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OFFICIAL REPORT

ORDER OF BUSINESS

Grand Committee

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

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House of Lords

Tuesday 20 March 2018

2.30 pm

Prayers—read by the Lord Bishop of Winchester.

Tributes: Lord Richard

2.36 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is my sad duty to lead the tributes to one of my predecessors as Leader of the House, Lord Richard, who died on Sunday.

Lord Richard was a significant figure in the political life of this country, holding a variety of high-profile public roles over several decades. He always argued with a fearsome combination of intellect and passion, directed by strong political convictions. He joined this House in 1990, becoming Leader of the Opposition two years later during a time of great change for the Labour Party before being appointed as Leader of the House after the 1997 general election. As Leader, he played a central role in the early cross-party discussions about the future of this House, which were to culminate in the House of Lords Act 1999. By then he had already had a long and distinguished record of service, both as an MP and at the highest levels of international relations, and after his time as Leader of the House he continued to make important contributions to our work and through our Select Committees.

In 1974, Harold Wilson appointed Lord Richard as the UK Permanent Representative to the UN, where he served for over five years. During this time he played a key role in bringing together the different sides in the Middle East and Rhodesia conflicts. Following the change of Government in 1979, Lord Richard was appointed as one of the UK's European commissioners, replacing Lord Jenkins of Hillhead. He spent four years in Brussels, where he oversaw employment, social policy, education and training. My noble friend Lady Chalker tells me that Lord Richard's unfailing willingness to listen and seek the advice of others helped him to resolve a wide variety of challenges and ultimately achieve better outcomes during his time in these international posts.

His service to this House since his period as Leader saw him making a number of invaluable contributions to the European debate as well as on major constitutional issues, including reform of this House. He was appointed as Chairman of Committees on the Constitutional Reform Bill, the Barnett formula and most recently of the Joint Committee on the draft House of Lords Reform Bill. In each of these roles he demonstrated all the negotiating skills gleaned from his international postings in achieving cross-party consensus on serious and difficult issues. As well as chairing committees, he also served until very recently on a number of EU sub-committees.

Together with the death of my noble friend Lord Crickhowell, I am sorry that the House has had to bid farewell to two distinguished Welsh political figures in the same week. Lord Richard was a man who never abandoned his Carmarthenshire roots; he was invited to chair a commission on the future powers of the National Assembly for Wales, which reported in 2004. While its recommendations were not initially accepted by the Government at the time, the important body of work eventually resulted in the devolution of further powers to Cardiff.

At this sad time, all sides of your Lordships' House will want to send their good wishes to his wife Janet, to whom he was a devoted husband, and to his children. We share in what must be their sense of profound loss. But it is almost impossible not to be struck at the breadth of what he achieved at high level in so many different fields He put his experience and wisdom willingly at the disposal of this House throughout his membership, and he will be greatly missed.

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Baroness for her comments; we are grateful for the tributes she has paid. As well as Lord Crickhowell, she will understand that we are also mourning our colleague Brenda Dean who died very recently.

In 1997 Lord Richard—Ivor—led the Labour Party in the Lords into government for the first time in 18 years. He had taken over the leadership in 1992, just after we had been defeated in an election that we went into with such high hopes. Noble Lords will understand that it was not an easy time: despite the convincing nature of Labour's victory in 1997 the future had looked far from certain five years earlier.

Ivor was a man of great intellect and experience—a "wise owl" if ever there was one. He had strong political convictions and as someone said to me earlier, he was a true character. His time in Parliament spanned almost 54 years. He was first elected as a Member of Parliament in 1964 for Barons Court in west London and served for 10 years in the other place, returning to Westminster on the red Benches in 1990. Between his times at Westminster he served in not one but two high-profile international postings; first, as Britain's ambassador to the United Nations and then as a European commissioner. In the former role, Ivor was at the centre of two of the key issues of the day: the Middle East conflict that still troubles us and the growing movement for independence in what is now Zimbabwe. An early advocate of Britain's membership of the then Common Market, Ivor found himself briefly dislodged from the Labour Front Bench for defying the Whip on the historic vote to join in 1971: some things change.

We will miss Ivor's wisdom, expertise and statesmanship as the seemingly never-ending Brexit process moves forward over the coming months and years. In 1997, his tenure as a Cabinet Minister and Leader of your Lordships' House was inevitably dominated by the new Government's heavy legislative programme, particularly the proposals for reform of this House. Lords reform remained a passion and an issue close to his heart, so he was the obvious choice to chair the Joint Committee considering the draft Bill at the last major attempt to reform your Lordships' House, under the coalition Government.

A proud Welshman, he also played a key role in the development of the powers of the National Assembly for Wales, paving the way for the 2011 referendum on

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the Assembly's lawmaking powers. Ivor served on more committees of this House than we have time to mention here, most recently on the Select Committee that this House set up to consider some of the most contentious aspects of the Trade Union Bill. I well recall the Monday morning when Ivor arrived at my office in your Lordships' House, having just been appointed the previous week, with a huge pile of papers under his arm, all marked up, all flagged: he had spent the whole weekend examining in detail the issues before that committee. His contribution to Parliament and to the Lords over many years was huge. He was the last former MP to become Leader of your Lordships' House—so far.

So today we pay tribute to Ivor, our friend and colleague whom we shall miss enormously. Our thoughts are with his family, particularly his wife, Janet. I hope that our thoughts as we remember him today will be of some comfort to them.

Lord Newby (LD): My Lords, Ivor Richard, as we have heard, had an exceptionally varied and successful career in both domestic and international politics. As MP for Barons Court, as the noble Baroness, Lady Smith, pointed out, he gained the battle honours of being sacked from his Front Bench for supporting the Bill taking the UK into the European Community in 1971. After leaving the Commons, he was a forthright UK Permanent Representative at the UN and then a successful commissioner when he succeeded Roy Jenkins at the Commission in Brussels.

On these Benches, he is especially remembered, particularly by my Welsh colleagues, as architect of the Richard commission report, which was commissioned in the early days of the National Assembly for Wales by the coalition Government, of which the Lib Dems were then part. The report looked at the powers and the size of the Assembly, and, somewhat remarkably, proposed changed the voting system to STV—which particularly commended it to my friends. He was a committed devolutionist and a committed Welshman. He helped push the boundaries of thinking on full powers for the National Assembly, which eventually, many years later, have come to fruition.

But the thing which always impressed me most was his presence and his voice. He had a solidity, an authority and a manner of speaking which commanded attention and made me, at least, want to listen very carefully to everything he said. This, in my experience, is a very rare ability and made him a most effective leader of your Lordships' House. I will certainly miss that voice.

Lord Hope of Craighead (CB): My Lords, on behalf of my colleagues on the Cross Benches, I too wish to be associated with the warm and very well-deserved tributes that have been paid to Lord Richard. As we have heard, he had a distinguished career before he became a Member of this House. Under the name Ivor Richard, he became very well known to the public, first as the UK's Permanent Representative to the United Nations and then as an EEC commissioner. Perhaps less well known is the fact that he had practised at the Bar for nearly 20 years before accepting these appointments. His clarity of thought, his skill as a communicator and the air of quiet authority which in later years were to become his hallmark when he spoke in the House must surely have owed much to his legal background.

As we have heard, he spent much more time on the Front Bench as Leader of the Opposition than he did when he was appointed Lord Privy Seal and Leader of the House after the 1997 general election. It was not until after he had left that office that the House of Lords Act 1999, which was the first measure to reform the House that was passed during the then Labour Government, received its Royal Assent. So he had the difficult task of being Leader when the party in government were very much in the minority in this House because of the presence of the hereditary Peers. I was serving as a Law Lord during that time, so I did not see how he handled that, as I was usually sitting upstairs with the Appellate Committee during Questions and on other occasions when his skills would have been put to the test.

His contribution as Leader was by no means the only contribution he made to the work of the House. I saw him in action when he chaired the committee that has already been mentioned, before which I gave evidence, which was appointed to scrutinise the Bill that became the Constitutional Reform Act 2005. That Act is certainly steeped in my memory because it resulted in the departure of the Law Lords and the creation of the UK Supreme Court. Then he was invited to chair the Joint Committee on the draft House of Lords Reform Bill which sat from 2011 to 2012. The careful and measured way in which he fulfilled these responsibilities and the many others that came his way was an example to us all.

The noble Lord, Lord Newby, referred to Lord Richard's presence. We on these Benches had the advantage and pleasure—denied to those on the Opposition Benches because of layout of the Chamber—of seeing and watching the noble Lord every day when he was in his place on the Back Benches. He was one of those remarkable men who could communicate his views by the look on his face or maybe the movement of his shoulders almost as well as he could when he spoke. There was much entertainment to be had when he was in that mood. We shall miss him very much, and to his wife and all the members of his family, we on these Benches wish to extend our condolences on their loss.

The Lord Bishop of Winchester: My Lords, on behalf of these Benches, I also pay tribute to Lord Richard and associate myself with the comments already made. Lord Richard's life was clearly one devoted to public service: MP, ambassador to the United Nations, where he worked hard on both the Middle East and then Rhodesia, and EU Commissioner before coming to this House, where he first became Leader of the Opposition and ultimately Leader of the House. Most of us aspire to making an impression in one area alone: he clearly excelled in many.

Although there is no one now on these Benches who had the privilege of serving under his leadership of this House, the last Bishop of Leicester had the pleasure of serving under his chairmanship of the committee looking at the coalition Government's plans for Lords reform—an experience made all the better

for his impressive command of the brief. Any Member who is given—or, indeed, accepts—the unenviable task of navigating their way through that contentious swamp has to be possessed of a formidable intellect and firm resolve, and command the trust and respect of all sides. These were qualities that Lord Richard held in abundance and which he applied to his service to the public good in so many different ways over the years. He will be much missed.

Lord Tugendhat (Con): My Lords, as noble Lords have pointed out, Ivor Richard served for four years as a Commissioner in Brussels. He and I were colleagues at that time. I pay tribute first to the broader horizons that he brought to bear when he arrived: he came from being ambassador to the United Nations and this added a dimension to the Commission's understanding of the world, which was very useful and important at that time.

Of course, he was Labour and I was Conservative and he was in charge of employment and social affairs, and I was in charge of the budget, so that in many aspects we were not natural allies. The way in which he always played his hand in those very difficult negotiations—conducted against the background of the British budget problem of the late 1970s and early 1980s—was a great tribute to his integrity and acumen. He never gave way on matters that were of particular interest to his portfolio or his beliefs, but he was always able to appreciate the wider interest, both in terms of Britain and the European Union and in terms of the Commission formulating a policy. In addition to that, he was a very convivial character, and in a multi-national body such as the Commission, where people come from different political parties and different national backgrounds, his convivial characteristics played a very useful role in cementing the group and helping to make it operate as one, rather than as a whole lot of different individuals. He was a good colleague and a good companion, and I have very happy memories of serving together with him.

Just before I sit down, I hope that the House will understand if I also say how very much I shall miss my very good friend and long-standing colleague, Lord Crickhowell.

Lord Morris of Aberavon (Lab): My Lords, Ivor was one of my oldest friends. We served together as Ministers in the Ministry of Defence in the 1960s. It seems a long time ago. I looked after equipment and he looked after the Army. After his distinguished diplomatic career, he returned to the Bar and again distinguished himself as a very impressive advocate. We both turned up from time to time and appeared at the Old Bailey—professionally of course. My last recollection of him was his comment a few weeks ago that he went to the same elementary school in Carmarthenshire as Jim Griffiths, formerly deputy leader of my party and the first Welsh Secretary. Ivor was a proud Welshman who rendered very great service, particularly to future constitutional development. He will be missed.

Lord Strathclyde (Con): My Lords, I should like to join in with a short tribute to Lord Richard. I was the Government Chief Whip from 1994 to 1997 when both he and Lord Graham ran a most effective and expert Opposition, which made our lives extremely difficult. Looking back over 20 years, one might have assumed that the transition from Opposition to Government under the Blairite wave of good will that swept the country would have been an easy task for a new Leader in the House of Lords. Far from it, but if his political skills, which were real indeed, were tested in that period then he never showed it, because he demonstrated with his intelligence, his Welshness and his profound belief in the Labour Party that everything could be achieved—and so it was, with him as Leader. I am glad that he came to this House regularly in the succeeding years and even until quite recently. He and I would occasionally stop and talk about those days. He will be much missed and, like everyone else, I send our condolences to his wife and his family.

Lord Desai (Lab): My Lords, I shall add my own tribute to Lord Richard. He was the first person who I voted to be Leader of the Labour Party in this House; I had arrived in 1991 and the election was held soon after. I must mention that his devotion to reform of your Lordships' House, and to trying to make it an elected Chamber, was profound and he worked very hard for it. At the end of the day that did not work out, but we all live in hope. I am sure that on the day when the House becomes an elected Chamber, we shall all remember Lord Richard's contribution. It was said that he had been sacked from the Front Bench during his career for defying the whip. I have the distinction of having been sacked by him twice, but I still liked him very much.

Abortion: Misoprostol

Question

2.57 pm

Asked by ***Baroness Watkins of Tavistock***

To ask Her Majesty's Government, further to the Written Answer by Lord O'Shaughnessy on 21 January (HL5321), why there are no plans to enable women undergoing early medical abortion to take the second dose of the medication, misoprostol, at home, if they so wish.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, the Government's priority is to ensure that women who require abortion services have access to safe, high-quality care. Abortions must be performed under the legal framework set by the Abortion Act 1967. We are not currently in a position to approve homes as a class of place under the Act. However, we will continue to keep this matter under review and assess further evidence as it arises.

Baroness Watkins of Tavistock (CB): I thank the Minister for his Answer, but can he inform the House of the expected timeframe for the Government's decision regarding enabling women to choose the dignity of being as comfortable as possible in their own homes when they experience medical abortion, rather than

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some of them suffering while travelling home from the clinic? Journeys of over two hours are not uncommon, particularly for women from rural areas. It is also worth noting that the procedure is endorsed as a safe practice by the World Health Organization.

Lord O'Shaughnessy: I thank the noble Baroness for her question. No timeframe has been set for any decision on a policy change. She will understand that any change of policy would need to be done cautiously, in the light of the evidence and of legal developments—for example, relating to Scotland's decision to name homes as a place. It is on that basis that we will consider any further evidence.

Baroness Thornton (Lab): My Lords, if women in Norway, France and now Scotland can take this drug at home, not in a clinical setting, with careful safeguards and support in place—I have looked at what has happened in Scotland, and there is no doubt about that at all—it is important that the Government should afford the same facility to women in England. I would like the Minister to perhaps go further than he has now and say that there will be a timetable for this to happen.

Lord O'Shaughnessy: In terms of the experiences in other countries, of course only the countries of the UK are operating under the auspices and obligations of the 1967 Act, which any Government would have to act under. The Scottish Government have made that decision, but the noble Baroness will know that it is subject to a dispute and that a judicial review has been brought against it by the Society for the Protection of Unborn Children, which is obviously testing the legality of the Scottish Government and their powers to act. We shall look closely at developments in these legal proceedings, as well as any other evidence that arises. Unfortunately, this is why I am not in a position to give her a timetable.

Baroness Eaton (Con): My Lords, a study of 42,600 early abortions in Finland—where there is good registry data, unlike in England and Wales—found that, six weeks post abortion, complications after medical abortions were four times higher than after surgical procedures: 20% compared with 5.6%. The Royal College of Obstetricians and Gynaecologists cites one study in the UK where 53% of late medical abortions required surgical intervention. Given these facts, are Her Majesty's Government not also concerned that so-called home abortions outside of a medical setting would compromise the health and safety of women, especially young women who may use these powerful chemicals secretly at home?

Lord O'Shaughnessy: This is obviously a concern. There has been an increase in women buying online the drugs necessary for medical abortions, and that is something on which we are attempting to crack down. It is worth pointing out that 90% of abortions are NHS funded and therefore provided for in that way. The noble Baroness was talking about medical abortions at a late stage; it is worth pointing out that, actually, there has been an increase in the number or percentage of abortions that are happening at an early stage, which is obviously in the interests of women's health.

Baroness Barker (LD): The noble Baroness, Lady Eaton, mixed up two completely different things. She mixed up early medical abortions and late abortions. Can the Minister confirm that a 2011 court case brought by BPAS established that the Secretary of State has the power to allow early medical abortions to happen at home? If he agrees, and if the evidence from the Scottish trial is convincing and underpinned by the decision of the Scottish courts, will the Secretary of State then undertake to look at the development of a facility for legal abortion which may well be to the benefit of thousands of women in this country, particularly those who live in rural areas?

Lord O'Shaughnessy: I am aware of the opinion in that judicial review. It is worth pointing out that there is still uncertainty about the legal position. This is why we will watch the developments in Scotland carefully and proceed cautiously. It would be wrong of me to prejudge either the opinions that come from the court or indeed any evidence if this scheme does get up and running in Scotland.

Baroness Tonge (Non-Afl): My Lords, does the Minister agree that, up to nine weeks, it is perfectly safe for a woman to take the pills for a medical abortion? It is much better and more comfortable for her to have the consequences at home. Does he also agree that this would mean each woman would have to make half the number of appointments to get a medical abortion—a huge saving for the health service?

Lord O'Shaughnessy: The importance here is making sure that, under the auspices of the Act, women have access to safe and legal abortion, and that is what they have a right to do. An important point here is that, the earlier these abortions happen, the safer they are. The proportion of abortions under 10 weeks has risen from 68% to 81% in the last 10 years. At the moment, both courses of treatment for early medical abortion should take place in a clinical setting approved by the Secretary of State.

Baroness Masham of Ilton (CB): My Lords, has any research been undertaken on the psychological feelings of people who have had abortions in their own homes?

Lord O'Shaughnessy: I am not aware of any research, but I shall ask the department to see if there is any. If there is, I shall write to the noble Baroness.

Baroness Taylor of Bolton (Lab): My Lords, if the information we have just had is correct that more women, especially young women, are buying abortion drugs online, surely that proves the point that we need to improve the abortion services that we have within the NHS and the advice that is given to young women.

Lord O'Shaughnessy: No, I do not think it proves that. The fact that illegal drugs of all kinds are being bought online, whether they are illegal drugs or prescription drugs bought illegally, is a feature of

modern life. Rates of abortion in the under-18s are falling, as is the teenage pregnancy and conception rate. Those are separate issues.

Baroness Jenkin of Kennington (Con): My Lords, is my noble friend aware that, as well as in Scotland, the home use of misoprostol is common practice in the United States, Canada and multiple other European countries?

Lord O'Shaughnessy: Yes, I am aware of that. As I said, those countries operate under a different legal framework from ours.

National Curriculum: Litter

Question

3.05 pm

Asked by ***Lord Robathan***

To ask Her Majesty's Government what consideration they have given to including litter picking in the National Curriculum for Year 6 children, to tidy up the roads and encourage civic responsibility.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, as part of the science curriculum, children are taught about the scientific concepts that relate to the environment. At key stage 2, pupils should explore examples of the human impact on environments, which can include the negative impact of litter. At present, around 75% of schools in England are members of the Eco-Schools programme. We would like to increase participation in this programme overall and are working actively on anti-littering awareness, including participating in litter picks.

Lord Robathan (Con): My Lords, that is a start and I am grateful to my noble friend. However, the shocking and disgusting proliferation of litter in our towns and countryside frankly shames this nation. While my proposal might meet with opposition and some people would understandably be very concerned about safety—and, indeed, some teachers might not like it very much—if all children spent a couple of hours clearing litter, it might not only have a gradual effect on attitudes but might in the long term have a positive educational impact. So will my noble friend please go back and look very seriously at this proposal or something similar and take radical action so that we no longer need be ashamed of the state of our highways and byways?

Lord Agnew of Oulton: My Lords, I agree with my noble friend that litter is a scourge. That is why the Government launched the litter strategy last year, which sets out our aim to clean up the country and deliver a substantial reduction in litter within a generation. The litter strategy brings together communities, businesses, charities and, most importantly, schools to bring real change by focusing on three key themes: education and awareness, improving enforcement, and better cleaning and access to bins.

Lord Winston (Lab): My Lords, given the high rate of illiteracy in many of our primary schools and the low rate of numeracy among 11 year-olds, which affects their subsequent education, does the noble Lord not agree that it would be far better to concentrate on the essentials of a good education and not expose our children to unnecessary danger doing foolish things that are not part of the curriculum?

Lord Agnew of Oulton: My Lords, litter is a symptom of children's respect for our society and environment—so a good education will address these two strands, which is what we do on the people side through the citizenship programmes and PSHE, and through the recent Tom Bennett review of behaviour in schools. As the noble Lord knows, on the environmental side we have just released the 25-year environment plan. We have the Eco-Schools project that I mentioned earlier. The Great British Spring Clean is under way and has been extended because of the bad weather. So I think the noble Lord's judgment is a little harsh, because not having litter is a symptom of a good society.

Lord Marlesford (Con): My Lords, two weeks from today a penalty of £80 will be imposed on the owner of any vehicle from which litter is thrown. This is a big advance, because previously the offence could never be prosecuted. The Government have now made it subject to a civil penalty rather than classing it as a crime. However, does my noble friend accept that the penalties for fly tipping and the enforcement of those penalties are completely inadequate?

Lord Agnew of Oulton: My Lords, this comes back to my earlier statement that this is about a sense of public responsibility and duty. I am delighted that the fines for littering from cars have been increased. My noble friend will also be aware that from January this year we banned the use of microbeads in cosmetic substances—so the whole thrust is to improve the protection of our environment. I applaud the most recent action to which he referred.

Lord Storey (LD): My Lords, the noble Lord is right to raise this issue and of course Keep Britain Tidy does a lot of work in schools. But now that we have light at the end of the tunnel, will the Minister not lobby the Government to provide more money to local authorities so that the highways, verges and streets that he is concerned about can be properly cleansed, with local authorities given the resources to carry that out? I know that this is not quite in the Minister's brief but, while I am up perhaps I might ask—as some schools include this as part of PSHE—when the consultation on PSHE will be concluded, and will we have an opportunity to discuss the recommendations?

Lord Agnew of Oulton: My Lords, in relation to the noble Lord's first question, if we can change attitudes we will not need to spend large sums of taxpayers' money cleaning up the litter left by careless people. In relation to PSHE, the review closed on 12 February and we had a record number of responses. We will be replying to that as soon as possible. It is also worth noting that an additional requirement that we have of schools is for the social, moral, spiritual and cultural

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development of children. This is a high-level duty that sits outside PSHE. It is written into legislation and also into the academy funding agreement, and it includes issues such as respect for the environment.

Lord Watson of Invergowrie (Lab): I am wary of criticising the noble Lord, Lord Robathan, given his service in the SAS, but I suspect that there are many parents and not a few children today who, having heard him, are quite relieved that there are mercifully few chimneys left in this country. I wonder whether the noble Lord is aware that it is extremely rare for the broad and balanced year 6 curriculum not to include civic responsibility, so it is not a problem. There are many great teachers in state schools in this country, not least Andria Zafirakou, who was named as the winner of the Global Teacher Prize just a few days ago. That is a tremendous credit to her work at Alperton Community School in north London. I suspect that most teachers in this country would welcome a robust statement from the Minister that teachers should be allowed to get on and teach. Will he give that assurance?

Lord Agnew of Oulton: My Lords, I agree with the noble Lord that it is very important that teachers are allowed to teach. The core of our reforms over the last seven or eight years has been the granting of autonomy to schools and the freeing up of the key stage 3 curriculum to give space for the teaching of things that are not directly linked to exams. I come back to my general theme: much of education is about producing a spiritual sense and a sense of belonging in society—so I agree that we should not be mandating additional individual activities.

Syria
Question

3.12 pm

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government what assessment they have made of the changing situation in Syria.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, we welcome the progress made in the fight against Daesh, including the liberation of Raqqa. However, the Syrian crisis is far from resolved; violence continues and the humanitarian situation remains dire. Eastern Ghouta, besieged by the regime, is a particularly tragic example. A political settlement remains the only solution to bring sustainable peace to Syria and we support the UN Geneva process. All parties must work constructively towards a political agreement.

Lord Roberts of Llandudno (LD): I thank the Minister. This is not, as Neville Chamberlain said of somewhere else,

"a faraway country of which we know very little".

In the past week, 237 people have been killed in Syria, 37 of whom were children. Over 10,000 were killed last year and nearly 3,000 of those were children. At the same time, some of the national and international agencies have been forced to withdraw, having given so much help to alleviate this terrible catastrophe. I make special mention of the White Helmets, who have done great work. Is it not time that the Dubs amendment—originally covering 3,000 children, with the number reduced to 480—should be restored to its original total of 3,000? We cannot turn our backs. These are people in the worst humanitarian crisis since the war. I ask the Minister: will he press somehow to restore 3,000 as the aim for accommodating and welcoming these children?

Lord Ahmad of Wimbledon: My Lords, I agree with the noble Lord about the situation in Syria, although I do not agree that it is something that we know little about. Tragically, we know a great deal about it because of the things that we see every day in the media—the unfolding crisis and the continuing suffering of the Syrian people. Over 400,000 people, including many children, have now died. As I am sure the noble Lord will be aware, we have established the vulnerable children's resettlement scheme, which will settle up to 3,000 at-risk children and their families by 2020. In terms of overall resettlement, by December 2017 a total of 10,538 people had been resettled under the vulnerable persons resettlement scheme since it began in 2014 and a total of 570 people had been resettled through the vulnerable children's resettlement scheme since it began in 2016.

Lord Watts (Lab): My Lords, the Government's position was that they would never deal with Assad and that they want to see him removed as part of any deal. Given that that is not going to happen, will the Government change their position as far as Assad is concerned?

Lord Ahmad of Wimbledon: The Government's position is very clear. We do not believe that the Assad regime, or indeed Assad himself, can be involved in the future of Syria, and we have said that it is for the Syrian people to choose a transition arrangement. We are imploring all parties, including the Russians, the Iranians and all those who have influence over the Assad regime, to move forward so that a peaceful transition can be reached. In terms of dealing directly with the Assad regime, our position does not change: we do not believe that there is a future for Syria with the Assad regime in place.

Lord Collins of Highbury (Lab): My Lords, no one would disagree with the noble Lord's sentiments about the need for a peace settlement involving all parties. We have recently seen Turkish forces in Afrin and it is possible that they are moving on to other towns where the US has military bases. We could be facing a scenario where two NATO allies are supporting different sides in a conflict and exacerbating the situation. What role are we playing in NATO and the UN in trying at least to bring our allies together, rather than just opponents?

Lord Ahmad of Wimbledon: I assure the noble Lord that we are following very closely the developments in Afrin and in the wider northern and western Syrian provinces. We call repeatedly for de-escalation and for the protection of civilians. We are using our good

offices through NATO and the UN and through bilateral exchanges directly with the Turkish Administration to call for that very de-escalation.

The Lord Bishop of Winchester: My Lords, will the Minister give an assurance that in the provision of humanitarian aid to those displaced in this conflict the Department for International Development's understanding of vulnerability includes religious persecution? Will he also give an assurance that the Government will continue to ensure that the UNHCR's procedures and criteria for determining refugee status recognise religious persecution as a distinct category?

Lord Ahmad of Wimbledon: The Government are very cognisant of religious persecution in Syria and Iraq. Indeed, I returned from Iraq only a couple of weeks ago. I visited Mosul and met directly with Christian representatives as well as those of the Yazidi community and heard first hand about the heinous crimes that have been committed against young women and children. I assure the right reverend Prelate that all forms of persecution against all people throughout Syria and Iraq are taken into account, and those issues are fully considered by all agencies, including the UNHCR.

Lord Hylton (CB): My Lords, will the Government call for the withdrawal of all foreign forces, together with foreign fighters, from Syria? Is this not absolutely necessary to enable the Syrian people to decide their own future?

Lord Ahmad of Wimbledon: Indeed. The commitment of Her Majesty's Government to the Geneva process includes exactly that call for all foreign forces to be withdrawn. Ultimately, we all wish to see a political settlement in Syria where the people themselves choose their leadership.

Baroness Northover (LD): What assessment have the Government made for the Geneva peace process—to which the Minister referred—in the light of the sacking of Tillerson and the appointment of Pompeo in the United States, and the re-election of Putin? Does he think that this will makes things easier or more dangerous?

Lord Ahmad of Wimbledon: The election of President Putin was a matter for the Russian people, and the selection of Cabinet members in the US Administration is very much a matter for the President of the United States. We believe that it is important for all members of the Security Council—particularly its permanent members—to be committed to the Geneva process, and to other processes. Indeed, the Astana process, which Russia has been overseeing with Turkey and Iran, should also feed in to ensuring the peace settlement we all desire.

Part-time Study

Question

3.20 pm

Asked by ***Baroness Bakewell***

To ask Her Majesty's Government whether they will consider further ways of promoting part-time study in the light of the findings set out in the report by the Sutton Trust, *The Lost Part-Timers*.

Viscount Younger of Leckie (Con): My Lords, we want everyone with the potential to benefit from higher education to do so. Studying part-time brings considerable benefits for individuals, the economy and employers. The recently announced review of post-18 education and funding will look at how we can encourage learning that is more flexible and complements ongoing government work to support people to study at different times in their lives.

Baroness Bakewell (Lab): I thank the Minister for that Answer, but I would be pleased to hear more than warm words. I would like action on the serious report by the Sutton Trust, which found a fall of 50% in part-time study in the last five years. This is very serious indeed, particularly for the Government's intended strategy, which is supposed to improve social mobility and encourage part-time study. Will the Government therefore undertake to include in their coming report on post-18 education consideration of part-time education as a whole, which will help fulfil their industrial strategy?

Viscount Younger of Leckie: The noble Baroness has spoken at length on this subject in the past. We are concerned about the decline in part-time study. I can reassure her that the review of post-18 education and funding will look at how we can address this issue further. Indeed, part of its terms of reference include consideration of:

"How we can encourage learning that is more flexible (for example, part-time, distance learning and commuter study options) and complements ongoing government work to support people to study at different times in their lives".

Beyond the review, as the noble Baroness will be aware, the Higher Education and Research Act placed a general duty on the OfS to consider the means by which learning is provided and specifically mentions part-time study.

Baroness Garden of Frognal (LD): My Lords, it should be a matter of great concern to see the decline in mature and part-time students at such transformational institutions as Birkbeck and the Open University. Will the Government consider a better-monitored version of the individual learning account, where contributions from learners, employers and government could provide a very effective mix of funding and motivation?

Viscount Younger of Leckie: I am sure that the panel will take note of the points made by the noble Baroness. The review covers all post-18 education and funding and it is important for it to look at this area. In addition to this, since 2012-13 we have provided tuition fee loans for part-time courses, and in 2018-19 we intend to introduce full-time-equivalent part-time maintenance loans, so there is some further action ongoing.

Lord Cormack (Con): Would my noble friend accept that one of the greatest achievements of any post-war Government was the creation of the Open University? What are the Government doing to encourage mature adults to take up courses at the Open University?

Viscount Younger of Leckie: The Open University is a good example. The noble Lord may know that there is a restructuring exercise going on there, and the Open University is looking to change the way it operates to take account of changing conditions and the reduction in part-time study. That is something that we will be looking at.

Lord Hunt of Kings Heath (Lab): My Lords, the Minister is being remarkably complacent. He and his colleagues have presided over a devastating reduction in the number of part-time students. That is madness when it comes to the priority to upskill people who have missed out on higher education in the past. The Sutton Trust report makes abundantly clear that the reason for the huge reduction is that the Government got rid of maintenance grants and put the fees up by a huge amount. Incidentally, in his Statement to this House in February, the noble Viscount did not mention part-time students. So instead of a review, why do the Government not reverse that decision and restore maintenance grants?

Viscount Younger of Leckie: My Lords, the important thing is to look at the reasons for the decline, and they are indeed complex. Over the past five years, there have been wider changes to the economy and there was the removal in 2008-09 of the HEFCE teaching grant for equivalent and lower-level qualifications, so there are complex issues here that need to be addressed. I also point out to the noble Lord that the numbers have fallen not only in England. The noble Baroness is right that the number has fallen significantly—actually, I have a figure of 63%—so we understand the seriousness of this, but the number has also fallen in Scotland by 22% and in Wales by 46%.

Lord Grocott (Lab): My Lords, is it not important to recognise the particular problems of part-time students, which are not faced in the same way by full-time undergraduates starting their studies at 18? In particular, there are often challenges with families, occupations, dependants, the difficulty of going back to full-time education after a long period outside and all the pressure that that has on people. In a sense, we should focus far more on the challenges that part-time students face than the rather more predictable course of full-time students.

Viscount Younger of Leckie: The noble Lord is absolutely right. That falls in line with what our statistics show us, which is that part-time study typically caters for more mature students: in 2016-17, 53% of undergraduate entrants were aged 30 or older. But to look broader to the noble Lord's question, we are looking at those people who might not have made the right career choice and in their 20s or 30s might be looking to make a change in their career. Part-time study could suit that. Returning mothers is another important group that we will be looking to encourage to get back into employment, and there are also post-retirement courses. All these areas are important and complex, and we need to look at them as part of the review.

Lord Wallace of Saltaire (LD): My Lords, have the Government considered the link between immigration, particularly from the rest of the European Union, and the shortage of medium skills at all levels? I see FE colleges being cut back as well as part-time education. I am very conscious that, across Yorkshire, companies find it easier to recruit directly from Slovakia or Poland than train their own people. The new apprenticeships scheme, as the Minister will know, has led to an immediate drop in new apprentices being taken on last year, so this will not help. Investing in training, part-time and full-time, for the 50% of our people who do not go to university is not only key to our economy but key to reducing the pull factor in immigration, which comes from companies recruiting directly from abroad.

Viscount Younger of Leckie: We should look at life from a more positive angle. The noble Lord mentioned the apprenticeship levy, which is just one of several apprenticeship or levy schemes that are ongoing, particularly if we look at the construction sector, which is very important indeed. The objective is to home grow our own skills.

Civil Liability Bill [HL]

First Reading

3.28 pm

A Bill to make provision about whiplash claims and the personal injury discount rate.

The Bill was introduced by Lord Keen of Elie, read a first time and ordered to be printed.

National Minimum Wage (Amendment) Regulations 2018

Criminal Justice and Police Act 2001 (Powers of Seizure) Order 2018

Works Detrimental to Navigation (Powers and Duties of Inspectors) Regulations 2018

Motions to Approve

3.28 pm

Moved by ***Lord Henley***

That the draft Regulations and Order laid before the House on 5 February, 23 January and 18 January be approved.

Relevant document: 19th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 15 March.

Motions agreed.

Brexit: Fisheries Management

Statement

3.29 pm

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, with the leave of the House I shall repeat as a Statement an Answer given to

an Urgent Question in the other place by my right honourable friend the Secretary of State for the Environment. The Statement is as follows:

"Can I begin by paying tribute to the hard work of the Ministers and especially the civil servants of our country's negotiating team, who this weekend concluded an agreement on the nature and length of the implementation period which will help us to prepare for life after Brexit? Taskforce 50, on behalf of the EU and our own team of dedicated civil servants, secured an agreed text which will now go to the March Council of the European Union, and after that Council at the end of this week, the Prime Minister will update the House on Monday.

The House will be aware that there are important legal and technical questions relating to fisheries management which mean that it occupies a special position in these negotiations. Both the EU and our own negotiators were always clear that specific arrangements would have to be agreed for fisheries. Our proposal to the EU was that, during the implementation period, we would sit alongside other coastal states as a third country and equal partner in annual quota negotiations and, in making that case, we did so after full consultation with representatives of the fisheries industry. We pressed hard during negotiations to secure this outcome and we are disappointed that the EU was not willing to move on this. However, thanks to the hard work of our negotiating team the text was amended from the original proposal and the Commission has agreed to amendments to the text which provide additional reassurance. The revised text clarifies that the UK's share of quotas will not change during the implementation period and that the UK can attend international negotiations. Furthermore, the agreement includes an obligation on both sides to act in good faith throughout the implementation period. Any attempts by the EU to operate in a way which would harm the fishing industry would breach that obligation and, of course, these arrangements will only apply to negotiations in December 2019. We are at the table as a full member state for negotiations in December 2018 and, critically, in December 2020 we will be negotiating fishing opportunities as a third country and independent coastal state, deciding who can access our waters and on what terms for the first time in over 40 years.

It is important that we use this transition period to ensure that we can negotiate in 2020, as a third country and independent coastal state, to maximise the benefits for our coastal communities; that we can control who accesses our waters and on what terms; and that we manage our marine resources sustainably. And we are already looking at a range of data to support consideration of future fishing opportunities, including the nature of catches and zonal attachment of stocks in the UK exclusive economic zone. There is a significant prize at the end of the implementation period, and it is important that all of us in every area accept that the implementation period is a necessary step towards securing that prize. For our coastal communities, it is an opportunity to revive economically. For our marine environment, it is an opportunity to be managed sustainably, and it is critical that all of us, in the interests of the whole nation, keep our eyes on that prize".

3.33 pm

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for that Answer, but he will know that the Secretary of State made great play of how he would fast-track our rights to fish in our own coastal waters on EU exit day and outside of EU constraints. The fact is that he has now been overruled by others in the Cabinet, which has accepted this deal. That is why we have real concerns that, despite the Secretary of State's promises, he will be overruled again and again—for example, when the Cabinet is confronted with the choice of new trade deals, or retaining future animal and food quality standards.

The Secretary of State has made a number of promises that are now open to question. Can the Minister clarify who exactly in the exit talks is leading the negotiations on fishing? Can we be assured that those negotiators will now be more honest with fishing communities about their negotiating position in the future? What guarantees can the Minister give that at the end of the transition period, our fishing rights will not be traded away for some other economic priority? What steps will the Government take to provide immediate support for those coastal communities who are bitterly disappointed by this decision and who, as we know, are already suffering acutely from economic hardship?

Lord Gardiner of Kimble: My Lords, along with my colleagues in the department we share the disappointment that the noble Baroness has suggested, but of course the UK share of quotas will not change during the implementation period and we will be attending the international negotiations. This is an extension, and the implementation period is due to conclude in December 2020, so that during that time we will be in a position to advance the things we think are absolutely right and to ensure that we fish in a sustainable manner. This country has been in the lead on that and we want to ensure, through our negotiations not only with EU members but with other independent coastal states, that the fisheries in this part of the planet are sustainably fished. That is a very important prize for us because the seafaring communities of this country are vital to us and, as I say, the changes that our negotiators have been able to secure are valuable because there is certainty. However, now we shall work on the access that we will have as an independent coastal nation, which I think is a very strong prospect for the future.

Baroness Bakewell of Hardington Mandeville (LD): I thank the Minister for repeating the Answer. This issue has caused a great deal of unrest and anger among Scottish fishermen. It had been anticipated that the UK would withdraw from the common fisheries policy on the day after leaving the EU. Indeed, the Government promised that they would take back control of the UK's fishing waters after Brexit. While Michel Barnier and David Davis may agree that the transition period is a decisive step, I fear that that view is not shared by the Scottish Fishermen's Federation. Bertie Armstrong of the SFF has expressed the view that the Scottish industry does not trust the EU to look after its interests. Is the Minister surprised by his reaction? Why have the Government sold the fishing industry short by agreeing to this transition period? Can the Minister confirm that there has been consultation

[Baroness Bakewell of Hardington Mandeville] with the industry and that it was satisfied with the outcome? Are the Government prepared to let our fleet continue to be governed by rules in which our Government have had no say, and what is the Secretary of State doing to achieve a sustainable supply of fish and to avoid depleting numbers?

Trust takes a long time to build but it can be destroyed in a moment. How are the Government going to restore confidence that they do indeed have the best interests of our fishermen at heart?

Lord Gardiner of Kimble: My Lords, it is in the national interest that we have a vibrant fishing industry and we support fishermen in all parts of the United Kingdom. I heard Bertie Armstrong on the radio this morning and the accusation about the implementation period and the year. Interestingly, he also said that it was ironic that, regarding those parties which do not wish to leave the common fisheries policy because they do not wish to leave the EU, we would never be in a position to have the negotiation we will have when we leave the CFP. We will have access to our own waters and we will be able to decide that access for ourselves based on the science. It is important to ensure that we fish our waters sustainably and that we base our judgments on the best scientific advice available.

Lord King of Bridgwater (Con): My Lords, will my noble friend confirm that what is clear—according to my understanding on both sides—is that nothing is agreed until everything is agreed? Once you get to that position and you have a transitional arrangement, it is inevitable that there will not be any changes in the meantime. But the most important part of my noble friend's Statement is the confirmation from the EU that there will be absolutely no attempt to change the present arrangements and that the Government will stick to their determination to improve the situation once everything is agreed.

Lord Gardiner of Kimble: My Lords, my noble friend is right about the arrangements for the deal, but clearly the negotiations will take time. As my noble friend has said, it is important that the UK share of the quotas will not change and that we are continuing on that basis. It is clear that there are enormous opportunities for UK fishing fleets across all parts of the kingdom, and that is a positive position. That is what we will be turning our energies towards achieving.

Lord Cunningham of Felling (Lab): My Lords, the Minister is correct to be cautious about this very complicated matter. Most people know that 75% of all fish caught in United Kingdom waters is exported and that, conversely, most of the fish consumed in our fish shops, our restaurants and at home is imported. There is an important deal to be done here. The vacuous promise of taking back control has been exposed, as my noble friend pointed out. We need access to other people's waters just as they need access to ours—otherwise fishing will grind to a halt in many of our communities. The idea that British vessels will fish only in British waters and everyone else will be excluded is for the birds—or perhaps I should say for the fish.

Lord Gardiner of Kimble: My Lords, this is a complicated matter. It obviously involves considerable negotiation and my right honourable friend the Secretary of State and the Fisheries Minister will be or have been visiting the Faroe Islands, Norway and other countries—because, as the noble Lord said, we all fish in each other's waters. The principle of this is that we must fish in a sustainable manner. That is what we all need to achieve and that is what the British Government will be seeking to achieve.

Lord Framlingham (Con): My Lords, will the Minister confirm the point made by my noble friend Lord King, given the disappointing news that is coming out of the fishing negotiations? In the Brexit negotiations nothing is agreed until everything is agreed—and if, at the end of the day, the total package presented to us is unsatisfactory we will not accept it.

Lord Gardiner of Kimble: My Lords, clearly Her Majesty's Government are seeking a deal and an arrangement. As is plainly obvious, at the end of the day this will involve a huge amount of work and we will all need to see how that goes. Our intentions are in good faith. We want there to be a deal. We think that it is in the interest of this country and, indeed, of the EU 27 that we come to a reasonable, responsible deal.

Lord Wallace of Tankerness (LD): My Lords, the Minister has on three occasions, I think, emphasised the fact that the quotas will remain the same during the transition period. From my recollections of times past, during the December negotiations one of the most important arguments and discussions was on the size of the total allowable catches to which the quotas apply. What will be the role of British Ministers and officials in the 2019 discussions on total allowable catches?

Lord Gardiner of Kimble: My Lords, I was very clear about the UK's "share" of the quota. Obviously that goes back to the issue of sustainability. As the noble and learned Lord will know, at the Council there is a discussion about catch sizes on the basis of proper consideration of the analysis of the fish stocks. This is why I precisely said "the share" in the 2019 Council—I said it specifically for that reason.

Lord Tebbit (Con): My Lords, is there anything that would disbar Her Majesty's Government from giving financial assistance to fishermen and their fleets during the transition period if our friends in the EU are grossly unfair in the negotiations?

Lord Gardiner of Kimble: My Lords, as I have said, there is already agreement in terms of the implementation period. Both sides have agreed that they will act in good faith during the implementation period and, clearly, if there was a breach—I repeat, if there was a breach—of good faith, that would be a serious mistake. But in the end this is part of an honest adventure to try to get the best deal we can for the country.

Nuclear Safeguards Bill

Report

3.44 pm

Relevant documents: 13th and 17th Reports from the Delegated Powers Committee

Clause 1: Nuclear safeguards

Amendment 1

Moved by ***Lord Henley***

1: Clause 1, page 2, leave out lines 18 and 19

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley): My Lords, I shall speak also to Amendments 2 and 12.The amendments place the definition of "civil activities" in the Bill. The House will be aware that the term "civil activities" forms a key part of the main regulation-making power set out in new Section 76A(1)(a). Regulations can be made for the purpose of ensuring that qualifying nuclear materials, facilities or equipment are available only for use for civil activities, so the meaning of "civil activities" is one of the elements that determine the scope of the safeguards regime that can be made through those regulations.

I am grateful to the Delegated Powers and Regulatory Reform Committee for its recommendation on this matter: that a definition of "civil activities" should be, so far as is possible, placed in the Bill, supplemented by a power where necessary to develop its meaning in regulations. Having considered the committee's recommendation on this matter, I am pleased to have been able to table this government amendment, which places the definition of "civil activities" in the Bill. This definition takes into account the continuing work on the draft regulations which will underpin the Bill, on which we are intending to consult by June.

It is important to emphasise again the fundamentals of what safeguards actually are and what we are hoping to achieve with our new domestic regime. Safeguards are nuclear non-proliferation reporting and verification processes by which states demonstrate to the international community that civil nuclear material is not diverted into military or weapons programmes. Nuclear safeguards measures include: reporting on civil nuclear material holdings and development plans; inspections of nuclear facilities by international inspectors; and monitoring, including by cameras in selected facilities.

As the House will now be well aware, nuclear safeguards are distinct from nuclear safety, which regards the prevention of nuclear accidents, and nuclear security, which is physical protection measures. Nuclear safety and nuclear security are the subject of separate regulatory regimes operated by the ONR.

The new domestic civil nuclear safeguards regime which we are developing is designed to ensure that we can robustly demonstrate to the international community that civil nuclear material is not being diverted into military or weapons programmes. I hope that the House will therefore agree that the proposed definition of "civil activities", which has the concept of "peaceful purposes" at its core, suitably recognises this international commitment while including helpful detail on the types of activities covered by safeguards.

Although the committee accepted that it might still be necessary to supplement this definition with a power to embellish its meaning in regulations, I have not found that to be necessary. The amendment removes the existing power to specify in regulations activities that are or are not to be treated as "civil activities" and replaces it with a definition on the face of the Bill without creating another power. It therefore reduces the number of powers created by the Bill.

I hope that the House will agree that the amendments satisfactorily address the recommendations of the Delegated Powers and Regulatory Reform Committee. I commend them to the House and beg to move.

Lord Hutton of Furness (Lab): My Lords, I welcome the tabling by the Minister of this amendment. It is always a good idea to see on the face of legislation the definition of terms used in it. It is helpful.

I quite understand why the Minister would want to confine the definition of "civil activities" to things carried on for peaceful purposes; for example, in relation to the production, processing and storage of nuclear material—it is within the safeguarding arrangements and makes sense; the same is true for the purposes of research and development. What I do not understand is why he has felt it necessary to use the words,

"carried on for peaceful purposes",

in the context of generation of electricity, because I am not aware that the generation of electricity is ever for anything other than peaceful purposes.

Lord Hunt of Kings Heath (Lab): My Lords, I will enjoy the Minister's response to my noble friend's question. I welcome the amendments brought by the Minister; they follow our discussion in Committee and the recommendation of the Delegated Powers Committee. However, on his eloquent defence of our having this Bill before us, the Bill would be quite unnecessary if the Government were to reverse their decision to leave Euratom, which remains for many of us unfathomable and unjustified.

Lord Henley: On the last point of the noble Lord, Lord Hunt, it is not necessary to rehearse all the arguments that we have been through on this matter because the decision has been made to leave Euratom. As he knows, that was dealt with in the transition Bill, which received a large majority in another place and is now an Act. It is a done deal. That is where we are and we have legislated on that issue.

On the more detailed technical point raised by the noble Lord, Lord Hutton, about electricity generation carried out for non-peaceful purposes, I have not got a clue and will take advice on the matter. I am assured by those drafting the Bill that this was the appropriate and proper way to deal with this matter. We wanted to ensure that we did not need to keep a residual power so that we could come back to this and make further amendments. That would have upset the noble Lord, Lord Hunt, who would have accused me of retaining a Henry VIII power to seek further amendments to the primary legislation. By tabling this amendment and drafting it in that way, I have been able to make sure that there is not even that residual power. That is the proper way to go forward.

[Lord Henley]

Having said that, I will write to the noble Lord, Lord Hutton, to give him an idea about electricity generation that is carried on for non-peaceful purposes, if such an answer can be found. I will make that information available to other noble Lords as they so wish.

Amendment 1 agreed.

Amendment 2

Moved by ***Lord Henley***

2: Clause 1, page 2, line 23, at end insert—

""civil activities" means—

(a) production, processing or storage activities which are carried on for peaceful purposes;

(b) electricity generation carried on for peaceful purposes;

(c) decommissioning;

(d) research and development carried on for peaceful purposes;

(e) any other activity carried on for peaceful purposes;"

Amendment 2 agreed.

Amendment 3

Moved by ***Lord Broers***

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

"Agreements required before withdrawal

(1) In the event that any of the agreements listed in subsection (3) are not in place on 1 March 2019, a Minister of the Crown must, as part of the negotiations regarding the United Kingdom's withdrawal from the European Atomic Energy Community Treaty, request to suspend the United Kingdom's withdrawal until either—

(a) the agreements listed in subsection (3) are in place, or

(b) other arrangements have been made to enable the United Kingdom to continue to benefit from existing nuclear safeguards arrangements until the agreements listed in subsection (3) are in place.

(2) For the avoidance of doubt, a request for suspension under subsection (1) applies only to withdrawal from the European Atomic Energy Community Treaty and to no other part of the United Kingdom's negotiations for withdrawal from the European Union.

(3) The relevant agreements are—

(a) an agreement between the United Kingdom and the International Atomic Energy Agency recognising the Office of Nuclear Regulation as the approved United Kingdom safeguarding authority in place of the European Atomic Energy Community;

(b) a Voluntary Offer Agreement between the United Kingdom and the International Atomic Energy Agency resulting from the United Kingdom no longer being a member of the European Atomic Energy Community; and

(c) relevant international agreements with those nations with which the United Kingdom has exercised rights in the last three years as a party to agreements made by the European Atomic Energy Community."

Lord Broers (CB): My Lords, Amendment 3 seeks to ensure that the necessary agreements to secure the safeguards for our nuclear power are in place before 1 March 2019. It does not require us to withdraw but to suspend the UK's withdrawal from the European Atomic Energy Community treaty until the agreements are in place.

The legal relationship between Euratom and the EU is not as clear to me as it is to the Minister. I have sought the opinion of learned friends who have told me there is no binding legal agreement that obliges us to withdraw from Euratom when we withdraw from the EU. However, the Government's position is based upon what is stated in paragraph 18(1) in the Explanatory Notes relating to the European Union (Notification of Withdrawal) Act, which states:

"The power that is provided by clause 1(1) applies to withdrawal from the EU. This includes the European Atomic Energy Community ('Euratom'), as the European Union (Amendment) Act 2008 sets out that the term 'EU' includes (as the context permits or requires) Euratom (section 3(2))".

The situation is not straightforward. I am reminded of the words of Sir Thomas More in "A Man for All Seasons"—"I trust I make myself obscure"—which seems to be the situation.

As I have already stated, we are not asking for withdrawal but suspension of our withdrawal from the European Atomic Energy Community treaty until we have the relevant agreements described in subsections (3) (a), (b) and (c) of the proposed new clause in place to give the confidence that these agreements are complete and appropriate and will maintain the highest standards in safeguarding our nuclear power. This is essential if we are to maintain the nuclear baseload needed to underpin our intermittent renewables. As I said last night, if this fails we will almost certainly not be able to meet our reduction in emissions obligation.

Of all the world's complex technologies, nuclear power is surely one where we must maintain collaboration with our partners, especially those in Europe, with whom we have been working so closely. To ensure that our energy strategy is secure, we must have the assurances contained in the amendment. I beg to move.

The Earl of Selborne (Con): My Lords, in the draft transition agreement published yesterday the entry on Euratom is in green, which appears to demonstrate that there is some progress being made, apart from any legal complication which might emerge from the woodwork. The Government have committed themselves to a close association with the Euratom research and training programme. The Secretary of State has also committed to report back to Parliament every three months about overall progress on Euratom, with a first update expected before Easter. All so far so good, but this does not change the position that a default clause, such as this amendment suggests, might be sensible.

The only reason I have heard why this amendment will not or cannot be accepted is that, by our own folly, we have already given notice that we are leaving Euratom, come what may. My noble friend on the Front Bench described it as a done deal—which of course it is in terms of the Act we have already passed—but that is not the best of reasons for rejecting this amendment. After all, one Bill can amend a previous Act and if we

find that the default position is needed in order to make sure that we do not fall between poles between one Bill and another, I should have thought that a fallback position such as that suggested by this rather sensible amendment would at least be worthy of serious consideration.

I recognise that the assurances given by the Government, and indeed by our Minister here, are helpful so far as they go—I have enumerated them just now—and that the disastrous decision to leave Euratom may ultimately be irreversible, but I will be listening to the Minister's response to this debate with great care.

Lord Warner (CB): My Lords, I strongly support this amendment. I want to focus on the one issue that will cause me to vote for this amendment if my noble friend puts it to a vote. That is the way that the Government have been playing Russian roulette with our energy security by the ill-considered and ideological rush to leave Euratom without being sure that an equivalent regime is properly in place. The jeopardy this places the UK in is well set out in the latest briefing from the Nuclear Industry Association. The Government are doing a very unusual and risky thing in ignoring the advice of the nuclear industry's experts simply because of their obsession with the jurisdiction of the European Court of Justice, which, let me remind the House, has never intervened in a Euratom matter during the duration of Euratom's life.

There is little evidence that it is possible to secure UK accreditation from the IAEA and negotiate a raft of new nuclear co-operation agreements with other countries before exit day. As the NIA briefing makes clear:

> "Without access to Euratom's NCAs and common market, the nuclear new build programme, nuclear could be seriously affected".

Clearly, a responsible Government would stay in Euratom and not risk the disruption and uncertainty to a critical industry that departure brings, but not this Government. They claim that they will secure an equivalent alternative set of arrangements to membership of Euratom by exit day. Their backstop for failure seems to be that by the end of the transition or implementation period they are trying to negotiate with the EU. Despite yesterday's upbeat gloss put on the negotiations of a transitional period, no such arrangements have yet been agreed by the Council of Ministers; they may well not be before the Bill leaves this House. Even if they are agreed before Royal Assent they will not provide for a transition period beyond the end of 2020. That may still not be long enough to secure all the new NCAs the UK needs, especially with the United States.

As the NIA briefing makes clear, without these agreements the trade in goods and services to maintain our existing nuclear reactors—these generate 21% of the UK's electricity—is put in jeopardy, as is the building of new reactors. Sizewell B is particularly vulnerable because it relies on an NCA with the United States, and a new NCA is effectively a treaty, which requires congressional approval.

4 pm

I have had the pleasure of living in the United States—at a slightly happier time—and of working in US government. Securing congressional passage of legislation is a highly uncertain experience. This is a legislature that is willing to shut down its own government in disputes over funding, so holding up an NCA with the UK is pretty small beer for the US Congress. It is far from certain that a new NCA with the US could be secured even by the end of 2020, whatever reassuring words the Minister might utter. Congressional approval is totally outside the Government's control. Even if by good fortune the Government did secure a new NCA in time, it is likely to be a nail-biting experience, causing great uncertainty in the industry for the best part of two years.

In these circumstances, I suggest to the House that the only responsible action the Government could take is to remain part of Euratom until new arrangements can be guaranteed to be in place. If the Government are unwilling to do this, it is in the national interest for the House to pass this amendment and ask the Commons to think again.

Lord Teverson (LD): My Lords, I am very happy to have added my name to this amendment. I am chair of the House's EU Energy and Environment Sub-Committee, which looked at the subject of Brexit and energy security. Regretfully to some, we did not come out with any great headlines that said that the country was going to grind to a halt on the energy side, although we did say there was probably going to be an increase in prices because of increased electricity trading inefficiency. However, we made one exception, which we thought at that time was probably unlikely, but the evidence since might push this the other way. If the UK did not manage to replicate the agreements that Euratom has with the rest of the world and the IAEA, then there was a real risk of our current fleet of nuclear power stations coming to a halt, Hinkley C not being built and various other problems in terms of our deep work in nuclear research.

That is why this amendment absolutely puts its finger on the issue. It goes through the three things that have to be agreed for the United Kingdom to be able not just to fulfil its own obligations internationally but to be able to trade in nuclear material, people and spare parts even, post Brexit. What are they? We clearly need our own Office for Nuclear Regulation to be approved as a safeguarding authority by the IAEA, which is clearly essential; we need a voluntary offer agreement with the IAEA; and we need to replicate a number of our nuclear co-operation agreements with the rest of the world. I have certainly not heard, anywhere, even any attempt to try to give confidence that we will be able to roll over any of these NCAs following Brexit. But there are a large number of hurdles to achieving these aims, and this is going to take time.

In terms of the approval by the International Atomic Energy Agency of a safeguarding regime, they include recruitment, which the noble Lord, Lord Hunt, has talked about many times and was covered in the evidence that came to the House of Commons Select Committee. There is the training of those personnel. There is the retention of those personnel, which has been highlighted by the noble Lord, Lord Rooker, on previous occasions, as once they are qualified, there is a very strong international demand for them. There

[Lord Teverson]
is also the issue, which I raised in Committee, of IT systems, and I thank the Minister the noble Lord, Lord Henley, for his reply to my Written Question, which very carefully went through the new systems that are required for us to be able to function as a safeguarding authority. Those systems are quite substantial, and we will come on to that—on my Amendment 9A—later today.

Of course, we also need to negotiate an agreement with the IAEA itself. When it comes to nuclear co-operation agreements, these are absolutely essential to us for our nuclear fissile material for power stations, for repairing, for spare parts and for nuclear intellectual property. It is very difficult to replicate those agreements so, as the noble Lord, Lord Warner, absolutely showed far better than I could, two of our key nuclear co-operation agreements—one with the United States, a legal requirement, and one with Australia, as the Minister highlighted in Committee—would expect us to be full members of the IAEA and to be able to have nuclear co-operation agreements in order to trade those materials. Even just in those two countries, we have major hurdles.

Turning to the voluntary offer agreements, these agreements are only necessary—or only made—by the five nuclear weapon states, or those that have declared as such; India, Pakistan and Israel have separate arrangements. I cannot imagine, however, that as a country that is one of the five permanent members of the United Nations Security Council and that stands for the upholding of international law and for the importance of the nuclear non-proliferation treaty, we would allow ourselves to go ahead without having concluded such an agreement with the IAEA.

That is why this amendment is so important. If we cannot fulfil these three criteria, then we should not go ahead: we should postpone leaving Euratom. Why is the date of 1 March 2019 there? Clearly, it is four weeks before we are set to leave the European Union. Like others, I have looked at the agreement that was made yesterday, and there is a separate article and chapter on Euratom. Paragraph 2 of Article 76 of that agreement—which is in green, meaning that it has been agreed by the European Union and ourselves in detail—says very starkly:

"The United Kingdom shall have sole responsibility for ensuring its compliance with international obligations arising as a consequence of its membership of the International Atomic Energy Agency and of the Treaty on the Non-Proliferation of Nuclear Weapons".

When you look to the transition chapter, there is no mention of Euratom, or of paragraph 2 of Article 76 being postponed in any way. This ties up with the Government's own view. We will be leaving Euratom on 29 March next year unless we make other arrangements, and the EU 27 and the UK are agreed on that position. That is why this is a matter not just of energy security but of national security.

Lord Hutton of Furness: I want to say a few words in support of the amendment of the noble Lord, Lord Broers. I draw the House's attention to my interest in the register: I am currently the chair of the Nuclear Industry Association.

None of us in this House or outside who has been following this debate really has any doubt at all that the Government are seized of the significance of the challenge that we face. Having made the decision, which many of us regret, to leave the Euratom treaty, the Government have to do two things against a very tight deadline. The first is to replace the existing Euratom safeguarding regime, which, as other noble Lords have said, is a very important part—in fact, the central part—of one of our obligations as a nuclear weapons state: to ensure against the risk of nuclear proliferation. That is a big challenge. We have not exercised that function, which is currently done for us by Euratom, and building up the capability under the auspices of the ONR is a difficult challenge. The ONR itself has said, in evidence in another place, that it probably will not be ready to fully discharge those responsibilities by next March. So the Government—rightly, in my view—have come to the view that they need a little more time, once we have left the EU, to ensure that the ONR can step up and do that job, but it will be touch and go.

The other thing that the Government need to do, although, with respect to the Minister, they have come to this a little late, is to put in place all the machinery necessary for the continuance of the nuclear co-operation agreements that exist between ourselves and Japan, the US, Canada and Australia, our principal nuclear friends and allies, for the continuing exchange of information, goods and services in the nuclear sector. Of course, unless we are able to move seamlessly from the current NCAs to the new arrangements, the trade in goods and services will come to an end at the end of the implementation period at the end of 2020—assuming that the implementation period is agreed—unless in that period we have successfully put in place alternative nuclear co-operation agreements.

The fundamental reason why your Lordships' House should pay close attention to the amendment is that it is good to have a default or a back-up. Suppose we do not get to the point at the end of the implementation period where these nuclear co-operation agreements have all been agreed, renegotiated and put into legal effect. The noble Lord, Lord Warner, drew our attention to some of the issues of complexity around renewing the NCAs. The process is not in our gift; we do not have control of the process whereby these replacement nuclear co-operation agreements will take legal effect, because in many of those countries they are international treaties—and will require the consent of, in the case of the US, the US Congress.

Any student of US politics knows one thing: that international treaties progress very slowly in Congress. Something that we have come to see in the US repeatedly, under both Democrat and Republican Presidents, is the extraordinary process that we in the UK do not understand at all where the US Government shut down because of, for example, a failure in Congress to agree budgets. We have no say in or control of that. Suppose there is a prolonged shutdown in the government machinery of the US at the very time when we want the US Congress to renew the nuclear co-operation agreement. What do we do then?

Fundamentally, the amendment poses that question: what do we do, all of us, if, with the very best of intentions and the absolute commitment of the Government, which I do not doubt, to renew these

nuclear co-operation agreements, the implementation period comes to an end and we have not succeeded in putting into place the nuclear co-operation agreements? It seems pretty obvious that, despite all the difficulties of trying to construct a default or backstop, we have to give attention to the risk that we come to the end of that period and we have not renegotiated successfully—through no fault of our own but simply because we do not control all the processes that are involved in moving pieces of the jigsaw—and we do not find ourselves in the situation, where we all want to be, where these NCAs can be seamlessly renewed.

If we get to that point where the NCAs are not in place with our key nuclear trading allies, we have a major problem. In my view, it would become impossible for the vital exchange of goods and services in the nuclear sector to continue beyond that point legally and lawfully, and if it cannot be done legally and lawfully then it will not be done at all. The noble Lords, Lord Warner and Lord Teverson, have referred to the problem which that might create for the energy security of the UK. I am sure I cannot be the only person in this House to say, "I don't think any of us should take a gamble or a risk with the energy security of our country". Given the important role of the nuclear industry, that is precisely what we will be doing if we do not find the wherewithal in this Chamber today to find a way of constructing a backstop for the "What if?" moment if at the end of the day these nuclear co-operation agreements cannot be brought into effect at the time when we want them to be. That seems to be the issue that the amendment has raised, and it is not going to go away. We have to have an answer somehow to that fundamental question, and I look forward to what the Minister has to say.

4.15 pm

Viscount Trenchard (Con): My Lords, I very much respect the expert opinion of the noble Lords who have tabled this amendment. I share their concern about whether the ONR is going to be sufficiently staffed in time, with enough appropriately qualified experts who can quickly take up all the safeguarding duties. It is also essential that the ONR should have the necessary budgets and organisation and enough duly authorised persons in order to carry out its duties. I should like to hear from the Minister that he is satisfied that this will be the case.

I should also like to ask the Minister exactly what our status is going to be during the interim or implementation period, assuming that we have managed, before March 2019, to put in place an IAEA-approved safeguards regime. This is unlikely because I think we will need most of the implementation period till the end of 2020 to establish and enter into the new NCAs, at least with our principal nuclear trading partners. Many of them have to go through their own legislatures and we have no means of guaranteeing how smoothly this will be done. I think we can be confident that it is equally in their interests to make sure that they continue the appropriate arrangements with the United Kingdom as a major player in the nuclear sector.

I feel that the noble Lord, Lord Broers, and the other noble Lords who have tabled this amendment, fail to recognise that there is an upside from our leaving Euratom. It has been suggested that it is a mistake, and that we could have remained within Euratom but left the EU. Even if this were so—and I do not know whether I believe it or not—I think there are good reasons why we would do better to have our own safeguards regime approved by the IAEA and to escape from the rather cumbersome and onerous Euratom process.

Other noble Lords were present at the briefing given by Mr Colin Parker of EDF. I have also been told by Dr Pat Upson, former director of BNFL and Urenco and former chief executive of ETC—the joint venture between Urenco and EDF—that there could certainly be advantages to the UK in having an independent safeguards regime and not seeking to replicate Euratom safeguards which concentrate too much on complicated verification processes and are less robust than IAEA requirements on process, procedures and controls.

There are those who believe that our security in this very sensitive sector will also be enhanced if we are not obliged to share all the details of our research and development programme with the 27 members of Euratom. There is, therefore, a considerable upside. Euratom is also too expensive. To replicate Euratom's safeguards regime does not provide extra safety or security over what is required by the IAEA. I therefore have some reservations about proposed new subsection (3)(c) of the noble Lord's amendment regarding the necessity to continue to share research and development entirely with the Euratom community.

Viscount Hanworth (Lab): My Lords, I am inclined to clap a hand on my head and express my utter amazement at the absurdity of this aspect of the Brexit agenda.

We are at present attempting to mitigate the deleterious consequences of a wholly unnecessary programme of the Government for leaving the Euratom consortium. The present amendment, which is supported by all other parties, foreshadows an inevitable outcome. The programme to leave Euratom will not be fulfilled by March 2019, when we shall formally leave the European Union, and the Government will have to bid for extra time. A similar amendment ought to have been brought forward by the Government. Their need to demonstrate their faith in Brexit may have prevented their doing so. Indeed, they have fostered some dangerous delusions. At the outset, the Government evinced an unreasonable optimism in the ability of the ONR to have the necessary security arrangements in place by March 2019. They have since become convinced that they will be able to negotiate a meaningful transition period thereafter from which our nuclear industry could profit. I believe that, notwithstanding recent events, it is far from certain that a workable agreement on a transition period will be reached. Certainly, a secure agreement has not yet been reached.

The Government also have an unjustified optimism regarding the likelihood that the necessary nuclear co-operation agreements, or NCAs, will be in place in time to avert a crisis in the supply of nuclear fuels and engineering materials. Without these NCAs in place, the generation of our electricity by nuclear power and the construction of the new nuclear power stations are

[Viscount Hanworth]
likely to grind to a halt. Let me elaborate on these three points in the order that I have raised them, albeit that, in doing so I am conscious that I will repeat some familiar arguments. It is necessary to do so in the face of the obtuseness of the Government.

First is the question regarding the readiness of the ONR to assume the burden of nuclear safeguarding by March next year. Doubtless the Minister will attest that the ONR has declared that it is willing and able to undertake the task, and that it is working hard to meet the deadline. One is bound to retort, "It would say that, wouldn't it?" But it has also said much else besides, which makes it abundantly clear that the best that it could achieve by that date is a threadbare organisation that would be severely understaffed. These honest admissions on the part of the ONR of its incapacity do not seem to have registered fully with the Government. However, they may have registered with other agencies that participate in the international nuclear regime. I am thinking of the foreign organisations that will require that we should have a proficient nuclear safeguarding regime in place if they are to continue to be our suppliers.

Next, there is the Government's optimism regarding the likelihood of our being granted a lengthy transition period to ease the demands of Brexit. We have heard a statement recently from Michel Barnier to the effect that he sees a prospect for a rapid advancement of the negotiations, but he has insisted that all this depends on the precondition of an arrangement regarding the Irish border. I wonder how this sounds in the ears of the responsible government Ministers. Have they been listening more to the upbeat tone of the delivery of the message than to the preconditions that it asserts? To many listeners the message serves only to increase the anxiety that there will be no viable transitional arrangements.

The final point to make concerns the nuclear co-operation agreements or NCAs. The importance of enacting these in good time has been stressed repeatedly by EDF, which is the owner of Britain's existing fleet of nuclear power stations and the constructor of the first of what is planned to be a new fleet. These are surely the people to whom we should be listening. The NCAs can be established only when there is a viable UK nuclear safeguarding regime in place. There is likely to be a considerable hiatus between the time when a new UK nuclear safeguarding regime is up and running and the enactment of the necessary NCAs. The Government have said nothing about how they would accommodate the inevitable delays. As many have mentioned, one is mindful of the fact that a new NCA with the United States will require to be ratified by the Senate. This could be a hazardous and lengthy process. The US has a nuclear industry of its own. Someone in the US legislature might be minded to promote the commercial interests of the American industry at the expense of ours and at the expense of the French, who own our nuclear power stations. I believe that this amendment foreshadows an inevitable outcome. The Government will be bound to take the steps proposed in the amendment.

Lord Grantchester (Lab): My Lords, I thank the noble Lord, Lord Broers, for tabling this amendment, to which we have added our names. I will say again what the amendment does so that we can be clear. The amendment delays the UK's withdrawal from Euratom until the required agreements that will allow the civil nuclear industry to continue are in place. These required agreements are listed and have been debated at length in Committee. They are not in place at the moment and there is widespread opinion that they will not be—indeed cannot be—ready before exit day in March 2019 and, in respect of the proposed new subsection (3)(c) on international agreements, before the end of any transition period yet to be fully agreed.

In saying what the amendment does, we should also be clear what it does not do. It does not stop the withdrawal of the UK from either the EU treaty or the Euratom treaty. It does not seek that the UK will remain permanently either in the EU or in Euratom. The problem in scrutinising this Bill in your Lordships' House is that the Government have been reluctant to give clarity to their negotiations—about what is and what is not included in them and how far they apply to nuclear safeguards and the Euratom treaty. The Government have even been reluctant to spell out exactly what immediate standards will be adhered to on exit day. I thank all sides of the House for the persistent challenges that have come to the Government and for remarks made again today examining the situation. I also thank the Minister for recognising the importance of this issue and providing what further assurances the Government are prepared to give. But the risks remain.

The conclusion is that the UK cannot set up its own Euratom-standard safeguards regime in time. In this situation it is only responsible that this House should insist on a delay. The importance of maintaining the UK's integrity to be part of an international civil nuclear order cannot be overstated. Once the vital international safeguards standards have been met and agreed, withdrawal of the UK from the Euratom treaty can proceed. This may well take longer to achieve than even the transition period may be able to offer.

The Government will want to claim that the amendment is defective. That is the default position, since the Government always state that the two treaties of the EU and Euratom are legally joined. That the two treaties share common institutions is not to be denied, but the Government have not come forward with their legal advice for the interpretation that they cannot be separated. There are two distinct treaties. As was discussed last night in amendments to the withdrawal Bill, the UK was a member of Euratom distinct from the EU treaty, because this was the case before the UK joined the EU. Furthermore, in the Prime Minister's letter of 29 March 2017 to President Tusk, she deliberately mentions both withdrawal from Euratom under Article 106a of the treaty establishing the European Atomic Energy Community and withdrawal from the EU. They are, therefore, separate.

Article 106a has never been invoked and was not mentioned in the drafting of the EU (Notification of Withdrawal) Bill, which the Government insisted could

not be amended. So the amendment does not try to undo anything legislatively that has already been agreed by Parliament. The Government claim that power to withdraw from the EU includes the power to withdraw from Euratom, so they make it a tautology in their opinion, and make no further reference or inclusion of Euratom. It can be argued that the noble Lord, Lord Broers, wishes to insist on the principle that leaving Euratom be delayed until the UK is ready. It is Labour policy to remain a part of agencies such as Euratom, as has been stated in the other place. The Government can perfect any drafting at Third Reading.

The Prime Minister herself, in her Mansion House speech on 2 March, stated that the Government want to explore with the EU how the UK can remain part of EU agencies. She mentioned three—namely, the European Medicines Agency, the European Chemicals Agency and the European Aviation Safety Agency—and went on to explain the reasons. By accepting this amendment, the Government can, in their determination to be in close association with Euratom, keep withdrawal from Euratom in suspense while they explore how far adherence to EU rules can still be beneficial to the UK. The Government have expressed this wish repeatedly without further definition. In a letter to my noble friend Lord O'Neill of Clackmannan dated 28 February, the Minister stated that,

"the Government's focus is on the outcome rather than the means".

That means that the House needs to focus on the outcome of the amendment.

4.30 pm

In all the discussions in this House and elsewhere, it is rare to hear many voices criticise Euratom, perhaps with the notable exception of the noble Viscount, Lord Trenchard. In the debates on safeguarding, many Members of your Lordships' House have drawn attention to the further benefits of Euratom, notably in research and development and in medical isotopes. The amendment to delay withdrawal from Euratom comes with added benefits—the UK's participation in further research programmes, and any assistance that the observatory brings to the timely supply of medical isotopes can continue.

Many noble Lords have spoken up about the risks that the Government are taking. We will support this amendment in a Division and urge Members of the House to undertake the only responsible action available to maintain the necessary and proper safeguards—that is, by voting in favour of the amendment.

Lord Henley: My Lords, I hope that I can persuade the House that it could be irresponsible and would create confusion and doubt to support this amendment in a Division, as the noble Lord, Lord Grantchester, wishes to do.

The amendment seeks to require Ministers to request, as part of the negotiations with the EU, that the United Kingdom does not leave the Euratom treaty if it does not have certain agreements or arrangements in place by 1 March next year—that is, four weeks before exit day. Those agreements or arrangements are set out briefly in paragraphs (a), (b) and (c) of new subsection (3) proposed in the amendment, and I will deal with those in due course.

The noble Lord, Lord Grantchester, also made it clear that the amendment is not about stopping us leaving Euratom. He might give us that assurance but, listening to some of the other speeches, I am not sure that that is necessarily the wish of others, who have made it clear that they would like us to stay in Euratom—a point made in earlier interventions by the noble Lord, Lord Hutton, and others.

At this stage, it is important to remind the House that when my right honourable friend the Prime Minister gave notice last year of our intention to leave the European Union, she also commenced the process for leaving Euratom. The power to make that notification has already been debated at considerable length in both Houses of Parliament and authorised by the European Union (Notification of Withdrawal) Act 2017. That notification has been accepted by the European Union. The United Kingdom will therefore withdraw from Euratom at the same time as withdrawing from the European Union. That, as I put it to the noble Lord, Lord Hutton, earlier, is a done deal.

I commend all noble Lords' commitment to ensuring that all the necessary measures are in place so that the United Kingdom can operate as an independent and responsible nuclear state upon withdrawal from Euratom. It is essential that the civil nuclear industry is not adversely affected by the UK's withdrawal from either the EU or Euratom and that it can continue to operate with certainty. I underline the word "certainty". That is our top priority and the reason for the Bill. It is why we are bringing forward all the regulations that sit beneath it—of which noble Lords will have seen draft versions—and the reason for the work the ONR is doing to put in place a regime, and that my department is doing to secure the agreements we need with the IAEA and key international partners. I will reiterate this point until the House understands the extent to which the UK stands ready to operate as an independent and responsible nuclear state from day one of exit.

The first quarterly update to Parliament, which will be available before the Easter break, will demonstrate our significant progress on this front, and I will share some of the details with the House shortly. Before I do so, however, I will address the crucial issue of the timing of our withdrawal from the Euratom treaty and the timings provided for in this amendment.

The amendment's proposed suspension period for Euratom withdrawal is in conflict with the transition period already agreed by the UK and the European Union. This has been referred to by several noble Lords, including the noble Lord, Lord Teverson, and my noble friend Lord Trenchard. The agreement is for a transition period running from 30 March 2019 to 31 December 2020 and will include all of the Euratom acquis. To be clear, the agreement reached in Brussels on 19 March is that the transition period will include the continued delivery of the Euratom safeguards regime in the UK, and the UK will continue to be covered by Euratom-level agreements with third countries during that period. Clearly, this will take effect after the UK has left Euratom, whereas this amendment refers to a period prior to the implementation of Euratom withdrawal—one of the reasons why it is not

[Lord Henley]
satisfactory. The amendment is, therefore, at odds with national government policy and as such mandates a request that we know is futile.

In terms of the overall principle of the amendment, I must be clear that an attempt to mandate a particular stance in negotiations, in the way that this amendment seeks to do, does not belong in primary legislation. I cannot, therefore, accept this amendment but I understand that the House will want reassurances that we have in place the international agreements that we need on safeguards.

I turn to progress on securing those new bilateral safeguard agreements. We have made very good progress in negotiating these with the IAEA, which I will simply refer to as "the agency"—I have problems with the initials, as noble Lords may have noticed. Both the UK and the agency are clear that the new agreements should follow the same principles and scope as the current trilateral agreements.

The amendment also addresses relevant international agreements with other nations—the NCAs. To be clear, the United Kingdom is not a party to nuclear co-operation agreements concluded by Euratom with other nations. These are concluded by Euratom on behalf of the member states. I understand, however, that the intention of this amendment is to cover agreements Euratom currently has in place with third countries.

As the House will be aware, the Government have prioritised putting in place nuclear co-operation agreements with those nations which have a legal or policy requirement for them to be in place as a prerequisite for civil nuclear trade. We are on track to conclude, and to secure third-country and UK ratification of, all such agreements that are essential to ensure a smooth withdrawal from Euratom in advance of 2019, in particular those with the US, Canada, Australia and Japan. We have held positive and constructive discussions with each of these four countries and remain on track to ensure that these agreements will be in place in time.

Lord Hutton of Furness: Have Her Majesty's Government received any assurance from the Government of the United States that this legislation will be in place, having passed through both Houses of Congress, in time to ensure that there is no break in trade? Has he received that assurance?

Lord Henley: My Lords, I am not aware of any such assurances. It is important that we get this legislation in place in good time. That is why I hope that we will complete Report today and Third Reading next week, and the Bill will receive Royal Assent some time after the Easter break. I do not know what is happening in the United States but I can assure the noble Lord that negotiations continue. We believe that we are on track to achieving the NCAs which are necessary. As I said, the important NCAs that we need are with the US, Canada, Australia and Japan. The amendment seeks relevant international agreements with those nations with which we have exercised rights within the last three years, which would include others that are not relevant. The important ones are those four—the ones that we trade with—and I give an assurance that we are on track. We have held positive and constructive discussions with each of these four countries and remain on track that those agreements will be in place in time.

All sides recognise the mutual interest in having these agreements in place to replace the Euratom agreements on which the UK currently relies. As I have said, discussions have been constructive; the substance of the new agreements is planned to follow very closely what is in the existing agreements. I am confident that sufficient progress is being made in this area, including on draft texts and ensuring that respective ratification processes and timetables have been taken into account in the planning.

Our substantial progress in international negotiations, coupled with our swift action to establish a legislative and regulatory framework for a domestic safeguards regime, not least via this Bill, means that we will be ready for exiting the Euratom treaty no matter the outcome of wider government negotiations on Brexit. The core aspects of this element of Amendment 3 will therefore already be met, and are therefore unnecessary.

Crucially, I must also bring the House's attention to the fact that the effect of this amendment would extend to covering a number of additional agreements which, de facto, are not required to ensure a smooth withdrawal from Euratom. Introducing such requirements into the Bill will unnecessarily create huge risks and uncertainties to the UK's ability to operate as an independent nuclear state from March 2019. I refer the noble Lord, Lord Hutton, particularly to proposed new subsection (3)(c) of the amendment, which could cover NCAs that Euratom has concluded with Uzbekistan, Kazakhstan, Argentina, and Ukraine. As I have previously set out, none of these countries has a legal or policy requirement for an NCA to be in place to facilitate nuclear trade. Requiring us to put agreements in place with each of these countries before we withdraw from Euratom would be a fruitless exercise which could jeopardise our work to establish a civil nuclear safeguards regime for the UK with all the essential agreements in place.

Further, proposed new subsection (3)(a) refers to an agreement between the UK and the agency to recognise the Office for Nuclear Regulation as the approved UK safeguards authority. I would like to make it clear that the agency's focus in respect of the UK's safeguards lies with the voluntary offer agreement and additional protocol, rather than the domestic legislation underpinning the domestic regime, or the UK's arrangements for fulfilling its commitments. It is the Government—not the ONR—who enter into these agreements, and therefore the Government who must uphold these commitments, regardless of whether or not we choose to delegate obligations to an independent domestic regulator. The additional agreement referred to in Amendment 3 as distinct from the voluntary offer agreement is therefore unnecessary, impractical, and in no way required for a smooth withdrawal from Euratom.

As I and ministerial colleagues have emphasised throughout the passage of this Bill—this has been echoed by all those taking part in this and earlier debates—certainty for the industry is essential. Creating a situation where we are compelled to secure agreements—

Lord Warner: I am sorry to interrupt the Minister as he comes to his peroration. Will he answer the question asked by the noble Lord, Lord Hutton, in more detail? Can he give a categorical assurance to this House that there is no risk of Sizewell B closing down as a result of the Government's failure to put in place all the things that he assured us of by 29 March next year? As he will know, it is of a US design and relies on imported spare parts and maintenance arrangements, and generates about 8% to 10% of the UK's electricity.

Lord Henley: The noble Lord is asking whether that NCA with the United States will be completed. I have given all the assurances I can that it will be and I cannot go any further than what I said in response to the noble Lord, Lord Hutton. With that in mind, what I was trying to make quite clear in what the noble Lord, Lord Warner, described as my peroration was the need for certainty for the industry, and this amendment would remove that certainty. The amendment would create a situation where we are compelled to secure agreements that we do not need and it runs counter to what the Government are doing: creating certainty. Even if this amendment were technically correct, its impact would be to introduce further uncertainty and potential disruption to an industry by casting doubt over establishing the domestic safeguards regime in the long term. I do not believe that can be the intention of the noble Lords who tabled it.

I believe we are on track to provide continuity and that this amendment is not only unnecessary but exacerbates the risks that it seeks to remove. I hope with the assurances I have given, and with the explanation of the weaknesses in the amendment, that the noble Lord will withdraw it.

Lord Broers: My Lords, I very much appreciate what the Minister said with respect to the progress the Government are making to seek these agreements—it is essential that we get agreements with our major partners. I do not feel that the amendment, as it is, will put us in great danger by going beyond our major partners, but perhaps such adjustments could be made in the other place.

I do feel, however, that I have heard too many assurances that have not been fulfilled. In a case of such great importance, this amendment would secure what may be relatively straightforward, as the Minister said. We are well on the way to gaining most of these agreements already so it should not be too burdensome, but I wish to test the opinion of the House.

4.47 pm

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Wei, L.
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5.06 pm

Clause 2: Power to amend legislation relating to nuclear safeguards

Amendment 4

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

4: Clause 2, page 4, line 24, at end insert—

"( ) No regulations may be made under this section after the end of the period of 5 years beginning with the day on which this section comes into force."

Baroness Vere of Norbiton (Con): My Lords, Amendments 4 and 5 seek to place a time limit, also called a sunset, on use of the power in Clause 2. I would like first to explain how Clause 2 works.

Clause 2 contains the power to amend by regulation the Nuclear Safeguards and Electricity (Finance) Act 1978, the Nuclear Safeguards Act 2000 and the Nuclear Safeguards (Notification) Regulations 2004. It can amend those three pieces of legislation only, and amendments can only be those in consequence of a "relevant safeguards agreement", that being very specifically an agreement relating to nuclear safeguards to which the UK and the International Atomic Energy Agency are parties.

This is a narrowly drawn power to enable the amendment of references in this legislation to provisions of safeguards agreements with the International Atomic Energy Agency—which I shall refer to simply as the agency. This legislation enables the agency to carry out its activities in the UK, including by providing it with legal cover for activities of its inspectors in the UK. For the UK to have a domestic safeguards regime in future, it is essential that the legislation specified in Clause 2(1) can be amended to make correct reference to new safeguards agreements that the UK enters into with the agency.

The legislation cited in this clause is extremely unusual in that it makes detailed references to specific provisions of international agreements. As such, these references—for example, to articles—are likely to change as a result of any amendment of, or change to, those agreements. The power in the Bill is therefore necessary to make the changes to the relevant legislation to update those references when the new agreements are in place.

The UK's safeguards agreements with the agency, and the agency's ability to perform safeguards activities in the UK in accordance with those agreements, are absolutely fundamental to the agency's application of safeguards in the UK. While the power is narrow, it is essential and underpins the entire regime. The unavoidable nature of negotiations means that we are tied to timing uncertainties and this power constitutes the only way we can address that uncertainty.

The Delegated Powers and Regulatory Reform Committee agreed that the power in Clause 2 is necessary and appropriately framed. It recognised that it is intended as a way of reflecting the new agreements with the agency required to establish the UK's civil nuclear safeguards regime, and recommended preventing the use of the power after a period of two years had expired.

The Government accept the principle of the committee's recommendation, and of Amendment 5, that we should not retain this power for an indefinite period. However, the regime is heavily reliant on wider international negotiations and it is therefore of the utmost importance that the power is not sunsetted prematurely. Prematurely sunsetting this power could result in the relevant provisions becoming ineffective, leaving the UK without an effective domestic safeguards regime and in breach of any new international safeguards agreements put in place with the agency. The potential consequences of such failures are serious. The UK's reputation as a responsible nuclear state would be damaged.

The international negotiations relevant to this power are unprecedented in their nature. I consider it essential to retain a provision enabling the UK to adapt to any circumstances affecting the timing of the commencement of international safeguards agreements between the agency and the UK. I hope that, in the light of my explanation, noble Lords will feel able not to press their amendment, and the House will feel able to support government Amendment 4. I beg to move.

Lord Grantchester: I speak to our Amendment 5, which is in this group. In Committee, we proposed that the power of the Secretary of State to enter into relevant international agreements without parliamentary approval be limited to a two-year period. The Government have accepted the principle but wish to extend the power to five years, as the Minister has proposed. We accept that this power is necessary and that there is oversight in its use through the Constitutional Reform and Governance Act 2010.

However, I would like to press the Minister on why the Government think that a two-year period that coincides with any transition period could be insufficient to conclude necessary wider international agreements. We certainly do not wish to leave the UK without an effective domestic safeguards regime, in breach of any new international safeguards agreements put in place with the IAEA, but the Minister has not properly explained why she thinks it could be premature if this sunset clause were brought in at a period of two years.

The government amendments seek a further three years beyond the end of any transition period. Can the Minister clarify the kind of agreement she thinks could still be outstanding? I wonder whether included here could be the circumstances already drawn attention to in the earlier amendment of the noble Lord, Lord Broers, under proposed new subsection (3)(c), regarding international agreements with third countries, whereby the NCA agreement with, for example, the US could well take longer than any transition period. He argued for a suspension to our leaving Euratom.

Baroness Vere of Norbiton: I thank the noble Lord for his contribution. It is clear that the sunset provision we are discussing relates to the arrangement with the agency; it does not cover the nuclear co-operation agreements. Those are separate agreements.

We have thought very long and hard about the sunsetting of this—I think it falls into the territory of known unknowns—and we believe that two years is

[Baroness Vere of Norbiton]
certainly too short and that five years is the right length. There may be circumstances that we cannot possibly foresee at this time that will make it necessary for the sunset clause to exist for slightly longer. We have now agreed—we hope, because nothing is agreed until everything is agreed—the implementation period. I think that noble Lords should take quite a lot of comfort in that implementation period in that, during that period, our safeguard arrangements will still be provided by Euratom. Indeed, it gives us an extra 21-month period for these arrangements to be put in place. Nevertheless, I think that the five-year period is appropriate. We have looked at the recommendations of the DPRRC and agree with them. A period of five years is the most appropriate time.

Amendment 4 agreed.

Amendment 5 not moved.

Amendment 6

Moved by ***Lord Henley***

6: After Clause 2, insert the following new Clause—

"Report on nuclear safeguards

(1) The Secretary of State must, in respect of each reporting period, prepare a report containing information about nuclear safeguards.

(2) Information about nuclear safeguards includes information about—

(a) international arrangements relating to nuclear safeguards to which the United Kingdom is (or is proposed to be) a party, and

(b) the establishment in the United Kingdom of arrangements relating to nuclear safeguards.

(3) A report under this section must be laid before Parliament after the end of the reporting period to which it relates.

(4) There are four successive reporting periods, each of which is a period of 3 months.

(5) The first reporting period is the period of 3 months beginning with the day on which this Act is passed."

5.15 pm

Lord Henley: My Lords, in moving Amendment 6 I shall speak also to my Amendment 10. This group includes Amendments 7 and 9, of which Amendment 7 is an amendment to my Amendment 6. Therefore, I take it that after I have spoken the noble Lord, Lord Hunt, will move his Amendment 7, and we can then debate the general issues. At this stage I shall speak to Amendment 6, and I shall respond to the noble Lord's words on Amendments 7 and 9 in due course.

We all agree about the importance of ensuring that the industry can continue to flourish in trade, regulation and innovative nuclear research, no matter what the outcome of negotiations with the European Union or the final terms of our withdrawal from the EU and Euratom. Whatever the outcome and terms, we obviously want to see this great industry continue to flourish. We have made substantial progress in ensuring that the United Kingdom can operate as an independent and responsible nuclear state from day one, and we are committed to being transparent to Parliament about our work in this area. We have taken seriously the requests from Members of both Houses, across all parties, for regular, detailed updates about nuclear safeguarding arrangements in this country.

I agree that it is vital that Parliament is able to assure itself that the Government are taking effective action in relation to nuclear safeguards. In order to promote a transparent system of regular information on progress, my right honourable friend the Secretary of State for Business, Energy and Industrial Strategy committed to provide quarterly updates on overall progress on Euratom negotiations, going further than the proposed amendments at the time. The House will be aware that we plan to publish the first such update at the end of this month. This is even sooner than originally envisaged, coming three months since the publication of our January statement. As the end of the three months would fall during the Easter Recess, a decision was made to bring forward the publication of the first update so that it will be laid before Parliament rises.

Further updates will be made available every three months, with the next one scheduled for June 2018. I listened very carefully in Committee and I understand that noble Lords across the House would like something more than hopeful reassurances; for that reason Amendments 6 and 10 would place a statutory duty on the Secretary of State to provide quarterly reports on nuclear safeguards, covering both domestic and international matters, for the first year after the Bill receives Royal Assent. We will come on to the other amendments but I hope that our Amendments 6 and 10, as well as the current commitment under the Written Ministerial Statement of 11 January to report on wider matters relating to our withdrawal from Euratom, demonstrate our continuing commitment to provide information and clarity to Parliament and provide sufficient reassurances to noble Lords. I will listen very carefully to what the noble Lord says about his Amendments 7 and 9, in his name and those of a slightly varying list of supporters, and deal with them at the end of the debate. In the meantime, I beg to move.

Amendment 7 (to Amendment 6)

Moved by ***Lord Hunt of Kings Heath***

7: After Clause 2, after subsection (2), insert—

"(2A) A report under subsection (1) may include other information on future arrangements with Euratom, which may include information relating to nuclear research and development and the import and export of qualifying nuclear material."

Lord Hunt of Kings Heath: My Lords, I am most grateful to the noble Lord, Lord Henley, for suggesting that I go next and speak to my Amendments 7 and 9. First, I welcome the Minister's Amendment 6 and the intention that we have regular reports on nuclear safeguards; that is clearly helpful and we look forward to receiving the first report fairly soon, so I am most grateful to the Minister for his response to our debate. I hope today that we can just persuade him to go a little further.

As noble Lords will know, because some noble Lords have taken part in the debates, we have been having concurrent debates on this Bill and the European Union (Withdrawal) Bill. Last night—fairly late, although not as late as on some amendments—we had a fascinating debate, led by the noble Lord, Lord Broers, about research and development. There is an intimate connection here, and an absolute necessity for us to continue to invest in research and development, particularly in relation to the projects that the noble Lord referred to, such as JET, ITER, research into advanced nuclear fission reactors and so on, on which our decision to leave Euratom could potentially have an impact.

In addition, we discussed in Committee medical isotopes and the concerns among medical colleagues and the health service in general. The work of Euratom has no doubt led us to deal with issues of shortage of supply and some of the issues of the rapid transport that is required. There is some concern about whether we can ensure the security of those supplies, which are absolutely essential for the treatment of many patients on a daily basis, in future. So adding a further reporting requirement to the noble Lord's own amendment would be important and would reassure noble Lords on some of the very important issues that have been debated both here and in the EU (Withdrawal) Bill.

In relation to nuclear safeguarding, we need to be clear that we are essentially taking a kind of policing role from an international agency. Nuclear safeguards make sure that nuclear materials used for peaceful purposes are not used for military ones, so this is very important in relation to nuclear proliferation and our treaty obligations. We are removing ourselves from Euratom, establishing ourselves as a single nation, with its own existing regulator being given these duties to police our responsibilities under the non-proliferation treaties, and then having a sort of backstop of doing it in accordance with the strictures of the IAEA.

So the Government themselves are taking on a very responsible duty. Although of course I would implicitly trust any report that the noble Lord presents to us on these matters, having as a backstop an independent reviewer who could report from time to time on what is happening to make sure that those safeguards are being conducted in the way that we need to do them internationally would be an important safeguard. I hope that the Minister will see that both these amendments are wholly constructive and intended to act alongside and add to the constructive nature of the noble Lord's own amendments.

Baroness Featherstone (LD): My Lords, I have attached my name to Amendment 7. I also support Amendment 9, which will be covered by my noble friend Lord Fox.

I totally welcome government Amendment 6, which brings in the reporting system, and hope that the Minister will take Amendment 7 really as sort of an aide memoire, as if it was something he clearly forgot to put it into Amendment 6. So many areas remain of concern about the precariousness of our exit from Euratom. We discussed many of them in Committee. As we have heard across the House already today, they include the critical issue of timing, with the industries that are directly affected and their supply chains being desperately concerned to avoid the cliff edge, unsurprisingly—and all the while the clock is ticking relentlessly towards exit day. Amendment 6 seeks to reassure us in the interim with regular reporting to Parliament on key issues. However, Amendment 7 in my name and that of the noble Lord, Lord Grantchester, amends Amendment 6 and seeks to cover those key elements of concern that we felt were missing. These include information on progress, and the form that is taking shape, on future arrangements on research and development, the import and export of qualifying nuclear material and, of course, the nature and form of future arrangements with Euratom.

I and my party still remain hopeful—Liberal Democrats are obviously optimists—that common sense will at some point take hold between now and exit day, and that we will simply be able to remain in Euratom or a bespoke associate membership of Euratom will become possible, just as a bespoke trade agreement seems to be possible in the Government's lexicon.

On nuclear research and development, exiting Euratom has put a number of concerns on the table. It would be really helpful in dealing with the uncertainties raised over the UK's future contribution to nuclear research and development if this were included in the reporting regime. We have benefited from Euratom funding for research. As was mentioned in Committee and earlier today, the JET project based in Culham receives £60 million a year from Euratom, covering 88% of the running costs; it provides employment for 500 people implementing the contract. We are also concerned about the impact on the ITER project, which is a magnificent international collaboration intent on proving that fusion is a viable source of large-scale, safe and environmentally friendly energy for the planet.

However, it is far more than the money itself. What should be an ongoing discussion in the negotiations, and what I would like to see reported back on in relation to our leaving Euratom, should be the co-operation and collaboration that is such an important part of research in Europe. We will discuss the talented people who forge that research and development—and their ability to come and go and work in countries around Europe—in my noble friend Lord Teverson's Amendment 8.

It is absolutely critical that we remain a key partner when outside Euratom if we are to be able to continue to hold EU and international regard as a key player as a nuclear nation. All the programmes demand close collaboration with the EU and the international nuclear community. We currently have access to research infrastructures and capabilities not available in the United Kingdom. We are also able to leverage UK investment for industry, national laboratories and academia.

Going forward—whatever the arrangement—we have to make sure that we can continue as a leading participant in the Euratom working groups and EU-funded research projects. We do not want our ability to influence and shape this agenda to be lost, nor our access to facilities, data, people and material that has enabled us to be at the cutting edge of developing technology and innovation. Therefore, as the Government go forward on this agenda, they are going to have to come to an arrangement over the future of JET with Euratom: we hope that it

[Baroness Featherstone]
can be paid for by the Euratom framework programme after 2020 if that is still the end date for the UK Government's commitment to its funding. The Government are also going to need to come to an agreement over F4E so that we can carry on participating in the fusion programme. Future arrangements must ensure that international collaboration is ongoing so that both contributing and gaining from world-leading research continues. That is why Parliament must be kept informed on progress on all those issues and why it is crucial that research and development are part of the reporting requirement.

I turn now to the import and export of qualifying nuclear material. Currently the Euratom Supply Agency has rights over such materials produced in its member states. This confers legal exclusive rights to contract the supply of those materials entering or leaving the European Union. Our current nuclear reactors are totally reliant on this fuel supply chain so, post Euratom, the Government will need to ensure this process in relation to the export of fissile materials from Euratom to the UK. This possibly—and probably—will in future become an export and may need to be authorised by the EU Commission's research and development department. What I am describing is a future situation regarding the import and export of fissile material that needs to be worked through so there are no additional barriers, to ensure that trade in this essential market can continue. It is vital that Parliament is regularly updated on these important issues.

The noble Lord, Lord Hunt, and I have made substantive and, I hope, persuasive arguments such that I trust the Minister can see the necessity for amending Amendment 6 with Amendment 7.

5.30 pm

Viscount Trenchard: My Lords, I welcome Amendment 6, proposed by the Minister. It makes a lot of sense but I do not think the House would be wise to support Amendments 7 or 9. Amendment 7 is about collaboration with Euratom in future in research and development and the import and export of qualifying nuclear material. I think we will benefit from greater flexibility by making our own decisions about research and development and committing our own funds. Of course Euratom will be an important and continuing partner for us in nuclear but we will be freed of the obligation and in the position where we will own our own research material, which of course in the JET and ITER programmes we do not. We should caution against overoptimism on what ITER is likely to bring; I understand that there is considerable scepticism in the industry about whether it is really worth the massive amount of money that it costs, and that there is some chance of a demonstration operation by 2045 if all goes well. If we were to commit funds to SMR research, by contrast, in which we in this country have several notable qualified players, we would own the outcome and could get ourselves back into the lead in nuclear by selling our new technology to others. We would have greater flexibility and the freedom not to be committed—

Lord Fox (LD): I remind the noble Viscount that the two are not mutually exclusive.

Viscount Trenchard: I accept what the noble Lord says but if you are bound to commit, through the Euratom programmes, to a greater amount of funding for the sector as a whole, that could effectively mean that you were constrained in what you do on your own. I am not saying we would not wish to contribute or to continue to participate, but it would be our decision on whether we participated or not. We would recover the right to make decisions and to apply our research and development funds, which we would then own in so far as they were invested in programmes that we were running independently.

On Amendment 9, I do not see the need for the taxpayer to have to fund a further independent reviewer. The IAEA will ensure that we follow the approved safeguarding regimes, check and verify our safeguards regime and ensure that we work only with verified customers.

Lord Warner: My Lords, I support Amendments 7 and 9, and I compliment the Government on Amendment 6. I remind the noble Viscount, Lord Trenchard, that scientific research, in this area or anywhere else, is now overwhelmingly collaborative. If you do not get in the game collaboratively, you find that some of your best researchers and ideas are rapidly transferred abroad to someone else who is much more interested in collaborative research. We have moved on from being a Great Britain that does all this stuff ourselves to being a collaborative, global, international participant in research, including in this area. That is one of the reasons why I support Amendment 7; I think it takes us in the right direction. I am sure that the noble Lord, Lord Broers, whose amendment last night I sadly missed, will want to say a bit about that.

I am really pleased that we have come back to talking about medical isotopes and having a report that keeps Parliament up to date in that area. There is huge concern outside this House about whether the supply chains around medical isotopes will be sufficient to cope with the needs and demands of NHS research and NHS patients.

On Amendment 9, after the last debate that we had before the vote, you would have to be one of life's perennial optimists—I am not a Liberal Democrat so I do not join that particular club—to believe that everything is going to be okay by March 2019. I suggest to the Minister that he might find it useful to have an independent reviewer who can make independent reports to Parliament to convince sceptical parliamentarians such as me and, I suspect, a few others in this House that good progress is being made on some of the critical issues. That is why I support Amendments 7 and 9.

Lord Fox: My Lords, I support Amendment 9, to which my name is appended, and I commend the Government on Amendment 6 and support Amendment 7. I echo the words of the noble Lord, Lord Warner: not even the Liberal Democrats are optimistic enough to imagine that everything is going to be in place in time. That is why we believe this is a helpful amendment to the Government and to the Minister. We heard in the debate on Amendment 3 that the stakes are high in achieving what needs to be achieved in time. I believe,

en passant, that for the noble Viscount, Lord Trenchard, to use the cost as a reason for not having something like this in place is a little like trying to save the money that is down the side of the sofa when the whole house is potentially at stake. I suggest that cost is not a reason for not doing this.

The stakes are high. I will not rehearse them again but the Committee has heard scepticism, concern and worry from a vast array of people about whether the finish line can be crossed in time. The Minister—this is in no way reflects scepticism of the Minister himself—has stood up on a number of occasions and said everything is in order and we need not worry. Almost every statement he makes begins with, "I believe". That is the problem; at this point, to some extent it is difficult to go beyond a belief system. Amendment 9 would put in place an independent voice, someone who was marking the Government's homework but was not the Government. This is not a question of doing the work of the IAEA; it is a question of following and tracking the Government's progress in getting to the finish line.

I echo the noble Lord, Lord Warner: this could be very useful for the Government in helping to give reassurance. It would be another voice to prove that the Minister was correct—if he was. When the noble Lord, Lord Hunt, says that this is not an aggressive amendment and not intended to be unhelpful, I know, because I participated in the discussion around this amendment, that it is genuinely not intended to wreck or harm the Bill in any way. It is intended to give support and some further credibility to the argument that things are moving in the right direction.

Lord Broers: My Lords, I will make some brief remarks in answer to the noble Viscount, Lord Trenchard. The research we are talking about here is not necessarily just in fusion—it includes fusion, but that is a great big project—but in areas that are ancillary to a certain extent but terribly important. Research is going on everywhere into radioactive waste disposal, but we happen to lead that. I do not think that this defeats the noble Viscount's ambition—which is my ambition—that our own industry does a lot and gains a lot from that. It also gains a lot from being accepted by the community, so that when our advances come up, others will use what we did. The same is true of radiological protection, which is always a problem with workers around nuclear plants. So it is not just the new reactors, although the one gap in our knowledge is what is happening to the new generation fission reactors beyond the EPRs that people are working on. We really need international collaboration.

With respect to our own ambitions, I entirely support the noble Viscount in terms of SMRs. We are dying to get going—to be specific Rolls-Royce is dying to get going—on SMRs. In fact, Rolls-Royce tells us they are spending £1 million a month keeping that programme alive and waiting for the Government to make a decision on the competition which I hope will come.

Also, in fusion, there is Tokamak Energy. This is a very ambitious small company which feels it can contain fusion in a spherical tokamak, which is a fascinating thing. I should love to spend a lot of time talking about it. It is a very clever and effective way to up the efficiency of the use of the magnetic field to confine the plasma. So there is more to this research than just a few of the most obvious things. I think that is greatly in support of Amendment 7. I also support Amendment 6. I agree with the noble Lords, Lord Fox and Lord Hunt, who mentioned this. I think the independent review is designed to help the Government and not be a hindrance.

Lord Henley: My Lords, I want to begin by adding to something that the noble Lord, Lord Fox, said. He said that I repeatedly say, "I believe, I believe", and that the House has to take it on trust. I hope this goes beyond me and officials within the department. We have seen what is happening when it comes to nuclear safeguards—

Lord Fox: I should say that was not intended in any way to impugn the noble Lord's integrity in his answers.

Lord Henley: I was not suggesting that the noble Lord was doing that in any way whatsoever.

Since Second Reading, I have visited Sellafield—well, obviously I have visited it on occasions in the past because it is in my home county, but I visited it again—just to see what nuclear safeguarding amounts to. After all, Sellafield contains two of the three sites that will be relevant in terms of nuclear safeguarding. I cannot say that a one-day visit has turned me into an expert in any way. I would not want to claim that, but I can say that I can go beyond, "I believe", and say "I have seen".

Noble Lords: Oh!

Lord Henley: I am amusing the clerical members of the Cross Benches and I will try to restrain from doing so. Perhaps they thought I was making some sort of evangelical speech.

Let me start by dealing with the two amendments. While expressing my deep sympathy for them, I do not think they are necessary, but I want to give some indication as to how importantly we take them. I am grateful to various noble Lords who welcomed the original amendment, which is government Amendment 6.

5.45 pm

In relation to research and development, the Government are taking the future of UK participation in nuclear fusion and fission R&D programmes very seriously. I know this is a matter of great concern to the noble Lord, Lord Broers. We have already taken practical steps to protect existing programmes. For example, in 2017, the Government guaranteed their share of funding for the Oxfordshire-based Joint European Torus—JET—fusion reactor until the end of 2020, subject to the EU extending the JET operating contract beyond 2018. That commitment is independent of the outcome of Brexit negotiations. It underlines what both the noble Lords, Lord Broers, and Lord Warner, said about the importance of collaboration in projects of this sort. We understand that they will only make progress with collaboration.

In September 2017, our future partnership paper on science and innovation made it clear that the United Kingdom wants to find a way to continue to work

[Lord Henley]
with the EU on nuclear R&D. In December 2017, we committed a further £86 million to establish a national fusion technology platform. This demonstrates our continued commitment to international collaboration in this field.

In a Written Ministerial Statement in January, my right honourable friend confirmed and made it very clear that the United Kingdom's specific objectives in respect of the future relationship are to seek a close association with the Euratom research and training programme, including the JET and ITER projects. We are also working closely with the United Kingdom Atomic Energy Authority and the Nuclear Innovation and Research Office to engage constructively with our EU partners to determine the best way forward for the United Kingdom's nuclear R&D sector.

Similarly, while I appreciate the sentiment behind Amendment 7, I consider that it is unnecessary in light of the Government's continued transparency on research and development and in the light of the existing commitment made in the Written Ministerial Statement to provide updates on overall progress of the Euratom negotiations and arrangements, including research and development, every three months.

Before I finish with Amendment 7, I will say just a little on import and export of qualifying nuclear material. This was raised by the noble Baroness, Lady Featherstone. We recognise the importance of continuity of open trade arrangements with the EU for nuclear goods and products. This is one of the objectives of our future relationship, as set out in the January Written Ministerial Statement and covered by the commitment to report. However, the specific arrangements about trading goods, including the import and export of qualifying nuclear material, are part of the wider negotiations with the EU on our future relationship. The Government have made clear that we are seeking a bold and ambitious economic partnership, of greater scope and ambition than any such existing agreement. Draft EU guidelines for negotiation of the future framework have been circulated to the EU 27 for comment and we expect final guidelines to be formally adopted at the March European Council this week. We hope that they will provide flexibility to allow the EU to think creatively about this future economic partnership.

I did not think this debate would end without the subject of medical radioisotopes coming up—this is a course that we have been round before—and I am grateful to the noble Lord, Lord Warner, for raising it. They are not qualifying nuclear material. Medical radioisotopes are not subject to international safeguards and, as such, we do not propose that they be covered by the domestic safeguards regime to be set up under this Bill. I know that this is a matter of concern to the noble Lord and to others who have an interest in this matter. I can confirm specific arrangements for the import and export of medical radioisotopes are also subject to those wider negotiations with the EU on our future relationship.

Turning to Amendment 9, I just want to set out the Government's position on the role of an independent reviewer of nuclear safeguards legislation. As the House has heard, the amendment would require the Secretary of State to appoint an independent reviewer, who would be required to report at least annually to him. The reports would have to be laid before both Houses and address issues including: the readiness of the United Kingdom's safeguards arrangements,

"to ensure that qualifying nuclear material, facilities or equipment are available for use only for civil activities";

compliance with the International Atomic Energy Agency; nuclear co-operation agreements with other countries; and the sufficiency of the ONR's staffing and safeguards resources.

I would like to give an assurance—if the noble Lord, Lord Fox, will accept yet another assurance from me—that, like noble Lords, I fully appreciate that there are particular circumstances in which an independent reviewer of legislation plays an important role. It is a model of scrutiny which has been fully developed in the context, for example, of counterterrorism legislation, where the role has been most ably performed by the noble Lord, Lord Carlile of Berriew—the former noble friend of the noble Lord, Lord Fox, but I am sure they are still good friends—who has contributed actively to deliberations on this Bill. I am sorry that he cannot be here today.

There are, though, significant differences between counterterrorism legislation and the measures we are proposing to establish a civil nuclear safeguards regime for the United Kingdom. It is necessary, to a certain extent, in the realm of counterterrorism to ensure secrecy over certain aspects of the regime at the current time, and perhaps for a long time in the future. Without this, the regime could not work and lives could be lost. Conversely, on nuclear safeguards, although there are aspects of the regime that are not yet certain because they are the subject of negotiation with another country or countries, the Government are committed to being as transparent as they can. As I explained to the House earlier, the Government have committed to provide information to Parliament on their Euratom exit work, and that information will no doubt be scrutinised by individuals and the appropriate committees. Given this existing commitment to transparency, I do not see what additional benefit an independent reviewer could add.

I hope that will satisfy the noble Lords who have spoken to these two amendments. I am very grateful for their warm welcome for the Government's agreement to move further in this matter and bring forward Amendment 6. Having moved Amendment 6, I feel that Amendments 7 and 9 are not necessary.

Lord Hunt of Kings Heath: My Lords, I thank the Minister for that full response. He expressed deep sympathy with the intent of our amendments but, alas, even with divine inspiration, he failed to go a little further. Essentially, his argument in relation to my Amendment 7 was that it was unnecessary in the light of existing commitments in the Written Ministerial Statement and what he has said today about the importance of research and development. I go back to our debate last night on the EU (Withdrawal) Bill, in which there was an overwhelming sense that this country still has a lead in some aspects of nuclear research. The noble Lord, Lord Broers, spoke about that very

eloquently. This is at risk because of what is happening in relation to Brexit and our withdrawal from Euratom. It is important to have on the face of the Bill—in primary legislation—a commitment that the Government will report on research and development. I wish to test the opinion of the House.

5.54 pm

Division on Amendment 7

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Amendment 7 agreed.

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6.09 pm

Amendment 6 (as amended) agreed.

Amendment 8

Moved by ***Lord Teverson***

8: After Clause 2, insert the following new Clause—

"Freedom of employment for specialists

(1) Article 2(g) of the European Atomic Energy Community Treaty, ensuring freedom of employment for specialists, continues to have effect in UK law in relation to those who work in nuclear safeguarding, after the United Kingdom leaves Euratom.

(2) In this section "specialists" includes those staff essential to the United Kingdom's nuclear safeguarding."

Lord Teverson: My Lords, I remind Members of what the Euratom treaty says in Article 2(g)—that, in order to perform its tasks, the community shall,

"ensure wide commercial outlets and access to the best technical facilities by the creation of a common market in specialised materials and equipment, by the free movement of capital for investment in the field of nuclear energy and by freedom of employment for specialists within the Community".

I have not taken the whole of the article, or of part 2(g), into the amendment, but rather the important post-Brexit part, which concerns the free movement of nuclear specialists. I will not make a long speech because I believe that this is self-evident. The Government have an industrial strategy around the nuclear sector: to expand it and for it to be part of where this country goes economically.

We have heard in previous debates that our most important need in the short term is to have a functioning safeguarding authority, whether that is Euratom or—as soon as that stops—our own Office for Nuclear Regulation. We need those bodies, and that body in particular, to function. We have a shortage of qualified people in this area and a shortage of specialists in the industry more generally—although the amendment is, because of the Bill, primarily around safeguarding. Therefore, it must be in the interests of the Bill, and of the country at large, to ensure that we maintain the mobility of those specialists in the nuclear industry and the nuclear sector, so that we maintain this benefit post Brexit and post our membership of Euratom. That is why the amendment is absolutely appropriate to the Bill and is of great importance not just to this sector but to our national security.

I very much hope that the Minister will be able to give a greater reassurance—perhaps higher up on my noble friend Lord Fox's Richter scale of assurances—than we have received so far that this area will be looked after by the Government, that we will not be browbeaten by the Home Office into having a minimal circulation of specialists, and that this country will benefit from those with the experience and skills that will enable us to perform in this sector, not just in safeguarding but in the nuclear sector more broadly. I beg to move.

Lord Warner: My Lords, I have added my name to this amendment because, like the noble Lord, Lord Teverson, I remain concerned about the industry's access to the workforce that it will need once the UK leaves Euratom. I suggest that the free flow of essential specialist staff could well dry up unless the Government are reasonably energetic in the guarantees that they give them. As the noble Lord, Lord Teverson, said, this is not just a safeguarding workforce issue; it affects the whole sector, as was very well brought out in the Nuclear Industry Association's briefing. I shall not go into detail on that but it is clear that we need a very skilled workforce coming to this country to help both in maintaining existing reactors and, even more significantly, in building new ones, as well as in the safeguarding area.

With regard to the regular reports that the Government will give to Parliament on progress in the safeguarding area, it is a bit disappointing that we did not manage to get into the Bill a specific reference to the need for an essential specialist workforce. I hope that the Minister will take this suggestion in the spirit in which it is offered, and perhaps he might encourage his officials, when they are producing these reports, to say something about the progress that is being made, particularly with the ONR getting the specialist staff that it needs.

6.15 pm

In conclusion, I would like to raise an issue which Ministers are usually keen not to talk about out loud—Immigration Rules. Successive Governments have been surprisingly flexible when they have been really up against it in getting specialist staff in certain capped sectors of our industries—no more so that in the NHS, where the Immigration Rules have been modified, bent and utilised to bring in specialist people when the country has had a shortage of them. In terms of this debate, what assurances can the Minister give us that the Government will not lose sight of the possibility of modifying the Immigration Rules where necessary to help specialist safeguarding staff to get into this country? I suspect that the industry would also like them to be a bit more flexible when it comes to areas where there may be problems—for example, in maintaining reactors or in getting the specialist skills needed to build reactors such as Hinkley Point C.

The Earl of Selborne: My Lords, for at least 20 years this country allowed its specialist skills in matters nuclear to run down. There was a failure by successive Governments to address the issues and determine what our attitude was to policy on nuclear generation, medical sciences and the like. Although things have improved a little in recent years, it is certain that we will depend on specialist skills from overseas. I doubt that it is really necessary to put this amendment on the face of the Bill, but I am absolutely confident that the Minister will agree that we will indeed need specialist skills. We must give an assurance to the industry that those specialist skills will be welcomed. Therefore, I am sure that, in responding to this short debate led by the noble Lord, Lord Teverson, the Minister can assure us that the Government will give due priority to those with the relevant nuclear skills.

Lord Hunt of Chesterton (Lab): My Lords, an important point about Euratom is that it had a research programme on connecting fusion and fission. A long-range problem in the nuclear industry is finding ways of dealing with nuclear waste. As the Euratom programme showed, one way of doing that in future would be to connect it to fusion, because fusion produces fast neutrons that can process waste and give it a shorter half-life. That is an extremely important issue, and the people who will be able to work on it will have a very broad range of specialties, not just the narrow range that experts have at the moment.

Lord Grantchester: I commend the noble Lords, Lord Teverson and Lord Warner, for bringing back this amendment on Report. It concerns an important issue: that the UK must address the skills that are needed in the UK. The problem of labour supply with the necessary skills beyond those present and available in the UK will need to be addressed by several industries—and none more crucial than the power industry, in relation not only to new build but to the continuing need for decommissioning.

EDF is certainly correct to identify the importance of the specialisms needed to deliver Hinkley Point C on time. The noble Lord, Lord Warner, drew attention to this and to the Immigration Rules. With restrictions on freedom of movement, currently no route is identified for the many categories of workers to enter the UK under the points system in order to fill the vacancies envisaged. It is crucial that the Minister's department underlines the importance of the issue to the Home Office and comes up with a solution. It will be needed in the best interests of the UK's civil nuclear industry.

Lord Henley: My Lords, I am grateful to the noble Lord, Lord Teverson, for moving his amendment, and for the contributions of other noble Lords. I accept that it will continue to be important to attract—as the noble Lords, Lord Hunt and Lord Warner, and my noble friend Lord Selborne put it—the brightest and the best, to ensure that we maintain our excellence in the nuclear field. This amendment, however, is somewhat more limited in scope than that. Our future immigration system will be set out shortly and it would not be right for me to go into it. As my right honourable friend made clear in his Statement on 11 January, we will ensure that businesses and communities, as well as Parliament, have the opportunity to contribute their views before any decisions are made about the future system that the Home Office will be developing.

Lord Fox: Can the Minister confirm that the issues rehearsed in this debate have been presented by DBEIS to the Home Office and the people drawing up these Immigration Rules?

Lord Henley: As I remember, the last time we debated this, by chance—I may be misremembering—a Home Office Minister was sitting next to me. I can confirm, however, that the Home Office is fully aware of the concerns expressed in debates of this sort, and we will make sure that it continues to be so. It is important to us that we continue to—as I put it—access the best talent. As the noble Lord will be aware, we have already doubled the number of available visas in the tier 1 exceptional talent review, and will be looking at changing Immigration Rules to enable world-leading scientists and researchers under the tier 1 route to apply for settlement after three years and to make it quicker for highly skilled students to apply for work in the United Kingdom after finishing a degree. We are, therefore, relaxing the labour market tests where appropriate.

The crux of this amendment, which relates to safeguarding staff—the Bill has been drafted in that way and so the amendment must be too—attempts to ensure the freedom of employment of specialists employed in that field. This is clearly a matter of particular interest in the light of the Government's preparations for establishing a domestic nuclear safeguards regime, which, among other important work, means securing the right quality and quantity of appropriate safeguarding staff in the Office for Nuclear Regulation. Given the importance of attracting the right staff to work in this specialist field, the Government are committed to ensuring that the ONR has the right personnel. I can give the House a bit of information: in the most recent recruitment round for two further posts in this field there were 112 applicants for the ONR to look at. We will continue to work with the ONR to ensure that it has the right staff to regulate the UK's new civil nuclear safeguards regime. Those figures show that there is no shortage, certainly in the world of recruiting and training the appropriate inspectors and building additional institutional capacity.

The noble Lord will not be surprised if I do not go into this, because he will then ask for further details. If I give him an assurance that the amendment is possibly itself defective and not suitable for inclusion, and he accepts that in spirit there is no need for it—since the Government are committed to ensuring that we have the right specialists and the Home Office continues to work in this field—I hope that he will feel able to withdraw Amendment 8.

Lord Teverson: I thank the Minister for his reply. It is good to have some figures: can we have more of them in these interactions around groups? I also remind the Minister that he regularly mentions the highly skilled and the talented. That may, I agree, be the case in nuclear safeguarding, but in a lot of Brexit areas, perhaps including some areas of the nuclear industry, the need is far broader. However, I take his point in regard to this Bill.

I also recognise that this issue will inevitably be fought out during the immigration Bill that we will eventually get. I am delighted that we will have another opportunity to debate Euratom in another Bill, to pursue sanity and perhaps get some change in this area. I therefore accept the noble Lord's challenge—as it were—and his assurances about taking up these issues in the future immigration Bill, which we continue to await with interest. In the meantime, I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Amendment 9 not moved.

Amendment 9A

Moved by ***Lord Teverson***

9A: After Clause 2, insert the following new Clause—

"Report on information technology systems necessary for nuclear safeguards

(1) The Secretary of State must, in respect of each reporting period, prepare a report containing information about the progress made to provide adequate information technology systems necessary for the United Kingdom to operate a nuclear safeguarding regime to international standards.

(2) The report under subsection (1) must include the progress on, and the estimated cost of, developing the following systems—

(a) a State System of Accountancy for and Control of Nuclear Materials;

(b) a Safeguards Information Management and Reporting System; and

(c) any other technology system necessary for the United Kingdom to operate an effective international nuclear safeguarding regime.

(3) A report under this section must be laid before both Houses of Parliament after the end of the reporting period to which it relates.

(4) There are four successive reporting periods, each of which is a period of 3 months.

(5) The first reporting period is the period of 3 months beginning with the day on which this Act is passed."

Lord Teverson: My Lords, in Committee I raised an issue that I do not think has been raised before, about the information systems required for the Office for Nuclear Regulation to perform its tasks acceptably as a safeguarding agency in the international system. I subsequently submitted a Written Question to the Government on this matter, and I thank the Minister, very genuinely, for a comprehensive and interesting reply—a very good one. In that regard, I almost feel that I have to apologise to the House for the long names in subsection (2)(a) and (b) of the amendment: the State System of Accountancy for and Control of Nuclear Materials and the Safeguards Information Management and Reporting System. The Minister informed me that these were needed to fulfil our international obligations.

I also asked what those systems would cost, less to understand the cost than the size of the task that needed to be completed within the next 12 months. I will quote from the Minister's Written Reply:

"ONR has estimated that it will cost £10 million to establish a UK SSAC and SIMRS"—

the two systems—

"is included as a part of this overall estimate. An initial tender opportunity in relation to the SIMRS is currently being advertised on the Government Digital Marketplace and responses to that tender will provide more certainty on estimated costs".

I do not know whether we already have the other system—I do not think so—but what concerned me particularly about that reply was that we are only tendering for one of those systems. It is clearly a significant cost—£10 million for both—but we are only just getting around to advertising them. From both my corporate career and my role in this House in scrutinising what the Government are up to, and government systems, I know that it is not the easiest thing to predict when IT systems will be ready, let alone functioning. We had a debate last week about the Smart Meters Bill and all the IT needed for that, and it is 12 years later that we have come to those particular systems.

My real question is a serious one. Clearly, from the Minister's reply, the ONR cannot function properly without these systems, but we are only at the stage of advertising just one of them. The size of them is at least £10 million and I feel very nervous that these systems will be ready when we need them to be ready on 29 March next year. That seems to be quite an ask. Therefore, with the amendment I am looking for some substantive reassurance from the Minister that this is under control and that it will be part of the Government's reporting mechanism between now and our leaving date for Euratom, so that we can understand the progress in this critical area—an area where, to put it lightly, the Government do not have the greatest reputation in terms of delivering such systems. I beg to move.

6.30 pm

Lord Warner: My Lords, I support the amendment, but I do not expect us to go for our hat trick of votes on it. I speak as someone who had the misfortune to inherit the NHS IT system as a responsibility. I also had some experience in the Home Office of IT systems. Things never work out the way that noble Lords think they will. They are usually delayed and they usually malfunction a bit when they are first introduced and used. My question for the Minister is: has he got a plan B and what is it, if this IT system does not come online to time? At the end of the day, the ONR will still have some responsibilities to discharge. If it does not have the IT system, how will it go about discharging its responsibilities?

Lord Fox: Following my noble friend Lord Teverson's excellent explanation for the reason for this amendment, on the long-named programmes and systems in proposed new subsection (2), can the Minister tell the House whether these are built on existing systems that are being adapted or will they be built from scratch? The Minister may have to write to me in answer. Also, on the nature of the IT companies delivering these, is there competition in delivering systems such as this or is this a very specialist area with a small pool to fish from and not much choice, which of course leads to price escalation?

Lord Grantchester: I thank the noble Lord, Lord Teverson, for raising the important issue of the information technology systems necessary for nuclear safeguards. I also saw the written Q&A from the noble Lord and I thank the Minister for replying so swiftly. In Committee, the importance of understanding the full inventory costs in IT management systems was debated. The Government clarified that the full implications of the mechanisms that the ONR will need to set up are matters that could be included in each report that the Government will undertake. It can only build confidence that Parliament will be reassured through any audit process that the UK's regime will be costed, reported and certified to be robust.

Lord Henley: My Lords, I am grateful to the noble Lord, Lord Teverson, for moving his amendment. He and the House really want two things. They want substantive reassurances and details of further reporting. I asked to have this amendment grouped with Amendment 6, which to some extent deals with this matter. We propose to put such reporting on the face of the Bill, and progress with the information technology systems required for the safeguarding regime will fall within that reporting duty. I hope that the noble Lord will feel that he does in due course get sufficient information. In the meantime, I will give an update about what is happening. As the noble Lord, Lord Fox, said, I might have to write with further detail later on, but let us see how the quarterly statements take place to see whether they provide sufficient information. If not, noble Lords can come back to me.

The overall system of safeguards is generally referred to as a state system of accountancy for and control of nuclear materials. The noble Lord referred to that in my original Written Answer. That is also known as an SSAC. The last time I came across SSAC it was the Social Security Advisory Committee, but that was in another world and another place. We will not go there now. As part of this, the ONR plans to put in place an IT system which it refers to as the safeguards information management and reporting system. I do not know how you pronounce "SIMRS" so we shall refer to it by its initials. The SIMRS is aimed at enabling the ONR to obtain and process the information necessary to ensure timely submission to the International Atomic Energy Agency of the reports required by any future safeguards agreements with the agency. The SIMRS will also enable submission of any specific reports required by supplier states as part of nuclear co-operation agreements.

The ONR has estimated that it will cost some £10 million—the figure I gave some weeks ago in Committee—to establish a UK SSAC, and the SIMRS is included as a part of this overall estimate. A pre-qualification questionnaire in relation to the SIMRS was recently advertised on the Government's digital marketplace. Sixteen suppliers responded, of which six have been invited to respond to the invitation to tender by 6 April. Responses to that tender will provide more certainty on estimated costs, and the ONR expects to let the contract in early May.

I of course take note of what the noble Lord, Lord Warner, warned about IT systems from his experience with the health service and the Home Office. We are all aware of problems that new IT systems can have. I do not think that what we are proposing here is on the scale of what the National Health Service needs, but I accept that there can be problems. We and the department have a duty to examine that as carefully as we can. I give an assurance that we will do that as far as is possible.

[Lord Henley]

Put very simply, that is where we are at the moment. We will keep noble Lords updated. We have accepted my Amendment 6, as amended by the amendment moved by the noble Lord, Lord Hunt. There is no need to further complicate the Bill's proceedings by adding this amendment, which duplicates what we already have. Therefore, I hope that the noble Lord will feel able to withdraw his amendment.

Lord Teverson: My Lords, I thank the Minister and welcome his undertaking that the IT systems will be included in the regular reporting. It would be useful if the Minister could answer my noble friend Lord Fox's question about whether they are starting from zero or whether we are effectively modifying existing systems.

Lord Henley: I give an assurance to write to the noble Lord, Lord Fox.

Lord Teverson: I welcome that and on that basis beg leave to withdraw the amendment.

Amendment 9A withdrawn.

Clause 4: Commencement

Moved by ***Lord Henley***

10: Clause 4, page 4, line 38, leave out "Section 3," and insert "Section (Report on nuclear safeguards), section 3,"

Amendment 10 agreed.

Amendment 11 not moved.

The Schedule: minor and consequential amendments

Amendment 12

Moved by ***Lord Henley***

12: The Schedule, page 7, line 3, leave out "76A(5) or (8)" and insert "76A(8)"

Amendment 12 agreed.

6.39 pm

Sitting suspended.

Free School Lunches and Milk, and School and Early Years Finance (Amendments Relating to Universal Credit) (England) Regulations 2018

Motion to Regret

6.45 pm

Moved by ***Lord Bassam of Brighton***

That this House regrets Her Majesty's Government bringing forward changes in entitlement to free school meals through the Free School Lunches and Milk, and School and Early Years Finance (Amendments Relating to Universal Credit) (England) Regulations 2018 which will undermine work incentives in Universal Credit and leave up to a million poor children unable to claim free school meals; and calls on Her Majesty's Government not to implement the Regulations until a full poverty impact assessment has been completed and considered by both Houses, and not before six months has elapsed (SI 2018/148).

Relevant document: 20th Report from the Secondary Legislation Scrutiny Committee.

Lord Bassam of Brighton (Lab): My Lords, I make no apologies for moving this Motion. I make it plain from the start that I see this in very personal terms.

Back in the 1960s, a time which brings happy nostalgia for many noble Lords, I was a teenager at secondary school, living with my mother and stepfather. Shortly before the start of the 1966 World Cup, he collapsed and died of a heart attack. I was just short of 13 years old and, frankly, my mother's world collapsed around her. She worked, as she always had. She was then a farm worker on a soft fruit farm that produced plants for sale all year round. She picked soft fruit in the summer months and then worked in the fields, greenhouses and packaging and distribution centre the rest of the year. It was hard, backbreaking work, sometimes with long hours.

The pay was regulated by the old Agricultural Wages Board. Her weekly take home pay was 157 shillings and six pence, the equivalent today of £7.85. The equivalent today, annualised, would be £7,152.60. With overtime, it would have risen close to the threshold set by the Government for cutting off access to free school meals. My mother would have faced a hard choice akin to those who face today a modern cliff-edge judgment. Like most teenagers, I found odd jobs to try to help pay my way, but in 1966 she was what we now call part of the working poor. In fact, until I did some research today, and assuming I have my sums right, I had not realised quite how poor she was.

There were not many silver linings for my mum becoming a widow and she struggled to cope, both financially and emotionally. Eventually, the local council transferred the tenancy to her. The loss of household income led to a housing allowance and, in turn, that triggered entitlement to free school meals. When my mother eventually got her head around it, she asked me to see if we qualified for something called family income supplement—it was a sort of universal credit of its time—but apparently we did not.

Why do I mention this, and why now? Free school meals were, for my mother, a godsend. They were not an add-on, they were an essential. She did not have to spend time packing a lunch for me and it meant I had a hot meal five days a week without her having to worry. It saved her time—if you are working poor, that matters—and it saved her money. That is what makes these regulations so abhorrent. The Government seek to dress up this change as something it is not. They say, as the noble Baroness, Lady Buscombe, did last week, that they are an act of state generosity because, when they roll out universal credit and it is complete, there will be 50,000 additional beneficiaries. This is not because the scheme is more generous; it is simply,

as the Children's Commissioner rumbled last week, because of an increase in the size of the school-age population by nearly half a million by 2022. In fact, as a percentage of the school-age population, fewer will be entitled to free school meals.

Studies show that the educational benefit of good eating habits are profound. Northumbria University's work on this suggests there is a real benefit in terms of educational attainment of a midday meal for those from low-income households. It was precisely because of this link that school meals were first introduced back in 1906 and why Labour has done so much to encourage breakfast clubs to ensure that kids get fed before the school day begins.

The Government are not making these changes out of the goodness of their heart. These changes are being made as part of the continuing austerity package. Will the Minister enlighten us this evening on the level of continuous savings they produce for the Treasury? However, we know the value of free school meals to individual households: £437 per child for a year and more than £1,300 a year for a three-child family where all are in education. Take those sums away and that represents a significant cut to family income.

We are supposed to be reassured by the transitional arrangements. No family should lose out if they currently receive free school meals except when they move to the next phase of schooling. On transfer from primary school to secondary school, you lose out, and you lose out when you transfer to sixth-form college. Perhaps the Minister can tell us how many will fall out of free school meals eligibility through that route each year. I ask this: how will it feel if you are in a family where the youngest child moves up to secondary school and loses their free school meals as a result of moving phases, but has a brother or sister still in receipt of free school meals? This is a divisive policy in families where some will get the benefit until they finish school and others will not. What are the total numbers who benefit now, and who will benefit at the real end of the rollout? Perhaps the Minister can give us a better and fuller picture of the long-term impact. The Children's Commissioner suggests that we will not know the difference until 2026 or 2027 because of the protections relating to the educational phases.

I have read the consultation document. At paragraph 4.4 it states that 90% of pupils currently getting free school meals will continue to get them. The 10% who will not amounts to roughly 110,000 children, a not insignificant number. Where is their transitional protection? In the White Paper on universal credit, the Secretary of State for Work and Pensions said:

"At its heart, Universal Credit is very simple and will ensure that work always pays and is seen to pay. Universal Credit will mean that people will be consistently and transparently better off for each hour they work".

The Children's Society argues that the introduction of the £7,400 earnings limit for free school meals creates a serious cliff-edge that fundamentally undermines that objective and will mean that many families actually become worse off overall by increasing their earnings. The society estimates that some 200,000 families with half a million children are at risk of falling into a new poverty trap where they seek to increase their earnings, or are forced to do so by their work coach, and they then lose the benefit of free school meals. It also estimates that a further 150,000 families with 400,000 children will find themselves in a position where they could be better off by reducing their earnings.

The best thing that can be said for the Government's consultation paper is that it is confusing. In it the Government tell us that 1.9 million pupils will be sufficiently in poverty for them to apply the pupil premium formula to schools. If they can apply this number to schools, why not to pupils in poverty? Another DWP report on households with below-average incomes 1994-95 to 2015-16 suggests 2.3 million and 4 million children living in poverty, yet only 1.1 million currently benefit from free school meals and even on the Government's best estimate, the figure will increase by just 50,000. The Children's Society states that up to 1 million children living in poverty will miss out, and, as the Children's Commissioner says,

"under any scenario, many hundreds of thousands and possibly well over a million children living in poverty are already not receiving free school meals".

The Children's Commissioner suggests that the Government should do four things. First, they should release the analysis behind what looks like a spurious claim for increased eligibility. Secondly, they should provide an estimate of the future number of pupils who will be eligible under a range of scenarios, including the old system of benefits-based eligibility, and the current system based on universal credit. Thirdly, they should provide impact assessments beyond 2022 to capture the full impact over the long term. Fourthly and finally, they should publish an estimate of the number of children who were previously ineligible for free school meals who will now become eligible because of the changes as compared against the number of 110,000 whose eligibility will cease as a result of the changes.

My Motion suggests that the Government should delay the changes for six months while they put their house in order, complete a full poverty impact assessment and place it before both Houses so that we get a complete picture. We should then consider these regulations again, otherwise they will penalise many of the working poor, people like my widowed mother who lived and worked in hard times and who asked for little. However, she needed a benign state not to penalise her, but to make life more tolerable so that she could just about manage.

Poverty does not make headlines, although it should. These regulations do nothing to solve the problems of modern poverty—rather, they surely make things worse. I beg to move.

Lord Storey (LD): My Lords, I thank the noble Lord, Lord Bassam, for tabling this Motion and I was moved by his opening comments about his own circumstances as a child with his widowed mother. For many people, in particular those whose children have left school, it may not seem important for us to debate a tiny piece of secondary legislation that tweaks the regulations about who will be entitled to a free school dinner. But this measure is about children, specifically those who most need our support: children living in poverty—children who through no fault of their own are not well fed, even in one of the wealthiest countries on this planet.

[Lord Storey]

For many children, the 190 hot meals a year they get in school, which on average comes to fewer than four a week, are the only "proper" meals they get. For them, a holiday from school is also a holiday from hot dinners. I can well remember Christopher, who I taught many years ago, telling me that he was always pleased to see the end of the summer holidays so that he could come back to a school dinner once more.

I am sure that we will hear from the Government about how the statisticians with their electronic slide-rules have worked out who should and who should not qualify for a free school lunch, to meet the demands of the small army of government accountants employed to deliver austerity. The reality is that hundreds of thousands of schoolchildren will, each and every one of them, pay the price for our meanness. Children in our poorest communities who are born next month, children whose brothers and sisters have benefited from a free school lunch, will not have that benefit. Why? It is because they will not be four years of age by April 2022.

Margaret Thatcher is remembered for many things, one of which was taking away free milk from children. Mrs May, I am sure, will be remembered for trying to take us out of Europe, but if these regulations get on to the statute book, she will also be remembered for taking away from many children their only hot meal of the day. Marie Antoinette is believed to have said "Let them eat cake" when she was told that the poor had no bread to eat. What will the Prime Minister say to poor children who have no free school meal?

The Liberal Democrats fought hard when in the coalition to deliver universal free meals for infant schoolchildren as we recognised the importance of a nutritious meal in ensuring that children are able to make the most of their education. These regulations, once universal credit is rolled out, will ensure that 1 million children will not be getting that free meal. Last week on 14 March, the Equality and Human Rights Commission published its final report looking at what the impact of changes to the tax and welfare system on families will be in the 2021-22 tax year. It found that children will be hit the hardest, as an extra 1.5 million will be in poverty. The child poverty rate for those in lone-parent households will increase from 37% to more than 62%, and households with three or more children will see particularly large losses of around £5,600. David Isaac, the chair of the commission, which is responsible for making recommendations to the Government on the compatibility of policy and legislation with equality and human rights standards, said:

> "It's disappointing to discover that the reforms we have examined negatively affect the most disadvantaged in our society. It's even more shocking that children—the future generation—will be the hardest hit and that so many will be condemned to start life in poverty".

We cannot let this continue if we want a fairer Britain. Appalling though this picture is, I am pretty certain that it does not take into account the additional impact on many poor families of these changes to the free school lunch regulations.

When I taught infant schoolchildren, if they occasionally misbehaved, I would say that I was sad in my heart. I am sad in my heart about these regulations and I regret the lack of humanity that these changes to the regulations demonstrate. Our children are our future and we must cherish and nurture them. On top of the negative impact on children of the tax and welfare reforms, this change adds insult and hunger to injury.

7 pm

Lord Patten (Con): My Lords, I do not have a flinty heart, but I am not oversentimental. However, I was moved by what the noble Lord, Lord Bassam of Brighton, said about his own circumstances and his hard-working mother and how people in working poverty suffer. I do not think there is anyone in this House who is not concerned about poverty and about dealing with it properly. But that always has to be based on fact and not on sentiment. What strikes me about what the noble Lord, Lord Bassam of Brighton, said in his speech is that there is a huge gap, not just in alleged or asserted numbers but in credibility, between the alleged 1 million child losers to whom he referred and the assurances given, for example, in a Parliamentary Answer by my noble friend Lord Agnew of Oulton earlier this month that by 2022 there will be an increase in the number of children getting free school meals. There is a seven-figure difference between the Answer from my noble friend and the figures of the noble Lord, Lord Bassam. I am all in favour of building bridges —I would welcome building a bridge with the noble Lord, Lord Bassam of Brighton, if I got the chance—but there is an unbridgeable gap here; a seven-figure gap.

The noble Lord may wish to reflect on his own time as a distinguished Labour Chief Whip. In Division after endless Division, he clicked away, totting up the votes, with the ever-helpful learned clerks counting up on their devices as a back-up—we all like our statistical fact checkers, and there is no hiding place for the eventual numbers of the contents and the not-contents. Yet there are lots of independent authorities which say that his figures asserting massive losses of free school meals are—forgive my uncharacteristic bluntness—wrong. Unlike some of my colleagues, I like experts, and these authorities and experts range from the UK Statistics Authority, which makes it clear that claims that universal credit causes poverty are wrong, through to the "Channel 4 News" FactCheck, which pointed out that no child currently receiving free school meals will lose their entitlement, but rather that more will benefit from the changes.

So, while I understand the strength of feeling, it seems that we have seen the noble Lord, Lord Bassam, with his new-found arithmetical freedom, transmogrify from being an obsessive bean counter—or perhaps I should say Peer counter—of those voting content or not-content into what some might think to be a statistical tearaway, albeit in a good cause. I do not doubt that it is a good cause, but, in the end, hard facts, rather than what some would think of as exaggeration, are best to rely on.

I certainly wish to see all children in all households that are in need get help. But if all children of all households on universal credit were to get free school meals, we would be talking about a cost of billions, and I am not making that up. I wonder what the shadow Chancellor of the Exchequer thinks about that.

By comparison, I congratulate Her Majesty's Government on what they are doing. All children in years 1 and 2 will continue to get free school meals—this was not mentioned in the debate—and no child will lose out as universal credit is rolled out. With respect to the noble Lord, these are facts rather than assertions.

The Earl of Listowel (CB): My Lords, it is good to hear the noble Lord, Lord Patten, recognising that on all sides of the House we are very concerned about the just-managing families. Two-thirds of all children in poverty live in working families that are working hard to make ends meet and to do the best for their children. It was encouraging to hear the Prime Minister talk so strongly after the Brexit vote about reaching out to those just-managing families in need. So I hope that the Minister will take this golden opportunity offered to us by the noble Lord, Lord Bassam, to give moral support to children and families in poverty today, and to say from the Dispatch Box that, yes, there may be difficulties, but he will look at how we can ensure that all children in poverty get a free school meal.

This morning, I spoke with a mother who endured poverty for several years. She was a victim of domestic violence; she was in a refuge for three months; and, last year, she spent six to seven months in bed and breakfast accommodation, living in one room with her teenage daughter and infant granddaughter. That was a hugely challenging time for her and she needed her friends around her to give her moral support. This morning, she told me that she had been successful in a visa application. She is now in a financially better state, and has found a new relationship with a good man. We need to give support to families when they are struggling through difficult times—and these are difficult times for so many families after years of austerity. Her issue is extreme, but many of the families we are talking about will be suffering severe housing problems. Increasing numbers of children are growing up in bed and breakfasts or hostel accommodation, and even those with more secure accommodation lack clear security of tenure.

Over the weekend, as your Lordships will have heard, a British teacher won the accolade of best teacher in the world. She talked of her experience in Brent, where she was very concerned about housing—so many children living in an overcrowded home and having to work in the bathroom to be able to concentrate.

These families are coping with the stress brought about by years of austerity. They have lost their early intervention services as local services have been cut. This is an opportunity for the Government—yes, perhaps a difficult one—to think about how we can offer moral support to those families. Often, it is mothers bringing up their children on their own, and, as the noble Lord, Lord Bassam, said at the beginning of the debate, giving them the confidence that their child will have a good, healthy, hot meal at the beginning of the day gives them one less thing to worry about. Surely we can reach out to these families and offer them that help. I hope that the Minister will give us that assurance today.

The Lord Bishop of Portsmouth: My Lords, it normally gives me great pleasure to speak in your Lordships' house, but this evening I speak with some sorrow. I am hoping that the proposals made by the Government—involving, I am sure, the Treasury, the Department for Education and the Department for Work and Pensions—are perhaps the result of the complexity of those interlocking interests and have inadvertently left what surely cannot be intended. The consequences of this policy run counter to everything that the Government have said about the principle of universal credit, which I and many others have supported. If the consequences are unintended then I shall be delighted and relieved to hear the Minister say so.

I have looked at these regulations and concluded that they drive a coach and horses at some speed through the defining principle of universal credit—a principle I wholeheartedly endorse—that work should pay. They create an arbitrary cliff edge at a low-income threshold, off which many risk falling. For working families just below the current threshold, this proposal would very clearly not make extra work pay. They would be better off not seeking more paid work and leaving their children on free school meals, unless their family income increased by some considerable margin. Those just above the threshold will be worse off under the regulations, facing school meal charges. They would be better off working less. That is at best an anomaly, but I am tempted to describe it as an absurdity.

I do not, however, see this as pointing to a flaw or a contradiction in policy design. Rather, it points to the real, pressing and increasingly difficult circumstances that, over the years, families will face. More often than not, this will affect people who are already in work who earn very little—people whose weekly budgets already have little or no slack.

Some Members of your Lordships' House may recall that recently I chaired a briefing for Members of both Houses. A number of your Lordships may remember Clare, who spoke to us. Her oldest child currently receives free school meals. She and her husband do not want to live on benefits, credits or allowances; they want to get on and get up. Clare's husband had been made redundant, and after 18 months volunteering in a local school he now works as a teaching assistant and earns £8,000. Clare had worked for 15 years as an NHS dental nurse, but her clinic closed. I quote Clare with her permission. She said:

"We both never, ever thought we would be in this situation. We feel terribly ashamed to have to rely on help".

Clare is retraining as a solicitor. When she has done so, her husband will complete his own retraining as a teacher; both will incur significant debts. Hers will be £56,000. Clare told me that they have many working years ahead of them and look forward to a future in which taxes are spent helping the vulnerable in society. She feels blessed to live in a society that has a safety net in place for them and others facing short-term difficulties.

These regulations will not help Clare and those like her overcome these short-term challenges. They will add to them and hinder her from creating a long-term future for herself and her family, because Clare has no slack. She told us her family of four,

"survives on £10 a day for our food and petrol … with no luxuries".

Clare does not understand how the figure of £7,400 has been arrived at. Nor does she understand how introducing an earnings threshold as low as that could

[The Lord Bishop of Portsmouth]
possibly benefit people in her situation. I do not understand either. She knows her eight-year-old daughter will, for now, continue to receive free school meals, but what of her son, who starts school in September and other children of their ages? As she observes, initially it seems nobody will lose out, but in the long term more and more people—and more specifically, more and more children—will.

We are potentially creating anxiety, even despair, when we should offer hope and support. We are creating a cliff edge so that work does not pay. The job of this House is often to ask the Government to think again about what may be the unintended consequences of policy. The outcomes of this one are severe. I ask the Government to think again this evening, and I do so from the bottom of my heart.

Baroness Sherlock (Lab): My Lords, in his very moving opening speech, my noble friend Lord Bassam quoted Iain Duncan Smith when he was Secretary of State, saying that universal credit would always make work pay and people would be better off for every hour they work. I want to focus specifically on the question of work incentives. I reassure the noble Lord, Lord Patten, that I trade in facts, which I offer to the House for its consideration.

Iain Duncan Smith's quote was not a throwaway comment. It was in the foreword to the White Paper which explained why the Government were planning to abolish all the main means-tested working-age benefits and replace them with universal credit. That process is now ongoing. It has had its challenges, as we all know. There have been problems with the system and computers, design and implementation challenges and severe delays. It has been subject to repeated budget cuts with the result that it has gone from being what was originally designed as a benefit to claimants to being a net saving to the Treasury. The whole point of this enormous exercise, which will eventually include some 7 million people, was that it would always "make work pay". Even small amounts of work and every extra hour would pay. That quote was the aim of the system in a nutshell.

Yet this SI reintroduces the mother of all cliff edges into universal credit. At the moment, if parents work, there comes a point when they lose free school meals, but at that point they gain access to working tax credit, which is worth more. Under this system it would mean if a parent were offered a pay rise—like the mother of the noble Lord, Lord Bassam—or the chance of an extra hour a week working which would take their earnings over a cash limit of £7,400 a year, they would either have to turn that down or take it knowing their children would all lose free school meals.

The excellent briefing from the Children's Society and the CPAG modelled the impact on a single parent in 2022 at the then-expected minimum wage raising two children in a rented house. She wants to raise her hours from 12 to 16 a week, exactly the kind of thing universal credit is meant to help. Her earnings would go up by £1,893 a year but she would end up £174 worse off by the time she had lost universal credit and free school meals. Other families would actually be better off by cutting their hours or taking a pay cut. This undoes all the progress made by tax credits and all the aims of universal credit of getting away from precisely those problems in the old-fashioned benefit system. Does the Minister acknowledge that there is a problem here?

7.15 pm

Universal credit has an in-work conditionality system in it for the first time. That means that people who have a job can still be forced to take more hours or to take a better-paid job. That makes people worried. What happens if a single parent is put in a position where she could be forced to take more hours or take a better-paying job but in doing so would lose free school meals and actually be worse off?

When this SI was debated in another place, that question was put to the Secretary of State, Esther McVey. She said that,

"we will not seek to put someone in a less advantageous situation. Therefore, if people look at the money that is coming in and the extra support that is coming from school meals, they can see that we will not seek to do that to an individual. A work coach will be working with individuals to help them to progress in work, so that they are in a better situation".—[*Official Report*, Commons, 13/3/18; col. 764.]

Will the Minister confirm to the House today that this means that no claimant will be sanctioned for refusing to increase their earnings if the result of doing so would actually make them worse off? If he cannot do that, will he please write to me to confirm?

I hope that is true, but even if it is, how then—in the Secretary of State's words—can parents "progress in work" if they cannot afford to take a pay rise or take more hours' work? I thought the whole aim of universal credit was to help people get into work, move up and through it and eventually lift themselves and their families out of poverty or off universal credit. We are putting back in an enormous cliff edge right into the middle of the system. Can the Minister tell the House how that is meant to help achieve the Government's objective of making sure that work always pays and people can progress out of poverty through work?

Absolutely finally, I want to say a word about numbers. I am not going to get into the game, but I want to challenge the Government to give the House some facts about where exactly the figure of 50,000 more children getting free school meals has come from. As well as the point made by my noble friend Lord Bassam, the Children's Commissioner pointed out that simply on children's numbers alone there will be another 500,000 kids by 2022 so you would expect more people to be getting free school meals.

Also, 2022, the date by which these 50,000 extra children will get free schools meals, is not a random date; it is when universal credit will finally be rolled out. Can the Minister tell us whether it has been chosen because it is the high-water mark, where as well as those who will qualify under the new system, there is the maximum possible number of people getting transitional protection from inside universal credit? Therefore that number includes people who will go on to lose free school meals when their children's circumstances change or when their kids move from primary to secondary school. Children who start school the day after universal credit is rolled out will not get free school meals if their parents earn the same as

parents on transitional protection. I say to the noble Lord, Lord Patten, that he needs to look very carefully at the brief he has been given by the Government because it obscures as much as it reveals.

This would have been made clear had the Government produced a proper impact assessment which compares, as it would usually do, the number of people who would get free schools meals in steady state in the new system with those who would get them in steady state before reform, in other words without transitional protection. They have not done that and the Children's Commissioner has called out the issue and asked the Government to reveal all the analysis behind the 50,000 figure and also to provide estimates of who will benefit or lose out in different categories under universal credit and the current system before and after 2022. Unless Ministers agree to do that, or to answer the repeated requests by my honourable friend Ruth George in another place—who keeps asking for figures to explain who is going to be included in this 50,000—I am afraid to say we must treat the figures with some concern.

My basic concern is that this proposal—as the right reverend Prelate the Bishop of Portsmouth has said—drives a coach and horses through the whole aim of universal credit. The Government have taken most of the working-age benefit system, thrown it up in the air, at vast cost, at huge disruption, and for what? Just to bring back in the biggest cliff edge we have seen in the system in decades? Surely this cannot be right. Will the Government think again?

Baroness Walmsley (LD): My Lords, I too echo the concerns of the noble Lord, Lord Bassam, about the Government's proposals to introduce an earnings threshold for eligibility for free school meals and milk. This is very unfair, because it takes no account of the number of children who the parents have to feed. It is a cumbersome way of doing things which will make it very difficult for families to plan their budgets and, as we have heard, will cause a poverty trap for many. This comes on top of recent cuts in benefits which have already made many working families worse off and the food banks busier.

Let me say first why free school meals are so important. There is plenty of research showing that nutrition levels in school meals are vastly better than those in either the average packed lunch, only 1.6% of which reach the same nutritional standard, or certainly those in a cheap bag of chips and a fizzy drink from the shop on the corner. One of the best services we have for school-age children is the provision of a nourishing meal at lunchtime. For some children in poverty, this is the only decent meal they will get all day, and it is essential that it is provided for them if their parents cannot afford to pay. Many teachers will tell you that they have children in their class who come to school without any breakfast. One local authority has taken this so much on board that it has decided to offer free meals for poor children every day of the year. That is because teachers notice evidence of malnutrition in some children when they come back to school after the holidays.

A nourishing, balanced meal containing fruit and vegetables is important not just for the health of the child, providing the vitamins needed for healthy growth and helping to prevent obesity; it is important also for the child's behaviour and academic attainment. Pilot studies on the effect of universal provision of free school meals for key stage 1 children when they were introduced by the coalition Government showed a distinct improvement in behaviour, and attainment advanced by as much as two months. This was particularly so with children from disadvantaged backgrounds. So it is clear that free school meals are one of the major tools in our armoury for closing the attainment gap between the rich and the poor.

The main objective of our education system must be to help all children attain their maximum potential, and good nutrition is one foundation of this. A hungry child is not a learning child. Anything that has the potential for reducing the number of poorer children who receive such meals should be rejected. Indeed, we should provide free meals for more children, not fewer, because a free meals regime increases uptake, decreases stigma and reduces the number of children bringing in sandwiches and biscuits or going to the chip shop. That in turn improves the attainment of all children.

The Government have told us that 50,000 more children will receive free meals under the new regulations than under the old and promise that no child already on free school meals will lose their meals while at their current stage of education. The problem with that is that children grow up. They get to the end of primary school or secondary school and, suddenly, children who were formerly eligible for free meals will no longer get them. There needs not to have been any change in their parents' earnings for this to happen because there is now an earnings threshold which takes no account of the size of the family.

Every mum and dad knows that it takes twice as much money to feed two children as one, and three times as much to feed three. That is £10 a week for lunches every week of term, or £20 or £30 for bigger families, which could easily be enough to make it not worth taking a few extra hours' work. Where then is the fundamental work incentive that is supposed to underpin universal credit? Where now is the mantra "making work pay"?

I am not going to go through the case studies in the briefing, as the noble Baroness, Lady Sherlock, has already done so, but there is clear potential for making a lot of families worse off. The Government need to look at the disposable income of a family once the 63% withdrawal of universal credit for every extra pound earned has been taken account of and school meals paid for. If they do that, they may come up with a fairer system.

School lunches are not a luxury; they are an essential of life for those families who find it hard to feed their children. Of course, we are talking not only about meals; many other passported benefits are linked to free school meals which help make bringing up children bearable. They currently include the early years pupil premium. I beg the Minister to decouple that at the very least, because, again, it is in the interests of closing the attainment gap.

Universal credit was supposed to avoid the cliff edge and make it worth while going to work. By introducing a lower earnings threshold, the Government are creating

[Baroness Walmsley]
a cliff edge at a very low earnings level where it will hurt most and undermine the whole point of universal credit. In doing so, they are putting at risk the health and academic attainment of the poorest children. Will the Minister please think again?

Lord Lexden (Con): My Lords, the noble Lord, Lord Bassam, made his case with characteristic vigour and force, and with deep feeling as he recalled life in the 1960s in a part of Essex with which I was very familiar myself. The Motion states that up to 1 million poor children could be deprived of free school meals as a result of government policies. As my noble friend Lord Patten has shown, independent experts have urged us to treat this truly alarming prediction with considerable caution. We should be wary about rushing to the conclusion that a crisis is in the making.

It is accepted on all sides that the introduction of universal credit throughout our country, so vital in helping more people into jobs, will affect the number of children eligible for free school meals while ensuring that poor families, whose needs must be safeguarded, remain at the centre of policy. Interim arrangements were announced last summer to secure free school meals for all pupils whose parents were at that time recipients of universal credit. Future recipients will be subject to a means test as regards the provision of free school meals to their children. There is nothing new or unexpected about this. It has been a feature of the plans for this major, constructive reform of our welfare system since 2013.

What are the implications? The Department for Education estimates that, in the years ahead, some 50,000 more children will be entitled to a free school meal than under the arrangements which universal credit is replacing. That is welcome reassurance, but the Government should perhaps consider some form of monitoring. I wonder whether arrangements could be made to publish at regular intervals between now and 2022 authoritative figures for the number of children actually receiving free school meals so that the effects of this hugely significant change of policy can be assessed. We need to be sure that the poorest families in our country continue to receive the help they need.

Lord Freud (Con): My Lords, I want to pick up on two statements made by the noble Lord, Lord Bassam, one of which I agree with and one of which I do not. The first and possibly more substantial statement is the claim that 1 million children will lose out and that the new threshold of £7,400 changes where the line is between when people have free school meals and when they do not. This figure was chosen to try to find the right level for continuing to make that provision, so I disagree with the noble Lord there.

However, where I agree with the noble Lord, as well as the noble Baroness, Lady Sherlock, and the right reverent Prelate the Bishop of Portsmouth, is on the disincentivising effects of what is almost the only cliff edge—rather than a cliff edge, it is almost a waterfall effect; it is more waterfall than the cliff edge that we are used to. Nevertheless, it is there. SSAC produced a report four years ago, which I commend to the House, looking at what we could do with passported benefits generally in order to incorporate them within universal credit and eliminate not just free school meals—there are others, such as prescriptions—and put them within the taper in a way that did not have a cash-flow impact. The report suggested a structure that the DWP response endorsed.

As SSAC pointed out, we have the most passported benefits of any country—they have proliferated—and we need a mechanism to add to universal credits and put them on a taper so that we do not have a disincentive effect. The DWP and this House care about disincentivising work, but other departments do not—they worry about feeding children and so on—so it is important to keep up the pressure in the years to come so that we do not allow these cliff edges or waterfalls to be reincorporated into the system. To do that we will have to design a way of putting the passported benefits into universal credit.

7.30 pm

Baroness Lister of Burtersett (Lab): My Lords, I am very pleased to follow the noble Lord, Lord Freud, because it fits well with what I want to say—but first I pay tribute to my noble friend Lord Bassam for his powerful introduction.

The Government have prayed in aid the report of the Social Security Advisory Committee to suggest that there is not a problem about work incentives. Last week in Oral Questions the noble Baroness, Lady Buscombe, said that when SSAC looked at the issue it found that there was no rigorous research evidence to show that the provision of passported benefits acted as a work disincentive. I am not sure whether the Ministers have read the report—I have it here; it is a right door-stopper—but it actually says that very little is known, which is slightly different.

However, the response to SSAC from the coalition Government was interesting. It said in its introduction to the report:

"The coalition Government endorses the SSAC's view that the design of passported benefits under Universal Credit can have a key impact on incentives to work ... SSAC notes that there is mixed evidence about the impact of passported benefits on work incentives. However, it is important to highlight that the responses gathered in the review focus on the impact of passported benefits within the current benefits and tax credit system rather than the impact under Universal Credit. This is an important distinction as, currently, at the point some passported benefits are withdrawn, recipients often receive an increase in working tax credits that helps compensate for the loss of the value of the passported benefits".

Quite—as my noble friend Lady Sherlock pointed out. But this was ignored by the Secretary of State when last week he told the House of Commons that there had always been a cliff edge. He seemed to interpret that as meaning "meal or no meal".

SSAC's fears have been borne out by the analysis by Professor Jonathan Bradshaw and Dr Antonia Keung, the Children's Society and the Child Poverty Action Group—I declare an interest as its honorary president—which has already been referred to. I look to that report also to address a point made by the noble Lord, Lord Lexden. We have always known that what is happening currently is an interim arrangement, that is true, but the SSAC report was six years ago, in 2012. It is not surprising that some noble Lords have forgotten about that, because it was a long time ago.

However, the Government also said then that they would consult on new criteria that year to put in place the new system in October 2013. We have had to wait six years. What took them so long? I suspect that it was because they could not find a way round the cliff-edge problem, because SSAC repeatedly drew attention to the fact that if you go down the route of introducing an income threshold it creates a cliff-edge problem. It did not have an answer to it because there is no answer if you are not prepared to pay for free school meals for all those on universal credit. As has already been said, that undermines the foundational principle of universal credit. Perhaps that is why the noble Lord, Lord Freud—who did so much work on that benefit—is so concerned.

Yes, the Government made this clear in 2012—but the living standards landscape is very different from what it was then. For example, we did not know then that there was going to be a two-child limit on benefits for families. We did not know then that universal credit was going to be subjected to cut after cut. The CPAG has suggested that the average loss for working families on universal credit will be more than £400 a year. We did not know then that working age benefits were going to be frozen. Child benefit is particularly relevant here. Professor Jonathan Bradshaw kindly did some calculations for me—I am not very good at calculations—and calculated that for a two-child family child benefit is worth £2.66 a week less than it was in 2012 when the Government first suggested that they were not going to give it to everyone on universal credit. It is £5.44 less if we go back to 2010. That is in the context of the Resolution Foundation pointing out that for a two-child-plus family, child benefit is less generous than at any point since it was fully introduced in 1979. So, as they say, when the facts change, perhaps the policy should change as well.

Many of these matters come down to how things work in practice, so perhaps I may ask a few practical questions. We know that the earnings of people at the lower end of the labour market fluctuate repeatedly. The Government have addressed how they are going to estimate what those earnings are, but if they are going to be recalculated every month—as in the briefing referred to by the right reverend Prelate from the representatives of the Children's Society—this will be an absolute nightmare. I cannot see any reference to what will happen to people on zero-hours contracts or self-employed people. Can the Minister explain how their earnings will be calculated?

On the point made by the noble Baroness, Lady Walmsley, have the Government given any consideration to decoupling free school meals eligibility from pupil premium eligibility? As I understand it, it is the latter that costs so much, not free school meals. So it would be possible to pay for free school meals for everyone on universal credit at not a huge extra cost and treat the pupil premium separately.

Finally—I hope this is not too cheeky—when the Minister responds, will he respond to what has actually been said here today? Last week in Oral Questions I got the sense that officials had expected us to say the same things that had been said in the House of Commons the day before. We did not, but that was what the response was to.

I say the same to the noble Lord, Lord Patten. My noble friend Lord Bassam made it very clear what he was talking about. He produced facts from the Children's Commissioner which showed that the facts that the Government have been presenting over and over again—that 50,000 children will be better off—are fake facts, to quote a certain President. So let us get our facts right and address what people are saying in this House rather than what we expect them to say.

Lord Polak (Con): My Lords, I also pay tribute to the noble Lord, Lord Bassam. His words about his experiences and circumstances as a child were very moving. However, change is often difficult to deliver. As George Bernard Shaw said, progress is impossible without change, and those who cannot change their minds cannot change anything.

The introduction of universal credit transforms the benefits system by making work pay. At the same time, public resources can be targeted at the families most in need, and that must include setting a threshold for free school meals.

I was particularly struck by the contribution to the debate in the Commons by my honourable friend the vice-chairman of the Conservative party Maria Caulfield. She too talked about her experiences of being brought up in a working-class background where there was no hope and no ambition for working-class kids other than a future life on benefits. Universal credit, I am sure noble Lords will agree, will help such families and such individuals. I will not repeat the arguments made and the reply to the Labour smears of last week; suffice it to say that as a result of the changes we are told—facts—that 50,000 extra children will get free school meals by 2022. I have called them facts; we cannot call them facts because only in 2022 will we know the real facts on any of the projections, but those will be as a result of changes brought about by the Government. As Maria went on to say last week, what some Labour Members did was to spread fear in a political, point-scoring way and use working-class families, shamefully, as a political football. That was clear. It was clear if you read what was in the press.

I was absolutely sure that it must be right that free school meals are intended for the most disadvantaged families on low incomes. Thus, targeting taxpayers' money at those most in need is the right thing to do. I support the Government's position, which is good for all, and I remind those who will not accept change of the words of the late Harold Wilson:

"He who rejects change is the architect of decay. The only human institution which rejects progress is the cemetery".

Lord Watson of Invergowrie (Lab): My Lords, I thank my noble friend Lord Bassam for opening this debate so effectively and, like other noble Lords, I was certainly moved by his personal story. These regulations have brought widespread resistance from opposition parties and Cross-Benchers, as evidenced in this debate, as well as from the children's welfare and education sectors in recent weeks and months. Apart from the effects of the regulations, anger has increased with the realisation that, inexplicably for such an important matter, no impact assessment was carried out by the Government. Can the Minister explain why?

[Lord Watson of Invergowrie]

I agree with the wording of the regret Motion regarding a six-month delay while that impact assessment is carried out; if it was not seen as necessary at the start, when the Government first devised these regulations, it certainly is now, because of the issues that have been raised in debates in the other place last week and in your Lordships' House this evening. When they were debated in the other place last week, when the Opposition prayed against them, the Government lost the argument that day but fended off the Motion to Annul with the help of the Democratic Unionist Party—hardly surprising, since the Prime Minister had enlisted their support, I would say cynically, by producing a rabbit from a hat by announcing that the regulations will not apply in Northern Ireland. The Government have no such cover in your Lordships' House.

As noble Lords have said, not receiving free school meals would cost a family around £430 a year for each child. Labour policy is that the children of all families in receipt of universal credit should receive free school meals, and of course that comes at a cost. However, not providing free school meals to the children of families stuck in poverty despite one or both parents being in work also comes at a cost, a cost of a different kind, because a key issue from the education point of view is that free school meals often act as a passport to other support, such as help with school clothing, trips, music lessons or discounted access to leisure facilities. This means that entitlement to free school meals can be worth significantly more to struggling families than the direct value of the meal itself.

The Government say they want to target the families that need free school meals most, and that is understandable and perfectly acceptable, but what about the families that may need it slightly less, but nevertheless genuinely need the benefits of free school meals? The Minister may not appreciate this fact, nor indeed some of his colleagues, but for too many children in poverty, free school meals are the difference between getting a hot meal during the day and going without. As the noble Baroness, Lady Walmsley, and my noble friend Lady Lister said, teachers know only too well that an undernourished child is in no fit state to be taught effectively. The Government should adopt the policy of the Opposition and support all children living in poverty by continuing with the transitional arrangements.

The government position is that it would cost too much: by most estimates around £3 billion a year. But if free school meals were decoupled from universal credit, as other noble Lords have suggested, and as has already happened with infant school meals, which are universally free, then the cost would be substantially reduced, probably to around £500 million a year. That is not an insignificant amount of money, I am not suggesting it is, but is the Minister going to get to his feet and tell your Lordships' House that his Government cannot afford that relatively modest amount to ensure that children from poor in-work families—I repeat that these are in-work families—are provided with a nourishing meal each school day? If so, then the Prime Minister's claim to be supporting the "just about managing" will be demonstrably empty rhetoric. If their aim is to target the families that need free school meals most, the Minister has to answer the point made very well by the noble Lord, Lord Storey, as to how children should be treated during school holidays: in many cases they suffer considerably without any access to free school meals in that period.

7.45 pm

As my noble friend Lord Bassam outlined, without the safety net of the current arrangements there will certainly be losers. Indeed, the Government have acknowledged that 10% of children eligible for free school meals under the benefits system existing prior to universal credit will no longer qualify. That amounts to a very significant number of children, around 110,000, whose families will be that £430 per child worse off. Does the Minister have any message for them? As my noble friend Lord Bassam asked, where is their transitional protection?

The Government are also being disingenuous at best by estimating the figure of 50,000 additional children that has been mentioned by many noble Lords this evening—not least because, in response to questions, they have consistently failed to show their working on that suspiciously rounded figure. On one point and one point only I agree with the noble Lord, Lord Polak. He said a few minutes ago that we will not know, even in 2022, what the actual figure is. That is correct and the point was made by the Children's Commissioner in her very clear briefing, where she says it will probably be five years after 2022 before we know what the final figure is.

The Children's Commissioner reckons that the Government's 50,000 figure is actually an underestimate and it should be nearer 75,000—bear in mind that it is still an estimate. That may sound like good news for the Government, but it is not, because the use of "additional" is wrong. These children are not gainers who would have been denied free school meals under the old system; it is simply that, as many noble Lords have said, the school roll is rising. With 13% of children receiving free school meals, when the school roll rises that figure will go up on a pro rata basis. I do not understand, frankly, why the Government could not have said that, because that is the case. They have chosen not to do so, but it has been made quite clear by the Children's Commissioner and we are grateful to her for that.

If one of the principal aims of the introduction of universal credit—after simply saving money of course—was to ensure that additional earnings would always leave families better off, the related issue of the cliff edge has been clearly set out by my noble friends Lady Sherlock and Lady Lister. I have to say that I am always amazed that they speak fluent DWP-ese, which I certainly do not. It is a very complicated issue and I give them credit for setting the stall out very clearly. You cannot expect people with different departmental responsibilities to have the grasp that they have and I thank them very much. The bottom line is that what the Government are proposing directly contradicts their stated aim for universal credit, which is to make work pay. As has been clearly shown, there are many situations where that will not happen in the future.

It was only last week that we learned that the regulations will not apply in Northern Ireland. A teaching assistant in England working part-time and earning

£8,000 a year will not be eligible for free school meals under the Government's plans, but that person would be in Northern Ireland. The threshold for free school meals there will be almost twice as high, at £14,000. There has been no explanation as to why hard-working parents in England do not deserve the same level of support; perhaps the Minister can fill that vacuum today. Frankly, I doubt it.

I finish by saying that there are three main reasons why these regulations should not be approved this evening by your Lordships' House. First, as I have said, the Government have been unable to provide justification for the figures that they bandy around as to who will be the so-called gainers from the introduction of the threshold, while providing no transitional support to the people even they admit will be losers. Secondly, the new arrangements for enrolment will place unacceptably arduous burdens on overstretched school administrative staff. There should have been a system of auto-enrolment to make that much more manageable. Thirdly, the regulations tear into little pieces the Government's much-trumpeted claim that:

"Universal Credit will mean that people will be consistently and transparently better off for each hour they work and every pound they earn".

The cliff edge caused by the introduction of an earnings limit will be the very antithesis of that work incentive, as set out clearly by the right reverend Prelate the Bishop of Portsmouth and I think—although he may say I am quoting him wrongly—by the noble Lord, Lord Freud.

For those reasons, these regulations are not fit for purpose and not fit to be approved by your Lordships' House. The Government must think again. Should my noble friend Lord Bassam decide to test the opinion of the House on his regret Motion, he will have the enthusiastic support of these Benches.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, I congratulate the noble Lord, Lord Bassam of Brighton, on securing this important debate. I also thank many noble Lords for their contributions today. I will attempt to deal with the important points raised. This Government are committed to providing a healthy free school meal to the most disadvantaged children. I reassure the House that, contrary to some reports, no child will lose a meal as a result of these changes. In fact, more children will benefit by 2022 compared to the previous system.

Let me discuss the technicalities behind these regulations. As your Lordships will be aware, we are reforming the welfare system to ensure that work always pays by replacing a complex and fragmented system with one benefit—universal credit. Since April 2013, all families receiving universal credit have been entitled to free school meals. As my noble friend Lord Lexden said, we have on several occasions flagged up that this was a temporary measure—for example, in the Social Security Advisory Committee report on passported benefits in March 2012 and as repeated in April 2013. As the national rollout of universal credit accelerates, we are replacing this temporary measure with clear eligibility criteria for free school meals to ensure that they continue to be targeted at disadvantaged families.

Under the new eligibility criteria, we have estimated that by 2022 around 50,000 more children will benefit from a free school meal. I want to address the concern expressed by the noble Lord, Lord Bassam, that this included population growth—it does not. In addition, our protections will ensure that no child receiving free school meals now, or gaining them during the universal credit rollout, will lose their entitlement until the end of the rollout, and beyond that until the end of their primary or secondary education. Children protected in this way are in addition to the 50,000 I have just mentioned.

Lord Bassam of Brighton: I am interested in this phasing argument. Say you are in primary school now, and get free school meals. If you fall outside the eligibility criteria, am I right in thinking that when you go to secondary school, in maybe two or three years' time, you will then lose entitlement to that free school meal?

Lord Agnew of Oulton: The protections are in place until 2022. It is the longer of the period of being in a phase of education or 2022.

Lord Bassam of Brighton: So if you go to secondary school in 2023—which is quite possible if you are in primary school now—you will lose your free school meal. Is that what the noble Lord is telling us?

Lord Agnew of Oulton: My Lords, it will depend on the circumstances of the family at that time.

I turn to the comments about the Office of the Children's Commissioner, which published a briefing which assumed that the number of 50,000 more pupils who will benefit from free school meals does not take into account population growth. This is incorrect. Our analysis compares 2022 under a universal credit system to 2022 under the legacy benefits system, and population growth is by definition captured within this comparison. Furthermore, the Government have just published an updated equalities impact assessment, on 7 February. The majority of respondents to the consultation agreed with us that there would be no adverse impact on those with protected characteristics.

It is important to add that the £7,400 threshold relates to earned income. It does not include additional income through universal credit. A typical family earning around this threshold, depending on their exact circumstances, would have a total annual household income of between £18,000 and £24,000 once benefits are taken into account.

I take this opportunity to bust a myth. Some have claimed that these reforms will take away free school meals from 1 million children. This is simply not true. As my noble friend Lord Patten said, Channel 4 made this clear in its FactCheck article. It highlighted that this claim is based on an entirely hypothetical scenario in which universal credit was to continue being an automatic eligibility criteria. This was never going to be the case. Contrary to some people's claims, this Government's plan will result in more children benefiting, not fewer, and is more generous than the old system.

I also acknowledge the report published by the Secondary Legislation Scrutiny Committee on 1 March this year. We have listened to the committee's comments and have responded to its report requesting that we

[Lord Agnew of Oulton]
publish the methodology supporting the modelling of the 50,000 children who will benefit by 2022. This has been published as part of the report.

The noble Baroness, Lady Lister, expressed concern about fluctuating income. We recognise that some households see their earnings fluctuate on a regular basis and have written into regulations that earnings should be checked over a period lasting up to three months, where the assessment period data is available. We are also exploring ways to ensure that families with very low incomes can receive free school meals during the initial assessment period for universal credit.

Baroness Lister of Burtersett: What will happen with self-employed people and those on zero-hours contracts? I could not find that in the document.

Lord Agnew of Oulton: As I mentioned, we are assessing those who are on very low incomes to ensure that they can receive free school meals. That information will become available in due course.

I hope your Lordships will agree when I state the importance of targeting public resources where they are needed the most. If free school meals were extended to all families on universal credit, as some suggest, this would mean that by the end of the rollout around half of all pupils would become eligible. Some universal credit households are on middle incomes, sometimes exceeding £40,000 a year. We estimate that extending free school meals to all these families would cost in excess of £3 billion more a year by 2022, including the cost of the extra meals and associated school deprivation funding. The additional meals alone would cost in excess of £450 million a year. As the noble Baroness, Lady Walmsley, said, fairness requires Government to direct resources to where they are needed most. These are not the low-income families that we want to target with free school meals, and this is not a sensible or indeed fair use of public money.

The noble Baroness, Lady Walmsley, was concerned about the decoupling of free school meals from the pupil premium. The Government are very committed to providing equality of opportunity so every pupil, irrespective of their background, can realise their academic potential. Since the introduction of the pupil premium in 2011, the difference in the relative attainment of disadvantaged children and their peers has reduced across both the primary and secondary phases. It has narrowed by 10.5% at key stage 2 and 10% at key stage 4. This means better prospects for disadvantaged pupils and a more prosperous life as an adult.

Concerns were raised about conditionality and the use of sanctions. Sanctions are only ever used as a last resort. When considering whether a sanction is appropriate, a decision-maker will take all the claimant's individual circumstances, including any health conditions or disabilities, and any evidence of good cause, into account before deciding whether a sanction is warranted.

I want to address some of the comments made by the right reverend Prelate the Bishop of Portsmouth and the noble Baronesses, Lady Sherlock and Lady Lister, dealing with cliff edges. Universal credit is designed to be more generous to claimants who take on additional hours, and the smooth taper rate gives incentives to do so because, unlike under the old system, people see more money in their pocket for every extra hour that they work. As my noble friend Lord Polak said, change does involve some disruption, but in general we are seeing a better system for people who want to achieve more and to work harder or to be able to have the opportunity to work. In addition, the well-established links between employment and improved health and well-being mean that there are considerable non-economic benefits for parents who increase their working hours.

8 pm

On the points made by the noble Lord, Lord Watson, about Northern Ireland, where there are some comparisons, there is a more generous system of working tax credits there, but Northern Ireland does not have a provision for a free two-hour two year-old offer at all and its three and four year-old offer is considerably narrower. There is also no universal protection for free school meals for all pupils in reception and years 1 and 2, as in England. It does not have an equivalent pupil premium as exists in England.

In conclusion, as we have said, a threshold has to be set and we have set it as generously as we believe we can, with 50,000 more children benefiting. This Government have always gone further than Labour to extend the availability of free school meals to families most in need. We extended free meals to disadvantaged students in further education institutions and introduced universal infant free school meals. More recently, we announced an additional investment of £26 million in a breakfast club programme over the next three years, using the soft drinks industry levy. The introduction of universal credit provides us with the opportunity to make the system of free school meal eligibility fairer, simpler and more consistent for parents, carers, schools and local authorities.

On the comments of the noble Lord, Lord Freud, about trying to find an alternative to the cliff edge, he will know far better than me that it is extremely complicated to find a way of breaking a total cliff edge, but the system is set to be fairer than its predecessor.

Lord Kirkwood of Kirkhope (LD): I do not think that the Minister has dealt with the absolutely crucial point raised by the noble Lord, Lord Freud, because if we do not have a mechanism that assimilates and deals with passporting benefits, there may be other outstanding issues that will come along and prove to be not cliff edges but waterfalls—I like that description. Will the Minister commit to refer the concerns of the noble Lord, Lord Freud, to the Social Security Advisory Committee? That is the best vehicle for coming up with an evaluation of the work-disincentive effect that these waterfalls and cliff edges are guaranteed to introduce long-term and in perpetuity into universal credit, which is a bad thing for the Government's own policy.

Lord Agnew of Oulton: My Lords, I am happy to relay those concerns and to take the matter away for further consideration.

Finally, I would like to highlight the five key improvements made by this Conservative-led Government for early years and child care. I give credit to the noble

Lord, Lord Storey, as part of his party's involvement in these important reforms, but I believe that it is incredibly important to put these into context. First, there is the 15 hours a week of free early education for disadvantaged two year-olds, which did not exist before 2010. Secondly, there is the universal 15 hours a week free childcare for three and four year-olds, now with the early years pupil premium. Thirdly, there are an additional 15 hours a week of childcare for working parents. Fourthly, through universal credit, up to 85% of childcare costs can be reimbursed, which is a higher percentage than was ever available under tax credits. Finally, nearly 1 million more families will gain support through tax-free childcare than through the existing voucher scheme.

I hope these five elements exemplify the efforts this Government have made to support vulnerable families. The continued provision of free school meals to children in households that might not be able to afford them remains of the utmost importance, and I would stress that—the utmost importance. Free school meals have always been provided to children who need them most, and we want to make sure that as many eligible children as possible continue to claim them.

Lord Bassam of Brighton: My Lords, I am grateful to the Minister for that rousing conclusion. I have not really heard anything that convinces me that the Government have got their policy on this right. The Minister failed and ducked the issue of the cliff-edge point that was so eloquently addressed by my noble friend Lady Sherlock and others. The Minister actually supplemented and aided my argument on phasing when he said that, yes, it would depend on the individual's circumstances in 2023, but if they move from one phase of education to the other then of course there would be an issue about whether they continue to have eligibility for free school meals.

I was grateful to the noble Lord, Lord Patten, for reminding us about fact-checking because, for me, he added to the confusion about figures. Part of the argument that we have been pushing over these last few weeks about free school meals is that nobody has quite got to the bottom of the Government's policy because nobody can be absolutely certain about the data on which it relies. I was very heartened to hear the noble Lord, Lord Freud, express some concern about the waterfall and cliff edge, because that cuts to the core of the issue. We just do not know.

I have tabled a lot of Written Questions on this issue; most of them have not yet been answered. Most of them were directed at trying to find out at what stage of the rollout of universal credit we can expect to have hard numbers and data about the overall impact. I find that most worrying and troubling because the Government have not done a poverty assessment in this whole process. We do not know what the real impact will be of taking away free school meals from people, or what impact the new system will have on populations in the future. The failure to do a proper poverty assessment fatally flaws this new system.

I agree with the Minister and I agree with other noble Lords on the Benches opposite when they say that work should always pay. That is a laudable objective of universal credit, but I am not convinced that the levels are right or that the policy is set in the right direction. I am grateful to my noble friends Lady Lister and Lady Sherlock, the noble Baroness, Lady Walmsley, the noble Lords, Lord Storey and Lord Kirkwood, and my noble friend Lord Watson for their support in this debate.

I have done a bit of a fact check since I have been sitting here. The noble Lord, Lord Patten, went to Wimbledon College; the noble Lord, Lord Lexden, went to Framlingham College; the noble Lord, Lord Freud, went to Whitgift School and the noble Lord, Lord Agnew, went to Rugby. I bet there were not too many free school meals at those schools. This evening we should stand up for those who benefit from this, and I therefore wish to test the opinion of the House.

8.07 pm

Division on Lord Bassam of Brighton's Motion

Contents 167; Not-Contents 160.

Lord Bassam of Brighton's Motion agreed.

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House adjourned at 8.19 pm.

Grand Committee

Tuesday 20 March 2018

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Lord Geddes) (Con): My Lords, it is now 3.30 pm but, as noble Lords will see from the monitors, the Minister is on his feet in the Chamber—I beg your pardon; he is not on his feet, although he was 30 seconds ago. He will be here any minute, so I suggest we be patient until such time as he arrives.

The Minister has now fulfilled his duties in the Chamber and is with us. I must advise the Grand Committee that if there is a Division in the Chamber, which I presume there may well be, the Committee will adjourn for 10 minutes.

Industrial Training Levy (Construction Industry Training Board) Order 2018

Considered in Grand Committee

3.33 pm

Moved by ***Viscount Younger of Leckie***

That the Grand Committee do consider the Industrial Training Levy (Construction Industry Training Board) Order 2018.

Viscount Younger of Leckie (Con): My Lords, this is familiar ground for me, having moved the draft of industrial training board levy orders in the House on three occasions previously. The order before us enables the CITB to raise and collect a levy on employers in the construction industry. The objective of the levy is to raise funds to meet the CITB's expenditure on training the workforce across the construction industry to secure a sufficient supply of skilled labour.

There is a strong public interest in a high-performing, efficient construction industry. Construction is one of the largest sectors in the UK economy, with a turnover of £370 billion, contributing £138 billion in value added to the UK economy and employing 3.1 million people, which is 9% of the total UK workforce. We know the construction industry faces many inherent disincentives to train. As Mark Farmer's report and the Government's own review of industry training boards identified late last year, construction is a highly fragmented industry, with SMEs making up more than 99% of all businesses. It relies heavily on subcontracting and self-employment, and it is the central role of the CITB to help incentivise firms to overcome these disincentives.

The scope of the CITB covers most construction activity. Construction is an extremely large and diverse industry, covering a highly disparate range of industries and trades—everything from major civil engineering works to private housebuilding. The Government recently published the 2017 update to the *National Infrastructure and Construction Pipeline*, setting out details of over £460 billion of planned infrastructure investment across the public and private sectors. Looking to the next 10 years, we project total public and private investment in infrastructure to be around £600 billion. This will be challenging; government and industry need to work together to ensure that we have the right people with the right skills to deliver this ambitious pipeline of investment.

We need also need a construction industry that has the right skills to build more homes, including in new and innovative ways. In the Autumn Statement, the Chancellor announced more than £15 billion of new financial support for housebuilding over the next five years, taking total financial support to at least £44 billion up to 2022-23. This will create, fund and drive a market that will raise housing supply to 300,000 a year on average by the mid-2020s. Building more homes using modern methods of construction, including off-site and smart techniques, is a part of this.

The construction industry recognises the important role of the CITB in helping it to attract, retain and develop individuals with the appropriate skills to meet the range of challenges it faces. The CITB recently estimated that 158,000 construction jobs are set to be created over the next five years. The CITB develops the skills of the existing workforce and new entrants into the industry through providing training grants and putting in place strategic initiatives that will benefit industry over the long term and secure a sustainable pipeline of skills. In 2016, the CITB used its levy income to provide £148 million of grants to 16,101 employers, including assisting them with the additional costs of employing an apprentice. In particular, the grant scheme supports and incentivises investment in training for smaller businesses, which carry out the majority of training but generally have greater constraints in their capacity to invest. The CITB also delivers a range of other functions such as sector-wide work on research, developing standards and qualifications and promoting construction as a career.

The CITB was established as an industry training board in 1964. The construction industry has therefore had a levy and grant arrangement for some 50 years. Recognising the need to consider the implications of the apprenticeship levy, increase domestic construction skills and improve the productivity of the sector, the Government recently concluded a significant review of industry training boards, including the CITB, which was published in November 2017. The review concluded that the CITB's resources and capabilities continue to be vital in supporting the construction industry and allowing it to deal with the challenges it faces. The industry training board review supported the CITB levy being retained alongside the apprenticeship levy. It determined that, because relatively few employers in the construction industry are likely to pay both the apprenticeship and the CITB levies, removal of the CITB levy would mean significantly less funding being available for training, at a time when levels of training need to increase. It concluded that the CITB levy and the apprenticeship levy are complementary and pay for different types of training and employer support.

I now turn to how the order has met the legal requirements set out in the Industrial Training Act. The Act allows the CITB to submit a proposal to the Secretary of State for the raising and collection of

[Viscount Younger of Leckie]
a levy. The order can be made only if the Secretary of State is satisfied that certain legislative tests have been met. These include consideration that the amount of levy is appropriate in the circumstances, that the proposals are necessary to encourage adequate training in the industry and that more than half of the employers—who together are likely to pay the majority of the levy—also consider the proposals necessary to encourage adequate training in the industry. The Secretary of State was satisfied that these conditions had been met.

The CITB has undertaken its most extensive consultation with industry to date on the levy proposals before us. The consultation process, also known as the consensus process, has included direct consultation with trade bodies that represent 7,150 employers and 4,000 employers that are not members of trade bodies. The CITB scoped out a range of possible options, entered into discussion with employers to share the developed options and received their feedback before agreeing on the final levy proposal. The levy proposals have therefore been shaped significantly by industry.

Having listened to industry views and recognising the impact that the apprenticeship levy will have on training in the sector, the CITB proposes to decrease the levy rate from 0.5% to 0.35% arising from emoluments relating to people directly employed by an employer. The liability for the levy arising from indirect employment will remain at a rate of 1.25%, and the CITB will continue to use information about net construction industry scheme payments to determine this liability. Of those companies in scope of paying the levy, who together are likely to pay 69% of its value, 76% are in favour of the CITB proposals before us today. In line with the requirements of the Industrial Training Act, the Secretary of State is satisfied that the CITB has taken reasonable steps to ascertain the views of employers who are likely to be liable to levy payments in consequence of the levy proposals.

The order can also be made only if the Secretary of State is satisfied that the exemption thresholds set out in the proposals exempt suitable small employers from the levy. The order therefore provides that small firms whose combined payroll and net expenditure on subcontracted labour is less than £80,000 will not have to pay at all, but will be able to claim CITB grants and access support. Of all the establishments considered leviable by the CITB, it is expected that around 40% will be exempted from paying the levy. In addition, employers just above the small-firm threshold will receive a 50% reduction in the levy payable if their expenditure on payroll and subcontracted labour is between £80,000 and £400,000.

Over three years, the CITB's proposals are expected to raise about £600 million of levy income, which will be directly invested back into industry. The order will enable the CITB to continue to carry out its vital training responsibilities, and I commend it to the Committee.

Baroness Garden of Frognal (LD): My Lords, I thank the Minister for introducing the order. As we know, the CITB has to apply every three years for authority to raise the levy from employers to enable it to continue operating and, as he set out, the industry is fragmented and has high levels of self-employment and subcontracting, and those create disincentives for employers to train and develop the workforce. The CITB is there to support and encourage training, which it has been doing since 1964, so it is well established and recognised throughout the industry.

The reduction of the levy to 0.35% from 0.5% must have been welcomed, as the Minister mentioned, and had the support of the great majority of employers. Of course, relatively few employers are large enough to pay the apprenticeship levy, so even after that is properly up and running, there will still be a need for the CITB to support training.

The Minister said that the two levies are complementary, but I wonder how the CITB levy will work alongside the apprenticeship levy. Will employers be prepared to pay for both, and has any assessment been done of the additional cost and burden on employers? Did the CITB consultation come up with any proposals to widen the apprenticeship levy to include skills, which is a widely mooted discussion at the moment?

The Minister says that the construction industry needs to recruit 158,000 people across the UK in the next five years. How will the Government help the industry to attract recruits, particularly in view of Brexit and the high number of EU citizens who currently work in the industry? What attempts are being made to recruit more women into construction? I am involved with one organisation called Women on the Tools and another called Women in Construction, which work to attract women and girls into the industry. Those who take the plunge find excellent work as plumbers, electricians, roofers and so on, but the macho nature of the workforce can make life difficult for women whose skills and interests lie in construction but who have to face up to being the only woman in the workforce or in training. To meet the skills and needs, women will need to be included.

3.45 pm

Currently, only about 2% of those in construction are women; the figure rises to around 9% if it includes administrators and office workers. What are the CITB and the Government doing to broaden the recruitment base? The CITB's review identified a key priority as careers, so how about careers information in schools? Are enough attempts being made to introduce pupils to the many and varied job and career opportunities in construction?

As ever with statutory instruments, there is little to oppose in this one. If the CITB has the agreement of the industry on these proposals and the Government agree to them, there is little for us to do or say. But this is a very important industry: it is heavily regulated for health and safety and has many demands and expectations put on it. Think of HS2 or Crossrail and other major infrastructure projects, not least a desperate need for housing. We shall need its many skills and talents when we eventually move out of this Palace. As it is, we have many construction experts here just to keep the building standing and us and all our visitors as safe as possible. If this order will help the industry on its way, we can only commend it.

Lord Jones (Lab): My Lords, I thank the Minister for his crystal-clear exposition of the order. I certainly do not wish to oppose it and I much appreciate the

figures supplied concerning the planned expenditure on infrastructure and the references to much-needed investment in housing.

My memory goes back to when I served in another place alongside the late Lord Eric Varley, some 30 years ago. In our opposition role, it appeared that night after night and month after month, after 10 pm there would be orders to abolish existing training boards. Those orders were brought forward by the late Peter Morrison, a Minister in the Department of Employment and the Member of Parliament for Chester, whose constituency abutted my own and with whom I often collaborated. I sometimes wonder whether the nation's extreme shortage of skilled labour has its roots in those successive abandonments of training boards in those debates after 10 pm in the 1980s. We certainly all agree that the nation needs a more skilled workforce. I know that the CITB is a great survivor and has a substantial training ground in north Norfolk, not a million miles away from the Sandringham estate.

I do not wish to detain the Committee but could the Minister, perhaps with the aid of his officials, exemplify a typical SME and indicate what sort of money that business may need to find each year for the levy? He rightly mentioned housing investment. The names of some of the great companies which build houses across Britain come to mind, such as Redrow, Persimmon, Barratt and Taylor Woodrow. Is he able in this Committee, or if not in writing at another time, to say what sort of money they pay? What is the levy on such exemplary great companies in housing and/or construction? That is my query following his exposition.

Lord Stunell (LD): My Lords, I will draw attention to one of the other facets of the importance of the construction industry and of the CITB. I too agree that the order should quite properly go forward, but a number of factors need a little further exploration. In presenting the case, the Minister set out the demands there will be on the construction industry in the infrastructure pipeline and the need to increase the number of homes built to 300,000 by the mid-2020s—2025 is seven years ahead. The infrastructure pipeline of £600 billion that he mentioned is, I understand, additional to that.

There is a requirement for 158,000 extra jobs in the construction industry. I am sure the Minister will be familiar with the statistic that some 70,000 people leave the industry each year and currently only about 40,000 UK residents are recruited to it. The difference is made up by EU 27 migrant workers. It is that side of the equation that I want to draw to the Minister's attention.

While we might need another 158,000 employees to meet these very necessary targets, some 200,000 workers in the construction industry are from the EU 27 and another key ambition of the Government is to reduce inward migration to the tens of thousands, presumably over approximately the same timescale to the mid-2020s. Add those two figures together and you get more than a third of a million extra workers who need to be recruited from within the UK to maintain or deliver that. I have the advantage of a press release from the Federation of Master Builders from January, which says:

> "Two-thirds of those running small and medium-sized … construction firms are struggling to hire bricklayers and carpenters as construction skills shortages hit a 'record high'".

We do not have any surplus. We certainly have pressure on that. The building survey report that I saw last week from GK Strategy—nowadays, with practically all jobs being online, you can also monitor how many people apply for jobs online—notes that the number of searches of UK-based jobs by workers in Romania has fallen by 36%. In other words, far fewer Romanians are looking at jobs in the UK as a destination they want to go for. Overall, there is a drop of some 30% in Eastern European searches for jobs in the UK.

The indication is that even without government policy action, the whole process of Brexit and the declaration of intent is leading to a reduced flow of workers coming in through the construction industry. The Home Builders Federation says that at the moment 17.7% of its workforce is from the EU 27, of which more than 50% are from Romania, the country from which applications appear to be drying up.

Putting all that together, the task being set for the Construction Industry Training Board—and, indeed, for the Government—is extremely serious and intense. It will require real focus and determination if we are not to find that some, if not both, of the Government's ambitions about reducing migration on the one hand and delivering the infrastructure pipeline on the other are not to be frustrated.

Having read the CITB briefing in preparation for this discussion, and having met the CITB just over a month ago, I am well aware that it is planning to both shrink and refocus its work and to direct it in a different direction. I do not criticise that. It is necessary in view of the feelings of concern that were widespread in the industry about the CITB and its role. Indeed, the CECA—Civil Engineering Contractors Association—members' survey, completed last year, reported that,

> "some members felt it was becoming more difficult to get hold of their CITB representative especially since the CITB has re-organised. CECA members generally reported less satisfaction with CITB since recent changes".

The consensus was indeed on the figures that the Minister gave but some pretty rough ground was covered in reaching it. Expectations of the CITB are clearly high and need to be delivered.

Putting all that together, I would be very interested to hear from the Minister not just what he has said already but how this proposal fits in with the broader aims of the construction industry strategy, as set out by the Government in their overall industrial strategy earlier this year. Does he agree that the CITB will need to expand and intensify its work, not least by getting the long list of courses and apprenticeships currently waiting for approval approved and those courses operating as quickly as possible? To pick up what my noble friend Lady Garden said about the two levies, will the Government please work with the industry and the CITB to make sure that, as the Minister expressed it, these things are complementary? That is not how the industry sees it. By and large, I would say that it is—using the other spelling—uncomplimentary about the fact that there are these two levies. The larger employers which fail to pay both are, frankly, gaming the system in order to spend the money, not necessarily

[LORD STUNELL]
on the task which the Minister clearly thinks is important, which is training and recruiting additional people for the industry, not simply upskilling those who are already in it.

Lord Watson of Invergowrie (Lab): My Lords, I thank the Minister for the clear and concise manner in which he laid out what this statutory instrument seeks to achieve. It is not often that we read from the same page but this is such an occasion because the Opposition fully support the introduction of the latest version of the CITB levy. The Minister started by saying, I think, that this is the third of these he has done. It is my second and I remember a year ago there were only two of us involved in the debate, so it was good to have contributions from the Liberal Democrats and my Labour colleague. It is an important industry so the way its training develops is very important as well.

From memory, there used to be in excess of 20 industrial training boards until they were significantly reduced in number by the Industrial Training Act 1982. That is the legislation under which this order is issued. Today there are just three boards, each of which is a non-departmental public body, and thus accountable to Parliament. They raise most of their funds through training levies and various commercial activities. We learn from the Explanatory Memorandum that the CITB expects to raise around £200 million in levy in each of the three years to which the order relates. It is to be hoped that the board will return more than this figure each year to the sector—as, to its credit, was the case in 2016.

It is interesting that the CITB itself made the proposal to reduce the rate of the levy for workers employed directly by the employer, but not for those employed indirectly. The memorandum explains that this is the result of the prevailing economic conditions and the skills needs of the sector. That is understandable, but why is there a differential? The economic conditions hit those employing people both directly and indirectly, so the rationale for the difference is not immediately obvious.

4 pm

As is made plain in the impact assessment:

"There remains a serious and distinct market failure in the development of skills in the construction industry: the trading conditions, incentives and culture do not lead to a sufficient level of investment in skills by employers".

Unfortunately, this malaise is not restricted to the construction sector. UK employers in many sectors have long been unwilling to recognise the need for skilling and upskilling, and that is a major factor in the low productivity levels from which our economy suffers. The apprenticeship levy was introduced a year ago as a clear sign that the Government accepted that employers would not, of their own volition, invest in skills in sufficient numbers and that they require a firm hand on their shoulder to "encourage" them to do so. As the Minister said, the levy we are discussing today will complement the apprenticeship levy: both will play a key role in equipping the construction industry with the skilled and flexible workforce that it needs.

At a time when the UK is preparing to leave the European Union, and given the large number of European Union nationals who work in construction in this country, it is not just important but absolutely vital that the industry is in a position to train—and continually retrain—its workforce for the challenges of the future. We know that employers in the construction industry support the levy and value the payback they get from their contributions. As the CITB itself says, the levy enables it to provide grants to train new staff and develop the skills of an existing workforce. It does so through peaks and troughs in the health of the industry, so that investment in skills and training continues.

The Minister referred in detail to the exemptions that are offered to small and medium-sized employers. Noble Lords may not appreciate that the term SME requires qualification in this context. More than 99% of the construction industry comprises small and medium-sized enterprises, but that embraces micro-companies with one to nine employees, small companies employing from 10 to 49 people and medium-sized companies employing 50 to 249. It is hardly surprising that these organisations find it more difficult to deliver training than larger employers do. It is instructive that the CITB allocates its grants in a manner that is surprisingly balanced throughout those four sectors. Some £24.6 million goes to micro-companies, £26.2 million to small companies and £33.4 million to medium-sized ones. The large ones receive only—a relative term—£44.5 million, so the CITB does an admirable job of ensuring that each of the sectors is enabled to train its staff appropriately.

The Explanatory Memorandum outlines the consultation on the levy proposals undertaken by the CITB. I was slightly taken aback to note that only 10 of the 14 employer organisations consulted backed the proposal, while 72% of employers not in membership of one of those organisations signified support. We are told that just under 77% of all employers supported the proposal, which is certainly a clear majority. However, this does mean that almost one-quarter of employers were not in favour, for reasons unknown or, at least, not listed in the Explanatory Memorandum. It is to be hoped that an enduring antipathy among some employers in the industry to allowing the costs of training to outweigh the benefits was not a factor. Might the Minister care to say something about that? Is he aware of why the consensus was not greater and has he considered asking the CITB to examine the reasons, with a view to building greater support when the levy comes to be renewed in 2021?

My final point concerns the future of the construction sector and ways in which the use of the levy can contribute to making the industry's workforce more diverse. The CITB's chief executive is Sarah Beale and she is clearly aware of the need to make construction open and attractive to all. Writing recently in the *House* magazine, she highlighted the fact that the industry being still overwhelmingly male means it is missing out on a huge pool of talent by not being seen as a first, second or even third choice for many women. Ms Beale went on to describe the development of a construction ambassador programme, enabling young people to hear what the industry is really like at

first hand. The CITB is also rolling out an industry-wide campaign aimed at young people called Go Construct, pointing out the exciting opportunities available. These are positive and welcome steps and I congratulate the CITB, not just on identifying the need for such an approach but on then putting it into operation.

I wish both the organisation and the industry it represents well and look forward to hearing of further progress in the development of the skills that they need when we come to consider the effectiveness of the levy between this year and 2021.

Viscount Younger of Leckie: My Lords, I start by thanking all noble Lords who have taken part in this short debate. I also echo the thoughts of the noble Lord, Lord Watson, who pointed out that it is not just him and me debating this important issue; we have representation from other parties, the Liberal Democrats in particular.

I will go straight in and address a number of questions that were asked about the order, and will start by looking at the apprenticeship scheme, because the noble Baroness, Lady Garden, asked about the levy. Even though I made it quite clear in my opening statement, understandably, she wanted to know a little more about how the CITB levy would work alongside the apprenticeship levy. We see them as complementary. The levy supports the extra costs employers face when taking on an apprentice. I am saying that also because the consultation raised that point as well, so the consultees—the employers—were perfectly happy for the two to go side by side.

The noble Baroness, Lady Garden, and the noble Lord, Lord Stunell, asked about the details of the apprenticeship levy. The CITB estimates that around 900 out of the 28,000 CITB levy-paying employers will pay both the CITB levy and the apprenticeship levy. The two are complementary, as I said, and pay for different types of training and employer support. The CITB provides grants that incentivise employers to take on apprentices and support travel and accommodation costs, but no other sector without an industry training board receives this support. Government funding generally covers apprenticeship training costs, while the CITB's grant scheme supports the employers with the costs of having an apprentice—for example, wages and tools.

The noble Baroness, Lady Garden, asked about the flexibility within the apprenticeship levy. I think she is probably alluding to a recent debate in the Chamber on this matter. I continue to reassure her that we continue to work with employers and the wider stakeholders on how the apprenticeship levy is spent so that the funding system works effectively and flexibly for industry and meets employers' skills needs, supports productivity across the country and supports our commitment to delivering 3 million apprenticeship starts in England by 2020. From April 2018, as she knows, we will allow eligible levy-paying employers to transfer up to 10% of the annual value of funds entering their digital accounts to other employers, and we will carefully monitor the implementation of this change. That could include employers in the supply chain of the main employers, which could obviously help with business.

The noble Lord, Lord Stunell, asked about the standards within apprenticeships and why it has taken so long to establish standards, which is a fair question. The Institute for Apprenticeships is responsible for managing the approval of new standards. It is important that we have a rigorous process for approving new standards so that we can be sure that we approve only high-quality proposals; that is an absolute cornerstone of what we are doing on apprenticeships. However, the institute has also been listening and consulting, and planning improvements to make the approvals process faster and better, and it will soon launch a simple, effective, two-stage review process for standards, starting with a root review and then more detailed scrutiny of a pathway support for trailblazers review. Employers will be actively involved in this. I cannot promise immediate improvement, but we are on it and it is important that we step up on speed; employers are telling us that.

The noble Baroness, Lady Garden, raised an important point about diversity. I say at the outset that the Government are committed to supporting the construction sector to increase the gender and ethnic diversity of its workforce to ensure that there are opportunities for all those who wish to pursue construction careers, regardless of their background. It is true that in 2014, women made up 46.6% of the working population, and yet only 14.5% of the construction workforce are women. The noble Baroness mentioned 2%, but I do not recognise that figure. However, the point is that it is very low—too low.

Baroness Garden of Frognal: The figure of 2% is for women doing construction jobs. The additional figure is because quite a lot of them work in office and admin jobs; they are working in the construction industry but not doing the plumbing and the roofing.

Viscount Younger of Leckie: The noble Baroness makes a very good point: 2% is far too low for those at the front end. The Government are very much aware of that. The CITB has taken practical steps by developing a cross-industry fairness, inclusion and respect programme, which will invest in activities to make the sector a more attractive place to work in for people of all backgrounds, particularly women.

There is more. The CITB careers hub, Go Construct, provides online guidance and case studies for prospective employees and employers on a range of diversity topics, including gender and race. In addition, the wage gap between women and men is 17% and people with disabilities earn 9.9% less, so there are suggestions that women fail to be promoted once given additional responsibilities. This is another linked area that we are looking at and the CITB is also aware of it. Those points are important.

The noble Baroness, Lady Garden, mentioned the EU and Brexit, asking whether our leaving the EU will reduce skills and our capacity in the sector further. We see this in a different light from her—she will probably not be surprised by what I am about to say—because we see it as an opportunity for industry to invest in its workforce and tackle the long-standing issues around training and productivity. We expect industry, working with government, to offer rewarding careers to a new generation of British construction workers. In parallel,

[Viscount Younger of Leckie]
local areas have the opportunity to use housebuilding to create skilled jobs and drive growth. There is more because, as the noble Baroness will know, negotiations are continuing and we will have to wait for their outcome to know what the construction sector will consist of after Brexit.

The noble Lord, Lord Jones, asked about the amount of levy paid by an SME and what is paid by larger housebuilders; that is two questions, actually. As he alluded to, I cannot give a specific example. Perhaps I can reassure him to this extent: as I mentioned, very small employers with a wage bill of less than £80,000 are entirely exempt from the levy, slightly larger firms—those with a wage bill of £80,000 to £400,000—pay a 50% reduced rate, and SMEs receive 60% of all CITB grants in return. I hope there is some reassurance there—without giving specific examples—that housebuilding firms fall into that as well.

Lord Jones: I am grateful. Would the Minister's officials be able to give him such details, given the importance of the levy?

Viscount Younger of Leckie: Yes. I will write to the noble Lord and give one, if not two, examples. We can perhaps look at *Hansard* and follow up on that.

Lord Jones: I am grateful.

Viscount Younger of Leckie: The noble Lord, Lord Stunell, asked about skill shortages, which is another item high on the Government's list. The CITB is committed to helping construction employers to deliver the pipeline of work faster, better and more efficiently. The CITB aims to use its evidence base on skills requirements to ensure that employers can access the high-quality training its workforce needs. The key is to work with employers and design with them a skills system more responsive to the needs of industry.

Lord Stunell: Is the Minister satisfied that the CITB will have the muscle and means to deliver such an expanded programme in the timescale he is speaking about?

Viscount Younger of Leckie: I was about to move on to a further point made by the noble Lord about the CITB and its efficiency. He may well be aware that reforms are under way as a result of the report published on the ITB back in November 2017 and linked to the 2016 skills plan. The report found that the CITB levy remained necessary, which is why we are here, but that it must reform and serve the skills needs of the construction industry better. That is a very clear message. Recommendations were made in two areas: improving governance and accountability; and ensuring that the CITB has a more positive impact on the industry. I hope I can reassure the noble Lord that, with the changes being made at the moment, the CITB will be fit for purpose to handle the issues that he raised.

4.15 pm

The noble Lord, Lord Watson, asked why there was a higher levy rate on indirect subcontractor labour payments. In the main, employers using subcontracted labour have fewer incentives to provide training opportunities and therefore do not contribute to the overall supply of skilled labour. The higher levy rate is intended to compensate for that. That is the direct answer. The noble Lord also asked about the consultation and the level of support. I would argue that 76% support is good. The noble Lord looked at the negative side of that, which I respect. However, some of the employer organisations that did not support the levy proposal during the consultation process were supportive of the levy system but wanted to see improvements in the CITB's governance and operation. That ties in with my final comment to the noble Lord, Lord Stunell. The industry training board review found that the CITB levy remained necessary but that it must reform, as I said.

I hope I have answered noble Lords' questions. If I have not, I will certainly write to noble Lords. I conclude by saying that it continues to be the collective view of the majority of employers in the construction industry that training should be funded through a statutory levy system to secure a sufficient pool of skilled labour, which is so important for our country. I commend the order to the Committee.

Motion agreed.

Armed Forces Act (Continuation) Order 2018

Considered in Grand Committee

4.17 pm

Moved by ***Earl Howe***

That the Grand Committee do consider the Armed Forces Act (Continuation) Order 2018.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, as ever, our Armed Forces continue to serve us well, yet they cannot do so without the consent of Parliament. Today we return to our annual consideration of the legislation governing the Armed Forces: the Armed Forces Act 2006. The purpose and effect of the draft order we are considering today is to enable the 2006 Act to continue in force for a further year, until 11 May 2019. This reflects the constitutional requirement under the Bill of Rights that the Armed Forces may not be maintained without the consent of Parliament.

Noble Lords are familiar with the fact that the legislation which provides for the Armed Forces to exist as disciplined bodies is renewed by Parliament every year. But it is right that I explain, for the record, why we do this. Every five years, renewal is by Act of Parliament—an Armed Forces Act. The most recent was in 2016. Between the five-yearly Acts, renewal is by annual Order in Council. This is such an order. The Armed Forces Act 2016 provided for the continuation in force of the Armed Forces Act 2006 until 11 May 2017 and for further renewal thereafter by Order in Council for up to a year at a time, but not beyond 2021. If the Armed Forces Act 2006 is not renewed by Order in Council before 11 May 2018, it will automatically expire. If the 2006 Act expires, the provisions necessary for the maintenance of the Armed Forces as disciplined bodies would cease to exist.

The 2006 Act contains nearly all the provisions for the existence of a system for the Armed Forces of command, discipline and justice. It creates offences and provides for the investigation of alleged offences; the arrest, holding in custody and charging of individuals accused of committing an offence; and for them to be dealt with summarily by their commanding officer or tried in the court martial. Offences under the 2006 Act include any criminal offence under the law of England and Wales, and those peculiar to service, such as misconduct towards a superior officer and disobedience to lawful commands. I remind the Committee that the Act applies to members of the Armed Forces at all times, wherever in the world they are serving.

Perhaps the clearest example of the effect of expiry of the 2006 Act would be that the duty of members of the Armed Forces to obey lawful commands, and the powers and procedures under which this duty is enforced, would no longer have effect. Commanding officers and the court martial would have no powers of punishment for failure to obey a lawful command, or other disciplinary or criminal misconduct. Members of the Armed Forces would still owe allegiance to Her Majesty, but Parliament would have removed the power of enforcement. The obligation of members of the Armed Forces is essentially a duty to obey lawful commands. They have no contracts of employment and so no duties as employees. The 2006 Act also provides for other important matters for the Armed Forces, such as for their enlistment, pay and redress of complaints.

To conclude, the continuation of the Armed Forces Act 2006 is essential for the maintenance of discipline. Discipline, in every sense, is fundamental to the existence of our Armed Forces, and, indeed, to their success, whether, for example, at home supporting emergency services and local communities following the recent heavy snowfall, or supporting the police in their investigation into the poisoning of the former Russian spy Sergei Skripal in Salisbury; playing their part in putting an end to the sickening and illegal poaching industry in Malawi; or, as one might more immediately think of, defeating Daesh in Iraq and Syria.

We have the finest Armed Forces in the world and the dangers they face are ever changing. We owe the brave men and women of our Armed Forces a sound legal basis for them to continue to afford us their vital protection. For those reasons, I beg to move.

Lord Craig of Radley (CB): My Lords, I totally support the order, but I will raise one point mentioned in the Explanatory Memorandum. It says that the Minister of State for Defence has stated:

"In my view the provisions of the Armed Forces Act (Continuation) Order 2018 are compatible with the Convention rights".

That is the European Convention on Human Rights. As has been evident in recent years, there are apparent disconnects between the Armed Forces legislation and some aspects of human rights law that I and other noble Lords have drawn attention to in various debates in your Lordships' House. What are Her Majesty's Government doing to address these difficulties, particularly where they arise in the course of live operations—difficulties that have, indeed, been acknowledged and spoken to by Ministers?

Lord Campbell of Pittenweem (LD): My Lords, I am also lost in admiration for the quality and character of the Armed Forces, who serve this country so well. Since the noble Earl introduced the debate with characteristic clarity there is no need for me to rehearse the statutory position. I also welcome the detail of the Explanatory Memorandum, but I draw the noble Earl's attention to page 2, paragraph 7.3, the second line of which says that the Bill of Rights is of 1688. All my schooldays were based on the proposition that it was 1689. Along with the Act of Settlement of 1701, it forms a part, at least, of the constitution of the United Kingdom. It does not really matter whether it was 1688 or 1689—at least it shows that I have read the Explanatory Memorandum.

Although this is a regular event, we should not allow ourselves to ignore its constitutional and political significance. The commander-in-chief of our Armed Forces remains the sovereign by law, but now the Government exercise the royal prerogative. That has assumed a political dimension, because Governments of both parties have accepted the need for parliamentary approval, whereas if the prerogative were simply exercised in purity, as it were, that would not be so. I think of the approval sought by Prime Minister Blair for the military action against Saddam Hussein and that sought by Prime Minister Cameron in relation to Libya. In both instances, the Government were successful, but when it came to the question of Syria in 2013, the Government discovered that there was no majority for the action proposed, which the then Prime Minister accepted almost immediately.

The Bill of Rights of 1689 arose out of the civil war that had so disfigured England. It was a particularly torrid time in the history of England, with Oliver Cromwell and the execution of Charles I. Given that Cromwell went to Edinburgh, where he stabled his horses in the basement of the Court of Session, Scotland was to a certain extent involved as well. There has been no civil war on this island since then, with the possible exception of the last convulsions of Jacobitism in 1715 and 1745.

I want to make three points, if I may, although the noble Earl has anticipated me to an extent. We do not always keep in mind the fact that the service of our Armed Forces takes place around the world in a whole variety of roles. I wonder how many citizens know that members of our Armed Forces are embedded in the Pentagon as part of the defence relationship between the United Kingdom and the United States or understand the extent to which our training commitments in Afghanistan are important. Although these are not the forgotten army of the Second World War, it is important on such an occasion to acknowledge the contribution that they make. One further contribution has some resonance with the events of the last 10 days: what I would call NATO's forward deployment in the Baltics but what is known by NATO as its enhanced forward presence. That is being done to make it clear to Russia and Mr Putin that NATO accepts and undertakes the obligations under Article 5 in relation to its members Estonia, Latvia and Lithuania.

My second point, which has also been foreshadowed, is assistance to the civil power. As the noble Earl pointed out, this takes a variety of roles. In Edinburgh,

[Lord Campbell of Pittenweem]
military transport took medical staff to hospitals to perform necessary and urgent operations. As we have heard most recently, a particular skill set has been brought to the Salisbury investigation. It was reported in some newspapers that there was formerly a battalion with those particular skills but that it had been disbanded. Perhaps the noble Earl could tell us a little about the history of that, because if there was any watering down of that capability, that is obviously a matter of some importance.

4.30 pm

Finally, there is the question of uncertainty. I do not propose to burden the Committee, nor indeed the noble Earl, with all the arguments about uncertainty: he has heard them on many occasions. I just want to say this. Although it may not be measurable, there must be some impact on morale on all the Armed Forces because of the uncertainty about their future—uncertainty which we all hope will be relieved when the Secretary of State for Defence produces the results of the exercise on which he has embarked.

Let me conclude by repeating that this is an occasion of constitutional and political significance, but it is perhaps equally importantly an occasion on which to express our continued admiration for those who serve the Crown.

Lord Jones (Lab): My Lords, I thank the noble Earl for his skilful introduction. It is always hard to follow him, and I totally support the draft order. I hope that the Ministry of Defence can get the extra funding that our splendid forces need and deserve.

It is always good to follow the noble Lord, Lord Campbell, particularly when he is in history mode. It requires to be said that in 1649, after the King was executed, by the March following that January, the monarchy was abolished and, days later, your Lordships' House was abolished. The Lord Protector was in such a pickle that he had to restore your Lordships' House. Of course, it was a nominated House and nowhere near the size of the current House of Lords—I believe it had no more than 70 Members and on the vesting day, only 34 arrived.

Historically, Britain—England—has looked askance at a standing army, and it bears reading into the record what is said in paragraph 7.1 of the helpful memorandum, which enables one to support the draft order:

"The Act provides nearly all the provisions for the existence of a system for the armed forces of command, discipline and justice. It covers matters such as offences, the powers of the Service police, and the jurisdiction and powers of commanding officers and of the Service courts, in particular the Court Martial. It also contains a large number of other important provisions as to the armed forces, such as provision for enlistment, pay and redress of complaints".

But we are but a handful of your Lordships' House—so few of us on such very important matters. It would perhaps have been better if we were on the Floor of your Lordships' House—in the Chamber—but that is but a modest opinion.

Again for the record, the memorandum states at paragraph 7.4:

"The obligation of members of the armed forces is essentially a duty to obey lawful commands … They have no contracts of employment, and so no duties as employees".

Rightly, the Minister said that without the 2006 Act, the powers and procedures under which the duty to obey lawful commands is enforced would no longer have effect.

These matters are of huge importance to tens of thousands working in our Armed Forces, giving wonderful, loyal service to sovereign and Parliament.

It just happens that, by serendipity, today's newspapers —the *Times* and the *Daily Mail*, for example—report a specific case where a judge refers to our Royal Military Police and its current shortcomings. The headline in the *Times* is: "'Flawed' inquiry into army abuse collapses". The report, which is more serious than its headline, is on page 14 of today's *Times.* It relates, by serendipity, to what these paragraphs refer to. That is why I have read them out, in the knowledge that, although this Committee is very important, these matters may well have been considered by the Minister and the House in the Chamber.

We should be grateful to the noble Lord, Lord Campbell. When the nation sent for William of Orange and Queen Mary, William brought with him 12,000 soldiers who landed on our southern shores. It was a remarkable, unopposed invasion which included German mercenaries and other continental soldiers. Parliament would be foolish to allow the most important of measures to just come by. It is our national history. As the noble Lord, Lord Campbell, reminded us, it is remarkable that 12,000 foreign soldiers came to our southern shores with our Queen Mary and her husband.

Lord Tunnicliffe (Lab): My Lords, I thank the noble Earl for introducing this order. I note the excellence of the Explanatory Memorandum. In previous years, we have had esoteric conversations about what would happen if we did not pass the order. This time, we are told. We could not tell them to go and get Ted. I fully support the order and, in doing so, also pay tribute to the men and women of our Armed Forces. Like other noble Lords, I have looked at the original documentation. The national archive refers to the Bill of Rights 1688 as, "1688 CHAPTER 2 1 Will and Mar Sess 2". If you dive into it, there are two references to a standing army. The second says that,

"the raising or keeping a standing Army within the Kingdome in time of Peace unlesse it be with Consent of Parlyament is against Law".

Why was that clause put in? They were turbulent times: it was an armed invasion and there were some clashes, but it ended up with a deal between William and Mary and Parliament. Why would Parliament at that point be so concerned about not having a standing army? In those turbulent times, a standing army was the means by which the Crown was able to impose its will on the people. There was, therefore, a strong movement for standing armies to be under the control of Parliament and to be illegal without its approval.

I do not think we are that worried any longer about a standing army imposing the will of the Crown, or even Parliament, on the people. However, this annual event gives an opportunity for a short annual review of the Armed Forces and their administration. Sadly, the Armed Forces are in a sorry state at the moment. They are underfunded by—I think the consensus figure is—about £2 billion per annum. Because of the financial

constraints, some of the Armed Forces are undertrained. Morale is bravely measured each year by the Ministry of Defence, and has fallen in recent years.

I will concentrate today on how the Armed Forces are being administered. Let us look at the present confusion. On 20 July 2017 the Cabinet Office—not the Ministry of Defence—announced a strategic defence and security review implementation. It said:

"The government has initiated work on a review of national security capabilities, in support of the ongoing implementation of the National Security Strategy and Strategic Defence and Security Review … The work will be led by Mark Sedwill, the National Security Adviser, with individual strands taken forward by cross-departmental teams, and will be carried out alongside continued implementation and monitoring of the 89 principal commitments set out in the NSS & SDSR … The government is committed to report annually on progress in implementing the NSS & SDSR, and published its First Annual Report on implementation in December 2016. Further progress on implementation of the NSS & SDSR, and related work, will be reported in the Second Annual Report after the end of the second year of implementation".

I believe that any reasonable person would have taken that to mean that if the first annual report was produced by the end of 2016, the second annual report—which is now apparently being subsumed into the Cabinet Office review—would have been published by the end of 2017. In fact, I am reasonably sure that it was not. Indeed, the question remains of when the report will be published.

The Joint Committee on the National Security Strategy is launching an inquiry into the national security capability review, which I assume is the same review. That was announced on 18 January 2018. So it is apparent that that Joint Committee had not seen the conclusions of the review. Meanwhile, on 25 January the noble Viscount the Minister—I am sorry, the noble Earl—

Earl Howe: I am also a Viscount.

Lord Tunnicliffe: If only I had the noble Earl's upward mobility. We mere Barons should show respect, I am so sorry. He was kind enough to write to us on 25 January. The letter said:

"I am writing to describe the purpose of this Government's Modernising Defence Programme and what it will involve. Following Ministerial discussion on the National Security Capability Review, which will be published later in the spring"—

when is the spring, I ask—

"the Secretary of State for Defence has agreed with the Prime Minister and the Chancellor that further work is required to modernise Defence. We must ensure that we deliver the best military capability that constantly evolves to counter the threats we face, and that this is done in a sustainable and affordable way".

4.45 pm

On 8 March the Minister was kind enough to write to us again. The letter was headed "Consultation on the Modernising Defence Programme". The letter is pretty general, but it says in its last paragraph:

"The consultation can be found on the 'Consultations' page of www.gov.uk by searching for *Modernising Defence Programme*".

Why are these documents always written by someone who has not tried to do it? No, it cannot. You have to go about three or four pages in to find it, as I did this morning. All that we have is a two-page document inviting comment on the review. It says:

"The National Security Capability Review concluded"—

so this review, which has not yet been published, has reached some conclusions—

"that we have entered a period of sharply increased complexity and risk".

As I say, it is only two pages long. Further in, it says:

"The Defence Secretary has set out a framework for a modernised Armed Forces, supported by a modernised strategy base, constructed around three pillars".

Those three pillars are, roughly speaking, NATO, missions led by close allies and an ability to act independently. It continues:

"Alongside this analysis, our Armed Forces must be able to … operate in a full range of combat environments … play a central role in cross-Government security apparatus",

and,

"provide leadership as a framework nation in NATO".

That is all good stuff. At the top of the next page—as I say, it is only a two-page document—it says:

"In support of the Armed Forces, the Ministry of Defence must achieve strategic affordability".

I have heard cuts described in many different ways in the past, but that is a new one.

I have four questions for the Minister. When will the National Security Capability Review be published, or has it been published with nobody telling Google? How do the NSCR and the modernising defence programme fit together? They seem to look at precisely the same subject. What does "strategic affordability" mean? When will the modernising defence programme be published? Will the Minister please convince me that the brave men and women of Her Majesty's Armed Forces have the professional administration and civilian leadership that they deserve?

Earl Howe: My Lords, let me begin by thanking in particular the noble Lord, Lord Jones, for having focused our minds on the historical origins of the order. I fully agree that we should not treat this as a mere routine measure. It behoves us to remind ourselves of where this all came from and where the legal framework on which our Armed Forces rely originates. I had to turn to my officials for a copy of the Bill of Rights in light of the comments of the noble Lord, Lord Campbell—

The Deputy Chairman of Committees (Lord Geddes) (Con): My Lords, a Division has been called in the Chamber. The Grand Committee stands adjourned for 10 minutes, to resume at, give or take, 5 pm.

4.48 pm

Sitting suspended for a Division in the House.

5.01 pm

The Deputy Chairman of Committees: My Lords, I rudely interrupted the noble Earl mid-flow. Perhaps he would like to continue.

Earl Howe: My Lords, not for the first time, we can be grateful to the noble Lord, Lord Campbell of Pittenweem, for drawing our attention to what may seem an anomaly in the date I read out from the Bill of Rights. I hope that I can convince him that I was correct—and that he too was correct. The Bill of Rights, a copy of which I have in my hand, is indeed

[Earl Howe]
dated 1688. However, the noble Lord may be interested to know that in the preamble of the Bill, the following words appear:

"Whereas the late King James the Second by the Assistance of diverse evill Councellors Judges and Ministers imployed by him did endeavour to subvert and extirpate the Protestant Religion and the Lawes and Liberties of this Kingdome",

and so on. It is apparent from the notes attached to the Bill that:

"The Bill of Rights is assigned to the year 1688 on legislation.gov.uk … although the Act received Royal Assent on 16th December 1689. This follows the practice adopted in *The Statutes of the Realm*, Vol. VI (1819), in the Chronological Table in that volume and all subsequent Chronological Tables of the Statutes, which attach all the Acts in",

the first year of William and Mary's reign,

"to the year 1688. The first Parliament of William and Mary (the Convention Parliament) convened on 13th February 1689 (1688 in the old style calendar—until 1st Jan 1752 the calendar year began on March 25th)".

So I am afraid that we are at the mercy here of a historical quirk which has, quite rightly, prompted the noble Lord, Lord Campbell, to question the accuracy of what I said.

Lord Campbell of Pittenweem: I am grateful to the noble Earl for his extensive investigations into these matters. I can say only that I would not have dared to correct the First World War veteran who taught me history to tell him that it was 1688 and not 1689.

Earl Howe: I think that in modern parlance we can safely say that it was both, but as a working basis, 1689 will do very well.

The noble and gallant Lord, Lord Craig, returned us to the issue of human rights, as he has done in the past. I understand entirely the concerns that he outlined. Clearly, we need to address what many people see as a flaw in the way that the law has come down upon certain events and situations experienced by the Armed Forces in the course of combat and in conflict zones.

For the future, and I make it clear that we cannot do anything about the past, the Government have already announced that they would consider on a case-by-case basis a derogation from the European Convention on Human Rights, where that is appropriate in the context of a future operation overseas. That could help to ensure that our troops can confidently take difficult decisions on the battlefield, and enable us to focus on the defence budget rather than on lawyers. Some would say that lawyers have had too big a slice of the cake in recent years when it comes to the cross-questioning of our Armed Forces personnel in various contexts. I am the first to agree that it has been very burdensome and difficult for many individuals.

Lord Tunnicliffe: Does the noble Earl agree that the problems in general have not been with the Human Rights Act but with very crooked lawyers?

Earl Howe: I agree with the noble Lord that dishonesty on the part of lawyers has played a part in the difficulties that I have referred to. Nobody wants to see service personnel facing extensive investigations and then re-investigations into the same incident. The situation is exacerbated when members of the legal profession are less than honest in the way that they handle the cases before them.

The noble Lord, Lord Campbell, asked about the report that he had read saying that a battalion specialising in chemical and biological weapons had been stood down or disbanded in recent years. He is quite right that the joint CBRN regiment was disbanded but I can reassure him fully that the capability which that regiment had is retained in the services, especially in the Army and the RAF. What matters, particularly in the context of the recent events in Salisbury, is that the capability we need was there when it was needed. Our Armed Forces stepped up to support the police in their investigation in Salisbury, building on the vital expertise and information already provided by our world-renowned scientists at the Defence Science and Technology Laboratory at Porton Down. We have the right people with the right skills to assist with the crucial inquiry that is in progress.

I would just add that our modernising defence programme, which is currently under way and to which the noble Lord, Lord Tunnicliffe, referred—I will come on to his question in a minute—will make sure that our country can respond to the changing nature of warfare and the new threats that we face, including those of a chemical and biological nature. The noble Lord, Lord Campbell, may have read that we have announced a £48 million investment in a new chemical weapons defence centre at Porton Down to maintain our cutting edge in chemical analysis and defence.

The noble Lord, Lord Jones, referred to the press reports from today relating to the Royal Military Police. Every year, the service police carry out a wide range of investigations into many different service offences. They play a key role in ensuring that allegations are investigated and offenders brought to justice, but it is clear that, in this specific case, something went very wrong. We will review that. The service police are a key part of the service justice system and as such are already included in the service justice system review, which we announced last year. It is due to report by the end of this year. The policing aspects of that review are being led by Sir Jon Murphy, the former chief constable of Merseyside Police, and we will of course consider carefully any recommendations that he makes.

I turn to the questions asked and points raised by the noble Lord, Lord Tunnicliffe, who asked me about the national security capability review and how it dovetails into the modernising defence programme, which we are leading from the Ministry of Defence. First, on the timelines, the Government will publish a report on the NSCR at Easter. The Ministry of Defence aims to be in a position to share headline conclusions from the MDP by the NATO summit in July. The NSCR essentially updates the Government's analysis of the threats and risks to the United Kingdom and articulates what an integrated, cross-government approach to national security ought to look like. When published, the report will set out high-level findings across 11 of the 12 strands of work that make up the NSCR, but will refer to defence—the 12th strand—only at a strategic level. The defence element of the NSCR identified

that further work was needed to modernise defence to deliver better military capability and value for money in a sustainable and affordable way. Therefore, the National Security Council commissioned a separate, further programme of work, namely the modernising defence programme, or MDP.

The noble Lord, Lord Tunnicliffe, questioned the meaning of "strategic affordability". That phrase is a condensed way of describing what we are seeking everybody's views on this consultation: how we marry strategy and affordability. By strategy, we are referring to not only the ways we should plan to counter the various threats identified in the 2015 SDSR, but the emphasis that we should attach to each strand of those capabilities. Different people will have different views on that, but we have to consider the affordability of all that we do. The MDP will build on the findings of the NSCR and the Ministry of Defence will continue to consult colleagues across government throughout the course of the programme.

The noble Lord asked about the apparent lack of synchronicity in launching the MDP before we published the NSCR. There is a very simple reason for that. Earlier this year, as the NSCR was reaching its final stages, it became clear to us that further work was needed to modernise defence. To conduct that work at the necessary pace, it was agreed by the National Security Council that the MoD should initiate the modernising defence programme without further delay. There would be no benefit from waiting for the publication of the NSCR report before starting work on the MDP. Work across government on the NSCR and the MDP continues to be, I assure the noble Lord, fully joined up.

5.15 pm

I hope that I have sufficiently covered the points that noble Lords raised, apart perhaps from the point raised by the noble Lord, Lord Campbell of Pittenweem, about uncertainty and its effect on morale. As he said, we have spoken about that before in debates, and I agree with him that uncertainty is a damaging commodity in all circumstances. But in this context, the MDP should provide reassurance to the men and women of our Armed Forces that the capabilities they need to face the threats which we all know are out there will have been determined on the basis of mature and careful reflection, at the highest levels of government, over what I hope will be seen as a reasonable period of time. I hope and believe that our brave personnel will take heart from the fact that this is a serious exercise, designed with them at the centre.

Motion agreed.

Greater Manchester Combined Authority (Amendment) Order 2018

Considered in Grand Committee

5.18 pm

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

That the Grand Committee do consider the Greater Manchester Combined Authority (Amendment) Order 2018

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the draft order that we are considering was laid before the House on Monday 5 February 2018. If approved and made today, it will support Greater Manchester's programme of public sector reform, promoting growth and productivity and continuing the implementation of the devolution deals.

There have been five devolution deals with Greater Manchester, including most recently at the Autumn Budget 2017. Noble Lords will be aware that, since passing the Cities and Local Government Devolution Act 2016, there have been seven further orders in relation to the Greater Manchester Combined Authority. The orders provided for the introduction of a mayor, and give the mayor the role and functions of the police and crime commissioner. They have also given the combined authority powers on housing, planning, transport, public health, fire and rescue, and education and skills. Some of those powers are to be undertaken by the mayor individually and others by the members of the combined authority collectively.

I turn to today's draft order. It makes provisions about the housing investment fund, allowances for committee and sub-committee members, and setting the police and crime commissioner component of the mayoral precept.

A housing investment fund was agreed as part of the initial devolution deal with Greater Manchester in 2014. It is a loan of £300 million from the Government that has enabled the combined authority to lend over £420 million to local developers to help fund quicker housing delivery in the Greater Manchester area. It has committed funding to build more than 5,800 homes at 23 sites across Greater Manchester. This order will amend the constitution so that, in addition to a simple majority of combined authority members, the mayor must also be on the winning side of any votes relating to the housing investment fund for the decision to be carried.

The order also refines certain aspects of the combined authority's remuneration powers. This will allow it to pay travel and subsistence allowances to all members of its committees and sub-committees, such as the fire committee, as well as to members of the combined authority. It also enables the independent remuneration panel to make recommendations on the remuneration of all members of committees and sub-committees and provides for the combined authority to pay an allowance to committee members who are not elected members of a council in Greater Manchester. The draft order also changes a date within the process for setting the police and crime commissioner component of the mayoral precept for the Greater Manchester mayor. This has been requested by the combined authority to ensure that the scrutiny process is complete before the precept must be issued.

There have been two consultations undertaken by the combined authority in relation to proposals contained in schemes that are relevant to this order. The first consultation ran for eight weeks from 21 March to 18 May 2016. The scheme included the proposal that the mayor should control the Greater Manchester housing investment fund, in addition to the combined

[Lord Bourne of Aberystwyth]
authority taking on a range of housing powers. The second consultation ran for six weeks from 4 July to 15 August 2016. This scheme made a number of proposals relating to committees that have now been legislated for, which is relevant to this order, as it is for members of these committees and sub-committees that the combined authority would be able to pay travel and subsistence and also refer to an independent remuneration panel for a recommendation on allowances.

There was general support for the powers consulted on, but few directly commented on these technical issues. The amendment to the process for setting the PCC component was requested by the combined authority to ensure that the statutory timetables for both components of the precept are properly integrated. As statute requires, the combined authority provided to the Secretary of State summaries of the responses to each of the consultations. Before laying this draft order before Parliament, the Secretary of State considered the statutory requirements in the 2009 Act.

The Secretary of State considers that making these constitutional changes on the Greater Manchester Combined Authority would be likely to lead to an improvement in the exercise of the statutory functions in the area of the combined authority. The Secretary of State has also had regard to the impact on local government and communities and the need to secure effective and convenient local government, as he is required to do. Also as required by statute, the constituent councils and the combined authority have consented to the making of this order.

In conclusion, implementation of the five devolution agreements made with Greater Manchester continues to progress at an impressive pace. We will continue to work and devolve more powers to Greater Manchester, contributing to greater prosperity and a more balanced economy, and economic success across Greater Manchester, the northern powerhouse and the country. I commend this draft order to the House.

Baroness Pinnock (LD): My Lords, I remind the Committee of my registered interests as a councillor on Kirklees council—the proper side of the Pennines—and a vice-president of the Local Government Association. I apologise for my deepening voice and croakiness: I am sure I will last through the sitting.

The three amendments proposed in this statutory order all relate to governance. It is very important that any amendments retain public trust and confidence in the system and create an open and transparent process of decision-making so that residents feel that their voices are not only heard but listened to, acknowledged and—crucially—seen to significantly influence outcomes.

That is my starting point for assessing the changes proposed. The proposal regarding amending the process for agreeing the police precept is eminently sensible. I have no problem with what is written in the statutory instrument. The second change is the one proposing allowances for those involved in the combined authority. As far as I am concerned, that is a matter for local decision-making and the amendment enables a decision to be made. However, I always have an addendum to that: anybody who receives funding from the council tax payer will need to be answerable to them for any allowances they receive. I am not always sure that non-elected members appreciate the importance of that relationship.

I have a bit more to say about the third proposal, which contains what I regard—that is, read and interpreted—as a mayoral veto. The proposal enables any decision relating to the housing investment fund to be made by a simple majority vote of the combined authority—in other words, the leaders of the 10 councils in the Greater Manchester area—provided that the Mayor is on the winning side. So nine of the council leaders could decide that the proposal was not good and the Mayor could stop them. That seems to require further thought. The explanatory memorandum attached to the statutory instrument suggests that this implements a commitment made in the devolution agreement and links to that element of the agreement with the combined authority in Manchester. I wonder whether the Minister can provide us with the text and source of that commitment. I have read through every single word of that and nowhere does it say anything about enabling a mayoral veto. It says, under planning and housing, that the Mayor will receive strategic planning powers. This will give the Mayor the power to create a statutory spatial framework for the city region, which will need to be approved by a unanimous vote of the Mayor's cabinet. This will be in line with the strategy currently being developed by the Greater Manchester Combined Authority, or GMCA. Of course, there is a catch-all phrase in that list about any further powers we can give; perhaps it comes under that.

However, I cannot think that the members of the combined authority had envisaged, when this was agreed and consulted on, that democracy would be undermined in this way. Our democracy is precious and has developed on the basis of collective decision-making. It has served us well. People respect it, understand it and will not be content with its degradation. I hope that the Government will rethink this element of the statutory instrument.

Lord Smith of Leigh (Lab): My Lords, I declare my interest as a member of the Greater Manchester Combined Authority and leader of Wigan Council. I must also declare that, in 2014, I was part of the team discussing the devolution deal with the then Chancellor of the Exchequer, George Osborne, which ended up being the deal we got.

I remember that, as part of the deal we signed up to, we were not exactly enamoured of having an elected Mayor at the time but we realised that we would get significantly increased powers if we agreed to it. One of the powers, in terms of the Housing Investment Fund, was a substantial amount of money. The Minister described how it has been used—largely, at the moment, to fund schemes that return into the Housing Investment Fund so that we can spread it out even further.

I do not think we discussed at the time whether a simple majority could depend on one person—actually, it could be 10:1, never mind 9:1. I assure noble Lords that within the unofficial governance of Greater Manchester we would ensure that things were decided in a proper manner. We would not allow any individual to hold up what would be a significant investment in Greater Manchester.

5.30 pm

Ironically, before I came down, I was involved in a meeting of leaders of Greater Manchester this morning. We talked about provision for the payment of allowances for the various committees. When you start up a combined authority, you inherit some work done previously and there are some new committees, such as the fire committee, which is very different from the fire authority. We need to understand exactly what the committees are, what their responsibilities are and to what extent we should pay allowances. In principle, we would be reluctant to pay many allowances; we would pay expenses but not additional allowances for the work being done on behalf of Greater Manchester. The minor change to the precept rule for police is helpful for local authorities in setting their budgets; we now have to add on the precept from both the police commissioner, or the mayor wearing his police commissioner hat, and the mayor wearing his mayoral hat, because he is allowed a precept too. It is sensible that we can get in our council tax bills early and get the money coming in.

The Minister will probably say, "This is nothing to do with me", but what is missing from the order is what got us to sign up to the 2014 agreement in the first place: the powers we were going to get through the Bus Services Act. I realise that it is a different departmental responsibility, but there seems to be no progress on that. Franchising buses is complex and we need to understand the bus market well, but we need to know the framework under which we are allowed to operate. I ask the noble Lord to press his ministerial colleagues to get their finger out and get on with it so that we can understand this important part of what we would like to do.

Lord Beecham (Lab): My Lords, I declare my interest as yet another vice-president of the Local Government Association and as a member of Newcastle City Council. Although it is good to hear from my noble friend Lord Smith that they are satisfied with the setup in Manchester and can rely on the current elected Mayor of Manchester not to exercise what is in effect a power of veto, which may not always be the case. Heaven forfend, but we might even get a Conservative or Liberal Democrat Mayor of Manchester elected separately from the constituent councils, in which case one can conceive of certain circumstances which might lead to conflict. So I share the reservations raised about that as a general principle. If Manchester is satisfied with it, so be it, but I should be wary of seeing that provision made in any other authority, and any members who are approached in that light should look carefully at that.

On remuneration, I wonder whether it is intended that this should simply come into force now with no retrospection. It would seem rather unfair if people had devoted considerable time up to now with no remuneration. If possible, it should be open to the authority to pay them, if it thought it reasonable. It would not be a duty to do so in any case, but it is invidious if those who have served already are not to be compensated to some extent as, presumably, they may well be in future.

My other question is whether any of these changes should be generalised and applied to all the combined authorities. If not, there will be a differential pattern up and down the country, particularly in relation to the remuneration of councillors. It would be helpful to know whether the Government will look at that, rather than bringing a succession of individual pieces of secondary legislation to give the power across the piece. I would be interested to know whether the Government have considered that or will consider it. If not, I suspect that we will spend time in this Room on a number of occasions simply repeating debates on the provision of a power that might be better conferred at the outset. It would not be a requirement, but I believe that the process of conferring the power should be simplified. Perhaps the Minister will think about that and get back to me and others in due course.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I draw to the attention of the Committee my relevant registered interests as a councillor and a vice-president of the Local Government Association.

I have read the order and the Explanatory Memorandum. As the noble Baroness, Lady Pinnock, said, the proposal that the mayor has to be on the winning side for a vote to be carried means that the mayor has a veto. I hear what my noble friend Lord Smith of Leigh says. He is a member of the combined authority, so I accept his expertise on these matters. If Manchester is happy with it, then so be it, but it is an odd way of working—it seems a bit cumbersome. As I say, if that is how it wants to work, we are fine with it. It means that, in effect, the mayor has a veto. Another way of operating would be to let the mayor take the decision.

A couple of points have come out of the debate. My noble friend Lord Smith of Leigh mentioned the Bus Services Act. I remember that, during the debates on the Bill, the Government were insistent that you had to have a mayor in order to get the bus franchising powers automatically. That was a big issue. Many of us could not understand why you had to have a mayor, but the Government were insistent. It is regrettable that, although the Act has been on the statute book for about a year, we have not moved forward on this. This is not a good place to be. Perhaps the Minister can come back to us on that, because I believe that it is important for authorities outside London to have powers to control their bus services—the fares, the routes and the timetables. Those powers exist in London, where we have a good bus service, and are very attractive to combined authorities.

My noble friend Lord Beecham referred to the differential pattern in the combined authorities. Manchester seems to have the most powers. Others are different, but can evolve over time. I believe that local government in England has a problem. It is a bit of a mess. We have all sorts of tiers of local government. Buckinghamshire is going to become two unitaries and there will also be two unitaries in Northamptonshire. I recall in one debate the noble Lord, Lord Lansley, listing the five authorities that potentially regulate where he lives in Cambridgeshire. It looks to me to be a bit of a mess now. At some point, we will have to look at what we want for local government in England outside London. This patchwork is not necessarily the right way to go.

[Lord Kennedy of Southwark]

I am happy with both parts of the order. The proposal for the remuneration of independent members seems sensible and I agree with it.

Lord Bourne of Aberystwyth: I thank those noble Lords who have participated in the debate on the Manchester powers. I will respond to their contributions in the order that they were made, so I turn first to the noble Baroness, Lady Pinnock. She was very much in Wars of the Roses mode as she entered the fray and she may have carried that through into thinking that the mayor and the council will always be at daggers drawn. She will know that that is generally not the reality of how councils work, so this idea of the mayor being on the winning side, as it were, is very much that he—as it is in this case; it could also be "she"—has the democratic mandate, which is likely to develop into a consensus rather than a battle between two factions. I take the point that in general it provides a check—or a balance, as I prefer to see it—rather than a cause for concern. I note in particular what the noble Lord, Lord Smith of Leigh, said in that regard. I thank the noble Baroness for her general support for the police precept point and the allowances point.

Picking up on points made by the noble Lord, Lord Beecham, I will go away and look at whether it would be helpful to have a more generalised provision for allowances. I suspect the answer is possibly not, because as has just been said by the noble Lord, Lord Kennedy, all of these deals are somewhat different. They are bespoke deals. They may not be visually or aesthetically pleasing but the question is whether they are appropriate for and work for the given area. I am not sure that, in the end, the provision would be that helpful. I am pleased to see that that seems to be the correct answer. It was not a punt—I thought it was the correct answer, but I am gratified that it indeed appears to be the case.

Moving on, I thank the noble Lord, Lord Smith of Leigh, for his general support for funds that were given in relation to the housing deal. This is part of an ongoing process. If I could pick up on the point made by various noble Lords on the bus position, I will investigate it further but the Bus Services Act provides the powers for bus franchising. That is absolutely right. It is intended that we will have a further order consolidating Greater Manchester transport powers. Believe me, a string of these things is coming through. Of course, they are extremely important.

In relation to the points made by noble Lords on allowances, the legislation prevents their being retrospective. Obviously, we want the relevant combined authorities and their independent remuneration panels to be able to act on this as quickly as possible so that they can get this right. I should say that when the independent remuneration panel makes its recommendations, the council cannot go above those recommendations. It can go below but not above, so there is a very sensible check there.

With that, I will write further on the points that have been made, particularly on buses. I thank noble Lords for their general support for a very sensible move forward for the Greater Manchester area. I wish it and the noble Lord, Lord Smith of Leigh—as a member of that authority—all the best in moving things forward.

Motion agreed.

Insolvency of Registered Providers of Social Housing Regulations 2018

Considered in Grand Committee

5.43 pm

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

That the Grand Committee do consider the Insolvency of Registered Providers of Social Housing Regulations 2018

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, these regulations were laid before this House on 7 February 2018. In the Housing and Planning Act 2016, we introduced a special administration regime for the social housing sector. In introducing these changes, we were responding to concerns that the existing moratorium provisions are not suitable for modern, large, developing and complex housing associations that might get into financial difficulty.

The provisions in the Act applied only to housing associations that were companies. We were unable to include registered societies and charitable incorporated organisations in the Act, due to the timing and the complexity of drafting required. Therefore, the Act included provision to make regulations to extend the housing administration regime to these forms of housing associations, thus covering all the different forms of housing association. These are the draft regulations that we are considering today. I also draw your Lordships' attention to the fact that there will need to be another piece of legislation enacted before the housing administration regime can be commenced. This will be a statutory instrument setting out the rules that apply to the administrator's conduct of a housing association. They will follow the negative procedure and cannot be introduced until we have passed this legislation.

Turning to the purpose of this legislation, the regulations before your Lordships are quite technical, but, as I said, they extend the housing administration regime set out in the Act to housing associations that are registered societies or charitable incorporated organisations. Under the law at the moment, where a housing association gets into financial difficulty and steps are taken towards it entering a formal insolvency procedure, a 28-day moratorium begins, which restricts creditors' ability to enforce their security during this timeframe. If the regulator cannot reach a solution with creditors within the 28-day period or any agreed extension, creditors are able to call in loans and seek to recover debts through a sale of assets including social housing stock. This could potentially lead to a fire sale of social housing, meaning that the stock would no longer be regulated and tenants would lose the protections of the social sector, including rent regulation.

This process was considered to be inadequate when dealing with modern, large, developing and complex housing associations with tens of thousands of properties in their ownership. There are almost 1,500 private registered providers of social housing in England, providing some 2.6 million homes to those in housing need. Although financial failure within any housing association is extremely rare, the housing association sector has changed significantly in recent years. The level of private finance has grown from £48 billion in 2012 to £70 billion in 2017, for example. Therefore, in the event of a private registered provider becoming at risk of entering insolvency proceedings, the Act gives the Secretary of State—or the Regulator of Social Housing, with the Secretary of State's consent—power to apply to the court to appoint a housing administrator. The administrator would manage the affairs, business and property of the registered provider of social housing for the duration of the housing administration.

As with any administration regime, the main objective would be to rescue the organisation or return money to creditors—or, indeed, both. The crucial difference is that a housing administrator would also have a secondary objective: to retain as much of the social housing as possible within the regulated sector. In addition, a housing administrator would not be constrained by a 28-day timeframe and would have the time to investigate the business and find the best solution possible to meet these objectives.

These regulations extend the housing administration framework in the Act to registered societies and charitable incorporated organisations. As I have mentioned, there are some 1,500 housing associations. About 400 of those are companies; the remainder, some 1,100, are registered societies or charitable incorporated organisations. The regulations apply certain provisions of the Insolvency Act 1986, with necessary modifications, to registered societies and charitable incorporated organisations.

We carried out informal consultation with representatives from insolvency practitioners, valuers, UK finance, and private registered providers and main lenders prior to the introduction of the Housing and Planning Act 2016, and again before laying these regulations. This group represented the organisations that have the main interest in housing administration, and they are keen to have this regime in place. A fuller public consultation was not carried out due to the extremely technical nature of the regulations and because the process of housing administration will be required only in the event of a housing association facing insolvency, which experience has shown to be extremely rare.

These regulations apply to the whole of the United Kingdom. We want the regime to cover social housing stock in England, including any such stock held by housing associations registered with the social housing regulator for England but which are, as legal entities, registered in devolved Administrations. I commend these regulations to the Committee.

Lord Shipley (LD): My Lords, I remind the Committee that I am a vice-president of the Local Government Association. It is important to support the regulations because it is in the interests of tenants that we should. It is also in the public interest that we should protect the Government's investment in social housing within the regulated sector. As the Regulator of Social Housing has pointed out, its powers may not be strong enough if one of the bigger private registered providers gets into trouble financially. There has to be a robust mechanism for the handling of financial failure. I accept that the sale of houses that is not done to an agreed, coherent plan could impact negatively on the rights of social tenants, not least on the level of their rents. We need to protect them.

However, now that housing associations are in the private sector and there is, as the Minister reminded us, a higher level of debt finance than there used to be, I return to an issue arising from four Written Questions on the governance of housing associations, which the Minister answered on 20 February. They were about, first, whether the Government would be prepared to take steps to require Homes England to maintain a formal, publicly available register of directors of regulated housing associations; secondly, whether Homes England could be required to publish clear governance standards for housing associations to enforce strong independent director representation and responsibilities, in line with those applying to public companies; thirdly, whether the Government would take steps to require all housing associations to publish details of director attendance at meetings in their annual reports; and fourthly, whether the Government will require annual returns to be made available to the public free of charge, showing the levels of board remuneration of housing associations.

Various statements were made in the rewritten reply. I understand why they were, but two lines struck me as particularly important:

> "The Secretary of State is not able to direct the Regulator on the governance arrangements of housing associations, and the Regulator has no plans to change the current approach".

I ask the Minister a very specific question in the context of these regulations. If a housing association becomes insolvent and there are found to be problems in its governance that led to the insolvency, does that mean that the regulator may be found partly responsible for the insolvency of that housing association, because, as the Minister's reply said, it has no plans to change the current approach? We need to be clear about the governance responsibilities of housing associations and of the regulator. Problems almost certainly will not arise but if they do, we need to be clear that a housing association—a regulated provider—has done everything it ought to have done about the openness of its governance structure.

Baroness Golding (Lab): My Lords, may I just ask the Minister a question? The housing association in my area took control of all the council housing that had belonged to and was controlled by local government some years ago.

5.54 pm

Sitting suspended for a Division in the House.

6.06 pm

Baroness Golding: My Lords, I am sorry for that interruption. I wish to ask a very simple question. Some weeks ago the chairman of my local housing association, which took control of all the council

[Baroness Golding]
housing in the area many years ago, announced that it was no longer a public provider but a private one. There have been arguments about what she said but, if it is now a private provider, will it come under the terms of the regulations?

Lord Beecham (Lab): My Lords, I refer again to my relevant interests. Has there been any consultation with, for example, the Local Government Association about the possible role of local housing authorities in this situation? In other words, could they be another potential source—I am not sure what phrase I am looking for here—for taking over the responsibility, as opposed to it necessarily being another housing association? In certain areas it might be more feasible for the local housing authority to do that. If the Government have not considered that, could they now take a look at it?

Lord Kennedy of Southwark (Lab Co-op): My Lords, I draw the Grand Committee's attention to my relevant interests, which I mentioned on the previous order. I am always slightly concerned when I hear mention of the dreaded Housing and Planning Act; it really is one of the worst and most ill-thought-out pieces of legislation that any Government have put on the statute book in recent times. Unfortunately, I regularly have to remind noble Lords of that. I think it is a terrible piece of legislation.

Having said that, I read the regulations and their Explanatory Memorandum before today's Committee and I am happy to support them as far as they go. As we have heard, they seek to extend a new protection regime that already applies to registered social housing providers that are companies to registered societies and charitable incorporated organisations. I am happy to support that.

I am aware that this has come about following discussions between the department and the lending sector. I am also aware of the issue of the Cosmopolitan Housing Group in the north-west of England, which has had problems. Although in the end they were resolved, they have highlighted some weaknesses in the statutory provisions governing insolvency in a registered provider of social housing. Many providers now have to make other arrangements regarding how they do their business and have to cross-subsidise things, which exposes them to more risk, so I am happy to support the regulations before us.

Paragraph 10.3 in the Explanatory Memorandum states:

> "An Impact Assessment has not been prepared for this instrument. However, an assessment of impact will be published alongside this instrument".

I have it here. Can the Minister tell me the difference between an impact assessment and an assessment of impact? Certainly this one is easier to read than the others; perhaps that is the difference. Can he tell us the status of it compared to impact assessment? Are they the same and, if not, why has this arrived? I would be keen to understand that. Having said that, I understand the regulations and am happy to agree them.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in discussion on these provisions relating to insolvency and housing associations. I thank them for the general support given to the regulations. I confirm that they are based on the provisions that applied to insolvency for companies introduced after the Cork committee in the mid-1980s, sensibly ensuring that there was a broader-based approach to companies in financial difficulties so that, if they were unable to pay debts, they were not automatically put into insolvent liquidation. It provided an administration procedure, which is something we have sought to replicate for housing associations. We did it first for companies and are now extending it by the regulations to friendly societies and charitable organisations. They provide an additional means of intensive care for these housing associations, rather than in the very rare event when insolvency was considered for a housing association—there has been only one circumstance in the past 22 years and even then it did not happen. If there should be an insolvency it provides an alternative rather than the 28-day moratorium, which is very short and specific. This would provide a period of, say, a year, which could be extended, for the debts to be paid off and the tenants to be protected. I appreciate noble Lords' support for ensuring that we can protect tenants as well as creditors at the same time.

I turn to points made by the noble Lord, Lord Shipley, who sought reassurance on the position of governance, and so on, in relation to the social housing regulator. I can confirm that the social housing regulator proactively regulates providers of social housing where there is a minimum of 1,000 units, which is more than 90% of the sector, on governance, financial viability, value for money and rent standards. I hope that that provides some reassurance. For the 10% under that threshold of 1,000 units, if a matter is referred to the regulator it will look at it, but it would not do so proactively.

The noble Lord asked if it was conceivable that the social housing regulator would be directly liable. Obviously, there are statutory obligations that it could be in breach of. I think it would be unlikely that it would be caught by the fair dealing provisions in relation to liquidation, except in the most unlikely circumstances, but there is that issue of statutory responsibility in relation to the standards that apply to the social housing regulator.

Turning to the noble Baroness, Lady Golding, we were left on tenterhooks as we went round voting in the Division wondering where her story was going to go. I am very grateful to her. I can confirm that her housing association would be subject to the regulations. If she wants me to have a closer look at the situation I am very happy to do so, but I think what the chair of the housing association is referring to is the fact that housing associations are now off the public balance sheet, as they are in the private sector rather than the public sector. I do not think that what would happen on a daily basis would change for that housing association, but it would certainly be subject to the regulations as I understand it.

The noble Lord, Lord Beecham, asked—I think I understood this correctly, but I am sure that the noble

Lord will correct me if I am wrong—about the possibility of housing authorities stepping into the breach where there was an insolvency position. Of course that would be open to the administrator to consider if there is a circumstance where it is trying to settle the debts and move the association forward so that it could be solvent once again. I am sure that such an approach would be considered by the administrator, appropriately in the circumstances, to see whether that would be feasible. That is a constructive point, and I think that is the position at the moment.

6.15 pm

The noble Lord, Lord Kennedy, does not miss his opportunities: I was pleased to see that he did his party piece on the Act, for which we are very grateful. However, he quite rightly said that this is to be welcomed, and I very much join with him on that. He asked a fair question, which had also struck me. When I looked at it I thought it was an impact assessment rather than an assessment of impact. I have asked what the difference is and I am still not quite clear. It is rather compounded by the fact that I think an impact assessment now has been produced as well. I understood today that an impact assessment had been produced, but it was just an assessment of impact. It seemed a model of lucidity, so I certainly was not going to question it. The point is that one is not required to produce a full impact assessment, which is more extensive, if the likely economic impact is less than £5 million, and I think this was adjudged to be beneath that, so it was a somewhat abbreviated version.

Lord Kennedy of Southwark: I must say that this is much easier to read than those forms you get, so maybe at some point they should look at how impact assessments are presented to Members.

Lord Bourne of Aberystwyth: I agree with the noble Lord; that is a fair point. I certainly found it easier to follow than some. I thank the noble Lord for his help on that point and others, and I thank noble Lords for their general support.

Motion agreed.

Gambling Act 2005 (Operating Licence Conditions) (Amendment) Regulations 2018

Considered in Grand Committee

6.18 pm

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

That the Grand Committee do consider the Gambling Act 2005 (Operating Licence Conditions) (Amendment) Regulations 2018

Baroness Chisholm of Owlpen (Con): My Lords, the draft regulations would impose a new mandatory condition on the holders of any betting operating licence issued under the Gambling Act 2005. The purpose of this new condition is to prevent these operators accepting bets from British consumers on the outcome of the EuroMillions draw or a EuroMillions game in a participating country outside the UK. Section 95 of the Gambling Act 2005 already prohibits the holder of a betting licence from offering a bet on the outcome of any lottery which forms part of the National Lottery. This includes the lottery known in the UK as EuroMillions.

This additional licence condition extends the existing prohibition on betting on the National Lottery to all EuroMillions lottery games, and will apply to all general betting operating licences, pool betting licences, and betting intermediary licences issued by the Gambling Commission. This will reduce customer confusion that has arisen as a result of operators offering these bets and maintain the "clear blue water" between the National Lottery and other forms of gambling, as set out in Section 95 of the Gambling Act 2005.

I will set out the background to this SI. Because EuroMillions is structured as a separate game in each of the nine countries in which it is played, a small number of gambling operators are able to circumvent the prohibition in Section 95 and offer bets on the outcome of a non-UK EuroMillions lottery—for example, a bet on the outcome of the Spanish EuroMillions lottery. Our consultation showed that this has led to customer confusion, with research showing that a percentage of players are unable to distinguish between placing such a bet and buying a National Lottery EuroMillions ticket. Some operators even undercut the National Lottery and advertise products at a lower price than the National Lottery EuroMillions or offer multiple tickets for the price of one. They are able to do this because they do not return a proportion of their proceeds to good causes.

The Gambling Commission has already undertaken a number of measures to reduce customer confusion, and this has resulted in changes to how products are promoted, but even where such proactive steps have been taken we still see evidence of customers unable to distinguish between the two products. A further point of confusion is how players can potentially arrive at these betting websites. It cannot be right that if you want to buy a National Lottery EuroMillions ticket online, and you search for "EuroMillions", you get a proliferation of sites offering a range of betting services to choose from. Between March and May 2017, the Government consulted on prohibiting betting on EuroMillions. Respondents included lottery operators, beneficiaries of lottery funding, betting operators and members of the public. There were 52 responses and 32 strongly agreed with the proposal that non-UK EuroMillions bets should be prohibited. Not surprisingly, the only respondents to strongly disagree were operators offering these bets.

Betting on the outcome of lotteries is nothing new—it has been offered legally for many years, but not on the National Lottery. For most operators offering bets on lotteries, the product is one element of a wider portfolio. British customers will still be able to participate in the other products offered by these operators, which remain unaffected by this action. Betting on EuroMillions is a growing market, and it is important that we maintain the clear distinction between the National Lottery and other forms of gambling, as set out in Section 95 of the Gambling Act 2005. The effect of these regulations will be to bring non-UK EuroMillions draws in line

[Baroness Chisholm of Owlpen]
with the UK draws and prevent gambling operators from taking advantage of the technical way EuroMillions is structured, as individual country draws. More urgently, this action will eliminate customer confusion. For these reasons, I commend these regulations to the Committee.

Lord Faulkner of Worcester (Lab): I am happy to support the regulations. I declare an interest as the chairman of the Alderney Gambling Control Commission and as a veteran of the scrutiny committee on the draft Gambling Act 2005. I recall very well that there were a lot of debates then about whether betting on the National Lottery should be permitted. Our advice was that it should not, for the reasons that the Minister has explained. There has always been a conflict of interest for the National Lottery and the role of the Gambling Commission as its regulator, which remains unresolved. The Gambling Commission—and the National Lottery Commission before it—had the twin objectives of player protection, in ensuring that people did not spend excessive amounts on the lottery and get themselves into difficulty, and the requirement to maximise the return to good causes. As I say, that conflict remains unresolved and will, I suspect, continue to remain so.

The regulations deal with companies such as Lottoland, from which I received a certain amount of unsolicited promotional material. It is based in Gibraltar and offers bets not just on the EuroMillions Lottery but on competitions such as the US Powerball, the Irish Lottery and something called the Bitcoin Lottery. I am not surprised that it opposed the regulations; being able to cash in on the promotion of EuroMillions is a nice little earner for it. Like the Minister, I do not agree that it is right for such companies to do that, so I support the order.

Lord Clement-Jones (LD): My Lords, I thank the Minister for her introduction to the order. It is a pleasure to follow the noble Lord, Lord Faulkner, who took us down memory lane with the Gambling Act 2005. It reminds me that I have been doing this job almost as long, I think, as the noble Lord, Lord Stevenson, which is saying something.

I entirely accept the logic and reasons outlined by the Minister. First, there is the confusion that has clearly been caused. I, too, thought that Camelot's briefing was pretty cogent on the subject of the damage to the EuroMillions and National Lottery brands in this country. Of course, that has a detrimental effect on participation. It is interesting that Camelot's research found that only 14% of consumers could correctly identify that buying a EuroMillions ticket via Lottoland —already mentioned—is actually a bet on EuroMillions in a foreign country. Over 60% thought that they were playing EuroMillions the UK. Indeed, I understand that Lottoland's research found that 28% of its customers did not understand the difference between the two products. That is pretty conclusive.

Secondly, none of the revenue from betting on these lotteries is returned to good causes. That must be a major reason for passing this order. Then there is the fact that Camelot is having to spend quite a lot of money defending its National Lottery brand as a result of all this. That is another reason, so we on these Benches support action by the Government very strongly. This kind of betting on lotteries runs contrary to the spirit and intention of the law, causes customer confusion and harms returns to good causes.

As is ever the case with these orders, it is a very good excuse to probe the Government on one or two other matters. I turn to the relationship between the National Lottery and society lotteries in this context. We know about the success of the National Lottery, which has partly been because of the clear distinction between the National Lottery and society lotteries. A single national lottery has been operated in order to maximise returns to good causes. The economic case for a single national lottery has been examined on many occasions; I think the most recent occasion was when the Gambling Commission advised the DCMS on regulatory policy for the lottery sector. That was in September 2014. It said that,

"the relatively low prizes and generally limited distribution footprint are key factors that have traditionally differentiated the",

society lottery,

"sector from TNL"—

that is, the National Lottery sector. To make a clear distinction between the National Lottery and smaller, traditional society lotteries, prize and proceed limits exist for society lotteries—as the Minister will know—with the top prize capped at £400,000.

The emergence of national or "umbrella" society lotteries has blurred the distinction between the National Lottery and society lotteries. These larger lotteries are sold and advertised nationally and run by commercial operations. For these reasons, umbrella lotteries stray into the territory originally intended by Parliament to be the sole preserve of the National Lottery through its single national lottery model. Of the current operators in the market, the only umbrella society lottery to offer the top prize of £400,000 is the People's Postcode Lottery. Increasing the top prize for society lotteries could create, in effect, many more national lotteries, contrary to all economic evidence that a single national lottery is the optimal way to maximise returns to good causes.

After that barrage, my question is: do the Government accept that case and that increasing the top prize for society lotteries risks unbalancing the single national lottery model, putting revenue for good causes at risk, and that therefore there should be no change to the top prize value for society lotteries? I would be more than happy if the Minister wrote to me.

6.30 pm

Lord Griffiths of Burry Port (Lab): My Lords, I am more than grateful for the remarks that have already been made. I am discovering all the time how much more I am being educated in abstruse parts of our national life that I had no idea about at all. I am a sweet innocent abroad most of the time. The noble Lord, Lord Clement-Jones, mentioned a statistic which I have also fallen upon in the paperwork before us: the 28% of people who do not know the difference between gaming—betting—and a lottery. I would be part of that 28%, without any doubt. What I have learned about the overlap between the EuroMillions and the National Lottery is completely new to me. But I can quite see why it should be confusing and why it needs to be evened out.

Others have expressed their own interests. Mine is simply that I have worked with 12-step self-help groups of people wanting to recover from habits incurred in these areas of life—gambling and various kinds of addiction, particularly alcohol—and consequently I look at measures such as this as if I were someone who had the problem and ask myself: what would help me with these matters?

Are we satisfied with the fact that 28% do not know the difference or does that goad us to feel that there ought to be some way of educating people so that it is less than 28%? Is there not some obligation on us to provide a programme of public education, or should there not be some way of drawing to people's attention to, first, what the difference is and, secondly, some of the other confusions that arose from the analysis offered by the noble Lord, Lord Clement-Jones? I do not have a clue what society lotteries are. We have entertained people from the People's Postcode Lottery, so I am beginning to be more alert to that. I am making progress on these things but if I am confused, it seems that we should ask ourselves: what do we do with people who are really confused and victims of their confusion?

Certainly, we ought to be driven by the fact that the National Lottery exists to raise money for good causes and anything that interferes with the clear profile that it has should be looked at askance. Is anyone else piggybacking on the National Lottery, taking advantage of the fact that the National Lottery is there, with all its structure and place in society and so on, and rather stealing its clothes in one way or another as it makes its appeal?

I wonder about the trademark authority refusing registration of the EuroMillions logo because of "near identical verbal elements". In this area I can claim some expertise. Words are very much my tools. If one form of words confuses the ground between the EuroMillions and the National Lottery, I can think of a thousand ways in which we could change the words but still take advantage of the logo. Verbal similarity is not a difficult thing. I have marked undergraduate essays for long enough to know how to identify a little plagiarism now and again. Who monitors the logos? I guess it is the Gambling Commission, the advertising standards people or the trademark authority itself. We ought to keep an eye on these things and—this is the thrust of the statutory instrument—always ask ourselves: will this make for a clearer picture for the people who are the victims of, first, the confusion and, secondly, some of the exploitative methods that are employed by some people in that area of life? But I have no doubt at all that I approve of the order and I add my voice to others who have spoken in favour of it.

Lord Stevenson of Balmacara (Lab): My Lords, I was not intending to speak on these regulations but I caught something my friend the noble Lord, Lord Clement-Jones, said and I thought I would respond to it. It was also mentioned by my noble friend Lord Griffiths in his response.

When we look at lottery matters, we should have regard to the fact that we are looking at a system under which the intention is to increase the amount of money paid out to good causes. We have adopted a model to do that which is not necessarily found in other parts of the world that have lotteries. I do not wish in any sense to emulate the length of time for which the noble Lord, Lord Clement-Jones, has presided over this brief in his party but when I came to debate it, a long time after he started, I wondered whether we should think harder about the percentages going out of the National Lottery system into the good causes. That was presumably not unrelated to the fact that money had to be found for the Olympics, so there was a lot of tension and a focus in that.

However, things have moved on and I felt that some of the figures being cited by the noble Lord, Lord Clement-Jones, were not exactly in line with the current state of knowledge on this. For instance, I understand that there is now a report from the National Audit Office indicating clearly that the money going to the Postcode Lottery does not deflect from people's interest in the National Lottery and that the representations made on behalf of the Postcode Lottery—that it should be allowed to expand its prize money, which is the point he made—have been the subject of lengthy discussion and consideration in the department. I think there are still consultations going on.

The Minister may know that I have tabled a Question for Written Answer on this matter, to which I am sure she will want to speedily return to amplify what she says in response to this debate. If she wants to wait until then, I will be quite happy, but my point is that there is an ongoing debate to be had about the proportion of money that the public wish to see going to national causes, which means that our model needs to be robust and sustainable.

First, is it time to reflect on that? Secondly, is there room now for this in a society that has changed out of all recognition since the National Lottery was formed, and which has an interest in local events? Research exists now to show that the Postcode Lotteries which are done postcode by postcode in the full system, and which operate right across Europe successfully, may offer another approach to giving for good causes in that the committees set up under the Postcode Lottery seem to be locally focused. The giving is therefore not so much for the benefit of winning a big prize, because the prizes are more modest, but because there is more satisfaction in the direct channelling of money towards local causes. It may be appropriate for the Government to look at whether it is time to think again about these things so that we can get more sense, and, we hope, more money, into the system.

Baroness Chisholm of Owlpen: I thank all noble Lords who have taken part. As the noble Lord, Lord Griffiths, said, it might be a steep learning curve for him but it is an even steeper learning curve for me. It is marvellous to have so many experts here today. I am very much the old new girl on the block where this is concerned, so it is interesting to hear everything that the Committee has said.

The noble Lord, Lord Faulkner, talked about the deal with companies such as Lottoland. We feel that one problem is that this is a growing market, which is why it is so important to bring this SI in. As several noble Lords have mentioned, there is no doubt that it takes away from people taking part in the National Lottery, which then takes away from good causes and so on.

[Baroness Chisholm of Owlpen]

The noble Lord, Lord Clement-Jones, talked about society lotteries, as did the noble Lord, Lord Stevenson. Evidence shows that, to date, there has been no substitution between society lotteries and the National Lottery due to the very different prospects they offer the players who take part. We have been looking at the Digital, Culture, Media and Sport Select Committee's recommendations on society lotteries and we will look closely at how we feel they are working, including on the top prize. We hope to provide a further update on that in due course.

The noble Lord, Lord Griffiths, talked about customer confusion. Again, we hope that this SI will sort this out. The ban certainly aims to reduce customer confusion by protecting those who wish to buy a EuroMillions lottery ticket online from ending up on a betting site.

It is always important to keep education in mind and find ways to improve it, making sure that people are betting on what they want to bet on and not on something else. It is not our intention to prevent operators offering bets on lotteries that do not form part of the National Lottery to consumers who genuinely wish to place legitimate bets on such a lottery. Betting on the National Lottery is already illegal and the point of this ban is to bring betting on all EuroMillions products in line with the rest of the National Lottery portfolio.

I think that has answered all the questions. I have a note that was handed to me; is it something I forgot? The National Lottery is a uniquely important part of British society. Each year, it raises around £1.6 billion for good causes and has raised a total of £37 billion—a pretty impressive sum—since it started in 1994, supporting important charity, heritage, arts and sports projects. From the charities I am involved in, I have found the National Lottery a great help on many occasions.

In bringing forward these regulations imposing a new licence condition, we are doing no more than extending the existing protection against betting on the National Lottery and taking action to remove consumer confusion in relation to bets on EuroMillions games. I commend the regulations to the House.

Motion agreed.

Electronic Commerce Directive (Miscellaneous Provisions) Regulations 2018

Considered in Grand Committee

6.43 pm

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

That the Grand Committee do consider the Electronic Commerce Directive (Miscellaneous Provisions) Regulations 2018.

Baroness Chisholm of Owlpen (Con): These regulations, which were laid in both Houses on 30 January, seek to implement two parts of the electronic commerce directive —or e-commerce directive—in relation to various offences. These are the country of origin principle and provisions relating to the liability of intermediary service providers.

To explain further, when new legislation is brought in on a particular policy area and an element of this relates to offences or requirements that could apply to an information society service—for example, intimate images on an online platform—the directive must be implemented to apply these rules. This must be done for the UK to be compliant with EU law. Importantly, the SI does not create new policy. These regulations are a technical measure to ensure that these offences are consistent with the e-commerce directive. The regulations implement the directive in relation to various offences including, for example, the children's hearings publishing restrictions offence.

The Committee should be aware that my department worked closely with officials in the Scottish Government and the Northern Ireland Assembly in preparing this draft instrument. The Scottish Government are keen to see this SI made law.

I will now look at what the e-commerce directive is and what the SI claims to achieve. The directive seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services within the EU. The directive is also relevant to the European Economic Area. This SI implements the e-commerce directive's country of origin principle in relation to these offences, where relevant. Under the country of origin principle, an information society service should be only under the jurisdiction of the member state in which the service is established, not the European Economic Area country that the service is targeting. The country of origin rules are described in more detail in the Explanatory Memorandum at paragraph 4.2.

Finally, the SI also implements articles 12 to 14 of the directive, where relevant, which limit, in specified circumstances, the liability of intermediary service providers which carry out certain activities essential for the operation of the internet, namely those which act as "mere conduits" and those which "cache" or "host" information. I emphasise that the sole intention and outcome of this statutory instrument is to implement parts of the electronic commerce directive in relation to various offences, where this has not been done before. It will not create or set new policy; instead it is a technical measure to ensure compliance with EU law. I look forward to the Committee's questions and hope that your Lordships will allow this SI to become UK law.

Lord Clement-Jones (LD): I thank the Minister for her very clear introduction. This is a very interesting regulation—for aficionados. As she spoke in detail about it, that introduces the country of origin principle for discussion. I understand completely what the draft SI is meant to do. I expect that somebody in DDCMS woke up in a cold sweat and suddenly realised that there was quite a backlog of criminal offences in Scotland and Northern Ireland that needed to be brought within the scope of the e-commerce legislation. Such cold sweats can occur, even in the best-run government departments. We should not impede the passing of this SI simply because some of the offences are rather ancient. We are not dealing just with 2015 offences.

Of much more interest for those who are currently debating the European Union (Withdrawal) Bill is the whole question of the future application of the country of origin principle. After all, starting with the e-commerce

directive, the EU Commission aimed to create an effective single market, particularly in the field of online retail. It is extremely pertinent to what is going to happen next. The current law is set out in the EU electronic commerce directive 2000, implemented into UK law in 2002. The regime covers almost every commercial website and is not restricted to online buying and selling but covers any service provided for remuneration at a distance using electronic means. On top of that, we have EU-derived distance selling and cookie regulation.

Much e-commerce law is implemented largely through secondary legislation, which will be preserved after Brexit takes place. However, the EU is obliged to revisit the directive every two years, so a divergence between the EU and the UK is possible. Therefore, the question arises as to whether we are going to need some sort of adequacy ruling for country of origin, rather in the way that we will probably have such a ruling for data protection. Indeed, is country of origin going to be available to us in the first place? Does the e-commerce directive fall away post Brexit? As I am sure the Minister is aware, country of origin principles applied to broadcasting will fall away unless there is a special deal which breaks through the normal cultural exceptions put into free trade agreements. So I am a little pessimistic about that.

Then, of course, the wagon rolls on. The consumer protection co-operation regulation was adopted by the Commission in December 2017. A regulation on addressing unjustified geo-blocking was adopted this February. There are two legislative proposals on the supply of digital content, and on online and other distance sales of goods, which the Commission proposed in December 2015 and are currently under negotiation in EU institutions. What are the Government's intentions in respect of the new EU digital single market developments? Does they intend to stay aligned with e-commerce law in the EU? If so, how? If not, what will the consequences be? I would be extremely interested to hear from the Minister.

Lord Griffiths of Burry Port (Lab): My Lords, the noble Lord, Lord Clement-Jones, must first hear from me. Perhaps that will give the Minister a little time. I am very grateful for the way in which an aficionado made me aware of this welter of material relating to the way that information flows and the activities that benefit from that flow of information across Europe in so many fields.

This SI is relentlessly logical. I cannot understand why the law on such important and serious matters as human trafficking, prostitution, the care of children, threatening comments, intimate images—all those things that are listed here—came on to the statute book in Brussels in 2000 and here in 2002 but it has taken us until 2018 to deal with it. The country of origin thing may be part of the answer, I do not know. But, as the noble Lord, Lord Clement-Jones, said, just this morning we received a visit from commercial broadcasting people who are terribly worried about this country of origin principle and how it will affect their business in the future.

This SI is intended to ensure the smooth functioning of the internal market and to ensure consistency with EU law—all of that—while we are still members of the EU. I share the bemusement of the noble Lord, Lord Clement-Jones, about what might happen afterwards. He talked about adequacy, the future application of country of origin—will that continue?—and possible divergence that may occur as two different regimes pursue ways forward according to their own respective best lights, which may not be the same.

Of course, Brexit is raising a whole host of details of this kind, which make us aware of how silly we were to go down this road in the first place. Perhaps that remark ought not to go on the record—it does not belong to this debate—but I could not forbear from making it. But here we are with something that makes obvious sense but raises questions of concern that lie beyond its scope and its date. We wonder about both the scope and the date and what will happen to us all very soon. But I have no hesitation in supporting this statutory instrument.

Baroness Chisholm of Owlpen: I thank the noble Lords, Lord Clement-Jones and Lord Griffiths, for their contributions, particularly the noble Lord, Lord Clement-Jones, who went off on one, I think. He will probably not think that the answer is good enough but, as we know, the UK will be leaving the digital single market but we will continue to work closely with the EU on digital issues as we build on an existing strong relationship in the future economic partnership. We will seek an ambitious agreement with the EU that enables the best possible access to each other's markets. There is mutual advantage in the continued close relationship between the UK and the EU on digital issues and the advancement of digital transformation across Europe.

Lord Clement-Jones: The Minister is entirely correct.

Baroness Chisholm of Owlpen: With that, I think I have covered everything that was mentioned. As I said, this SI is important, and I have set out clearly why we need these regulations, which are technical. They will provide legal certainty to UK online services to enable them to trade across the EU with confidence. I therefore commend them to the Committee.

Motion agreed.

Data Protection (Charges and Information) Regulations 2018

Considered in Grand Committee

6.56 pm

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

That the Grand Committee do consider the Data Protection (Charges and Information) Regulations 2018

Baroness Chisholm of Owlpen (Con): My Lords, the work of the Information Commissioner and her office is of fundamental importance and relevance in today's society. Data is a pivotal element of the digital revolution, enabling a multitude of technological innovations that support growth and benefit our society. However, for these innovations to be successful, we—both government and the general public—must be confident that our

[Baroness Chisholm of Owlpen]

data is not being misused. For this reason, we are modernising our data protection laws through the Data Protection Bill, and providing new and stronger powers for the Information Commissioner.

An effective data protection regulatory framework is critical to retaining the right balance between innovation and privacy. This is particularly the case now, when data is at the forefront of the political agenda, both domestically, with the Data Protection Bill currently in Parliament, and internationally. This was highlighted in the Prime Minister's recent Mansion House speech, which featured the UK's exceptionally high standards of data protection as one of the foundations underpinning our post-Brexit trading relationship with the EU. This changing data protection landscape has increased the responsibilities of the Information Commissioner and the challenges she faces, and with these increased responsibilities comes an increased cost.

It is crucial that we ensure that the Information Commissioner and her office are adequately funded to fulfil their responsibilities and that government meets its responsibility under the GDPR to ensure that the ICO is funded for the effective performance of its tasks. As with other similar organisations, such as the Care Quality Commission, Ofcom and the BBC, it is only right and appropriate that this funding comes from charges levied on relevant stakeholders—in this case, data controllers.

Currently, data controllers pay two tiers of charge: tier 1, for organisations with less than 250 staff or turnover under £25.9 million, is £35 per annum; and tier 2, for the remaining larger data controllers, is £500 per annum. These charges have not increased at all since their introduction in 2001 and 2009 respectively. The regulations will implement a new charge structure in order to fund the Information Commissioner's data protection activities, and will come into force on 25 May 2018, which is when the new Data Protection Act and the GDPR standards are due to take effect.

The new structure is made up of three categories of charge: "micro-organisations"—including individuals—which will pay a charge of £40; "small and medium organisations", which will pay £60; and "large organisations", which will pay £2,900. The structure is designed to be closely aligned with the standard government categorisation of businesses. Furthermore, a £5 discount applies to all organisations where they pay by direct debit. This in effect means that micro-organisations which pay by direct debit will pay the same charge that they have since 2001 and that all micro, small and medium data controllers are paying less than the annual cost of a Netflix subscription towards maintaining the ICO as a world-class data protection regulator.

Similar to the current approach under the Data Protection Act 1998, public authorities will be categorised on the basis of number of members of staff only. In addition, charities and small occupational pension schemes will continue automatically to pay the lowest charge. The new funding model for the Information Commissioner has three main policy objectives. It will ensure an adequate and stable level of funding for the ICO, build regulatory risk into the charge level and raise awareness of data protection obligations in organisations, thereby increasing their compliance. Let me expand on what that means in practice.

First, in designing the new charge structure, the Government, in conjunction with the ICO, have given detailed consideration to the income requirements of the ICO now and in future. The new charge levels recognise the increased funding required by the ICO under the new data protection regime and spread the funding provision appropriately across each of the three tier groups. The charge levels have been increased from the current level of fees primarily to reflect the increased responsibilities of the ICO under the GDPR. For example, the GDPR will expand the Information Commissioner's responsibilities in relation to mandatory breach notification and data protection impact assessments, as well as increasing the scope and scale of her existing activities. In 2016, the Department for Culture, Media and Sport estimated that the ICO's income requirements for its data protection functions will increase from approximately £19 million in 2016-17 to approximately £33 million in 2020-21. A financial forecast for the first year of operation under the GDPR—that is, 2018-19—sets the income requirement for the ICO at approximately £30 million. It is imperative for the ongoing success of the UK's data protection regulatory framework that the ICO has the income it needs to continue fulfilling its vital functions to such a high standard.

Secondly, large organisations, including public authorities, often hold the most complex and sensitive datasets, as such represent a higher level of information risk and will generally draw more heavily on the ICO's resources than small organisations that process small amounts of personal data. The charge structure has been designed to ensure that overall income from each group of data controllers—micro, small and medium, and large—adequately reflects the proportionate information risk accruing to each group, as well as to recognise that it would not be appropriate for large businesses and public authorities to be effectively subsidised by small and micro-businesses, which make up the majority of the register of data controllers.

Thirdly, and finally, in making these regulations we are highlighting the importance of compliance with the UK's data protection regulatory framework to data controllers, thereby increasing their awareness of the ICO as the regulator and their own obligations. The new regulations substantially replicate the current exemptions from paying notification fees, with some exceptions. The regulations will remove the current exemption for some data controllers who are only undertaking processing for the purposes of safeguarding national security, and introduce clarification to the wording of the existing personal and household purposes exemption to make clear that homeowners using CCTV for these purposes are no longer required to pay a charge under the new scheme. I appreciate that there is appetite from stakeholders to review these exemptions in general; the Government have committed to undertake a public consultation on the exemptions later this year. Your Lordships may be interested to hear that we are especially minded to consider an exemption for elected representatives and the House of Lords.

In conclusion, the work of the Information Commissioner and her office is fundamental to the success of our digital economy. It is vital that we secure adequate funding, for now and the future. The new funding regime set out in these regulations maintains the spirit of notification fees in charging only those people and organisations that handle personal data without the need for direct government funding, while providing the ICO with the level of income it requires to continue to deliver as a world-class data protection regulator. I beg to move.

Lord Clement-Jones (LD): I thank the Minister for her comprehensive introduction. We all accept the need for a well-resourced Information Commissioner's Office. On Report, we welcomed what the noble Lord, Lord Ashton, who was the Minister at the time, had to say in response to an amendment from the noble Lord, Lord Puttnam, about the commitment to ensuring that the commissioner has adequate resources to fulfil her role as a world-class regulator and to take on the extra regulatory responsibilities set out in the Bill. There is no argument between us about the principles of funding the Information Commissioner's Office. The pledges made by the noble Lord, Lord Ashton, were very welcome. We wish the Information Commissioner well with her extended role and her extended £33 million budget.

That does not come without a cost to data controllers. It is not simply a question of deciding the budget and then deciding what people pay, without considering affordability. Local authorities have put to me that they are very concerned at the lack of consultation offered to all affected parties, including the LGA, ahead of the new charging model. Apparently, approximately 40,000 data controllers were written to, inviting them to respond to the consultation: I understand that about 2,000 did so. However, not all affected parties were offered the opportunity to contribute. The consultation, and responses to it, are not publicly available, which differs from most government consultation. Will the Minister commit to publishing the outcome of the consultations?

Local authorities are concerned by what appears to be a rather arbitrary increase in the charges that they will have to pay to the ICO as data controllers. I also understand that it is proposed that elected representatives will be subject to a small increase in their charge. Under the new charging model, councils with 250 or more employees are defined as large data controllers and are subject to the highest fees under the SI. In practice, most councils that would have been paying £500 to register with the ICO will now have to pay £2,900. This is an increase of 480%; an inflationary increase would have seen the fees rise from £500 to £623.61. This comes at a time when local government is under significant financial pressure and local councils are receiving no additional government funding to help implement the GDPR.

It seems from the Explanatory Memorandum that the Government are considering an exemption for elected representatives, subject to a full review of exemptions in general. In the current process, there are exemptions from the requirement to register with the ICO. These include exemptions for those maintaining a public register, for staff administration purposes, for advertising and for accounting. I refer the Minister to paragraph 7.10 of the Explanatory Memorandum, where the Government state their intentions about the review.

On these Benches, we would definitely support an exemption for elected representatives. Councillors should not have to pay a charge to the Information Commissioner to correspond with their residents and should not incur a cost associated with their duties in representing their constituents. I am interested to hear what the Minister has to say about the review which is heralded in the Explanatory Memorandum.

Lord Stevenson of Balmacara (Lab): My Lords, I agree with just about everything that the noble Lord, Lord Clement-Jones, said, particularly on the comments—they have been passed to me as well—from the Local Government Association, which seems to have been badly hit by the changes. He will remember, although I think this predates the Minister, that we went through some of the thinking behind the charges in what is now the Digital Economy Act. He will recall the debate and discussion at that time; it is good to see it coming through now in a form that we can look at.

I will not repeat some of the issues that have been raised because I come at this with a slightly different argument, although we arrive at roughly the same place. First, noble Lords could not have gone through the Data Protection Bill without recognising, as the Minister did, the huge amount of extra work and responsibility that will lie with the ICO after it went through. It is an astonishing step change. Yes, it is true that that is reflected in the additional resources, which will be calculated to flow from these changes and increases in the fee structure, but two questions arise. We are relying for the arithmetic on work that was done, as I understand it, by working through the new charge structure; the department has modelled the anticipated income generated to try to come up with something. Two things occur to me from that.

First, what happens if the calculations are wrong? As we speak, we are living through a situation in which a huge additional workload has suddenly landed on the ICO's desk. Cambridge Analytica was not a household name before this week's revelations but if the matter goes to court to get submissions, the ICO will have to prosecute and defend itself. I cannot quite see where that was built into things. I am not looking for a specific response but I want to sharpen the question. It is all very well being on a cost-recovery basis when the funds exceeds the expenses, but what happens when they do not? Who will carry the cost? Can the Minister comment on that? Secondly, would it be possible to get a bit more detail about how this plays out in real terms, given the reserves that are allowed to be carried forward and the implication for what work would have to be cut if it is not possible to carry forward deficits from year to year? We are talking about government accounting so, presumably, the NAO will be watching very carefully. I worry a bit about what will happen in the short term. I do not want a detailed response now but I would be happy to get a letter on that.

[Lord Stevenson of Balmacara]

My second point is about the assertion made that somehow the structure we have here is a way of responding to what was described in paragraph 7.2 of the Explanatory Memorandum as building,

"regulatory risk into the charge level".

I do not understand what risk is being assessed here. Again, this may need a more considered response. Is it the numbers? It is clear that there will be a lot more tier 1 organisations and therefore a lot of detailed administration and housekeeping, but does that equate to risk? I think not. I therefore wonder why the charge, relatively speaking, is being kept at roughly what it was before—it is still £40—and has been extended.

I do not think that the noble Lord, Lord Clement-Jones, made this point today but I am sure that he raised it in discussion in Committee and on Report. We are talking about a situation where it did not matter whether you registered with the system under the Data Protection Act 1998, despite the fact that the noble Lord did not get his amendment through on having a statutory register for these things. I am sorry about that. There will effectively be a register for all those who use data, which will be policed to some extent. Therefore, the chances are that anyone who was not paying before will certainly be caught now. There is a huge additional element here that has not been previously caught or considered. I am intrigued by that. Therefore, the comment made about not wanting micro-organisations to pay for their activities further up the scale struck me as a little odd. Perhaps we might come back to that.

Tier 2 includes the mid-range of the organisations. A lot of companies are in this area; in fact, the bulk of activity in the industry. Yes, they should pay for services received but I would hazard that they are extremely low-risk. I cannot believe that major breaches of personal data are happening in a large number of small and medium-sized enterprises. That bears comparison with the new third tier that has been introduced to look at large organisations; we are talking about Facebook and other organisations which I do not need to name. We are asking them only to pay a modest proportion more than small and medium-sized organisations. I do not know how that equates to risk. It seems that the evidence of this week is that 50 million Facebook accounts could have been picked up and used in some alleged way of trying to influence elections. We are talking about damage on a substantial scale, which is not the same, in any sense, as that which might occur to citizens—the local joiner, plumber or building firm mislaying their accounting records for a short period. However, I am prepared to listen to the arguments on that.

7.15 pm

Add to that the fact that public authorities, which have not previously been involved to this extent, as mentioned by the noble Lord, Lord Clement-Jones, and, presumably, government are also paying. Where was the risk relationship in that? It seems that the public sensitivity on comes from the Government, government agencies or public authorities more generally having a place in people's thinking that is disproportionate to the possibility of the damage that might be caused by a breach. In other words, there will in some senses be more concern about the loss of privacy in terms of health or other issues than there perhaps would be about the loss, as we have seen in some cases, of phone records and credit card details from a telephone company. Again, what is the risk profile here? Perhaps we need a bit more on this.

The proof of what I am saying was made pretty evident by the examples the Minister gave; even she must have had a slight smile on her lips when she was doing that. To compare this with the contribution that you pay for a Netflix subscription verges on the ridiculous. We are talking about very serious, damaging issues: cybercrimes are on the increase, people put themselves in danger by releasing data uncontrolled on to the internet—and children are affected. These are all things that were talked about in the debates on the Data Protection Bill. These come to force in the way in which the Government set up their charging system, and we have not got this right. I do not want to hold up this statutory instrument, even though I object to the fact that it is not coming out on a common commencement date. However, I understand the reason for that, because these things come into force on 25 May irrespective of what we do. However, I hope that the reviews of the statutory instrument will have a chance to look at some of these things in more detail than perhaps we were able to during the passage of the Digital Economy Act and the Data Protection Bill. Now that we see them, they do not measure up to the aspirations we had for them, and more thought should be given to them.

Finally, I acknowledge that I have benefited from the comment made by the Minister when she introduced the clarification to the wording of the existing exemption relating to processing for personal and household purposes to make clear that homeowners such as me, who use CCTV, are no longer required to pay a charge. I have been paying a charge since 2005 and I am delighted to see that I will be relieved from that going forward; had I not been here today, I would not have known that. I will also benefit from the fact that elected representatives, including Members of the House of Lords, may not have to register in future.

Baroness Chisholm of Owlpen: I thank the noble Lords, Lord Clement-Jones and Lord Stevenson, for their comments.

The noble Lord, Lord Clement-Jones, asked whether we will publish the results of the consultation. In response to interest from Peers and in the interests of transparency, they will be published shortly. Both noble Lords talked about the top tier. Indeed, as the noble Lord, Lord Stevenson, said, these regulations and the GDPR come into force on 25 May, so we are a bit short of time. The top tier has been raised significantly, and the amount has been set out to ensure appropriate funding for the ICO without leading to excessive surplus. However, I hear what the noble Lord, Lord Stevenson, said about large companies. It is important to remember that DCMS will review the income generated annually to ensure that it remains appropriate, so it can be checked.

The noble Lord, Lord Stevenson, also talked about large public authorities. It is important to remember that they hold a huge amount of sensitive data about

members of the public; therefore they are subject to high levels of information risk. So we consider it appropriate that the regulation of these organisations is effectively subsidised; that means that they are paying a large sum, but the small and medium-sized businesses are not. It is important that they should not be unfairly charged. The new funding model is aimed at ensuring that the new charges are fair and reflect the risk of the organisations. The small and medium-sized businesses will not be paying any more than they have been, in real terms. It is the larger organisations that will be paying the most.

Lord Stevenson of Balmacara: I may not have made the case clearly enough. We have not seen the figures but the last time we asked about this we were told that the proportion of very small registrants—micro-companies and individuals—is really small. As we learned when the Bill was in Committee, an awful lot of people and loads of small companies and organisations—including parish councils, of which much was made—will have to appoint data controllers to make sure that their systems are up and adequate. That is right, but the shock of having to pay on a regular basis will be substantial. I want to make it clear that going from 10% to 100% of people involved in this will be a major change in people's thinking.

Baroness Chisholm of Owlpen: They have been paying up until now, but a very small amount.

Lord Stevenson of Balmacara: Those that registered did pay, but very small numbers do. That is the point. I bet that no parish council has ever registered: every one will have to register. That is a big change.

Baroness Chisholm of Owlpen: I take the noble Lord's point. However, more often than not they will be able to use somebody who is already on the parish council to do the work. They will not have to pay somebody extra to do it. We feel that this is the fairest way of doing it. Those with the least money are paying the least and those with the most money are paying the most. I think I have answered all the questions.

Lord Clement-Jones: I do not think the Minister has really answered the question about the lack of consultation with local authorities and why they are being particularly hit by this new set of charges.

Baroness Chisholm of Owlpen: As I said earlier, it is because we feel they have quite a lot of risk. They hold a huge amount of data, so it will be quite a lot of work for the commissioner. It is only fair that they should pay their way. Does that satisfy the noble Lord?

Lord Clement-Jones: Yet their resources are shrinking on a daily basis.

Lord Stevenson of Balmacara: It is not so much whether they should be paying—we probably accept that they should, though how much is in question—it is the fact that they were not consulted. The consultation exercise did not reach that far and the Minister was going to try to give some information about why that could have been.

Baroness Chisholm of Owlpen: In 2015, the ICO used the BDRC, an independent market research company, to conduct initial research about its funding structure. The contractors of the survey were provided with a sample of 10% of the register of the Information Commissioner's Office, including all top fee-payers and a random sample of lower ones. In 2017, data controllers who responded to this initial research formed the basis of the targeted consultation on the new charges last year. This comprised a representative sample of data controllers, including public authorities, small businesses and other large organisations.

I thank noble Lords for their contributions on this important matter. I believe that the funding regime proposed today represents the best way of ensuring that the ICO is appropriately resourced for its increased role, while still keeping regulatory costs and burdens low for small businesses. I assure the Committee that, while the exemptions from paying charges have not significantly changed at present, they will be comprehensively reviewed with a view to updating them later this year. I beg to move.

Motion agreed.

Committee adjourned at 7.24 pm.