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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Tuesday 27 March 2018

2.30 pm

Prayers—read by the Lord Bishop of Durham.

Israel-Palestine Conflict

Question

2.36 pm

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what assessment they have made of the importance of the right of return of Palestinian refugees to the resolution of the Israeli-Palestine conflict.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, as part of a resolution to the Israeli-Palestinian conflict, there needs to be a just, fair, agreed and realistic solution to the question of Palestinian refugees in line with the United Nations Security Council Resolution 1515. Any such agreement must be demographically compatible with two states for two peoples. The United Kingdom remains committed to supporting Palestinian refugees, including through the United Nations Relief and Works Agency, to which we have so far provided over £50 million in 2017-18.

Baroness Tonge (Non-Afl): I thank the Minister for that response, but is the Minister aware of families like that of Haj Abdullah Shahata from Kuwaykat in Palestine who were driven from their homes and prosperous farms 70 years ago, and have been living in camps and temporary accommodation in Lebanon since then? Is he aware that the Lebanese Government continue to restrict Palestinians' right to work, prohibit them from owning property and refuse them access to healthcare and education, leaving them dependent on UNRWA, which has diminishing funds? Can he really be content to let this continue for another 70 years, or will the Palestinians be allowed the right of return to their homeland as prescribed in international law?

Lord Ahmad of Wimbledon: As I have already said in my original Answer, of course the importance of refugees returning to the Holy Land, to the Palestinian territories, is an important part of the peace resolution. Let me reassure the noble Baroness that, in terms of money and financing, as I have already said we remain committed to UNRWA and continue to provide support. We also continue to provide financial support to the Palestinian Authority. This financial support allows for the education for the next generation, which I know is a priority for the noble Baroness. While I fully acknowledge the challenge of the Palestinian refugees, particularly those living in camps, from a UK perspective we remain committed to the two-state solution and also committed to supporting UNRWA in its efforts.

Lord Collins of Highbury (Lab): My Lords, the Minister keeps mentioning UNRWA, but the President of the United States has decided that the Palestinians' position needs to be punished and that there needs to be some form of retribution because of their decision over Jerusalem. What are the Government doing to persuade the US that punishing the Palestinians is not the right way forward, and that we should be working together as allies to support UNRWA? Have the Government had any discussions at Foreign Office level with the new national security adviser and the new Secretary of State, both of whom have taken positions that could make life very difficult for the Palestinians?

Lord Ahmad of Wimbledon: I reassure the noble Lord that I speak for Her Majesty's Government, and the Government remain committed to a two-state solution and to UNRWA. Regarding the relationship with the United States, we continue to implore the United States, which is a key player in finding a lasting Middle East settlement, to engage fully with all parties and to continue engagement with both the Palestinians and the Israelis in finding a resolution to this crisis, which, as the noble Baroness has said, has gone on for far too long. In response to the question about specific meetings, most recently my right honourable friend the Foreign Secretary has had discussions on a range of issues relating to foreign policy with American counterparts, and we continue to do so.

Baroness Deech (CB): My Lords, does the Minister agree with me that this is a problem that need not exist? Of the 60 million refugees in the world, only the Palestinians are treated as refugees for generation after generation, when they should have been resettled in the lands where they are living now, as were the same number of Jews who were expelled from the Middle East in the late 1940s. It is time to call a halt to this artificial definition, which is destined to use people as bargaining chips.

Lord Ahmad of Wimbledon: The one point on which I will agree with the noble Baroness is that it is important to find a resolution to this long-standing issue. The Palestinians, as the Jewish communities of Israel before them, have suffered for too long from being disassociated and removed from the holy lands. We need to find a lasting solution that is fair for both the Palestinian people and of course Israel.

Viscount Hailsham (Con): My Lords, I say to my noble friend that achieving the right of return is going to be extraordinarily difficult and probably impractical. What we can do is to urge upon the Government of Israel the importance of desisting from building settlements around Jerusalem. That could make a substantial contribution to a resolution of the conflict in the Middle East.

Lord Ahmad of Wimbledon: I agree with my noble friend. The issue of return in any refugee crisis that we have seen since time immemorial has always been challenging. I agree with him totally on the issue of settlements. Our position is clear: any settlement that is built in the Occupied Territories is illegal and against UN resolutions.

Lord Winston (Lab): My Lords, I declare an interest in this regard: I am a Zionist. Many of my family have been living in Israel since the 15th century after the persecution in Spain. Is it not fair to point out that

[LORD WINSTON]
one of the problems about the repatriation or readmittance of Palestinians is the firm resolve by so many of them to try to destroy the state of Israel? As long as that happens—the openly avowed intention is to ensure that Israel does not exist—that remains a very big problem in these negotiations.

Lord Ahmad of Wimbledon: Any party that believes in the destruction of Israel of course cannot be party to a peace process. The UK Government have made it clear that, before taking part in any peaceful negotiations on the two-state solution, any party at the negotiating table needs to agree the right of Israel to exist, so I agree with the noble Lord. Equally, I am sure he would agree with me that there are many on the Palestinian side who not only recognise Israel's right to exist but believe most passionately in the coexistence of Arabs, Jews, Christians and indeed all faiths and communities living peacefully side by side. That is what we believe the two-state solution provides.

Baroness Northover (LD): My Lords, on the question of taking forward a two-state solution, does the Minister not feel that the UK should recognise Palestine, as most other countries in the world do?

Lord Ahmad of Wimbledon: It has been the position of Her Majesty's Government that we will recognise officially the state of Palestine when we feel that would be most constructive and progressive to ensuring a peaceful resolution to the conflict, which has gone on for too long. At the same time, we also recognise the right of Palestinian children and Palestinian people to get support in terms of health and education, and we continue to support them and the Palestinian Authority in that regard.

Lord Hylton (CB): My Lords, does the Minister accept that the Palestinian refugee population—particularly in the neighbouring countries, as mentioned by the noble Baroness—has been consistently excluded from all political negotiation? Therefore, would Her Majesty's Government favour consultation with those people to discover what are their own wishes? Could UNRWA, as their friend, advocate and protector, be allowed at least observer status?

Lord Ahmad of Wimbledon: We continue to abide by the agreement reached at the UN for a two-state solution. The Palestinian people, including the Palestinian refugees, are represented and their views are known by the Palestinian representatives in the peace negotiations.

Brexit: European Council and Commission

Question

2.45 pm

Asked by ***Lord Dykes***

To ask Her Majesty's Government what response they have given to the most recent submissions from the European Council and Commission on the Brexit negotiations.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, the European Union published a draft withdrawal agreement text as part of our ongoing negotiations under Article 50. We have made significant progress towards concluding much of the withdrawal agreement by agreeing the chapters on financial settlement and citizens' rights, in line with the joint report, as well as the terms of a time-limited implementation period. We will carry this momentum forward and aim to reach agreement on the entire withdrawal agreement by October.

Lord Dykes (CB): I thank the Minister for that Answer. How long will the Government need to renegotiate the existing trade agreements with non-members who have trade agreements with the European Union as a whole? Will the 21 months of the transition period be enough?

Lord Callanan: We are pursuing many of these multilateral agreements in a whole range of areas, including trade agreements, and we are confident that we have enough time to complete those negotiations.

Lord Bridges of Headley (Con): Perhaps my noble friend could clarify a point from the Statement yesterday. In the Statement, the Prime Minister said that,

"we remain committed to the agreement we reached in December in its entirety".

A little later, she said, on the Northern Ireland border:

"I have explained that the specific European Commission proposals for that backstop were unacceptable".—[*Official Report*, Commons, 26/3/18; col. 524.]

Which is it: do we accept the agreement in its entirety or do we not?

Lord Callanan: I thank my noble friend for his question. The Government are committed to the avoidance of a hard border, including any physical infrastructure or related checks and controls. The UK's intention is to achieve these objectives through the overall EU-UK relationship. Should this not be possible, the UK would propose specific solutions to address the unique circumstances of the island of Ireland.

Lord Anderson of Swansea (Lab): Do we confidently expect to get a better deal on our own with, for example, South Korea, than the EU will get?

Lord Callanan: It will be a matter for the negotiations, but we hope to achieve an agreement at least as good as the existing trade agreement with South Korea, yes.

Baroness Ludford (LD): My Lords, is not the truth that, despite barbs often directed at Brussels, EU institutions have proved far more transparent, accessible and accountable—and, I might add, more honest—than Ministers and departments in Whitehall? There is no way that we would have this annotated withdrawal agreement if it had been left to the UK Government. Does not the Brexit process show how much our democracy and governance need modernising?

Lord Callanan: I am afraid I just do not agree with the premise of the noble Baroness's question. We are extremely transparent and very accountable. We published a draft legal text on the implementation period. The EU publishes many documents; we publish many documents. We appear at numerous Select Committees and debates in this House to account for the Government's strategy. We are committed to being as transparent as possible but, obviously, as is the case with the EU, we do not want to do anything to prejudice our negotiating position.

Lord Foulkes of Cumnock (Lab): My Lords—

Lord Tebbit (Con): My Lords—

Noble Lords: This side!

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, it is disappointing that I should have to get my feet. There is time to hear from both noble Lords. I think it is the turn of the Conservative Benches first.

Lord Tebbit: My Lords, could my noble friend perhaps arrange some sort of education process for those people on the other side of the House who do not believe that the British people are capable of running a democratic process? We had been doing it for quite a long time before most of those on the continent got round to the idea of having a democratic process.

Lord Callanan: I see that my noble friend is as provocative as ever. We believe in democracy; part of the referendum was about taking back control. I am sure that this House, and the other place, are quite capable of organising our own affairs in the future.

Lord Foulkes of Cumnock: Was that not a waste of a question? You would have thought the noble Lord would have learned by now. Would the Minister now care to try to answer the question posed by the noble Lord, Lord Bridges, without reading from a pre-arranged brief? Which statement is correct: the first, that everything is agreed; or the second, that we have not agreed in relation to Northern Ireland? Which is correct?

Lord Callanan: We have a number of things to discuss with the EU about Northern Ireland. As I said to the noble Lord, it is one of the areas that has not been bottomed out into a legal agreement yet. We are committed to taking those discussions forward with the Commission and the Irish Government, but our red line of having no hard border between Northern Ireland and the Irish Republic remains, and of course, the indivisibility of the United Kingdom also remains a red line.

Lord Hannay of Chiswick (CB): Has the Minister studied the part of the guidelines which says that the European Union would reconsider its approach to trade issues if the British Government were to change their mind? Will the Government show any of that flexibility that the Prime Minister is calling for?

Lord Callanan: We have been flexible throughout the negotiations. We want to reach a good flexible agreement with the European Union. We have given some ground, and the EU has given some ground. That is in the nature of European negotiations. I am sure that will continue into the future but, of course, we have our red lines, which will not be crossed.

Baroness Symons of Vernham Dean (Lab): My Lords, my noble friend Lord Foulkes was right: the statements read out by the noble Lord, Lord Bridges, are not compatible with each other. Will the noble Lord, Lord Callanan, undertake to clarify the position and to come back to the House with a clearer and more satisfactory answer than he has been able to give?

Lord Callanan: As in all these negotiations, when we reach an agreement with the European Union and the Irish Government on the precise details of the border, we will be sure to report to the House on that matter.

Housing: Right-to-Buy Sales

Question

2.52 pm

Asked by ***Lord Bassam of Brighton***

To ask Her Majesty's Government what further measures, if any, they plan to take to increase the supply of council housing stock to replace homes for rent lost through right-to-buy sales.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, we recognise that more must be done to build a new generation of council housing. We are giving councils £1 billion additional borrowing headroom and £2 billion more to deliver more affordable and social housing in areas of high affordability pressure, and we have set a longer-term rent deal to provide investment stability. We continue to listen to councils and these conversations will feed into the forthcoming social housing Green Paper.

Lord Bassam of Brighton (Lab): My Lords, since 2010, just 10,000 council homes have been built, and more than 60,000 sold off through right to buy. Given that councils can undertake land assembly, and have planning and borrowing powers, why will the Government not back a major council housebuilding programme? Does the Minister share my distaste at the now regular auctioning-off of social housing, in lots like family silver, to private landlords for profit when we have a national affordable housing crisis? Will he now act to ban this obscene plunder of the public realm?

Lord Bourne of Aberystwyth: My Lords, first, I take issue with the noble Lord on the figures. The latest figures, from September 2017, show that 14,736 new houses were built under the three-year rolling figures that we have. With anything that is not sold—where there are proceeds, of course—by local authorities, the relevant part of the money goes towards affordable housing programmes. I therefore take issue with that point. As the first Answer indicates, I agree that there

[Lord Bourne of Aberystwyth]
is definitely an issue to address in social housing. That is why we are making the £1 billion additional money available on borrowing and why we have announced £2 billion more for affordable and social housing.

Lord Shipley (LD): My Lords, I wonder whether the Minister is aware that the Canadian Government have defined adequate housing as a human right. Does the Minister think, as I do, that that is an extremely good idea? Might the UK Government think of defining adequate housing as a human right?

Lord Bourne of Aberystwyth: My Lords, I am very interested to hear that. I was not aware of it. I think the most important thing is that we address what is definitely a massive issue for people. Clearly, people need to have an appropriate home and we are seeking to do that. From the latest figures, I think we have built more in the past year than in any year for the past 20 years. However, there is, as noble Lords are aware—and as I have said more than once, even today—a considerable issue in addressing the shortfall in housing in our country.

Lord Best (CB): My Lords, does the Minister agree that the impact of selling existing council housing at very substantial discounts varies considerably from place to place? Obviously, losing affordable housing is a huge problem in London. It is also a huge problem in many villages where we have lost, in some cases, all the council housing. Has not the time come for local authorities to have discretion as to the sales that they make and the discounts that they use?

Lord Bourne of Aberystwyth: My Lords, the noble Lord—who knows a considerable amount about this area—is right that its impact varies. He will know, of course, of the rural exemptions that apply in relation to right to buy and also the total exemption in relation to right to acquire in rural areas. We are looking at that. Of course, there is also the forthcoming social housing Green Paper that I referred to, which will look at this issue in the round.

The Lord Bishop of St Albans: May I push the Minister a little more on the whole question of rural housing? Only 12% of the rural housing stock is social housing, compared with 19% in urban areas. How exactly are Her Majesty's Government going to increase the level of rural social housing over the coming years?

Lord Bourne of Aberystwyth: My Lords, the right reverend Prelate also is an expert in this area—he does a lot on rural housing, and I applaud him for that—and he is right. As I say, there is an issue that needs addressing in relation to rural areas and social housing. It is a more difficult issue there. I expect the social housing Green Paper to come up with thoughts on this but meanwhile, as I say, there are particular policies on right to acquire and right to buy that alleviate the position in rural areas.

Lord Porter of Spalding (Con): My Lords, the original question referring to 2010 was slightly disingenuous. Do Ministers—certainly this Minister—agree that the housing crisis has been caused over the last 30 years, not the last 10 years, and that the only way of building enough homes is by diversifying the amount of people who can get into that space? History shows that the only time this country has ever reached 300,000 homes is when councils have been allowed to take up their proper role and deliver a major part of them.

Noble Lords: Hear, hear!

Lord Bourne of Aberystwyth: My Lords, the noble Lord is right on all those matters. I am sure that the "Hear, hear!" was in relation to the slight chastisement of the noble Lord, Lord Bassam, who I know is far too wise to think that this problem started in 2010. It is much longer term than that. Yes, it is right that local councils will have a considerable role. That is recognised by the department and the Government. It is very important that we engage with local councils. We are doing that now, as the noble Lord will be aware, in terms of meeting the shortfall that exists in social housing.

Baroness Hollis of Heigham (Lab): My Lords, the evidence suggests that a very high proportion of right-to-buy council housing—the Minister will no doubt have more up-to-date figures than I have, but my figures are something like 60%—has been recycled into the private rented sector, at double the rents and double the housing benefit, without meeting some of the most desperate need that social housing was designed for. Will the Minister give us the latest statistics?

Lord Bourne of Aberystwyth: My Lords, I do not have those to hand but I am very happy to write with them to the noble Baroness and copy that to the Library. She is right that there is an issue in relation to the reselling-on of houses. She will be aware that in rural areas there are restrictions on that. Again, that will be open for discussion following the social housing Green Paper.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I refer the House to my relevant interest in the register. Can the noble Lord tell the House how many social rented homes have been lost in the housing association sector by converting social rented properties to affordable rented properties? Does he agree that it is a most regrettable policy that is eroding the social rented stock at an alarming rate, with no replacement?

Lord Bourne of Aberystwyth: My Lords, where I agree with the noble Lord is that there is a considerable problem in addressing the shortfall. By ensuring that some of this is affordable rather than social, we are going to reach the target more easily of supplying additional homes, as the noble Lord is aware, but that is not to say that we do not have a challenge, even on the social housing front. That, again, is something that the Government are determined to address. As I say, we have the £2 billion committed to affordable and social housing in terms of money available, and we are alleviating the borrowing cap by £1 billion from 2019, which will also help.

Schools: Free Lunches and Milk

Question

2.59 pm

Asked by ***Lord Watson of Invergowrie***

To ask Her Majesty's Government when they intend to undertake a full impact assessment of the Free School Lunches and Milk, and School and Early Years Finance (Amendments Relating to Universal Credit) (England) Regulations 2018; and what further action they intend to take regarding those Regulations.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, the Government listened carefully to the views that arose in the debate last week. I can confirm that our changes will help those on the lowest incomes. The Government have published an equalities impact statement, which was updated following our public consultation. We are committed to ensuring that at least 50,000 more children will benefit from free school meals by 2022, compared to the previous system, and that no child will lose out during the transition to universal credit. We have also reviewed the threshold following the rollout of universal credit to ensure that those who need support are benefiting.

Lord Watson of Invergowrie (Lab): My Lords, last week your Lordships' House voted in favour of a regret Motion in the name of my noble friend Lord Bassam, calling for a delay in the implementation of regulations which, by the Government's own admission, will result in more than 100,000 children receiving free school meals under the existing benefits system losing that right under universal credit. In passing, I should say that the vote was carried by 52% to 48%—a margin that may be familiar and one that the Government have consistently told us is decisive and must be respected. But the Government showed your Lordships' House no respect, because, as the Minister said, guidance was issued two days later.

Ministers have been unable to explain why there has been no full impact assessment on such a controversial issue, not just the equalities impact assessment that the Minister mentioned. It is surely inconceivable that the Department for Education would not have undertaken an internal impact assessment on such a controversial issue. Will the Minister confirm to noble Lords that the outcome of that assessment was so damaging to the Government's plans that it was suppressed, and will they now either publish it or undertake a proper, public, full impact assessment?

Lord Agnew of Oulton: My Lords, I want to reassure the noble Lord that we take very seriously the concerns raised about this important policy issue. As I mentioned, we published an updated equalities impact statement on 7 February. The majority of respondents agreed that there would be no adverse impact on the protected characteristics. The reason, really, is because we are improving the system, basing eligibility on income rather than the number of hours worked. All the existing recipients of free school meals whose parents move to universal credit will be protected for the full rollout period.

Lord Storey (LD): My Lords, the Minister will be aware that there is no cap on those people receiving a heating allowance. As the Government are in a listening mode, does he not think that we should ensure that every child who is officially defined as being in poverty should receive a free meal?

Lord Agnew of Oulton: My Lords, the free school meal mechanism was designed for those in the most serious stages of poverty, and with the transition to universal credit we have been very careful to ensure that the number of children who benefit from free school meals is retained. We have made an absolute commitment that during the transition period, any child eligible for free school meals will retain his or her entitlement, and that will continue if they are in the school system beyond the rollout period.

Baroness Lister of Burtersett (Lab): My Lords, last week the Minister told the House that only some £450 million of the total £3 billion cost of extending free school meals to all on universal credit would go on the meals themselves—a tiny fraction. Most of the cash will go on the pupil premium, which is linked to free school meal eligibility. Given that an income threshold would undermine the cardinal universal credit principle of making work pay and leave some children hungry, would it not make sense to go ahead with the threshold for the premium but provide free school meals for all children on universal credit, who are by definition in some need? Why do they have to be linked?

Lord Agnew of Oulton: My Lords, if we did not have a cap on the eligibility for free school meals but relied purely on universal credit, over half of children would end up being eligible. We have a number of recipients on universal credit earning in excess of £40,000 a year.

I believe that the pupil premium has been a tremendous success. We have closed the attainment gap by 10% since it was introduced in 2011, and invested more than £11 billion in schools to encourage them to recruit pupils from the poorest backgrounds.

Lord Lexden (Con): What does my noble friend make of the claim that has been bandied about that 1 million children may be deprived of free school meals as a result of these reforms?

Lord Agnew of Oulton: My Lords, that was a very theoretical figure. It simply presumed that there would be no cap on the numbers of recipients if the universal credit system carried on without any cap. It was misleading, and it has concerned a lot of parents out there, because it has set hares running that are simply not relevant. We have been meticulous in trying to ensure that recipients of free school meals today will continue to receive them. Indeed, we have made that commitment not just for the current phase of their education but up to 2022, or thereafter if they are still in the school system.

Lord Watts (Lab): My Lords, does the Government's policy not mean that although present claimants are protected, future generations will not be and children will go hungry?

Lord Agnew of Oulton: My Lords, we must look at our Government's broader track record since 2010. As I said when summing up the debate introduced by the noble Lord, Lord Bassam, last week, we have intervened in a number of areas for the most disadvantaged children in our society: 15 hours for disadvantaged two year-olds, 30 hours for working parents, early years pupil premium, disability access fund, tax-free childcare and shared parental leave. None of those are designed other than to help the most disadvantaged members of our society. I urge noble Lords to look at universal credit and free school meals in the context of all that we have done over the past eight years.

Lord Bassam of Brighton (Lab): My Lords, if that is the case, why did a recent report point out that 1 million more children would be in poverty by 2020? How does the Minister justify the policy and answer that question?

Lord Agnew of Oulton: I am not familiar with those figures. However, we have done more than previous Governments to ensure that families are taken out of poverty—and we know that the route out of poverty is through work. The items on the list I gave a moment ago are all aimed to help parents become working parents and not to be exposed to poverty.

Marriage (Same Sex Couples) (Northern Ireland) Bill [HL]

First Reading

3.06 pm

A Bill to make provision for the marriage of same sex couples in Northern Ireland, to make provision for the legal recognition of the same sex marriages of armed forces personnel overseas and other same sex marriages solemnised outside Northern Ireland, to make provision in the law of Northern Ireland for the conversion of civil partnerships to marriages, and for the review of civil partnerships, to make provision for rights to pensions and social security contributions for same sex married couples and civil partners, to make provision for gender change by married persons and civil partners, and for connected purposes.

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

House of Lords: Allowance

Motion to Approve

3.07 pm

Moved by ***Baroness Evans of Bowes Park***

That—

1. (1) The Resolution of 20 July 2010 relating to the House of Lords allowance is amended as follows with effect from the beginning of 1 April 2018.

(2) For paragraph 1(3) substitute—

"(3) The amount of the allowance payable to a Member in respect of a day of attendance in the year beginning with 1 April 2018 should be—

(a) £305, or

(b) if paragraph (4) applies, £153.

(3A) In relation to the year beginning with 1 April 2019, and each subsequent year beginning with 1 April—

(a) any formula or mechanism included in the IPSA determination for the year as a result of section 4A(4) of the Parliamentary Standards Act 2009 (adjustment of MPs' salaries) should be treated as applying for the purposes of adjusting for that year the amount of the allowance payable to a Member of this House, and

(b) accordingly, the amount of the allowance payable to a Member in respect of a day of attendance in that year should be—

(i) the amount obtained by applying the formula or mechanism to the amount payable by way of allowance (under paragraph (3) or this paragraph) in the previous year, or

(ii) where no formula or mechanism is included in the determination, the same amount payable by way of allowance (under paragraph (3) or this paragraph) in the previous year."

(3) After paragraph 1(4) insert—

"(4A) In paragraph (3A)(a) "IPSA determination" means a determination under section 4(4) of the Parliamentary Standards Act 2009.

(4B) Any fraction of a pound in an amount obtained under paragraph (3A)(b)(i) should be rounded up to the nearest pound if the fraction is 50p or more, but otherwise should be disregarded."

(4) In paragraph 2(1) for "Accordingly, the" substitute "The".

2. In respect of a day of attendance before 1 April 2018, the Resolution of 20 July 2010 relating to the House of Lords allowance continues to have effect without the amendments made by this Resolution.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, the Motion in my name proposes changes to the current and future rates of the daily allowance that would come into effect from 1 April. It follows the agreement of a report by the commission, which has also been put to the House for agreement. The current system was introduced in 2010 and was rightly considered to be a more direct, simpler and more transparent system, as well as being much easier to administer than the previous, discredited expenses system.

The daily allowance rates of £300 and £150 have been fixed since their introduction in 2010, and the House made a conscious decision at that time that this should remain the case until the end of the 2010 to 2015 Parliament. No decision was taken about how the scheme would operate after that Parliament, and rates have remained the same. I believe that, after almost eight years of the rate being frozen, the time is now right to introduce a modest uprating. While freezing the rate during that time was justified in line with public sector wage restraint and expenditure more generally, it is clear that, unless some means of providing

a modest uprating mechanism is introduced, over time the amount of the daily allowance will reduce significantly in real terms.

The question then arises of what uprating mechanism should be used. I believe that the method that the Independent Parliamentary Standards Authority has used to determine annual increases in MPs' pay for the last few years, in line with the independent ONS figures for average increases in public sector pay, is a sensible method which we should apply to the level of the daily allowance, beginning this year and for subsequent years. I am pleased to confirm that the commission agreed to my proposal that an initial uprating should be made to the daily allowance from 1 April 2018, in line with this year's IPSA increase to MPs' salaries of 1.8%, with subsequent annual upratings being pegged to subsequent annual IPSA determinations. Initially, this would result in a new rate of either £305 or £153. The result would be a modest and sustainable adjustment to the rate which I commend to the House. I also welcome the commission's endorsement.

The overall cost of such an uprating in terms of the impact on the House of Lords estimate would be approximately £339,000 per annum. This can be accommodated within the current financial plan, which reflects overall savings year on year in the total running costs of this House, and means that we would continue to fulfil our important role at a rate that represents good value to the taxpayer. If IPSA were to change its method of determining future upratings, the commission would, of course, want to reconsider this approach. I beg to move.

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Baroness for her comments. This seems a sensible and appropriate approach to an uprating mechanism. As she pointed out, Members of your Lordships' House have not seen any increase in allowances since 2010. To have an automatic annual increase on the same basis as Members of Parliament seems an entirely fair and appropriate way to proceed. She will understand that issues and anomalies remain that colleagues across the House will seek to address. They have not been addressed today, as she commented. However, the approach to the uprating mechanism is entirely appropriate. On a personal level, I thank the noble Baroness as I have raised this issue for a number of years, and without her personal commitment I do not believe that we would have seen this uprating at all.

Lord Newby (LD): My Lords, I, too, congratulate the Leader on securing this settlement. It is modest but it protects the current level of allowances after years during which they have fallen and provides the basis of a regular uprating in the years to come—and it is closely linked to what happens in the Commons. In the current environment, I simply do not believe that a more generous settlement was politically possible, so it is very much to be welcomed.

In my view this does not mean that we have anything like a satisfactory approach to allowances. The noble Lord, Lord Strathclyde, produced a simple political fix when he introduced the current system, and, while it has met what I am sure were his objectives—namely, a system which survived without inviting much adverse comment—it is by any logical perspective deeply flawed. In the past 10 years, I have seen my allowance in effect doubled—I lived in London when the Strathclyde measure was introduced—and then, when I moved last year to north Yorkshire, halved again. These changes have borne no relation to my participation in the affairs of the House.

Colleagues who have lived outside London for the whole period have seen a real terms fall in their allowances of nearly 20% at a time when London accommodation costs have increased faster than the overall rate of inflation. Personally, I can see no reason why, within a slowly rising funding envelope, we should not move towards a position in which expenses start again to reflect the actual costs incurred by Members who live outside London. I think that would be a much fairer system. However, I realise that there is no consensus in the House to move in such a direction and that the overall funding available to the Lords is likely to remain tightly constrained for the foreseeable future. That being so, I reiterate my thanks to the Leader for securing the increase she has announced today.

3.15 pm

Lord McConnell of Glenscorrodale (Lab): My Lords, I realise that I am unlikely to win the popularity stakes in your Lordships' Chamber by the comments that I am about to make—but, having exhausted all other opportunities available to persuade those who hold offices in this House to change this system of allowances, I feel that I have no other alternative but to say a few words in this debate.

In 2010, shortly after I was introduced to your Lordships' House, the system of allowances was changed. I have to say today that I am opposed to this Motion on two grounds. First, I am opposed to the increase; that will certainly not make me very popular. I do not believe that £300 tax-free, available to every Member of this House indiscriminately, is justifiable in terms of public opinion or the public purse. Secondly, I am opposed to it because it entrenches the discrimination that was introduced into the system in 2010.

For those Members of your Lordships' House who have been introduced since 2010, I will remind the House of what the allowances were back then. The day allowance, which is effectively the equivalent of the £300, was £86.50. It was introduced for the majority of Members of the House, who went from £86.50 to £300 overnight. There was an office allowance—a secretarial allowance—of £75, available to all Members, and there was an overnight allowance of £174 for Members who lived outside London. That was a total of £335.50 for those Members who could legitimately claim the overnight allowance because they lived outside London and were paying sometimes up to £200 a night for a hotel in London.

In 2010, that was changed to £300 for every Member of the House, available every day that the House sat. The Members who lived outside London received a reduction of £35.50; the Members who lived inside London—even with the ending of the secretarial allowance—received an increase of £138.50. That system continues to exist today and is entrenched by the report of the House of Lords Commission that is in

[Lord McConnell of Glenscorrodale]
front of us. It was basically introduced because leaders in your Lordships' House assumed that it was impossible to police a system that relied on the trust of Members living in London not to illegitimately claim an overnight allowance to which they were not entitled. So those who were legitimately incurring costs through living outside of London were effectively penalised because people who lived in London—it was perceived—could not be trusted. That is a shocking state of affairs: it should have been dealt with long before now.

There have been assurances again and again over the last eight years that, if there was any change at all to the allowance system, the first change would be to rectify this anomaly. The impact of this anomaly is clear: there are Members here today, in your Lordships' House, who have moved their residence from outside London to inside London solely for financial reasons, because of the impact of the allowances scheme. People who were introduced in 2010, 2011 and 2012—because they lived outside London and because of the desire of the then Prime Minister and others to bring in more people from outside London to your Lordships' House—have moved to London since then. There are Members here who have an incentive to move to London, when the incentive should be to increase the geographical diversity of this House: to get people here from the devolved Parliaments who have not served in Westminster and to get people here who spent their working lives in Northern Ireland, Wales, the north of England, the south-west and Scotland. This system acts as a disincentive to that objective. All the political parties say that they have that as an objective, and yet they will not take the one simple step, based on receipts, that would make a difference. So I am opposed to this report because it entrenches that discrimination: it is an unjust system and it is a disincentive to greater diversity in this House at a time when, I hazard to suggest, it is deeply needed.

Lord Blunkett (Lab): My Lords, you can agree with my noble friend on the anomaly he highlights and the unfair system that penalises those who live—and remain living—distances from London, and still be in favour of passing the Motion this afternoon. They are not mutually exclusive. It is perfectly feasible to recognise that after eight years, a modest increase in the allowance is justified whether the media mislead the public or not about your Lordships' House, and to want to look at changes in the future. I encourage my noble friend to support what is put forward by the Leader of the House this afternoon and then to work with others on seeing whether we can have a watertight system.

There are many other anomalies. One of the things we should greatly encourage is to get the work of this House better known and better connected across the United Kingdom. One small measure in that regard would be to pay the same allowance for activities outside this House that are paid when they take place inside the House. In other words, we do not discriminate, for instance, against committees that take themselves out of London to find out how the real world lives out there.

Lord Foulkes of Cumnock (Lab): My Lords, I back my noble friend Lord Blunkett, and I have total sympathy with the concerns that were raised by my noble friend Lord McConnell and, indeed, by the noble Lord, Lord Newby, although perhaps he did so in a gentler way. As Members on all sides will know, I have raised this issue on a number of occasions. I pay tribute to the Lord Speaker—I hope that this does not sound too gratuitous and crawling; it is absolutely genuine—who agreed to meet a deputation of all parties and the Cross Benches, which I had the privilege of taking to him to make the arguments, including the argument my noble friend Lord McConnell made. The Lord Speaker has been working with deft diplomacy behind the scenes, and the result is what we have achieved today. It is the first step towards getting these considerations dealt with properly, and I look forward to meeting the Lord Speaker afterwards, with a deputation, to raise other issues that need resolving, particularly those raised by my noble friend Lord McConnell. I hope that on that basis, my noble friend will not vote against this. As my noble friend Lord Blunkett said, it is a small step in the right direction.

Baroness Evans of Bowes Park: My Lords, I am grateful to all those who have briefly contributed. I thank in particular the noble Baroness, Lady Smith, and the noble Lord, Lord Newby, for the work they have done and for their support for this approach, which has allowed us to make progress, notwithstanding the comments made by the noble Lord, Lord McConnell. I understand that this is not what many Members of the House may have hoped for, but I hope they see that we have understood some of the comments noble Lords have made and that we have tried to take a step in the right direction. I agree with the noble Baroness, Lady Smith, that this is the right thing to do at this point. I accept that it is a modest increase, but I hope that noble Lords will feel able to support the Motion.

Motion agreed.

House of Lords Commission

Motion to Agree

3.23 pm

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

That the Report from the House of Lords Commission *Financial Support for Members of the House of Lords* (1st Report, HL Paper 113) be agreed to.

Motion agreed.

Armed Forces Act (Continuation) Order 2018

Motion to Approve

3.23 pm

Moved by ***Baroness Goldie***

That the draft Order laid before the House on 25 January be approved. Considered in Grand Committee on 20 March.

Motion agreed.

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

Motion to Approve

3.23 pm

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

That the draft Regulations laid before the House on 29 January be approved. Considered in Grand Committee on 20 March.

Motion agreed.

Greater Manchester Combined Authority (Amendment) Order 2018

Insolvency of Registered Providers of Social Housing Regulations 2018

Motions to Approve

3.24 pm

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

That the draft Order and Regulations laid before the House on 5 and 7 February be approved. Considered in Grand Committee on 20 March.

Motions agreed.

Nuclear Safeguards Bill

Third Reading

3.24 pm

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Nuclear Safeguards Bill, has consented to place her interests, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

3.25 pm

Bill passed and returned to the Commons with amendments.

Northern Ireland (Regional Rates and Energy) Bill

Second Reading (and remaining stages)

3.25 pm

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

That the Bill be now read a second time.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): My Lords, with the leave of the House I shall speak to all three Motions standing in my name on the Order Paper.

The UK Government take seriously our responsibility to uphold our commitment to govern in the interests of all parts of the community in Northern Ireland. To that end, there are three Bills before the House that represent a series of necessary steps now required to protect and preserve public services, ensure good governance and increase public confidence in Northern Ireland's political institutions. We have deferred action on these measures for as long as possible in the hope that a restored Executive could take this legislation forward. That is now not possible. So, with the greatest reluctance, it is important that we proceed with the Bills.

With the leave of the House, I will discuss each Bill in turn, starting with the Northern Ireland Budget (Anticipation and Adjustments) Bill. Members of the House will recall that, last November, Parliament approved the Northern Ireland Budget Act 2017. This was a step we took reluctantly. This Act gave the Northern Ireland Civil Service the clear legal basis required to manage resources and perform the important work it continues to do in the absence of an Executive. The Northern Ireland Civil Service has continued since then to assess where pressures lie across the system, taking decisions to reallocate resources as required. It has also requested since then to draw down £20 million in 2017-18—of the £50 million of support arising from the financial annexe to the confidence and supply agreement—which the Government committed to releasing for 2017-18 to help address immediate health and education pressures. The remainder of that £50 million will form part of the resource totals available in 2018-19.

Noble Lords will want to be reassured that the additional funding for 2017-18 was confirmed in the Supply and Appropriation (Anticipation and Adjustments) Act 2018, which received Royal Assent on 15 March. These changes to the financial position approved in the Northern Ireland Budget Act 2017 in November must now be placed on a legal footing for the Northern Ireland Administration as we approach the end of the financial year, and that is what this Bill does.

In addition, the Bill will provide for a vote on account in the early months of next year to give legal authority for managing day-to-day spending in the run-up to the estimates process. This will avoid the unorthodox need for the Northern Ireland Civil Service to rely on emergency powers set out in Section 59 of the Northern Ireland Act and Section 7 of the Government Resources and Accounts Act (Northern Ireland) 2001 to issue cash and resources. For 2018-19, we do not consider it would be appropriate if we did not provide the usual vote on account facility to the Northern Ireland Civil Service—a facility provided to the UK Government departments through our own spring supplementary estimates process.

To be very clear, this is not a forward-looking budget for the year ahead. The Bill does not seek to set out in legislation the departmental allocations of the Secretary of State's Budget Statement on 8 March, nor does it seek to vote any new moneys for Northern Ireland. The totals to which it is related are either locally raised or have been subject to previous votes in Parliament, most recently in the Supply and Appropriation (Anticipation and Adjustments) Bill.

[Lord Duncan of Springbank]

Instead, the Bill looks back to confirm spending totals for 2017-18 to ensure that the Northern Ireland Civil Service has a secure legal basis for its spending in the past year. As such, it formally allocates the £20 million of confidence and supply funding already committed for 2017-18; it is not concerned with any of the £410 million set out in the 2018-19 Budget Statement, which will be a matter for the UK estimates in the summer and for a Northern Ireland budget Bill thereafter.

I will turn briefly to the content of the Bill, as it largely rehearses what I set out to your Lordships in November when bringing forward the Northern Ireland Budget Act 2017. In short, it authorises Northern Ireland departments and certain other bodies to incur expenditure and use resources for the financial year ending 31 March 2018.

Clause 1 of the Northern Ireland Budget (Anticipation and Adjustments) Bill authorises the issue of £16.1 billion out of the Consolidated Fund of Northern Ireland. The allocation levels for each Northern Ireland department and the other bodies in receipt of these funds are set out in Schedule 1, which also states the purposes for which these funds are to be used.

Clause 2 authorises the use of resources amounting to £18 billion in the year ending 31 March 2018 by the Northern Ireland departments and other bodies listed in Clause 2(2).

Clause 3 sets revised limits on the accruing resources, including both operating and non-operating accruing resources in the current financial year. These are all largely as they appeared in the Northern Ireland Budget Act 2017, and the revised totals for departments appear in Schedules 1 and 2 to the Bill.

Clause 4 does not have a parallel in that Act. It sets out the power for the Northern Ireland Civil Service to issue out of the Northern Ireland Consolidated Fund some £7.35 billion in cash for the forthcoming financial year. This is the vote on account provision that I have already outlined. It is linked to Clause 6, which does the same in terms of resources. The value is set, as is standard, at around 45% of the sums available in both regards in the previous financial year. Schedules 3 and 4 operate on the same basis, with each departmental allocation simply set at 45% of the previous year.

Clause 5 permits some temporary borrowing powers for cash management purposes. As I have already noted, there is no new money contained within the Bill; there is simply the explicit authority to spend in full the moneys that have already been allocated and locally raised.

This Bill would ordinarily have been taken through the Assembly. As such, at Clause 7, there are a series of adaptations that ensure that, once approved by Parliament, the Bill will be treated as though it were an Assembly Budget Act, enabling Northern Ireland public finances to continue to function notwithstanding the absence of an Executive.

Noble Lords may already be aware from the Library that, alongside the Bill, a set of supplementary estimates for the departments and bodies covered by the budget Bill have also been laid as a Command Paper. These estimates, which have been prepared by the Northern Ireland Department of Finance, set out the breakdown of their resource allocation in greater detail. This is a different process from that which we might ordinarily see for estimates at Westminster, where the estimates document precedes the formal budget legislation and is separately approved. That would also be the case at the Assembly, but as was the case in November, the Bill provides that the laying of the Command Paper takes the place of an estimates document laid and approved before the Assembly, again to enable public finances to flow smoothly.

This Bill is very much a technical step as we approach the end of the financial year to provide a secure legal footing for the Northern Ireland Civil Service. It looks backwards rather than forward, although it avoids the use of emergency powers for the forthcoming financial year. It is on that platform that the Secretary of State's 2018-19 Budget Statement of 8 March builds. It is worth making it clear that the 2018-19 Budget Statement will need to be the subject of formal legislation later in year. I am sure that noble Lords will share the hope that this will be taken forward by a restored Executive. However, I should highlight to your Lordships that this is something that the UK Government would be prepared to progress if required as we uphold our responsibilities to the people of Northern Ireland.

Before we reach such a point and in addition to the technical steps of this Bill there are some further pressing steps proposed in the Northern Ireland (Regional Rates and Energy) Bill that need to be taken now to build on the Government's efforts to safeguard public services and finances in Northern Ireland. I ask the House also to give a Second Reading to the Northern Ireland (Regional Rates and Energy) Bill.

Clause 1 of the Northern Ireland (Regional Rates and Energy) Bill addresses the collection of the regional rate, which represents more than 5% of the total revenue available to the Northern Ireland Executive. With a devolved Government in place, this would be set via an affirmative rates order in the Assembly, enabling bills to be issued in 10 instalments, providing certainty to ratepayers and allowing various payment reliefs to be applied. It would not be acceptable to allow uncertainty to linger in the absence of an Executive to set its own rates and begin collection from ratepayers. So while we are clear that this is a devolved matter, we are also clear that only the UK Government and Parliament can take this action to secure the interests of individuals and businesses in Northern Ireland.

This Bill therefore sets out rates, in pence per pound terms, for both domestic and non-domestic properties. For non-domestic properties, this reflects a 1.5% inflationary increase. For domestic properties, the rate will be raised by inflation plus 3%, as set out in the Secretary of State's 2018-19 Budget Statement on 8 March. In deciding on these levels we have reflected on conversations with the parties and stakeholders more broadly; considered the budget consultation launched by the Northern Ireland Civil Service in December, which discusses rises in regional rates of as much as 10% above inflation; considered the pressures on key services and the need to balance any increase to rates at the right level.

We have concluded that it is fair that we ask households to pay a little more—less than £1 per week for the average household—to help address pressures in health, education and elsewhere. In order to keep a focus on the growth that Northern Ireland needs to see, holding business rates in line with inflation is the right approach. This rates income, along with the flexibilities set out in the Secretary of State's Statement, will represent an important contribution to delivering a sustainable budget picture for 2018-19, upholding the UK Government's responsibilities to uphold good governance in Northern Ireland. Yet the Bill also makes clear that nothing we do cuts across the continuing right of a restored Executive to set a rate by order in the usual way.

The second element of the Bill concerns the administration of Northern Ireland's renewable heat incentive scheme. The scheme was established in 2012 to support efforts to increase the uptake in the use of renewable energy. However, errors in the administration of the scheme led to substantial excess payments. Over the 20-year lifespan of the scheme, the projected overspends were well over £500 million, with £27 million of overspend in the 2016-17 year alone, putting the sustainable finances of the Northern Ireland Executive at significant risk. The administration of the scheme and the circumstances which led to the errors in its administration are subject to an ongoing public inquiry.

One of the last acts of the previous Executive was to make regulations in January 2017 that put robust cost controls in place. These made sure that the costs were sustainable, but they were put in place for one year only, to allow for a longer-term consideration of the scheme as a whole. They are now due to expire. If they are allowed to expire, there will be no legal basis not only for maintaining the current cost cap but also for paying all those who receive payments under the scheme and whose installations were accredited before November 2015. Neither of these would be acceptable outcomes. Nor would it be suitable for the Northern Ireland Civil Service to administer payments on an extra-statutory basis, which would create unnecessary legal uncertainty for all concerned. That is why Clause 2 will ensure that the present cost controls and the legal basis for payments can continue for the 2018-19 financial year. These are sunsetted for a year, as it is right that the longer-term approach is one for a restored Executive to decide. In the meantime, I am assured that the Northern Ireland Civil Service will undertake the detailed analysis to enable a new Executive to consider the right course for the future.

I hope noble Lords will agree that this is a modest Bill, doing two very discrete but necessary things in the interests of safeguarding public finances: setting a regional rate and extending the cost controls of the RHI scheme.

The third and final Bill before the House today is the Northern Ireland Assembly Members (Pay) Bill. Where the other Bills focus on increasing clarity and confidence in Northern Ireland's finances, this Bill looks to increase public confidence in Northern Ireland's political institutions. The continued payment of full salaries for Members of the Northern Ireland Assembly, when the Assembly has not met for over a year and there has been no Executive for 14 months, is a matter of considerable public concern in Northern Ireland and there is a broad desire for action. The Bill will grant the Secretary of State the power to vary pay and allowances for Members of the Northern Ireland Assembly, the MLAs.

MLAs' salaries and allowances are rightly a devolved matter. In 2011, the Assembly appointed an independent body, the Independent Financial Review Panel, to set MLA pay and allowances by means of determinations. Its last determination was made in March 2016, before the election in May that year. As no members have been appointed since the first panel's term of office ended in 2016, however, there is presently nobody with the power to change MLA pay to reflect the current extraordinary circumstances. The Bill would allow the Secretary of State to do that; that is, to vary the pay and allowances of MLAs by means of a determination. One important difference from the panel's powers is that, while the panel also makes determinations on pensions, the Bill includes an explicit protection for MLAs' pensions so that they are not affected by any changes to pay under this Bill.

Under the panel's most recent determination, an automatic £500 per year inflationary increase in MLAs' salaries is due on 1 April. It is simply not appropriate for this increase to apply in the present circumstances, and my right honourable friend the Secretary of State intends—if granted the power by this Bill—to stop that increase from being applied. Support for this action comes in the advice on MLA pay and allowances that Trevor Reaney, a former Clerk to the Northern Ireland Assembly, gave to the then Secretary of State in December 2017. It also comes from the Assembly Commission, whose chair, the Speaker of the Assembly, wrote to the Secretary of State earlier this month. There was also widespread support for it in the other place when this Bill was debated there last week. I hope that noble Lords across the House will agree that this is a suitable step to take in the current circumstances.

More broadly, Mr Reaney's advice provided an independent assessment of what action should be taken on MLA pay and allowances in the current circumstances, taking account of all of the important work that many Members continue to do in the absence of an Assembly. These recommendations included a 27.5% reduction in MLAs' salaries. The Secretary of State has been clear that she is minded to follow Mr Reaney's recommendations, with the exception of the proposed cut to the staff costs allowance. As the Secretary of State has said,

"The position of",

MLAs' staff,

"should not be prejudiced by what is happening with their political masters".—[*Official Report*, Commons, 21/3/18; col. 339.]

Before making her final decision, however, she has asked for final representations from the political parties. This is a sensible approach that I hope noble Lords will support.

This Bill would not itself alter MLAs' pay or allowances. It simply creates the power to make a determination during the current period without an Executive. Once an Executive is formed, the power to make a determination would return to being entirely a devolved matter. A future panel would, of course, be free to make a new determination as it sees fit, including to cover periods without an Executive. This determination

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would supersede any made by the Secretary of State under this Bill. To ensure that we do not again find ourselves in the situation where MLAs remain on full pay when there is no Executive and no panel determination covering the situation, the Bill allows a determination made by the Secretary of State in the current period to apply again should that situation arise. To be clear, it is the determination that would apply again: the power to make a new determination would in that situation remain devolved.

Overall, the focus of this Bill is narrow, and I consider that taking the power to set MLA pay is a necessary step to uphold public confidence in Northern Ireland in the absence of an Executive and sitting Assembly.

I recognise the extent of the ask of the House in considering all three Bills in one day. As I conclude, I would like to reaffirm that the Government have considered very carefully the necessity of and timing required for this legislation. We are doing this reluctantly in order to put Northern Ireland finances on a legal footing for the financial year 2017-18; to provide more certainty and a sustainable footing for the financial year 2018-19, in the interests of protecting public services; and to ensure good governance and uphold public confidence in Northern Ireland. I believe that these Bills reflect our approach of intervening only as necessary, and only at a point when it is critical that the measures are taken forward. I hope noble Lords will agree that it is important we now make progress to see the measures of each Bill passed into law. I beg to move.

3.43 pm

Lord Hain (Lab): My Lords, I, along with other noble Lords, was proud to be a member of a Government who devoted so much time and effort over a decade to help Northern Ireland move from the horror of its violent past towards a better future. The devolved institutions set up in 2007, after a settlement that I helped negotiate, have not functioned for the past 15 months, and there appears to be little prospect of a change in that position. I have heard nothing from the Government to suggest that they have a clue what to do. Former serving Ministers in Northern Ireland such as myself and my noble friends Lord Murphy of Torfaen, Lord Reid, Lord Mandelson, Lady Smith of Basildon, Lord Browne, Lord Rooker and Lord Dubs, feel passionately about the way that the enormous peace progress made has gone so badly into reverse.

It gives me absolutely no satisfaction to say that I really do not think this Government get Northern Ireland. I make no criticism of the Minister or the arguments he has made, or of the Secretary of State—they are both new Ministers and I wish them all the best. But I observe—as I have said before, as has my noble friend Lord Murphy—that the Prime Minister's approach, which is a kind of fly-in, fly-out diplomacy of insufficient in-depth detailed negotiation and relationship-building with all the parties and their leaders in Northern Ireland, was never going to work. You cannot achieve success in an impasse such as the one we face with this kind of approach. I urge the Government—No. 10 in particular—to reconsider this.

The measures in these Bills should never have had to come to us in the first place. They represent direct rule in all but name. But I do not think we can simply nod them through as a matter of process without addressing some of the implications of the current political impasse. The people of Northern Ireland are left in limbo, facing, as the noble Lord, Lord Empey, has pointed out so graphically, a serious crisis in the National Health Service, probably worse than in any other part of the UK. Last week I had the privilege to meet a group of remarkable people for whom that limbo is particularly cruel. They were members of the WAVE Trauma Centre's injured group, and I will briefly recount two of their stories.

Jennifer was 21 in 1972 when she and her sister, who was shopping for a wedding dress, went into a Belfast city centre cafe for a coffee. A no-warning IRA bomb tore both Jennifer's legs off. Her sister lost both legs and an arm. Noble Lords from Northern Ireland will recall the horror of the Abercorn bomb. Peter was 26 when he was shot by a loyalist gang in 1979 in a case of mistaken identity. Because of the configuration of the flat where Peter lived, the ambulance crew could not manoeuvre a stretcher around the stairs. They brought Peter down in a body bag. His father Herbert arrived at the scene and thought that his son was dead. "Oh my poor Peter" were his last words. He had a heart attack and died as Peter was carried to the ambulance. Peter is paralysed and confined to a wheelchair.

There are many more similarly harrowing stories. It is estimated that around 500 people in Northern Ireland are classified as severely physically injured as a direct result of the Troubles, with injuries that are at the very top of the scale: bilateral amputees, paraplegic, those blinded. All the injuries are life-changing and permanent. Because of their injuries most have been unable to work to build up occupational pensions and today have to survive on benefits. The levels of compensation paid through the adversarial criminal injuries compensation scheme were wholly inadequate and there was no disability discrimination legislation in the early days to protect them. Frankly, these people were not expected to live beyond a few years. But they have and the passage of time has compounded their problems as many suffer increasing physical distress as a result of deteriorating health and chronic pain.

They are campaigning for a special pension of the type that is in place in most other countries that have suffered from conflicts similar to that in Northern Ireland. All they want is some semblance of financial security and independence as they grow into old age in the most difficult circumstances. I find their argument compelling. The pension has been costed by independent consultants at around only £3 million to £5 million per annum—a figure which will reduce year on year as the majority of the severely injured are moving into old age. I appeal to the Government to provide this money now. It is a small amount to rectify a big injustice.

All the Northern Ireland parties are on record as saying that they support the idea of a pension for severely injured people such as those who come to see them and argue their case. But saying they support it is about as far as it has gone because their support for

the severely injured is not unconditional. Of the 500 severely injured, there are 10 or so who were injured by their own hand; for example, planting a bomb that exploded prematurely. Of the 10, six are loyalist and four republican. It is no surprise that the DUP and Sinn Féin are split. The DUP says there can be no pension for those injured by their own hand. Sinn Féin insists that they cannot support a pension that excludes them as this would be tantamount to accepting a hierarchy of victims.

The injured group, who are unfairly drawn into this toxic debate, argue that it is not for them to say who should or should not qualify. What they do insist is that it is unjust, unfair and immoral for politicians to say that because they cannot agree about 10 people the other 490 must get nothing. I totally agree with them, and I hope the Minister will respond positively. The injured group, all of whom have been injured through no fault of their own, regard their plight as being as much a part of the legacy of Northern Ireland's violent past as anything else, and the legacy issues are not devolved entirely. But the Government refuse to accept that they are part of the legacy for which they have responsibility. If the devolved institutions are, for whatever reason, unable to deliver on this—and of course, suspended, they are unable to deliver on this; and tragically, we are unlikely to see those institutions in place for some considerable time—the Government at Westminster surely must step in now, because it would be shameful if the people who have suffered so much through no fault of their own were told that nothing can be done because of political buck-passing.

On 20 February, in the other place, the Secretary of State said that she recognised the Government's responsibilities to,

"provide better outcomes for victims and survivors—the people who suffered most during the troubles".—[*Official Report*, Commons, 20/2/18; col. 33.]

I agree, and I appeal to her and to the Minister to act now. They have the power to do so. It is a very small amount; it would not be noticed on the overall allocation for Northern Ireland or, indeed, the Whitehall budget. It would not be noticed at all. I have met men and women in the WAVE trauma group who by any definition have "suffered most", in the Secretary of State's phrase. Unless both this Parliament and the Government accept that responsibility and act immediately to provide pensions for these 490 people, it will be to our eternal shame.

3.52 pm

Baroness Suttie (LD): My Lords, I shall be fairly brief as the noble Lord, Lord Hain, has very eloquently and, if I may say so, movingly made many of the key political points.

There is general consensus that these three Bills are necessary in the continued absence of an Executive in Northern Ireland. The fact that these Bills continue to be necessary is deeply to be regretted, and it is all the more tragic as this is precisely a time where clear strategic direction and forward planning are needed to plan ahead for the economy in Northern Ireland, given the ongoing uncertainties and additional pressures as a result of Brexit and the lack of clarity about the progress in the negotiations relating to the island of Ireland. The Bills before us today are little more than sticking plaster Bills that do little to provide clarity on the priorities for the months or years ahead, but we shall support them from these Benches as another necessary measure to ensure the continuation of budgetary certainty in Northern Ireland.

I shall concentrate my remarks this afternoon on issues surrounding legacy and legacy institutions, especially following the decision of a High Court judge on Friday to compel authorities in Belfast and London to reconsider providing funds for legacy inquests in Northern Ireland, and I will make a few comments on issues surrounding scrutiny and oversight, most particularly during the critical months ahead to ensure that a Northern Ireland voice is heard during the Brexit negotiations. The Minister will be aware that during the debate in the other place, Owen Smith MP, like the noble Lord, Lord Hain, today, raised many valid points regarding legacy issues and stressed the continued very great need for reconciliation between communities in Northern Ireland.

There is now a very large backlog of legacy inquests. In February 2016, the Lord Chief Justice of Northern Ireland, Sir Declan Morgan, concluded a review into the remaining legacy inquests in Northern Ireland and said that they could be dealt with in five years if he received the necessary funding from the Stormont Executive. That was costed at £35 million over those five years. He proposed setting up a specialist unit with its own staffing and resources to complete 54 inquests into 94 deaths.

The Lord Chief Justice's proposals were blocked in the Executive by the then First Minister, Arlene Foster. That decision was recently declared unlawful by the High Court in Belfast. There is an overwhelming case to proceed with this funding immediately. While the issues surrounding legacy inquests have become heavily contested in terms of narratives surrounding the past, there is a very real danger of these matters becoming even more polarised if they are further delayed. It is critical to maintain a shared and cohesive approach.

The Historical Institutional Abuse Inquiry conducted by Sir Anthony Hart was the largest inquiry into child abuse in children's homes in the UK. Its recommendations have political agreement, yet because the Executive collapsed at virtually the same time as the report's publication, there has been no action. Some victims have now been waiting since the 1970s for compensation, and we are sadly seeing these generations passing away before receiving the compensation they are due. In the continued absence of an Executive, will the Minister confirm that the Government will at some stage before the summer introduce the necessary legislation to give effect to the recommendations contained in the Hart inquiry?

It is welcome that on several occasions in recent debates the Minister has made a point of stressing that nothing is being ruled out in the current circumstances, with the talks having collapsed once again. However, the time is surely coming when we have to look at alternative and creative solutions to ensure that there is at least some degree of democratic accountability in the absence of an Executive.

[Baroness Suttie]

On 23 January this year, at a meeting of the EU Select Committee, I asked Karen Bradley—in her first public exchange of views after becoming Secretary of State—whether she would consider alternative mechanisms to allow MLAs or other democratically elected representatives in Northern Ireland to have their voices heard during the Brexit negotiations, in the continued absence of a power-sharing Executive. At the time she said, perhaps understandably, that she did not want any alternative solutions to stand in the way of the obvious preferred option of continuing with the talks to re-establish the Executive. However, more than two months has passed since that exchange and there is still no Executive; there are currently no talks taking place; and there is no voice for Northern Ireland on Brexit, other than through the Government's confidence and supply arrangements with the DUP, which does not speak for the majority in Northern Ireland on matters relating to Brexit.

The Minister may be aware that the Alliance Party has published a set of proposals on the next steps forward. One proposal that is particularly interesting is that a cross-party Brexit Committee be established to allow Northern Ireland's voice to be heard during the Brexit negotiations. It also suggests reconstituting the Assembly's departmental scrutiny committees to allow policy development, and some level of scrutiny and reform, to proceed.

In his concluding remarks, it would be very helpful to hear from the Minister not just that nothing is being ruled out but when alternative models could be ruled in. Could he also say what concrete measures the Government are currently taking to restart the talks—and, to repeat an earlier question I have posed now several times to the Minister, are the Government actively considering the involvement of an external mediator?

In relation to the Bill on MLA pay, I am extremely pleased to hear from the Minister this afternoon that he has confirmed that it is not the Government's intention to cut staffing budgets or office costs for constituency offices. As he said, members of the public are continuing to contact MLAs and to look for their assistance with problems. There is no reason why staff should be penalised because there is currently no political agreement on the formation of an Executive.

Finally, in relation to the Northern Ireland (Regional Rates and Energy) Bill, there was no consultation before the 2017 regulations were implemented because of the urgency of the matter at that time. Indeed, paragraph 4.1 of the Explanatory Memorandum attached to the original Northern Ireland legislation on the Renewable Heat Incentive Scheme Regulations states:

> "There has been no opportunity to consult on the introduction of these first stage measures. As part of the next stage, the Department will give consideration to consultation".

In the continued absence of an Executive, can the Minister say whether it is the intention of the UK Government to carry out this consultation now?

It is deeply to be regretted that we need to be passing these Bills at all today—but, in the interests of ordinary people in Northern Ireland, for the continued provision of public services and with a heavy heart, we give them our support.

4 pm

Lord Morrow (DUP): My Lords, what the Minister has brought before your Lordships' House today in these three Bills should of course be going to the Northern Ireland Assembly—but, regrettably, due to the intransigence in particular of Sinn Féin, which brought the Assembly and Executive crashing down, this cannot happen. Indeed, had the Executive Minister of Finance Máirtín Ó Muilleoir, a Sinn Féin Member, carried out his responsibilities, we would not be in the position that we are today. When the Finance Minister was being pressed by the finance committee in the Assembly to bring forward measures in the budget, he refused to do so. He would not even bring issues to the Executive. He of course always had the full knowledge that Sinn Féin was planning to crash the Assembly and the Executive. Sinn Féin has demonstrated that it does not like making hard decisions—but, due to the way that the Assembly is set up, its support is required because of the veto principle.

The Assembly was allegedly stalled because of the RHI scheme. This was undoubtedly a flawed project, but did it merit pulling apart the whole edifice of the Assembly and Executive? I certainly do not think so. It is well known that Sinn Féin was under pressure to bring down the Assembly and the Executive, as the message was beginning to filter out slowly but surely that Northern Ireland was beginning to prosper and was a good place to do business. This of course was something that Sinn Féin and its support base did not want to hear. So a device had to be found to paralyse the governing of Northern Ireland, and the excuse or cunning plan was the RHI scheme that is presently being investigated. The pressing need, of course, was the setting of a budget to direct money to the different departments for the running of Northern Ireland.

I must stress that my party, the DUP, is ready to return to the Assembly tomorrow and get round the table to discuss any issues that other parties feel should be discussed. These can be time-limited. I emphasise that the DUP has no red lines in getting an Executive and Assembly up and running. Unlike Sinn Féin, we certainly have no unreasonable demands to make.

However, with devolution not operating, it is the responsibility of this House and the other place to govern and ensure that Northern Ireland is not left behind. I suspect that this will not be the only occasion on which the Minister and other Ministers will be bringing to this House matters relating to Northern Ireland. I am of the firm opinion that other issues relating to our schools and health service, to name but two, will become even more pressing in the very near future. Indeed, I feel that the decision cannot be far away when direct-rule Ministers should be put in place to run all the departments in Northern Ireland in the continued absence of an Executive.

Much has been said, particularly in media circles, about MLAs being paid for a job that they are not doing. It merits saying that those who say these things conveniently ignore the fact that Sinn Féin has been paid almost £1 million in expenses, despite the fact that its MPs do not take their seats in the other place. These expenses of £1 million relate to the period of 2008-09 to 2016-17.Surely it is time that the Government

applied themselves to tackling this glaring and indefensible farce, which has been allowed to carry on for far too long. It also has to be said that MLAs in my party, and I suspect in others, are getting on with their constituency work, so I am pleased that the legislation before the House does not propose to reduce MLAs' staffing and other related expenses. Permanent Secretaries need to be given more power in the absence of the Assembly or Ministers taking responsibility for spending money that is allocated.

I take some comfort from what is happening today. I hope that it is the commencement of decision-making, and perhaps from here on the drift will end. I support these three Bills.

4.04 pm

Lord Empey (UUP): My Lords, I wish to speak primarily on the budget Bill and the regional rates and energy Bill. The third Bill on Assembly Members' pay requires little debate and its provisions are inevitable in the current circumstances. The sad thing is that we are, as usual, punishing the innocent along with the guilty, but the Bill will pass.

Dealing with the budget Bill first, apart from the totally avoidable circumstances which have brought us to the present impasse, I want to focus on one issue which is causing many people in Northern Ireland great concern and anxiety. It has already been touched on by the noble Baroness, Lady Suttie.

In January 2017, Sir Anthony Hart submitted his report on his findings following the historical institutional abuse inquiry over which he presided. Among his recommendations was that compensation should be paid to survivors of abuse, including in homes and institutions not covered by his inquiry, and that relatives of the deceased should also be taken into account. In the Bill, for both 2017-18 and 2018-19 under the allocations for the Executive Office, provision is made for,

"actions associated with the preparation and implementation of the Historical Institutional Abuse Inquiry Report and Findings".

This gives the Executive Office authority to make expenditure to implement the findings of the HIA inquiry.

To put this in context for your Lordships, the inquiry covered the period beginning in 1922, and I think it went up to 1996. Some of the evidence of the abuse was shocking. It ranged from vulnerable children being scrubbed with Jeyes Fluid by nuns to the notorious sexual abuse committed in the Kincora Boys' Home: years and years of all sorts of physical, psychological and sexual abuse conducted by those who were supposed to help children and vulnerable young people at difficult times in their lives.

In excess of 500 people came forward to Sir Anthony's inquiry—and more have since indicated that they wish they had. However, as the noble Baroness rightly said, many have also died during the period and more continue to do so. Having fought for years to get this inquiry, the victims are now being subjected to a second—if different—form of abuse. As my party colleague at Stormont Mike Nesbitt MLA said:

"They have no Executive in place in Belfast to ratify the inquiry report and nobody is planning to implement its findings. This is totally unacceptable".

Does the Minister agree with me that the Bill gives the Executive Office power to spend money to implement the findings of the report? Secondly, do he or his ministerial colleagues have any plans to persuade the head of the Northern Ireland Civil Service to get on and implement the findings of Sir Anthony Hart's report? Thirdly, does he believe that this matter should be above politics and other political and constitutional concerns and be treated as a humanitarian measure which has unanimous political support in Belfast?

I turn now to the regional rates and energy Bill. The proposal for rates, as it affects ordinary householders, imposes a 4.5% increase on ratepayers, well above inflation. For the benefit of your Lordships, I say that local government finance in Northern Ireland is vastly different from that in Great Britain. A domestic householder still pays rates levied on capital values. Part of the rates is levied by local councils— approximately half—and the balance by Stormont. All major services are delivered by central government—that includes social services, welfare, housing, roads and education. No local council in Northern Ireland has delivered such a high increase this year, confining their increases to from nil to just over 3%. While councillors have tried to ease the burden on people, central government has not. This is another example of Stormont letting people down.

However, the main item in this Bill that I want to address is the RHI scandal that has left a trail of destruction in its wake. We know that the inquiry into the RHI is ongoing with Judge Patrick Coghlin presiding. The Bill proposes to continue the tariff regime that was introduced last year by the Assembly as its dying gasp, in an attempt to staunch the flow of money out of the system due to a botched scheme. The Assembly decided to impose a cap for one year, and this expires on 1 April next, unless it is renewed.

Members need to know, however, that this was a blunt and badly prepared instrument. That it was time limited for a scheme that will be ongoing for years illustrates the fact that the intervening period was to be used to consult stakeholders and reflect on the best way ahead. This has not happened. No business case was presented to the Assembly to justify the new tariffs, and the relevant Assembly committee twice refused to endorse the new cap, due to lack of information. The Minister, Mr Hamilton, confirmed to the Assembly on 23 January 2017:

"I have not yet received approval for the business case that underpins the regulations before us, and that is deeply troubling".

The former First Minister who introduced the scheme described it as a "debacle", and so it has proved to be.

Some Members will have received heartfelt emails from a range of participants in the scheme. These are people who, quite legitimately, took up the offer to convert from fossil fuels to renewable fuel, as the scheme intended. But they have been betrayed. I wish to quote from a letter to the banks in Northern Ireland from the then Minister, Arlene Foster. On 7 January 2013, Mrs Foster wrote:

"The tariffs have been calculated to cover the cost difference between traditional fossil fuel heating systems and a renewable heat alternative. The tariffs account for the variances in both capital and operating costs, as well as seeking to address non-financial

[Lord Empey]

'hassle' costs. In addition, a rate of return is also included on the net capital expenditure to ensure the renewable energy technology is attractive to investors. The rate of return has been set at 12% for all technologies incentivised under the NI RHI".

This is an interesting bit. She continues:

"Tariffs are 'grandfathered' providing certainty for investors by setting a guaranteed support level for projects for their lifetime in a scheme, regardless of future reviews".

It goes on:

"I am therefore writing to encourage you"—

the banks—

"to look favourably on approaches from businesses that are seeking finance to install renewable technologies. The government support, on offer through the incentive schemes, is reliable, long term and offers a good return on investment".

It goes on to offer the opportunity for officials to arrange seminars to promote the scheme to the banks' customers.

The language and undertakings in that letter could not be clearer. People have been badly let down, and many are facing financial ruin. They have been conned. Be under no doubt about the consequences of the measures in this Bill. They will confine some businesses to ruin and their owners to a further year of worry and torment. While a focus has naturally been on the potential for some people to profit from RHI by abusing it, and it is right that such cases are investigated, we must remember that the vast majority of applicants are bona fide businesspeople who responded to a government initiative that has left them in financial peril.

I hope that the RHI inquiry looks into the suspicious cases. I suggest it looks at those who subsequently made alterations to what legitimate installers did. In the few cases that look questionable, were workmen asked to run pipes from commercial buildings containing these boilers to other private property? Does that appear on invoices or have workmen perhaps been asked to modify invoices to conceal such actions? I suspect at the end of the day such cases will be few and far between.

I propose that the Minister asks the NI Civil Service to begin work on a strategy for alleviating the hardship being suffered by many, as was the original intention. Such a hardship scheme was suggested by an academic last year in a submission to MLAs. I urge the Government to respond positively to this request.

The real problem with the RHI scheme was that the former Executive set a target to achieve electricity generation from renewables but no adequate budget was provided. Today, legitimate businesses are paying the price for that blunder and it is unfair and unjust. I hope the Government have considered the implications of introducing retrospective tariffs for other schemes in the UK's energy generation market. This is dangerous territory.

To those who seek a return to direct rule in Northern Ireland, I point out that we are being asked to pass all stages of three Bills in one afternoon, with no ability to delve into the detail. I ask those people: is this the way ahead? I think not.

Will the Minister, together with his NIO colleagues in the other place, also investigate with urgency the statement from the head of the Civil Service on 14 March 2018 to the effect that minutes of meetings in Stormont departments were not taken, to frustrate freedom of information requests? Mr Sterling said:

"Ministers liked to have a safe space where they could think the unthinkable and not necessarily have it all recorded".

He went on to say that the DUP and Sinn Fein were sensitive to criticism and, in that context, senior civil servants had "got into the habit" of not recording all meetings. He said this was done on the basis that it was sometimes "safer" not to have a record which might be released under FOI.

Does the Minister agree that Mr Sterling's comments must leave the former Administration at Stormont teetering on the brink of illegality? Was he admitting to a conspiracy to thwart the law? These are serious matters and I look forward to the Government's reply.

4.17 pm

Lord Bew (CB): My Lords, I offer my support to the Government for the broad thrust of the legislation this afternoon. I want to address two aspects. On the Northern Ireland Assembly Members (Pay) Bill, the Government have been very careful and have calibrated not to take action that would precipitately destroy the Northern Irish political class. On one level it looks vaguely absurd to pay people not to do their jobs, but we have a genuinely difficult situation in Northern Ireland and it is not the individual responsibility of a very large number of the Assembly Members that no accommodation has been reached between Sinn Féin and the DUP to allow the Assembly to be reinstated. The Government have taken a careful and wise approach to this. In particular, the point already made about research staff is a good one.

Having said that, I listened carefully to the Minister's words and I understand completely why the Government do not want to do anything that smells of fully fledged, all-singing, all-dancing direct rule. On the other hand, he said that the Government will not ignore or walk away from their responsibility to govern Northern Ireland. A number of legacy issues have been discussed in this House this afternoon on which there is cross-party support in Westminster and Northern Ireland. There is also a smaller issue, of interest to quite a few of us, which is simply a decision on whether the Commonwealth Youth Games can take place in Belfast in 2021. It again has cross-party support in the other place. I should like to hear from the Minister whether, for example, on an issue such as that, the Government acknowledge that they may well have to take the decision themselves, although we all hope that they will not have to.

My most important point this afternoon concerns the transparency of this legislation. The Government have little choice but to move ahead on the budget in this way, but the Minister may be aware that there has been comment in the local press about the terseness of information. John Simpson, the distinguished economist, formerly of Queen's University Belfast, made the point that it is difficult to assess some of these meanings without five-year tables and to work out exactly what we are talking about in real-terms expenditure. Indeed, he poses the question: seven of the nine departments are suffering real-terms cuts, so what does that actually mean?

The Government are entirely right not to want to move towards anything that looks like all-singing, all-dancing direct rule. On the other hand, to provide information about the public finances of Northern Ireland to the people of Northern Ireland is a positive thing, and more could be done here. The blog "Research Matters", produced by the Northern Ireland Assembly Research and Information Service, again makes the point that the latest government statement makes proper full comparisons very difficult. In this interim period, it may be helpful to debate some of those issues to spell out exactly what is going on in the public finances of Northern Ireland.

By the way, there are difficult questions for the people of Northern Ireland. Why is our health service expenditure rising? We all know that health service expenditure rises in the rest of the UK largely on the grounds of the ageing population. We have a younger population, but still our health service expenditure rises. Why, when our unemployment is now so relatively low, are we spending 20% more on social security than the rest of the United Kingdom? Those are real issues—and, in the interim, the transparency debate and the production of more figures showing what the budget really means are not stopping the return of Stormont. Those are all things that will mean, when the new Ministers come back, as I firmly believe and devoutly hope they will, that they are better informed than they currently are. The noble Lord, Lord Empey, is right: one of the essential points about the RHI scandal is an unusual degree of illiteracy about the public finances that seems to affect the administrative and political class of Northern Ireland. This period should be used at least to address and challenge it more than we are doing. Certainly, the figures that are now being released are just too terse and do not perform the service that the public need. I have already raised with the Minister the question of knowing the education figures but not the balance between higher education and the rest of the sector. I look for some help from the Minister on this matter.

4.22 pm

Lord Browne of Belmont (DUP): My Lords, I join other noble Lords in strongly supporting the three Bills before us today. I fully appreciate that their fast-tracking is unavoidable in the present circumstances, as there has been 15 months of absence from the Northern Ireland Assembly Chamber.

As regards the Northern Ireland Budget (Anticipation and Adjustments) Bill, the Government's timely intervention has provided much-needed certainty for the Northern Ireland departments. The Secretary of State has already set the departmental spending limits and provided us with a budget statement. Last year's expenditure will now be authorised in this technical Bill and the departments will be granted the legal authority to spend, since 45% of the budget is allocated in this Bill.

Your Lordships' House recently agreed the Northern Ireland budget, which provided a significant boost to future resource spending on frontline health and education as well as an increase in infrastructure spending across Northern Ireland. A significant part of this spending, which will benefit both communities in Northern Ireland, was made possible by the confidence and supply arrangements agreed with the Democratic Unionist Party. I am certain that noble Lords will agree that this will provide welcome relief from pressures on the front line.

On the Northern Ireland (Regional Rates and Energy) Bill, although the increase in the regional rate is slightly above the rate of consumer price inflation, it is considerably less than the figure of 10% above inflation recommended in the options paper drawn up by the Northern Ireland Civil Service. As regards the business rate, the increase has been kept in line with inflation, and the small business rates relief scheme has been retained for the time being. Can the Minister indicate whether this scheme will be continued after the present scheme comes to an end later in the year? On the subject of the renewable heat incentive scheme, I welcome the retention of the cap on costs, which should prevent any future overspend.

Moving on to the Northern Ireland Assembly Members (Pay) Bill, I support the Secretary of State's decision to take the power to vary MLAs' pay and allowances. The Government are also correct to say that they will take the appropriate steps to stop the £500 MLA salary increase due in April. Again, this must be welcomed as a sensible move. I believe that the court of public opinion will be on the Government's side here. I also welcome the decision to seek representations on this subject and to take full account of the independent report published recently.

Given the unfortunate continued absence of decision-makers at a local level, I am pleased that the Government have now acted to provide some much-needed clarity. Nevertheless, the restoration of a sustainable and fully functioning local Government for all the people of Northern Ireland must remain our focus. To the vast majority, it would be much more desirable for work to be able to continue across government with locally elected Ministers, who know what decisions will work and what decisions will not work in a local context. I would prefer that Bills such as those we are discussing today were laid before the Stormont Assembly in Belfast by a locally accountable Minister. Regrettably, instead of a sensible and balanced approach and a coherent way forward, the party that collapsed the devolved institutions 15 months ago set out a list of absolute preconditions, thereby prioritising the fulfilment of certain demands over governing in the interests of all the people.

However, the people of Northern Ireland still need key decisions to be made on education, health and public services. Although the legislation discussed today is welcome, it is vital to remember that during the past 15 months many key decisions have had to be postponed. In the absence of a functioning Assembly, will the Government be prepared to give permanent secretaries the power, or, in the last resort, to have Ministers provide guidance, direction and authority, and to make specific decisions on how the money allocated is to be spent? The current situation is not sustainable in the long term. There are examples—such as a number of decisions that will be made within the Department of Health and the Department for the Economy—that will require ministerial direction. These decisions are about allocation and prioritisation.

[Lord Browne of Belmont]

Since the breakdown of the Stormont talks there have been too many negative statements about the possibility of restoring devolved government in Northern Ireland. It is important that all parties return to the negotiating table as soon as possible, preferably without setting any preconditions. I am sure that the Secretary of State will spare no effort in trying to achieve this outcome, and that all noble Lords in this House will give her every possible encouragement and support in this difficult task.

4.28 pm

Lord Maginnis of Drumglass (Ind UU): My Lords, I have to admit that when I first looked at these Bills, I did not find myself being particularly enthusiastic. I thank our Front-Bench spokesmen and the new Secretary of State for at least endeavouring to meet to discuss the problems that I encounter. First and foremost, I agree with the noble Lord, Lord Browne, in hoping that the Assembly will be back in place.

It has become very clear that Taoiseach Varadkar has actually encouraged Sinn Féin not to complete the talks, conditional on what happens in terms of Brexit. I supplied evidence of that to the Front-Bench Northern Ireland Office spokesman. For us then to find that the case is argued on the basis that one day everything in the garden will be rosy is a bit ridiculous and does not help us to sort out some of the problems.

Another area where I have to be blunt—some noble Lords have touched on this already—concerns civil servants in the Northern Ireland Office who have advised consecutive Secretaries of State. Many of these civil servants are not qualified to do that job. They quite literally do not know what they are talking about. To think that the head of the Civil Service permitted and encouraged no minute-taking, as was mentioned by the noble Lord, Lord Empey, is the height of ridiculousness. Other people who have been employed are not qualified to deal with RHI. Some of them have literally no qualifications whatever. One has been described as not knowing his right hand from his left. I will not name Mr Hughes. Oh dear, I have. Anyhow, the reality is that the RHI scheme has been flawed from the outset. There is a similar scheme in Great Britain where the returns on lower consumption are about 150% of what they are in Northern Ireland. The returns on higher consumption are almost three times less in Northern Ireland than they are in Great Britain. Again, I have furnished the Minister with those figures. He has them in front of him. However we move forward, I want to see those matters addressed. The DfE originally projected a £490 million overspend on RHI over 20 years. Then that figure jumped to £700 million, but there has been no sign of the calculations that brought those figures about. An independent economist from Scotland has said that the overspend will be £100 million, and that figure has been supplied with evidence. How can the Government move us forward against all the hindrances that we face in Northern Ireland?

I digress for a moment. I hear more people claiming to be experts on border control in terms of the forthcoming Brexit negotiations than I believe know where Northern Ireland is. The reality is that it is frightening.

I come back to RHI. The amended tasks were set solely to bring the scheme back within budget with no regard to the tariffs required to pay debt and running costs. No business impact assessment was carried out before the 2017 regulations were passed. Nevertheless, we are about to run into the irreparable damage of taking that scheme and turning it into primary legislation. I have been reassured that, when the Assembly gets up and going, that can all be reversed—but when? In a year, two years, three years, four years? How are our farmers, who have borrowed money, expected to keep going if we have this open-ended threat to their livelihoods?

The whole basis on which Northern Ireland is being governed now is probably as good as we can get. I was encouraged to hear what the Secretary of State said this morning. But while we have so many new-found experts on Northern Ireland and on border controls, those who brought about the Belfast agreement—even those who disapproved of it initially but who made it work, and work well while it worked—and are now sitting in this House are seldom consulted. I hope that, with the new Secretary of State, that is going to change. Consider this: if we are to have direct rule in all but name, there are people here—I will not name them all—such as the noble Lords, Lord Bew, Lord Alderdice and Lord Kilclooney, and many others—who know exactly what is happening, who have loyalty to Northern Ireland and to the efficient running of Northern Ireland and who will, at no cost, be able to reinforce a direct rule, whether we call it that or not.

There are other aspects in relation to which I find a degree of almost-hypocrisy. One relates to elections in Northern Ireland, a matter which I have raised again and again through Questions in this House and on which I have not had a satisfactory answer. It astonishes me to hear Ministers lamenting that we do not have nationalists in Parliament. We did have Mark Durkan, Margaret Ritchie and Alasdair McDonnell, but they lost their seats because of cheating by Sinn Féin. I have never said that publicly before; I have hinted at it. That the number of proxy votes in Durkan's constituency increased by 800% between 2010 and 2017 is almost unbelievable. When I asked what was being done, what did the chief electoral officer do? She said that we would eventually get a report. We all know that when the election took place in 2017, we got a one-and-a-half page report to the Secretary of State that was placed in the Library. It tells us absolutely nothing: it does not indicate how many times the PSNI has been asked to investigate this illegal voting. Are we afraid? Have successive Governments been afraid to face up to the reality that Sinn Féin abused the system, and did so to the extent that it does not matter whether you are a unionist or a nationalist? I worked in local government for many years, and I worked in peace and harmony with my nationalist colleagues. But Sinn Féin does not approve of that.

I will leave those thoughts with noble Lords today, specifically on RHI and the abuse of our 1,100 or so farmers, who are being impoverished because we have a scheme that is less efficient and has lower returns for them than the scheme throughout the rest of the United Kingdom.

In conclusion, I return to what I started with—the abuse of the border issue by Taoiseach Varadkar and by those here who try to tell us things that we know. I was born 80 years ago and grew up within a mile of the border. I know the border. It was no major problem until the IRA started shooting and importing arms and so on, and we can get that back. As I said before, there are good negotiators here who could sort that out if somebody had the courage and the common sense to come to speak to us about how matters could be addressed.

4.41 pm

Lord Hay of Ballyore (DUP): My Lords, I welcome the three Bills coming to the House today. Obviously, you can talk about almost anything on those Bills.

I will touch on an issue raised by several Members: Judge Hart's inquiry into institutional abuse in Northern Ireland. We all sympathise with the need to find a way to resolve this issue. However, I have a question not only for the Minister but for Members of this House. Do they agree that the institutions that carried out the abuse should also be held to account and should have to look at providing some funding to resolve this issue? It is unfair that wholly taxpayers' money is going to resolve this issue for victims. I sympathise with what Members have said, but the issue needs to be raised with the institutions that first created the abuse of the many victims out there today. Ministers, the Government and Members who raised this need to think about this.

The noble Lord, Lord Maginnis, raised the border in Northern Ireland, which was discussed recently in this House. I never thought there were so many experts in this House on how we might resolve the border issue. I also said that the border issue has been used in some aspect as a political stick to beat the Prime Minister with. I think I am right in saying that; we have not come into some debates in this Chamber because of the way some Members of this House have abused this whole issue of the border. We can get a resolution to the border: it is not about hard border or soft border but about getting a reasonable settlement on the border. I probably live closer to the border than any other Member of this House. I know its importance and know about the goods traffic and the pedestrians that come across that border on a daily basis. All that is important, and certainly none of us on the island of Ireland want a hard border.

As I said, I welcome the three Bills; certainly, with no Executive in place, they are required to give much-needed certainty for the Northern Ireland Civil Service in safeguarding public services for the people of Northern Ireland. The Bills provide a secure legal footing for the Northern Ireland Civil Service. This debate is really about how departments spent their money last year. By looking at the Bills, we can see that some spent more than was allocated to them and some spent significantly less. The debate looks back at the past—at what was allocated, what has been spent and what additional money has been given to some departments. For example, the Department of Health got more. Where did that money come from? It came from the underspend of other departments. The debate also looks forward because a budget for Northern Ireland was set by the Secretary of State a couple of weeks ago. Now, each department in Northern Ireland knows its expenditure and the limit it has for next year. Departments can spend with confidence, knowing that the money is available to them and the limits within which they must spend it.

My noble friend Lord Browne touched on the Secretary of State's announcement in the budget a few weeks ago of the first tranche of £410 million of our confidence and supply arrangements with the Government, which I welcome. I know that some people in the media and elsewhere said that this money would never come to Northern Ireland. It has now been delivered. Others said it would not come if there was no Executive in place. Of course, that has been proven wrong as well. As my noble friend Lord Browne rightly said, this money will be spent right across the community in Northern Ireland. I remember the announcement on our agreement with the Government quite well. Some Members of this House almost believed that this money would go to only one side of the community. In fact, some Members said that this money was actually coming to the DUP. This money will now be spent right across Northern Ireland, in every community—on schools, on hospitals, on roads, on mental health and in deprived communities. This money is over and above what we normally get in the Northern Ireland block grant.

I want to touch briefly on an issue that I met the Minister about recently. The Belfast city deal was announced by the Chancellor in last year's Budget. I very much welcome and support it. It is an opportunity for Belfast to grow for the future. I also want to thank the Minister, who met a consortium from Londonderry —an area I have lived in for many years and represent in the Northern Ireland Assembly—led by the local authority and the mayor. It was seeking a city deal for Londonderry and the wider north-west community. I know that more work needs to be done on that issue, in getting buy-in from other local authorities in the north-west, but I believe that work is progressing. As others will know, city deals have worked extremely well across the United Kingdom, where they have been implemented and managed with expertise. They have been a huge success for inward investment, job creation and economic development. So, we welcome the Belfast city deal announced by the Government but I am now batting for a city deal for my region and my city, to build on job creation and economic development there for the future.

I want to say something quickly on the political process at the moment and where we are. My noble friend Lord Morrow and other Members touched on the fact that we are very keen to restore the Assembly sooner rather than later. We have no preconditions. We have no red lines. As the former First Minister Peter Robinson said recently, we cannot squander the years that have got us to where we are now in Northern Ireland. Those are years to which people committed themselves. The only way these issues will be resolved is by people getting around the table. We are keen to get around that table, but we also need to remind Sinn Féin, especially, that whatever agreement we reach needs to be balanced and one that both communities can buy into and take ownership of. If it is not that

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type of agreement, it will not work. Sinn Féin has been told this over and over again. It cannot be an agreement where one side takes all and says, "Thank you very much, but we'll be back for more in maybe six months or a year's time". We are at a point in Northern Ireland—we see it here today with the Government having to introduce these Bills to the House—where we need a settlement that all the people of Northern Ireland can buy into. I think we can get there by being reasonable about all this and trying to reach an accommodation. That is where we are coming from as a party. We have no preconditions; we have no red lines. We want to get around the table and resolve the remaining issues that are a stumbling block to getting the Executive and the Assembly up and running.

4.51 pm

Lord Lexden (Con): My Lords, as we all know, these Bills are the inevitable consequence of the deeply unfortunate circumstances in which our fellow countrymen and women in Northern Ireland find themselves as a result of the failure of their political parties to agree on the means by which devolved government can be restored. Sinn Féin, buoyed up by electoral advance, has over recent months raised its terms for returning to government, prompting a widespread suspicion that it does not really want to return at all, while seeking to foist the blame for continuing deadlock on the Democratic Unionist Party. Political stability in Ulster is never likely to be a high priority for an organisation dedicated ultimately to removing Northern Ireland from our country. When power-sharing was first conceived, the possibility of Sinn Féin entering the seats of power did not feature in anyone's worst nightmares.

Fortunately, in today's very different conditions, we have a United Kingdom Government to whom the union is precious, as Mrs May has repeatedly made clear. It is the duty of Parliament, and of the Government accountable to it, to provide directly for the Province's good governance if it cannot be secured in any other way. Exactly the same duty would arise if devolved government in Scotland or Wales ran into serious difficulties.

When the Northern Ireland Assembly is absent, Ulster lacks not only democratically accountable devolved government but an upper tier of local government answerable to elected representatives. Shortly before their suspension in 1972, the last Ulster Unionist Government passed legislation as part of their ambitious reform programme—now generally forgotten—which transferred all the principal local government services from county and county borough councils to Stormont, leaving only minor powers with a new set of district councils, now 11 in number. No other part of our country is in a similar position.

The logic of the reform was impeccable, not least because of the controversy that had raged since the partition of Ireland about the tendency of both unionist and non-unionist councils to show undue favour towards their own supporters. It was agreed that an all-Ulster institution would be better placed to discharge responsibility fairly, particularly since, in a very modest way, power-sharing was now beginning to be considered by the Ulster Unionist Party under Brian Faulkner, a man whom I greatly admired and who was all too briefly a Member of this House before his sudden death in a riding accident in 1977.

However, that important reform more than 40 years ago means that, today, Ulster has a very large democratic deficit. The fact that a Bill is before us to set a regional rate in the Province, which still retains the old system of local government finance—as the noble Lord, Lord Empey, reminded us—is a stark reminder of Ulster's double democratic misfortune. Officials in the Northern Ireland Civil Service, highly regarded for the most part but now unanswerable to elected representatives in Ulster or to Ministers in the Northern Ireland Office, are in charge of all services above the district council level. Nothing quite like this has been seen in our country since the 19th century.

Plainly, Northern Ireland as it finds itself today needs these three measures. The pay of Members of the Assembly must of course be docked to an appropriate extent, as an independent review has advised, since they cannot perform their legislative role and are limited to providing an advisory service to their constituents and to acting as a conduit between them and civil servants in the Northern Ireland departments. Above all, Northern Ireland needs the elegantly phrased Budget (Anticipation and Adjustments) Bill. It provides full legal approval, as we have heard, for public spending in the financial year that is drawing to a close and will keep the money flowing into vital public services in the first part of the financial year that will begin shortly.

There is widespread agreement about the central question which now arises. As several Members representing Northern Ireland constituencies asked in the other place last week—the noble Lord, Lord Browne, raised the matter again today—who is to decide the allocation of money to ensure that sustained progress can be made in improving services: above all, education and health, where major reforms are so badly required? Acute controversy always and naturally arises in such circumstances. Are civil servants to be left to face it as best they can, or will serious reform once again be delayed in the continued absence of an Assembly, damaging vital services still further?

It was deeply disturbing to listen recently to a delegation of mental health experts from the Province who addressed a group of Members of both Houses. Issues that need to be settled so that an adequate service can be delivered to those suffering acute mental health problems are constantly deferred. Meanwhile, the suicide rate remains shockingly high. We have heard other serious instances from the noble Lords, Lord Hain and Lord Empey, of important decisions delayed. The Government provide us with no assessment of the likelihood of restoring devolution and the upper tier of local government that is bound up with it. For 15 months they have kept on saying that they are working tirelessly to secure agreement among the Northern Ireland parties, and that they are focused entirely on that task, but nowhere is success keenly anticipated, to put it mildly. It is hard not to conclude that the impasse will continue unless Sinn Féin scales back its heightened demands, and of that there is, sadly, no sign.

Instead of waiting interminably for circumstances to change, is it not time to shift the focus so that it rests on the best means of securing the good governance of our fellow countrymen and women in Northern Ireland in the circumstances that actually face them and us today? Indeed, after 15 long months, is that not our duty?

4.58 pm

Lord Shutt of Greetland (LD): My Lords, I am grateful for the opportunity to speak in the gap. In the brief time I feel I ought to spend I want to speak about the Northern Ireland Budget (Anticipation and Adjustments) Bill. What we have had in Northern Ireland is Stormont rule, direct rule and now, civil servant rule. I am sure that when there was Stormont rule the Stormont Assembly would have had something akin to a public accounts committee, and therefore there would be some scrutiny of expenditures. I recall well during my 18 years in this place, when there was direct rule I spent many hours scrutinising the Northern Ireland budget—only scratching the surface, quite frankly; nevertheless, some work was done on that. My concern is that under this civil servant rule there is no scrutiny at all. This document tells us of many billions that have been spent in the 361 days of the current year and the four days that are left, and more billions for the beginning of next year.

The noble Lord, Lord Hain, mentioned early in the debate his concern about money being available to assist people who were hurt and damaged in the early days of the Troubles. Surely, any form of scrutiny could have looked at that and insisted that money be put into the budget. Similarly, we do not know whether there is money in the forthcoming budget that will not be required—that wonderful phrase that I learnt in local government, "virement", can be used here.

This Bill talks about anticipation. What does the Minister anticipate can possibly be done? Can there be a new way of thinking about scrutiny—the creation somehow of a scrutiny body, whether it is made up of Members of this House, the other place or, indeed, Members of the Assembly, who are not being used fully at present? Surely, it is right that there should be some scrutiny of civil servant rule.

5.01 pm

Lord Murphy of Torfaen (Lab): My Lords, it has been a fascinating if short debate. It has been a timely one, too, because this is the last occasion we will debate this issue in either House of Parliament before we celebrate or commemorate the 20th anniversary of the Good Friday or Belfast agreement in two or three weeks' time. Looking around the Chamber, I see Members of your Lordships' House who played a huge part in that agreement. The noble Lords, Lord Maginnis, Lord Trimble, Lord Empey and Lord Bew, and others brought that enormous triumph to fruition just two decades ago. Of course, these three Bills are the result of the institutions which the Good Friday agreement set up collapsing. That is the tragedy and reality of today's proceedings. We should not have these Bills because there should be a functioning Assembly and a functioning Executive.

With regard to the Bill on the budget, my friend in the other place, who until recently was the shadow Northern Ireland Secretary, Owen Smith—I deeply regret his departure from that job because he knew a great deal about Northern Ireland and had a lot of experience—as well as my noble friend Lord Hain and the noble Baroness, Lady Suttie, referred to the pensions of victims of the Troubles. The opportunity for the Government to deal with this matter is before us. I know there is controversy on this point, but if controversy surrounds just 10 victims as opposed to 490 who are not subject to controversy, I see no reason why we cannot park the argument about the 10 and carry on giving compensation to the nearly 500 remaining victims. After all, as my noble friend Lord Hain said in his very moving speech, that number will inevitably reduce as the months and years go by.

The noble Lord, Lord Empey, and the noble Baroness, Lady Suttie, referred to the inquiry under Sir Anthony Hart, and the compensation for victims of historical abuse in Northern Ireland. There seems to be no reason at all why the Government cannot under these powers ensure that compensation is paid to those people who have suffered abuse in the decades gone by.

With regard to the rates, obviously we have to agree with the increase—I put them up myself when I was the Finance Minister in Northern Ireland a long time ago. It is not a very nice thing to do to the people of Northern Ireland but it is essential to ensure that services are maintained. I agree that we should support the Government on that Bill and, indeed, on the RHI issue. I hope that the suggestion of the noble Lord, Lord Empey, with regard to that matter will be taken up by the Minister in his reply.

With regard to the pay for MLAs, obviously we agree with the Government's intentions and with the indication in Trevor Reaney's report that there should be a 27% reduction in their pay. It should not affect their constituency offices or their staff but of course it will be welcomed by public opinion in Northern Ireland. I take the point made by the noble Lord, Lord Bew, that we have to take great care that we do not dismiss an entire political class that has arisen over the past 20 years. If we took away their pay completely we might have to start all over again, and I do not think that is a very good idea. In a sense, it is an admission of failure to have to reduce the pay of MLAs. Indeed, when I was Secretary of State for some years, although I reduced the pay of MLAs, I never stopped it. I was criticised for not stopping it but it was important to ensure that the political class that had grown up in Northern Ireland was maintained.

Of course, the answer to all this is the restoration of the Assembly and the Executive. The noble Lords, Lord Lexden and Lord Hay, both talked of the importance of that. I do not underestimate the difficulties in bringing the Assembly and the Executive back. After all, it has to do with trust and confidence on both sides. That is not always easy. Obviously, the sticking point is the Irish language but there are other issues as well. Members of your Lordships' House who were involved in those negotiations over 20 years ago will remember the issues that we were discussing then—police, the release of prisoners, the issue of consent, the Assembly,

[Lord Murphy of Torfaen]
the Executive, human rights, equality, criminal justice, the change of the Irish constitution, and so on—but we managed it. It took us a long time to do it but we managed it, so it does not seem a huge issue to be overcome.

I remind your Lordships' House that in a way these three Bills are drifting towards real direct rule. I do not believe the Government want that. I do not believe that anybody in this Chamber actually wants direct rule. It certainly is not the answer. The noble Lord, Lord Browne, referred to the importance of having local people taking local decisions. Certainly, when I was a direct rule Minister for five years, I did not think I was the right person to be taking decisions on hospitals, schools and roads when I represented a Welsh constituency in the House of Commons. It was not right that I should be doing all those things; nor is it right now that civil servants, for all their effectiveness and knowledge, are taking decisions about the lives of people in Northern Ireland; nor should British Ministers be doing it.

The other problem is that when we have direct rule, politicians become supplicants. They do not take decisions, they ask for things. Sometimes it is easy to have direct rule—not to take the difficult and nasty decisions on closing a hospital or building a school somewhere or whatever it might be. Those are harsh, difficult decisions and sometimes it is easier to be the supplicant rather than the decision-maker.

It will be disastrous in the long term if there is direct rule. I just want to repeat some of the things that the noble Baroness, Lady Suttie, and my noble friend Lord Hain said about trying to ensure that none of this happens. The involvement of the Prime Minister is vital. As we look back on how we achieved the Good Friday agreement 20 years ago, it was because two Prime Ministers were negotiating these issues day by day and through the night, over a period not of months but of years. Perhaps we need an independent referee. In two weeks' time Senator Mitchell will be in Belfast commemorating that anniversary—perhaps we need another Senator Mitchell.

It is important that all the parties in Northern Ireland should be involved in transparent talks, not just the two big parties—they are the most important ones, of course, but there are other parties in Northern Ireland and often issues can be raised and challenged in all-party meetings. You would have to involve the Irish Government as far as you could, constitutionally. As the noble Lord, Lord Maginnis, touched on, we should not let Brexit distract us from the importance of ensuring that we restore our institutions in Northern Ireland.

The problem is that over two decades people have become a little complacent. They have taken things for granted. They forget what it was like 25 or 30 years ago in Northern Ireland. A whole generation has grown up not knowing the Troubles. You would have to be in your 40s in Northern Ireland to understand what it was like before we signed the Good Friday agreement, and then you were only a child.

I return finally to the fact that we are commemorating that agreement signed 20 years ago, which should be the spur to local politicians, the Government, the Irish Government and all of us in Parliament to ensure that we restore those institutions as quickly as we possibly can.

5.10 pm

Lord Duncan of Springbank: My Lords, this has been a very wide-ranging discussion, as it always is when we confront the serious issues we encounter in Northern Ireland. I am struck by the remarks of the noble Lord, Lord Hay of Ballyore, who spoke of the Belfast city deal and the Derry/Longdonderry city deal. Would it not be great if that was all we were talking about today: the UK Government's contribution to a deal determined by an Executive in Northern Ireland which was about jobs, growth, employment and prospects? Would that not be something that we could celebrate?

However, we are not doing that, and more is the pity. I do not detect any dispute among noble Lords today that we must take forward these three Bills. I recognise that we are doing so in an expedited manner, and for that I apologise on behalf of the Government, but that is what we must do today. I am conscious that a number of the issues that have been raised today are about future spend, and it is important to stress that the Bills before us here today are, in effect, about regularising the 2017-18 spend, the spend that we are currently engaged in delivering. A separate Bill will be brought before another place and this House with regard to specific provisions of future spend inside Northern Ireland. That will be an opportunity again to touch upon a number of these issues as we go forward.

Before I delve into the budget itself, it is important to talk a little about future talks and the future status as a number of noble Lords have raised those matters—I thank the noble Lord, Lord Murphy, and the noble Baroness, Lady Suttie, for doing so. We are in a period of reflection. That is sometimes used euphemistically, but it means to look inside and ask yourself what is going on and what should be going on. This period will be short, I hope. It is also important to stress that during the talks progress was made. We did not get to the other side of the chasm, but we made substantial progress, and it is on that basis that my right honourable friend the Secretary of State for Northern Ireland continues to emphasise that she is of the view that we will find the means of bringing about an agreement upon which we can build and which will, I hope, supersede all that we do here today.

As we consider the various elements that might help us move forward—the noble Lord, Lord Murphy of Torfaen, has raised a number of these points—we welcome Senator George Mitchell to our shores. We pay tribute to the service he rendered our country in helping bring about that agreement in the past. As I have said on more than one occasion, we are not ruling out an independent referee, to use that term. If I may be frank, I would welcome noble Lords' thoughts in that regard. Nothing can be ruled out. We need to be conscious of that.

It is important for me to emphasise that my right honourable friend the Prime Minister has been very active in this regard, and I do not doubt that she will continue to be active. Indeed, as we mark and celebrate the Belfast agreement—the Good Friday agreement—the Prime Minister will be in Belfast taking part in those celebrations, marking that important moment and meeting participants at that time.

The core point raised by the noble Baroness, Lady Suttie, was the notion of what model we can look at to see this afresh. Part of the challenge for anyone who listened to or read of the outcomes of the two recent conferences of the two principal parties in Northern Ireland is that it is clear that there is no alternative model ready to be pulled off the shelf. I am sad to say that, but it is a simple statement of fact. If there was, I believe we would have done so already. That does not mean that it cannot be found, but it certainly means that we have not yet found it. It is sad, but I must reflect upon that point.

If I may touch upon the Bills themselves, I am struck again by some of the very useful remarks made by the noble Lord, Lord Empey—they always are useful. I will not go into the details of the Historical Institutional Abuse Inquiry, which I suspect are well known in our House, but it remains our overriding priority to see devolution restored—I cannot, frankly, say that often enough—so that a new Executive can take decisions on a range of strategic issues and respond directly to Sir Anthony's report. For anyone who has read it and recognised what it contains, it makes challenging reading. Of that there is no doubt. The courage and dignity of those who have taken part in that particular inquiry are to be commended. I acknowledge the frustration so many feel about the lack of progress, particularly in the absence of an Executive to consider that particular report. But I welcome the preparatory work being taken forward by the Executive office to enable action to be taken swiftly once an Executive is restored.

As to the matter of the wider question of legacy, we do have a very clear duty to survivors and victims to bring forward proposals to address the legacy of the past. There is broad agreement among victims and survivors that the legacy institutions, as they are currently set up, are not working. That is a sad admission in itself. We continue to seek the implementation of the legacy institutions in the Stormont House agreement as the best way to provide better outcomes for victims and survivors. We believe that the institutions have the potential to provide better outcomes. We believe that very strongly. The proposed Stormont House legacy institutions would be under legal obligation to be balanced, proportionate, transparent, fair and equitable. The next phase is to consult publicly on the details of how the new institutions will work in practice. A public consultation will provide everyone with an interest the opportunity to see the proposed way forward and contribute to the discussion on the issues. The Government want to begin that consultation soon with the aim of building support and confidence in the new legacy institutions from across the community. We are obliged to move forward so that the victims and survivors are able to see progress—not just hope that it will occur in due course. We continue to support reforms of the legacy inquest system to provide the best way to address this. We are also committed to provide £150 million—

Baroness Harris of Richmond (LD): Could the Minister give us some indication about how long the consultation process will be?

Lord Duncan of Springbank: That was a question I did not anticipate. I thought you might ask when it would begin, but not how long it would be. On that basis, I will write to the noble Baroness with the specific duration, as I do not have that information to hand.

If I may turn my attention to the harrowing remarks of the noble Lord, Lord Hain, who opened the debate today. There are complex issues. A number of noble Lords have touched upon this. I have in front of me a very clear statement of the Government's position, which I will read out. We will work to seek an acceptable way forward on the proposal for a pension for severely physically injured victims for a restored Executive to take forward. I hope a new Executive might bring forward a pension proposal that has the support of and meets the need of victims and survivors in Northern Ireland. I know that does not respond adequately to the points he raised in his remarks. If he will forgive me, might I suggest we meet after this point to discuss this further? That would be useful and important.

Lord Hain: I am grateful to the Minister for his positive response. May I ask him to reflect before we meet—and I am grateful for that invitation—on the fact that we do not know how long it will take to restore the Executive? This Government and this Parliament have responsibility ultimately for legacy matters. There is no reason why the small cost could not be proceeded to at least rectify one injustice while the wider question of the legacy issues is addressed.

Lord Duncan of Springbank: I thank the noble Lord for that point. Yes, I will reflect before we meet, and I hope we can meet soon.

If I may touch upon some of the wider issues raised, a number of noble Lords made the point about the question of particular meetings taking place without minutes being taken and so on. I thought I had better seek guidance from the wise people in the Box. They have come back simply saying it would not be appropriate for me to comment on the actions of the Northern Ireland Civil Service nor the ongoing public inquiry. What I can say in my own personal capacity is that minutes matter and should be taken.

I am conscious that a number of points were raised about the RHI question. There is an inquiry exploring how the scheme itself was constructed and put together, and I invite all noble Lords who contributed today to take the opportunity to make their points very clearly to that inquiry. I am aware, however, that the Bill before us today has a very specific purpose, which is to allow an extension of one year only to the current arrangements with a sunset clause. I am conscious that a number of individuals will be concerned about this initiative, and we need to find a way to bring some comfort to them as they contemplate what that will mean. I hope there will be a welcome outcome. I have specific notes here saying that there will be a 12-week consultation period—helpfully, this time I have the exact duration—between April and June, when these views can be put. We are working against the deadline of 31 March for the longer-term solution. There is a recognition that there needs to be a longer-term solution to address these aspects.

The noble Lord, Lord Maginnis, described himself as blunt. I think we can all endorse that view. The points that he made are none the less important.

[Lord Duncan of Springbank]
Specifically, he questioned how the Northern Ireland scheme compares to the scheme in the rest of the UK. If he will forgive me, I will write to him on that point so that we can set out in greater detail how the two schemes measure against each other. There are a number of technical aspects that I hope will be able to be addressed in that letter.

I emphasise again that the purpose of moving this forward for one year is not to enshrine this approach for ever but rather to provide an opportunity for the incoming Executive to focus quickly and carefully on what I believe are a number of the well-established flaws in this approach and to address them head-on. We have, I hope, time in which we can do that, and the notion that we are creating primary legislation in this instance should be no impediment to that because of the manner in which the Bills themselves are drafted. I hope that will help the noble Lord to address this.

I am aware that on more than one occasion the noble Lord has raised the point about the wisdom that is contained within this House. I too am grateful for that, even during today's debate. I believe that, as the talks and discussions are ongoing, that wisdom should be drawn upon. I welcome again the meeting that took place between my right honourable friend the Secretary of State for Northern Ireland and some of your Lordships earlier today. I would like to see that happen with greater frequency so that we can ensure that, as the ideas begin to coalesce and crystallise, the views in this House are taken forward.

The noble Lord, Lord Bew, raised the issue of how we can understand the breakdown of the data. After the last time when we spoke on this matter, I am aware that I promised to give him that breakdown of the data but I fear that I may not have done so as yet. The noble Lord is right: it is important that we not only understand what we are doing at the moment but see it as part of a longer trend so that we understand exactly what is happening in Northern Ireland and interrogate the data where there appear to be things that on the surface do not look as if they are comparable with anywhere else. I would much rather see the five-year rolling cycle of data that can be fully interrogated. I commit again to breaking down the data with regard to the educational question, and I hope to be able to give some greater clarification in that regard.

As to the notion of the Commonwealth games, I am happy to give a personal commitment on that matter. I would like to think that the Government would join me in that commitment; that is an initiative that would be well worth taking forward.

I am conscious that the noble Lord, Lord Browne, raised an interesting point regarding the continuity of the business rate support scheme. Helpfully, the little note that I got back from the Box simply contained the word "Yes", so I believe that that particular scheme will indeed be continuing. If the noble Lord requires further details, I can provide them as well.

I shall touch on some of the matters raised by the noble Lord, Lord Empey. I am aware that we have squeezed this debate into a very short time, and for that I apologise. I would much prefer a Northern Ireland Executive to take as long as they felt they needed to interrogate all this. I would much prefer that Executive to be dealing with it because they are living it, rather than sitting on burgundy Benches, but we are not quite there yet. I hope I have addressed the issues about the minutes to the noble Lord's satisfaction—or as best I can. I am aware of the concern he raised about the heating initiative and I hope we can make some progress to give certainty there.

As for the wider questions of legacy, support for victims and so on, the noble Lord is absolutely correct: this needs to be above politics. It is humanitarian; it is not and should not be a matter for partisan division, and I hope we can take it forward on that basis. Progress will need to be made on that sooner rather than later.

My noble friend Lord Lexden raised an important issue about mental health. I can confirm that there will be £10 million in the budgetary cycle of 2018-19 to address those specific and serious issues, which I believe will be necessary.

Commenting on the remarks of the noble Lord, Lord Murphy, we too, on this side, regret the departure of Owen Smith. He was an asset to the ongoing discussion and leaves behind a void. I am sorry to see that.

In conclusion, the noble Lord, Lord Murphy, pointed out that he was not the right person to take forward direct rule in Northern Ireland. Nor am I. I am no better equipped—frankly, far less equipped—than he is.

Lord Maginnis of Drumglass: Before the Minister sits down, I draw his attention to one thing that he and the noble Lord, Lord Murphy, said: perhaps it would be a good idea to have a second-generation George Mitchell. We do not want another George Mitchell. Much as we loved him, much as we worked under him and much as we sought to achieve an agreement, that agreement was voted on north and south. I have nothing more to concede as an Ulster Unionist, and I hope noble Lords will remember that.

Lord Duncan of Springbank: I thank the noble Lord, Lord Maginnis, who makes his point clear, as always. I understand exactly what he is saying.

On that basis, I hope your Lordships will accept that this is not what we want to do, it is not how we want to do it and it is not when we want to do it, but it is what we must do.

Lord Empey: Before the noble Lord sits down, I ask him to reflect on the Judge Hart inquiry. If I picked up him correctly, he indicated that this would await the return of an Executive. I point out to him that every solitary MLA I am aware of supports the implementation of that inquiry. Other parties represented here can say no if they disagree. Every party supports it. Some of the material in the report is very harrowing. One lady started off in the system at four years old. She is now 87. How much more do we have to put these people through? I therefore ask the Minister to discuss with his colleagues and reflect on that.

Secondly, on the RHI scheme, although I appreciate that this is a renewal, it was originally based on no substantive information. I suggest that the Minister again consult his colleagues and ensure that a proper

working party is established to alleviate this, because people are losing their livelihoods as a result of this botched scheme.

Lord Hay of Ballyore: Just before the Minister gets to his feet, I should like to say that I broadly agree with what the noble Lord, Lord Empey, said. There is no doubt that all the political parties in Northern Ireland want this issue resolved. The issue I raised earlier was that the institutions that carried out the abuse should be made to pay for some of that abuse and repent for all of it. I do not think there is an issue in resolving this, but it would be totally wrong if only taxpayers' money was used to resolve it.

Lord Duncan of Springbank: I thank both noble Lords for their interventions, and I will reflect on them.

As to the RHI scheme, there will be an opportunity to feed in about past failings. The key thing now is to ensure that its future workability is also examined in some detail. These are matters on which I hope we can move forward on that basis. Therefore, I beg to move.

Bill read a second time. Committee negatived. Standing Order 46 having been dispensed with, the Bill was read a third time, and passed.

Northern Ireland Assembly Members (Pay) Bill

Second Reading (and remaining stages)

5.32 pm

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

That the Bill be now read a second time.

Bill read a second time. Committee negatived. Standing Order 46 having been dispensed with, the Bill was read a third time, and passed.

Northern Ireland Budget (Anticipation and Adjustments) Bill

Second Reading (and remaining stages)

5.32 pm

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

That the Bill be now read a second time.

Bill read a second time. Committee negatived. Standing Order 46 having been dispensed with, the Bill was read a third time, and passed.

GKN/Melrose Takeover: Update

Statement

5.34 pm

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, I would like to repeat a Statement being made in another place by my right honourable friend the Secretary of State for Business, Energy and Industrial Strategy. The Statement is as follows:

"With permission Mr Speaker, I would like to make a Statement about the current takeover bid by Melrose plc for GKN plc.

Following the announcement of the bid, I spoke to the chief executives of GKN and Melrose to understand their plans, and I have done so again as the bid timetable draws to a close and changes have been made from the original terms proposed. My quasi-judicial role requires me to treat all parties fairly, so I should disclose that I have also had a briefing with the chief executive of Dana Incorporated, which has been proposed as a partner in a transaction with GKN.

As honourable Members know, the longstanding British manufacturing and engineering company GKN is subject to a current takeover bid from the British company Melrose plc. One of the most important features of the British economy is that we have a vigorous market for corporate control. Businesses are kept competitive and efficient by the possibility of the current management being replaced by another set of managers if, in the view of their shareholders, they are underperforming and the company could be better run.

However uncomfortable that constant threat may be for incumbent managements, it is an important one and acts against complacency and inefficiency and so is in the interests of employees, customers, suppliers and taxpayers as well as shareholders. It is worth reminding ourselves that shareholders include the pension funds on which millions of working men and women rely for a comfortable retirement.

There are strict and limited grounds for ministerial intervention in proposed mergers. The limited exceptions apply where one or more of the three public interest grounds are engaged. These are those of national security, media plurality and financial stability. The Enterprise Act 2002 gave powers focusing narrowly on those grounds to refer a bid to the Competition and Markets Authority. Such a reference is possible until four months after the completion of a transaction.

I will make such an assessment following receipt of advice from the Ministry of Defence and other agencies on the final terms of a bid, were it to be successful, and I will inform the House immediately if an intervention is launched. However, beyond that formal statutory role, I am concerned to ensure that significant takeover bids shall not act against the interests of our economy, employees or the broader set of stakeholders.

It has long been recognised that companies and their directors have duties which extend beyond current shareholders alone. Section 172 of the Companies Act sets out a requirement for directors to have regard to, among other things, the interests of the company employees, its business relationships with suppliers, customers and others; and the impact on the community and the environment. In my view, this establishes the principle that we expect interests broader than pure shareholder value to be taken into account by directors and in the attitude of the Government.

In the past, some takeovers have had consequences for these groups that were not only deleterious but were at odds with indications given during takeover bids. For this reason, a new regime was established whereby bidding companies can now make legally binding commitments as to their intended conduct in the event of the bid succeeding. Having established

[Lord Henley]
this regime, I believe it should be used in takeover bids where the interest of these stakeholders is engaged, as is clearly the case here.

GKN is a valued employer, directly and through its supply chain, and plays an important role in Britain's automotive and aerospace sectors. Through its research and development it has a vital role to play in our industrial strategy. It also benefits from government-sponsored contracts and participates in sectors which enjoy active engagement from government-sponsored R&D programmes. It also carries responsibility for a large number of pensions that depend on GKN's prosperity to fund the pension scheme, which is currently in deficit.

Melrose's business model is based on acquiring, improving and selling businesses to new owners after a small number of years. While this approach can have advantages in terms of efficiencies, tensions can arise between it and the need for long-term investment and stability for important relationships.

With the deadline for the offer period closing on Thursday, and without prejudice to my use of the Enterprise Act powers, which operate according to a longer timetable, I believe that Melrose should set out more clearly its intentions towards wider stakeholders, and specifically to make commitments concerning them in a legally binding form before the opportunity is lost with the closure of the offer period. Accordingly, I wrote to Melrose yesterday asking it to set out clearly its proposed commitments, including on maintaining the business headquartered and listed in the UK; maintaining a United Kingdom workforce and respecting its employment rights, as well as engaging closely with representatives; continuing to pay tax as a UK taxpayer; continuing to invest in R&D programmes, which are crucial to our industrial strategy; investing in the training and development of the workforce, including in apprenticeships; treating suppliers well, including the prompt payment of suppliers; and making arrangements for current and future pensioners which are to the satisfaction of both trustees and the independent Pensions Regulator.

In addition, stable ownership and financing is an important part of underpinning the trusted relationships which particularly characterise the defence sector. That stability is also important for research and development partnerships which, by their nature, endure over many years, whereas Melrose's model has been built on short-term ownership. I have therefore sought a legally binding commitment from Melrose to greater continuity of ownership specific to the defence-related businesses, and to exclude the option of a short-term sale of this business without the prior consent of the Government. I have also made it clear that, in the event of a successful bid, the Ministry of Defence would look to require a legally binding commitment relating to the management of any defence contracts. It is important to emphasise that these would be voluntary commitments by the company, over and above questions of the use of Enterprise Act powers, but it is right that these wider issues of public concern should be addressed by Melrose before the bid closes formally. Melrose has, earlier today, given a response to my letter, which I will place in the Libraries of both Houses, alongside my letter to Melrose.

Subject to the powers that I have described, it is for shareholders of GKN to decide which management team they wish to run their company. But my strong belief is that when broader interests are at stake, and having established a new regime in which legally binding commitments about the future can be given, they should be used before the opportunity to do so expires. I will continue to keep the House up to date at every phase of these proceedings, and the House can be assured that I will carry out my responsibilities seriously, meticulously and fairly in representing the public interest in the future of such an important company. I commend the Statement to the House".

My Lords, that concludes the Statement.

5.47 pm

Lord Stevenson of Balmacara (Lab): My Lords, I thank the Minister for repeating the Statement made in another place by his right honourable friend the Secretary of State. I think that many Members of your Lordships' House will think that it is rather troubling and a bit confused towards the end. I shall ask a number of questions in hoping to elucidate that.

GKN is a UK engineering firm, founded in south Wales in 1759, which is now a global engineering business which designs, manufactures and services systems and components for most of the world's leading aircraft, vehicle and machinery manufacturers. GKN has various defence contracts in Luton, the Isle of Wight and in King's Norton, including making components for the F35, A400MM, P8, Typhoon, V22, C130, and F22 vehicles. Approximately 58,000 people work in GKN companies and joint ventures in more than 30 countries, including 6,000 here in the UK. It has global sales of £9.4 billion and spends £85 million on R&D in the UK alone. As a percentage of sales, GKN spends about 4% on training, and we are hoping that that will continue.

The motto of the bidder, Melrose, is, "Buy, improve and sell"—in other words, to dismantle a business and then quickly sell each part off. On 8 January, the board of GKN received an unsolicited proposal from Melrose to purchase it; the board of GKN unanimously rejected it, on the grounds that the bid was,

"entirely opportunistic and that the terms fundamentally undervalue the company and its prospects".

A formal offer from Melrose and various defence documents have been issued since then, and the deal closes this Thursday, 29 March. But despite growing concern it was not until yesterday, Monday 26 March, that the Secretary of State wrote to Melrose to seek the commitments referred to in the Statement and relevant undertakings on a number of key areas. So my first question is: why on earth did it take the Government so long to get involved, and why on earth leave it all so late?

I accept that there are currently strict and limited grounds for ministerial intervention in proposed mergers, in essence where one or more of national security, media plurality and financial stability are engaged. However, the Enterprise Act 2002 powers allow reference on those grounds to the Competition and Markets Authority for four months after the completion of a transaction. Better late than never, perhaps.

In the Statement the Secretary of State said that he would make such an assessment,

"following receipt of advice from the Ministry of Defence and other agencies on the final terms of a bid were it to be successful".

So my second question is: can the Minister set out the likely timescale for this process, and how it will operate in practice? Will he guarantee to keep the House informed?

The Statement seems to suggest that the reason why the Secretary of State kept a low profile was that he did not want to jeopardise his quasi-judicial role in this takeover battle. If that really is the case, does it not prompt another question? If the Secretary of State for Business is debarred from taking an active interest—and we have to wonder whether that is a sensible position for him to adopt—who in government has the responsibility for looking after our industrial assets, including strategic and defence interests, in this and similar takeovers? I look forward to hearing from the Minister on that subject.

The Secretary of State rightly pointed out in the Statement that in the past some takeovers have had "deleterious" consequences. Presumably that is a reference to the Kraft/Cadbury debacle. He went on to say:

"In my view, this establishes the principle that we expect interests broader than pure shareholder value to be taken into account by directors and"—

this is quite important—

"in the attitude of the Government".

He lists these as:

"a requirement for directors to have regard to … the interests of the company employees, its business relationship with suppliers, customers and others; and the impact on the community and the environment".

That is quite wide-ranging, and all very sensible.

All those issues are directly engaged in this proposed takeover. So my fourth question to the Minster is: can he point out how and where these new principles will actually bite? How will they impact in Luton, the Isle of Wight and Norfolk? Will they ensure that the R&D spend continues, that the pensions are secure, and that the training opportunities GKN currently offers will be continued?

Finally, the Statement contains the view of the Secretary of State, as expressed in his letter yesterday to Melrose, that Melrose should set out more clearly its intentions towards wider stakeholders. He specifically requests it to make commitments in a legally binding form. I have to say that if the commitments specified by the Secretary of State were put in legally binding form, that would go a long way towards allowing us to support the Government in this matter. So my fifth question to the Minister is to ask him to confirm that the Government will refer the proposed takeover to the CMA if they have not received, by close of play on Thursday 29 March when the deal closes, legally enforceable commitments from Melrose on the issues that he has adumbrated already.

I repeat that those issues are: maintaining the business headquartered and listed in the UK; maintaining a UK workforce and respecting its employment rights as well as engaging closely with its representatives; continuing to pay tax as a UK taxpayer; continuing to invest in R&D programmes at current levels; investing in the training; treating suppliers well, including prompt payment of suppliers; making arrangements for current and future pensioners that are satisfactory both to trustees and to the Pensions Regulator; greater continuity of ownership of the defence-related businesses; and a commitment relating to the management of any defence contracts. At present only two of these "asks" will be covered by the legally enforceable commitments offered by Melrose to the Takeover Panel, and one of those only partially. The rest are not. I would be grateful if the Minister would reflect on that.

In conclusion, I have to say to the Minister that there cannot be many people in this country who think that the Government have got a grip on this issue. Voluntary agreements will not work, as we know from recent experience. Today's weak, late and unenforceable assurances from Melrose are insufficient. There should be statutory provisions, not voluntary aspirations. In truth, without them, there is nothing there to assure the workers, the pensioners or the local communities. Nor will voluntary agreements assuage the concerns about the devastating impact that this opportunistic dawn raid will have on our industrial strategy and our national security. Both in this case and in future cases, we surely deserve better.

Baroness Kramer (LD): My Lords, I want to press the Government a little more on one or two of the issues raised by the noble Lord, Lord Stevenson. One of those is the timing of the letter. The Minister will be very much aware that, presumably, it was meant to elicit information and to express some government concerns to be taken into consideration by the shareholders of GKN before they exercise their votes. However, as he will know, many of the shareholders have already declared —and I think he will confirm that a declaration once made cannot be retracted. In addition, the remaining shareholders have largely had all their internal meetings to come to their final decisions, and cannot pull those meetings back together to reconsider in the very brief timeframe of the next 48 hours. Therefore, if this is something other than public relations, will he explain to me how it is meant to inform shareholders, because I do not understand that? Will he especially, in that case, confirm that he still takes the view that the Secretary of State can call in this transaction, in whatever form it goes through, if concerns remain following the vote?

I scanned through the Melrose response very quickly but there seems to be no mention of the 6,000 workers. There are various assurances on other points but I saw no mention of them. Will the Minister comment on that? I am also concerned that all the various declarations seem to have a timeframe of five years. Considering the length of time needed to plan measures such as the industrial strategy and the sustainable relationships that need to be developed in the aerospace, defence and other fields, five years seems an infinitesimal period. Will the Minister explain why that short timeframe apparently reassures him, because I am not sure that it does me?

Does the public interest definition need to be looked at again as it does not mention workers' rights or pensioners and does not refer to the industrial strategy, which is supposed to have a much more important role now? Airbus, for example, has expressed concerns about a potential new owner, which could undermine the direction in which the Government are trying to take industry in this country.

[Baroness Kramer]

My last point concerns an issue I do not fully understand. However, the Minister may be able to help me. I understand that many of the shares are held by arbitration houses, and that rather than buying them and paying stamp duty they have them on loan and are exercising them in that format. Is that really appropriate and is it something else we should look at?

Lord Henley: My Lords, I shall make a fist at answering some of the points put to me by the noble Lord, Lord Stevenson, and the noble Baroness, Lady Kramer. However, I apologise in advance if I fail to do so on some points as this issue is highly technical. I want to be very careful about precisely what I say, bearing in mind that my right honourable friend will possibly have to make quasi-judicial decisions following advice from the Ministry of Defence. I am not party to that but the noble Baroness and the noble Lord will understand what I mean: I have to take care over what I say.

The noble Lord's first criticism was that we were slow off the mark on this issue. I can assure him that right from the start, from the moment we knew there was a bid—it goes back only to January—the Government have monitored this and paid attention to it. As the noble Lord will know, as things have hotted up, we have taken a more active line; hence the letter from my right honourable friend yesterday, to which he and the noble Baroness referred. I will say a little more about that, and about the response today from Melrose.

The noble Lord also asked about the timescale and what we will do to keep the House informed. I can assure him that we will keep the House informed as things happen, as my right honourable friend made clear. The Secretary of State set out the statutory timeframe under the 2002 Act. He will inform the House if an intervention is ordered, again in line with his quasi-judicial powers. As I made clear, there are limits to what my right honourable friend can and cannot do. He set out in his Statement just when he could intervene under the terms of the Act. In the third paragraph of the letter to Melrose, he again makes it clear that the Act gives powers to the Secretary of State to act in a quasi-judicial manner.

He goes on to say, when talking about broader stakeholder interests, that in addition to his statutory role, he, as Business Secretary, had a wider concern that,

"where important businesses are involved, takeovers should not act against the interests of our economy, employees or the broader set of stakeholders".

He adds that Section 172 of the Companies Act, to which he referred in his Statement, sets out that statutory requirement for directors,

"to have regard to, amongst other things, the interests of the company's employees; the company's business relationships with suppliers, customers and others; and the impact on the community and the environment".

A response to that letter came through from Melrose. It is now available in the Library, and I hope the noble Lord, the noble Baroness and others have seen copies of that letter. In the letter, Melrose again set out what it felt it could do, particularly where it agreed with the takeover panel on the form of the legally enforceable undertakings:

"For a period of five years, Melrose will: maintain its UK listing; maintain its UK headquarters; ensure a majority of its directors are resident in the UK …",

and so it goes on. There are commitments about the amount of research and development it will invest in. That is all set out in what it refers to as its takeover panel-enforceable undertakings. The letter goes on to make further long-term commitments that we hope that it, as an honourable company, will adhere to should it be successful. That is obviously, as my right honourable friend made clear, a matter for the shareholders.

Going back to those initial undertakings about legally enforceable commitments in the letter, the Secretary of State indicated in his letter his wish to see Melrose making those other commitments, to which I referred in the main letter, in good faith. I hope the company will stick to that. Since the noble Lord asked particularly about R&D and training, the commitments about R&D are listed in its letter in the paragraphs about enforceable undertakings, which state:

"Melrose will at least maintain GKN's current level of expensed research and development investment equal to 2.2% of sales over the financial years 2019, 2020, 2021, 2022 and 2023".

This is a legally enforceable commitment.

As I said, I am limited in what I can say, and I want to be very careful about what I do say and how far I go because the Secretary of State has to look at this thereafter. I will leave it there and take up that rather technical point that the noble Baroness made about arbitration houses—

Baroness Kramer: Arbitrage houses.

Lord Henley: Yes, arbitrage houses. I will write to her in due course, because I would not want to give a response that was in any way misleading. I hope that deals with most of noble Lords' concerns.

5.58 pm

Lord King of Bridgwater (Con): My Lords, the House will recognise that this is a very serious announcement about a major British company that is obviously facing some difficulties in its present operation and is now the subject of this takeover bid. It is extremely worrying that this has occurred at a time when, obviously, the future prospects for our economy are far from certain in the present Brexit developments. The Secretary of State was absolutely right to ask for the clearest undertakings, although, as the noble Lord from the Front Bench said, it has come rather late. I do not understand at all the idea that the Secretary of State has up to four months in which to intervene in something that may have already taken place. However, he does recognise that it is not just a matter of national security: the Secretary of State says he has a wider concern that the takeover should not act against the interests of the economy. He asked for undertakings from Melrose Industries plc, but I find them extremely inadequate. The company says that it is prepared to give an undertaking to maintain its UK listing and UK headquarters for five years, and to,

"ensure that the Aerospace and Driveline divisions retain the rights to the GKN name".

However, it goes on later to say that if a strategic purchaser comes forward with an investment proposal prior to 2023, it hopes that it would be allowed to consider that. It goes on to add:

"Unfortunately, as a result of the nature of the transaction, we have not had access to the information we would expect in order to make detailed commitments".

By the end of that, I wonder just what commitments are being given. This is a very serious matter and the Government need to think very carefully indeed. I pay tribute to Melrose, which is obviously an extremely successful company, whose business will be to acquire it and to sell it on. No doubt it will make a great success of that, and full marks to it for its approach. Whether or not it is appropriate in this situation, a heavy burden is on the Government to get far clearer and far more binding undertakings that will give some form of security to an essential part of the UK industrial economy.

Lord Henley: My Lords, I note exactly what my noble friend has said. As he said, my right honourable friend has up to four months to consider these matters, depending on the advice he receives from colleagues in the Ministry of Defence. I am also grateful to my noble friend for referring to the response from Melrose. It is not for me to say whether that is a good or bad response; I just note that, ultimately, it has to be a matter for shareholders and others. But parts of that, as I made clear—the letter is now in the public domain—will be enforceable commitments, albeit some of them for only five years, and another part will be undertakings of a less enforceable nature. It is not for me to defend or attack that letter. I have simply set it out as the response that my right honourable friend the Secretary of State received from Melrose following his letter, in which he set out, first, his legal obligations under the 2002 Act—which gave him a relatively limited power to intervene, which is quite appropriate. Secondly, however, he stressed—I am grateful to my noble friend for underlining this—the wider interests he has as Business Secretary and the wider interests that the directors have under Section 172 of the Companies Act as regards what they must look at. In the end, the shareholders will have to take a view on that matter. As I said, it is possible that my right honourable friend will have to make a decision in a quasi-judicial manner. He must await advice on that, and at that stage, if appropriate, he will intervene.

Lord Higgins (Con): My Lords, I share the view that this takeover proposal is important for the UK economy. My noble friend the Minister refers to legally binding contracts. There have been cases in the past where contracts have not been fulfilled by those taking companies over. What will be the consequences if these legally binding contracts are broken? In particular, since it seems unlikely that the takeover company in this case will retain indefinitely the company it has taken over—the expectation is quite the contrary—how will the legally binding commitment be carried forward as regards any future owner of the company?

Lord Henley: My Lords, I would need to take advice on that. I was quoting the letter from Melrose back to my right honourable friend the Secretary of State. In that letter—in the paragraph headed, "Takeover Panel enforceable undertakings"—Melrose states:

"We have been able to agree with the Takeover Panel"—

I imagine this is a matter for it—

"the form of the following legally enforceable undertakings".

I am not aware of how and in what way those would be legally enforceable, but that is the assertion it made.

Lord Jopling (Con): My Lords, surely one of the most worrying aspects of this matter is the suggestion that a company whose business is very much concerned with national security could be bought and held for only five years by a company whose business seems to be a quick turnover on selling and buying businesses. In five years' time, as I understand it, the business could then be passed on to China or almost anybody, which has severe implications for the five-year term. I notice that the five-year issue was not in the Minister's Statement. It seems a crucial, central aspect of the issue. Can we know why the Government were not frank enough to put it in the Statement?

Lord Henley: Again, I am not sure that I can take my noble friend much further than I did earlier when I talked about the advice that my right honourable friend needs to receive from the Ministry of Defence. Under the 2002 Act, there are limited grounds on which the Secretary of State can intervene in matters of this sort, one of which is on grounds of national security. He needs to take advice on that and, if appropriate, he can then act; but as I said earlier, he needs to act in a quasi-judicial manner. If the other two reasons for intervening do not come into play, my right honourable friend would not have the ability to intervene because national security would not be affected. It would be for my right honourable friend to take that advice and come to a decision, but these matters have to be decided in a quasi-judicial manner and I therefore do not want to say anything that might damage his ability to do that in any way.

Lord Browne of Ladyton (Lab): My Lords, I apologise to the Minister in advance if I should know the answer to this question. Can he tell your Lordships' House if any such legally enforceable undertakings have, in the past, ever been enforced by the Takeover Panel? What have been the consequences of such enforcement action? That seems to be at the heart of the concern of your Lordships' House. In what sense are these undertakings enforceable?

Lord Henley: I am always filled with dread when experienced colleagues such as the noble Lord get to their feet and say that they should know the answer to a question. I do not know the answer to that question, but I will commit to write to him about occasions when, and if, such legally enforceable commitments have been enforced, and I will make sure that it is copied to other noble Lords who have taken part in this debate.

Lord Elton (Con): My Lords, my noble friend and other colleagues have brought forward the term of five years as though it was reassuring, but surely all the issues that are alive now will be equally alive in five years' time. Merely pushing a cataclysm back does not solve the problem. Can we have some assurance that the Secretary of State will look to the longer term and not merely to the contractual niceties that he has set out so far? Can the Minister answer the question—a question to which I too should know the answer—of what the extent of his power to intervene is if he decides to do so?

Lord Henley: I do not think that our national security is limited to five years, and I do not think that the 2002 Act says that. These commitments have been

[Lord Henley]
made by Melrose. I am sure that it will be for my right honourable friend to consider national security on a long-term basis. I hope the noble Lord will understand that I cannot pre-empt how my right honourable friend might consider that.

Electricity Supplier Payments (Amendment) Regulations 2018

Motion to Approve

6.10 pm

Moved by ***Lord Henley***

That the draft Regulations laid before the House on 5 February be approved.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, this draft instrument seeks to amend regulations concerning the contracts for difference, or CfD, scheme and the capacity market. CfDs provide long-term price stabilisation to low-carbon generators, incentivising investment by lowering the costs of capital and thus reducing the costs to consumers. The capacity market is the Government's main policy to ensure a healthy margin of electricity capacity. Regular payments are made to different forms of generation or demand-side response in return for such capacity being available when needed.

In both schemes, support to participants is assigned through competitive auctions, minimising costs to consumers. The 2017 CfD auction secured 3.3 gigawatts of renewable capacity, enough to power an estimated 3.6 million homes. It also saw the clearing price of offshore wind halve compared to the first auction back in 2015. The next competitive auction for less established renewable technologies is planned for spring 2019.

Following four successful four-year-ahead auctions, the capacity market is already securing the capacity we need through to 2021-22. The latest auction secured 50.4 gigawatts of capacity at a price of £8.40 per kilowatt per year. The main auctions have all cleared at between £8.40 and £22.50 per kilowatt per year, below most industry estimates and indicating that the process is highly competitive and delivers value for money for consumers.

The Low Carbon Contracts Company and the Electricity Settlements Company, two operationally independent government-owned companies, work with government to operate the capacity market and CfDs, playing a crucial role in their successful delivery. The Low Carbon Contracts Company was set up to be the counterparty to the contracts for difference. It manages the contracts for their duration, as well as collecting and making CfD payments. The Electricity Settlements Company was established as the capacity market settlement body to oversee all financial transactions relating to the capacity market. Both companies recover their operational costs through levies on electricity suppliers. This is the subject of the regulations that we are considering today.

The regulations will set revised operational cost levies for each of the companies for financial years 2018, 2019 and 2020. Previously, the levies have been set annually. These regulations, however, will set levies for each of the next three financial years, allowing the companies to recover their expected operational costs over this period. Additionally, the regulations make a minor grammatical amendment to the Electricity Capacity (Supplier Payment etc.) Regulations 2014, removing the words "is responsible", which are not required.

Both companies are essential to the Government's decarbonisation and security-of-supply objectives and must be sufficiently funded to perform effectively while keeping costs to consumers minimised. The budget-setting process aims to strike the right balance. The budgets are scrutinised by government to ensure they reflect operational requirements and deliver value for money. The budgets have also been exposed to external scrutiny through consultation. The three consultation responses were broadly supportive of the proposed budgets. We also asked stakeholders for their views on setting levies for the next three years instead of one year ahead. They agreed that this was a sensible approach, as it provides them with greater visibility of the estimated costs. Furthermore, parliamentary time is saved over what is likely to be a very busy period.

The operational cost budgets over the three-year period have been set to cover the expected activity required to manage the CfD scheme and the capacity market. The Low Carbon Contracts Company's budget will be £16.5 million in 2018-19, increasing by about £0.5 million for each of the next two years. The Electricity Settlements Company's budget will be £7.6 million in 2018-19 and decrease slightly to £7.5 million in 2020-21. The Low Carbon Contracts Company's net core operating cost for 2018-19 is slightly down on last year. The increase in total cost reflects the inclusion of a contingency provision for managing potential contract disputes. The increase in the final two years takes account of potential additional contracts awarded through future allocation rounds. Importantly, however, management costs per contract are projected to fall by 30% over the budget period.

The Electricity Settlements Company is managing a significant increase in the amount of capacity and the number and type of capacity providers. Moreover, there will be an ongoing need to refine the operation of the capacity market. To manage this activity effectively and ensure that it continues to successfully deliver all the financial transactions for the capacity market, the Electricity Settlements Company requires investment. The budget increase reflects the investment needed.

The regulations revise the levies currently in place to reflect the expected operational cost requirements in financial years 2018, 2019 and 2020. Subject to the will of Parliament, the levy to fund the Electricity Settlements Company's operational costs is due to come into force on the day after the regulations are made; the operational costs levy for the Low Carbon Contracts Company on 1 April. I commend these regulations to the House.

6.15 pm

Lord Grantchester (Lab): I thank the Minister for his introduction to the order before your Lordships' House today. He has set out the details very well, in that the order amends the rates for the operational costs levy for the next three financial years in the contract for difference regime and the rates for the settlement costs levy also for the next three financial years in the capacity market. These costs are borne by electricity suppliers who pass them on to their customers through their bills. These costs are levied to cover the operational and administrative charges borne by the CfD counterparty, the Low Carbon Contracts Company that operates the ESO regulations, and the Electricity Settlements Company that is responsible for the operation of the capacity market.

As the Minister said, these costs have previously been calculated on an annual basis. As both these operations have been successfully running for a few years and have become predictably regular, it makes sense to convert these from annual to three-year periods. The Minister is also correct to point out that both the capacity market and the CfDs have been a success in bringing forward reduced bids at the various auctions, resulting in lower costs to consumers. Against this, it must be acknowledged that both companies are now managing increased market complexity with a greatly increased number of participants that is reflected in the increased rates in the order today.

Discussions on the order in the other place focused on these costs, the not insignificant amount that is translated on to consumer bills and the enormous cost inflation—an increase of some 700% in the operational budgets of the ESC since 2014. Mercifully, we need not rehearse those discussions today. The Minister in the other place was able to clarify that, in the case of the ESC, the number of participants increased from 46 to 447, providing initially from 0.6 gigawatts of capacity to 55 gigawatts. It was interesting that, while operational costs as part of the whole scheme should reduce from 1.6% last year to 0.6% in 2020, this is against a forecast of a fall in gross electricity demand of some 2% over the same period, meaning levy rates increase. I hope that all that makes sense to the uninitiated.

What was not discussed in the other place was that, in relation to the LCCC in the CfD market, the budgetary increase was principally due to the inclusion of a provision set aside for disputes. Paragraph 8.4 of the Explanatory Memorandum explains that the Government will keep this contingency under review but that the LCCC must have sufficient funds to defend a dispute.

My questions to the Minister revolve around disputes. What do these disputes tend to be about; what have been the past costs in the operation of the CfDs; and has any dispute resulted in a court case and, where appropriate, involved the recovery of losses, with costs being borne by the loser? These points have not been explained—perhaps the Minister could explain them now. I phoned the department this morning and I am very grateful to Fiona Reynolds for discussing the issue with me; I trust she has been able to advise the Minister. Finally, are these disputes to be categorised more as queries, challenges or appeals against decisions, and what has been the experience from past years, such that a regularity can now be transposed into a budgetary contingency? While the order can be approved today, this would be interesting to understand.

Baroness Featherstone (LD): My Lords, capacity markets and contracts for difference have been a roaring success and came in during the coalition years when Ed Davey was Secretary of State—we would expect no less. The regulations will pass today, but it is absolutely right to question any rise in cost, particularly when a small proportion of it is passed on to the consumer. It is always important to keep an eye on costs and particularly when renewing a contract with an entity that is effectively the sole supplier in the field, thus making competition on pricing an impossibility—there is no one competing, so they get more.

Having read the debate in the other place, the rationale given for the steep rise in costs to the Low Carbon Contracts Company and the Electricity Settlements Company since commencement, is basically the expansion of the number of providers, as the noble Lord, Lord Grantchester, mentioned, from 46 to 447—which, of course, is a good thing—as well as the need to cover disputes. I too am very interested in the information on exactly what those disputes are and look forward to reading that in due course. We need to remain vigilant that all costs are properly scrutinised.

I could not help but note that the Minister in another place, Claire Perry, in order to assuage any concerns over the creeping inflation of costs beyond what they should be, said:

> "I am always keen to run the calculator over these companies' calculations. As the Minister ultimately responsible, I will continue to do so".—[*Official Report*, Commons, Delegated Legislation Committee, 19/3/18; col. 8.]

I am impressed with the Minister's personal intervention in this mission and trust that her background in banking and finance mean that her use of a calculator is unimpeachable—but I hope there are some accountants keeping an eye on this too. I simply wish to reiterate that companies in receipt of large sums of public money need strict monitoring. On the basis that this will happen, I am content that the regulations should pass.

Lord Henley: My Lords, I can certainly assure the noble Baroness, Lady Featherstone, that my right honourable friend Claire Perry will continue, as the noble Baroness quoted, to run a calculator over these issues—I am sure she will use a calculator, an abacus or any other instrument that is necessary but, just as important, she will also make use of accountants, and the department will keep a very close eye on these matters.

I think the only matter that I need to deal with for both the noble Baroness and the noble Lord, Lord Grantchester—who very helpfully let the department know what his concerns were—is how the budget, including the provision to deal with potential disputes in relations to managing CfDs, has been calculated. As the Low Carbon Contracts Company is the counterparty for CfDs, it is important that it has sufficient funds to defend a dispute if necessary. The provision included in the budget is largely based on previous experience and assumptions about potential disputes. Previous disputes have largely related to contract matters, though the nature of those will be confidential—that is the

[Lord Henley]
nature of such things. I emphasise that if the provision is not utilised for disputes and the surplus levy income is not required for other operational activity—we are only talking about matters relating to such activity—it will be repaid to suppliers in accordance with the regulations.

I hope that satisfies both the noble Baroness and the noble Lord and that, with their agreement, I can commend these draft regulations to the House.

Motion agreed.

Northamptonshire County Council
Statement

6.25 pm

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, with the leave of the House I will repeat a Statement made in the other place earlier today by my right honourable friend the Secretary of State for Housing, Communities and Local Government, Sajid Javid. The Statement is as follows:

"Mr Speaker, with permission, I wish to make a Statement about the independent inspection report on Northamptonshire County Council. Everyone in this House, regardless of party, appreciates the crucial role that local government plays as the front line of our democracy—delivering vital services on which we all depend, helping to create great places to live and, in doing so, making the most of every penny it receives from hard-pressed taxpayers to secure better outcomes—all of which builds confidence and trust between local authorities and those they serve, which is why the situation in Northamptonshire is of such concern.

Prior to my instigation of the report, there were signs that Northamptonshire's situation was deteriorating. External auditors at Northamptonshire had lodged adverse value-for-money opinions in audit reports, suggesting that the council was not managing its finances appropriately. The resignation of the former leader in May 2016 also signalled the need for change. As late as last year, the Local Government Association conducted a financial peer review which concluded that there were issues with delivering the 'Next Generation' reforms and, again, with mismanagement of its finances. The then chief executive, Paul Blantern, resigned in October 2017.

These reports, along with the concerns raised by district councils in Northamptonshire and by honourable Members of this House with local constituencies, prompted me to act, as I was concerned that there were potentially fundamental issues within the authority. On 9 January, I informed the House that I had concerns regarding the financial management and governance of the council. I therefore decided to exercise my powers under Section 10 of the Local Government Act 1999 to initiate a best-value inspection of the council, and appointed Max Caller, an experienced former chief executive and commissioner, to conduct this and report on whether or not the council was complying with its best value duty.

Mr Caller submitted his report on 15 March, and I placed a copy in the Library of this House so that everyone could see what he had found, and his recommendations. Before I go any further, I thank Mr Caller and his assistant inspector, Julie Parker, for their dedication and focus in conducting such a thorough and prompt review.

When I commissioned the best value inspection, I asked the inspector to consider four things in particular: first, whether the council had the right culture, governance and processes to make robust decisions on resource allocation and to manage its finances effectively; secondly, whether the council allowed adequate scrutiny by councillors; thirdly, whether there were strong processes and the right information available to managers and councillors to underpin service management and spending decisions; and, fourthly, whether the council was organised and structured appropriately to deliver value for money.

I have reflected on the contents of the Caller report. It is balanced, rooted in evidence and very compelling. The inspector has identified multiple apparent failures by Northamptonshire County Council in complying with its best value duty—failures on all counts. While I recognise that councils across the country have faced many challenges in recent years, the inspector is clear that Northamptonshire's failures are not down to a lack of funding or because it is being treated unfairly or is uniquely disadvantaged compared with other councils.

Mr Caller says in his report:

'For a number of years, NCC has failed to manage its budget and has not taken effective steps to introduce and maintain budgetary control'.

Furthermore, the complex structure of financial support meant that oversight was difficult and accountability blurred. The report says that Northamptonshire's 'Next Generation' approach, which envisaged outsourcing many of the council's functions, had no,

'hard edged business plan or justification to support these proposals … which made it difficult to ensure a line of sight over costs and operational activity',

and,

'made it impossible for the council, as a whole, to have any clarity or understanding as to what was going on'.

Similarly, the inspector found that Northamptonshire County Council used capital receipts to support revenue spend without documentary evidence demonstrating compliance with the statutory guidance and direction. Furthermore, until this February, there was no report to full council on the proposed projects and their benefits. He says:

'Savings targets were imposed without understanding of demand, need or deliverability and it is clear that some Chief Officers did not consider that they were in any way accountable for the delivery of savings that they had promoted'.

On the question of scrutiny, the report says:

'The council did not respond well, or in many cases even react, to external and internal criticism. Individual councillors appear to have been denied answers to questions that were entirely legitimate to ask and scrutiny arrangements were constrained by what was felt the executive would allow'.

I want to emphasise that the report also indicates that the hardworking staff of Northamptonshire County Council are not at fault and have worked hard to provide quality services. With all this mind, it is clear

that I must consider whether further action is necessary to secure compliance with the best value duty. In doing so, I want to reassure the residents of Northamptonshire that essential services will continue to be delivered.

The inspector is clear that:

'The problems faced by NCC are now so deep and ingrained that it is not possible to promote a recovery plan that could bring the council back to stability and safety in a reasonable timescale'.

He recommends that:

'A way forward, with a clean sheet, leaving all the history behind, is required'.

I am therefore minded to appoint commissioners to oversee the authority using my powers under Section 15 of the Local Government Act 1999. From day one, I propose that they take direct control over the council's financial management and overall governance. Getting these basics right must be the first step in stabilising this authority. I also propose giving them reserved powers to act as they see fit across the entirety of the authority's functions if they consider that they must step in. My officials are writing to the council and district councils today to this effect, and they can make representations on this proposal. I will consider any representations carefully before reaching a final decision.

The Caller report makes a clear recommendation on restructuring, and notes there are a number of options available. So, in addition, I am inviting Northamptonshire County Council and the district and borough councils in the area to submit proposals on restructuring local government. I would like those councils to think about what is right for their community and the people they serve, and to come forward with proposals. This invitation and the letter to Northamptonshire that I mentioned earlier have been published today, and copies placed in the Library of this House.

It is clear to me that any proposals from the councils should seek to meet the criteria for local government restructuring that I have previously shared with the House: that they should improve local government, be based on a credible geography and command a good deal of local support. I will be particularly interested in hearing how the councils have consulted with their communities to ensure that Northamptonshire's future is truly locally-led.

The findings of Mr Caller's inspection report on Northamptonshire County Council are extremely serious, which is why this Government are prepared to take decisive action to ensure that local people receive the high-quality services they need and deserve, and to restore faith in local government in Northamptonshire. I commend this Statement to the House".

6.33 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, first I draw to the attention of the House my relevant interests as set out in the register—namely, that I am a councillor in the London Borough of Lewisham and a vice-president of the Local Government Association.

I thank the noble Lord, Lord Bourne of Aberystwyth, for repeating the Statement delivered by his right honourable friend in the other place earlier today. I welcome much in the Statement. The best value inspection report on 15 March makes tragic reading and highlights the total mismanagement of the affairs of the authority by the council. I pay particular tribute to Max Caller for the work he has done in submitting the report. I have known him for many years, and he is a very experienced former chief executive. I had the privilege to serve on the Electoral Commission with him for many years. I have huge regard and respect for him. It was a very wise choice to appoint him to undertake this review.

The problems with this authority have been building up for many years. The council has outsourced virtually every single service possible. I think in the end it employed only about 150 people directly. The peer review conducted last September warned of the difficult position the authority was in, yet soon afterwards the authority opened its brand new £53 million headquarters. It was actually opened by the Secretary of State who delivered this Statement in the other place earlier today. Soon after that we had the council effectively declaring itself bankrupt as an authority.

I know Northamptonshire and Northampton very well. I worked there for many years. I have been in Northamptonshire County Council many times, and I could not see much wrong with the old headquarters.

Then we had the revelation of the former chief executive being paid £1,000 a day as a consultant. This is not good. It is time we sent the commissioners in. Can the noble Lord give the House the timetable for making the final decision in this respect? If it is decided that commissioners are to be appointed, how long after that decision do we expect them to go into the authority? Would he expect the remit of the commissioners to be as extensive as recommended by the report? The finances of the authority will remain precarious for a number of years, so can the noble Lord tell the House what level of budget monitoring will be undertaken by officials in his department? What will their relationship be with the commissioners, if they are appointed and go into the authority?

On the reorganisation proposals, I am happy to welcome them in principle, but they need to be looked at very carefully. For any unitary authority to succeed, it first has to be adequately financed. Drawing lines on a map will not in itself solve the problems in Northamptonshire. There has to be a sense of credibility in what is being proposed. We have the county council suggesting a unitary council to cover the whole county. There are other proposals, including the suggestion of two unitary councils: north Northamptonshire and west Northamptonshire.

All this has to be looked at very carefully to see what the best arrangement is with no predetermination of what the structure should be. Northampton borough, which is a very historic borough, may well want to make the case for becoming a unitary authority in its own right. I know it was granted its charter by King Richard I in 1189, and was permitted its own mayor by King John in 1215. It is also the most populous urban district in England not to be administered as a unitary authority. I have no view at this stage on what is right, but all ideas must be looked at properly and heard fairly.

People in Northamptonshire deserve a proper, accountable local government delivering for them. The time has come for the Government to take the decisive action needed to deliver that.

Baroness Pinnock (LD): My Lords, I draw Members' attention to my registered interests as a vice-president of the Local Government Association and a councillor in the borough of Kirklees in West Yorkshire.

I thank the Minister for repeating the Statement. I share his comments that the failures in the governance of Northamptonshire in no way reflect on the many staff who clearly continue to provide services to the public to the best of their ability. Nor do they reflect on the majority of councillors, who, according to the evidence in the best value inspection report, were denied information and were thus not able to undertake their responsibilities as might have been expected.

As a consequence of the inspection, the Government have decided that commissioners should be appointed to take direct control of the council's financial management. This will undoubtedly result in the commissioners proposing that some of the very difficult cuts to services that many other councils have already made will now be made without proper democratic involvement. That is a terrible indictment of the senior officers and senior members of the council who failed to grasp that, like it or not, cuts in income of the scale experienced by local government inevitably lead to significant cuts in services.

Northamptonshire County Council's response to cuts in funding was to adopt a full outsourcing and commissioning model. For all the reasons expounded in the inspection report—it makes tragic reading—this failed abysmally. The residents of Northamptonshire have been ill served by some of the senior directors of the council, but it is the residents who will suffer the consequences of the failure to get a grip on constantly reducing budgets and to deal with difficult decisions in a timely manner.

That leads me to comment on the financial pressures that local government is facing. As has been said many times in this House and the other place, local government budgets have been reduced by about 40% across the board, and will have decreased by 50%—by half, in other words—by 2020, in two years' time. This is at the same time as demand for services for vulnerable older people and vulnerable children is increasing at a significant rate. The Local Government Association estimates a shortfall of billions of pounds by 2020 for local government to deliver the statutory services that it is required to.

However, I want to point out that failure to deal with challenging financial budgets is not confined to local government. Carillion is a good example of what happens in the private sector when budgetary situations are not grasped. Many councils are just about managing, and it seems that some will just about manage for only another 18 months or so. There are statutory services to be provided, and for some this will soon not be possible. This brings me to some questions for the Minister. Does his department really appreciate the difficult financial situation that many councils face? For instance, is there an analysis in his department of those councils that may be on the brink of being unable to fulfil statutory functions? I assume that there is such an analysis; maybe he will be able to tell us what planning has been done to meet that eventuality. I ask this so that other councils are not allowed to fall into the same difficulties that Northamptonshire has done, though for very different reasons.

In the case of Northamptonshire, the Government determined that there would be a reorganisation of the county council and district council model into a unitary model. I hope whichever model is chosen succeeds, because residents in that county deserve it to succeed. However, I doubt that will sort out the problem; as the noble Lord, Lord Kennedy, has said, if the financial situation is not resolved, simply moving geographical pieces for governance around the county will not solve it. Perhaps the Government will be able to spell out in the fair funding review which services they expect local authorities to deliver and which are not to be a priority. Until that is clarified, councils will continue to find their responsibilities and funding availability stretched beyond their ability to fulfil their duties.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord, Lord Kennedy, and the noble Baroness, Lady Pinnock, for their contributions. I will try to deal with the issues that they raise. Both of them used the word "tragic" and I absolutely agree that this is a tragic situation that has arisen in Northamptonshire. I remind them both, particularly the noble Baroness, that it is clear from the Caller report and other investigations that this is not a failure because of finance; it is a failure because of governance. It is clear in the report that that is the case.

In response to questions from the noble Lord, I say that the timetable for the district councils and county councils to respond in relation to the appointment of the commissioner is 12 April. It will then be for the Secretary of State to consider any representations or points made. The Secretary of State would anticipate responding by the end of April and then, if appropriate, appointing commissioners to take on the role, which is clearly the direction that Max Caller and Julie Parker, in their excellent report, would anticipate.

On the timescale for the restructuring, I remind both the noble Lord and the noble Baroness that Max Caller says that restructuring is necessary. It is a recommendation of the report. This is not the Government's view: it is a recommendation to the Government. We ask the relevant seven district councils and the county council to respond by the end of July. We are open-minded on the different options. It is important that we look at what the councils say, bearing in mind the considerations that apply to any restructuring, as my right honourable friend set out: the proposals should,

"improve local government; be based on a credible geography; and command a good deal of local support".

My right honourable friend went on to say that the councils should state how they,

"have consulted with their communities".

That is all absolutely right.

I echo what the noble Baroness said about the people working for Northamptonshire, who have clearly worked incredibly hard to deliver services and continue to do so, and what she said about many councillors finding themselves excluded from decision-making, questioning decisions or having the ability to critique,

which is not how the local government service should operate and not how the vast majority of local government behaves.

The noble Baroness referred to financial pressures. Quite separately from this, we recognise that there are challenges, but I am keen to keep impressing the basic principle that this is not a failure because of finance. There is no unique feature of Northamptonshire—that it has been discriminated against or has not had the necessary finance. This is a failure of governance, as the Caller report readily recognises. In saying that, I acknowledge that we are looking at fair funding by 2021. That is an important principle and we will be considering the fair funding formula, but that is separate from this issue. Otherwise, I accept the points made by the noble Lord and the noble Baroness.

6.47 pm

The Earl of Listowel (CB): My Lords, I thank the Minister for repeating the Statement and declare my interest as a vice-chair of the Local Government Association. I have listened to this very troubling and sad case, which is probably harming the vulnerable children and elderly most of all by its failings. Can he assure me that there are robust mechanisms in place to support councils which are struggling early on, so that we do not get into these situations? In the education system, there was the Greater Manchester Challenge and the London Challenge, where schools got together and poorer functioning schools were supported by experienced heads to get better outcomes for the struggling schools. Is there such a system in the local government framework, particularly for councillors, who have huge responsibilities but may have no experience of social care or finance before arriving in post? Are there robust systems to ensure that they get the right support at the beginning to be able to give the best?

Lord Bourne of Aberystwyth: I thank the noble Earl for those points. First, interventions can and do happen. This is not the first intervention in local government services: there have been others for other reasons—Rotherham, Doncaster, Hull and so on. Naturally, any Government would be loath—that might not be too strong a word, but certainly wary—to intervene because of the importance of local government being just that. Of course, there are checks and balances within the local government system operating properly. There is proper scrutiny and there are proper balances. As I think I said on a previous Statement on Northamptonshire, we have looked carefully to see whether any other local authority is remotely in the same position and satisfied ourselves that there is not, but that is something that we obviously keep under careful scrutiny and review.

I also say—and should have said earlier in response to points made by the noble Lord, Lord Kennedy, in particular—that there will be regular reporting to the Secretary of State by any commissioners who are appointed to ensure that the correct procedures are instituted and proper progress made by those commissioners.

Lord Porter of Spalding (Con): I declare my interest as chairman of the Local Government Association and leader of South Holland District Council. It is obviously regrettable when central government feels the need to dip its toes beyond just splashing about into local government, and it is a shame that there is not a way to avoid external commissioners going in, leaving the sector to be able to regulate this part of the world for ourselves—but clearly, under current legislation, it is not. It is with regret that I support my noble friend's statement that it is time for the commissioners to go in.

I do not think that we should be leaving all the blame purely with Northamptonshire. Clearly local government in general is facing a very tight financial situation, although Northamptonshire cannot claim to be the worst funded. If it were, it probably would have had a case in saying that it was purely down to central government. But it is not the worst funded, and those that are considerably worse funded than Northamptonshire have not got into that state, so we have to accept that Max Caller's report to a large extent is correct about the financial mismanagement by senior officers and the lack of political oversight while that was happening.

That said, the solution of sending in commissioners is fine but, on the reorganisation, I struggle to see how a change in structure will assist the financial situation because a restructure costs money in the initial years anyway. I would want some reassurance that the Government were prepared to underwrite any potential restructure costs. My real question is that there appears to be an inconsistency in the letter that has gone out today to council chief executives. It clearly says that a proposal from type B authorities—basically the districts—for some sort of reorganisation within Northamptonshire to at least two unitaries is the model that is being looked at, or would be preferred from the Government's perspective. But that does not preclude a bid that includes a district council neighbouring Northamptonshire being part of the bid. That is largely because of the current structural arrangements of two councils—one in Northamptonshire and one in, I think, Oxfordshire.

The letter also says specifically that a single county model is ruled out. Does that mean a single county model with one district from a neighbouring borough is not ruled out? It is inconclusive, in the opinions I have had on that letter. If we are expected to advise the sector, it would be handy to have an answer to that question.

Lord Bourne of Aberystwyth: My Lords, I thank my noble friend Lord Porter very much for a balanced and temperate observation. I absolutely agree that it is clear from the Caller review that commissioner intervention is appropriate. Central government, under various political parties, has always been wary about interventions, but here it is undoubtedly the right approach and certainly the recommendation. Once again, I remind noble Lords that this is not a matter of finance; it is a matter of management and governance, as was made very clear by the Caller report: silo thinking; lack of team working; lack of challenge; and so on. No doubt, inappropriate financial decisions were made but they were based on an essential failure of governance according to the Caller review.

[LORD BOURNE OF ABERYSTWYTH]

On the point made by my noble friend Lord Porter in relation to possible restructuring, the department and the Secretary of State are very keen to hear the views of the districts and of the county on that. That is important. It is made very clear in the letter that we want the determined views of the local councils before responding by the end of July. I would encourage councils to regard the fact that they can make recommendations about restructuring, which will be looked at by the department and the Government. Obviously there is time to consider this—if not at leisure, then certainly with some reflection, because I quite agree that it is a very important step to be taken.

House adjourned at 6.55 pm.

Grand Committee

Tuesday 27 March 2018

3.30 pm

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): Good afternoon. If there is a Division in the House, the Committee will stand adjourned for 10 minutes.

Regulatory Reform (Fire Safety) (Custodial Premises) Subordinate Provisions Order 2018

Considered in Grand Committee

3.30 pm

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

That the Grand Committee do consider the Regulatory Reform (Fire Safety) (Custodial Premises) Subordinate Provisions Order 2018.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, in bringing forward this statutory instrument the Government are seeking to restore the long-established principle that responsibility for enforcing fire safety regulations across the whole of the Crown's custodial and detention estate should lie with those who have been appointed or authorised as Crown inspectors by Ministers in England and in Wales. At present, Crown inspectors in England and Wales are not the enforcing authorities for fire safety in the small number—about 7%—of custodial and detention premises where the Government have contracted out the provision of services to private providers.

That this was a significant issue became apparent in 2016 when responsibility for Crown inspectors in England transferred to the Home Office. Crown inspectors, the Home Office and the Ministry of Justice instigated an investigation into the contractual arrangements in place for the provision of custodial or detention operations. As a result of this detailed review of contracts and ownership arrangements, it became clear that a number of contractual arrangements had been put in place for the operation of these premises, which had had the effect of transferring ownership or occupation for the purposes of the fire safety order away from the relevant Crown departments to private companies. Where this has happened, the responsibility for enforcing compliance with fire safety regulation has similarly been transferred away from our dedicated teams of Crown inspectors, and lies instead with the individual local fire and rescue authorities in which the relevant premises are located. This is not what was intended when the fire safety order was enacted in October 2006.

At that time, the then Government were clear that, irrespective of any contractual arrangements that were in place with the private sector for the provision of services, they wanted Crown inspectors to be the sole enforcing authorities in these types of premises. Indeed, they went so far as to spell this out in the guidance on enforcement that they published, to which all those with enforcement responsibilities under the fire safety order are required to have regard.

Now we are aware that the policy intent no longer aligns with the law, we want to rectify the position and ensure that the original policy of Crown inspectors inspecting, and where necessary enforcing, fire safety regulation across the whole of the Government's custodial estate is re-established. We want to ensure that there is absolute clarity, both now and in the future, about the scope of enforcement responsibilities for the fire and rescue authorities and the Crown inspectors. This order therefore amends article 25 of the fire safety order to set out specific legal definitions of the full range of custodial premises for which the Crown inspectors are to be responsible. These will be established beyond doubt and will not, as is currently the case, be contingent on the often complex contractual leasing or ownership arrangements that may now be in place. Essentially, this order delivers through legislation the clarity that was intended by the 2007 policy guidance on enforcement.

It is the Government's intention, shared by our counterparts in Wales, for there to be a single national organisation in each of our areas of jurisdiction: an organisation charged with the responsibility and invested with the specific skills and expertise necessary to provide three key things.

First, we want Ministers and relevant departments—which of course have the ultimate responsibility for fire safety in these types of custodial and detention premises—to benefit from the strategic oversight of fire safety compliance across the whole of the Crown's custodial estate that is available where a single national body is in place. Secondly, we want there to be a clear and easily accessible route established for ensuring that any concerns relating to fire safety in our custodial estate can be raised immediately and addressed promptly by those with day-to-day responsibilities for fire safety management. Where reluctance or poor communication militates against appropriate action, we want an immediate escalation mechanism—direct to Ministers, if necessary—to be in place and delivered through our national fire and rescue advisers. In England, this means the Chief Inspector of the Crown Premises Fire Inspection Group. In Wales, as in Scotland, it means the Welsh Government's Chief Fire and Rescue Adviser. Thirdly, we want a dedicated cadre of fire safety inspecting officers, each with the necessary training, maintained and regularly updated, to operate safely and effectively in this unique type of premises, where the risk to life in the event of a fire is generally high.

The order will re-establish robust national arrangements across all of the Government's custodial estate. As such, it will specify the full range of custodial premises for which the Government are responsible, providing absolute clarity on the scope of the Crown's responsibility for inspection and enforcement. This will ensure that our dedicated team of experienced Crown inspectors are clear that they have the powers to ensure that appropriate fire safety standards are in place to protect the lives of those living in, working on or visiting the Government's custodial or detention estate. I beg to move.

Lord Paddick (LD): My Lords, I am grateful to the Minister for introducing the order. I heard from what she said that this anomaly, whereby privately run

[Lord Paddick]
prisons and custodial premises were not being inspected by national inspectors, was stumbled across when responsibility for Crown inspectors was transferred from the Ministry of Justice to the Home Office. Will she confirm that that is the case, and is it not a little worrying? How long might it have continued if that transfer had not taken place? Clearly, it is very important to have consistency across all privately run prisons and other places of detention, rather than to have the potential for different standards being applied by local fire and rescue services. On that basis, we support the order.

Lord Kennedy of Southwark (Lab Co-op): My Lords, like the noble Lord, Lord Paddick, I am very happy to support the order before the Grand Committee. It is certainly very sensible to have the experts in fire safety and security to be looking after the whole of the estate. I am very happy to support it.

I have one query; it is a little disappointing—I refer to page 5 of the impact assessment at paragraph 1.9. I am surprised that we still have this ridiculous "one in, three out" rule. It does not apply here because the Government have clearly tested it against that ridiculous rule. It is an example of the worst kind of ideological, political dogma. You would have thought, in the aftermath of a tragedy such as Grenfell, we would not be using it, but clearly the Government still are. I hope that any regulation is in force at any time because it is necessary and proper. I cannot believe we still have this arbitrary rule. It is a matter of much regret, which I will probably take up elsewhere. Other than that, I am very happy to support the order, but I was surprised to see this when I read through the papers this morning.

Baroness Williams of Trafford: I acknowledge the frustration of the noble Lord, Lord Kennedy, but first the noble Lord, Lord Paddick, said that we "stumbled across" this issue. Fire and rescue services were inspecting private prisons during the said period. Responsibility for Crown inspectors transferred from MHCLG in January 2016, but, going back, when the regulatory reform order was implemented in October 2006 the then Government issued statutory guidance to all those bodies that had a duty to enforce its provisions in the range of premises to which it applies. The guidance, to which all enforcing authorities are required to have regard, specifically addressed the issue of enforcement in the custodial estate. As it made clear:

"For the avoidance of doubt all civilian prisons, young offender institutions, immigration detention, holding or removal centres, court custody suites, customs and excise detention areas are the responsibility of the Fire Inspectors of the Crown Premises Inspections Group regardless of whether they are operated by the relevant Government department or contracted out".

But as we know, what the law actually says does not always align with the policy intent, no matter how sound the principles are on which it is based. The principles are sound, as they were in 2007 when the guidance was issued, and they remain so. I hope that the statutory instrument before the Committee clarifies the situation and I beg to move.

Motion agreed.

Police Powers of Designated Civilian Staff and Volunteers (Excluded Powers and Duties of Constables) Regulations 2018

Considered in Grand Committee

3.40 pm

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

That the Grand Committee do consider the Police Powers of Designated Civilian Staff and Volunteers (Excluded Powers and Duties of Constables) Regulations 2018.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, noble Lords will recall the debates we had on the Policing and Crime Bill during the last Session—it seems a long time ago. The Bill received Royal Assent on 31 January 2017 and many of its provisions are already in force, with a number of further measures due to be implemented on 1 April.

The Committee will recall that the Act provided the legislative underpinning for a number of important reforms which included provisions enabling chief officers to make better use of police staff and volunteers, freeing up police officers to focus on their key tasks. Chapter 1 of Part 3 of the Policing and Crime Act 2017 amends Section 38 of the Police Reform Act 2002 to enable civilians employed by police forces to be designated with additional police powers. These reforms also enable volunteers under the direction and control of a chief police officer to be designated with powers for the first time. Part 1 of Schedule 3B of the Police Reform Act 2002 sets out a list of powers that are reserved solely for use by constables and cannot be used by police staff or volunteers. Included within that list are some of the most intrusive powers available to constables such as stop and search and arrest.

When we consulted on these reforms in 2015, the Police Federation proposed the removal of one of the original powers of detention officers made available in 2002, that of carrying out an intimate search when a medical professional is not available. While the number of intimate searches conducted by police staff rather than constables is very low—they have been carried out three times nationally in 15 years—this is a very intrusive power and I committed in our debate to restrict its use. Unfortunately, due to an oversight in the drafting process, the Act does not in fact restrict the use of this power, so these draft regulations would deliver on that commitment. Regulation 2 would add the power to undertake an intimate search when a medical professional is not available, under Section 55(6) of the Police and Criminal Evidence Act 1984, to the list of excluded powers and duties. As with the other powers already on this list, they are reserved solely for use by constables and cannot be used by police staff or volunteers.

The addition to the schedule of excluded powers and duties of the power to conduct an intimate search in the absence of a medical professional will ensure that the most intrusive powers remain available only to police officers, thus preserving the office of constable as central to the delivery of policing in England and

Wales. These draft regulations deliver the full intent of the measures already approved by noble Lords in the last Session. On that basis, I commend them to the Committee.

3.45 pm

Lord Paddick (LD): My Lords, I am grateful to the Minister for introducing this statutory instrument. I recommend that it is used by Radio 4 as one of its puzzles of the day because the complexity of the legislation had me going for a little while.

As I understand it, the Policing and Crime Act 2017 allows chief constables to confer powers of a constable to community support officers and community support volunteers unless the power is specifically excluded by its inclusion in Part 1 of Schedule 3B of the Police Reform Act 2002. I am getting reassuring nods from the Minister's officials. The Government have woken up to the fact that this would include the power to conduct an intimate search if a police inspector or above—it used to be a superintendent but that was changed in other legislation—considers that an intimate search by a registered medical practitioner or registered nurse is not practicable. This would be, presumably, where there was concern that something was concealed that might cause harm to the individual or to other people, or that important evidence might be concealed which could be lost if the search did not take place straightaway.

I was going to ask the Minister to explain how this power was highlighted as not being suitable for PCSOs or volunteers to undertake but she has already explained that it was the Police Federation which raised this as an issue. However, I wonder how many other powers should be included in Part 1 of Schedule 3B of the Police Reform Act 2002 that we are yet to discover. I was also going to ask how many times the power had been used by PCSOs or volunteers but the Minister said that it had been used three times in the past 15 years.

During the passage of the Bill we made quite clear our concerns about powers that should be reserved for police officers potentially being given to police community support officers and police community support volunteers. However this is an important and welcome addition to Part 1 of Schedule 3B of the Police Reform Act 2002 and therefore we support it.

Lord Kennedy of Southwark (Lab Co-op): My Lords, like the noble Lord, Lord Paddick, I am happy to support the regulations before the Grand Committee. It is obviously sensible that civilians are designated as having certain additional police powers as and when an appropriate police officer believes they are needed. Equally, of course, it is important that certain things are prohibited, and certainly an intimate search should not be in the hands of anyone but a warranted police officer. That is why I fully support this order.

Baroness Williams of Trafford: I thank both noble Lords for their contributions. On the question asked by the noble Lord, Lord Paddick, about how many other powers should be included, he is right that the Government should keep these excluded powers under review. They will give careful consideration to any request to add powers but it should be noted that the regulation-making power within Section 38(6)(c) of the 2002 Act can only be used to add powers to the list—that is, to remove further powers from designated staff and volunteers. The noble Lord probably knows that primary legislation would be required to remove any powers from the list and enable them to be designated to staff or volunteers.

Motion agreed.

Non-Domestic Rating (Rates Retention and Levy and Safety Net) (Amendment) Regulations 2018

Considered in Grand Committee

3.50 pm

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

That the Grand Committee do consider the Non-Domestic Rating (Rates Retention and Levy and Safety Net) (Amendment) 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, which are highly technical, make changes to the regulatory framework governing the day-to-day operation of the business rates retention scheme. The amendments in these regulations are necessary to ensure that the regulatory framework properly reflects the impact of the 2017 business rates revaluation, our decision to create new 100% business rates pilots in London and 10 other areas of the country, and changes to the compensation arrangements in enterprise zones.

Before saying something about each of the changes, I remind the Committee that the rates retention scheme was introduced with effect from 1 April 2013. For the first time since 1990, it allows local authorities to keep a percentage of the business rates they collect from local ratepayers and gives them a direct financial interest in maintaining and extending their business rates' bases.

When the scheme was first set up, local government was able to keep 50% of locally raised business rates, subject only to a redistribution mechanism that requires authorities which have more business rates than their relative needs to pay over some of that income as a so-called tariff, while authorities that have a lower business rates income than their relative needs receive a top-up payment.

In 2017-18, we allowed local authorities in five newly created 100% pilot areas to keep all the local business rates they raised. Additionally, we increased the GLA's share of business rates from 20% to 37% and, in return, it took on direct responsibility for financing Transport for London's investment grant from its additional share.

In December last year, we announced that we would create a further 11 100% pilot areas, including in London. In 2018-19, therefore, local authorities in Berkshire, Cornwall, Derbyshire, Devon, Gloucestershire, Greater Manchester, Kent, Leeds City, Lincolnshire, Liverpool, London, Solent, Suffolk, Surrey, West of England and the West Midlands will all keep 100% of

[Lord Bourne of Aberystwyth]
the business rates they raise locally. The regulations before the Committee this afternoon will give administrative effect to the 11 new 100% pilots that will come into force on 1 April 2018. They will ensure that the sums paid and received by the pilot authorities over the course of the year reflect the new pilot arrangements.

As well as amending the administrative arrangements of the rates retention scheme to reflect the new 100% pilots, the regulations also make changes to tariffs and top-ups following the revaluation. As I said earlier, tariffs and top-ups are the way in which we redistribute local tax income between richer and poorer authorities under the rates retention scheme. They were originally set in 2013-14 based on the difference between the business rates that authorities were expected to collect in that year and their relative need, as established in that year's local government finance settlement. Since then, they have been uprated only by inflation.

However, as a result of the business rates revaluation that took effect on 1 April 2017, the amount of business rates that authorities will actually collect in 2017-18 will be very different from what they collected in 2016-17. If, therefore, we were simply to uprate the existing tariffs and top-ups by inflation, as we have done in the past, authorities could find their income from business rates substantially changed, for reasons quite unconnected to their efforts to secure growth. Therefore, when we set the scheme up in 2013, we announced that we would adjust tariffs and top-ups to strip out the impact of revaluations.

In the 2017-18 settlement, we announced adjusted tariffs and top-ups for all authorities, but, as we said at the time, we would revise them in the 2018-19 settlement to reflect updated data. These revisions were duly made in February as part of the local government finance settlement for 2018-19. However, the revised values are also used in the calculation of levy and safety net payments under the rates retention scheme. The changes made by the regulations before the Committee this afternoon ensure that the revised values for tariffs and top-ups in 2017-18 and 2018-19 will be used in levy and safety net calculations. Without these regulations, the calculation of the levy and safety net payments due to or from authorities would be wrong. Authorities that needed a safety net payment would fail to get one, and other authorities might be forced to pay a levy that they could ill afford.

Finally, the regulations make changes to the financing of enterprise zones. Under the rates retention scheme, certain areas have been designated as enterprise zones. In those zones, authorities are entitled to keep all of the growth in business rates income. The growth is used by local enterprise partnerships, or LEPs, to help regenerate the zones. Enterprise zones were first set up in 2013, and there are now more than 200 separate zones in nearly 100 local authorities. As well as keeping all the growth in business rates in an enterprise zone, authorities are also able to give business rates relief to new businesses relocating there, thus further stimulating economic development. Where authorities use their powers to award relief, they can be compensated by central government for the reduction in their income. Compensation is given to local authorities by allowing them to deduct the cost of the relief from the 50% share of business rates that they otherwise pay to central government under the rates retention scheme. Of course, with the advent of 100% business rates pilots, any compensation owed to 100% pilot authorities will be paid via a Section 31 grant because there is no longer a central share from which it can be deducted.

When the first enterprise zones were set up in 2013, authorities were entitled to receive compensation for the relief they gave for a period of five years until 31 March 2018. That period, set out in the rates retention regulations, has not changed since, despite the fact that we have set up new enterprise zones in 2014, 2015, 2016 and 2017. In order to ensure that every enterprise zone is treated on an equal footing, regardless of the date that it came into being, the regulations ensure that authorities can be compensated for up to five years after the enterprise zone came into existence, regardless of whether that was 2013, 2017 or any year in between.

To sum up, the regulations make technical changes to the administration of the business rates retention system to reflect the impact of the revaluation. They allow the new 100% rates retention pilots to operate from 1 April 2018, and they put all enterprise zones on a level playing field. Without the changes, authorities would be unable to receive the income from the business rates retention scheme to which they are entitled. I commend these regulations to the Committee.

Baroness Pinnock (LD): I register my interest as a councillor in the borough of Kirklees, which is part of the Leeds combined authority, rather than Leeds City, for the 100% business rates retention scheme. The people in Kirklees would not be happy to think they were part of Leeds City, so we had better make that clear.

Lord Beecham (Lab): Not yet.

Baroness Pinnock: Not ever, I would say. As the Minister said, these are quite complex technical amendments, which, in the circumstances, I particularly welcome. Obviously, as he has indicated, they are to enable the so-called 100% business rates retention pilot authorities to come into existence next week.

4 pm

I do not think that the Minister referred to the fact that the pilots lasted for only two years, as I understand it. That comes up against the deadline for the loss of government revenue support grant, and I would like to comment on that. First, the Minister described this as a very technical document, which it is. On other occasions I have referred to the opaque way in which these changes are referenced, and perhaps the Minister will be able to explain what they all mean. For instance, one of the formulae that amends Schedule 4 reads, in Regulation 9(4):

"(A-(B+C-D-E)) x 33%".

It would be great if those of us involved in local authority finance were able to fathom what that means, because nowhere in the document is there any reference to what any of those letters refer to. One thing that we should do in these technical documents is to make it clear what the letters in the formulae refer to. I know

that the regulations refer back to the original Act but I do not think that that is helpful for anybody who just looks at the amendments.

Secondly, the headline reference to 100% retention of business rates is misleading. It would help understanding and discussion at the end of the pilot period if that phrase were not used to describe what actually happens, which is that 100% goes out but then you have tariffs, top-ups, levies and safety nets to take into account. Certainly in some areas, those tariffs and top-ups are significant, and they change the way that we look at the delegation of business rates. Therefore, in my view we are looking not at genuine fiscal devolution but at changes in the way that business rates are redistributed. I support what is happening but we need to recognise that we are not talking about 100% due to the way that the money is divvied up.

Can the Minister provide us with some reassurance as to the progress of the fair funding review? How will the business rates retention scheme fit with that model, and how will an ever-diverging local government tax base be addressed to provide for equalisation of the funding system? This will be a challenge for government but it will be a very big headache for local authorities unless what the funding looks like and how the business rates retention scheme fits with that are made much clearer and more transparent.

Any business needs to plan two or three years ahead. We are facing 2020—which is 18 months away—when local authorities will be making decisions about their budgets, but those of us in local authorities have no idea what the funding system will look like. Will there be more—we optimists live in hope—or less, which is more likely? Where will the money come from and what will the requirements be from government for spending the ever-decreasing fund that we have?

I appreciate that these are very technical regulations and I broadly support the move towards giving local government greater control and responsibility over the funds that it has, but I look forward to the Minister's response to some of my queries.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I refer the Grand Committee to my relevant interests as a councillor in the London Borough of Lewisham and as a vice-president of the Local Government Association. I should say at the outset that I am happy to support these regulations. As the noble Baroness, Lady Pinnock, has just said, this is a technical document and she made a valid point when she highlighted the formula. I must say that the key she is after would have belonged in the Explanatory Notes. It is strange that we have notes but no explanation of what the letters mean. It cannot be changed now, but perhaps it is something that the department should take back for the future. However, as I say, I support the regulations which are useful and will be helpful.

I hope that the Minister will be able to answer a couple of questions. We will have 10 pilot authorities. How many actually applied for this? I might be wrong, but I think that it was around 24 authorities. What is the department doing in terms of providing feedback to the unsuccessful authorities to explain why they were not selected? If I was a member of an authority which had not been selected, I would certainly like to know why that was the case. There may be all sorts of reasons, but it would be useful to know what is said to those authorities which are not to be part of the scheme.

The noble Baroness also mentioned the fair funding review. I hope that the noble Lord will be able to say a little more about that. Can he confirm whether any councils will see a reduction in their income as a consequence of the fair funding review? Will everyone get a bit more or will they all remain as they are now? It would be useful if he could respond to that.

There is also the question of the business rates appeals. I think that something like 150,000 appeals have been hanging around since 2010. We have to deal with them because at the moment the system is not working. The Valuation Office Agency needs more resources to speed up its work because it would be better for everyone if these issues were resolved as quickly as possible. Some of these appeals now go back almost eight years so they need to be sorted out. Again, I would be grateful if the noble Lord can tell us something about the position.

I am also aware of the grant error set out in a Written Ministerial Statement published on 20 March. There appears to have been an overpayment of £36 million which the Government are not going to claw back this year, but may do so in the next financial year. How did the error come about? I would like to understand what has happened because it is quite a large sum of money. Has provision been made for councils to hand the money back or will the repayment be spread over future years?

With those few points, I am happy to approve the regulations.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Baroness, Lady Pinnock, and the noble Lord, Lord Kennedy, for their contributions and I shall try to deal with the points raised. I am flying solo at the moment so one or two caveats may be entered here and there.

On the technical issue raised by the noble Baroness and echoed by the noble Lord about the nature of some of the schedules with the figures and letters set out in them which make Einstein look rather straightforward, perhaps I may get back to them to try to explain how they work.

I shall take up the point made by the noble Baroness about Leeds City Council. I have checked the schedule where it is referred to simply as "Leeds", but I very much take the point she made about the fierce local loyalty in Kirklees and I readily understand the point she is making.

I gently disagree with the noble Baroness on fiscal devolution. This is significant fiscal devolution. Obviously, at the end of the day there have to be adjustments, which I think we all support. Without a smoothing mechanism, so that rich authorities contribute towards poorer authorities, the system would break down as being totally unfair. I understand the point that she makes, but I think that this is significant fiscal devolution.

Both the noble Lord and the noble Baroness raised the fair funding review. In a sense, we have twin-track processes, both of which kick in in 2021. Significant work is being done on the fair funding review. I say to

[Lord Bourne of Aberystwyth]
the noble Lord, without anticipating precisely what the review will show, which of course I cannot do, that I would be amazed if everywhere got a larger sum of money. That is not how it will work. I would have thought that some will get a lesser sum of money, while others will get more. The essence of it is that it will be fair.

The noble Lord asked how many applicants there were to be pilot authority areas. Twenty-six made an application. We have sought to explain to those authorities that were not chosen that the field was competitive, that there was a lot of interest and how we made the decisions. He then, fairly, raised the issue of appeals. He will know—we were both party to the discussion—that the check, challenge and appeal process that we are now adopting will significantly cut down the time taken for appeals. We are working alongside those that are appealing to cut down the time further. Considerable work needs to be done, but we are progressing that.

Lastly, the noble Lord, again fairly, raised the issue of Section 31 overpayments. We have taken the decision not to claw back the overpayment for the last financial year, so to that extent the authorities affected are all better off by virtue of that, but for the next financial year, 2018-19, we have decided that we are not going to overpay. Those authorities will get the correct amount of money. It is not as if we are clawing it back, as it has not been paid yet, but it will be a lesser amount than we were proposing to pay, because we got the figures wrong in the department. Mea culpa on that—lessons are being learned and there are red faces. As I say, this has resulted in a windfall for those authorities overpaid last year, but we are ensuring that this year we pay the correct amount—some £80 million less than it would have been if the error had not been spotted.

I am grateful to the noble Lord and the noble Baroness for their support. I will ensure that I respond to them on the points that I was unable to deal with, particularly the technical one about the figures and letters in the schedules. As I say, I am grateful for their support and I commend the regulations to the Committee.

Motion agreed.

European Union (Definition of Treaties) (Work in Fishing Convention) Order 2018

Considered in Grand Committee

4.14 pm

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

That the Grand Committee do consider the European Union (Definition of Treaties) (Work in Fishing Convention) Order 2018.

Baroness Chisholm of Owlpen (Con): My Lords, I ask that this order, which was laid before the House on 22 February 2018, be considered. This draft order would give the Government the powers to implement the Work in Fishing Convention into UK law by declaring that this 2007 convention, ILO Convention No. 188, is to be regarded as an EU treaty as defined in Section 1(2) of the European Communities Act 1972. As a result, the provisions of the 1972 Act would apply in relation to the convention and could then be used to implement the convention. The order does not in itself implement it; that will require new and amending statutory instruments, which will be laid later this year, if this order is approved, under negative procedure.

So what is the Work in Fishing Convention? It was adopted in Geneva by the International Labour Organization—the ILO—on 14 June 2007 and entered into force internationally on 16 November 2017. It entitles all fishermen to written terms and conditions of employment, decent accommodation and food, medical care, regulated working time, repatriation, social protection and health and safety on board. It also provides minimum standards relating to recruitment and placement. Sadly, in too many cases, as the Committee may be aware from reports in the press during the last year or so, such basic requirements are not always met.

The convention provides global minimum standards for decent work and a framework which enables both flag states and port states to enforce them. The UK should therefore ratify the convention to tackle the fortunately rare cases of labour exploitation in the UK industry and to give the Maritime and Coastguard Agency—the MCA—the tools to enforce the same standards on non-UK fishing vessels visiting UK ports. At a domestic level, it will also help to further safety.

Fishing remains the most dangerous industry in the UK and the Government are committed to making it safer. The MCA works with the Fishing Industry Safety Group to improve fishing vessel safety. One issue which has hindered progress is that much of the UK legislation covering fishermen's health and safety, and living and working conditions, applies only to employed fishermen when a large proportion of the UK fleet is manned by self-employed share fishermen. The Government consider that the implementation of the convention into UK law is an important step forward in the development of health and safety policy for the fishing industry, as it provides protection for all fishermen regardless of their employment status.

ILO conventions must be ratified as a whole. UK legislation is already compliant with parts of the convention, while the Merchant Shipping Act 1995 provides the necessary powers to implement other parts of it. However, some provisions of the convention cannot be implemented under that Act. This order will allow us to use the powers contained in the European Communities Act 1972 to give effect to those provisions.

The MCA conducted a public consultation on proposals to implement the convention between November 2017 and January 2018. These proposals were developed through extensive discussion with industry representatives. Consultation responses generally supported implementation in principle but raised some concerns about the practical implications. That is why the MCA is considering these responses and will work with industry representatives to mitigate any impact before implementing regulations are made.

I should like to make clear the thinking behind having this choice of instrument, as opposed to new primary legislation. The convention is ancillary to the EU treaties because it contains some matters that lie within the competence of the European Union, although the EU is not itself able to be party to the convention. Other matters are ancillary to the transport and

employment provisions of the EU treaties, in particular the promotion of social protection and the raising of the standard of living and employment of fishermen. As an EU Council decision was passed authorising ratification by EU member states, a directive has been adopted on the European social partners' agreement on the convention; and, as it is not possible to ratify conventions piecemeal, it is appropriate that the convention is deemed to be ancillary to the treaty. I hope the Committee followed all of that.

There is also precedent. The convention is a sister convention to the Maritime Labour Convention 2006. The MLC, widely regarded as a bill of rights for seafarers, was implemented into UK law in 2014. This House approved the European Communities (Definition of Treaties) (Maritime Labour Convention) Order 2009 to use the powers in the European Communities Act to implement the MLC into UK law. As this convention is intended to provide similar protections for fishermen as the MLC did for merchant seafarers, it is appropriate that the same method be used to provide powers to implement the convention.

I therefore propose that this order be made under Section 1(3) of the European Communities Act 1972 in order to use the powers in Section 2(2) of that Act to facilitate the implementation of those provisions of the convention that are not either already implemented into UK law or capable of being implemented using existing powers, thus enabling the United Kingdom in meeting its international obligations and improving working conditions within the fishing industry.

The draft order before the Committee is intended to ensure that the Government have the powers to fully implement the convention into law to improve the health, safety and well-being of all fishermen in the UK. It is fully supported by the UK social partners and by the Government. I beg to move.

Lord Teverson (LD): My Lords, I declare an interest as a board member of the Marine Management Organisation.

I thank the Minister for her explanation but I still do not get how we will use this legislation. This specifically is not EU legislation. The fact that this process might have been used before should not act as a precedent for repeating something that is wrong. None of the areas covered by this—minimum age and some on the medical side—are exclusively EU competencies. There is a number of EU competencies which are exclusive under the common fisheries policy, but these are not them. This is the wrong instrument with which to effect these measures and I will be interested to hear the Minister's comments.

As this has an EU context, I am particularly interested in whether all 28 EU member states are signatories to the convention and whether there has been a pan-European signing-up to it.

I welcome the convention. The Minister made the valid point that the order applies to foreign vessels that might come into UK ports and enables us to enforce this. The vast majority of vessels will be from either EEA or EU member states and I would be surprised if they were not meeting the terms of the convention. However, it is an excellent backstop.

It is interesting that the Minister used exclusively the term fishermen whereas the convention refers to fishers. Certainly in North America, "fishers" is the English word that is always used in this context. Will the Government in future always use the term fishers rather than fishermen when they refer to this industry and its participants? Fisherman is an ancient term, it is gender-specific and inappropriate to this industry in the 21st century. I do not accuse the Minister of being inappropriate while she was making her explanation because that has been the way in which we do it in this country, but it is time for change.

Baroness Byford (Con): My Lords, perhaps I might raise a query. I thank the Minister for introducing the convention order. My query is on the medical aspect that was picked up. Paragraph 4.2 of the Explanatory Memorandum refers to ILO 188 and "medical care", but paragraph 4.5 refers to "shared competence". It then goes on to describe,

"medical treatment on board vessels".

Obviously the vessels will vary in size. Can we be given any clarification on what is expected in the difference between medical care and medical treatment on board vessels?

Baroness Randerson (LD): My Lords, I follow my noble friend Lord Teverson by saying that we support the basic aims of ILO 188, but I have some questions for the Minister. I start with a really easy one. Paragraph 3.2 of the Explanatory Memorandum on the territorial application says,

"this instrument includes Scotland and Northern Ireland".

What happened to Wales and to England? It then says that,

"it is not a financial instrument that relates exclusively to England, Wales and Northern Ireland".

What happened to Scotland then? I find that particular paragraph confusing.

This whole process has been very slow. ILO 188 was laid before Parliament in 2008. The Government say they now hope to rectify this as soon as possible. Given that we are a decade on, when will that be? Is that what the Minister was referring to when she said that the Government hope to take further action by later this year? Do we have any clarity as to exactly what that phrase means?

The Government are making this order under the European Communities Act 1972 to facilitate the implementation of ILO 188. My noble friend drew attention to the appropriateness, or not, of using this method, but the Government have chosen to do it by that system. It raises a wry smile, of course, at this stage of our attempts to leave the EU, but nevertheless that is the Government's chosen path. One has to ask: what would be the implications of Brexit on how we implement this? There are obviously issues of shared competence here. It is not that the EU has remained uninterested in this. The Council exhorted member states to ratify it by the end of 2012. We are clearly lagging behind that timescale, but at least the work is now being done. One applauds that.

I realise that this is a mechanism for further implementation, but the impact statements say that there will be "no impact on business" and that it,

"does not apply to activities that are undertaken by small businesses".

[Baroness Randerson]
What we are doing by agreeing to this is unlocking the door to rules and regulations that will surely apply to small businesses. I am confused by the lack of an impact assessment and by the statements on the lack of impact on business. Are the Government saying that there is no impact because we do all this anyway? I thought that might be the answer, but in fact the Minister just stood up and said that very often these rules are not observed. We need to receive an explanation to find out exactly why the Government feel that an impact assessment is not necessary.

Finally, I refer to regulated working time, to which the Minister referred earlier. She pinpointed the fact that these standards often are not met. I wonder what the Government have in mind to improve conditions in relation to regulated working time.

4.30 pm

Lord Davies of Oldham (Lab): My Lords, I am a late draftee to this Committee and already I feel out of my depth—I tend to feel out of my depth in three feet of sea-water, but I will get accustomed to the situation, I am quite sure. I understand that this may well be the Minister's last speech, as she is leaving the Front Bench. Of course, we all wish her well. I do not have the slightest doubt that she will, with her usual skill, answer the challenging questions that have already been presented to the Committee, and I can reassure her that I do not have a challenging question.

Although I was born in south Wales, I was brought up 14 miles from Stratford-upon-Avon, so of course we lived by the works of Shakespeare. I remember when I played the part of Orlando, who was proud enough to boast,

"yet am I inland bred. And know some nurture".

In other words, he was born in the Midlands, a long way from the sea, and was therefore a polite, dutiful citizen and well respected; and heaven help those people who went anywhere near where rougher trades were practised—for which I have no doubt fishers qualified.

I very much enjoyed the point that the noble Lord, Lord Teverson, made, and I am sure that the Minister will respect it. After all, I thought it had a biblical origin—"ye shall be fishers of men", not "fishermen". So the word has a tradition to it, and I am sure the Minister will accept that point.

I also recognise the obvious fact that the issue of small businesses is bound to apply as far as fishing is concerned. My own perspective on fishing was that it used very small vessels indeed, until eventually, by some mischance, I arrived in Ullapool—actually, it was deliberate: we enjoyed Ullapool very much. The amount of fish being landed there and the activities of the trawlers were enormously impressive. However, what seems be going on is the absolute reversal of 16th-century trade patterns. Whereas Drake went to the Spanish Main and brought home Spanish treasure, it looked to me as though the great trucks came from Spain to take Scottish treasure—the catches brought in by the local trawlers—back to Spain.

Let me assure the Committee that we are in favour of this instrument. We recognise the point that it is not an EU document. Nevertheless, I am sure that the Minister will explain why we continue to use this framework and why it will stand us in good stead. It needs to, because there is no doubt that in recent years there has been growing anxiety about the conditions in which men—it is almost universally men—are employed in the fishing fleet. Many are in ships in which conditions can be quite deplorable.

A recent development is the recognition of people trafficking. I do not know how far back it goes, but I can certainly recall a time when the concept of trafficking did not apply to people who worked on British fishing vessels. The trafficking that has been exposed must be a shock to us all, and it involves people from a very long way away indeed—Sri Lanka is very far away for a fisher involved in work on a British vessel to claim to be in home waters, and certainly he did not arrive on that vessel when it was directly off the coast of Sri Lanka. But it is an indication of the extent to which people trafficking is an increasing problem. We know it most acutely, of course, in the migration in the Mediterranean, but it is not just there that it is happening: ask the Australians about the problems in their part of the world.

We are aware of the fact that there are cases of British vessels being involved with people who look as though they have appeared in the crew not through orthodox recruitment but through trafficking, where it is the intermediaries who make all the money out of them. Often, therefore, they work in appalling conditions on vessels, and they have great difficulty working out any strategy for escape. It is difficult to know what the correct word for "work" is if you have no escape from it and no control at all over conditions—I suggest that it is some form of modern slavery. That is the seriousness with which we should address this issue today. I am very glad, therefore, that both in the other place and here my party is fully behind these steps to improve the situation—and not before time.

I am interested in the question of enforcement measures, and perhaps the Minister might dwell a little on these. If the legislation is not directly anyone's, the problem is who then takes responsibility for the effective policing and operation of these areas. I am sure that the Minister has a clear answer to that question.

This may be a brief document and a brief debate, but it is about the most serious of issues. We certainly want our fishing industry to be clear of the malpractices that have been identified here. Of course, it may be that it is always foreign vessels identified in British waters that are involved, but we cannot be too careful. We need the response of international action because, of all industries, fishing is so obviously an international practice for so many—fishers do not just stay in home waters.

The other dimension is obvious as well. There is no industry with a greater casualty risk than the fishing industry. Only two days ago, I was talking to a steeplejack—retired, I hasten to add. He had been in the employ of the Church Commissioners and had spent all his working life working on contracts for English cathedrals. What a joy that must have been in so many ways, and he was a wonderfully enlightened man. When I questioned him about the risks involved in his industry, he said, "We don't take risks; we're

professional in what we do and accidents are few and far between". Would that that were entirely true of our fishing industry also.

Baroness Chisholm of Owlpen: I thank all noble Lords who have taken part. I particularly thank the noble Lord, Lord Davies, for his kind words. Unless there is an Urgent Question, which can easily happen, this probably will be the last time I stand up from the Front Bench. But that is probably just as well, because when I finish replying to this I will probably get the sack anyway—I have to say that I have found it quite a difficult order to understand. However, I thank everybody for their words and I will try to answer all the questions.

The noble Lord, Lord Teverson, mentioned the words "fishermen" and "fishers". Funnily enough, I brought that up when I was given my brief. It turns out that, even though in academic circles "fishers" is the term it is thought should be used, apparently the industry particularly said that its members still want to be known as fishermen. That is why we are referring to "fishermen", but it will be interesting, as time goes on, to see whether that does indeed change.

The noble Lord, Lord Teverson, also asked why we are implementing the convention in this way, as it has nothing to do with the EU. Some aspects of the convention come exclusively within EU competence, but an EU directive that comes into force later in 2019 requires the implementation of the social partners agreement, which incorporates the provisions of the convention only for employed fishermen. Therefore, the convention will form part of EU law and Section 2(2) is appropriate for that reason. That is why we are doing it in this way.

The noble Lord also wanted to know how many states had signed up to the convention so far. The answer is three of the 28.

The noble Baroness, Lady Randerson, talked about impact assessments. A full impact assessment has been done on the SIs that have been introduced to implement ILO 188 and this has been subject to public consultation. The noble Baroness also talked about the speed of implementation and asked why it has taken so long. The measure was originally laid before Parliament in May 2008 and we then started consultation with the fishing industry. Some Governments have continued to support the policy, but I am afraid that it has taken time to get round to implementing it.

My noble friend Lady Byford asked about medical treatment. There is what I suppose you would describe as a trained first-aider, with equipment, on board vessels. If somebody falls ill while they are abroad, the owner of the vessel has to pay the bills for any hospital treatment. However, part of the point of implementing the convention is that we wish to highlight safety on vessels and the need to check the health of fishermen, ensuring that they are fit when they go to sea.

The noble Lord, Lord Davies, talked, quite rightly, about the problems of modern slavery in the fishing industry. There have indeed been such problems, and in fact I think that there was a case last year. It is felt that this measure will tackle the scourge of modern slavery in the industry through enhanced inspections and regulations. That is being borne very much in mind, as is the safety of all fishermen. As we know, it is one of the least safe industries in which to work, which I suppose is not surprising when you consider what fishermen are up against on the sea.

I think that I have covered all the questions. If there are any that I have not answered, I will make sure that I write to noble Lords. However, I hope that the Committee will agree that the Work in Fishing Convention will help to overcome the dangers associated with the fishing industry. The Government are committed to improving safety in this sector and it is right that all fishermen are afforded the protections within the convention relating to working conditions. I commend the draft order to your Lordships.

Motion agreed.

Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018

Considered in Grand Committee

4.45 pm

Moved by ***Lord Gardiner of Kimble***

That the Grand Committee do consider the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I am delighted to bring forward this important set of regulations which introduce a new system of local authority licensing of activities involving animals in England. The regulations form part of an important package of reforms that the Government are delivering to improve animal welfare.

These regulations meet the Government's manifesto commitment to continue their review and reform of the pet licensing controls and specifically to update the licensing system for dog breeding, pet sales, riding establishments and animal boarding establishments. They also modernise the system for animal exhibits, which are currently regulated under the Performing Animals Act 1925. The current licensing and registration system that covers these five animal activities is outdated and complex. The new regulations create up-to-date minimum welfare standards for these five activities in England, while streamlining the system for both local authorities and businesses. We have worked closely with stakeholders from the sector, animal welfare organisations, local authorities and veterinary bodies in drafting these regulations and are very grateful for their support, in particular the work of the Canine and Feline Sector Group and the Equine Sector Council for helping to co-ordinate this.

One of the key issues with the current licensing system is that the animal welfare standards with which businesses are required to comply have not been updated for many years. The schedules to the new regulations include detailed animal welfare standards for each of the activities that have been developed in close consultation with stakeholders. These will ensure that anyone who receives a licence for dog breeding, selling pets, boarding dogs and cats, hiring out horses or keeping or training

[Lord Gardiner of Kimble]
animals for exhibit will need to meet these new minimum welfare standards. This should help to drive up animal welfare standards across all of these sectors.

Many people and organisations have been calling for more restrictions to be placed in particular on the breeding and selling of dogs, where it is felt that there are unscrupulous businesses that breed dogs in poor conditions for maximum profit. The regulations address this issue in a number of ways. We are making changes to the definition of dog breeding so as to ensure that the regulations capture both large-scale dog breeders as well as smaller-scale dog breeding businesses. Under the new regulations, anyone who is in the business of breeding and selling dogs will need a licence. In addition, breeders that are not classed as a business will also need a licence if they breed three or more litters a year and sell any of them. Overall, this will ensure that more breeders are captured under the regulations and will need to comply with the high animal welfare requirements set out within them. They ensure that we can crack down on unregulated backstreet breeding.

It is important to acknowledge the sad fact that many unsuspecting potential buyers are providing a lucrative market for rogue dog breeders and animal dealers who work illegally outside the licensing system. The regulations therefore include a number of measures that will help consumers to identify these rogue traders and make more informed decisions when purchasing an animal. No licensed breeder or pet seller will be able to sell a puppy, kitten, ferret or rabbit which is below eight weeks of age. In addition, we have ensured that the recently updated welfare codes for cats and dogs carry the same requirement, so that no one should be separating puppies or kittens from their mothers before eight weeks of age unless there are genuine welfare reasons for the mother or the offspring.

Following the excellent work undertaken by the Pet Advertising Advisory Group, we have placed a number of the PAAG voluntary minimum standards in the regulations. Licence holders are now required to publish their licence number on all adverts, including online adverts, so that consumers can check this with the relevant local authority to make sure that it is a legitimate business. Adverts will also have to include a photograph of the animal and state its country of residence and origin. All licensed businesses will also receive a risk rating from one to five stars, based on the welfare standards that they adopt and their compliance record. This is a similar system to the one used in the food hygiene rating scheme.

For puppies, there is an additional requirement for any sale of a puppy to be completed at the premises where the puppy was bred, to make sure that the purchaser sees the puppy and the conditions that it has been kept in before making the final purchase. All licensed breeders can only show a puppy to a prospective purchaser if it is together with its mother, unless separation from the mother is necessary for welfare reasons. All licensed pet sellers are also required to provide purchasers with information about how to care for the animal they are buying. These measures will ensure that consumers are able to make more informed decisions when buying an animal, and are better able to care for it once they have taken it home. This is particularly important for more exotic species such as reptiles.

Many people are concerned about the increase in the online sale of pets. Currently, the legislation is not clear on whether or not these businesses require a licence, and so enforcement is inconsistent across the country. Under the new regulations, all commercial sales require a licence, including those that take place online. All of these businesses will have to comply with the minimum welfare standards set out in the regulations. These measures will ensure that the licensing system is consistent and fit for purpose in this modern age.

The licensing system is run by local authorities and funded by full cost recovery, so there is no financial burden on local authorities. Licences can be issued at any point in the calendar year, which will help to spread the workload across the year. The maximum licence length that can be issued is increased from one to three years, with longer licences going to businesses with earned recognition. This should reduce the workload for local authorities, allowing them to spend more time on enforcement of unlicensed businesses and on the less compliant businesses.

This will also reduce the burden on good businesses, such as those that operate to a particularly high standard of animal welfare and those associated with a body accredited by UKAS—for example, breeders in the Kennel Club's assured breeder scheme. Such businesses will already be exceeding the requirements of the regulations and so will be able to achieve longer licences for a lower fee. This clearly also provides an incentive for businesses to improve welfare standards.

We recognise that the implementation of these regulations will be crucial to their success, and so local authority inspectors will be required to undertake specific training on licensing and inspection. This will ensure that they are suitably qualified to undertake inspections for all of the animal activities covered by the regulations. To that end, the City of London has worked with the pet industry to develop a syllabus for a level 3 training course for animal activities inspection, which inspectors will be required to attend. Local authorities will be able to recoup all their reasonable costs for this training from the licensing regime.

The regulations have been drafted in consultation with stakeholders from the industry, animal welfare organisations, local authorities and veterinary bodies, and we are very grateful for their assistance. The regulations are proportionate and targeted and will help to improve animal welfare across a number of sectors. For these reasons, I commend the regulations to the Committee. I beg to move.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I am grateful to the Minister and his officials for their time and explanations regarding this SI and for his comprehensive introductory remarks. I declare my interest as a district councillor. It is now two years since Defra's initial consultation on this important issue and I welcome moving it forward.

This SI covers a number of domestic animal welfare issues that are of great concern to the public, including the breeding and selling of animals, animal boarding

establishments and, as the Minister said, the hiring out of horses. While it is essential to ensure that animal welfare is paramount, I welcome the introduction of requiring only one licence instead of the two previously needed. This is a sensible cut in bureaucracy. The Minister has provided assurances that those working in the sector have been consulted in the form of the equine, feline and canine organisations and that the Government have been working closely with them and with vets. A licence lasting up to two years instead of being renewed every year will be welcomed, as will the risk-based approach to the length of the licence and the ability for it to be given at any time during the year, not just at the year end.

My colleague and noble friend Lady Parminter has raised the issue of puppy farming on a number of occasions inside and outside the Chamber, and was extremely concerned that there should be adequate regulation of this often very distressing industry. Defra launched a call for evidence on the third-party sale of puppies and kittens on 8 February. This consultation will close on 2 May and we look forward to its results. We would be grateful if the Minister could give us an indication of when the results might be published.

We welcome the restriction of the number of litters that a bitch may have to one a year as a great step forward. The prohibition of the sale of a puppy—as well as kittens and other animals—below the age of eight weeks, and the need for a puppy to be shown with its mother by breeders prior to sale, will also be welcomed by those legitimate breeders and owners who have the best interests of their animals at heart. Similarly, the detailed restrictions on the size, height and type of boarding kennels and catteries should ensure that domestic animals can be left by their owners, in confidence that their pets will be well looked after during their absence.

As a local councillor, I am aware that local authorities are under tremendous pressure with budget restraints. I fully support the move to allow them to have full-cost recovery for their work in granting licences, as well as being able to raise fees for reasonable enforcement. In the past, it has not always been possible for the cost of extra work passed to local authorities to be recouped in this way. There will, of course, need to be an adequate number of suitably qualified inspectors to ensure that this legislation is properly enforced. I welcome the comments that the Minister made about the new qualification. I understand that it will take three years to meet the necessary standard and that vets on the list of the Royal College of Veterinary Surgeons will carry out some of this work.

While Defra is going to publish guidance, this will not be available until the regulations come into force. Does the Minister believe that this will give enough time to local authorities to be prepared to issue the new licences in an efficient and responsive manner?

I fully support the measures covered by this SI but I have one concern. Part 4 of the schedule, which covers the hiring out of horses, does not appear to cover riding for the disabled. While the regulations cover the welfare of animals in a commercial operation, they do not apply to those which operate on a charitable basis. I would be grateful if the Minister could reassure us that if establishments which offer riding for the disabled are operating not on a charitable basis but as a business, they will be covered by this new legislation. That apart, I believe that this is a great step forward and look forward to its implementation eagerly.

Lord De Mauley (Con): My Lords, I generally welcome these regulations. I declare an interest as an owner of a rescue mutt, which we are told is a cross between a poodle and a Shih Tzu. I would welcome suggestions from noble Lords as to what we should call that breed.

It must be right that puppies are not sold below the age of eight weeks. It is also right to draw the line at three litters a year. I am in favour of a risk-based approach to licensing and inspections by local authorities. In the same vein, it is helpful to avoid a backlog of inspections by operating on a basis of fixed-term licences set at any point in the year. I support the regulation of advertisements, as these regulations do, although I ask my noble friend how this will all be enforced. Are there the funds to allow the necessary inspections and monitoring of advertising? Perhaps PAAG and the excellent dog charities can help with the latter. However, what about enforcement?

I note that these regulations apply in England and I wonder what discussions my noble friend has had with the Welsh Government with a view to ascertaining whether they might do something similar. Not that it is introduced by these regulations, although they refer to it, but I have a concern about the dead hand of bureaucracy, which demands that someone who very occasionally looks after someone else's dog, and perhaps has done so for years, should be required to obtain a licence if they are to be even modestly recompensed. Having said that, there is no excuse for poor welfare conditions for animals, and, as I have said, I generally support these regulations.

5 pm

Lord Trees (CB): My Lords, I strongly support these extremely welcome changes to activities licensed by local authorities under five earlier Acts through regulations under powers in the Animal Welfare Act 2006. These licensing conditions will now reflect the welfare requirements of animals as required in that Act and as will be required in the specific guidance being produced in association with this instrument—guidance that will be statutory, which is very important. The activities have been outlined by the noble Lord and I commend Her Majesty's Government for introducing this instrument, which will undoubtedly have a very positive effect on animal welfare. I should like to make one or two comments and ask one or two questions.

On the breeding of dogs, the measure to reduce the numbers of litters per year from five to three, at which point a licence is required, and to apply various sensible measures, such as a prohibition on the sale of pups less than eight weeks of age, the requirement to provide information to the buyers and other sensible measures, are very welcome. However, it is worth emphasising, as the noble Lord did, that these requirements would apply to anyone breeding and selling puppies, even from one litter, if it was deemed to be a business. My understanding—the Minister may want to correct me on this—is that Her Majesty's Revenue and Customs regards a profit of more than £1,000 a year as a business, but that needs clarity.

[Lord Trees]

In toto, this instrument addresses several serious animal welfare concerns which many have had for some time. They include online sales, which have been addressed, exotic pets, for which more guidance will now have to be given at the point of sale, and various aspects of the breeding and sale of puppies.

Another measure with which I strongly concur is relevant to current concerns about the breeding of dogs where their conformation or genetics predispose to health or welfare problems among mothers or puppies. This is contained in paragraph 6(5) of Schedule 6 of the guidance:

"No dog may be kept for breeding if it can reasonably be expected, on the basis of its genotype, phenotype or state of health that breeding from it could have a detrimental effect on its health or welfare or the health or welfare of its offspring".

This is extremely welcome. It clearly has relevance to issues of current concern, such as brachycephalia, where short-nosed breeds have a much higher incidence of respiratory disorder. There is even a name for it: BOAS—Brachycephalic Obstructive Airway Syndrome. There will clearly need to be consideration and discussion of the words "reasonably be expected" but I very much hope that this guidance will hasten current efforts to improve the health status of various breeds that intrinsically have a higher risk of suffering ill health. Indeed, I hope it will persuade dog owners and breeders to be much more selective in the dogs that they buy and breed.

I have some questions for the Minister. The guidance is essential to this instrument, so can the Minister assure us that it will be available by 1 October when the instrument is enacted? Will local authorities be given enough scope to charge reasonable fees? Will those fees be ring-fenced so that they cover all the costs incurred by local authorities—not just the training costs, about which we have heard a little, but all the costs of the measures—so that no local authority can claim insufficient resources to enforce this instrument?

Baroness Byford (Con): My Lords, I too welcome this animal welfare regulation before us. I think that there are two of us here in Grand Committee who took the original Bill through, back in 2006, and I know we spent many hours on the Bill trying to get it right. Clearly, however, times have moved on—there was no such thing as buying and selling animals online in those days, which, as other noble Lords have mentioned, is a challenge.

I want to follow up on the last comment made, about breeding healthy dogs, because that is a huge problem. I do not know if it is so relevant in cats—it could well be—but it is certainly relevant for dogs. Therefore, I am glad to see it mentioned and hope that the Minister will be able to reinforce it. However, I have one question: what about some of the dogs that come in from abroad? Again, that is a question relating to their health and breeding.

In general terms, I welcome this improvement and tightening up of some of the regulations, and I know that a lot of outside bodies were consulted so that they could comment. I have four specific questions that I would like to raise about the document. I turn first to paragraph 5(2) of Schedule 3, which states that anybody who wants to buy a cat or dog has to go in person to see it. But I am thinking of those who are housebound: in that situation, those who want a cat may not necessarily be able to go and see it. Has any thought been given to this? Could a carer or somebody else go on their behalf?

My second question relates to paragraph 8(4) of Schedule 4: why do boarded dogs require daily exercise only once but breeding dogs require it twice? It seems to me slightly strange that they are not both under the same regime, because surely they both need good exercise. However, I suspect that the Minister will have an answer.

My third question concerns Schedule 7, which talks about private persons who train or show one or more pets. This may not apply directly to farm animals, but many of us in the Grand Committee go to county shows where animals are shown. They are perhaps not trained in the technical sense, but they are trained to show. Originally, I presumed that they would not be classed as a business, but some of the animals at these shows become very valuable if they manage to win championships. I have not found an answer in what is before us as to whether they would qualify and need a licence, or whether they are not regarded as a business, although they might be a business. It is fairly fine line and I would be grateful for some clarification.

My last question, which has been picked up by other noble Lords, goes back to the responsibilities that have been placed on local authorities. I accept that local authorities are able to claim back and get full costs, but will those local authorities that do not have many demands on them under the regulations have different charging rates? I am sure that that is not the intention, but how will we overcome this? The best way forward is not clear to me. There is a responsibility on local authorities and the move from one year to three years will help to lessen the demands on people's time and expertise, but I would be glad to hear some clarification from the Minister when he responds.

Earl Cathcart (Con): My Lords, when I was looking through the regulations, I was trying to see whether they would stamp out the bad practice of illegal, back-street puppy farming. I welcome the provisions on the eight-week period and viewing with the mother. I was also pleased to see that the regulations require non-commercial breeders to obtain a licence if they breed three or more litters per year, which is down from five or more previously. That will make it more difficult for breeders to claim that they are non-commercial in order to avoid having to have a licence.

Let me play devil's advocate for a moment. It is not difficult to see that, if a breeder wanted to avoid this restriction, he could say that he owned two bitches, his wife owned another two bitches and each of his children owned two bitches. It would be impossible to prove otherwise. I think that the regulations have missed a trick. If the requirement for a licence for more than two litters per annum was applied not to the breeder but to the premises, it would be much more difficult to circumvent the rules. My question to the Minister is this: is there any way that the Government could add to "breeder" the words "and/or premises", perhaps in the guidance notes to the local authorities?

The Countess of Mar (CB): My Lords, I was about to refer to the noble Baroness, Lady Byford, as my noble friend—we have been friends for such a long time, even though I am independent and she is a Conservative. She touched on something that is absent from this statutory instrument, which is the breeding of cats. Just as with the dogs that the noble Lord, Lord Trees, mentioned, you are getting cats with flat faces, because they are attractive to people who think that they look like babies. It is a real menace in the cat world and should not be allowed. Many people acquire cats—we have two farmhouse-bred moggies. Cats living on farms have litter after litter, and I feel that there needs to be some regulation on spaying or castrating them so that we can reduce the overall number of cats and breed nice, healthy animals—like ours.

Baroness Redfern (Con): My Lords, I just want to say a few words. First, I declare that I am a member of a local authority. I welcome the new regulations on minimum welfare standards. I hope that we will have tough customs checks when puppies come into the UK. I also welcome the important provisions on streamlining, enforcement and full costs for local authorities. As previous speakers have said, this is an opportunity to stamp out unscrupulous, back-street puppy farms, which should be banished as soon as possible.

My second declaration is as a dog lover: I have dogs and I love them dearly. I agree with the comments made by the noble Earl, Lord Cathcart, on the breeding of dogs, under Part 5 of Schedule 1. I acknowledge the move from five to three litters, but I think that if something is a business it should be licensed, even if there is only one litter. It is a commercial enterprise and obviously it is going to make a profit. Instead of having it go down to three, it should be one. If it is a commercial enterprise it should breed a litter to sell. It is a business. Could the Minister clarify that for me?

5.15 pm

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the Minister for setting out the intent behind the regulations. As he says, the proposals provide a long overdue update on a number of aspects of the regulations about keeping and selling animals as pets, which, as he says, are well out of date. We welcome much of the content, which would improve the licensing requirements of owners, breeders and sellers alike. I might have been guilty of this, but while we have used the Secondary Legislation Scrutiny Committee reports to criticise the department, it is also worth placing on record its unusual praise on this occasion in drawing the regulations to our attention. It says:

"We commend Defra on a well-judged and informative",

Explanatory Memorandum. I echo that and say well done to the staff.

We welcome the new licensing approach, which encourages businesses to become low risk through delivering high standards, with those that conform being able to have licenses for a longer period, rather than having to reapply each year. That seems to make sense. However, it is important that this flexibility is used for the right reasons and that it is not just seen as an easy option for local authorities that do not have the staff or the resources to visit premises only every two or three years. It is important that that high standard underpins all this and that it is not traded off for financial constraints. We also welcome the obvious thing of having one standard licence rather than multiple licences. Again, that is good common sense, but we have some concerns about the application of the licensing system, which I will come back to shortly.

In addition, we have campaigned for a long time to require puppy sales to be completed in the presence of the new owner, for a ban on the sale of puppies and kittens under eight weeks old, and for the licensing threshold for dog breeders to be reduced, so we welcome all of those developments. However, as the Minister knows, we very much regret that the opportunity was not also taken in these regulations to ban the third-party commercial sale of puppies and kittens. Indeed, it is not really clear how many of the other improved welfare standards that underpin these regulations can be enforced while third-party sales continue, many of which happen under the radar and are not properly regulated.

The reality is that, as the noble Lord said, there has been a huge rise in online sales of puppies and kittens fuelled by "rogue traders"—I think that was his expression—which are often overseas and are sadly renowned for having poor welfare standards. This all has a knock-on effect. The poor animals that are traded on this basis have health and behavioural problems associated with long journeys, often travelling many hundreds of miles in unhygienic conditions, and often with premature separation from their mothers, who themselves are often kept in exploitative and inhumane puppy farms abroad. There have been numerous whistleblowing cases where we have seen examples of this—in particular in eastern Europe, but they come from all sorts of places across the continent.

I still do not feel that the measures before us address this problem. The noble Lord was talking about curtailing adverts. Obviously those sorts of measures are welcome, but we are still seeing that illegal trade taking place. I do not see that it will be dealt with until we have that third-party commercial ban. We believe that it is time to stamp out this trade, which is why we support such a ban. However, the fact that the Government have now issued a separate consultation that revisits this issue has given us some hope. We look forward to participating in that debate and hope that, in time, the Government will see the error of their ways on this issue.

In the meantime, I have some questions for the Minister arising from the regulations before us. First, as the noble Baroness, Lady Bakewell, said, there seems to have been a very long delay between the end of the consultation in March 2016 and the appearance of these regulations today. That seems to be a bit of a hallmark of the department. Can the Minister explain why it has taken two years to process the regulations?

Secondly, the regulations are to be supported by more detailed schedules and guidance, but the way in which they are written at the moment uses very simple language. In one sense that is great, because it is easy to understand. However, they use phrases such as "adequate" facilities, "sufficient" space and a "suitable" environment, all of which are open to interpretation,

[Baroness Jones of Whitchurch]
so it is important that as soon as possible we have measurable requirements so that local authorities can make a proper assessment of whether welfare standards are being maintained. When will that more detailed guidance be provided so that we can be assured that there will be proper ways to measure the improvement in welfare standards?

Thirdly, has any further thought been given to introducing a microchip database recording microchip numbers on entry to the UK and extending microchipping to cats? Does the Minister agree that this would help to cut down on the illegal trade in puppies and kittens?

Fourthly, a number of noble Lords have talked about the new inspection arrangements. We are concerned that local authority inspectors will be undertrained and underresourced to manage the new licensing regime successfully. What, if any, additional resources are being provided to local authorities to carry out these duties? Is the Minister concerned that the proposal for level 2 qualifications for inspectors is not really high enough for them to understand the complex animal welfare needs that they will be required to inspect? Indeed, what plans are there to require licence holders themselves—the actual owners of these animals—to demonstrate minimum competence standards and meet best practice?

The impact assessment assumes a one-off familiarisation for businesses and local authorities of two hours a week. Does the Minister agree that this is wholly inadequate and that a much more rigorous training regime needs to be developed? Can he shed some further light on how the licensing fees will be established? In response to questions in the Commons, the Minister there said that the licences would be,

"funded by full cost recovery … so there is no financial burden on local authorities".—[*Official Report*, Commons, 20/03/18; col. 5.]

We understand what that means, but how will it be calculated in practice? We are talking about a differential cost for licence holders in every different local authority. Will all licensed operators be compelled to pay a contribution not just towards the inspections of the good guys, if I can put it like that, but towards the enforcement activities taken against all the illegal operators too? The people who own up and pay up will be paying for the policing. It differs in different parts of the country, but there could be quite widespread potentially illegal activities, and that does not seem very fair. Is that not a case of penalising those who play by the rules, rather than getting everyone to up their game?

Lastly, the regulations address only certain kinds of commercial animal services, such as providing boarding for cats and dogs and day care for dogs. Several noble Lords have mentioned other kinds of commercial animal services. My bugbear, which I have mentioned to the Minister in the past, is that commercial dog walkers are becoming big business these days: they often deal with large numbers of dogs during the day, yet they do not seem to be covered by these regulations. Has any thought been given to requiring commercial dog walkers to have a licence? Are any reviews of other animal licensing arrangements currently taking place for new businesses that are developing?

In conclusion, while we welcome many of these proposals, there seems a lot more work to be done in raising animal welfare standards across the board. We therefore look forward to receiving these details from the Minister in due course. In the meantime, I look forward to hearing the Minister's response to the many very pertinent questions that have been raised today.

Lord Gardiner of Kimble: My Lords, this has been a very important discussion, and I am most grateful to the noble Baroness, Lady Jones of Whitchurch, for recording what I would call some praise, but some chastisement as well. Her genuine praise was for the officials who have been engaged on this matter over a considerable period. I will be in longer form in a moment but the most important thing is to have got these regulations right. They may have taken some time but it is better to get them right, because this has involved fairly intricate work with a number of parties, which I will explain in greater detail.

I am very struck by the universal endorsement of the spirit of what the regulations are seeking, which is to enhance animal welfare. Again, I acknowledge that it would not have been possible to get to the detail that we will have without the support of the Canine and Feline Sector Group, the Equine Sector Council, the local authorities, vets charities and participants in this sector generally. We always want to root out the bad but we should also remember that there are some extremely good and dedicated dog and cat breeders, who care immensely for their animals and would not dream of selling them to what they identified as an indifferent home, so these things can work both ways. The purpose of much of what we have been wrestling with is to ensure that we endorse the good, raise the standard of the intermediate and root out the bad. In my lay man's terms, that is how I see our objective.

The noble Baronesses, Lady Jones of Whitchurch and Lady Bakewell, raised the issue of third-party sales. As has been mentioned, we have issued a call for evidence in relation to a ban on the third-party sale of puppies and kittens. I should say that part of the issue was that not all the interested parties in the animal charity world were of a common view on this. But—I stress "but"—I acknowledge that there are strong feelings on this issue, and such a ban would prevent commercial sellers selling puppies and kittens unless they had bred the animal. As the noble Baroness, Lady Bakewell, said, the call for evidence closes on 2 May, after which we will consider the way forward. We are seeking to publish that by the end of July. One possibility, if we were to go down this route, would be to amend these regulations using the powers under the Animal Welfare Act 2006. However, we felt that in the meantime it was not sensible to delay the implementation of what are already advances in the range of these regulations. Clearly, as always, guidance is where we will have further and better particulars, and I say to the noble Lord, Lord Trees, and the noble Baroness, Lady Jones of Whitchurch, that we are very conscious that guidance needs to be published. We aim to publish by the end of July precisely for many of the reasons that have been outlined.

I will seek to answer some of the questions asked and if, in my view, I have not answered any sufficiently, I will of course write to noble Lords. The noble Baroness, Lady Bakewell of Hardington Mandeville, queried whether organisations such as charities that provide riding for the disabled would require a licence for the hiring out of horses. I can confirm that the regulations apply only to commercial businesses, so it is extremely unlikely that a registered charity would be required to hold a licence. But I emphasise that it depends on what might be undertaken in each individual case. The point is that these regulations deal with commercial businesses.

5.30 pm

The noble Baroness, Lady Jones of Whitchurch, asked about dog walkers, and indeed I am now thinking about dog groomers and the range that could be considered for inclusion in the licensing system. As is understood, they are not currently licensed and we are not of the view that sufficient evidence was presented during the consultation for the inclusion of these additional activities. However, the regulations will need to be reviewed after five years. If during that time evidence is presented demonstrating that these activities need to be licensed for the welfare of the animals involved, they can indeed be added to the regulations.

My noble friend Lady Byford highlighted her experience of being involved in the Animal Welfare Act 2006. It is wonderful to have noble Lords who can point us in the right direction, and of course it is probably due to the advice of the noble Countess, Lady Mar, that we are here now since she was material to the gestation of what we are considering. A number of more detailed points were raised. I take very seriously the importance of animals and pets to people who are housebound. In those circumstances, a person who is housebound could certainly ask their carer or an alternative representative to purchase and collect an animal on their behalf. These things should pass the test of reasonableness, and this is clearly one of them.

Noble Lords raised daily exercise—we all need exercise—in terms of the regimes covering boarded dogs and breeding dogs. I do not know the precise details so I will have to discuss this with representatives from the canine sector, but obviously a lot of information came to us through their specialist advice. Boarded dogs are more likely to be being held temporarily so it is acceptable to provide them with less exercise during that time as compared with breeding dogs, which are much more likely to be in kennels permanently. It is therefore important that they are given adequate opportunities for exercise over the period that they are kept as breeding animals.

My noble friend also made a point about the keeping and training of animals for exhibition. I thought I would help myself by going to Part 6 of Schedule 1, which refers to:

"Keeping or training animals for exhibition in the course of a business for educational or entertainment purposes".

The truth is that even if my noble friend had a splendid prize animal at an agricultural show, my guess is that she will be there to display the wonders of her animal rather than for any other purpose. However, I will ensure that the guidance provides details on how to determine whether a person is running a business and takes into account factors such as making a profit. From my experience of seeing many farmers at agricultural shows, it costs them money to show their animals. They do it for the love of their animals and to enable the public to see them, and thus it is unlikely that they would be classed as a business.

A number of comments were made about implementation, which I take extremely seriously because it is important that local authorities are ready. We have been working with local authorities to develop the regulations since 2015 and, because of the benefits they will provide for local authorities, there is a lot of enthusiasm for them. There is no set date for when they should start and a distinction is made about the period before the UKAS-accredited schemes come in, so that those who do not achieve high standards is taken into account. All of this has been designed precisely to enable local authorities to concentrate on what is necessary. We will be working on the detail of the regulations—we did not want to presume to get the consent of your Lordships or Members of the other place—and we want to continue with that work over the next few months so that we are ready.

My noble friends Lord De Mauley and Lady Byford also raised the issue of local authorities. As I said, the full-cost recovery is clearly important but I had examples of where local authorities are working together. Local authorities are teaming up on the provision of services, sometimes using the provisions of a primary authority. I met someone in one of the London boroughs, which are working together so that they get the specialism to work on these matters. The City of London is also a good example of this: for instance, it acts on behalf of all London boroughs on welfare and transport controls and I know that it is very successful at Heathrow, where it has great experience on animal matters. We want to work closely with local authorities; there are ways to do that and it is absolutely imperative that the enforcement is taken extremely seriously.

As I say, the local authorities will enforce the legislation with the powers to charge a fee to applicants. This can include a charge for enforcement and they will have the powers to inspect unlicensed premises which they suspect should have a licence. They will have the powers to raise money for that but the noble Baroness, Lady Jones of Whitchurch, is absolutely right that there will be different fees. I am turning round just to make sure that I am not going off piste but that is the whole purpose of having the UKAS-accredited scheme within the embrace of this provision. We and the local authorities will clearly not need to have the fee rates for the UKAS-accredited scheme and there will be a longer scheme. There will be a more proportionate approach so that we can deal with raising the intermediate and rooting out those who should not be breeding animals.

The noble Lord, Lord Trees, mentioned the upper limit and the guidance. I can confirm that the guidance will include the amount, which is drawn from the existing HMRC guidance on the business test. That guidance will be available by the end of July and we will be developing these guidelines with local authorities

[Lord Gardiner of Kimble]
and stakeholders. But it is very important that all breeders recognise that these new regulations should command their attention.

My noble friend Lord Cathcart asked an intricate question about whether an example of various family members could be a ruse to counter the spirit and intention of these regulations. I emphasise that anyone in the business of breeding and selling dogs—in other words, trading—must be licensed by a local authority. Non-businesses producing three or more litters a year must also be licensed. It will be a matter for the local authority to decide in that situation whether the litters were all on the same property. The regulations tie the activity to the premises, so in our view there is no loophole here. Given what my noble friend has said, we clearly need to look at the scope for all the possibilities that anyone may use. However, I am assured that the regulations tie the activity to the premises and I think that covers the point about rogue breeders—or whatever we want to call them; perhaps "unscrupulous breeders"—and people associated with them. If any one of those breeders were running a business and selling or breeding puppies, I emphasise that they would need a licence. I trust that we will cover that.

My noble friend Lord De Mauley asked about devolved Administrations. He will of course know that animal welfare is a devolved issue, so it is for the devolved Governments to decide. For instance, the Welsh Government updated their legislation on dog breeding in 2014. We have of course shared the regulations with the Scottish and Welsh Governments and we understand that they are considering whether to take further and similar action.

The noble Countess, Lady Mar, raised the issue of cats. The breeding of cats was specifically raised in the Chamber by my noble friend Lord Black of Brentwood and we are very conscious of the issue. Anyone selling animals on a commercial basis is included within the scope of the regulations. Whether they breed the animals themselves or source them from elsewhere, they will have to comply with the welfare requirements for pet sales and the cat code applies to all cat owners and cat breeders. Cat breeding is covered in general terms. As I said in the Chamber, the breeding of cats and dogs with defective elements is self-indulgent of people. It is not right. All breeders should be working on—I say in my utterly amateur way—breeding out defects and certainly not breeding animals with such defects, which are injurious to the offspring. We all need to think strongly about that and to work with charities, breeders and breed societies. I know from my discussions with the Kennel Club that it well understands that we must wrestle with this important issue.

The noble Baroness, Lady Jones, referred to cat microchipping, which we support. As to making it compulsory, we consider that the nature of cats makes microchipping more awkward. When we understood that dogs should be compulsorily microchipped we gave proper consideration to whether cats should be, too, but there was a feeling that the nature of the cat's world would make it rather difficult. Clearly we do not want cats to stray, injuring themselves or causing problems, and again it is in the interests of owners of cats and dogs to look after their pets. One great advance due to microchipping is that it has enhanced the reuniting of owners with their pets whether they are cats, dogs or horses. It has been a great advance in many ways.

In my opening and closing remarks, I have sought to deal with the importance of a training regime. That is why I mentioned the City of London and its level 3 training. We will spend time working with local authorities. We have introduced the concept of full recovery precisely to enable the enforcement and implementation of the regulations, which will advance animal welfare in so many respects and enable people to feel more confident that they are buying their much-loved pets from reliable sources.

I do not doubt that there will be people at home and abroad who not only flout these regulations but act illegally. That may be a consideration for another day but I am seized of the importance of this issue and I commend the regulations.

Earl Cathcart: I am confused about one thing. It is not to do with the Minister's response to my questions—for which I thank him—but my noble friend Lady Redfern referred to needing a licence for fewer than two litters and the Minister said that you need a licence if you are selling your puppies. In the Explanatory Notes it states that these regulations remove the existing exemption whereby someone who breeds from their own pet dog does not need a licence to sell puppies. So if one of my dogs has puppies and I want to sell a few, give them away or whatever, do I have to get a licence for that?

5.45 pm

Lord Gardiner of Kimble: My Lords, I might look sideways slightly as I say this, but the precise distinction is if the owner is in the business. In other words, the point is that if you have three or more litters you must have a licence, but if you are in the business you would have to have a licence even if you had only one litter. That distinction of being in business will be set out in the guidance. The whole purpose is to capture those who are in the business of dog breeding if they have any number of breeding bitches. It is important that we can license those who are in the business, but we have a catch-all that if you breed and sell more than three litters and you are not in the business, you have to be licensed as well. I say to all breeders who are breeding and selling to look at the regulations. Obviously the purpose of this is not to be bureaucratic, but to raise animal welfare standards. I will reflect on what my noble friend has said. If there is a clearer response I will of course write to my noble friend and all noble Lords, but I think that *Hansard* will report what are the varying elements of requirements for a licence from the local authority. If there are any ambiguities and noble Lords would like to ask me afterwards so I do not confuse myself, I would be very pleased.

Baroness Redfern: If, as my noble friend Lord Cathcart said, you are in the business and you breed one litter, then should you not be licensed because you are in business? That was the emphasis of my intervention earlier.

Lord Gardiner of Kimble: I think my noble friend answered that. If someone is in the business the number is irrelevant, so that is caught.

Motion agreed.

Mandatory Use of Closed Circuit Television in Slaughterhouses (England) Regulations 2018

Considered in Grand Committee

5.47 pm

Moved by ***Lord Gardiner of Kimble***

That the Grand Committee do consider the Mandatory Use of Closed Circuit Television in Slaughterhouses (England) Regulations 2018.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I am very pleased to introduce these important regulations on the mandatory use of closed circuit television in slaughterhouses in England. These regulations meet the Government's manifesto commitment to make CCTV recording in slaughterhouses mandatory. Our manifesto commitment reflected widespread public concern over animal welfare in slaughterhouses. They are made under powers in Section 12 of the Animal Welfare Act 2006.

The Government have encouraged the voluntary uptake of CCTV in slaughterhouses, but the number of slaughterhouses with CCTV has stalled in recent years, with only 50% of red meat slaughterhouses and 70% of white meat slaughterhouses having some CCTV for animal welfare purposes in 2016. Those slaughterhouses which had installed CCTV had not always done so comprehensively. In 2016, only 46% of those slaughterhouses with CCTV had coverage in the unloading area. The level of CCTV coverage was even lower in the stun area, with less than 40% of slaughterhouses having CCTV in this area or in the bleed area. So even in slaughterhouses where CCTV is installed, key areas are not currently covered by cameras.

The Farm Animal Welfare Committee, FAWC, produced an independent assessment of the benefits of CCTV in slaughterhouses in February 2015. It identified CCTV as offering real benefits as an important complement to official inspection of slaughterhouse practices and as an evidential method of recording animal welfare abuses.

Baroness McIntosh of Pickering (Con): Will my noble friend confirm that this is not taking away the need for a vet to be present for the inspection?

Lord Gardiner of Kimble: I will of course address that. I am grateful to my noble friend.

FAWC also identified the significant benefits of CCTV systems to slaughterhouse operators, from in-house review of their operations and effective staff training to providing evidence of due diligence, which can increase public confidence in the meat industry and its adherence to the UK's high animal welfare standards. FAWC's report provided a useful basis for the Government's proposals on mandatory CCTV which we published last summer. We received nearly 4,000 responses to this public consultation, with more than 99% in favour of mandatory CCTV recording in all slaughterhouses.

These regulations will require all slaughterhouse operators to install and operate a CCTV system that provides a clear and complete picture of areas where live animals are present. This will include where animals are unloaded, lairaged, handled, restrained, stunned and killed. We would expect CCTV installations and their use to be proportionate to the size of premises and their throughput. Slaughterhouse operators will be required to provide access to CCTV recordings for the official veterinarian of the Food Standards Agency and other authorised inspectors. An official veterinarian is required in every slaughterhouse when in operation. Access to CCTV recordings for monitoring, verification and enforcement purposes is essential and will be especially useful where the official veterinarian is undertaking other duties in the slaughterhouse and does not directly witness an incident.

We would expect official veterinarians to carry out a timely review of CCTV to address any immediate welfare incidents and take advisory or enforcement action. Nevertheless, the slaughterhouse operator will need to retain recorded images and information for 90 days. This is in line with the requirements of some farm assurance schemes. While CCTV should not replace, reduce or be considered a substitute for the current inspection and control of slaughterhouse practices by official veterinarians, access to CCTV recordings will provide more opportunities to assess compliance with animal welfare requirements on a proactive and reactive basis. Requirements for mandatory CCTV recording should be applied to all approved slaughterhouses on the basis that all animals should be offered the same level of protection at the time of killing.

Ninety-five per cent of our meat is killed in abattoirs which have CCTV in some form. The regulations ensure that all slaughterhouses of whatever size must now have CCTV at all stages of the process.

Lord Campbell-Savours (Lab): My Lords, I am sorry to intervene, but I want to clarify something at the beginning of the debate. The Minister said that the Government expected the arrangements to be "proportionate". Can he explain what "proportionate" means, because it might worry some of us?

The Deputy Chairman of Committees (Viscount Ullswater) (Con): My Lords, it may be for the convenience of the Committee if the Minister introduces the regulations. I can then put a Question to the Committee and we can have a debate.

Lord Campbell-Savours: Sometimes a debate is helped by an early intervention on the Minister.

Lord Gardiner of Kimble: My Lords, I would like the opportunity of finishing these remarks. I am afraid that I am not acquainted with the practice of not permitting a Minister to introduce regulations. I will be more than pleased to receive comments when I have unfolded the argument. That helps the flow for the Minister. My task is to give a respectable introduction,

[Lord Gardiner of Kimble]
deploying all the points of the regulation. I will then of course be very pleased to answer the questions that come from it.

We are conscious that some of the businesses that will be affected by this legislation are small, so we thought it appropriate that the regulations should allow six months for them to become compliant. In view of the considerable gains to animal welfare and the many other benefits identified, particularly for the slaughterhouse operator, the Government consider that the benefits justify the costs involved and do not deem financial support to the sector to be borne by the taxpayer.

This legislation will introduce mandatory CCTV recording in all 270 slaughterhouses in England as an additional monitoring and enforcement measure to ensure that animals are spared avoidable pain, distress or suffering during the slaughter process in all approved slaughterhouses. These regulations form part of an important package of reforms that the Government are delivering to improve animal welfare, such as the new system of local authority licensing of activities involving animals and the publication of updated animal welfare codes of practice. The regulations are proportionate and targeted, and will help to improve animal welfare at slaughter.

These regulations have been widely welcomed. Indeed, following our recent announcements, I have heard from a number of farmers who are pleased that we have ensured a respectful end for the animals they have cared for throughout their lives. These regulations will also assist the Food Standards Agency, which has been most supportive, as has the British Veterinary Association as well as a large number of other interested parties. I want to emphasise once more that the regulations will work in the interests of the slaughterhouse operator. It is the case that many people will be reassured that with the enforcement of these regulations, animals are much more likely to reach the end of their lives in a manner which shows them respect.

Many noble Lords along with many Members of the other place have been extremely supportive of these measures. For all those reasons, I endorse the regulations. Again, they are proportionate. I have mentioned specifically that for smaller slaughterhouses, the extent and cost of their installations will clearly be less than those for larger enterprises with no CCTV provision. Again, 95% of our meat is killed in abattoirs that already have CCTV in some form. For those operations, the regulations may be about updating or if necessary upgrading their systems so that all the stages of the process are covered. For those with no CCTV provision, it will be a cost, but the Government believe that this measure is in the interests of the sector. I commend the regulations to the Committee.

6 pm

Earl Cathcart (Con): My Lords, the Minister has already said why the voluntary take-up of CCTV has been disappointing. I am certain that this regulation will satisfy customers, consumers, retailers, certification/assurance scheme operators, NGOs and animal welfare organisations who have been pressing for CCTV in 100% of slaughterhouses. I should probably declare that I farm in Norfolk and we have livestock. We like to give all the livestock a really good life while they are with us on our farm, and when they go to meet their maker, we want that to be to the best possible standards, stress-free and humane. If that does not happen in slaughterhouses, perhaps CCTV will help.

I want to concentrate on two areas. The first is the cost and the second is the effective viewing or reviewing of the CCTV footage. I know that the Government think that the installation will cost only about £2,500 per slaughterhouse, but I think that is way too low. Even a small slaughterhouse needs about five CCTV cameras to ensure that all areas are covered. At £1,000 per camera, that alone will come to £5,000. I have been told that it will cost between £5,000 and £10,000 per slaughterhouse to install.

In 2012, it was reported in the Scottish Parliament that the cost of installing CCTV in a slaughterhouse in Scotland varied between £6,000 and £25,000. Whatever the cost, it will be considerably more than the Government's £2,500. For small plants, that cost may be prohibitive, and that is not the only cost. There is also the annual cost of maintenance, which will vary according to the number of CCTV cameras and could be between £500 and £1,000 per annum. Then there is the cost of a secure, locked cabinet to store the 90 days of footage per camera to prevent tampering with the evidence. Then there is the cost of training and employing CCTV monitoring staff.

That brings me neatly to my second point: who, if anyone, will be viewing or reviewing the CCTV footage? Obviously where there is a known incident the relevant footage can be pulled out and looked at, but CCTV is really effective only if it is viewed or reviewed, and here is the rub. One of the limitations of CCTV is that it is rarely viewed or reviewed in a systematic, consistent and effective manner by the slaughterhouse operator, enforcement agencies or the official vet. If it were, considerable costs would be incurred in training the staff required to view the footage in real time—that is, as it is happening—or to review large amounts of footage from multiple cameras. Whether this is done by the slaughterhouse operator or the official vet, ultimately the cost will be borne by the slaughterhouse, which already balks at the hourly rate charged by the official vet—£70 to £80 an hour or around £600 for an eight-hour day.

Twenty years or so ago, there were probably six or eight slaughterhouses near my farm in Norfolk; now there is one large one quite near me. In the past 20 years, about 100 small slaughterhouses have shut down, as have a further 100 medium-sized ones. This does no good at all for the welfare of animals as they must now travel further to their final destination. I can understand the need for this regulation, but I hope that an unintended consequence will not be that more slaughterhouses have to close down.

Lord Campbell-Savours (Lab): My Lords, first, I will deal with the issue of cost. The costs of the CCTV equipment have dropped dramatically over the past seven or eight years. In many areas, they are a quarter of what they were. So it is quite probable that the

estimates that have been given by the Government are not accurate, even though the ones that were given in Scotland will have been accurate at the time.

What drew me to this issue was paragraph 42 of the FAWC report of February 2015, where it says:

"Where examples of animal abuse have been brought to light … FBOs, AWOs and OVs"—

that is, food business operators, animal welfare officers and official veterinarians—

"have consistently asserted that they were unaware of such abusive practices".

That is a shocking statement. Professionals went into slaughterhouses where the law was being breached, yet they were unaware of what was going on. I congratulate the Government on bringing in this extremely important measure, which I warmly welcome. I also welcome the policy position of my own party on this matter: the document produced by Sue Hayman, our spokesperson in the other place, which has come up with some fairly radical measures to deal with this problem in slaughterhouses.

In addition to that concern, I noticed in the Explanatory Memorandum the following statement, in paragraph 8.1, under the heading "Consultation outcome":

"The responses from slaughter industry bodies and abattoirs were more balanced"—

when I hear those words, I always think, "Oh yes, here it comes"—

"with a number arguing against the proposal on the basis of proportionality of application of the requirements to all slaughterhouses regardless of size or record of compliance and the length of time records should be retained for";

in other words, there was opposition. I would like to know what the scale of the opposition was. Perhaps it is reflected in the fact that, as we were told before, only 50% of slaughterhouses have even introduced these cameras. In the case of the ones that have introduced them, we are told, as I think the Minister alluded to, in paragraph 7.1 of the Explanatory Memorandum:

"Moreover, those slaughterhouses that have installed CCTV have not generally installed cameras in all areas where live animals are kept and where animal welfare could be compromised";

in other words, there is a real problem out there and I regard these regulations as a good attempt to deal with it.

However, I have one or two concerns. One is about the retention of documentation. The committee recommended three months. In this measure, is it nine months?

Lord Curry of Kirkharle (CB): It is 90 days.

Lord Campbell-Savours: Oh, it is 90 days. So basically we are talking about three months. So the Government followed that recommendation. But I wonder why not five years? We are talking about equipment which produces a tiny disk, I presume—why not keep it long term, unless it deteriorates? If we are talking about prosecutions, we may need more evidence than simply one or two occasions. It might be that consistent breaches can be revealed only in the event that there is far longer retention of the tapes in question. So I suggest not 90 days but five years—let us really retain this in case we have to prosecute.

Another issue that interests me is the question of visits. I heard someone refer earlier to a charge of £80 an hour for veterinarians to visit. I presume that there must be many slaughterhouses that rarely get a visit, if visits are charged up to them. Why do we not have more impromptu visits? So many visits in such areas are never impromptu. I remember when I was dealing with nursing homes some years ago, we found out that the managers were often informed in advance of when the so-called impromptu visits by the Care Quality Commission, or its predecessor, would be made. I presume that in these cases, too, information may well be provided to a slaughterhouse that there will be a visit by a veterinarian officer, charging for his services at £80 or £90 an hour. I would like more impromptu visits to these places. Then they would be more on guard against potential abuses.

Under "notices", the regulations say:

"Any notice required or authorised to be served under these Regulations on any person may be served by … delivering it to the person; … leaving it at the person's proper address; or … sending it by post to the person at that address".

Can we presume that there are no options? In the case of slaughterhouses, a number of routes could be used to ensure that they actually received the notice. If the attitude of slaughterhouses is as my earlier quotation from paragraph 42 of the report suggests, it seems that there will still be some resistance in the industry.

As in all such cases, even with the presence of cameras, people will try to find their way round the regulations in some way. They may perhaps even position the cameras in such a way that they do not fully reveal what is happening in that slaughterhouse. Who decides where the cameras will be? Who decides whether a certain camera is going to point here or there? At the moment, this comes out only in the enforcement proceedings. I could not find anything in the proposed arrangement that said that the authorities—I presume that would be the veterinarians—would tell people where to put the cameras to ensure maximum coverage. There was one reference to requiring,

"any person to produce or make available for inspection any images or information retained and stored",

and making,

"any enquiries, and take recordings or photographs".

There is nothing really, although there is something about requiring,

"any person to provide such assistance, information, facilities or equipment as is reasonable, without delay".

There is nothing about directing slaughterhouse owners to use the equipment in a particular way so that it will reveal fully what is going on. That is a bit loose in the regulations.

Perhaps, in winding up, the Minister can give us an assurance that that will be dealt with, and that more than guidance will be given. There should be requirements; there should be some sort of arrangement whereby, at the beginning of this process, people are required to place the cameras in a particular position so that there is no avoidance of what is intended under the law.

I have the FAWC recommendations here. They start in paragraphs 90 to 94, and there is then more detail. I want to go through them briefly. I am sorry if I am delaying the Committee. I normally speak quite briefly

[Lord Campbell-Savours]

in such Committees, but I want assurances that all this is being implemented—that there has not been a selective acceptance of what is required. They say:

"CCTV systems should be installed in all live animal areas within the slaughterhouse including those used for unloading, lairage, moving live animals through the facilities, stunning and killing".

I think the Minister said that before, but I was not absolutely sure whether a word or two had been missed. I would like an assurance that that will be the case—that that recommendation has been accepted. The recommendations continue:

"CCTV … should be recorded at all times when animals are present in the areas listed above … CCTV … should be installed so as to permit a clear and uninterrupted view of the processes being recorded at all times … Cameras should be installed in a manner that facilitates easy access and repair … CCTV cameras should record continuous visual images but, if audio is captured, should not record conversations between slaughterhouse personnel … footage should be viewed, whether in real-time or from recording, from designated areas that permit detailed review".

I will stop at that point.

Can I assume that civil servants, in reviewing the debate, will go through that list of FAWC recommendations as a checklist from paragraph 90 right through to paragraph 101 and give us an assurance that they intend to implement every one of those recommendations fully? We will know then if any of the FAWC recommendations have not been accepted and that they will be subject to further scrutiny, perhaps at a later stage.

Finally, I repeat that I thoroughly welcome this. I think it will be one of the big changes from this Government. To some people it might not seem important but for people outside, animal welfare is a huge issue, as we know. I believe that if this policy is managed, organised and implemented properly, it will be a feather in the Government's cap.

6.15 pm

Baroness Byford: My Lords, I am happy to follow the noble Lord, Lord Campbell-Savours, because getting this right is hugely important. I do not know whether anybody happened to see the response to the Question that I tabled the other day on the number of abattoirs, because this reflects and follows on from some of the concerns that have been expressed. I asked what the number of small and medium-sized abattoirs was between 2001 and 2017. The data provided for that—if I go through it—was that back in 2001 there were 32 large abattoirs but 463 small ones. Looking at the last ones—I will not go through them all for the Committee; that would not be fair—the change that has taken place is that the number of large abattoirs has gone up from 32 to 44 but small and medium-sized abattoirs have declined from 463 to 276. As far as I am concerned that rings huge bells for animal welfare.

I welcome the move to have CCTV in all abattoirs. The noble Lord, Lord Campbell-Savours, identified some of the things that I would have done. Cameras need to be in the right place, at the right time and they need to be consistent. My query would be: what happens if you get a power cut? Do they automatically keep going? The power cut could happen naturally or could be from deliberate tampering. I do not think there is anything in these regulations that would cover that. I am afraid in this instance I am very concerned about some of the staff operating in our abattoirs and the way they have been dealt with.

I look back to a shocking case where halal abattoir staff taunted sheep before they were slaughtered. Halal and the way stunning is done or not done is not addressed here—and I know there are good reasons for that—but I think on this occasion it should be raised. It is crucial that we get right the whole question of how we deal with animals, how we look after them—we are not livestock producers—and how the end of life comes.

Bearing in mind my early comments I have a couple of queries. I draw the Committee's notice to page 5 of the regulations before us. I am very keen that where penalties can be legally introduced they should be really strong. At the end of the awful case that I brought to the mind of the Committee, two halal slaughtermen were found guilty of causing suffering and were given,

"16 weeks and 18 weeks imprisonment—both suspended for 12 months".

Alongside that, they had to do 250 hours of unpaid work. Both were disqualified from control over sheep and ordered to pay £500 costs. I would have preferred to see something much stronger there. I hope that other noble Lords will reinforce the idea that we have an opportunity here to make sure that the correct fines are in place where they are clearly needed.

I apologise—I have deviated a little. I come back to Regulation 12, which concerns penalties. The footnote to this regulation states:

"Section 12(4) of the Animal Welfare Act 2006 provides that the power in subsection (1) does not include power to create an offence punishable with a fine exceeding level 5 on the standard scale. Section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) allows the power to be exercised to create an offence punishable by a fine of any amount".

I do not quite understand what is going on here. With one piece of legislation the fines are limited, whereas another gives the option to create an offence punishable by a fine of any amount. I seek clarification on this because it is hugely important. We have the opportunity today to try to improve animal welfare. CCTV plays a part in that but it is important that we have a chance to debate fines and the way that we deal with people who are proved to be guilty of unacceptable behaviour, whether that involves halal slaughter or the way that animals are stunned—sometimes stunning is not done in the best way possible. I suspect that noble Lords who follow me will be able to clarify that.

Going back to an earlier comment, my understanding is that veterinarians have to be present at all times. It is not a question of making unexpected visits; veterinarians should be there all the while. If it is suggested that veterinarians are not doing a good job and that, in addition, experts should be brought in, that is another matter, but for the benefit of the Committee I seek confirmation that a veterinarian has to be present when abattoirs operate.

I hope that what I have said will prompt others to comment because we are at a crossroads in dealing with end-of-life issues. There are certain things that I would love to have seen in the regulations but we want to make sure that what is in them will be enforced and will work properly.

Lord Trees (CB): My Lords, I welcome these regulations, which, as other noble Lords have said, are hugely important. My one question is this: why has it taken so long? That is a rhetorical question, not a criticism of the Government, whom I congratulate.

We live in a country that is hugely surveilled. I understand that there is one CCTV camera for every 13 of us. By my calculations, that amounts to 5 million CCTV cameras throughout the country. Every day we see how important they are in investigating and solving all sorts of wrongdoing, yet we have failed to get them introduced into every corner of every abattoir. It is great that 95% of animals are under surveillance but surely it is the other 5% that we should worry about because, if malpractice is likely to happen, it will surely happen in the places where people do not volunteer to have surveillance.

Therefore, this measure is very important in ensuring compliance with the rigorous regulations that, rightly, are in place to ensure the welfare of animals in our abattoirs through the inspection of their health and well-being, both in the lairages where animals are often kept overnight or for 12 hours and more, and then throughout the killing process. Your Lordships may not have been in an abattoir—they are not very nice places—but the killing lines often move very fast and it is very difficult for a veterinarian to be everywhere at once. With things moving so fast, things can happen that can go unseen. I would suggest, and it has been mentioned, that CCTV is also useful to aid training and management by those who own the abattoirs. So there are two benefits, but the benefit to animal welfare is obviously the major one.

Stunning and non-stun has come up. I do not want to labour the point, but there are breaches of regulations that can happen in both situations. These rules will be extremely important in helping us to ensure that the regulations in both types of killing process are observed. There are some particularly stringent regulations pertaining to non-stun such as standstill times after the neck cut, which must be 30 seconds in the case of cattle beasts and 20 seconds in the case of sheep. That is a long time to hold a killing line, but it is essential for the welfare of the animals, if we are to permit non-stun, that those standstill times are honoured. CCTV will help us to ensure that that is happening because it is sometimes difficult to supervise.

I absolutely share the noble Baroness's concerns about the loss of our abattoirs. There is very much an animal welfare issue in terms of the distance animals have to go between the point of rearing and the point of slaughter. That distance should be minimised as much as possible. We are all therefore keen to ensure the financial sustainability of abattoirs, big and small, but I remain to be convinced that these costs would be the last straw. If they are critical, we must find other ways in which to address that problem, not simply give up on enforcing these regulations. As has been mentioned by the noble Lord, Lord Campbell-Savours, the technical costs of cameras these days are incredibly low; people are putting these sorts of cameras in birds' nest boxes, and so on. I understand that the observation of the stored material, to which the noble Earl, Lord Cathcart, referred, is going to be done by the official veterinarians of the Food Standards Agency who are already employed. I would have thought that they would incorporate that observation as part of their working day.

In conclusion, this is a long overdue and extremely welcome innovation that we should all endorse.

Lord De Mauley (Con): My Lords, I understand why Her Majesty's Government are following this course of action and I am aware of some fairly horrible cases, which means that CCTV is prima facie desirable in slaughterhouses. We are all on the same side in trying to ensure the least suffering for animals. As the noble Lord, Lord Trees, has just said, there is nothing nice about slaughterhouses or what animals have to go through. I take the points made by the noble Lord, Lord Campbell-Savours—he made a number of strong points. But I would just point out that not so long ago almost every rural town of a reasonable size had a slaughterhouse. From figures produced by my noble friend the Minister for my noble friend Lady Byford I can say that in 2001, Great Britain had 495 slaughterhouses. By last year that number had fallen to 320, which is a drop of 35%. The adverse effect on the welfare of animals which have to travel long distances to slaughter have been well aired. Those slaughterhouses closed down because they became commercially unviable. In many cases, it does not take much additional cost to tip any commercial operation from the black into the red. I take issue with the noble Lord, Lord Campbell-Savours. CCTV of the standard required is not inexpensive. You cannot just buy it on eBay. The system needs to be robust, built to last, operated in quite demanding circumstances and positioned carefully, out of reach of tampering and so on. In addition, as my noble friend Lord Cathcart said, it has to be watched, which costs money. I would therefore like to hear from the Minister what research has been done into how many of the remaining 320 slaughterhouses are on the margin of commercial viability. The crunch point for me is whether they will be tipped over the edge.

We all want a better outcome and less suffering for animals. I just hope that the Government have done enough homework to ensure that animals will not end up having to travel much further in what are often, to say the least, uncomfortable conditions, and perhaps even to countries with less rigorous rules than our own.

6.30 pm

Lord Curry of Kirkharle: My Lords, I have had some experience of this subject over the last 20 years. I declare an interest in that I farm in Northumberland and have livestock. During the 1990s I chaired the Meat and Livestock Commission for eight years, during which time we had the outbreaks of BSE and foot and mouth disease. Noble Lords might be interested to know that when I took over there were about 750 abattoirs, and I presided over the decline of a large number during that period.

Noble Lords have quite rightly highlighted concern about the geographic positioning of abattoirs and their importance to local and regional food production. I continue to monitor this as chair of the Prince's Countryside Fund because we have been requested to assist where abattoirs appear to be under threat. The

[Lord Curry of Kirkharle]
most recent case was in Orkney where the abattoir was closed, although it is crucial to the economy of Orkney. Work has been taking place to try to assist in the retention of critical small abattoirs. However, according to the association, over the last two years the decline has stabilised and the number of closures has been matched largely by new abattoirs opening. I am quite encouraged by that recent data.

I will ask the Minister four questions and then make a final comment. First, I absolutely agree with the noble Lord, Lord Campbell-Savours, that inspections should be unannounced and made at random. I assume and hope that the Food Standards Agency will adopt the practice. Secondly, I hope that the CCTV system will include views of the lairages so that the standard of animal welfare there is also monitored by the cameras. Thirdly, I hope that if CCTV footage is not retained for 90 days, and there is evidence, it would fall under a penalty. I know that mistakes can be made and footage can be lost, but it is often too easy to lose the CCTV footage to cover up potential breaches in regulations. I hope that that will also be regarded as attracting a penalty.

Fourthly and finally, on the issue of proportionate penalties, like the noble Baroness, Lady Byford, I was horrified to read of these suspended sentences. If that is an example of how penalties will be applied under this legislation, it is not good enough. We need to make sure that the penalties are penalties and that they are meaningful so that businesses are stopped if it is proved that their animal welfare standards have fallen short of what is desirable.

My final comment is that the Secretary of State has made it very clear that he wants Britain to be seen, post Brexit, as a nation with very high animal welfare standards. We should be trading in a world where animal welfare standards are recognised and provide us with a potential commercial advantage. It is essential that that happens and that we use this regulation to help present ourselves as having very high animal welfare standards. I remember only too well through the 1990s how confidence in our abattoirs and our meat processing was at an all-time low. That was because of bad practice. We must never let that happen again.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, again I thank the Minister and his officials for their time and extensive briefing ahead of today's debate, and for the Minister's introduction. We welcome these regulations. I declare my interest as a district councillor.

The public are extremely concerned about animal welfare in slaughterhouses, regardless of whether they eat meat or are vegetarian, as everybody has demonstrated. Currently, CCTV is in place in some slaughterhouses but the coverage is not comprehensive and the cameras may not be in the right places. CCTV is present, as the noble Lord has said, in 50% of red meat and 70% of poultry slaughterhouses. Making it compulsory in all slaughterhouses regardless of size will reassure the public and, we hope, ensure that animal distress is kept to a minimum. We note that the CCTV film has to be kept for 90 days and be available for inspectors to scrutinise at all times. The film and equipment will be owned by the slaughterhouses but they are still required to conform to the regulations. Enforcement for slaughterhouses with no CCTV is to be welcomed, as is making it an offence to obstruct an inspector in his or her duty.

We are concerned about the cost of installation for smaller slaughterhouses, and I agree with the noble Earl, Lord Cathcart, about this. We understand that installation can cost about £2,500, although there seems to be some debate about the actual cost. Obviously systems will be proportional and therefore smaller outfits will need smaller installations, but we do not want smaller slaughterhouses to be put out of business, resulting in animals having to travel further to the next nearest slaughterhouse. The transportation of live animals is in itself a stressful process for them, as has already been said by the noble Earl, Lord Cathcart, and the noble Baroness, Lady Byford. I attempted to find a map of the slaughterhouses in England on the Food Standards Agency website, but I was not successful. We would be grateful if the Minister could provide such a map so that it is possible to see just what kind of coverage there is, especially in deeply rural areas.

There has been a lot of debate about the reduction in the number of slaughterhouses. Since 2001, many slaughterhouses have fallen victim to the catastrophic foot and mouth outbreak in that year. I have not seen the figures on the reduction but I suspect that quite a number will have closed as a result of that outbreak. There are 290 slaughterhouses in England—or 270, depending on your maths—and it is of some concern that there may not be enough staff and vets to oversee what is going on. Other Members have made that comment. Many vets are EU migrants. Is the Minister confident that there are currently sufficient numbers to ensure animal welfare at the point of slaughter? What are the arrangements for overseeing vets? As well as the issue of the sufficiency of overseeing vets, is he confident that the current numbers can be retained, given the impact of the impending Brexit Bill? Official veterinarians are currently partly paid for by the slaughterhouses themselves, as the noble Lord, Lord Trees, has said, and partly by the Food Standards Agency—that is, by the taxpayer—so we need to ensure that there are sufficient OVs.

As well as CCTV monitoring, there are also meat hygiene responsibilities. We understand that 80% of the slaughterhouses in England are owned by two companies—although that is not what the noble Baroness, Lady Byford, said, so there may be some discrepancy in the figure. This has led to larger rather than smaller operations. In the larger plants, meat inspectors will also be needed on site. Given their current budget constraints, are local authorities able to fulfil their requirement to provide meat hygiene inspectors for those larger plants?

We fully support the introduction of this statutory instrument, which comes into place in May, with enforcement coming in six months later. I thank the Minister for his time and effort in explaining the processes.

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the Minister for setting out the details of these regulations today. I should say at the outset that we support the regulations, which have been a manifesto commitment of our party and are long overdue. More importantly, as we have heard from the noble Lord, Lord Trees, and others, it is something that vets themselves have been calling for and will undoubtedly help them in driving up animal welfare standards in slaughterhouses. The introduction of the regulations is important, as more than 4,000 serious breaches of animal welfare laws in British slaughterhouses were reported by the Food Standards Agency in the two years to August 2016. Indeed, its audit report showed that not one UK slaughterhouse was in full compliance when the data was analysed in June 2016.

We welcome the measure today, but of course it is only one tool in tackling the problem. The vets, the RSPCA and indeed the Minister have made it clear that access to CCTV footage should not replace physical observations by the official veterinarians, and we agree with that. The vets on the ground still have to have the ultimate responsibility for upholding welfare standards and prosecuting when necessary.

My noble friend Lord Campbell-Savours, and the noble Baroness, Lady Byford, clarified that vets are expected to be on the site the whole time when killing is taking place. However, that raises the question of why all these animal welfare issues are still arising. It has to be a matter of real concern that so many incidents of animal cruelty have come to light only because of covert filming on the premises by whistleblowers and so on rather than by the vets themselves, even when a vet has been in attendance. This is an ongoing problem that we have to address. Hopefully, the added deterrence of CCTV in all quarters of the animal's journey—from arrival to slaughter, as the Minister spelled out—will prevent further abuse.

I listened carefully to the noble Earl, Lord Cathcart, and the noble Lord, Lord De Mauley. Of course there is concern about the cost and about small abattoirs, but I did not really hear from the noble Lords what the alternative is. If the alternative is the status quo then I think that is unacceptable. We should be tightening up on these standards, and if that means we have to make unpalatable decisions, then we should do so. I agree with the noble Baroness, Lady Byford, that, if anything, we should be looking at higher penalties. We need to clarify what the penalties are in the proposals before us.

In giving these measures broad support, I have a few questions of clarification for the Minister. First, how will the department ensure that the CCTV cameras are installed and used correctly to avoid blind spots? Can he confirm that the requirements for storing the CCTV records once they have been taken will be such that they cannot be tampered with or have times and dates changed after the event? I have some sympathy with what my noble friend Lord Campbell-Savours, said: although 90 days is a start, I can well see that there is a case for a longer period of storage because these cases might unfold over time rather than happen in a short period. There is a case for longer storage, and perhaps the Minister can reflect on that.

Secondly, apart from the official veterinarians, who else will be entitled to view the tapes? For example, if there are allegations of cruelty that have not been addressed by the OVs, will the police and other enforcement agencies be entitled to view the tapes? On the other side of that, can we be assured that the tapes will be used only for animal welfare purposes and not, for example, for staff to be observed by immigration officers or other people who are not concerned with animal welfare? Also, many animal welfare organisations have called for additional independent monitoring of CCTV footage. Has the Minister given any consideration to introducing that extra layer of oversight? That might go some way to addressing the issue of impromptu inspections, which was raised this afternoon. Maybe that is where that extra intervention could come from.

6.45 pm

Thirdly, as the noble Baroness, Lady Bakewell, said, the vast majority of slaughterhouse vets are EU nationals, so how can we be assured that sufficient vets will be available to oversee the 290 slaughterhouses post Brexit? If those vets are asked to leave because of new migration rules, can we be assured that their places will be taken only by other qualified vets and that there will be no attempt to deskill the role?

The internal impact assessment states that the costs to Government are assumed to be broadly neutral, even though there will now be additional duties on the shoulders of the official veterinarians. This does not seem to make sense: if the vets are expected not only to staff the premises in real time while killing is taking place but to inspect the tapes, surely that will bring additional hours and costs. Will the Minister comment on how he intends to keep those costs under review?

Finally, what support and training will be offered to smaller abattoirs on how to install and secure the CCTV tapes—this is obviously not their primary skill function—so that they cannot use a lack of skills as a reason for not complying with the new regulations?

We have had a wide-ranging discussion and I know that there are many other questions about slaughterhouse practice and slaughter that remain to be addressed, not least stunning before slaughter, which several noble Lords touched on. However, I realise that this strays beyond the confines of this SI. Therefore, with that in mind, I look forward to the Minister's response.

Lord Gardiner of Kimble: My Lords, this has been a really worthwhile debate. I have learned a great deal about the intricacies of this matter from some of the experiences of noble Lords, but I repeat that we are absolutely clear that these regulations require all slaughterhouse operators to install and operate a CCTV system that provides a clear and complete picture of areas where live animals are present. To directly reply and reaffirm to the noble Lord, Lord Curry, this will include where animals are unloaded, lairaged, handled, restrained, stunned and killed. It is the complete operation within the slaughterhouse.

[Lord Gardiner of Kimble]

Some really fascinating questions have been asked and I will take them in the order they were asked. The noble Lord, Lord Campbell-Savours, encapsulated that this is a matter of zero tolerance, in which nothing can be as important as ensuring that welfare during the operation at a slaughterhouse is of the top order. I will not go into the other questions associated with this because they are not directly germane to the CCTV issue, but this is precisely the point that the noble Lord, Lord Curry, spoke about and that noble Lords alluded to. If this country wishes to have a recognition and a reputation for high animal welfare standards, this is precisely the sort of area where we can say to consumers at home and abroad that we are doing everything possible to assure them that the meat they consume is of the top animal welfare quality through our farm assurance schemes, that it is produced and lives a life to good animal welfare standards—in fact, above the norm of animal welfare standards—and that the animal has met its end in a proper and dignified and respectful manner. The contribution that these regulations make is that it will be absolutely clear to everyone, from the operators and everyone engaged through to the official veterinarian, and indeed to the person undertaking the work, that this really is of prime importance.

For instance, the noble Lord, Lord Campbell-Savours, asked who would decide about the positioning of the cameras. FSA official vets will discuss with operators where the cameras should be sited in order to meet the requirements set out in Regulation 3(1) which states that the CCTV system must provide,

"a complete and clear image of killing and related operations".

That is essential. The noble Lord, Lord Campbell-Savours, also talked about the FAWC recommendations being implemented. Those which were directed to the Government are precisely what is set out in the regulations and the guidance. They all address the challenges which have been posed to Government, which is why we are dealing with them today. I do not have in front of me the precise wording of the recommendations, but I identify what the noble Lord has said as being the very essence of the creation of these regulations. Let us remember that some of the FAWC recommendations were directed at the industry as well.

My noble friend Lord Cathcart asked about who will be viewing and reviewing. As a part of normal duties, official veterinarians will view about 10 minutes to 20 minutes of the footage, but I emphasise that the moment they think something needs to be looked at, they will be able to do so. The point of keeping these records is that they will be able to go back and review the situation. The FSA welfare assurance scheme will also review footage as part of any audit process, and the number of audits depends on the size of the operation.

Lord Campbell-Savours: The noble Lord is talking about viewing and reviewing the operation. There may be a dozen slaughtermen of whom just one has been identified as being at risk of bad practice. Surely a far more extensive backlog of material will be needed to nail that one slaughterman. You need to look at this selectively over a long period of time. That is the argument behind the 90-day period. It is not sufficient to gather enough material to identify one particular abuser of the law.

Lord Gardiner of Kimble: I understand the essence of what the noble Lord is saying. The FSA feels that 90 days is sufficient for its enforcement purposes. However, because I believe in zero tolerance in these issues, I contend that with all the CCTV provision, I expect that the official veterinarian will be able to identify someone who is not behaving properly very much earlier. The point about the 90-day period is that we are looking at the official veterinarian and the other means which I will come on to.

Lord Campbell-Savours: I am sorry to come back on this again, but I go back to my opening comments where I quoted from paragraph 42 of the FAWC recommendations which points out that in many cases the officials were unaware of what was happening in terms of animal abuse.

Lord Gardiner of Kimble: I understand that. It is why CCTV will cover all areas, and that will provide the extra scrutiny. The FSA and the official veterinarian will be able to enhance animal welfare and, if necessary, identify people in slaughterhouses who are not behaving properly. Obviously the CCTV will need to cover all areas of the operation and the official veterinarian will need to look at the footage. The whole purpose of this is to enable the official veterinarian to see when any elements of the operation are not being undertaken properly.

I think some of this will unfold in a way that I hope will satisfy the noble Lord that we are really keen to get this one properly sorted. As I say, the FSA will be viewing the tapes. The noble Baroness, Lady Jones of Whitchurch, and, I think, my noble friend Lord Cathcart may have raised this in terms of viewing the tapes. The FSA inspectors will include the OVs, meat hygiene inspectors and FSA auditors from the health and welfare angle. In addition, I will be mentioning random visits; it is somewhere in my papers.

The noble Lord, Lord Curry, asked whether it is an offence not to retain footage for 90 days. This is indeed an offence under Regulation 9(1)(b). The penalty for a breach is a fine of unlimited amount. I say to the noble Lords, Lord Curry and Lord Campbell-Savours, and a number of your Lordships who have raised this, official veterinarians must be on the premises at all times, but the FSA also undertakes random inspections and risk-based audit visits of slaughterhouses. So with the requirement of the official veterinarian being in place at all times, the random visits, the arrival of this new regulation and the work we will need to undertake in that respect, I believe this advances these points.

The Duke of Montrose (Con): Excuse me for coming in at this point. When you were talking about the official veterinarian being there at all times, I presume that means all times when the slaughterhouse is operating officially. Will the cameras run at other times or will the cameras switch off when the official veterinarian leaves?

Lord Gardiner of Kimble: Again, I may look slightly sideways. The whole purpose of these regulations is so that at all times that the slaughterhouse is in operation—I

stress "at all times"—whether at the arrival or at the end, the CCTV has to be on. If no animals are present or if everyone has gone home, the CCTV camera would not be in operation. But when any animal is present, at all the stages that I have outlined, there will be a requirement for CCTV to be in operation so that it can be viewed by the range of people that I have outlined. I think that is very much a positive.

A number of your Lordships, including my noble friend Lady Byford, have raised the level of the fine. The level of fine that can be imposed under these regulations is unlimited. By way of background, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 removed the cap on level 5 fines, allowing them to be unlimited in amount.

My noble friend Lord Cathcart raised the question of costs. I can only, in this honest venture, set out what I know from the impact assessment. The impact assessment published with the consultation last summer estimated the average cost—I underline "average"—to be £2,500 for installation. The cost of installation in slaughterhouses will clearly be proportionate to the size of premises and whether CCTV is already installed. The costs would be incurred only to cover live animal operations not previously covered. This is estimated to be about £500 per area. Again, in the figures I have, total one-off costs to the English slaughter industry for the installation of CCTV were estimated at £670,000. Ongoing costs, to include staff, maintenance, replacement and electricity, were £250,000, with a view that the cost to the regulator was considered to be minimal. I am going to go on to talk about small slaughterhouses. One knows the benefit of these regulations for animals, but what they mean for the provenance and reputation of British food is also very strong.

The noble Lord, Lord Trees, mentioned the issue of standstill periods. Animals which are subject to religious slaughter and which are not stunned must not be moved after the neck has been cut until the animal is unconscious—that is at least 20 seconds for sheep and goats and 30 seconds for cattle. We are very clear on that.

7 pm

My noble friends Lord De Mauley and Lady Byford raised the issue of small slaughterhouses. We appreciate the role of small and medium-sized abattoirs, which meet the needs of producers in more remote areas. We are also aware of their decline. I think it is fair to say that the result of consolidation in the retail sector has a part to play in this; that is, there has been a drive for greater efficiency. The correctly increasing requirements for higher meat hygiene standards in abattoirs has also played a part, and this issue is of the highest order whatever size the abattoir is.

As for the map, we have already asked the FSA for a geographical spread of abattoirs, and I will certainly let the noble Baroness, Lady Bakewell, have a copy of that.

The noble Baronesses, Lady Bakewell and Lady Jones of Whitchurch, asked about the sufficiency of OVs. The FSA is working with its delivery contractors on this. As your Lordships will know, the FSA has an arrangement with delivery contractors on plans for the recruitment and retention of sufficient veterinary resources to maintain the necessary oversight of meat hygiene and animal welfare at approved slaughterhouses. The department is also working very strongly with the veterinary profession on capability and resources post Brexit, and I think that veterinary professionals would acknowledge that we are most serious in ensuring that there are sufficient resources.

The noble Baroness, Lady Jones of Whitchurch, also asked a number of questions about storage and tampering. Cleary, any tampering would be in breach of regulations.

I have mentioned the length of time for enforcement: the FSA feels that 90 days is sufficient for its purposes but we do not need to wait 90 days to root out bad behaviour. We need to ensure that bad behaviour does not happen, and that requires the proper training of the people undertaking this task for those of us who wish to eat meat.

I will check *Hansard* because there have been a considerable number of questions, and I have probably already used far too much of my ration, as it were—the noble Lord opposite and my noble friend probably entirely agree. I hope your Lordships will agree that the whole thrust of these regulations is for the benefit of animal welfare. In addition, I passionately believe that they will put slaughterhouse operators in a position in which they feel much more comfortable that the consumer knows that, at the end of its life, the animal providing their meat has been cared for and had its welfare considered at large. That is why I recommend these regulations. They will be most helpful for all the reasons I have outlined.

Motion agreed.

7.03 pm

Sitting suspended.

First-tier Tribunal and Upper Tribunal (Composition of Tribunal) (Amendment) Order 2018

Considered in Grand Committee

7.05 pm

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

That the Grand Committee do consider the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) (Amendment) Order 2018.

Baroness Vere of Norbiton (Con): My Lords, the principal purpose of the draft order before us is to provide the Senior President of Tribunals, to whom I shall refer as the SPT, with greater flexibility in setting panel composition within the First-tier Tribunal. These changes are being made with the support of the senior judiciary in order to address restrictions in the existing law. The order will also introduce a level of ministerial involvement with panel composition in the First-tier Tribunal and Upper Tribunal, bringing their processes in line with other parts of the justice system. The current SPT, Sir Ernest Ryder, has been consulted on the draft provisions and has confirmed his support.

Tribunals were designed to be user-friendly, allowing citizens to seek impartial redress. The tribunal system should be proportionate, accessible and simple to use,

[Baroness Vere of Norbiton]
though it has become increasingly complex and burdened with bureaucracy. The Government have therefore committed to reforming the tribunals as part of our wider reform of the justice system, delivering a tribunal system that is more efficient and delivers better value for money. This will involve a greater use of technology. New online processes will enable tribunals to be more accessible and easier for users to navigate. As these reforms progress, the use of tribunal panel members should be more tailored and flexible. This will ensure that the tribunal can benefit from panel members' specialist expertise and knowledge when it adds specific value to the decision-making process.

The terms of the existing composition order specify that in setting panel composition in the First-tier Tribunal, the SPT must have regard to the arrangements that existed before its creation. That requirement means that many tribunal panels are based on historical precedents, dating back over 10 years to 2008 and earlier. In a system that will be reliant on digital processes, the provision of specialist expertise should be looked at afresh to ensure that it remains appropriate. The current legislation restricts the SPT's ability to do so.

I shall explain further. Tribunal reform will see the introduction of continuous online resolution. Parties will be able to submit a claim and evidence online, and judges will be able to review and request additional information, meaning that where appropriate a decision can be reached without the need for a physical hearing. This will be possible because, unlike the current system where the first interaction between the judge and tribunal user is usually the hearing, there will be an opportunity to offer information and resolve disputes earlier in the process. It will essentially be a triage system, where the most straightforward cases are resolved online and more complex cases continue through to a full hearing.

In this digital context, it would not be reasonable to require the SPT to have regard to panel arrangements that were in place before these alternative means of resolving disputes existed. Rather, the SPT may wish to consider whether specialist expertise could be provided in alternative ways that were more compatible with new online processes. The draft order therefore intends to remove the existing requirement on the SPT to have regard to previous panel arrangements. Instead, it will provide for a requirement to consider the nature of the matter and the means by which it is being decided, as well as the need for members of tribunals to have particular expertise, skills or knowledge.

I turn to ministerial involvement in panel composition. The existing provisions delegate the Lord Chancellor's responsibility for setting panel composition to the SPT. The current arrangements have been made in practice statements, which do not include any form of ministerial involvement. It is intended to introduce a requirement for the SPT to set panel composition by practice direction. The process for doing this, as set out in legislation, is subject to consultation with the Lord Chancellor. There is nothing unusual about the use of practice directions, and they are used in other parts of the justice system. In the civil courts, decisions on judicial allocation and assignment are similarly matters for the judiciary, and are set by practice direction after consultation with the Lord Chancellor. The existing determinations made by practice statement, however, would continue to apply until such time as they are superseded. Although the SPT will be required to consult the Lord Chancellor, panel composition decisions will remain a judicial matter and the SPT will continue to make the final determination.

As to the number of panel members, two years ago the MoJ consulted on proposals to amend the panel composition provisions. At that time, it was proposed to introduce single-member panels as a default and to provide the SPT with the power to specify where additional members should be used. The intention was to ensure tribunal panel composition was proportionate to the case being determined.

However, we listened to our stakeholders and the Government subsequently announced that they would not proceed in this way. Instead, this statutory instrument provides that the SPT will determine whether a panel should consist of one, two or three members. While this still allows for some cases to be heard by a single-member panel—indeed, many tribunals are already ordinarily heard by a single member—the SPT will have regard to the nature of the matter and the means by which it is to be decided, and the need for particular expertise. We can therefore be confident that single-member panels will be used only in appropriate circumstances. Previous changes to panel composition have not proved to be controversial. In 2014, a former SPT conducted a pilot in the tribunal's special educational needs and disability jurisdiction, reducing the number of panel members from three to two. This did not affect user experience. Importantly, the tribunal was flexible enough to ensure panel composition could be adapted according to the complexity of the case.

The Government of course recognise the valuable contribution that panel members make to the tribunal system. While there will continue to be a need for specific experts, the greater use of technology and new ways of resolving disputes will be an important new factor to consider. This instrument will not itself change panel composition. It will be for the SPT to review and consider whether new panel arrangements are needed.

There are sufficient safeguards to ensure that users are not adversely affected by any panel changes implemented under this order. The SPT has an existing statutory duty: to have regard to the need for tribunals to be accessible; for proceedings to be fair and handled efficiently; and for members of tribunals to be experts in law or the subject matter applied in cases. Additionally, as I have already stated, the revised order will specify that the SPT must have regard to the nature of the matter to be decided and the means by which it will be decided, as well as the need for members of tribunals to have particular expertise, skills or knowledge. Previously, wherever the SPT has sought to amend panel arrangements, he has done so in collaboration with senior members of the judiciary, who in turn have undertaken consultation appropriate to, and proportionate with, the nature of the proposed changes. The SPT has confirmed that he would remain committed to that practice.

In conclusion, the proposed measures will provide the judiciary with greater flexibility to ensure that tribunal panel composition is proportionate and suitable to the case being heard. I commend the order to the Committee.

Lord Marks of Henley-on-Thames (LD): My Lords, I have two main concerns as to this order. The first is the risk of damage to the quality of tribunal decision-making because of the reduced recourse to specialist expertise. We welcome the fact that in response to the consultation, as the Minister said, the Government have abandoned their proposal for a default position that tribunals should be single member. Nevertheless, we are concerned that tribunals may not benefit from specialist membership when they would otherwise do so.

My noble friend Lady Thomas of Winchester, who was planning to stay and speak but has had to leave because of the hour, is concerned about the composition of tribunals hearing personal independent payment cases. Her views apply equally, of course, to employment support allowance and disability allowance cases. Presently such appeals are heard by a tribunal judge together with a doctor and a disability specialist. It is important that experts have full membership of the tribunals in important cases because, in my noble friend's experience, assessors advising tribunals are not always, as she puts it, up to the job. Her views are fully supported by Disability Rights UK, which has done a great deal of work in this area.

7.15 pm

My second concern is the risk of a rising number of appeals as a result of first-instance hearings going wrong, increasing costs on both sides and the strain on applicants, for whom the effects of delay can be devastating, particularly vulnerable applicants seeking enhanced payments. This is a particular problem in social security tribunals, which have a history of a high proportion of appeals and of appeals having a high proportion of success.

It was a concern raised by the Bar Council in its response to the original Ministry of Justice consultation that errors of fact, and therefore appeals, would increase if specialist expertise were reduced. Furthermore, errors of fact do not always give rise to appeals, so applicants may often be stuck with unjust decisions. There is huge benefit to getting it right first time.

I appreciate that there is a duty on the senior president under paragraph (3), as the Minister said, to have regard to the need for members of tribunals to have particular expertise, skills or knowledge, and that the senior president must issue a practice direction. I have no objection to the practice direction procedure as such, but I ask the Minister to make it clear that any practice direction must provide for sifting out cases that raise questions of fact that are expertise-sensitive. These include involving medics and disability experts for PIP and other disability hearings, accountants for tax hearings, and educational experts and mental health experts for special educational needs cases. It is really only cases involving pure points of law—generally interpretation and application of statutes and regulations—that justify single-member tribunals, as well as, possibly, cases involving fact that is not expertise-sensitive.

Expert membership of tribunals is an important feature that distinguishes them from courts. There is a clear distinction between expert evidence given by expert witnesses to judges in court, where the judges are decision-makers, and expert tribunal members taking a full part in decision-making and lending their expertise informally in discussion as well as formally to the other tribunal members. The difference in roles is important and valuable, and I suggest that it enhances public confidence in tribunals. We would not wish it to be threatened.

Important also are questions of balance. The practice direction needs to ensure that the composition of tribunals strikes a balance between opposing parties' interests. That should be a perceived balance, clear to the public, as well as an actual balance. The classic case, of course, is three-member employment tribunals, with one lay member reflecting the employer's interests and another the employee's interest, alongside an employment judge. In First-tier Tribunals in respect of disability appeals, Disability Rights UK cites a disability expert member of tribunals as explaining that such experts are uniquely able to see cases from the perspective of the disabled person.

I question the wisdom of removing the requirement that the senior president should have regard to past practice. Of course, I can see why we should move on from having regard to practice at the original creation of First-tier Tribunals. That would become steadily more out of date, as the Minister pointed out. But the senior president could still be required to have regard to the composition of panels prior to any change. Existing practice can act as a salutary check on any change without excluding it.

I point out that the requirement to have regard to a practice does not require the senior president slavishly to follow it. All I say is that we can learn from experience. In fact, the system works pretty well. We appreciate the need for it to be proportionate and efficient. Broadly, we accept that that means introducing cost-saving measures, and they are fine if they will have no impact on fairness. At best, the order could keep that, but at worst, the impact could be serious. We suggest that having regard to experience is often helpful in preserving the best of what we have.

Lord Blencathra (Con): My Lords, the noble Lord has just mentioned the little question I was going to ask and I apologise if my noble friend covered the point while I was scribbling some notes and trying to listen to the technical detail. It is simply about the cost: is there any additional cost to this measure or is there a cost saving? That is all I want to know.

Lord Beecham (Lab): My Lords, there is no objection to reviewing the composition or indeed the working of tribunals in a system that covers significant areas of public policy and provision but which also extends to areas of law and practice in which the Government do not have a direct interest. The effect of the order as drafted is to enhance the role of the Senior President of Tribunals, notably in relation to the composition of panels, which hitherto has been the responsibility of the Lord Chancellor.

[Lord Beecham]

In many areas the tribunals will be adjudicating on claims and issues between the citizen and the state in relation to a variety of claims, and it may be that in many and even perhaps most of the cases in this category the proposed changes will not be controversial. There are, however, real concerns about the impact of the changes on the employment tribunal system in which the adjudication is between two independent parties, employees and employers, rather than the citizen and the state in one of its many manifestations. This is already an area in which the Government have intervened when they imposed fees for applications to the employment tribunals, an action which was of course struck down by the Supreme Court last year. The number of claims to employment tribunals has since risen by 60% with no perceptible increase in staffing and a consequential growing backlog in cases, to the detriment of both employees and employers. Can the Minister say what measures will be taken, and when, to address this issue?

However, there are issues about the application of the provisions of this order to employment cases. In a previous incarnation I had some professional experience of employment law, in all but one case on the part of employees. Employment law is, as the TUC has pointed out, a complex and specialist field of law. Among other things it is frequently concerned with equalities issues and, at least for the moment, the provisions of European law. There is therefore a very strong case for excluding these tribunals from the general provision in the order removing the requirement for the panels in the First-tier Tribunal and Upper Tribunal to have expertise in this area of law. In this I concur with what the noble Lord has said.

The TUC urges that the panels from which employment tribunals are drawn should be composed of people with experience of employment law, although not necessarily lawyers. This has the support of the CBI and other employers' organisations. A majority of those responding in 2011 to a government consultation on the issue opposed the proposal to limit the role of lay members in unfair dismissal cases. Specifically, the TUC urges that lay members should sit in all employment-related cases, including fast-track cases, unfair dismissal and discrimination cases. It concedes, however, that where a case involves complex legal issues and, importantly, all the issues of fact are uncontested, employment judges should have discretion to sit alone.

The Government are keen, perhaps for understandable reasons, to promote virtual hearings and teleconferencing. Can the Minister say whether this extends to tribunals in general, and employment tribunals in particular? There are concerns about the reliability of these approaches and the stress on those who are unfamiliar with these systems, among whom I would probably have to include myself. There would need to be safeguards where, for example, the parties to an employment case give evidence of that kind rather than in a conventional forum, and there are some doubts about the ability of panel members to assess the credibility of witnesses or parties when such approaches are used. At the very least, will the Government pilot such methods before requiring them to be applied across the piece? Finally on this aspect, do the Government agree that virtual hearings of this kind should have to be agreed by both parties?

Baroness Vere of Norbiton: My Lords, I thank all noble Lords for their contributions. I agree with the noble Lord, Lord Marks, that the system does indeed work pretty well. The proposals today are just to make sure that it works slightly better than it currently does by focusing resources in the areas where we need them most.

Perhaps I could tick off an easy win by turning to the question raised by my noble friend Lord Blencathra. There are no costs relating to the proposals and indeed, there may be some cost savings, but of course the proposals themselves do not assume that. It will be up to the SPT to do the panel composition. However, in certain circumstances, lay members may not be required as a member of the panel, and in that case there will be a saving. One might assume that if there was a 25% reduction, for example, the saving would be somewhere in the region of £3 million. Again, I do not think that we should bank that; we need to be aware that resources need to be used effectively, but that is one possible consequence.

I turning to the point made by the noble Lord, Lord Marks, about the risk of damage to the quality of decision-making. I would point him to the changes which have already been made to panel composition and various other elements. For example, the Immigration and Asylum Chamber made some changes in June 2014. It decided that there would no longer routinely be a non-legal member on those panels. Over the period it looked at the proportion of cases that went to appeal and found that there was no change. I think that there is evidence that there is no risk of damage to the quality of decision-making. It will always be front of mind for the SPT to make sure that the panels are made up appropriately.

The appropriateness of the panel was raised by a number of noble Lords. It is clear that the SPT must ensure that in making these decisions, he or she has a legal duty to consider the need for tribunals to be accessible, for the proceedings to be fair and to be handled quickly and efficiently, and where needed, for the members of the tribunal to be experts in the subject matter. We do not see that that would need to change under this order. It will be up to the SPTs to decide the panel composition, whether that is for different types or groups or cases or sometimes on a case-by-case basis for very complex cases. I would go back to the original thing about this order which is that it will respond to the sort of triage system that we hope will come into force, whereby some very straightforward cases can be dealt with much more swiftly within the new system, which is good in terms of access to justice for people wishing to make a claim. On the impact of the changes in the panel composition, HM CTS routinely collects data relating to all tribunals, covering success rates, appeal rates and overturn rates of first instance appeals. We will continue to monitor that data as these changes come into effect.

The noble Lord, Lord Beecham, referred to employment tribunals. The order does not impact on those at all as it is not related to them, so it is probably

not wise for me to go down that particular road today. We may look at similar provisions for employment tribunals in the future, but that would come under a different type of legislation and it is certainly not on the short-term horizon. If there are issues about employment tribunals that the noble Lord mentioned, I will be happy to write, but I am afraid that at the moment it is not wise for us to discuss it.

The provisions we have discussed today are an essential component of the Government's ambitious plans to modernise Her Majesty's Courts and Tribunals Service, and I commend the draft order to the Committee.

Motion agreed.

Committee adjourned at 7.29 pm.