-rate mortgage can do so only if they can hedge it through a derivatives contract, so that is an entirely appropriate and necessary use of a derivatives contract, or by doing it at the level of the balance sheet to achieve the same kind of protection.

1.45 pm

At the very end of his speech, the Minister referred to the cascade process that occurs when a member of a clearing house fails. I think he has given us an assurance that the category of membership that would apply to a building society would mean that it would escape the consequences of that cascade. He talked about the cascade that occurs when a single member fails. There is also the cascade that occurs when the entire CCP fails. If the Minister wishes to look at a reference, during the passage of what became the Financial Services Act 2012 the discussion of the construction of the cascade was fairly substantial. Will the Minister tell us how a building society fits into that rather different cascade, because typically the members create a sort of protection fund, which is the first element to be raided, and they will have other contingent responsibilities in the course of that cascade. If there is a way that building societies could be carved out from that, I would be very grateful. It may be that that has already been achieved and I am just completely unaware of it, so I will raise that question.

The final issue is about the change that makes the FCA the registrar as well as the regulator for credit unions in Northern Ireland. I can find no comments that would suggest anything negative about that. Have any issues been raised that I simply have not been able to find that we should be aware of around this, or is there a wide consensus that this is a logical fitting in place of the final piece of a jigsaw that has already been assembled and is functioning properly?

Lord Tunnicliffe (Lab): My Lords, I congratulate the noble Baroness, Lady Kramer, for finding so much to say about these three orders. On the first order about equality with private limited companies, I have no comment. On the order relating to Northern Ireland mutuals moving under the control of the FCA, I was curious about why it took so long. The consultation started in 2010 and is only now coming into action. Were there some complications that were not brought out in the Explanatory Memorandum or was it just slowness of pens?

Finally, on derivatives trading, we have the same general concern as the noble Baroness, Lady Kramer, that we do not want to make building societies any less safe through the application of this order. Membership of a clearing house, at least at a theoretical level, has some risks—but, as I understand it, the building societies see this as a very positive thing, so I am hoping that the consensus that this makes sense is right. I would like an assurance that the extension of a building society's right to trade in derivatives in order to be a member of the clearing house is so worded that it applies solely to that and does not in any way allow further extension of the building society's right to trade in derivatives beyond that which is already exercised.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I have some brief comments in respect of the orders in front of us today. I declare that I am a member of the Co-operative Group and have been a member of the Co-op, as it were, for over 40 years, after starting off in the Royal Arsenal Co-operative Society. I am also a director of the London Mutual Credit Union, one of the biggest credit unions in London. These orders will affect us because its turnover is in excess of the uprated ones here.

The audit requirement is good news, and will certainly help many smaller credit unions in terms of the audit function burdens they have. The point the noble Baroness, Lady Kramer, made about ensuring that the organisations are properly accounted for is important as well. These sums of money are owned by members. They should be properly accounted for and any risks taken into account. Where there are problems, people should be alerted to them, and they should be dealt with properly.

I support the building society order, which enables them to join clearing houses. I see from the papers that the Government consulted the large building societies. That is fine, but did they also consult the Building Societies Association, which is the umbrella body for them? I cannot see that there are any views from it in the papers here.

It is a good move to put mutual societies in Northern Ireland under the umbrella of the FCA. The credit union sector in Northern Ireland is very big and much bigger than it is in the rest of the United Kingdom—in fact, the credit union sector is big in the whole island of Ireland. Giving it protection under the umbrella of the FAC is very welcome.

Lord Mawson (CB): My Lords, I agree with the noble Lord, Lord Kennedy. Although I am not sighted on the detail of the co-operative and community benefit societies order, it feels like the right direction of travel. My point is really just a general one. I spend a lot of my life in SMEs and small charities, and at the moment many of them are becoming overwhelmed by the amount of bureaucracy, red tape and other things that are appearing on their desks. My question is really one that the Minister might take back to government. Someone needs to look carefully at what is happening to these small organisations, in terms of the amount of red tape and things that are appearing on their desks, and whether we can create this direction of travel for some of them. It is just a general point and a concern.

I was at a small charity last weekend, with one member of staff and two part-time people working in it, which is doing a great piece of work around education in the local community. The amount of treacle and stuff they were having to deal with was immense and extraordinary. You can feel many good people, who want to do good things in their community, wondering how much longer they can have a role in these kinds of things. They become very fearful of the 92-page document that appears on their desk. It is a general point, but one that needs to go back to government.

Lord Young of Cookham: My Lords, I am grateful to all noble Lords who have taken part in this brief debate and hope to address as many points as I can in response.

The noble Baroness, Lady Kramer, asked why the figures for the thresholds had been chosen. The reason is given at point 7.4 of the Explanatory Memorandum:

"These thresholds are out of step with both inflation over the last decade, and current company law. Over the same period, the thresholds for private limited companies of comparable size have been updated".

We are aligning the thresholds in this order with those for companies. As we heard from the noble Lord, Lord Kennedy, this has by and large been welcomed. The noble Baroness made a different and wider point, which goes to the heart of the Co-operative movement—namely, how it takes decisions. Not just those on audit, but all decisions in co-operatives are nominally taken by the members. If she wants to press that issue, it goes to the heart of what the Co-operative movement is and how it is regulated. It is a much broader point than the specific one on audit. As I said, they would have to vote for this exemption. In addition, there is still an opportunity for the regulator to intervene if he is concerned, and there will still have to be an ordinary audit of the accounts.

A number of noble Lords, including the noble Baroness, Lady Kramer, and the noble Lord, Lord Tunnicliffe, asked about the exemption for building societies and were slightly concerned that it might go broader. But if one looks at new paragraph (d) in Article 2 of the SI, it is very narrowly drafted. The general exemption, which the noble Baroness referred to, is lifted in the very constrained circumstances of complying with,

"an obligation imposed by a recognised clearing house".

So it does not open the building societies into the wider field of trading in derivatives and of speculation.

The noble Baroness asked a general question about cascades. When I introduced the order, it was in the specific context of a limited failure and the members having to bid for the interests of the defaulting member. On the broader question of what happens if the whole system collapses, the briefing I have here says, "I will write". It is a good question about what happens if there is a systemic failure. As I say, I will write about that.

The noble Lord, Lord Kennedy, asked about consultation with the Building Societies Association. Yes, we consulted representatives of the BSA and they are supportive of the change. As I said a moment ago, the exemption is sufficiently narrowly drafted so that building societies will not be able to engage in speculation.

The noble Lord, Lord Tunnicliffe, asked about the delay in transferring the registration responsibilities from Northern Ireland over to the FCA. It was caused, first, by the transfer of the responsibilities of the FSA to the FCA and PRA, which were established in 2012. Secondly, time was needed to prepare for the transfer between the FCA and Department for the Economy officials. I do not think there is anything sinister behind it. Northern Ireland Ministers agreed with HM Treasury to transfer the function, and the Department for the Economy in Northern Ireland has indicated that it does not have the resource to continue providing this function. If it had kept on doing it, it would have had to increase the fees. As I said when I introduced the order, it is logical to have registration and regulatory oversight sitting with the same body.

[Lord Young of Cookham]

The noble Lord, Lord Mawson, raised a more general point about regulation for charities. I will take that away, but we have recently made it easier for charities to reclaim the tax through Give As You Earn, by making it less bureaucratic to claim the extra tax. I think I remember taking through an SI, or indeed a Bill, on that a year ago. I will write to the noble Lord, because he raises a good, general point about the regulatory burden on charities, which we certainly want to lift.

I think I have covered all the points raised, apart from the systemic one about cascade failure. I beg to move.

Motions agreed.

Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2018

Motion to Approve

1.58 pm

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

That the draft Order laid before the House on 21 December 2017 be approved.

Lord Young of Cookham (Con): My Lords, the order amends existing regulations to clarify an outstanding regulatory issue for the peer-to-peer lending industry. Peer-to-peer lending is not what happens at the Bishops' Bar, but a thriving business activity which I will describe in a moment.

Specifically, the order, drafted in consultation with the Financial Conduct Authority and the Prudential Regulation Authority, will set out when a business borrowing via a peer-to-peer lending platform would need to have a deposit-taking licence to do so.

Peer-to-peer lending is a relatively new financial service, with the world's first peer-to-peer loan originating in the UK in 2005. This nascent industry has experienced rapid growth and, at the industry's request, the Government legislated to bring running a peer-to-peer lending platform into the scope of financial services regulation. Running a peer-to-peer platform is a discrete activity and not, for example, another type of asset management service. It allows investors, including consumers, to lend money directly to businesses or other consumers via the peer-to-peer platform.

The Government therefore introduced bespoke legislation regulating peer-to-peer lending where it interacts with consumers. This means that all P2P platforms used by consumers need to be authorised by the FCA and comply with financial, organisational and conduct requirements. These requirements include rules regarding separation of client money, business conduct such as fair treatment of customers, financial promotions and creditworthiness and affordability assessments.

This approach to regulation has allowed the industry to thrive, and £3.5 billion was lent via peer-to-peer platforms in 2016. In 2016, peer-to-peer lending to businesses grew 36% compared with the previous year, and was the equivalent of 15% of all new loans by UK banks to microenterprises in 2016. These impressive statistics demonstrate the Government's commitment to fostering a diverse and competitive financial services sector which delivers quality services at efficient prices.

There is a degree of risk in members of the public making deposits, as they may not necessarily have the same degree of financial literacy as professional lenders. As a result, regulation surrounds businesses accepting deposits from the public. Under current legislation, conditions set out that if a business wishes to accept deposits from the public in order to wholly or materially finance their activities, such as a bank, they must be authorised and regulated by the FCA and the PRA. This could be termed "accepting deposits by way of business". The regulatory permission for accepting deposits by way of business is known colloquially as a banking licence.

Currently when a business borrows money via a peer-to-peer platform, the legislation could be read as saying that businesses are technically accepting deposits from the public "by way of business" and therefore require a banking licence. In reality, it is not the case that the core business of these borrowers is accepting deposits. If it were, they would, for example, be operating like a bank and require FCA and PRA oversight.

However, for the vast majority of commercial borrowers, borrowing via peer-to-peer platforms is simply a way of financing their business—for example, capital expenditure. In the existing legislation as inherited by this new industry, there exists uncertainty as to whether those who are not accepting deposits as their core business would still need to be regulated.

It remains the case that peer-to-peer platforms used by consumers should be regulated, but some peer-to-peer platforms are therefore unsure as to whether businesses borrowing via their platform would require a banking licence. The practicalities of obtaining and then maintaining a banking licence just to borrow via a peer-to-peer platform would be burdensome for both the borrower and the platform, increasing costs and making it unviable as an efficient source of finance.

The order therefore provides clarity for peer-to-peer platforms and their business borrowers regarding the regulatory framework. It does this in a number of ways, specifically by making clear that where a peer-to-peer borrower is using deposits solely to finance their other business activity, they should not need a banking licence, and by ensuring that regulated financial institutions still need a banking licence to accept funds from the public, regardless of whether they do so via peer-to-peer or other means.

The order is required to provide certainty to peer-to-peer lending platforms and the businesses which fund their growth and other costs through this means. The certainty provided by the order will ensure that no undue burdens are placed on the sector or businesses because of legislation which predates the invention of this financial service. I beg to move.

Baroness Kramer (LD): My Lords, I may have been the first person in this House to use the phrase peer-to-peer lending, to the enormous amusement of Lord Peston, who misunderstood it as "pier to pier", which, as he

said, was impossible. It is now a widely accepted, very successful strategy. I am not sure if this is officially a conflict of interest, but I declare that one of my children is an employee of a peer-to-peer lending platform. Back in the old days—and certainly before my son was involved—my noble friend Lord Sharkey and I helped to construct the framework that sits behind the regulations. We obviously missed a trick in allowing this discrepancy to enter the regulation, and for that, I—also on behalf of my noble friend—apologise. I am very glad that the Government are clearing up this misconception.

Lord Tunnicliffe (Lab): My Lords, I came to the order in a state of almost complete ignorance, having never been involved in peer-to-peer activity in my life and not entirely understanding what it was. I did some research, and it seems that through peer-to-peer lending, the lender can get a better rate of return and the borrower has to pay less. I am reminded of the advice I would give anyone when it comes to financial affairs: "If it is too good to be true, it is too good to be true". It is too good to be true in the sense that, in a peer-to-peer environment, one can lose one's total investment and one is not covered by the FSCS guarantee.

I then did a bit more googling, and picked up an article from *Which*?, which stated:

"Two of the biggest peer-to-peer (P2P) lenders in the UK have been beset by problems over the past month, with RateSetter forced to make up a near £9m loan-deal gone sour and Zopa customers experiencing a severe cut in returns. So, is the market for peer-to-peer lending headed for trouble? RateSetter has announced that it had to intervene to protect investors from losing money in struggling wholesale loans. The company, which lent £664m last year, has now confirmed it has left a peer-to-peer lending trade body for breaching transparency rules".

I say that because, with no experience, you have to turn to Google, but it does not look as though the peer-to-peer environment is entirely without problems.

I then read the order and the Explanatory Memorandum and it seemed to me in some way deregulatory. The last thing I naturally want when I read about this is for peer-to-peer lending to be deregulated. I then tried to understand the situation more carefully, and I concluded that peer-to-peer lending activity involves three parties: investors, platforms and borrowers. It is important to be absolutely clear what the order does to each of those groups. In my understanding, investors are in no way regulated and therefore the order has no impact on them, except where the investor is a company or firm involved in financial services.

My question to myself, which I have partly answered, is: are the platforms regulated? As has already been said, they are. Perhaps the Minister would enlarge slightly on his brief reference to the regulation of the platforms. The key question is: is the regulation of platforms in any way impacted on by the order?

Finally, under the present regulations, are borrowers regulated? Clearly they are if they are in the financial services business, but if they are ordinary firms, are they in any way regulated? I think that that is what the order seeks to address. The final question that sums up everything is: is the SI in practice solely related to borrowers? Does it leave the protection of customers using the platform in its present regulated state?

Lord Young of Cookham: I am grateful to both noble Lords who have spoken in this debate. I accept the mea culpa from the noble Baroness, Lady Kramer, although I assume that there was a Minister involved who also failed to spot this as the legislation went through. But it was generous of her to accept full responsibility for not spotting this lacuna.

In response to the noble Lord, Lord Tunnicliffe, this order is borrower facing; it does not affect the platform or the investor. The platform may be able to give greater assurance to borrowers that, because of this SI, the borrower need not worry about having to get a banking licence, but it is essentially, as I said, borrower facing.

On the issue of regulation by the FCA, like the noble Lord, I made a few inquiries about this, because, like him, I am new to this. There are roughly 60 P2P platforms active in the UK. Before the FCA's regulatory regime was introduced, I understand that some platforms ceased trading and a couple of very small P2P platforms failed in the UK, but it is not known whether lenders lost any money as a result. But all this happened before the FCA's regulatory regime. Since then, the FCA is keeping an eye on the industry. Occasionally, as with many other financial services firms, they have told platforms to take down a certain advertisement or amend a part of their business model. To be authorised in the first place, some firms have to make substantial changes to pass the FCA's rigorous threshold conditions for advertising. But also there is a review, conducted by the FCA, going on at the moment, and I shall certainly feed the concerns of the noble Lord into that review, and into the wider P2P industry as a whole.

I think that I have answered all the questions that have been raised, and commend the order to the House.

Motion agreed.

Gambling Act 2005 (Amendment of Schedule 6) Order 2018

Motion to Approve

2.12 pm

Moved by ***Lord Ashton of Hyde***

That the draft Order laid before the House on 14 December 2017 be approved.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, Schedule 6 lists the bodies with which the Gambling Commission can share information, and vice versa, using powers in Section 30 of the Gambling Act. Gambling Commission licence conditions also require operators to share information with the bodies in the schedule in some circumstances. The list is made up of bodies which have functions under the Act, UK enforcement and regulatory bodies and sports governing bodies. The last substantive review of the bodies listed in Schedule 6 was in 2012. The Government propose to amend it to update the names of some sports governing bodies which are already listed, and add others which meet the criteria that I will touch on later. This will include the UK Anti-Doping agency. The update will help information flow between the Gambling Commission, which regulates all gambling

[Lord Ashton of Hyde]
operators selling to customers in Great Britain, and sports bodies. The integrity of sport is paramount. It is important that we make sure the Gambling Commission can share intelligence with sports governing bodies to help protect the integrity of sport and sports betting markets.

Sports betting is a popular entertainment activity for many who enjoy watching sport. Preventing the manipulation of competitions is essential to uphold public trust in sports betting and in the integrity of sport itself. Information sharing plays a central part in preventing corruption domestically and, given that threats can be cross-border in nature, internationally. The Gambling Commission's statutory objectives include keeping gambling fair, open and free of crime. Its sports betting intelligence unit receives information and intelligence relating to potential criminal breaches of sports betting integrity, misuse of information and breaches of sports betting rules. This comes in particular from gambling operators who have noticed suspicious or irregular betting patterns. The intelligence is shared with other bodies involved in tackling these issues.

Bodies which are to be added were required to demonstrate that they had the necessary systems for information management in place, as well as the necessary rules governing betting. Although information can be shared with a body not listed in the schedule, this requires detailed consideration and, potentially, legal advice. While all data sharing remains subject to the Data Protection Act, listing a body in the schedule provides a legal gateway, which reduces the administrative burden on the commission and the bodies themselves, as well as helping information to be shared in a timely and effective way. The update is intended to ensure that Schedule 6 covers an appropriate range of sports, using information-sharing powers as originally intended for supporting the fight against corruption. The inclusion of UK Anti-Doping aligns with the Government's approach to protecting the integrity of sport, as set out in the *Sporting Future* strategy and the anti-corruption strategy.

A government consultation on updating Schedule 6 ran between November and December 2016. During and after the consultation, the Gambling Commission engaged with governing bodies that had expressed interest in being included. This was to provide advice and determine whether their information management arrangements would make it possible to include them in this update. The consultation response was published in August last year. Where bodies were not able to be added this time, the commission is continuing to engage with them and to promote best practice. The intention is to help to establish arrangements that will enable more bodies to be added in a future update. In addition, the Sports Betting Integrity Forum's key priorities include working with governing bodies to help to facilitate information sharing.

The following organisations met the criteria for inclusion and will be added to Part 3 of Schedule 6, subject to your Lordships' approval. They are: United Kingdom Anti-doping Ltd, the Darts Regulation Authority, the Irish Rugby Football Union, the Rugby League European Federation, the Tennis Integrity Unit, Table Tennis England, Ladies European Tour for golf, and the International Paralympic Committee. The following bodies will have their names updated: London Marathon Events Ltd, World Rugby Ltd and European Professional Club Rugby.

I thank the Gambling Commission, sports bodies, betting operators and law enforcement for the excellent collaborative work they do to maintain the integrity of sports betting and uphold public trust in sport and enjoyment of sport. The regulatory regime that we have in the UK is recognised as being world-leading, but we can never be complacent. To support this collaborative work and maintain the UK's international standing as a leader in this field, I commend the update to Schedule 6 to the Gambling Act 2005 to the House. I beg to move.

Baroness Finlay of Llandaff (CB): I will ask a question that is probably very naive. I was surprised that neither football nor any kind of horseracing or any of those activities was included in the list. Is there a reason for that, or have I completely missed the point? I declare an interest as chair of the National Mental Capacity Forum. When people become hypomanic, lose capacity and go into a phase of placing large numbers of bets in a completely uncontrolled way, it is often football and horseracing where they will be placing those bets and running up debts.

Lord Griffiths of Burry Port (Lab): My Lords, I have given due attention to the proposals before us and can see exactly the logic that brings them to our attention. My eyebrows have been raised by certain of the details; I wish I knew how people might gamble in an inappropriate way in terms of playing darts, for example. A treble 20 is a difficult thing to be sure about under any circumstances. For all that, I can see that, if assurances have been given by the various bodies that they will come into line with the expectations under the terms of the Act, they should be added to the list.

My pulse quickened when I saw the European Rugby Cup Ltd mentioned, since the Llanelli Scarlets are leading the way for British involvement in the European cup quarter-finals. I am happy as a Welshman to just lord that over any English friends I have here in the House with me.

I have one question that perhaps the Minister can help me with. How do we get the necessary information that relates to companies registered in the Republic of Ireland? That stands out as being a little different from the others.

I am happy to note that the anti-doping people, UKAD, are now involved. Having met their representatives on more than one occasion, I can see how there is an overlap of interest, but also that it adds competence to the governing of these different sports and this activity.

All that having been said, I think that due process has been followed. When I was growing up, it was inconceivable that anybody would bet on any of these activities at all. Indeed, betting on horseracing was done illicitly in my youth. Round the corner we had Dai Double-Ticket, as we called him, and he ran the bets to the local bookkeeper on our behalf. We hoped

that he would share the profits with us eventually. We have now come to the point where we can bet during matches and all the rest of it. It is so complicated now compared to what it was, and adequate machinery has to be put in place. The Gambling Act 2005 sought to do that and, a few years having passed, we must of course seek to update the information base upon which we operate the provisions of that Act. Apart from those little questions I have, I am happy to concur with the recommendation.

Lord Clement-Jones (LD): My Lords, just to follow on briefly, I am very pleased to see that, as in the Commons, there is a strong Welsh perspective being displayed on these matters today.

We all have a strong interest in sports betting integrity, and we had quite a debate on the issue during our discussion of the Data Protection Bill. I am pleased, therefore, to see the inclusion of UKAD in Part 3 of Schedule 6. In the Commons discussion of this order, there were some interesting debates about the inclusion of international bodies. Perhaps the Minister could slightly unpack the reason for those international bodies being included.

The last thing I want to say is that there is a distinction between Parts 2 and 3 of Schedule 6, and I wonder whether the Minister could explain why UKAD is included in Part 3 but not in Part 2. I know that the Explanatory Memorandum goes into that to some extent, but not entirely. UKAD is an enforcement body, and it seems slightly strange that it is not going to be on the face of the statutory instrument.

Lord Ashton of Hyde: My Lords, I am grateful to noble Lords for those questions. I will start with an easy one, that of the noble Baroness, Lady Finlay. The reason we have not talked about football or horseracing today is that they are already on the old schedule, which includes the British Horseracing Authority, the Football Association, the Scottish, Welsh and Irish associations, and FIFA.

The noble Lords, Lord Clement-Jones and Lord Griffiths, asked why an Irish body is included. We are pleased that the UK is home to some international sports bodies and that some of the world's greatest sports events have been held, and will continue to be held, here. Therefore, it is only right that all relevant international sports bodies, such as the Tennis Integrity Unit, the International Olympic Committee, the International Paralympic Committee and the Commonwealth Games Federation, are listed under Schedule 6. Tackling corruption and protecting the integrity of sport requires a co-ordinated approach at the domestic and international level. We must remember also that the threat faced is often cross-border in nature.

The noble Lord, Lord Clement-Jones, asked about the differences in Parts 2 and 3 of Schedule 6. To be honest, I am not sure what the answer to that is. If it is okay with him, it will be better if I write to him afterwards and get it right.

The Gambling Commission's statutory objectives include keeping gambling fair, open and free of crime. Millions of bets are placed on sport each day and a great deal of work goes on behind the scenes to ensure that the integrity of betting on sport is maintained. Information sharing plays a central part in preventing corruption, and the order will help promote that. To support this excellent work and maintain the UK's international standing as a leader in this field, I commend the update to Schedule 6 to the Gambling Act to the House. I am grateful for the support of noble Lords, and I hope that the House feels able to approve it.

Motion agreed.

Particulars of Proposed Designation of Age-Verification Regulator

Motion to Approve

2.26 pm

Moved by ***Lord Ashton of Hyde***

That the Paper laid before the House on 14 December 2017 be approved.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the Digital Economy Act introduced the requirement for commercial providers of online pornography to have robust age-verification controls in place to prevent children and young people under the age of 18 accessing pornographic material. Before considering the specific points related to this debate, I want to remind the House why we introduced this requirement.

In the offline world, there are strict rules to prevent children accessing adult content, but the same is not true in the online world. A large amount of pornography is available on the internet in the UK for free, with little or no protection to ensure that those accessing it are old enough to do so. This is changing the way young people understand healthy relationships, sex and consent. A 2016 report commissioned by the Children's Commissioner and the NSPCC makes this clear: over half of the children sampled had been exposed to online pornography by the age of 15; nearly half of boys thought pornography was "realistic"; and just under half wished to emulate what they had seen. The introduction of a requirement for age-verification controls is a bold step to tackle these issues and it demonstrates our commitment to making the UK the safest place in the world to be online.

Section 16 of the Digital Economy Act states that the Secretary of State may designate by notice the age-verification regulator, and may specify which functions under the Act the age-verification regulator should hold. I am therefore seeking this House's approval to designate the British Board of Film Classification as the age-verification regulator. We believe that the BBFC is best placed to carry out this important role, because it has unparalleled expertise in this area.

The BBFC has been classifying films for cinema release since 1912 and video content since 1984. In doing so, it has established a trusted reputation for making difficult editorial judgments and giving consumers, particularly parents and children, clear information about age-appropriate content. Importantly, the BBFC is currently responsible for classifying adult material for sale offline, including judging when content should be rated R18 and therefore available for sale only in

[Lord Ashton of Hyde]
licensed sex shops. Moreover, the BBFC understands how new technology is changing the way people access content. It provides the current framework for filtering content on mobile networks, which has been highly successful in preventing children accessing pornography on their mobile phones.

2.30 pm

It is clear, therefore, that the BBFC is the only organisation in the UK with the breadth of experience and expertise required to undertake the role of age-verification regulator. In this role, the BBFC will be responsible for identifying non-compliant websites and giving notice to the appropriate persons. Draft regulations defining who will be in scope were published alongside the then Digital Economy Bill. We expect to lay an updated draft before the House shortly. The particulars of the proposed designation set out the powers that the BBFC will be designated with to carry out this role; namely, the power to request information it requires in order to exercise its powers; the power to issue civil proceedings against non-compliant persons; the power to give notice to payment service providers or ancillary service providers to suspend their services to non-compliant persons; the power to direct internet service providers to block access to non-compliant material; and the freedom to exercise its powers proportionately and in a manner that prioritises child safety online.

In addition, there is an obligation on the BBFC to issue guidance on the age-verification arrangements that it will treat as compliant and the approach it will take to ancillary service providers. Following designation, this guidance will be laid before the House for approval. We are confident that, taken together, this approach gives the BBFC a range of powers that will provide a real incentive for pornography providers to comply with the requirements under the Digital Economy Act. I am pleased to report that the BBFC has engaged openly and constructively with DCMS from the beginning of this process and has made extensive preparations for the role, including developing the technical expertise and processes that will be necessary. It has undertaken engagement with relevant organisations, including representatives of the adult industry and the age-verification industry. In particular, it has established a charity working group to ensure that its approach is in line with child online safety goals.

In conclusion, we believe that the BBFC has the right attributes and experience to carry out the role of age-verification regulator. It is a highly respected organisation with unparalleled expertise in classifying content. I have every confidence in recommending it to the House as the age-verification regulator for online pornography. I beg to move.

Lord Clement-Jones (LD): My Lords, I have no great argument with the particulars and the designation of the BBFC as the age-verification regulator. Indeed, we had some debates on this. I know that we may have some differences with the Labour Front Bench, but we think that the BBFC is fit for this particular purpose and will carry out the job effectively. Conversations we have had have convinced us of that. Another aspect that is beginning to be unpacked is the appeals system. Although of course we put down amendments on the question of the independence of the age-verification regulator, we think that the appeals system being set up, which is qualified in the Act—we would have preferred it not to be qualified—will be fit for purpose as well.

I want to revert to something that may strike both the Minister and Members on the Labour Front Bench as rather déjà vu: the question of the specification of the type of age verification that is required, or not, by the age-verification regulator. When we talked about this issue in Committee—indeed, amendments on it were laid on 2 February 2017 in Committee and on 20 March on Report; my noble friend Lord Paddick had a particular role in that—we were very concerned on both occasions that the age-verification methods were not going to be specified in enough detail in the Bill. It did not appear that they would be specified in any great detail in the draft guidance.

Flash forward a year and I am afraid that nothing has changed. The Minister may remember that, back in January, the Select Committee on the Constitution said:

> "We are concerned that the extent to which the Bill leaves the details of the age-verification regime to guidance and guidelines to be published by the as yet-to-be-designated regulator adversely affects the ability of the House effectively to scrutinise this legislation".

We have not moved on a great deal. If we look at the details of what I have found—which appears to be the up-to-date draft of the government guidance on the age-verification regulator—under chapter 3, paragraph 4, there is this statement:

> "The regulator is not required to approve individual age-verification solutions. There are various ways to age-verify online and the industry is developing at pace. Providers are innovating and providing choice to consumers".

That is exactly the same wording as in the draft guidance last year and quoted by my noble friend Lord Paddick on 20 March. That is extremely disappointing. It appears that the age-verification regulator will play an incredibly light-touch role in the approval of the type of age-verification that takes place.

Of course, later in chapter 3—which is headed "Age-verification arrangements"—it describes,

> "the expectation that age-verification services and online pornography providers should take a privacy by design approach as recommended by the ICO".

I have the privacy by design guidance from the ICO in front of me and I must say, if I was an age-verification provider, I would not find it particularly onerous, in terms of requiring me to try to find an anonymised age-verification solution. I find the Government's guidance, as per Section 27 of the Act, extremely disappointing. I very much hope that the Minister can explain whether the ICO will have a role in this, what the impact of privacy by design is, in terms of enforcement, and whether the ICO will have the ability to impose a privacy impact assessment—or even a data impact assessment—on the object of the age-verification regulator's regulation. Perhaps at the same time the Minister can explain in this particular space the boundary between what the ICO is empowered to do and what the age-verification regulator will be doing.

I am sorry to have to be disappointing in that respect, but I think that as part of the wider landscape—a matter we discussed last year—where we have got to is not particularly satisfactory if the general purpose of the age-verification regulator is to make sure that age-verification really works and that there is not the access for young people to these pornography sites that the Act was designed to prevent.

The Earl of Erroll (CB): My Lords, I want to say a few words. I was quite involved in this issue when it was going through as part of our consideration of the Digital Economy Act. The Digital Policy Alliance, of which I am chairman, has had a working group on age verification for several years, looking at whether there are available solutions and encouraging people to develop them. I am pleased to tell the noble Lord, Lord Clement-Jones, that there are some solutions out there. I will explain something about that.

The only thing I want to say is that the Act received Royal Assent on 28 April, I think, so it has taken a very long time to get this guidance in place. That is a bit of a worry and a bit of a disappointment. I seem to remember that there was an intention to try to have enforcement within a year, otherwise there would be a huge great gap in the meantime. We are trying to protect children after all; that was the whole point of this. Waiting for a year—it will probably now be longer—is an awfully long time not to have protection in place.

I am very glad that the BBFC is finally about to get some teeth, get into operation and do something about this, which I am sure it will do extremely well. I know that it has been consulting an awful lot with a lot of different people from all the different sides, from child protection right through to the adult industry. The interesting thing is that quite a lot of the adult industry is happy to help and to co-operate, because it does not want children wasting its time. It is not in the job of trying to pervert children, but of trying to sell adult content to adults, so it is willing to co-operate. The world is watching. There is apparently now a willingness to realise that this will happen and to co-operate to a large extent.

The noble Lord, Lord Clement-Jones, has put his finger on the point about age-verification methods: they have to work and to do various things. I say to him, though, that there is a difference between the bit that is checking the attribute—the age—and the bit about privacy, which is not identifying who the person is to a website and to a casual visitor to that website. It would be career-limiting were it to be found out that the noble Lord himself was visiting an adult content site, even though it would be totally legal for him to do so. Therefore, it is important to ensure that privacy happens at that point, which is the ICO's part. It is not the ICO's job to say how age verification should be done. That is a different job.

In fact, we have developed, along with the British Standards Institution, a publicly available specification, PAS 1296, which should be coming out quite soon. It has been around the houses several times and has been revised. That should allow it to be possible for an organisation to see for itself how well it is doing. It might be that an industry body should be set up that can check whether age-verification providers are doing something in alignment with the PAS, which goes into great detail about how you can do these things and make sure that it can be privacy enforcing. The privacy side is left up to the GDPR, but it is mentioned in there as well.

Those are the main points that I wanted to make. It is time to get on with this. It is a huge leap forward. As I said, the world is watching. A whole lot of good will is out there to get this done properly. I look forward to seeing the final draft regulations, which will probably do the job.

Lord Stevenson of Balmacara (Lab): My Lords, are we not back in familiar territory? We seem to spend a lot of time on these important issues, first on the Digital Economy Act, then substantial work, discussion, debate and thinking in the debates on the Data Protection Bill. I will disappoint the noble Lord, Lord Clement-Jones, by agreeing with most of what he said. He has a good point about where the boundaries between privacy and the processes described in the Digital Economy Act come to bear. There is room for a variety of approaches here. This is not an easy issue to address. I am not going to go back over the ground he covered—I look forward to hearing what the Minister will say about that—so I will go into some constitutional issues.

I have two general questions that might be important as we continue with this. One was touched on by the noble Earl, Lord Erroll, in his concluding remarks. Is it not the case that, when the Data Protection Bill, which brings in the GDPR, becomes an Act in May, we have inserted into it a requirement that those who operate on data subjects' information relating to age have to do so in a way that is age-appropriate, otherwise the design has to change? In a sense, is this not the other half of the equation about blocking those who provide material by requiring those who are preparing and disseminating material to have it in a way that will not lead to the problems that were discussed so graphically about what happens to children, who we want to protect, who stumble across material that should be behind an age-verification system? In that sense, age-verification seems to be a bit like shutting doors after horses have bolted. We have to get the design right. If it is right, there will be no such question about people stumbling on to things, because if they go through an ISP or any form of social media provision, such as Facebook and similar arrangements, their progress would be age-designed and could be managed that way. Can the Minister reflect on that? He may well argue that this is the sort of thing that needs to be addressed by a yet to be established data ethics commission. He would probably be right.

2.45 pm

This leads on to my second point. There were quite a lot of unfinished strands to the debate when we discussed these issues during the passage of the Digital Economy Act. I am sure that the noble Lord, Lord Clement-Jones, will agree with this point. We still have a problem in being certain about where the boundary will be between commercial and non-commercial services. We also have a difficulty on the question of extreme pornography. The working assumption is that we are

[Lord Stevenson of Balmacara]
talking about material that is operated commercially but not on a personal basis and that it is illegal for that material to be made available through the processes that are being arranged. We were also told that that needed further work and that the department would be carrying out a consultation and would report at a later stage. The easy question is: how is that going? Do we have any timescales? Do not say "soon", please. The more difficult question is: how does that all fit together in trying to have a comprehensive package? I do not necessarily expect a full answer, but it is something to mark for future debate and discussion.

Those are my general questions, but I have two particular questions for the noble Lord. I still argue, and I will continue to argue, that it is not appropriate for the Government to give statutory powers to a body that is essentially a private company. The BBFC is, as I have said before—I do not want to go into any detail—a company limited by guarantee. It is therefore a profit-seeking organisation. It is not a charity or body that is there for the public good. It was set up purely as a protectionist measure to try to make sure that people responsible for producing films that were covered by a licensing regime in local authorities that was aggressive towards certain types of films—it was variable and therefore not good for business—could be protected by a system that was largely undertaken voluntarily. It was run by the motion picture production industry for itself.

Out of that has come statutory responsibilities for video and DVDs. It is interesting that the BBFC has continued to operate in the film world without any statutory authority, although it is often regarded as having it. We are building a problem for some future date if we do not try to address this issue and make sense of what is obviously a good thing to happen: the classification for information purposes of material that might be come across by people seeking to watch films or videos, whether in theatres or online. That is an important function that I will defend, but if it is that important it should be done by the Government, not by a private company under licence. That would just build up difficulties.

To take a very simple example, the organisation and structure of the BBFC is not what you would find if it had been established under royal charter as a body operating in the public interest. It has an operation split between functions that face towards consumers and a council and management for which details are obscure. A company that made £1.3 million profit last year, and which has reserves of £14 million, is obviously in a different category from that which would operate in the public interest. Ultimately, the processes that the Government are saying have attracted them to appointing it are, because it is singular, not necessarily the ones that one can see in place. It is true that it consults on its guidance, but it does so in a relatively infrequent way that could be looked at differently. Although it has some responsibilities, it does not have a way to engage with the education sector, which might be more appropriate if the organisation responsible for this was in government. We all know that education is key to how people should be taught things that they should be aware of before they go to see products. That is my general concern, which I have expressed before. I do not need a full response today but I am glad it is on the record again that there are concerns about it.

The second point here, which was touched on by the noble Lord, Lord Clement-Jones, is that I still worry about the question of appeals in relation to this new age-verification system. In the Digital Economy Bill we applied considerable pressure to try to get a separate regulator appointed as the appeals body; indeed, we suggested that Ofcom would be appropriate for that. That was not successful at the time, and now we have a situation where the BBFC is the organisation of first instance but also the body for appeals. In the document before us there is considerable detail about how it will do that. I do not object to the way that that is proceeding, but I do not think it is right that the body is both judge and jury in its own case. For films, there is already an appeals system against the BBFC's classifications but it comes under local authorities, and it is outside the control of the BBFC to run it. For videos, the independent Video Appeals Committee had a long and distinguished presence, before video disappeared, in relation to the decisions that it made. So the body itself already accepts in some senses that it should not be both the first-instance court and the appeals court, but that is not the way that the Government are going. I look forward to hearing the Minister's response.

Lord Ashton of Hyde: My Lords, I am grateful to the noble Lords, Lord Stevenson and Lord Clement-Jones. There is a sense of déjà vu from the Digital Economy Act; we are continuing some of the discussions that we had then, and I am happy to do so. However, it is important to bear in mind what we are doing today, which is designating the BBFC. I hope we will come to other issues in the coming weeks. I will get into the definition of "soon" later.

Lord Clement-Jones: I apologise for interrupting the Minister. Perhaps he can explain why we are not doing this all in one fell swoop. It seems rather bitty. The draft guidance seems to be on the web, and certainly it seems to be all there, so why are we not trying to deal with this in a holistic way?

Lord Ashton of Hyde: The answer is that until the regulator is designated, it cannot issue guidance.

Lord Clement-Jones: My Lords, I was thinking of the government guidance.

Lord Ashton of Hyde: We have the government guidance that the Secretary of State has issued. The important issue, which I was going to come to in answering the noble Lord's question, is that this is a series of steps that involves consultation and then issuing guidance. Until the regulator is designated, it cannot begin to consult or issue guidance. It is a sequential process. There is no question that we want to get on with this; we are not trying to delay it. We are conscious that this needs to be done as soon as possible, and I will come to the steps that might explain that further.

The noble Lord, Lord Clement-Jones, was asking about how the system is going to operate and the level of detail. As I said, the Secretary of State's guidance

to the regulator is there for as and when it is designated, but then the regulator is required to publish its guidance on the age-verification arrangements that it will treat as compliant. So, as I was saying, once the BBFC has been designated, that draft guidance will be laid before Parliament. The noble Lord will be able to raise his objections or queries then, when he has seen the guidance that the regulator itself has made. Until that happens, it cannot either consult or lay the guidance. Parliament can then scrutinise it. That will involve the affirmative procedure in both Houses, so that will be an appropriate point to debate the issues.

We have absolutely understood the need for things like privacy. We understand that it is important to outline those issues and priorities in the Secretary of State's guidance to the regulator, as and when it is designated. It is then up to the regulator to get into the detail of what it will consider compliant. There is no question that it will choose a particular method. It will set criteria. There will not just be one system, for example; it will make sure that its criteria are clear in the guidance. As I say, we will have a chance to debate that.

The noble Earl, Lord Erroll, talked about when the powers are going to come into force. As I said, we want to do that as quickly as possible. In fact the current Secretary of State said it was his ambition to complete it within a year, although that is going to be difficult. We want to get it right; we want the process of consultation and guidance to be done properly. Of course, there was the small matter of purdah and an election in the way. Now, however, if this House approves the regulator today, we will be well on the way to doing that, and we are definitely trying to do it as quickly as possible.

We take data protection and privacy very seriously. The age verification arrangements should be concerned with verifying only age, not identity; we absolutely agree with that. Providers of age-verification controls will be subject to data protection laws—the GDPR—from 25 May, and the BBFC will work with the Information Commissioner's Office to ensure that its standards are met by age verification providers, particularly with regard to security, data minimisation and privacy by design. So the ICO is there to uphold the law and enforce data protection law and the GDPR. To go further on that point, the noble Lord, Lord Clement-Jones, mentioned the relationship. The BBFC and the ICO are going to agree a memorandum of understanding to ensure and clarify how they are going to work together and separate their various responsibilities.

I know the noble Lord, Lord Stevenson, is not entirely happy with some of the arrangements; we debated some of them on the Digital Economy Bill. He also mentioned definitions and said one of the things that the regulator—that is, the BBFC if it is designated—will have to do is regulate the definition of extreme pornography that is unlawful even if it has age verification in place. That is not really the subject of debate today. Noble Lords will have an opportunity to discuss that when the regulations come—

Lord Stevenson of Balmacara: I know the Minister was struggling with the wording there but this is really quite important. I thought he might have suggested that it would be up to the BBFC to define what was or was not permissible to view. I hope he is not saying that. I imagine the assumption is that there is a law of obscenity. Obviously it is interpreted through the courts in a way that is not entirely consistent in every case, but the law has to be the law and it must not be up to the BBFC to change the definitions.

Lord Ashton of Hyde: The noble Lord is absolutely right, and I apologise if I misled anyone. It is not the BBFC's job to determine what is lawful. It is meant to implement the law. The debate that I think we will have when the regulations come to this House will be on the decisions that will have been taken on what is pornography available for commercial purposes. The definition of what is unlawful will be under the extreme pornography definition within the existing Act.

The Earl of Erroll: Leading on from that, I remember from the debates that the trouble was that the Obscene Publications Act was not aligned with the CPS guidance or with various other things. I presume therefore that some work will be done on this in the near future, otherwise I suspect that the BBFC will get into trouble. At the same time, because age verification may come into this too, presumably we will also try to align the internet stuff, which is what we have been talking about in the Digital Economy Act—broadcast, which is regulated differently, and video on demand, which I think is Ofcom's responsibility at the moment. We really do not want different rules across all of those, so I hope we are going to get on with that.

3 pm

Lord Ashton of Hyde: We debated this extensively during the passage of the Digital Economy Bill. Parliament agreed with the very clear definition of extreme pornography, which is based on the Criminal Justice and Immigration Act 2008. That is what it will opine on. The primary legislation—the Digital Economy Act—requires the Secretary of State to consult on the impact and effectiveness of the regulatory framework, including the definitions used, within 18 months of the powers coming into force. That will be the time to do it. What I meant about it not being the subject of debate today is that this regulation is very clearly to define the regulator, and we say it should be the BBFC. I am not trying to duck the issues that are still there, but they will come back and I am sure I will have to deal with them—unless I am late for something.

The other issue mentioned by the noble Lord, Lord Stevenson—which I fear we will not agree on today—is the structure of the BBFC. He did say that he did not want a full response; I will just say that the BBFC is set up as an independent non-governmental body with a corporate structure, but it is a not-for-profit corporate structure. We have agreed funding arrangements for the BBFC for the purposes of the age-verification regulator. The funding is ring-fenced for this function. We have agreed a set-up cost of just under £1 million and a running cost of £800,000 for the first year. No other sources of funding will be required to carry out this work, so there is absolutely no question of influence from industry organisations, as there is for its existing work—it will be ring-fenced. As far as surplus is concerned, it is relatively common for non-profit

[Lord Ashton of Hyde]
organisations to keep a surplus and to do things such as investing in major projects or equipment. We think that, because the BBFC has been doing a similar job and making very difficult judgments on these things since 1912, it is the most suitable body.

We are content—and the previous Secretary of State was satisfied—that, with this structure, including the appeals structure, we have done our best to ensure that the arrangements will be sufficiently independent. I am thankful to the noble Lord, Lord Clement-Jones, for his support on that. There will be an independent appeals panel, which will not include the regulator, the Government or the affected industries. The BBFC will play no part in deciding the chair or membership of the independent appeals panel; this will be the role of the independent appointments board, so there is a clear division between the BBFC and appointments board, which will ensure its independence. Interestingly, the BBFC in its other role has had remarkably few appeals. Since 1985, there has been a total of 21 appeals, nine of which were ruled in the BBFC's favour, nine against, and the remaining three were withdrawn. Since 2007, no appeals have been made to the BBFC.

I think I have addressed most of the issues raised. The noble Lord, Lord Stevenson, mentioned some of the more philosophical issues on this—I agree with him; the data ethics body may be a place for that—and I can assure noble Lords that we will come back to some of these more difficult issues. In the meantime, to go back to where I started, today's job is only to designate the BBFC as the regulator. I hope that, after what I have said, the House will agree that it is the best body to take on the role, and I therefore beg to move.

Motion agreed.

Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018

Motion to Approve

3.04 pm

Moved by ***Baroness Vere of Norbiton***

That the draft Regulations laid before the House on 21 December 2017 be approved.

Baroness Vere of Norbiton (Con): My Lords, I am pleased to introduce these regulations in your Lordships' House today. I must begin by thanking my noble friend Lord Marlesford for his tireless campaigning over several years to bring these regulations to the statute book. I know from previous debates on this subject how strongly Members of this House feel about litter and littering. We launched the first ever litter strategy for England in April last year, which sets out our aim to clean up the country and deliver a substantial reduction in litter and littering within a generation. While improvements in education and disposal infrastructure are essential elements of our strategy, we must also ensure that councils have appropriate enforcement powers to back up the fundamental message that littering is not acceptable.

This brings me to the regulations before your Lordships' House today. The purpose of these regulations is to make it easier for councils to take appropriate enforcement action to tackle littering from vehicles, by holding the keeper of the vehicle responsible. These regulations will give powers to councils in England, outside London, to issue a civil fixed penalty notice to the keeper of a vehicle when an enforcement officer has reason to believe that a littering offence has been committed from the vehicle. As set out in the underlying primary legislation, these powers may be given only to bodies that are under a statutory duty to keep their relevant land clear of litter and refuse. The powers will therefore be conferred on district councils—or the county council in an area for which there is no district council—in England, outside London, as well as the Council of the Isles of Scilly. In this context, a district council includes authorities that may call themselves district, metropolitan, borough, unitary or any other name; it simply means the council for that district. London boroughs, as your Lordships know, already have similar powers under private legislation.

I emphasise that the person liable to pay the penalty is the keeper of the vehicle from which litter is thrown at the time of the offence. This is presumed to be the registered keeper unless proven otherwise: for example, because the vehicle has been sold or stolen, or was hired out to someone else. Vehicles such as buses, taxis and private hire vehicles are exempt from liability if the offence is committed by a passenger.

The penalty amount payable is set by the litter authority and must be the same as the level of fixed penalty for littering in the area. From 1 April 2018, the Environmental Offences (Fixed Penalties) (England) Regulations 2018 will increase the maximum fixed penalty for littering from £80 to £150, with an increase in the default level of penalty from £75 to £100. From April 2019, the minimum fixed penalty for littering will also increase, from £50 to £65. The regulations on littering from vehicles therefore reflect these higher penalty amounts.

If the penalty is not paid within 28 days, and the recipient has not made any representation against the penalty notice, the regulations provide for the amount of the penalty to be increased by 100%—in other words, to double. If it is still unpaid, it can be recovered by the litter authority in the county court. Similarly, the regulations enable litter authorities to encourage prompt payment by offering a discount if the penalty is paid within 14 days. However, the discounted penalty must not be less than £50.

The penalty notice must give details of the alleged offence, the amount of the penalty and deadlines for payment, and information about what will happen in the case of late payment. It must also set out how the recipient may make representations or appeals against the penalty notice. It is of course crucial that any enforcement action is proportionate and in the public interest. The regulations provide for a number of grounds on which the recipient of a penalty notice may make representations to the litter authority against the issue of a penalty. If the recipient makes representations to the litter authority on one of the listed grounds, the authority must consider the representations and respond. If it agrees, it must cancel the penalty notice—and if it rejects the representations, it must also advise the recipient of the penalty that they have a right to

appeal that decision to an independent adjudicator within 28 days. We are grateful to the Traffic Penalty Tribunal for agreeing to hear these appeals.

By giving councils this additional power to take action, we believe that these regulations will operate as a greater deterrent to those who may be tempted to litter and will reduce the build-up of litter on our roadsides and verges. I commend the draft regulations to the House.

Lord Marlesford (Con): My Lords, obviously I welcome this very small step in the battle against litter and I am most grateful to my noble friend for introducing it. There are several lessons in it. It has taken an awfully long time. This requirement was introduced in the then Anti-social Behaviour, Crime and Policing Bill, which received Royal Assent on 18 March 2014—so it is now nearly four years old. That must be nearly a record for slowness in complying with the will of Parliament. It is, of course, a long way from the record of 10 years achieved when I persuaded this House, when I first arrived here, to introduce a requirement for an electronic central register of firearms. It was 10 years before that happened. The department did not like it and decided to ignore it for as long as it could. I had support from all parties and 10 years later it happened. That was about 12 years ago and it works extremely well—but that is beside the point.

I suspect the reason the department has delayed this provision for so long is that neither the Home Office nor the environment department wanted it. Eventually I obtained help from the then Home Secretary—now my right honourable friend the Prime Minister—and the then excellent Environment Secretary, the right honourable Owen Paterson, who personally intervened. Indeed, my noble friend the present Chief Whip of your Lordships' House was the Minister who put it into practice—for which I am extremely grateful. But it has taken an awfully long time. The essence of this is that for a long while it has been a criminal offence to throw litter out of a car—but nothing is ever done about it because you have to prove who threw the litter.

I pay tribute to CPRE, of which I was chairman for five years some years ago, for campaigning for this measure from 2008. It will operate like a parking offence. If I lend you my car and you park it in the wrong place, I will get the parking ticket. That is sensible. There is no dispute and I can then, I hope, get the money back from you. Another plus of these regulations is that they decriminalise this offence. Previously, it was a criminal offence, which was virtually never successfully prosecuted. Now it is a civil offence with a civil penalty, which I hope will work. The penalty is actually very low. We have heard about the £100 basic penalty. This can go up if people do not pay it and can be halved if they pay it quickly. It is a small sum.

The Minister referred in particular to proportionality. It is important to administer this penalty proportionately. We do not want to discredit it by applying it to someone throwing a matchstick out of a car; we want to catch people who throw out containers, Big Mac packs and all that stuff. Another way of tackling this, which I hope the Government will soon introduce, is to bring in rules about deposits on returnable containers. This was introduced in the United States 30 years ago, originally in Oregon, and works very well because when the affluent discard these containers the less affluent pick them up and hand them into shops to collect the money.

3.15 pm

We have to make progress with this issue. I am afraid that England—I say "England" because I would not dream of trespassing on the culture of the devolved areas—is one of the dirtiest countries in Europe, as we all know. I am not saying that we can ever achieve the cleanliness of Singapore, because we know that the measures that country took to achieve that under Lee Kuan Yew were pretty extreme. However, it worked and Singapore is still a very clean place. I hope that this will be followed up by councils. They now have the power. I have just one question for my noble friend. When we have reason to believe that litter has been thrown, will that enable somebody who is prepared to be a witness to tell the council that they have seen litter thrown from a vehicle and then the procedure can go forward, or does it have to be a council official? If only council officials can report it, the danger is there will not be enough council officials and they certainly will not have time to go around looking for people throwing litter from vehicles. I hope that people can be reported for committing this offence and that, provided the person who reports it is prepared to confirm it, preferably with another witness, the civil penalty will be issued.

Littering on our roadsides is a disgrace. One of the big problems is that the contracts awarded by local authorities for litter clearance are not properly monitored. I have found—this is not the best way of doing it, but it works—that when I have driven on a particularly dirty road and I have put down a PQ for Written Answer to ask the Government whether they are satisfied with the state of that bit of road, miraculously, within two or three weeks, the road is cleared up. But that is not the way it should happen. We need much closer monitoring—and not just of big companies such as Carillion. Local authorities must be persuaded to ensure that companies awarded contracts to clear litter from roads earn their fees. I again thank my noble friend and I am glad that we have taken this small but necessary step.

Lord Bassam of Brighton (Lab): My Lords, I was not going to intervene in this discussion but I am fascinated by this debate on littering. The noble Lord, Lord Marlesford, is a wonderful chap. I love his persistence. I well remember the guns registration issue because he rightly hounded me on it for two years. As he said, the then Government eventually sorted it out. He was right to say that that measure was obstructed inside the then Government.

I have a beef and it is called the A27. I am delighted that my noble friend Lady Jones is on our Front Bench because the A27 is the litter epicentre of the south-east. What grieves me most is that it is clear that someone there is failing to take responsibility for clearing it up properly. I would like to know who that is. I think the responsibility rests with the Highways Agency as I am sure that I have seen its contractors tackling this but they appear only once a year. In the intervening period,

[Lord Bassam of Brighton]
that road is a haven for rubbish and litter. That is not good enough. One of the reasons for the litter is that the road is not cleared frequently enough and a contract to do so is not let over sufficient phases of the year. I believe that this has a lot to do with the fact that contracts are not let in that way and that contractors do not have an obligation to clear the road when it becomes badly littered.

I have a serious question about this legislation, which I am sure is very well intentioned: what is the incentive for a district council to become involved in proceedings—civil proceedings at that—and follow up complaints made to it? Where is the incentive for it to deploy the "person power" to enforce this legislation? There are already enough financial pressures on local councils regarding all the other things they are supposed to enforce, so I cannot see that they will want to chase complaints and complainants of this sort. No doubt this is a very well-meaning measure but I guess that it will be barely enforced, as has been the case with all other litter legislation in the past. Will the Minister do some research on this and tell your Lordships on how many occasions people have been brought before the courts and fined for littering offences in the last two or three decades? My mind goes back to the time when Margaret Thatcher was Prime Minister. She introduced legislation by which she tried to grade the litter acceptability of land, and we were told that it would solve the problem. The problem is still with us and, until we get regular cleaning of the waysides and footpaths along roads and highways, it will not be solved.

This legislation is clearly well-meaning, but we need to know a lot more about the incentives to local government and the level of activity that has been employed so far in enforcing legislation in the past.

Baroness Stowell of Beeston (Con): My Lords, I will make a brief contribution to this debate. I welcome these regulations, which tackle an important matter. However, I will use this opportunity to say something a bit more broadly about the topic of litter. While it is important that regulations are available to local authorities to go after people who commit these offences—doing things that are so unacceptable to us—it is also worth thinking about what more we can do to prevent litter in the first place.

Earlier this week there was a significant debate here in the Chamber about the Government's environmental plan, and I was disappointed only that I was not able to participate in it. I absolutely share the commitment of the Government—and so many people—to a lot of the initiatives we are adopting to preserve our environment, and it is right that the Government, schools and everybody else use interest in preserving marine life and so on to encourage interest among young people and everybody else in the environmental issues that form part of the Government's environmental plan. However, in the last few weeks the Government's litter strategy, published just before the 2017 general election, caught my attention. It is incredibly important.

One thing that is a nuisance for us is the increasing litter we see, not just on our roads and our pavements, outside shops and fast food restaurants, but on public transport. We are not doing enough to encourage ourselves as citizens to take on responsibility for tackling these sorts of things. A few weeks ago I managed to gate-crash a meeting of a local authority about litter and the litter strategy, where I had the huge privilege of meeting the environmental manager for the area I live. This gentleman had worked for the local authority and is now in one of the subcontracted companies, and is responsible for litter. He cared very much about our area and was absolutely passionate about keeping our streets clean. I liked this chap. Through him, we managed to get some additional litter bins on our public roads in the area.

I wanted to have a conversation with one of the local shopkeepers, whose outside area can be rather unkempt and which rather lets us down because of the increasing litter. I spoke to him about the litter outside his shop and said, "You know, you are a very important man in our community. You are responsible for one of the most important hubs of our local environment". I was able to encourage him and his sense of his importance in keeping our area clean and devoid of litter, and I do not think that he had ever understood and appreciated just how much of an important role he plays in his society.

While it is important that we have regulations that tackle people who adopt these kind of nuisance behaviours, that should not mean that we should avoid encouraging people to accept responsibility. We should acknowledge the importance of people, whether they are shop managers or bus drivers who find people abusing the vehicles that they are proud to drive themselves, and get behind them to support them to maintain the standards that are so important to us. That should prevent these kind of regulations ever having to be deployed.

Viscount Simon (Lab): My Lords, I will be brief. In many other countries there is no litter on the ground or the roads at all. How come? Their drivers are encouraged to have litter bins in their cars. Why cannot we do the same?

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I am grateful to the Minister for her introduction to this important piece of legislation. I declare an interest as a district councillor. I was interested in the contributions made by the noble Lord, Lord Marlesford, and the noble Baroness.

We have all seen cars driving past us, or followed cars from which rubbish has been thrown carelessly out of the window. As we have heard, litter is one of the scourges of our throwaway society. When I was growing up, it was very unusual to see the countryside and pavements littered with bottles and packages. Sadly, now it is commonplace. If this issue is not addressed, we will all be knee-deep in litter. As the noble Lord indicated, there appears to be an attitude among some car drivers—but not all—that they do not need to take their rubbish home and dispose of it safely. Winding down the window appears to be a better option for some of them.

In the market town of Yeovil a few years ago on a retail park site, KFC, previously known as Kentucky Fried Chicken, opened a first new outlet. On the day it opened, a free meal was offered to the first batch of customers. The queues of cars to get to the outlet

stretched around the site and down to the bypass. I believe that in excess of 6,000 meals were served that day. Sadly, afterwards, the litter from the takeaway meals was strewn for many miles around the town and countryside. The fact that this opening was such a major event in Yeovil says a lot about the level of leisure activities available—but that is another matter.

Fining motorists for discarding their litter from cars is a start to helping to solve this problem. However, it also has to be tackled at source as well. Burger King, McDonald's and KFC, as well as other outlets of a similar nature, have their part to play: first, in providing incentives and signage, encouraging their customers to dispose of their litter sensibly and with a view to the state of the environment; but also in making their packaging biodegradable, including their drinking cups and straws and the food containers. It will simply not be good enough to say that it is only on "Blue Planet II" that marine life is endangered by plastic. What of the rarely seen hedgehog, the urban and rural fox, and badgers, mice and voles, which are all likely to pick up and try to eat discarded waste that smells so invitingly of food?

This piece of legislation is long overdue. The keeper is responsible for the action of their passengers. It contains exemptions for taxi drivers, who may not be able to control their passengers' bad habits. The language in the SI makes it very clear what processes will be involved to ensure that those guilty persons are pursued and fined. There are appeal mechanisms and adjudicators.

My concern is that the enforcement falls back on the "litter authority". As usual, this is a district council, or a county council where there is no district council, and applies only to England and the Council of the Isles of Scilly, as the Minister said. The good point about collecting the fines is that they may be kept by the collecting authority for execution of its duties under the Clean Neighbourhoods and Environment Act of 2005. The number of reasons that the recipient of fines can give as an excuse for not paying the fine are extensive and lean overly towards the offender. I am concerned that many will be able to wriggle out of paying.

I hope that the fines imposed and collected will recompense the local authorities for the work involved. This should send a big message to the public that the country is no longer prepared to accept such loutish behaviour from car drivers and their passengers. I fully support the SI.

3.30 pm

Baroness Jones of Whitchurch (Lab): My Lords—

Lord Swinfen (Con): My Lords, I am sorry; I was trying to be polite to my noble friend. I thought he was intending to speak but he has decided not to.

In 1959, which was some time ago, I was on leave in Munich and was warned by my German hosts not to drop even a match when I lit my pipe or I would be fined on the spot, so I did not drop a match. However, the lane that leads to my home in east Kent, where people frequently stop to have their lunch in the middle of the day, is often full of litter. Some of it is biodegradable and some is not, but there is absolutely no need for it to be thrown out of a window. In places where a lot of litter is deposited, we should have cameras, hidden in trees if necessary, to photograph people dropping litter out of their cars.

I also think the fine stipulated in these regulations is far too low. Most people can afford £100 and would not worry too much about that. I think we should have a fine in the region of £1,000 as a preventive measure. The noble Lord, Lord Griffiths, indicates that it should be higher than that. If that is what he wishes, that is fine, but I think £1,000, which might need to be raised in a few years' time, would be quite sufficient to deter a lot of people. Very often there has to be a deterrent to stop people doing something that they ought not to do. Today, we make it too easy for them. You have only to drive around south-east England to see litter everywhere on minor and main roads and thrown out of windows on motorways. We are far too tolerant of the mess that other people make.

I remember hearing a story many years ago about a farmer who saw someone having a picnic on one of his fields. They left an awful lot of mess. He cleared it up, followed them home and deposited it on their front lawn. I hope it made them think. It would make a lot of other people think as well.

Baroness Jones of Whitchurch: My Lords, I was very interested in the comments of the noble Lord, Lord Marlesford, about the delay in introducing measures. If he had been present at other debates in which I have taken part, he would have seen that the progress Defra makes on legislation is a bit of a running theme and that we have had a bit of an issue with the department about it for some time. I will not dwell on that too much but I have some sympathy with his point.

I am very grateful to the Minister for explaining so clearly the intention behind these regulations. As she said, they form part of the Government's littering strategy, which was published last year. Of course we welcome that strategy and share its objectives of cleaning up our urban and rural landscapes to make them better places to live and work—a theme that all noble Lords have echoed this afternoon. The strategy makes it clear that litter is not only an eyesore but hugely costly—a point made by the noble Baroness, Lady Bakewell. Street cleaning cost local government £778 million in 2015-16, and we can all think of better ways to spend that money. Clearly, dropping litter from vehicles adds to the overall litter challenge, so it is important—again, this is a point all noble Lords have made—that we create a culture where dropping litter is simply considered unacceptable and communities and individuals learn to value their local environment.

In principle we do not have a problem with extending to other councils across England the powers already granted to London councils to fine those who litter from vehicles. It is very clear from the consultation carried out by Defra that this extension has received broad support from the Local Government Association and organisations such as Keep Britain Tidy. However, I have a number of questions about the detail that I would like the Minister to address.

First, what lessons have been learned from the London experience? London has had these powers for five years but what discernible difference has it made? My noble friend Lord Bassam made a very good point

[Baroness Jones of Whitchurch]
in this regard. What are councils doing to take up these powers? Defra's scoping study of November 2015 showed a marked reluctance from London boroughs to participate in a pilot study of the scheme's effectiveness. As the scoping study identified:

"The London boroughs have been slow to enforce their 'litter from vehicles powers', but there is a lack of robust empirical evidence to help understand where the problems lie".

At the time, a number of London boroughs basically said that they had other priorities and did not want to set up a new system for charging and recovering fines. In fact, it appeared that Wandsworth Council was the only one to actively pursue these new powers. So what is the position after five years? A recent study of appeals against vehicle-litter fines to London Tribunals found that Wandsworth was the only council that anyone appealed against. Of course, that might be because Wandsworth was particularly draconian, but perhaps it is more likely that many other London councils are simply not implementing the fines in the way intended. Therefore, can the Minister clarify how many London councils are using the powers and what lessons we are learning from those not currently doing so?

Secondly, in Defra's Explanatory Memorandum which accompanies the regulations, it is recognised that the guidance on environmental fixed-penalty powers needs to be updated and clarified. The memorandum goes on to say that Defra intends to consult on the new guidance and have improved guidance in place before the powers in these regulations come into force in April 2018. It does not take a genius to say that that date is looming, so what progress is being made with this consultation? Will the deadline be met, and does the Minister think that this new guidance will go some way towards encouraging uptake of the new powers?

Thirdly, who will police these new regulations, and will it be acceptable for councils to outsource this responsibility? I ask that because the Minister may be aware of a "Panorama" programme aired last summer which showed that a private company, Kingdom Services, was employed as an environmental enforcement agency by around 28 councils around the country, dealing not with littering from cars but with littering in general. It paid its staff what it called a competency allowance, which amounted to a bonus for every littering incident at which they issued a fine. As a result, people were fined for ridiculous incidents—someone for pouring coffee down a drain, another for dropping and then picking up a piece of orange peel, and someone else for putting out their recycling on the wrong day. It was alleged that the company was working with the councils to fine as many people as possible and to profit from the income from the fines.

Does the Minister accept that the purpose of these new powers to fine those who litter from vehicles is not to add to the profits of councils but to change behaviours and keep the public on our side? That means rolling out the new powers intelligently and sympathetically. It also means that a high standard of reliable evidence has to be at the core of the scheme. Does she agree that for the new regulations to have public trust, the money from the fines should be used solely for further improvements to the environment and not for councils to make a profit?

Fourthly, as the noble Lord, Lord Marlesford, said, these provisions will allow for a fixed penalty to be issued with the lesser civil standard of proof. However, as I understand it, normal street-littering is dealt with under the criminal standard of proof—again, I may have got this wrong but I am sure that the Minister will clarify it—which includes the risk of criminal prosecution. Does the Minister think that having both a civil and criminal penalty for different sorts of littering in different circumstances can be justified?

Finally, my noble friend Lord Bassam mentioned the A27, which is an issue very close to my heart. I agree with him about what an eyesore it is. A number of noble Lords talked about littering in the countryside. How it is envisaged that the scheme will work in rural areas and on motorways? We all feel particularly affronted when we drive through the countryside and see litter left in the hedgerows and on the grass. Often, we know that it will be left there for a very long time. It seems unlikely that an enforcement agency would have the staff to police rural roads, but at the same time, the eyesore is even more powerful in areas of natural beauty. So do the Government have further plans to help clean up the countryside?

Also, am I right in saying that responsibility for litter on the side of motorways has transferred to Highways England? If so, will it have the same powers to catch and fine drivers throwing litter out of car windows, which again is a real blot on our landscape? Will the Minister clarify how that will work and what the Government's target is, particularly for cleaning up the countryside?

I raise these issues not because I want to oppose the regulations—far from it—but because I want regulations that are effective and transformative. It is important that we learn the lessons from our experiences of tackling litter so far and that the new regulations really make a difference in the future. I hope the Minister will confirm that that will be the case. I look forward to her response.

Baroness Vere of Norbiton: My Lords, I thank all noble Lords for their contributions to what has turned out to be a fascinating debate, with some interesting points made. I will do my utmost to respond to all of them. However, as usual, if I do not I will write noble Lords a letter.

First, I thank my noble friend Lord Marlesford for his contribution today and his welcoming of these regulations. I agree with the noble Lord that this is a small step. There is no magic bullet when it comes to litter, but I hope that it is one step along the journey to making our country litter free. I also welcome the support that these regulations have received from my noble friend Lady Stowell, who made a very good contribution about it being everybody's responsibility to stop littering.

My noble friend Lord Marlesford and the noble Baroness, Lady Jones, asked about timing. I admit that these regulations are a little delayed. However, we have used the time since the Anti-Social Behaviour, Crime and Policing Act achieved Royal Assent in March 2014 to carry out a scoping study into how the regulations were being used in London, and councils'

expectations or desires for a civil penalty system. We then developed and consulted on the draft regulations as part of preparing our new litter strategy for England. That is one reason for the delay. I hope that there will be no further delays when it comes to the department.

On the experience in London and the lessons learned, the slow take-up in London so far has been disappointing. I am surprised that London boroughs have not adopted these powers with more enthusiasm. I will certainly be on the case to my local councillor to ask exactly why this is the case. It is beholden on all of us as citizens to get in touch with our local councillors, because littering is a very important issue. Wandsworth is the only borough using the powers at the moment and we will take this opportunity to encourage other London boroughs to make use of the powers.

However, we are aware that there were some initial teething problems with these powers, which is why there may have been some delay. There was a problem with processing and enforcing payments. We have worked with the Traffic Penalty Tribunal and the MoJ to ensure that we have not replicated the problems initially experienced in London. We know that local London councils are using a mix of education and the threat of prosecution to change behaviour, and that is as important as fining people as they throw things out of their cars.

3.45 pm

On the potential take-up by councils outside London, as raised by the noble Baroness, Lady Jones, concerns have been raised about whether there is a demand for these powers in the rest of England—or, as the noble Lord, Lord Bassam, put it, what is the incentive? Noble Lords will be aware that we published a public consultation on these proposed powers in April last year, which was welcomed by the Local Government Association. It said:

"Allowing councils to fine the owners of vehicles which litter is thrown from, rather than expecting councils to prove who exactly in the vehicle had thrown litter, is also something that the LGA has long called for".

I hope that this will encourage councils across the country to take up this opportunity.

On the point made by the noble Lord, Lord Bassam, about the A27, many moons ago I was a parliamentary candidate for Brighton Pavilion. I remember trying to get the Highways Agency involved in the litter problem on the A27. But in all seriousness, I will write to noble Lords about those arrangements with the Highways Agency, because they are slightly different from those for many other roads.

The noble Baroness, Lady Jones, raised the extremely important issue of proportionality and outsourced enforcement. I must be clear that enforcement action of any kind must always be proportionate. At that point, I am afraid that I will have to disagree with my noble friend Lord Swinfen: fines of £1,000 may be a little premature at this juncture.

Enforcement must also be in the public interest. In no circumstances should councils view these powers as a means to raise revenue. Councils of course remain accountable to their local residents for the decisions they take, and that is absolutely right. This will include whether to enter into contracts with private enforcement companies and how well they are monitored. Any income from these civil penalties will be ring-fenced and must be spent by councils on their functions of keeping land clear of litter and refuse. This includes reinvestment in enforcement to help punish and deter those who needlessly spoil our local environment.

We will issue improved guidance on the use of these important enforcement powers to ensure that they are used fairly and appropriately. We will publish the guidance for consultation very soon, but we want to ensure that it fully reflects any points made in these debates first.

I turn to the take-up in rural areas, which was mentioned by the noble Baroness, Lady Jones, and whether these powers will be effective. Councils can use cameras, as pointed out by my noble friend Lord Swinfen, subject to compliance with other legislation such as the Regulation of Investigatory Powers Act, data protection and so on. My noble friend Lord Marlesford said that councils can take action based on reports by private individuals, including evidence from private dashcams, as long as they are satisfied that, on the balance of probabilities, litter was thrown from that vehicle. Of course, councils cannot deploy enforcement officers everywhere at all times and they may choose to target enforcement on particular problem areas. It is up to councils whether or not to use these powers and how to prioritise enforcement action against other activities. They can set penalties at a level which should cover their enforcement costs within the permitted range and, as has been mentioned, any surplus income should be ring-fenced to be spent on council functions around keeping land clear of litter.

The noble Baroness, Lady Bakewell, raised the issue of KFC in Yeovil. The responsibility of businesses for reducing the amount of litter they generate is an important issue. Litter reflects badly on everyone associated with it, and of course we want to see businesses playing their part. I hope that the KFC namecheck today will do its bit to help. The litter strategy sets out a number of ways in which this can be tackled. Where particular premises are associated with persistent litter, councils have existing powers under the Anti-social Behaviour, Crime and Policing Act 2014 to take action against them.

I turn finally to littering more broadly, as mentioned by my noble friend Lady Stowell. I agree wholeheartedly that it is the responsibility of every citizen to work for a cleaner society; litter is simply not acceptable. I appreciate the suggestion made by the noble Viscount, Lord Simon, that we should all have litter bins in our cars, and I am going to look into having one.

All the actions set out in our litter strategy are aimed at delivering a substantial reduction in litter and littering within a generation, whether in urban or rural areas. Enforcement is only one part of a strategic approach that includes improving education and communication, as well as the provision of appropriate disposal facilities. It is clear that we all recognise the need to address the blight of litter in our country. These regulations demonstrate that we are determined to ensure that councils have the powers they need to take effective action on litter. I beg to move.

Motion agreed.

Independent Radio Production

Question for Short Debate

3.51 pm

Asked by ***Lord Stevenson of Balmacara***

To ask Her Majesty's Government how they intend to ensure that a sustainable independent radio production sector is operating over the period to 2027, with particular reference to maintaining the quality of programming across the BBC and commercial services, and to ensuring appropriate skills and working conditions.

Lord Stevenson of Balmacara (Lab): My Lords, I am grateful to the noble Baroness, Lady Grender, and the noble Lord, Lord Berkeley, for speaking in the debate. The noble Lord is a practising radio performer, I think one can call him, whose programmes I listen to regularly—an interest that I should declare. I am sure he has a lot to say from the other side of the microphone. We are a small but select group interested in the future of radio in this country and I look forward to all the contributions, including that of the Minister, as well as that of my previous apprentice and now fully fledged shadow Minister for DCMS, my noble friend Lord Griffiths of Burry Port.

In our debate on the Digital Economy Bill last year, discussed in an earlier debate today, I tabled an amendment on the future of the UK radio production sector. It attracted only one speaker apart from myself and the Minister, but unfortunately that speaker did not give his full-hearted support to the amendment, which was a bit of a downer. However, I am doing better today. We have double the numbers and I think I shall get a slightly better response.

If my amendment to the Digital Economy Bill had been accepted, it would have required the Secretary of State to report, within a year of the passing of the Act, on the impact of the BBC royal charter and agreement—particularly the agreement—on the balance between in-house and independent production of programmes for BBC radio broadcast; the extent to which the training and development of production staff may have been affected; the number of staff active in radio production compared to 2016, including details of gender and other indicators of diversity; and the impact that the changes had had on the salaries and conditions of radio production staff. These issues are still relevant today, although I now think we need to spend a little time reflecting on the changes that have been made in the intervening period.

My reason for raising the issue at the time was that we had learned at a very late stage in the discussions on the BBC royal charter renewal process that the BBC had decided to make significant changes to radio commissioning. Not only were changes going to be made, they would be incorporated into the BBC agreement. This decision deeply affects the health of the radio production sector in this country as radio production moves broadly from a system in which most programmes are produced in-house to a commissioning-driven model. That is why my original amendment called for a report to assess the implications of this decision for the wider UK radio production sector, because it certainly changed the terms of trade. It is important to recognise that we are not talking only about quality of output, although that is important, but an analysis of staff numbers, training, pay and conditions, gender and diversity, as set out in the original amendment.

Radio is a popular medium with a wide audience reach and we are well served by the present diverse mixture of national, regional and local stations, the mixture of public service broadcasting and commercial channels, and a wide variety of genres and styles. They make a terrific offering which many people enjoy. Of course, sound probably lay at the heart of our civilisation itself. It is an amazing experience to have pictures created in your brain by sound alone and a wide range of skills are needed to provide a proper system of radio production.

Sound is also used here, of course: our voices are amplified and taken from here by the use of a sound recording system. We could not enjoy concerts without it and there is obviously a question about how we would get on in safety situations if there were no proper system of communication through sound. So it is really important that we get a broader picture of this. It is therefore a bit ironic that radio, as part of the creative industries, does not get as much political attention as it should. That may be because it is not a major part of the UK's creative industries; although it is very successful, it does not contribute to the bottom-line figures as much as film or television. However, it is part of our creative economy, so its health and future success should matter to the department, to Ministers, to Parliament and to the country.

There is a debate to be had on some future occasion—not now—about how and in what format Parliament should engage with the BBC charter renewal process. I give notice that at the appropriate time I will argue that Parliament is not as engaged as it should be in the process and we need to do something different in the future, particularly on the agreement, which is at the heart of how the contract between the Government and the BBC works in practice but is never discussed, mainly for lack of time. We focus on the charter, which is the very broad-brush stuff, but we ignore, at our peril, the detail in the agreement.

However, for the remainder of this speech I want to focus on two small asks that I am sure the Minister will want to consider very carefully and, I hope, respond to positively. I should like her to arrange a meeting for those who have been affected by the current changes in the BBC and in the wider radio community so that the department is properly briefed about what is happening on the ground—I worry that it is not. Secondly, the original idea of having a review immediately after the passing of the Digital Economy Act was, as I said, a little previous. I now have a suggestion that I hope the Minister will take up when the Government come to do their mid-term review of the operation of the BBC charter. We had previous assurances about it being a very limited, light-touch review, but I hope it will be appropriate for it to look at the particular issues raised in this debate. The review will be in about 2022, I gather; half way between now and the next renewal of the charter in 2027.

I should make clear before I proceed that my focus is on the public interest as it affects the whole radio production sector; it is not about the BBC. It is quite inappropriate for Ministers, or indeed the Opposition, to pontificate about what the BBC should or should not do: that is set out in the charter and agreement and we should leave them to get on with it. However, it is important that we recognise the impact that decisions will have on the wider community involved in radio production. In a helpful note for this debate, the BBC points out that before the current BBC charter and agreement commenced in 2017, the BBC guaranteed 10% of eligible BBC network radio hours to independent production and a further 10% was open to competition between the independents and in-house departments. In fact, the total available up to 2017 was about 9,000 competitive hours per year. Following the charter process and the new agreement, the BBC committed to opening up 60% of eligible hours to competition within six years. There are restrictions on that because BBC news output, BBC Weather, EBU broadcasts, BBC local radio and coverage of state occasions are not included in the eligible hours. Even so, this brings the eligibility for consideration for outsourcing to some 27,000 hours per year—an increase of a staggering 300%.

I accept that, as the BBC points out, this does not mean that everything put out to tender will be lost by the BBC and I respect the belief expressed by the BBC that the process will be what it describes as a robust, transparent and fair system of competition: they would, wouldn't they? However, I put it to the Government that we do not know enough about the radio production industry at present to understand the impact that these changes will have and that this new policy will bring to bear on the sector. While it may be true, as the BBC asserts, that,

"the broadcasting ecology works best when we have in-house and independent production working in creative tension",

I, for one, would like to see the evidence. The Government should ensure that it is presented in their mid-term review.

Total radio production in the UK is generated by a very small group of people. There are about 150 relatively small companies, spread right across the country. Do we actually know the numbers involved? Who is charged with collecting and reporting on this sector and where is the data published? There is clearly an issue about scale. The present group of independent radio production companies are surely not currently capable of operating, like the BBC, on a scale that would enable them to take over the huge increase in the proportion of radio that we are talking about. Add to that the fact that most staff are freelance and that some, but not a huge amount, of training is done outside the BBC and I think we have a perfect storm.

As we have heard in this House on many occasions, one of the problems facing the creative industries is that they are not structured in a way that encourages apprenticeships, and it is generally agreed that there are far too many unpaid interns. What is the current position and how will it change through this change in the BBC's work? Given that more than 50% of programmes are likely to be commissioned from outside firms, for how long will the BBC be expected to continue to operate as a major trainer, perhaps the sole major trainer, in this area? Who is going to pick up the slack? Will the present voluntary levy system in the creative industries survive the apprenticeship levy? We can all agree that radio needs a flow of qualified people coming forward, but if the independent production companies are not able to do it and the BBC will not, who will take this on?

What will happen to current staff contracts, for those who are involved in the BBC and whose work is outsourced? Clearly, TUPE rules may well apply, in which case there will be quite a lot of constraints on the ability of existing independent companies to respond in a different way from what is currently the case for in-house commissioning. There are already concerns about gender balance in the radio sector, including on pay, as we have heard in recent weeks. Again, we lack the baseline data that would help assess the situation. It needs to go wider than just the BBC.

It is important to recognise that there is considerable disquiet across the industry about these changes. A long list of top BBC radio professionals and others had a letter published in the *Sunday Times* not so long ago, at the time the BBC was considering this decision, calling on the Government and the BBC to scale down proposals to outsource 60% of radio output. They said:

"As radio professionals, we are extremely worried about the proposal … to put 60% of BBC national radio output out to competitive tender. Over the past 20 years BBC Radio has gradually increased external commissioning from zero to around 20% … This gradual increase has fostered evolution while maintaining stability, allowing BBC Radio to sustain its international reputation for excellence. The proposal to increase competition to 60% … threatens severe damage to that excellence".

At a subsequent public meeting, Gillian Reynolds, the distinguished radio critic, said that while the 20% of production that has gone out to independent companies has resulted in some excellent programmes, she saw no benefits in outsourcing 60%, or what she called the,

"Uberisation of the radio workforce".

I take it as given that the BBC's charter and framework agreement, in effect since January 2017, obliges it to open up 60% of "relevant broadcasting time" on BBC Radio to competitive tendering by 2022, with a review at that point. I have no problems with that: it is happening and we should watch it be taken forward. However, while the BBC has to do what it has to do, and we should not interfere, there is a public interest in ensuring the more general continuing success of the radio production sector. This change of practice at the BBC gives rise to serious concerns, centring on the sustainability of what is really a very fragile radio production market. The potential threat to smaller independent producers and to the BBC's own in-house, world-leading production capacity has to be borne in mind. I look forward to the debate and to the Minister's response to my two asks.

4.02 pm

Lord Berkeley of Knighton (CB): My Lords, with unerring accuracy the noble Lord, Lord Stevenson of Balmacara, has put his finger on a vital and current issue. Before I begin, I draw attention to my work as a broadcaster and composer, as stated in the register of interests.

[Lord Berkeley of Knighton]

Long before the advent of television, radio—as provided then exclusively by the BBC—carved out a niche in the public psyche that has never really gone away. Think of Churchill or Eden; think of the King. Indeed, given the way television is gradually morphing into something that will doubtless be unrecognisable to us in a few decades, radio may well be the long-term survivor. What is it about radio that makes it so special, if less high-profile than its visual partner?

At its best, it is very much to do with the imagination, as the noble Lord, Lord Stevenson, suggested. By not spelling out every detail, radio allows listeners—indeed, forces listeners—to use their imagination, to build pictures in the mind. I enjoy drama on television very much but I invariably find drama on radio more challenging and more satisfying. Radio, particularly local radio, is the great friend of the car driver—with information on where he or she is, what they can expect to find weather-wise, local events. That is very important, particularly in remote rural areas. Television, apart from short bulletins and the occasional magazine, cannot really devote the time to discussing local issues in the way that radio can and does.

Television has, in fact, been forced further and further down the one-way road of instant gratification. There is a terror that without quick editing the viewer will be bored, so we get faster and faster intercutting to hold the attention. Of course television can take us directly to world events as they unfold—the Twin Towers, Grenfell—and yet, does not a wonderfully scripted description, as we often hear on, say, "From Our Own Correspondent", sometimes and somehow give us more human insight? What we get on television will be the same footage repeated over and over again until we almost feel we are becoming immune to the full horror of what is happening, whereas a radio correspondent will act as our witness and as our conscience, especially in the case of gifted reporters such as Fergal Keane, Kate Adie, George Alagiah and Robert Simpson, to name but a few.

I had the pleasure of working with the current director-general of the BBC, the noble Lord, Lord Hall, at the Royal Opera House. What he achieved at the ROH was a remarkable turnaround. I believe that what he is attempting to do at the BBC is equally ambitious and admirable—for example, rationalising salaries in management, cutting through excess middle management and opening up the BBC to fair competition from the independent sector, as we have just heard, although that in itself raises problems. This latter move is still in its infancy but it has been welcomed by the Radio Independents Group. However, between the ROH and the BBC there is a huge difference in size and scale. Turning round an ocean liner—which Broadcasting House indeed resembles—is one thing on the open sea but quite another if you are hemmed in on both sides as though instead of being on the ocean you are actually trying to turn a liner round on the Serpentine.

I love the BBC and have contributed to it in many ways since the early 1970s. Even then, we were trying to attract younger listeners—well, they are our listeners now. In the spirit with which the noble Lord, Lord Hall, invited constructive suggestions at the Select Committee yesterday, I am going to make some observations which I believe are central to securing a continuing and healthy radio sector. The gender pay issue and the size of well-known presenters' salaries has rather masked a troubling state of affairs on the factory floor—the grass-roots. I am talking here in particular of local radio, which the BBC has done so much to set up, but which is now in pretty dire straits. Several factors have fed into this, but one is that there is absolutely no equality in terms of rates for the job. I am certainly not saying that a local radio breakfast host should get a comparable rate to a "Today" presenter—obviously not—but the disparity has grown out of all proportion. Instead of the possible £325,000 that a "Today" presenter might get, let alone what they have been getting, a local radio man or woman gets up at 4 o'clock in the morning and, with no assistance, entertains and informs his or her local community or county for, after tax, something like £76. I support the request made to the Minister by the noble Lord, Lord Stevenson, and I shall add another one. I would like to know whether local radio staff are working for figures above, near or even below the minimum wage when the hours are properly and fairly accounted for.

Let us move up the ladder and take very knowledgeable and skilled specialist presenters on BBC Radio 3 and BBC Radio 4, but not on "Today". Why do they get a fraction of what, say, leading BBC 6 Music presenters get? Audience sizes are similar, as is profile. I realise that in a commercial world there has to be some element of hierarchy and that the BBC has to have the right to say that so-and-so is worth so much to it and to use some sort of yardstick, but that yardstick needs to be transparent so that Miss A can say, "Is my job not more or less identical to that of Mr or Mrs B?". My suggestion is that the BBC may need, in this area, to jump the hurdle of network budgets in order to achieve greater visible equality across the board in terms of fees. I think the BBC might have some sympathy with this, or at least a version of it. I want to add that I am not speaking out of personal desire here. It is a matter of public record that when the controller and my editor at BBC Radio 3 pointed out that I was being paid more than my colleagues who did similar jobs, I volunteered to take a 33% pay cut to bring me more in line with them. That is a perfect example of what I would like to see more of, as long as the proceeds really do go to the underpaid.

Let me turn now to an issue that has caused huge distress and hardship. It is the handling by the BBC of HMRC's IR35 directive, which the BBC has interpreted, lazily in my view, as meaning that virtually all freelancers must be put on PAYE. Except that is not the whole picture. The Revenue wants to cut down on abuses, as it sees it, involving PSCs—personal service companies—but the BBC could and should have fought for those people who are arguably not required to go on to PAYE. The Revenue took a sledgehammer to crack a nut here, and the fallout has contaminated people who are completely blameless.

Instead, by its own admission, the BBC not only dropped the ball, it simply did not see it coming. These executives are presumably on rather good salaries, and get pensions, perks and expenses. No such goodies

were offered as compensation to presenters, many of whom had been forced by the BBC to set up personal service companies in the first place, often against their wishes and those of their accountants—not cheap. So while the BBC sorts out this mess, presenters do not actually have contracts at all, and furthermore, people have been required to pay tax in advance without knowing what they are going to earn. This is devastating for many people with mortgages and families, not to mention cases I have heard of women being denied maternity leave.

To sum up, the BBC has been overzealous in its interpretation of IR35 and CEST—"check employment status for tax", which determines whether or not someone should be on PAYE. It saddens me to have to say that an organisation that is supposed to be expert at communication with the public has been so utterly disorganised and inept in that regard when dealing with its own employees.

The BBC appears to have paid HMRC up front without any idea of what will be owed and has applied IR35 to sole traders unnecessarily, forcing people into unacceptable contracts that tax them as staff, but with none of the benefits. All of this is a legacy of making people set up PSCs so that the BBC could avoid employer's national insurance contributions. Can it be right that the BBC can simply disregard contractual obligations and, without consent, claw back tax from the past as well as the future? Many talented radio people are now questioning whether they can carry on working for the BBC. These matters really go right to the heart of this debate and the future of radio. I cannot help pointing out that under most BBC contracts, I could be sacked for saying what I have said and for criticising the BBC—but then again, I do not have a contract.

I end on a note of optimism. The BBC is like the NHS: it has myriad components that make it the impressive vehicle it unquestionably is. As a fine Culture Secretary in her day, I hope the noble Baroness, Lady Jowell, will not mind me taking an important point from her moving speech about illness and the NHS, and applying it to other large institutions such the BBC: we have to nurture the small specialist departments that contribute so much to making the body whole.

Of course, as with the NHS, money is the game-changer, but I believe that the BBC can be seen to be economising—it just has some of its priorities and methods horribly wrong. However, while it can give us programmes as diverse as "Test Match Special", "Moneybox", the "Shipping Forecast", "Hear and Now", "All in the Mind", "Choral Evensong", the "Proms", "New Generation Artists", "In Our Time", "Open Book" and so many more, it will continue to hold a place of great affection and importance in the national psyche.

4.14 pm

Baroness Grender (LD): My Lords, I congratulate the noble Lord, Lord Stevenson of Balmacara, on securing the debate. He has championed broadcasting issues here in the Lords for longer than I have been in this place, and I look forward to hearing even more from him on this.

I also thank all those organisations that provided briefings for the debate. There is clearly strong interest in the progress of building a sustainable radio production sector for the future. It is important today that we continue to review whether or not the current arrangements will achieve just that. Indeed, as a member of the Artificial Intelligence Committee, I am only too aware of the significant changes we are facing in the media and almost every other walk of life. Some suggest that Al will bring us the next industrial revolution. Changes are coming, particularly to platforms for media, changes that will require vibrant, creative and innovative approaches to all forms of media production, including radio. Yes, great change is coming, but there is a constant too. Radio continues to reach 90% of adult audiences. Radio was condemned long ago. The advent of TV was thought to be its death knell. As eloquently described by the noble Lord, Lord Berkeley of Knighton, radio is woven into people's lives. It is conversational rather than just informational. It establishes a unique one-to-one relationship with the listener. Radio has adapted well to new lifestyles through the use of apps, podcasts and access to Freeview. The BBC's global news service, the World Service, is the most trusted news source in the world and reaches a quarter of a billion people every week, more than any other international broadcaster.

The background to this debate is all-important, as the noble Lord, Lord Stevenson, set out in his opening remarks: the new charter and what followed, the "compete or compare" speech by the noble Lord, Lord Hall, in 2014. On these packed Benches, we welcomed the opening up of competable radio hours—as many as 27,000 by the end of 2022, a minimum of 60%. We believe that external commissioning is a good way to grow a strong and creative independent production sector.

We also believe that, for this to work, the process has to be as described by the noble Lord, Lord Stevenson: a level playing field and transparent. However, we wonder whether it is a bit early in the process to assess progress. Although the BBC Radio "compete or compare" strategy was initially set in place in 2015, the BBC's new radio commissioning framework started only in April 2017, and there have not been many commissioning rounds since. For example, there has not been a full Radio 4 commissioning round so it is early to assess the overall impact, as the Radio Independents Group explains in its briefing.

There are encouraging anecdotal signs from both the independent production side and commissioners at the BBC. The BBC believes that "compete or compare" opens up BBC Radio to the best creative ideas, in turn driving up standards and getting value for money. There is anecdotal evidence that commissioners believe that the process so far has raised the game. RIG has been encouraged by the new Radio 2 schedule changes that were put out to competition, and remains in regular dialogue with the BBC over any teething troubles regarding the overall strategy. I therefore support the call of the noble Lord, Lord Stevenson, for other discussions to take place—in particular, about whether in-house staff are having equal teething troubles.

RIG remains convinced that these changes will revitalise BBC radio production, both in-house and

[Baroness Grender]
independent. If both the BBC and RIG are right and this heralds a transformative period for independent radio production, I wonder what the potential is for this open competition to increase in the commercial sector, which is sometimes a little more conservative about some of these things.

There are examples of where it has been working. For instance, companies such as Somethin' Else and TBI Media work with stations such as Classic FM, Absolute Radio and Virgin Radio. Is there potentially a day when the radio industry could learn from the experience of Sky and BT, which have shared content in recognition of their need to compete in what is now a new world of streaming and YouTube?

Perhaps the BBC can lead the way, if the positive feedback so far proves accurate. As the noble Lord, Lord Stevenson, explained, this view is in sharp contrast to other reports. I refer in particular to the NUJ report, and look forward to hearing the Minister's response to some of those concerns. I should like to hear the Minister's view of the need for some kind of public value test for this process and what discussions have been held with the BBC Trust on that undertaking.

Fostering independent production in all parts of the country, rather than the current media centres, is also an important objective. We therefore hope that the new BBC Radio commissioning arrangements result in more opportunities for companies outside the normal media centres. Does the Minister believe that there is any scope for local radio to be included within eligible hours? I recognise that lack of finance and resource may be the main challenge to such an undertaking, but wonder whether the potential has been considered.

I hope that radio is not one of the casualties from an across-the-board percentage cut, when the BBC has to fund licences for the over-75s from this dodgy smash-and-grab policy that was imposed on the BBC. The budgets in radio are so much lower than those in TV that it could ill afford that kind of cut.

As one of our greatest global assets, the BBC should, and often does, lead the way, which is why the equal pay issue, raised by the noble Lord, Lord Berkeley, is such an outrage. As we saw yesterday, when Carrie Gracie gave evidence to the culture Select Committee, she is a women promised equal pay for equal work who has been treated badly—and she is not alone in that. Many other women sitting behind her, and many of the BBC women, now 200 strong, have similar stories. Indeed, there are other stories much beyond the 200 women who have signed up to this. The noble Lord, Lord Berkeley, is an example in having shown the way and taken the pay cut that he described. The issue has shamed the BBC, and the sooner that it puts this right the better. Until people know what different jobs are worth, and where they sit on salary bands, the culture of secrecy and an environment where unfairness can fester and breed will sadly continue.

While the deregulation issue was not in the wording of the debate, I would like to touch briefly on two areas. First, we in the Liberal Democrats remain convinced that we should retain existing local news requirements and commit to this principle being extended to DAB services in future, in line with the current rules for FM and AM. Seventy per cent of listeners say that they trust radio for national and local news. In a world of fake news, where President Trump can denounce the *New York Times* from Davos—a paper featured in the film "The Post" for publishing the Pentagon papers—the need to protect and preserve news has never been greater.

Secondly, we support greater freedom for radio stations to choose the music they want to play, to cater for their own listeners. Music consumption and distribution through streaming has moved on, and so should we. So we support the Government's intention to reform in this area but ask them to examine with care what impact that may have on minority genres, such as the Asian Network.

Digital switchover is well overdue. The Communications Minister at the time, Ed Vaizey, said as far back as 2010 that 2015 remained the target. A commitment was made to lead in the drive to overcome the remaining barriers to switchover. While it is also true that he wanted to wait for the listeners to move, surely we are now close enough to 50% to simply get on with it. If we want to encourage this sector, we need to ensure they are not being charged to be on two radio bands rather than one.

If the future of radio is to be secured, I hope that the meeting next week with the DCMS and the industry will go well when they discuss the new contestable fund for public sector broadcasting. As the Minister is aware, my noble friend Lady Benjamin successfully campaigned for greater funding for children's content, particularly on TV. Children's TV has needed this boost for some time but, at the same time, it was noted that it might be possible to use some of this fund for radio. We hope that that is the case, if relevant to children. We also hope that additional funding above the £60 million is found, if that is applied to radio, for adults. We look forward to hearing reports of those discussions.

Radio in the UK is a great asset. We need to keep it that way and ensure that future generations continue to use this wonderful medium.

4.23 pm

Lord Griffiths of Burry Port (Lab): My Lords, I am delighted to add my voice to those taking part in this debate. I have come to feel like Tweedledum to the Tweedledee of my noble friend Lord Stevenson over the time I have been standing in this position, although his description of me as fully fledged is not one I am ready to accept. I feel half way between fully fledged and half-baked. I hope that, at least on good days, I am getting there.

I welcome the concentration on radio that this debate opens up for us. Perhaps I should begin by declaring my interests, as well as a little of my experience. I have been a contributor to BBC radio for over 30 years, mainly, but not entirely, to its religious output. I have worked with in-house production teams over that time, many members of which have since grown wings and are now occupying very senior positions in the corporation and other bodies. I sat alongside Brian Redhead, of beloved memory, and John Humphrys, James Naughtie, Sue MacGregor and others, in a

17-year stint with my "Thought for the Day". I still do the "Daily Service" and "Prayer for the Day", and, with BBC Radio Wales, "Weekend Word". I can testify to the skills and experience, and the innovative and creative energy, of the teams that present these programmes. The plans and proposals we are discussing today should never be at the expense of the expertise gathered and honed in those production teams. However, these teams should, of course, constantly be kept on their toes by the knowledge that, even in religion, they do not operate by divine right.

Because of my decision to take the Labour Whip when I entered your Lordships' House in 2004, I was obliged to drop out of the number of those doing "Thought for the Day"—par for the course. Another opportunity soon opened up. For the last four or five years, I have been offering my "Pause for Thought" on the "Chris Evans Breakfast Show" on BBC Radio 2. I assure noble Lords that moving from Radio 4 to Radio 2 was like moving from Neptune to Mars, but I have come to love the bustle and the culture of my new habitat very much. "Pause for Thought" is one of the strands won by an independent company in competition with the BBC. Its quality control mechanisms are good, and I am kept up to the mark by two levels of production scrutiny. Once again, the company is only too aware that its licence will need to be reviewed from time to time and that a renewal will depend entirely on the quality of its output.

Finally, I have been a long-time contributor to the output of Premier Christian Radio. For 10 years I co-presented a programme called "Taking the Tablet", a half-hour show in which an Anglican priest, a woman, interviewed me, a Methodist minister, about three stories chosen from the Roman Catholic weekly newspaper, *The Tablet*. My association with the station has intensified of late, and in four days' time I shall attend my first meeting as a trustee of Premier, where I will be meeting the issues and themes of this debate head on. The station operates in a fiercely competitive marketplace and, apart from the usual ways of funding such independent bodies, is greatly supported by private subscription. All this is by way of declaring my interests in this matter.

I would like to address the question of training, raised by my noble friend Lord Stevenson. If the independent sector is to take up even half the openings that are declared available between now and 2022, it will be increasingly necessary to ensure that the work it wins will be done by properly trained personnel. The question of payment for people involved in the commercial sector needs to be addressed; so many people are freelance, volunteers or interns, and it is necessary to monitor that.

A helpful briefing from RIG, the Radio Independents Group—I think that if I were the Radio Independents Group I would choose a more fortunate acronym—gives a snapshot of where we are now on the issue of training. It indicates that its members are involved in training "the next generation" of producers, and claims to have so far provided over 2,000 learner days, comprising over 1,100 individual learners and including a diversity mentoring scheme. It states that:

> "Around 60% of learners have been women and around 15% BAME and 5% disabled".

This is, of course, to be welcomed. But someone needs to monitor the figures as the great leap forward scheduled over the next three or four years takes place.

Is anyone doing the bespoke work previously undertaken by the Radio Authority? One feels that Ofcom treats radio as a Cinderella and gives it only marginal attention; the Radio Authority, of course, existed with the sole purpose of looking at the quality of radio. Quis custodiet ipsos custodes? A bit of Latin—who will regulate the regulator? It seems to be a relevant question as we move into the different situations that face us.

Of course, the commercial sector is driven largely by finance. No problems there—expect that when difficult decisions about expenditure have to be taken, there will always be a temptation to make economies in areas that tend to be more costly. The results of the recent consultation on these matters recognised how, in the event of greater deregulation, the relatively expensive news service currently required of them may well be diminished or even abandoned. Yet local news, traffic conditions, weather and events would seem, for the most part, to be an essential ingredient in the output of any commercial broadcasting company anxious to give its audience what it most wants.

Indeed, once listeners are thought of merely as customers—and then, en masse, commodified—radio itself loses out on what it is, at the end of the day, all about, for radio is the most intimate medium of communication available to us. Whereas the BBC blazons its vocation at Broadcasting House as helping nation to "speak peace unto nation", the actual activity is more about speaking peace to individuals in the privacy and intimacy of their own space. Certainly, that is how I was taught to do it; I always feel that I am talking to someone in their car, or in their bed, or at breakfast, or taking the children to school. It feels such a personal medium as a result of that way of looking at it.

Great care should be exercised to ensure that greater freedoms do not lead to lesser quality of output. The overarching responsibility for the commercial sector taking up its new opportunities must have the effect of:

> "Holding the BBC to account for the delivery of its mission and public purposes".

Good regulation should make this a priority. The National Union of Journalists is concerned that a proper review has not yet been carried out of the likely impact of the proposal to boost the number of hours available to independent companies to bid for production previously held within the BBC to see what damage it might do, both to the commercial sector and the BBC. The NUJ suggested that it might cost the BBC up to £1 million without the BBC benefiting from it at all. It is worth at least thinking through.

I have one further matter to bring forward. The commercial sector consists, so we are told, of about 150 companies. The self-styled "trade body" for two-thirds of these SMEs is the Radio Independent Group, which I have already mentioned. The bulk of commercial radio stations seems to have been consolidated within two large companies: Global and Bauer. No doubt this achieves critical mass for negotiating contracts,

[Lord Griffiths of Burry Port]
offering infrastructural support, sharing experience and ensuring solidarity in what can be a difficult commercial environment.

My concern is that the way these chips fall might well militate against the entry of smaller, innovative, aspirational newcomers. In the overorganisation of the commercial sector into large blocs, we must also throw in Arqiva, which is responsible for pretty much all of the transmission. We should be very careful about keeping space and offering opportunity to newcomers who may start in a very small way but might become something of great interest later on. There must be scope for bright new things as well as seasoned and organised veterans in the bidding process, which will increase in pace as that 60% of BBC output becomes open to others.

So I am delighted that, even at the fag end of an exhausting week, we can give our attention to the present and future needs of radio, and I hope the Minister can give us, with a little élan and freedom to anticipate the weekend, some firm assurances on the questions that we have asked.

4.35 pm

Baroness Chisholm of Owlpen (Con): My Lords, this has been an interesting but short debate. The noble Lord, Lord Stevenson, told me that he was going to step back, do much less and spend more time at home. All I can say is that I have seen him on either the Front Bench or the one behind more than ever before. I am not quite sure what "taking more time" actually means. I thank him for bringing forward this debate on independent radio production, and all those who contributed.

The independent radio production sector is a growing and exciting industry. Many of us will be familiar with its offerings, particularly on BBC Radio, with programmes such as "Diplo and Friends" on Radio 1, and two of my favourites, "Sounds of the 60s" on Radio 2 and "Gardeners' Question Time" on Radio 4, which I am afraid slightly shows my age. With the high quality of programmes provided by the independent radio production sector, it is important that those within the industry are supported to grow their businesses and to secure commissions for programming, as the noble Lord, Lord Stevenson, mentioned.

In June 2015, the BBC reached an agreement with the Radio Independents Group, known as RIG—I agree with the noble Lord, Lord Griffiths, that it is a slightly unfortunate name for the trade body for the sector—which sought more opportunities to pitch its independent radio production ideas to the BBC. This agreement was then written into the BBC framework agreement and provides a level playing field for independent and in-house producers.

RIG represents the independent radio/audio production sector in the UK, which comprises around 150 companies. This agreement established that the BBC will move from the limited quota-based arrangements to a new commissioning structure, which subsequently opens up 60% of eligible hours—all radio hours except for news and current affairs—to competition by 2022. Prior to this, independent radio producers were able to pitch ideas for only around 20% of BBC programmes, which meant there were relatively few opportunities to offer new ideas for many parts of the BBC's schedule.

Although the Government are not party to this agreement, we continue to support this change. The agreement from 2015 provides many more new opportunities to the growing independent radio production sector. This sector has a track record of producing high-quality content and gives BBC Radio audiences access to the best ideas and productions available.

However, I emphasise that increasing the competition between independent and in-house productions does not automatically guarantee that the independent sector will receive more commissions. Both independents and BBC in-house will be eligible to bid for work and the best ideas will win commissions. There will still in effect be an in-house guarantee, consisting of 40% of all programmes, reflecting the BBC's continuing importance to radio.

As far as the timetable is concerned, the new BBC charter sets a firm timescale for the implementation of this change. The timescale for the transition by 2022 was set by the agreement between the BBC and RIG. Following on from that, since 2015 the independent radio production sector has remained strong and continues to thrive.

The noble Lord, Lord Griffiths of Burry Port, talked about quality. With the possibility of more independent radio productions being commissioned by the BBC, we expect that the high quality of programmes should be maintained or even increased by offering a wider choice of programmes to licence-fee payers.

The changes to BBC Radio continue to take place within a broader strategy called "compete and compare," as mentioned by the noble Baroness, Lady Grender. It aims to extend competition, where it works, across the BBC's output and, where this is not appropriate, to make greater use of comparisons with best practice in the market to ensure that we are given universal access to great quality content. I am pleased to be able to share an update from the BBC on the progress that this strategy has made. As of January 2018, 70% of "compete and compare" hours have already been awarded, with a further 6% to be awarded by March 2018. That means that in the first full year of "compete and compare", BBC Radio will have put up 23% of eligible hours for tender, which equates to around 10,800 hours of content. So far, there has been a marginal shift of hours from BBC in-house production to indies totalling 89 hours, and competition is working with commission going in both directions.

I acknowledge that there may be concerns about the possible implications for BBC staff, such as possible job losses. These changes are being introduced with a long transition, and both the BBC and RIG are taking steps to ensure that the transition is as smooth as possible. As of now, no BBC in-house redundancies have resulted through the "compete and compare" strategy.

The noble Lords, Lord Griffiths of Burry Port and Lord Stevenson, talked about skills, training and contracts. The independent radio production sector strives to

support all its members and advocates skills training, adequate employment conditions and the training of new entrants into the sector. As part of its remit, RIG offers advice, resources and training to its members to ensure that all those working in the sector have the essential skills required and can access further development opportunities as their careers progress.

The noble Lord, Lord Berkeley of Knighton, talked about wages. Independent production companies contracted by the BBC are obliged to comply with all legal requirements and the BBC's living wage policy, with many firms employing a standing staff with the rest employed on freelance rates set by the market.

The noble Lord, Lord Stevenson, mentioned diversity and training. Independent radio producers are heavily involved in training the next generation of producers. Through the RIG training programme, they have so far provided 1,959 learning days involving 1,089 individual learners, including a diversity mentoring scheme. Around 60% of learners have been women, around 15% BAME and 5% disabled—I hope that last statistic will rise—showing the industry's commitment to promoting diversity within the workforce.

Noble Lords raised several points, which I hope I can answer. The noble Baroness, Lady Grender, raised a couple of points that I will have to write about because the inspiration that normally appears over my left shoulder was not here until five minutes ago, so I probably did not pick up everything. Inspiration is appearing now, though.

The noble Lord, Lord Stevenson, mentioned a meeting, and we are of course more than willing to ensure that that happens. Perhaps we can talk about how we can go ahead with that. Several noble Lords, including the noble Lord, Lord Stevenson, mentioned a report and a review. The Government do not plan to produce a report on the BBC's new strategy but, as I think several noble Lords mentioned, we have the opportunity to review this at the mid-term review of the BBC charter. That is when many concerns raised today by noble Lords can probably be discussed further.

The noble Lord, Lord Berkeley, talked about HMRC. The original IR35 or intermediaries legislation was introduced in 2000 but the legislation has now been changed regarding the engagement of individuals through personal service companies for all public sector bodies. There are two main areas of change. First, it is now the BBC's obligation as a public body to deduct the right amount of tax and NIC for all those whom it engages. To do so, it must assess individuals' employment status. Secondly, the employment test that we previously used to indicate employment status has been replaced by a new one-size-fits-all test called the CES tool, designed by HMRC, which is intended to apply to all industries. This is being used to assess the status of all on-air contributor engagement, new and current, which extend beyond 6 April 2017. The CES tool provides HMRC's view of the employment status of a worker; if the outcome of the new tool deems the engagement to be one of employment, we will deduct the appropriate tax via PAYE and NIC at the point of payment.

The noble Baroness, Lady Grender, talked about digital. We are making steady progress towards reaching 50% of listings on digital platforms and the radio industry expects this figure to be reached in 2018. Decisions on future switchover are not simple or straightforward. It is important for the Government, the BBC, commercial radio and other stakeholders to take time and care in how we approach any decisions. A review by government, following the reaching of 50%, will need to carefully consider the key factors that will need to be in place, including issues in relation to cars, DAB coverage for all those parts of the country without digital services and the potential timing and approach to switchover. The noble Baroness also talked about extra funding. I do not know if she was thinking about the contestable fund.

Baroness Grender: My understanding is that there is a meeting at DCMS next week. It sounds like an excellent idea; it is about whether some of the contestable funding is available for radio. As the noble Baroness will be aware, that is something that was hard fought for. The £60 million is going towards children's TV content and maybe some radio, but we would like to know that it will still be directed towards children's content, even if some is allocated to radio. If it becomes adult radio, we would ask for there to be additional funding to the £60 million.

Baroness Chisholm of Owlpen: The noble Baroness is right; that is for children's television. In fact, we want to engage with the radio industry to explore whether there might be alternative options, so as to use a small proportion of the funding marked for the contestable fund to support the radio sector in a more bespoke way, but that would not take away anything from children's programmes.

I have now been inundated with papers, including on public value tests, which I thought I would have to write to the noble Baroness about. No review is planned, but we are confident that the compare or compete strategy is working. We have the power to review this midway through the charter, should there be any worries. When the BBC wishes to launch a new service, Ofcom may have a role in asking about its public value and the market impact that it may have. It equally may apply when the BBC wants a major change to how it provides its services. I may well not have answered all the questions. I apologise to noble Lords but I will certainly write if I have not.

To conclude today's debate, independent radio production remains a strong industry and the agreement made between RIG and the BBC will ensure that the best programming is made available to BBC radio listeners. I look forward to the new and exciting programming that the independent radio production sector will continue to offer in the future. Like the noble Lord, Lord Berkeley of Knighton, I, too, am looking forward to listening to the radio on my long journey home tonight.

House adjourned at 4.49 pm.