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

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House of Lords

Tuesday 1 May 2018

2.30 pm

Prayers—read by the Lord Bishop of Portsmouth.

Swansea Tidal Lagoon: Hendry Review

Question

2.36 pm

Asked by ***Baroness Finn***

To ask Her Majesty's Government what are their plans, if any, for the Swansea Tidal Lagoon, following the Hendry Review published in January 2017.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, work associated with the Hendry review and the proposed Swansea Bay tidal lagoon continues. The Department for Business, Energy and Industrial Strategy remains focused on it. Any decision will have to represent value for money for the United Kingdom taxpayer as well as the consumer.

Baroness Finn (Con): I am grateful to my noble friend for his Answer. Given that the Hendry report said that the Swansea pathfinder would cost households less than the cost of a pint of milk per year, that no country in the world is better placed to be a hub for the development and export of tidal power technology, and that the tidal barrier could be a significant user of steel from the nearby Port Talbot steelworks, does my noble friend agree that it is now time to do what the late great Lord Crickhowell did with the Cardiff Bay regeneration project—cut through the procrastinating and just get on with it?

Lord Henley: I am grateful to my noble friend for paying tribute to our late friend Lord Crickhowell, who we all miss, and for setting out a number of arguments in favour of the Swansea Bay tidal lagoon. Obviously, there are a number of matters to consider, not just those that she mentioned but the costs and environmental concerns. We will take all of those into consideration, and, along with the Welsh Government, make an announcement when it is appropriate.

Lord Anderson of Swansea (Lab): The review of this project, which is very close to my home, was completed well over a year ago and was positive. What further evidence do the Government need?

Lord Henley: My Lords, it is not a question of needing further evidence but of considering the evidence that is before us such as that relating to costs—obviously, it would be a very expensive operation—environmental considerations and all other matters. My right honourable friend the Energy Minister has spoken about this, as the noble Lord will be aware, to colleagues in the Welsh Government. All matters should be taken into consideration and an answer will be given at the appropriate time.

Lord Stern of Brentford (CB): My Lords, will the Minister ensure that, in the economic analysis that lies behind the project, he considers the tremendous benefits in terms of recreation, much longer life and above all its use as a prototype? This could and should lead to the Cardiff lagoon, which would be highly competitive with other sources of energy, and could and should lead to tremendous exports. Countries around the world are following this very closely. If he needs any help with the economic analysis, as a professor at the LSE and former chief economist to the World Bank, I am happy to oblige.

Lord Henley: I am more than happy to take up the noble Lord's offer but he has also raised other matters that must be considered.

Lord Wigley (PC): My Lords, what on earth is taking so long with this decision? Is it not an appalling example for business and everybody else that the Government are so slow on this matter? Yes, the cost must be taken into consideration, but it is a matter of taking a decision based on the information. Surely we should be getting on with it.

Lord Henley: My Lords, the Government will not be rushed.

Lord Bradshaw (LD): My Lords, it is reported that the Drax power station is supported financially by the Government with an ongoing subsidy to the tune of about £1 billion a year. To aid the consideration by this House and others of the merits of the Swansea scheme, will the Minister table the facts about Drax?

Lord Henley: I am more than happy to lay before the House any amount of information about the Drax power station and, if the noble Lord's figures are correct, confirm them. Obviously, those matters can also be taken into account.

Lord Morris of Aberavon (Lab): My Lords, I support the interests of the noble Baroness, Lady Finn. Because of the delay of this project and the delay in electrification, is there not an impression that, in the words of President Obama, south-west Wales is at the bottom of the queue?

Lord Henley: My Lords, south-west Wales—and the whole of Wales—is not at the bottom of the queue. As my right honourable friend the Minister for Energy made clear in another place this afternoon, she has been engaged in discussions with colleagues in the Welsh Government. A decision will be taken at the appropriate time but we do not want to be rushed into it.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, this iconic project would be a world first. It would power 120,000 homes, develop exportable technology and create a major tourist attraction for Swansea. Whatever the rights and wrongs of the subsidy—I acknowledge that a large one would be required to prove this pioneering form of energy generation—does the Minister agree that this decision has been in the long grass for long enough?

Lord Henley: My Lords, I note what my noble friend says and the feelings of the House. As I said, the Government should not be rushed into an answer but I will make sure that my right honourable friend is fully aware of the concerns that have been raised.

Baroness Finlay of Llandaff (CB): Have the Government compared the risk to the public health of the type of lagoon and pilot project as has been proposed with the long-term risk of a nuclear power plant and all the potential dangers from it? In terms of value for money and the environment, the public health risk must also be assessed.

Lord Henley: I do not think that I can take this much further but I note what the noble Baroness has to say.

Lord Stevenson of Balmacara (Lab): Let me try the question the other way round. Is this project still open? Is it possible that we might get a positive response to all these requests? I draw the Minister's attention to a letter sent to Mr Carwyn Jones by the Secretary of State in January, which described the tidal lagoon as,

"an untried technology with high capital costs and significant uncertainties".

Is that not just the end?

Lord Henley: I think that the noble Lord is trying to put the wrong interpretation on that. As my right honourable friend made clear in responses earlier today in another place, she is still open on this matter, no decisions have been made and she still wants to continue those cordial relations with colleagues in the Welsh Government. I have not got a transcript of what she said but no doubt the noble Lord can look at *Hansard* tomorrow.

Lord Teverson (LD): My Lords, the Minister could take this matter forward by telling us when the decision will be taken.

Lord Henley: The noble Lord is slightly more of an optimist than I am.

Lord Rowe-Beddoe (CB): My Lords, I remind the Minister and the House that the Bristol Channel is the route of the second largest rise and fall of tide in the world. It is more than 40 feet every day. We have tried since 2012, if my memory serves me correctly, to harness the power awaiting us. Please will the Minister realise what is happening here, because we cannot go on? Whether it is Cardiff, the Bristol barrage, the Swansea lagoon or anything, we should take a decision to back renewable energy.

Lord Henley: My Lords, the noble Lord will find that the Government do back renewable energy. I can give him an assurance that I was aware of the figures he gave about the tidal variations in the Bristol Channel, but I cannot take him any further on when the decision will be made.

Non-Disclosure Agreements
Question

2.45 pm

Asked by ***Baroness Kennedy of The Shaws***

To ask Her Majesty's Government what steps they are taking to ensure that non-disclosure agreements are not used to cover up criminal behaviour or silence victims, and that there are no financial or other consequences imposed when a breach of an agreement is in the public interest.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, non-disclosure agreements cannot prevent any disclosure required or protected by law. A court could find a non-disclosure agreement to be void or decline to give effect to it for reasons of public policy. The Government are looking at the structures around non-disclosure agreements and the evidence coming forward about how they are being used.

Baroness Kennedy of The Shaws (Lab): Noble Lords will know that after the great surge of disclosure when Harvey Weinstein's sexual abuse came to light, those very serious allegations gave light to many other instances of women in the workplace experiencing sexual abuse and drew attention to bullying experienced by men and women both. A light has been shone on the fact that non-disclosure agreements are used all too often to silence complainants who have experienced harassment of a sexual nature that sometimes falls short of criminal behaviour. Do the Government agree that they should give a clear statement, and, if possible, bring legislation, to say that it is not right to use non-disclosure agreements in this way for the purpose of silencing complaint?

The second matter is that we also know that many employment contracts now contain a clause to say that there has to be recourse to arbitration if there are any complaints or matters of dispute to avoid court hearings. Again, that silencing is often used to prevent those who are suffering harassment and abuse in the workplace from taking their cases forward. Should something not be done about that?

Lord Keen of Elie: My Lords, the Employment Rights Act 1996 makes two things clear. First, if an employee does not get independent legal advice regarding such an agreement it will be void. Secondly, it ensures that where a non-disclosure agreement has been entered into it does not affect the right of the employee to make a protected disclosure—that is, a disclosure that pertains to various forms of wrongdoing and is made to a protected party.

Lord Thomas of Gresford (LD): But protected disclosure does not cover all forms of sexual harassment or harassment in the workplace. Is there not a duty on lawyers to make it clear to their clients, whether employers or employees, that non-disclosure clauses in contracts of employment or settlement agreements cannot be used to conceal criminal conduct or to prevent the reporting of conduct that amounts to sexual harassment, particularly where it involves an abuse of power by a senior over a junior or where it is repeated and habitual?

Lord Keen of Elie: My Lords, the Protection from Harassment Act 1997 includes the matter of sexual harassment. On the need to disclose to employees their rights in this context, I reiterate that, to have an enforceable non-disclosure agreement, it is necessary that the employee should have been given the opportunity to take independent legal advice.

Lord Soley (Lab): By chance I recently came across the case of an employee of a charitable body that operated in the private and public sectors and had contracts with employees that prevented them taking away any correspondence between themselves and the employer in the event of their leaving for any purpose at all, as far as I could understand the contract. I wonder whether that is lawful. I should add that the case was in Scotland. I am not sure whether the same laws apply in Scotland in this case as would apply in England. Can the Minister offer the House any guidance on whether such a contractual arrangement between an employer and employee is legal?

Lord Keen of Elie: My Lords, I cannot comment in detail on the particular case outlined, but there are legitimate reasons why an employer would wish to retain correspondence or other confidential information pertaining either to its business or to its charitable functions and not wish it to be taken away. There can be a legitimate basis for such a provision.

Lord Watts (Lab): My Lords, are not large amounts of money often paid to individuals which may satisfy that individual but are not in the public interest? Should we not do away with some of these disclosure deals?

Lord Keen of Elie: My Lords, in circumstances where a person accepts a sum of money which is beyond reasonable indemnity for any loss they have suffered on the grounds that they will not disclose wrongdoing or a criminal offence, they themselves are liable to commit a criminal offence.

Baroness Chakrabarti (Lab): My Lords, the Minister will remember, I think, a very similar Question being asked on 22 January. It is now a glorious May Day. Given the complexities and competing public concerns around this issue, might the Government not consider setting out a clear timetable for clarity in policy and potential legislation in this area?

Lord Keen of Elie: My Lords, the House of Commons Women and Equalities Select Committee is currently conducting an inquiry into sexual harassment in the workplace and has taken evidence about the misuse of NDAs in that context. The Government want to see what the committee has to say about that before reaching their own conclusions. In other words, we will make an informed decision on the matter.

Lord Faulks (Con): My Lords, I am sure that the whole House deprecates the use of non-disclosure agreements to bully employees or former employees, and appreciates that the Government are looking carefully at this. However, does my noble and learned friend agree that non-disclosure agreements originally came into being to protect, quite legitimately, trade secrets and other matters that it was in the interest of both parties should remain secret? I hope that the Government will bear that in mind when deciding what to do in this area.

Lord Keen of Elie: My Lords, my noble friend is absolutely correct: non-disclosure agreements have an entirely legitimate use, particularly in the context of protecting confidential information of an employer upon the departure of an employee.

Government Vehicles: Procurement

Question

2.52 pm

Asked by ***Baroness Randerson***

To ask Her Majesty's Government what is their policy on procurement of the Government's fleet of vehicles.

Lord Young of Cookham (Con): My Lords, UK public procurement policy for all goods and services, including vehicles, is to award contracts on the basis of best value for money, which is achieved through fair and open competition and in line with our current international obligations. *Government Buying Standards for Transport*, published in December 2017, requires fleet managers to procure zero-emission or ultra-low-emission vehicles whenever possible.

Baroness Randerson (LD): My Lords, the Minister referred to the need for ultra-low-emission vehicles. Figures show that the Ministry of Justice has a fleet of 1,482 vehicles, of which only two are electric. At the same time, the Government have a target of 25% of the cars in the central government fleet being electric by 2022. Does the Minister agree that the Government have made far too modest a start on what is already a very modest target? Does he agree that 50%, or even 75%, would be a more realistic option? Does he agree that the Government should lead by example?

Lord Young of Cookham: The Government may be starting from a low base, but if one looks at all the cars in the country one sees that 0.4% are plug-in electric; the percentage for the Government Car Service is 8.3%, so, to that extent, we are ahead of the game. We are planning to drive up to, as a minimum, 25% of the fleet being electrified—I hope that that will not distress the noble Lord, Lord West—by 2022. As we make improvements through the Bill in which the noble Baroness has taken an interest, it will become easier not just for the Government but for everyone else to invest in low-emission vehicles.

Lord Hunt of Kings Heath (Lab): My Lords, is the move to increase the proportion of ultra-low-emission vehicles from 7% to 25% in 2022, which is some years away, an extension of the enunciation by the noble Lord, Lord Henley, that the Government will not be rushed? The Minister knows that there is a serious problem with air quality standards in London and other urban areas. Given the slowness of the Government to respond, can he tell me when he expects this country to reach the standards that have been set?

Lord Young of Cookham: On the first part of the noble Lord's question, the Government published a document in December last year, *Government Buying Standards for Transport*, which makes their position on cars absolutely clear:

> "The default is zero or ultra low emission at tailpipe with alternatives considered only in exceptional circumstances".

As the fleet is refreshed—we keep cars for four or five years—and as that mandate begins to bite, so the percentage of government cars that are electrified will inevitably be driven up. As for his broader question, we will be publishing our clean air strategy later this year. We are due to respond shortly to a Select Committee report recommending that the Government should set out a procurement route map to show how they will achieve this target in the Budget and extend this commitment to cover the fleets of all departments, agencies and public bodies.

Baroness Jones of Moulsecoomb (GP): My Lords, are the Government putting any energy into thinking about reducing their car fleet overall? The Minister mentioned cleaning up the air. The best way to clean up the air is not to have any vehicles at all and to encourage people to walk and cycle, including Ministers. Have the Government considered that?

Lord Young of Cookham: This Minister certainly has. Not only do I have an all-electric car, but I have a non-electric bicycle, and I suffer from range anxiety with both. As for reducing the fleet, the document to which I referred a moment ago starts by asking government departments whether regular journeys are required at all, whether journeys can be replaced by phone teleconference and whether the need for a vehicle is still valid or just a legacy arrangement. The cost of the Government Car Service continues to be reduced.

Lord Teverson (LD): My Lords, the Government are a major fleet operator nationally. What steps are they taking to collaborate with the automotive industry and, indeed, the IT industry, which is moving into this sector, not just to lay down legislation for things such as driverless cars and energy efficiency, but to work with those organisations to perfect those technologies, not least fuel cell technology and hydrogen?

Lord Young of Cookham: The noble Lord raises a valid point. The Government's industrial strategy, which was published a few months ago, says that the Government are providing industry with visibility in terms of potential procurement opportunities across 19 sectors, of which this is one. Improving pre-procurement dialogue is a key part of that process. I know that my noble friend the Minister at the Department for Transport and her colleagues are in touch with the automotive industry to make sure that it can respond to the challenges that are behind many of the questions that I have been asked this afternoon.

Lord West of Spithead (Lab): My Lords, the Minister spotted that the word "fleet" got me rather excited, but my question relates to procurement. I have concerns, after my time in government, that departments play shops. For a particular department, it might make sense to go for a cheaper option, but the totality of the real cost for the country is never properly calculated by the Treasury. For example, not giving work to a certain factory means that it will go bust and we will have to pay money for unemployment and retraining, but these things are never taken into the calculation. We are very bad, sometimes, about making an overall decision about what is the best value for money for the nation, rather than a shortcut for a particular department. Is the Minister happy that the Treasury takes those factors into account when fleet—I am talking about car fleets, sadly—decisions are made?

Lord Young of Cookham: The Government try to use their purchasing power to get the best value for money when it comes to investing in these vehicles. The Crown Commercial Service aggregates, through the vehicle purchase e-auction programme, the requirements across all government departments. It then has what is called a reverse auction three or four times a year to get the best bids for the vehicles that it needs. When it commissions the vehicles, it looks at the overall cost, not just the upfront cost. The contracts quite often go further than just the purchase and include servicing and repairs throughout the life of the vehicle.

Lord Dannatt (CB): My Lords, the noble Lord, Lord West, raised the question of fleets. Naval ships have not come into this conversation, but would the Minister care to consult his colleagues in the Ministry of Defence and inquire whether the fleet of aircraft carriers, signed off in 2007 at £3.6 billion, which has recently come in at £6.2 billion, explains why the Army has a very small fleet of medium-weight armoured fighting vehicles?

Lord Young of Cookham: I knew that it was a mistake to draw attention to the word "fleet" in answer to an earlier question. I say to the noble Lord that my noble friend who has responsibility for procurement at the Ministry of Defence has heard his question. There was someone sitting between us, so he was not able to relay the answer to me, but I am sure that he will be in touch with the noble Lord shortly.

Fire Safety: Building Materials

Question

3 pm

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

To ask Her Majesty's Government what action they are taking to ensure the safety of the public in the light of the Association of British Insurers' report, published on 25 April, on fire safety testing of building materials following the Grenfell Tower fire.

Lord Kennedy of Southwark (Lab Co-op): My Lords, in asking the Question standing in my name of the Order Paper, I refer the House to my relevant interests in the register.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the Government have taken advice from their expert panel on fire and safety on this report. The expert panel

has advised that the report's findings do not require changes to be made to the advice that has been given to building owners about actions that they should take. The programme to identify and make safe buildings with ACM cladding continues. The British Standards Institution has already sent the report to the relevant technical committee for review.

Lord Kennedy of Southwark: My Lords, the report of the Fire Protection Association, commissioned by the Association of British Insurers, highlighted that the official testing regime may have overlooked a number of real-life factors when conducting its tests on the appropriateness of the standard test for cladding materials. I hear what the Minister says, but will he look at whether there is a need to convene a committee to look at the British Standard 8414 test so we can be sure that the findings of the report have been considered carefully?

Lord Bourne of Aberystwyth: My Lords, I am grateful to the noble Lord. The relevant standard, BS 8414, was originally set in 2005 and has no doubt been effective. As I indicated, the report has gone to the relevant technical committee of the BSI for analysis. It will take a view on it and, if appropriate, refer it to the Government. That is the appropriate process. Of course we will take it very seriously when it gives us the report.

Baroness Gardner of Parkes (Con): My Lords, is the Minister aware of the statement from the fire control chiefs that they are very concerned about the complete lack of checking for the short holiday lets occurring all over London? No one quite knows where they are.

Lord Bourne of Aberystwyth: My Lords, the noble Baroness is our side's answer to the noble Lord, Lord West, for getting in these questions on pet areas. I appreciate what she says about short-term accommodation lets and I will ensure that that matter is looked at. I reassure her that the Short Term Accommodation Association, which I know she has taken a great interest in, looks at this sort of thing and is moving things forward in relation to the issues she has brought up previously, by starting a pilot agreement with Westminster City Council.

Lord Stunell (LD): My Lords, I remind the House that I served as Minister with responsibility for building regulations between 2010 and 2012. Whatever controversy there may be about the adequacy of the fire tests, they have shown that more than 300 blocks need amending. According to the department's own figures, 297 blocks have still not been repaired. Something like 7,000 families are stuck in them, facing not just the risk of fire but the reality of higher heating bills because of damp and condensation. None of those families brought this on themselves. Will the Government now agree to fund a "pay now, recover later" scheme so that there is no more delay in getting on with this process?

Lord Bourne of Aberystwyth: My Lords, the noble Lord gave very distinguished service in the role that he referred to. The issue of the standard we are looking at here is somewhat different from the ongoing work on the ACM cladding, which I think he is referring to. Work on 66% of the buildings in the public sector has been commenced and, for the remaining 34%, appropriate interim measures are place. We are identifying the blocks in the private sector, which I think is where the condensation issue that he talks about is relevant. We have provided £1 million to local councils to identify those blocks. In relation to whether the cost of that is borne by the landlord or the tenant, he will have seen that Barratt has stepped into the breach to help with Citiscape, which I applaud. In other areas we are hoping that landlords will step forward. Where they do not, we have a round table which will look at this issue across the piece.

Lord Naseby (Con): Is my noble friend aware that this House will recognise the strength and fervour that he has shown in trying to get a grip on this quite complicated area? Requirement 8414 covers a whole host of materials used in the industry. It is not clear to me, or I am sure to a number of colleagues who take a particular interest, whether those who inspect those materials subsequently are necessarily clear on whether they meet the requirements of 8414 or not. Can some system be looked at to ensure that there is real co-ordination between the manufacturers of these important products and those who subsequently—some years later—carry out regular inspections on their consistency over time?

Lord Bourne of Aberystwyth: I am most grateful to my noble friend for his comments. In relation to 8414, the report particularly concerns external wall cladding systems—it is the whole cladding system, including the insulation, which has been looked at and referred to the relevant sub-committee for review. Of course we will take seriously the response from the relevant committee to the Government but the House should bear in mind that this report was issued barely a week ago.

Domestic Gas and Electricity (Tariff Cap) Bill

First Reading

3.06 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Privileges and Conduct Committee: First Report

Motion to Agree

3.07 pm

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

That the Report from the Select Committee on the conduct of Lord Bassam of Brighton (1st Report, HL Paper 126) be agreed to.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, this report addresses the conduct of the noble Lord, Lord Bassam of Brighton, who referred himself to the independent Commissioner for Standards following media allegations that he had wrongly claimed

[LORD MCFALL OF ALCLUITH]
the Lords' travel allowance, paid by the House, and the Lords' officeholder's allowance, paid by the Cabinet Office.

The commissioner found that the noble Lord, Lord Bassam, should have used the officeholder's allowance to cover some of his daily travel costs and therefore should not have claimed as much in Lords' travel allowances as he did. In so claiming, the noble Lord breached provisions in the House of Lords Code of Conduct. The commissioner found that there was a lack of clarity and guidance surrounding the relationship between the Lords' officeholder's allowance and the Lords' travel allowance. She concluded that although the noble Lord broke the Code of Conduct by making the claims, he did so mistakenly, not dishonestly, and therefore did not breach provisions requiring Members to act on their personal honour.

In its report, the Privileges and Conduct Committee recommends that the noble Lord, Lord Bassam, should repay £15,737 in overclaimed travel allowance. The noble Lord has written to the chair of the sub-committee to apologise and arrangements have been made for the money to be repaid. The Committee for Privileges and Conduct has sought reassurance that guidance will be clarified and procedures altered to ensure that no similar confusion can arise in the future.

Motion agreed.

Financial Guidance and Claims Bill [HL]

Commons Amendments

3.10 pm

Motion on Amendment 1

Moved by ***Baroness Buscombe***

That this House do agree with the Commons in their Amendment 1.

1: Clause 1, page 2, line 6, at end insert "and the devolved authorities."

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, throughout the passage of this Bill, the importance of increasing the number of people taking Pension Wise guidance has been debated and recognised on all sides. We all want people to make more informed decisions and to make it the norm to use Pension Wise before accessing their pension.

Amendments 4, 7, 8 and 36 place new duties on managers and trustees of all defined contribution pension schemes. They build on proposals put forward by noble Lords who introduced an amendment seeking to give those accessing pension flexibilities a stronger, last-minute nudge towards Pension Wise. They also draw on the proposals put forward subsequently by the Work and Pensions Select Committee in another place to require that people should have to make an active decision to opt out, rather than be able to opt out passively.

I want to stress that the guidance given under these amendments can be provided only by the single financial guidance body. This is by virtue of the interaction between Clauses 3 and 5 and Amendments 7 and 8. Subsection (7) of the new clause inserted by Amendment 7 and subsection (6) of the new clause inserted by Amendment 8 define the pensions guidance referred to in the amendments as the information or guidance provided in pursuance of Clause 5. This clause requires the new body, as part of its free and impartial pensions guidance function in Clause 3, to deliver what we know as Pension Wise guidance.

Throughout this process, discussions with Members of both Houses and key stakeholders brought out two core issues. The first was that any requirements should be based on the presumption that people have not already accessed Pension Wise guidance. The second was that, if people are to opt out of accessing such guidance, it might be desirable for that opt-out decision to be made and communicated to a body other than their own pension scheme. These amendments to the Bill provide a workable way to achieve the consensus position that was reached in those discussions. When an individual seeks to access or transfer their pension pot, these duties will ensure that members are referred to Pension Wise guidance, that members receive an explanation of the nature and purpose of that guidance, and that before proceeding with an application, subject to any exceptions, schemes must ensure that members have either received Pension Wise guidance or have explicitly opted out.

Rules and regulations must specify how, and to whom, the member must confirm that they are opting out. This allows for the opt-out process to be separated from schemes. Rules and regulations will set out the detail of the opt-out process based on evidence of what helps people take up Pension Wise guidance. This approach is completely aligned with the Select Committee in another place. The committee recommended that the details of how an individual could expressly turn down the opportunity to receive guidance should be set out in FCA rules following public consultation.

It is important that new requirements introduced in this area are operationally deliverable for schemes and the new guidance body. Detailed rules and regulations should be based on evidence of what delivers the outcome we all want: more people taking up Pension Wise guidance and a robust opt-out process. These amendments provide scope to test what works best and to update the approach as the pensions landscape, technology and the needs of the users change. This might be through direct hand-off of the member from the scheme to Pension Wise, including for the purpose of conducting an opt-out process, or through providers booking Pension Wise appointments for their members.

Further, these clauses also require the FCA, the Secretary of State and the new body to work together to develop and deliver these new requirements. As is customary, before making the rules and regulations the FCA and the Secretary of State will need to consult, providing the proper opportunity for public scrutiny of proposals before they are commenced.

3.15 pm

Once again, I thank everyone who has contributed to our thinking on these amendments, particularly the noble Lords, Lord McKenzie and Lord Sharkey, and the noble Baroness, Lady Drake, but also all other noble Lords who have taken part in the many debates that we have had in this place and the subsequent meetings that we have held. The collaboration and listening process has really made a difference and helped to shape these vital protections. They lay the foundation for a very strong and effective final nudge towards guidance and, we believe, strike the right balance between what is set out in primary legislation and rules and regulations. I am confident that they will deliver the right outcomes for consumers.

Amendments 1 and 35 enable transfer schemes under Schedule 2 to transfer staff, property, rights and liabilities from the Money Advice Service to the devolved authorities. This is necessary in view of the fact that the devolved authorities will be responsible for the provision of debt advice in their areas once the single financial guidance body is established. I beg to move.

Baroness Drake (Lab): My Lords, I recognise that the constructive engagement of the Ministers with Members in the House of Commons and noble Lords in this House has resulted in beneficial amendments to the Bill and enthused people about the creation of the new financial guidance body. I accept that we need to move on and let the department get on with building the new body and delivering all the grand things that we want it to achieve. I thank the Minister and the Bill team for the access that was afforded to me personally to raise matters on the Bill.

I welcome the Minister's clarification that the reference to pension guidance in Amendments 7 and 8 is defined by reference to Section 5 in the Bill, on the new body's pension guidance function, which itself is a subset of Section 3, which requires that guidance to be free and impartial. I think there was some misunderstanding and it is very helpful that that clarity of link between the sections has been made clear.

If I may make one final observation, a well-founded consensus on matters of high principle supported by legislation can sometimes be undermined in the implementation. Everyone agrees that referring people by default nudging to impartial guidance before they access their pension savings is an integral part of protecting consumers and enabling them to make more informed decisions. However, there are anxieties that the FCA and the Secretary of State, in setting the rules for the process, should not give administrative control to the providers particularly of the opt-out process, given that the providers will not be impartial because they have a direct interest in retaining the consumer as a customer for their product. So any reassurance from the Minister that the Government recognise this concern, and intend that the rules for nudging and defaulting people into impartial guidance will be designed in such a way as to prevent providers from manipulating the process to undermine the referral to guidance, would be welcome.

Baroness Altmann (Con): My Lords, I am grateful to the Minister and officials for their work on the Bill, but significant flaws remain, including a point on which I hope the Minister will be able to offer reassurance relating to pensions guidance.

Along with the noble Lords, Lord Sharkey and Lord McKenzie, Members of this House voted by 283 to 201 in October to add an amendment creating provisions for savers to be defaulted to impartial, independent guidance if they have not already received guidance or regulated advice before they decide when, whether or how to access their pensions. The purpose of those provisions was to address the consistently low take-up level of pensions guidance by harnessing the potent force of inertia.

The amendment passed by this House was supported because there is a wealth of evidence suggesting that people are ill-equipped to make key decisions without such impartial, independent professional support. That was specifically the intention behind setting up the Pension Wise service when the pension freedoms were introduced. I hasten to add that I congratulate the Government once again on introducing those pension freedoms—I think that that was the right thing to do—but fewer than one in 10 are making use of this guidance, despite the fact that so many need it.

At Second Reading in the other place in February, I was pleased to hear assurances from the Pensions Minister that the new clauses would be strengthened—albeit by some fine-tuning. The same assurances were given in evidence to the Work and Pensions Select Committee, yet the Commons amendments show that the promised fine-tuning seems to have been somewhat inadequately applied.

Instead of being strengthened, the default guidance provisions added by noble Lords have been replaced with clauses that merely require pension providers to refer savers to guidance if they have not yet done so. This introduces no new requirement for providers beyond what is already required by FCA rules. The new clauses also leave open the possibility that savers may opt out of guidance by their scheme provider. The FCA's consumer panel believes that this is inadequate, the noble Baroness, Lady Drake, just expressed similar concerns, and I should be grateful if my noble friend could reassure the House that there will be a separate and impartial opt-out process. There are significant reasons to fear that consumers may not otherwise receive the assistance that they desperately need.

If providers have an interest in not sending people to the guidance service and finding ways in which they can encourage them to call their own helpline or take advantage of their own services, the concerns expressed by Age UK, the Financial Services Consumer Panel and by noble Lords when the Bill was originally passed will, unfortunately, be borne out.

This may seem a small point, but a great deal depends on it for millions of savers. As the Work and Pensions Select Committee pointed out, providers do not usually benefit if there are higher rates of guidance take-up—indeed, it may be to their detriment—so they may well try to find ways round and an opt-out process that is not impartial and, perhaps, take advantage of customers in that way. Therefore, I would be grateful if my noble friend was able to offer reassurances about the opt-out process. I welcome the idea of default guidance, but I hope that regulations will be a lot stronger than the current legislation seems to suggest.

Lord McKenzie of Luton (Lab): My Lords, we are happy to support the Government on this group of amendments. Amendments 7 and 8 in particular are very important, relating as they do to pensions guidance. Amendment 7 relates to personal pension schemes, Amendment 8 is a parallel one relating to occupational schemes, and there is a further subset of provisions relating to occupational schemes in Northern Ireland.

Our earlier deliberations and those of the other place had a strong focus on consumer protection, recognised this afternoon, on pressing back against pension scams and on the risks that can arise from an imbalance in information. These issues have been heightened in significance since the advent of pensions freedom, and we are wholly supportive of the requirement on the FCA to make rules which require trustees, managers and stakeholders, when liquidating and transferring entitlements, to refer members to appropriate guidance provided by the SFGB or its delivery partners to ensure that effective explanations and/or opting-out processes are in place.

Amendments 1 and 35, which we support, enable transfer schemes under Schedule 2 to transfer staff rights properly from the Consumer Financial Education Body to SFGB and devolved authorities. It would be relevant if devolved authorities became responsible for provision of debt advice in their area. This facilitates the devolved authorities being responsible for the debt advice in their area. As the Minister explained on introducing the Bill into your Lordships' House, the devolved authorities currently deliver a broad range of guidance services. By transferring responsibility for debt advice, there will be opportunities for joining up the commissioning of services—and we obviously support this.

As has been evidenced from the earlier discussion on this item, there has been discussion about whether the clauses are robust enough in enabling impartial advice. We know the view of the noble Baroness, Lady Altmann. It seemed to me that the Minister had dealt with this; a note provided by the Minister would appear to put that matter to rest—in particular, about the need to look at the interaction between Clauses 3 and 5. I think that my noble friend Lady Drake touched on that matter. New subsection (7) in Amendment 7 and new subsection (6) in Amendment 8 define the pensions guidance referred to in the amendments as the "information or guidance" provided in pursuance of Clause 5 of the Bill. That clause requires the new body, as part of its "free and impartial" pensions guidance functions in Clause 3, to deliver what we know as Pension Wise guidance. That seems to address the very real concern that the noble Baroness, Lady Altmann, raised.

We enter the final straight on this important Bill, and we might reflect just briefly on the journey that we have made and the changes that have occurred, with yet more to follow this afternoon. This is an important measure, encompassing as it does the creation of a single financial guidance body and its reach to cover pensions guidance, debt advice, money guidance and consumer protection functions. It is charged with developing a national strategy to improve financial capability. It further deals with the regulation of claims management services, in particular to challenge fraudulent practices and excessive charging.

Some important changes have been made to the Bill, especially in your Lordships' House, and this can be attributed to the open-book approach of the Minister in particular, for which we thank her, as well as the engagement cross party of your Lordships around the House. Key matters now include the duty of care for the FCA, and the breathing space scheme—a very important provision. My noble friend Lord Stevenson was heavily involved in that, of course. Then there is the prohibition on cold-calling for pensions and CMCs, with enabling legislation to cover other financial products; the interim fee cap for PFI claims management; default guidance for pensions; the extension of CMC regulation to Scotland; and much more. I hope that we will have the opportunity finally to thank the Minister and her colleagues in due course, but is right that we reflect on the journey that we have made so far in the Bill.

Lord Flight (Con): My Lords, I support these amendments. I put on record the fact that, in the largest area of pensions saving, occupational schemes, participants typically do not seek advice but allow their savings to go into the default fund, which typically may have taken up as much as 90% of the total savings. There is nothing wrong with that, and default funds are generally constructed very sensibly for long-term pension fund investment. However, it is the area where most money ends up and where individual beneficiaries do not really take decisions themselves.

3.30 pm

Baroness Buscombe: I thank all noble Lords who have taken part in this brief debate, and in particular the noble Lord, Lord McKenzie, for his very warm words of support for these amendments and for the Bill, and for the way in which we have worked collaboratively and have, collectively, improved the Bill. We have sought to do so with care not to impose requirements where they are not necessary or where they could box the new body into a corner in terms of its ability to be flexible. Default guidance is an example of an area where we want to be extremely careful. That is why so much time and care has been taken to make sure that we have come to a situation where we are managing that balance sufficiently.

I absolutely understand the concerns of the noble Baroness, Lady Drake, in relation to the scheme being free and impartial. To reassure her, and my noble friend Lady Altmann, I will refer back to a part of my speaking note where I made it absolutely clear that that is the case and stressed that the guidance given under these amendments, as the noble Lord, Lord McKenzie, said,

> "can only be provided by the single financial guidance body. This is by virtue of the interaction between Clauses 3 and 5, and Amendments 7 and 8. Subsection (7) of Amendment 7 and subsection (6) of Amendment 8 define the pensions guidance referred to in the amendments as the information or guidance provided in pursuance of Clause 5 of the Bill".

This sounds rather convoluted, but I reassure noble Lords that it actually creates clarity.

I fear that my noble friend Lady Altmann is looking for mandatory guidance, but we simply do not believe that that is right. As the Work and Pensions Select Committee in another place observed in its report, Clause 5(2) does not require individuals to participate

in or expressly turn down guidance before being granted access to their pension pot. Opting out could be passive for a significant proportion of people. It also risks making routine transactions, and those in which the individual has already taken advice, unnecessarily cumbersome. Further, the clauses which relate to the rules and regulations that will be developed require the FCA, the Secretary of State and the new body to work together —this is very important—to develop these new requirements. Respecting the concerns of my noble friend Lady Altmann, we are talking about a strong final nudge. As is customary, before making the rules and regulations the FCA and the Secretary of State will need to consult, providing the proper opportunity for public scrutiny of proposals before they are commenced.

My noble friend referred to a vote that took place on default guidance. However, it is important to stress that it did not reference mandating the guidance. All our research, including talking to stakeholders, shows—

Baroness Altmann: I thank my noble friend for giving way. I am not in favour of mandatory guidance: I have always supported the idea of default guidance.

Baroness Buscombe: On that basis, I hope that I have—at least to some degree—reassured noble Lords that we have found the right balance, having worked very closely with all noble Lords and the Select Committee in another place to ensure that we hit the right mark in developing default guidance.

Motion on Amendment 1 agreed.

Motion on Amendment 2

Moved by ***Baroness Buscombe***

That this House do agree with the Commons in their Amendment 2.

2: Clause 3, page 3, line 12, leave out subsection (7) and insert—

"(7) The consumer protection function is—

(a) to notify the FCA where, in the exercise of its other functions, the single financial guidance body becomes aware of practices carried out by FCA- regulated persons (within the meaning of section 139A of the Financial Services and Markets Act 2000) which it considers to be detrimental to consumers, and

(b) to consider the effect of unsolicited direct marketing on consumers of financial products and services, and, in particular—

(i) from time to time publish an assessment of whether unsolicited direct marketing is, or may be, having a detrimental effect on consumers, and

(ii) advise the Secretary of State whether to make regulations under section (*Unsolicited direct marketing: other consumer financial products etc*) (unsolicited direct marketing: other consumer financial products etc)."

Baroness Buscombe: My Lords, let me now turn to the Government's action to further protect consumers from harmful cold calls. This Bill has been agenda-setting in relation to cold calling, as well as in respect of our close co-operation across the House on this important issue. I have been delighted to engage closely with the noble Lords, Lord McKenzie and Lord Sharkey, on these important issues.

The measures introduced in the other place enable us to restrict pensions and claims management cold calls—two of the most pressing areas of need for consumers—and to bring forward measures that enable the Government to keep the issue under review and act further in relation to consumer financial products when it would be appropriate. Indeed, I was delighted to hear that in the other place, the honourable Member for Birmingham Erdington described our commitment to ban pensions cold calling as a "wholly welcome step", and the honourable Member for Eastbourne noted that the Liberal Democrats "welcome the amendments" that the Government have made on these issues.

Let me turn to our specific amendments. Amendments 10 and 11 allow us to protect consumers from harmful cold calls by enabling us to lay regulations to ban pension cold calling, and to introduce bans for other forms of cold calling if we consider it appropriate. Amendment 10 builds on the proposed approach of the Commons Work and Pensions Select Committee to banning pensions cold calling. The new clause enables us to ban pensions cold calling both quickly and effectively. Our proposed ban has a wide scope, meaning that we can ban all pension-related calls. Crucially, unlike the existing Clause 4, we do not need to wait for advice from the new body before laying a ban. Let me be absolutely clear that we are going to make regulations to ban pensions cold calling as soon as possible. This is a commitment we have made repeatedly. We know the detriment that pensions cold calling can cause and we are going to protect consumers. Indeed, I hope noble Lords are further reassured on this point by the fact that the Economic Secretary to the Treasury will have to lay a Statement before both Houses if we have not made regulations by the end of June 2018.

Turning to Amendment 11, it is clear to the Government that too often significant consumer detriment arises because of cold calling. If the Government, supported by the new body, find that there is evidence that people are experiencing detriment as a result of cold calling on consumer financial products, we will not hesitate to use this power to take action to protect consumers.

I am now pleased to be able to confirm the final part of our approach to protect consumers from cold calling when speaking to Amendment 2. The amendment expands and improves the consumer protection function, and gives the new body powers to publish assessments of consumer detriment resulting from cold calling on a regular basis, and advise the Secretary of State on where further bans should be implemented. The body's core purpose is to provide high-quality support on all money matters, so we believe that specifying that the body must complete a two-yearly review would not be the correct use of its resources. Instead, the Government expect the body to be flexible and responsive to emerging issues, and we expect it to report promptly as and when such evidence of detriment is available. I, alongside Ministers in the other place, will work closely with the body to ensure that consumers are firmly protected from nuisance calls.

Alongside these changes, we also introduce Amendment 5, which strengthens the information-sharing provision in the Bill with respect to the consumer protection function.

[Baroness Buscombe]

Having replicated much of the existing Clause 4, but in a more effective way that helps to better protect consumers, we are committed to removing the existing Clause 4 through Amendment 3. I beg to move.

Motion on Amendment 2A (as an amendment to Amendment 2)

Moved by ***Lord Sharkey***

That this House do agree with Amendment 2A.

2A: Line 10, after second "time" insert ", and not less than once every two years,"

Lord Sharkey (LD): My Lords, my amendment to Commons Amendment 2 deals with the issue of cold calling spoken to by the Minister a moment ago. Your Lordships will recall that as the Bill has progressed, we have discussed cold calling extensively. There was almost universal acknowledgement of widespread abuse, of invitation to commit fraud and of an unwarranted and all too frequent intrusion into people's lives. I will not rehearse at this late stage all the details of the evils inflicted on us all, and particularly on the elderly and the vulnerable, by unscrupulous cold calling. The House clearly recognised an omnipresent when it saw one: we voted decisively to address the problem via this Bill.

In the Bill we sent to the Commons, we included, as the Minister has said, a provision to oblige the SFGB to,

"have regard to the effect of cold-calling on consumer protection",

and to,

"make and publish an annual assessment of any consumer detriment".

We also required the SFGB, where it found consumer detriment, to advise the Secretary of State,

"to institute bans on … cold-calling and the commercial use of any data obtained by … cold-calling".

The Bill now comes back to us slightly modified and in many ways improved, but in one critical way, significantly weakened. Amendment 2(7)(b) requires the SFGB,

"to consider the effect of unsolicited direct marketing on consumers of financial products and services, and … from time to time to publish an assessment of whether unsolicited direct marketing is, or may be, having a detrimental effect on consumers".

The final part of the Government's amendment obliges the SFGB to advise the Secretary of State to "make regulations" to remedy any defect.

There are two very significant differences between this and the original formulation. The latter cut off the revenue chain for cold callers operating from outside the UK by banning the use of data obtained unlawfully. This is absent from Amendment 2. I will return to this issue later when I discuss Government Amendment 10 and, in passing, Amendment 21. Here, I want only to deal with the Government's use of the words "from time to time"—words which the Minister herself has highlighted. The full text states that the SFGB,

"from time to time … publish an assessment of whether unsolicited direct marketing is, or may be, having a detrimental effect on consumers".

The question here is: what is the force of the phrase "from time to time"? What obligation does it really put upon the SFGB? What would count as "from time to time"? For example, would once in five years satisfy? Would once every 10 years satisfy? This is an extremely weak requirement, so vague as to have no force at all. The phrase "from time to time" does not in practice place any definable obligation on the SFGB. This is not only unsatisfactory; it is also not what this House voted for. We voted for an annual assessment.

There may of course be arguments—the Minister has deployed some of them—against annual assessments: for example, that, in its first year of existence, the SFGB may well have other very urgent priorities. I understand that, and that is why my proposed amendment simply adds the words,

"and not less than once every two years".

This seems to me a moderate response that is necessary to prevent a vital part of our agreed curbs on cold calling being rendered ineffective by Amendment 2. I very much look forward to the Minister's response.

The Minister told us several times during the Bill's progress through our House—with real passion—that she abhorred cold calling. I hope that she can find a way to reassure us that the Government's proposed amendment does in fact have meaning and force. Of course, she could do that by accepting Amendment 2A.

3.45 pm

On Amendment 10A, in our discussions about cold calling in Committee and on Report, I recall frequent mention of the difficulty, if not the impossibility, of dealing with calls made from outside the UK to UK residents. There seemed to be an assumption that nothing could be done about this. This amended Bill seems to reflect that assumption. Amendments 10 and 21 are both aimed at banning unsolicited cold calls from abroad. Amendment 10 is for calls related to pensions, and Amendment 21 is for calls related to claims management companies. Both are areas, as the Minister correctly said, of huge potential and actual consumer damage. However, neither of the Government's amendments deals with the problems presented by cold calling into the UK from abroad. That is surely what will increasingly happen if we prevent cold calling from companies located in the UK. It surely is unarguable that if cold calling companies relocate abroad and can continue cold calling into the UK, they will do exactly that. The government amendments will not have dealt with the cold calling problem comprehensively; they will have offshored it.

There are two possible responses to all this. The first is that the Minister may be able to point us—I hope she can—to existing rules, regulations or laws which will in fact prevent such offshore cold calling. That will of course be a satisfactory, if rather surprising, response at this stage. The second response is that contained in my Amendment 10A and, later on, Amendment 21A. Both amendments do essentially the same thing, attempting to cut off the revenue stream to offshore cold callers from UK principals. They do this by banning the use of data obtained by unsolicited cold calling by UK-based organisations. To put this another way, offshore cold callers will not be able to use themselves or sell on to UK organisations for use any data obtained unlawfully. No sale, no incentive—no cold calls.

Our attempts to control and dramatically reduce the volume of unsolicited cold calling should address this offshore problem. We need to try to shut down

entirely unsolicited cold calling for pensions and for CMCs. I know that the Minister will agree with that. We should also be able to do the same for other organisations who prey on consumers or persuade them to fraud. The Bill will allow us to do that as well where there is evidence of detriment, and I very much welcome that provision.

My amendments are aimed at removing the peril of offshore cold calling. I hope that the Minister will be able to reassure us that these amendments are unnecessary or that she can accept them. I beg to move.

The Earl of Kinnoull (CB): My Lords, I will comment briefly on Amendments 2A and 10A. I very much congratulate the noble Lord, Lord Sharkey, on putting them down and on making such a clear presentation of them, and I will not add very much to what he had to say.

I was looking at something that I pointed out to the House at an earlier stage in respect of the size of the asset of private pensions in Britain, when I referred the House to the Office for National Statistics report, one chapter of which is on private pension wealth. The median for someone between the age of 55 and 64 who has a private pension is to have a pot of £145,000. To put that in perspective, the average value of a house in Britain in June last year was £220,000, and Savills said that it thought that 48% of the house was financed by debt. That means that for an average person in Britain, the pot of pension is huge, and of the same order, as the value of their home. This makes it an incredibly juicy target for the bad guys.

That is why it is very important—I strongly suggest it is why people voted for the amendments when they did—that a belt-and-braces approach must be taken to frustrate the wicked designs of the bad guys. I very much hope that the Minister will be able to say that the Government will support these two amendments.

Baroness Altmann: My Lords, I support Amendment 10A and I hope that my noble friend will be able to accept it. Of course I welcome the Bill and the concept of a ban on cold calling but I fear, as we have expressed and the noble Lord, Lord Sharkey, in particular has pointed out, that unless we ban the use of any leads that have been obtained from cold calling we will not protect consumers.

What is cold calling? It is unsolicited, direct marketing. Companies try to approach potential customers to entice them into buying products that in most cases end up being scams and on which those customers often end up losing significant sums of money.

The legislation tends to focus on this issue from the perspective of protecting people's information and data, but this issue of banning cold calling needs urgently to be considered from a customer perspective as one of business selling practices. That is very different from the concept of protecting someone's data. Even if there were consent in some way to cold calling, the practice that is currently prevalent—whether from overseas or within the UK—tends not to be calling people whose numbers have been found by invading their data privacy. Very often, it is random number calling from an automated device or merely trawling through telephone directories. Even those people who sign up to the Telephone Preference Service receive cold calls.

Cold calling is effectively already banned, but what the Bill seeks to do, what noble Lords were trying to do and what this amendment would help to achieve would be more than that, because we will never effectively stop someone trying to call people. However, if we ban the business reasons for which they do so we will properly protect consumers. That leads on to my plea to my noble friend to consider this from the point of view of the selling process and the customer buying process. If we ensure that the regulators in charge of the sales process do not permit the use of data that has been obtained from an unsolicited call, in any form, as we have already done for mortgages, that would be much more likely to ensure the kind of protection that I know my noble friend and the Government wish to achieve.

I thank David Hickson from the Fair Telecoms Campaign. He has tirelessly attempted to help people understand why these things are so important. The ICO is of course responsible for enforcing compliance with data protection legislation but the regulation of business practices is undertaken by the specialist regulators. In the case of pensions, it is the FCA or the Pensions Regulator. Indeed, the FCA already prohibits unsolicited direct marketing of mortgage products. The SRA prohibits unsolicited direct marketing of claims management services by solicitors, so it is possible to stop. I urge my noble friend to consider and respond to these concerns when she makes her closing remarks.

Lord McKenzie of Luton: My Lords, I start by acknowledging the role played by the noble Lord, Lord Sharkey, in our deliberations—particularly on cold calling, which he has been focused on. I am not sure that we are meant to, under the rules, but I also welcome the Minister from the other place, who is with us and hoping not to get the Bill back for another round of ping-pong. We will see.

The consumer protection function of the single financial guidance body is part of the armoury to build a case for banning cold calling and unsolicited direct marketing for consumer financial products. It adds to the abolition of cold calling for pensions and CMCs that is now in the Bill. As sent back from the Commons, the Bill requires the SFGB to consider the impact of unsolicited direct marketing on consumers, publish from time to time an assessment of whether such activity has a detrimental effect on consumers and advise the Secretary of State whether to make regulations under the cold calling provisions of the Bill.

The amendment in the name of the noble Lord, Lord Sharkey, seeks to add a requirement for the SFGB to additionally publish an assessment,

"not less than once every two years".

Given where we are in the process, I frankly doubt that this requirement would add value. Surely the key is to have flexible arrangements so that the body can respond to emerging issues and report expeditiously as and when evidence of detriment is available. If the noble Lord's concern is that the SFGB will somehow let this function lie fallow, I am sure that the Minister can put something on the record in her response.

Amendment 10A—also in the name of the noble Lord, Lord Sharkey—seeks to ban,

"the use by any person of data obtained in contravention of the prohibition",

[LORD MCKENZIE OF LUTON]
of cold calling for pensions and,

"determine the penalties for any such contravention".

A further amendment seeks a parallel prohibition on data from cold calling for claims management services. It is understood that through measures in this Bill—which will be complemented by existing and forthcoming data protection legislation—where personal data is obtained through an unlawful cold call, further use of that data would be contrary to the Data Protection Act 1998. I understand that fines for such abuse are about to be raised significantly. Through the general data protection regulation and the Data Protection Bill going through Parliament, these matters will be addressed and prohibited. The issue is important and it is certainly important that we hear from the Minister on the second amendment of the noble Lord, Lord Sharkey.

Baroness Buscombe: My Lords, I thank all noble Lords who have taken part in this brief debate. I thank the noble Lord, Lord Sharkey, for his amendments, which give us an opportunity to reiterate some of the assurances that I hope I have already made, both through the passage of the Bill and about where we go now. It is a pleasure to echo the words of the noble Lord, Lord McKenzie: although we appreciate the sentiments of the noble Lord, Lord Sharkey, and understand where he is coming from, the Government expect—I stress this—the body to be flexible and responsive to emerging issues. We expect it to report promptly as and when evidence of consumer detriment in relation to cold calling is available. Our concern is that as soon as one says, "It's every year" or "It's every two years", the situation in departments and bodies such as the new one can so easily become a box-ticking exercise. We do not want it to be that. We want to be sure that the body will be able to respond as issues emerge, particularly real evidence of consumer detriment. Having been through the process of the Bill and talked to all those currently working in the three existing bodies that will be transferred shortly into the one single financial guidance body, I have great trust that the level of expertise and experience we will be able to transfer to the new body is such that they will have a strong eye on this. I assure noble Lords that there is strong feeling in support of what we seek to do both in your Lordships' House and way beyond. We have listened to noble Lords on these issues and we will act firmly to protect consumers where appropriate.

4 pm

That was in relation to Amendment 2A. On Amendment 10A, I again thank the noble Lord, Lord Sharkey, for it and for our conversations prior to the debate. I welcome the opportunity to clarify points about the commercial use of data. The measures in the Bill will be complemented by existing and forthcoming data protection legislation. Under the Data Protection Act 1998, where personal data is obtained through an unlawful cold call, the further use of that data—for example, to make further calls—would be contrary to the Data Protection Act, irrespective of whether the recipient of the call purported to give consent to further calls. The ICO can fine up to £500,000 for breaches of the Data Protection Act, although this will be raised significantly to approximately £17 million or 4% of a company's turnover through the forthcoming general data protection regulation and the Data Protection Bill going through Parliament.

The noble Lord asked in particular about calls from overseas. The ICO has arrangements with international regulations to enable enforcement action in circumstances where companies operating wholly abroad make calls into the UK that would appear to be unlawful if made in the UK. These arrangements extend across Europe and beyond to a range of countries, from Mexico to the Republic of Korea and from Nigeria to the USA. On top of that, any organisation based in the UK acquiring personal data through others based abroad must ensure they comply with data protection legislation. Crucially, changes made by this Bill make it explicitly clear that organisations in the UK must neither make unlawful cold calls themselves nor instigate others to do so on their behalf.

My noble friend Lady Altmann asked questions regarding the force the ban, such as whether the Financial Conduct Authority should enforce the ban. The ICO has tough enforcement powers as well. It will also be able to enforce bans on lead generators, which are outside the FCA's remit and the source of many pensions scams. However, the FCA will still have a role to play. It will work closely with the ICO where breaches are identified. Indeed, there is already an MoU between the two organisations.

On mortgage cold calling, referenced by my noble friend, it was appropriate and effective for the FSA, now the FCA, to enforce the ban because the firms doing the cold calling were to be FCA-regulated firms. However, this is not the case with pensions cold calling, where many of the calls are being made by unregulated lead generators. The FCA would therefore not be able to enforce a ban against these firms, significantly limiting its impact. An ICO-enforced ban would cover these firms. When the bans are introduced, the FCA will work closely with the ICO where breaches of the rules by FCA-regulated firms are identified. Of course, the two organisations already work closely together on a range of issues and have a shared memorandum of understanding underpinning this. The FCA can already take significant action against firms that break ICO rules, should it believe it a proportionate response.

I hope I have been able to reassure noble Lords that we have taken the measures as far as we feel expedient, sensible and flexible, allowing the body and the considerable degree and body of expertise within it to proceed, working with the Bill as amended thus far. On that basis, I hope that the noble Lord, Lord Sharkey, will feel able not to press his Amendments 2A and 10A. I will also address the questions raised relating to Amendment 21A under group 5.

Lord Sharkey: I thank the Minister for that response. I should say at this point that it has been a pleasure to work with her and her team throughout the lifetime of the Bill. I agree with her assessment and that of the noble Lord, Lord McKenzie, that we have made significant progress on improving the Bill as it has been before this House and the other place.

I am reassured by what the Minister said. I remain slightly sceptical about whether "from time to time" has the kind of force that she suggests—but she suggested

it so forcefully that I feel able to be reassured. I am slightly—but only slightly—less reassured about the prohibition on international cold calling. I was worried when I heard Nigeria listed as one of the co-operating countries in the new universal ban on cold calling. It does not appear to be working quite as well as we might have expected. However, I take the Minister's point about the new regulations that will enable us to clamp down.

I will finish by emphasising a point made by the noble Baroness, Lady Altmann. We need a kind of sales approach to this. We need to make certain that the regulator focuses on the people selling products to examine whether they have legitimately got their leads. That seems to be the key thing that the regulator needs to do. I wonder whether the ICO is equipped to do that; it certainly has no history of doing it and it needs to proceed on a rather fast learning curve. I beg leave to withdraw the amendment.

Motion on Amendment 2A (as an amendment to Amendment 2) withdrawn.

Motion on Amendment 2 agreed.

Motion on Amendments 3 to 5

Moved by ***Baroness Buscombe***

That this House do agree with the Commons in their Amendments 3 to 5.

3: Clause 4, page 3, line 35, leave out Clause 4

4: Clause 5, page 4, line 13, leave out subsection (2)

5: Clause 18, page 14, line 17, after "where" insert "—

(i) the disclosure is for the purpose of enabling or facilitating the exercise of the consumer protection function, or

(ii) "

Motion on Amendments 3 to 5 agreed.

Motion on Amendment 6

Moved by ***Baroness Buscombe***

That this House do agree with the Commons in their Amendment 6.

6: Page 14, line 26, leave out "Data Protection Act 1998" and insert "data protection legislation"

Baroness Buscombe: My Lords, this group contains a number of technical and consequential amendments necessary to enable the other government amendments to operate as intended.

I will start with Amendments 6, 37 and 38, which relate to changing references to the Data Protection Act 1998 to a reference to "data protection legislation". These amendments prepare the Bill for the forthcoming data protection legislation currently before Parliament.

Amendments 9, 22, 25, 31, 32, 39, 40 and 41 make minor drafting changes to both clauses and consequential amendments. Amendment 12 inserts a reference to the "consumer protection function" introduced in Amendment 2. It also references the change in definition to the new data protection legislation that I mentioned earlier. Amendment 13 aligns our definition of direct marketing with the existing data protection legislation that I mentioned.

Amendments 14 and 15 are small and consequential amendments, extending the FCA's financial promotions regime to claims management activity. They also bring claims management activity into line with the amendments already made in the Bill to Section 21 of the Financial Services and Markets Act 2000, which covers restrictions on financial promotions.

Amendment 23 inserts a new subsection (3A) into Clause 29, "Extent", so that amendments to the Pension Schemes Act 1993 proposed by Amendment 8 extend only to England, Wales and Scotland. It also provides that the corresponding power in Amendment 8 for the Department for Communities to make regulations will extend to Northern Ireland.

Amendments 24, 26, 27, 28, 29, 30, 33 and 34 make consequential changes to both the extent and commencement clauses. They amend Clause 30 to ensure that the pensions cold calling ban comes into force on Royal Assent so there is no unnecessary delay to making regulations.

Amendments 42 and 43 make changes to the Long Title of the Bill to ensure that it correctly reflects the changes in respect of unsolicited direct marketing. Finally, Amendment 34 removes the privilege amendment inserted previously by your Lordships' House. I beg to move.

Motion on Amendment 6 agreed.

Motion on Amendments 7 to 9

Moved by ***Baroness Buscombe***

That this House do agree with the Commons in their Amendments 7 to 9.

7: After Clause 18, insert the following new Clause—

"Personal pension schemes: requirements to refer members to guidance etc

(1) Section 137FB of the Financial Services and Markets Act 2000 (FCA general rules: disclosure of information about the availability of pensions guidance) is amended as follows.

(2) After subsection (1), insert—

"(1A) The FCA must also make general rules requiring the trustees or managers of a relevant pension scheme to take the steps mentioned in subsections (1B) and (1C) in relation to an application from a member or survivor—

(a) to transfer any rights accrued under the scheme, or

(b) to start receiving benefits provided by the scheme.

(1B) As part of the application process, the trustees or managers must ensure that—

(a) the member or survivor is referred to appropriate pensions guidance, and

(b) the member or survivor is provided with an explanation of the nature and purpose of such guidance.

(1C) Before proceeding with the application, the trustees or managers must ensure that the member or survivor has either received appropriate pensions guidance or has opted out of receiving such guidance.

(1D) The rules may—

(a) specify what constitutes appropriate pensions guidance;

(b) make further provision about how the trustees or managers must comply with the duties in subsections (1B) and (1C) (such as provision about methods of communication and time limits);

(c) make further provision about how, and to whom, a member or survivor may indicate that they have received or opted out of receiving appropriate pensions guidance for the purposes of subsection (1C);

(d) specify what the duties of the trustees or managers are in the situation where a member or survivor does not respond to a communication that is made for the purposes of complying with the duty in subsection (1C);

(e) provide for exceptions to the duties in subsections (1B) and

(1C) in specified cases."

(3) In subsection (2), for "this section" substitute "subsection (1)".
(4) After subsection (2) insert—

"(2A) Before the FCA publishes a draft of any rules to be made by virtue of subsection (1A), it must consult—

(a) the Secretary of State, and

(b) the single financial guidance body."

(5) In subsection (3), for "the rules" substitute "rules to be made by virtue of subsection (1)".

(6) After subsection (3) insert—

"(3A) In determining what provision to include in rules to be made by virtue of subsection (1A), the FCA must have regard to any regulations that are for the time being in force under section 113B of the Pension Schemes Act 1993 (occupational pension schemes: requirements to refer members to guidance etc)."

(7) In subsection (4), for the definition of "pensions guidance" substitute— ""pensions guidance" means information or guidance provided by any person in pursuance of the requirements mentioned in section

5 of the Financial Guidance and Claims Act 2018 (information etc about flexible benefits under pension schemes);"."

8: Insert the following new Clause—

"Occupational pension schemes: requirements to refer members to guidance etc

(1) The Pension Schemes Act 1993 is amended as set out in subsections (2) to (5).

(2) After section 113A insert—

"113B Occupational pension schemes: requirements to refer members to guidance etc

(1) The Secretary of State must make regulations requiring the trustees or managers of an occupational pension scheme to take the steps mentioned in subsections (2) and (3) in relation to an application from a relevant beneficiary—

(a) to transfer any rights accrued under the scheme, or

(b) to start receiving benefits provided by the scheme.

(2) As part of the application process, the trustees or managers must ensure that—

(a) the beneficiary is referred to appropriate pensions guidance, and

(b) the beneficiary is provided with an explanation of the nature and purpose of such guidance.

(3) Before proceeding with the application, the trustees or managers must ensure that the beneficiary has either received appropriate pensions guidance or has opted out of receiving such guidance.

(4) The regulations may—

(a) specify what constitutes appropriate pensions guidance;

(b) make further provision about how the trustees or managers must comply with the duties in subsections (2) and (3) (such as provision about methods of communication and time limits);

(c) make further provision about how, and to whom, a beneficiary may indicate that they have received or opted out of receiving appropriate pensions guidance for the purposes of subsection (3);

(d) specify what the duties of the trustees or managers are in the situation where a beneficiary does not respond to a communication that is made for the purposes of complying with the duty in subsection (3);

(e) provide for exceptions to the duties in subsections (2) and

(3) in specified cases;

(f) provide for the Secretary of State or another prescribed person to issue guidance for the purposes of this section, to which trustees or managers must have regard in complying with their duties under the regulations.

(5) In determining what provision to include in the regulations, the Secretary of State must have regard to any rules that are for the time being in force under section 137FB(1A) of the Financial Services and Markets Act 2000.

(6) In this section—

"relevant beneficiary", in relation to a pension scheme, means—

(a) a member of the scheme, or

(b) another person of a prescribed description, who has a right or entitlement to flexible benefits under the scheme;

"flexible benefits" has the meaning given by section 74 of the Pension Schemes Act 2015;

"pensions guidance" means information or guidance provided by any person in pursuance of the requirements mentioned in section 5 of the Financial Guidance and Claims Act 2018 (information etc about flexible benefits under pension schemes)."

(3) In section 115 (powers as respects failure to comply with information requirements), in subsection (1), after "113" insert ", 113B".

(4) In section 182(5) (power of Treasury to direct that regulation-making powers are exercisable only in conjunction with them), after "except" insert "regulations under section 113B or".

(5) In section 185(2) (consultations about other regulations: exceptions), after paragraph (c) insert—

"(ca) regulations under section 113B; or".

(6) The Pension Schemes (Northern Ireland) Act 1993 is amended as set out in subsections (7) to (9).

(7) After section 109A insert—

"109B Occupational pension schemes: requirements to refer members to guidance etc

(1) The Department must make regulations requiring the trustees or managers of an occupational pension scheme to take the steps mentioned in subsections (2) and (3) in relation to an application from a relevant beneficiary—

(a) to transfer any rights accrued under the scheme, or

(b) to start receiving benefits provided by the scheme.

(2) As part of the application process, the trustees or managers must ensure that—

(a) the beneficiary is referred to appropriate pensions guidance, and

(b) the beneficiary is provided with an explanation of the nature and purpose of such guidance.

(3) Before proceeding with the application, the trustees or managers must ensure that the beneficiary has either received appropriate pensions guidance or has opted out of receiving such guidance.

(4) The regulations may—

(a) specify what constitutes appropriate pensions guidance;

(b) make further provision about how the trustees or managers must comply with the duties in subsections (2) and (3) (such as provision about methods of communication and time limits);

(c) make further provision about how, and to whom, a beneficiary may indicate that they have received or opted out of receiving appropriate pensions guidance for the purposes of subsection (3);

(d) specify what the duties of the trustees or managers are in the situation where a beneficiary does not respond to a communication that is made for the purposes of complying with the duty in subsection (3);

(e) provide for exceptions to the duties in subsections (2) and

(3) in specified cases;

(f) provide for the Department or another prescribed person to issue guidance for the purposes of this section, to which trustees or managers must have regard in complying with their duties under the regulations.

(5) In determining what provision to include in the regulations, the Department must have regard to any rules that are for the time being in force under section 137FB(1A) of the Financial Services and Markets Act 2000.

(6) In this section—

"relevant beneficiary", in relation to a pension scheme, means—

(a) a member of the scheme, or

(b) another person of a prescribed description,

who has a right or entitlement to flexible benefits under the scheme;

"flexible benefits" has the meaning given by section 74 of the Pension Schemes Act 2015;

"pensions guidance" means information or guidance provided by any person in pursuance of the requirements mentioned in section 5 of the Financial Guidance and Claims Act 2018 (information etc about flexible benefits under pension schemes)."

(8) In section 111 (powers as respects failure to comply with information requirements), in subsection (1), after "109" insert "or 109B".

(9) In section 177(6) (power of Department of Finance to direct that regulation- making powers are exercisable only in conjunction with them), after "except" insert "regulations under section 109B or"."

9: Transpose Clause 20 to before Clause 23

Motion on Amendments 7 to 9 agreed.

Motion on Amendment 10

Moved by ***Baroness Buscombe***

That this House do agree with the Commons in their Amendment 10.

10: After Clause 22, insert the following new Clause—

"Unsolicited direct marketing: pensions

(1) The Secretary of State may make regulations prohibiting unsolicited direct marketing relating to pensions.

(2) The regulations may—

(a) make provision about when a communication is to be, or is not to be, treated as unsolicited;

(b) make provision for exceptions to the prohibition;

(c) confer functions on the Information Commissioner and on OFCOM (including conferring a discretion);

(d) apply (with or without modifications) provisions of the data protection legislation or the Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426) (including, in particular, provisions relating to enforcement).

(3) The regulations may—

(a) make different provision for different purposes; (b) make different provision for different areas;

(c) make incidental, supplementary, consequential, transitional or saving provision.

(4) Regulations under this section are to be made by statutory instrument.

(5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(6) If before the end of June in any year the Secretary of State has not made regulations under this section (whether or not in that year), the Secretary of State must—

(a) publish a statement, by the end of July in that year, explaining why regulations have not been made and setting a timetable for making the regulations, and

(b) lay the statement before each House of Parliament.

(7) In this section, "OFCOM" means the Office of Communications established by section 1 of the Office of Communications Act 2002."

Amendment 10A not moved.

Motion on Amendment 10 agreed.

Motion on Amendments 11 to 15

Moved by ***Baroness Buscombe***

That this House do agree with the Commons in their Amendments 11 to 15.

11: Insert the following new Clause—

"Unsolicited direct marketing: other consumer financial products etc

(1) The Secretary of State must keep under review whether a prohibition on unsolicited direct marketing in relation to consumer financial products and services other than pensions would be appropriate.

(2) If the Secretary of State considers that such a prohibition would be appropriate, the Secretary of State may make regulations applying regulations made under section (*Unsolicited direct marketing: pensions*) to other consumer financial products and services (with or without modifications).

(3) In considering whether to make such regulations, the Secretary of State must take into account any advice received from the single financial guidance body under section 3(7)(b)(ii) (consumer protection function: advice on effect on consumers of unsolicited direct marketing).

(4) The regulations may—

(a) make different provision for different purposes; (b) make different provision for different areas;

(c) make incidental, supplementary, consequential, transitional or saving provision.

(5) Regulations under this section are to be made by statutory instrument.

(6) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

12: Clause 23, page 17, line 2, at end insert—

"the "consumer protection function" has the meaning given in section 3(7);

"the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);"

13: Clause 23, page 17, line 7, at end insert—

""direct marketing" means the communication (by whatever means) of advertising or marketing material which is directed to particular individuals;"

14: Clause 24, page 17, line 21, at end insert—

"( ) In section 1H (interpretation provisions for FCA's objectives)—

(a) in subsection (2), at the end of paragraph (c) insert "or to engage in claims management activity";

(b) in subsection (8), at the appropriate place insert—

""engage in claims management activity" has the meaning given in section 21;"."

15: Clause 24, page 18, line 7, at end insert—

"( ) In section 137R (financial promotion rules)—

(a) in subsection (1), omit the "or" at the end of paragraph (a) and after that paragraph insert—

"(aa) to engage in claims management activity, or";

(b) in subsection (6), for "has" substitute "and "engage in claims management activity" have"."

Motion on Amendments 11 to 15 agreed.

Motion on Amendments 16 to 20

Moved by ***Baroness Buscombe***

That this House do agree with the Commons in their Amendments 16 to 20.

16: Clause 26, page 21, line 17, leave out "and 28" and insert "to (*PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA*)"

17: Clause 26, page 22, line 11, at end insert ", and

(c) so far as relevant for the purposes of section (*PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA*), to be read as referring to any service which is a relevant claims management activity (within the meaning given by subsection (5) of that section)."

18: After Clause 28, insert the following new Clause—

"PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA

(1) A legal practitioner—

(a) must not charge a claimant, for a service which is a relevant claims management activity provided in connection with the claimant's PPI claim, an amount which exceeds the fee cap for the claim, and

(b) must not enter into an agreement that provides for the payment by a claimant, for a service which is a relevant claims management activity provided in connection with the claimant's PPI claim, of charges which would breach, or are capable of breaching, the prohibition in paragraph (a).

(2) Subsections (2) to (5) and (7) of section 27 apply for the purposes of the prohibitions in subsection (1) as they apply for the purposes of the prohibitions in section 27(1) but as if—

(a) references in those subsections to "regulated claims management services" were references to "relevant claims management activity" and references to "regulated persons" were references to "legal practitioners", and

(b) the first entry in columns 1 and 2 of the table in subsection (5) were omitted.

(3) Subsection (1) applies as follows—

(a) the prohibition in subsection (1)(a) applies only to charges imposed by a legal practitioner under an agreement entered into during the period—

(i) beginning with the first day of the second interim period

(within the meaning given by section 28(6)), and

(ii) ending with the end date for that practitioner, and

(b) the prohibition in subsection (1)(b) applies only to agreements entered into by a legal practitioner during that period.

(4) For the purposes of subsection (3), the end date is—

(a) for a legal practitioner for whom the relevant regulator is the Law Society of England and Wales, the day before the coming into force of the first rule made by the Law Society of England and Wales under section (*Legal services regulators' rules: charges for claims management services*) that applies to, or to any description of, PPI claims, and

(b) for any other legal practitioner, 29 April 2020.

(5) In this section "relevant claims management activity"—

(a) does not include any reserved legal activities of the kind mentioned in section 12(1)(a) or (b) of the Legal Services Act 2007 (exercise of a right of audience or the conduct of litigation), but

(b) otherwise, means activity of a kind specified in an order under section 22(1B) of the Financial Services and Markets Act 2000 (regulated activities: claims management services), disregarding any exemption in that order for activities carried on by, through, or at the direction of, a legal practitioner."

19: Insert the following new Clause—

"Legal services regulators' rules: charges for claims management services

(1) The Law Society of England and Wales, the General Council of the Bar and the Chartered Institute of Legal Executives may make rules prohibiting regulated persons from—

(a) entering into a specified relevant claims management agreement that provides for the payment by a person of specified charges, and

(b) imposing specified charges on a person in connection with the provision of a service which is, or which is provided in connection with, a specified relevant claims management activity.

(2) The Law Society of England and Wales must exercise that power to make rules in relation to all relevant claims management agreements, and all relevant claims management activities, which concern claims in relation to financial products or services.

(3) The Law Society of Scotland may make rules prohibiting regulated persons from—

(a) entering into a relevant claims management agreement concerning a claim in relation to a financial product or service that provides for the payment by a person of specified charges, and

(b) imposing specified charges on a person in connection with the provision of a service which is, or which is provided in connection with, a relevant claims management activity concerning a claim in relation to a financial product or service.

(4) Rules under this section may make provision securing that for the purposes of the prohibition referred to in subsection (1)(a) or (3)(a) charges payable under a relevant claims management agreement are to be treated as including charges payable under an agreement treated by the rules as being connected with the relevant claims management agreement.

(5) In this section "regulated persons" means—

(a) in relation to the Law Society of England and Wales—

(i) persons who, or licensable bodies which, are authorised by the Law Society to carry on a reserved legal activity,

(ii) European lawyers registered with the Law Society under the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119), and

(iii) foreign lawyers registered with the Law Society under section 89 of the Courts and Legal Services Act 1990;

(b) in relation to the Law Society of Scotland, Scottish legal practitioners;

(c) in relation to the General Council of the Bar—

(i) persons who, or licensable bodies which, are authorised by the General Council to carry on a reserved legal activity, and

(ii) European lawyers registered with the General Council under the European Communities (Lawyer's Practice) Regulations 2000;

(d) in relation to the Chartered Institute of Legal Executives, persons authorised by the Institute to carry on a reserved legal activity.

(6) The rules must be made with a view to securing an appropriate degree of protection against excessive charges for the provision of a service which is, or which is provided in connection with, a relevant claims management activity.

(7) The rules may specify charges by reference to charges of a specified class or description, or by reference to charges which exceed, or are capable of exceeding, a specified amount.

(8) The rules may not specify—

(a) charges for a reserved legal activity within the meaning of the Legal Services Act 2007 (see section 12 of that Act);

(b) charges imposed in respect of—

(i) the exercise of a right of audience by a Scottish legal practitioner;

(ii) the conduct of litigation by a Scottish legal practitioner.

(9) In subsection (8)(b)—

"conduct of litigation" means—

(a) the bringing of proceedings before any court in Scotland;

(b) the commencement, prosecution and defence of such proceedings;

(c) the performance of any ancillary functions in relation to such proceedings;

"right of audience" means the right to appear before and address a court in Scotland, including the right to call and examine witnesses.

(10) In relation to an agreement entered into, or charge imposed, in contravention of the rules, the rules may (amongst other things)—

(a) provide for the agreement, or obligation to pay the charge, to be unenforceable or unenforceable to a specified extent;

(b) provide for the recovery of amounts paid under the agreement or obligation;

(c) provide for the payment of compensation for any losses incurred as a result of paying amounts under the agreement or obligation.

(11) For the purposes of this section—

"relevant claims management activity" means activity of a kind specified in an order under section 22(1B) of the Financial Services and Markets Act 2000 (regulated activities: claims management services), disregarding any exemption in that order for activities carried on by, through, or at the direction of, a legal practitioner;

"relevant claims management agreement" means an agreement, the entering into or performance of which by either party is a relevant claims management activity;

"Scottish legal practitioner" means—

(a) a person qualified to practise as a solicitor in accordance with section 4 of the Solicitors (Scotland) Act 1980;

(b) European lawyers registered with the Law Society of Scotland under the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (S.S.I. 2000/121);

(c) foreign lawyers registered with the Law Society of Scotland under section 60A of the Solicitors (Scotland) Act 1980;

(d) an incorporated practice within the meaning given by section 34(1A)(c) of the Solicitors (Scotland) Act 1980;

(e) a licensed legal services provider within the meaning of Part

2 of the Legal Services (Scotland) Act 2010 (see section 47 of that Act) that provides, or offers to provide, legal services under a licence issued by the Law Society of Scotland;

"specified" means specified in the rules, but "specified amount" means an amount specified in or determined in accordance with the rules.

(12) This section does not limit any power of the Law Society of England and Wales, the Law Society of Scotland, the General Council of the Bar or the Chartered Institute of Legal Executives existing apart from this section to make rules."

20: Insert the following new Clause—

"Extension of power of the Law Society of Scotland to make rules

(1) The Treasury may by regulations amend section (*Legal services regulators' rules: charges for claims management services*) for the purpose of extending the power in subsection (3) of that section so as to apply to—

(a) all relevant claims management agreements; (b) all relevant claims management activity;

(c) any description of relevant claims management agreement; (d) any description of relevant claims management activity.

(2) The Treasury must obtain the consent of the Scottish Ministers before making regulations under subsection (1).

(3) Regulations under this section—

(a) are to be made by statutory instrument;

(b) may make incidental, supplemental or consequential provision.

(4) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Baroness Buscombe: My Lords, Amendment 19 places a duty on the Law Society of England and Wales to cap fees in relation to financial services claims management activity, as well as giving a power to the Law Society of Scotland to restrict fees charged for this activity. It also gives a power for some legal services regulators in England and Wales to restrict fees charged for broader claims management services. Alongside this, Amendment 20 gives the Treasury a power to extend the Law Society of Scotland's fee capping power to broader activity in future.

Amendments 16, 17 and 18 ensure that the interim fee cap provisions, introduced as a concessionary amendment in your Lordships' House, work together with the fee capping powers for legal regulators. Taken alongside the fee restriction powers for the FCA that we have already agreed should form part of the Bill, these provisions will ensure that consumers are protected, no matter which type of claims management service provider they use, and whether it is regulated by the legal service regulators or by the FCA.

They will also ensure that the relevant regulators are able to adapt to any future changes in the market and that there is continuity of coverage for the interim fee cap throughout the transfer of regulation. Indeed, the honourable Member in another place Jack Dromey MP put it well when he said:

"The clauses are sensible because they go beyond claims management companies. … Of course it is about not only CMCs, but legal service providers".—[*Official Report*, Commons, Financial Guidance and Claims Bill Committee, 6/2/18; col. 95.]

I hope that noble Lords will agree with this sentiment and will accept Amendments 16 to 20, as made in the other place. I beg to move.

Lord McKenzie of Luton: My Lords, if my honourable friend Jack Dromey is happy with these, I have to be as well.

Motion on Amendments 16 to 20 agreed.

4.15 pm

Motion on Amendment 21

Moved by ***Baroness Buscombe***

That this House do agree with the Commons in their Amendment 21.

21: Insert the following new Clause—

"Cold calling about claims management services

(1) The Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426) are amended as follows.

(2) In regulation 21 (calls for direct marketing purposes), after paragraph (5) insert—

"(6) Paragraph (1) does not apply to a case falling within regulation 21A."

(3) After regulation 21 insert—

"21A Calls for direct marketing of claims management services

(1) A person must not use, or instigate the use of, a public electronic communications service to make unsolicited calls for the purposes of direct marketing in relation to claims management services except in the circumstances referred to in paragraph (2).

(2) Those circumstances are where the called line is that of a subscriber who has previously notified the caller that for the time being the subscriber consents to such calls being made by, or at the instigation of, the caller on that line.

(3) A subscriber must not permit the subscriber's line to be used in contravention of paragraph (1).

(4) In this regulation, "claims management services" means the following services in relation to the making of a claim—

(a) advice;

(b) financial services or assistance;

(c) acting on behalf of, or representing, a person;

(d) the referral or introduction of one person to another; (e) the making of inquiries.

(5) In paragraph (4), "claim" means a claim for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage or in respect of an obligation, whether the claim is made or could be made—

(a) by way of legal proceedings,

(b) in accordance with a scheme of regulation (whether voluntary or compulsory), or

(c) in pursuance of a voluntary undertaking."

(4) In regulation 24 (information to be provided for the purposes of regulations 19 to 21)—

(a) in the heading, for ", 20 and 21" substitute "to 21A"; (b) in paragraph (1)(b), after "21" insert "or 21A"."

Baroness Buscombe: My Lords, Amendment 21 implements the commitment I made to your Lordships' House that the Government would table an amendment restricting cold calls made in relation to claims management services. We are all aware that calls about claims management services are not just a source of irritation; for the most vulnerable in our society, being bombarded by these nuisance calls can be highly distressing.

The Government have already taken forward a number of measures to tackle this issue, but debates in your Lordships' House clearly demonstrated that more action was needed. That is why the Government tabled Amendment 21, which will insert a provision into the Privacy and Electronic Communications (EC Directive) Regulations—the regulations which govern unsolicited direct marketing calls—to ban such calls in relation to claims management services, unless prior consent has been given. This amendment takes the onus away from the individual to opt out of such calls being made to them and puts the responsibility back on the organisation to do its due diligence before making such calls. As I have mentioned previously, there are complexities in legislating in this area, including issues relating to EU frameworks. But I am confident that the amendment will have the effect of making unwanted calls about claims management services unlawful.

Concerns were also raised in your Lordships' House about the commercial use of illegally obtained data, and I have been having further discussions with the noble Lord, Lord McKenzie, on this issue. The measures in the Bill will be complemented by existing and forthcoming data protection legislation. Where personal data is obtained through an unlawful cold call, the further use of that data—for example, to make further calls in the future—would be contrary to the Data Protection Act. The ICO can issue fines of up to £500,000 for breaches of the Data Protection Act, although this will be raised significantly—to approximately £17 million or 4% of a company's turnover—through the forthcoming general data protection regulation and the Data Protection Bill that is currently going through Parliament.

Overall, we believe that Amendment 21 is another robust proposal to add to our package of measures to tackle unsolicited marketing calls, and one that will be gratefully received by consumers across the UK.

As we have heard, Amendment 21A, tabled by the noble Lord, Lord Sharkey, seeks to prevent the use of data obtained by illegal calls. I completely agree with the sentiment behind this amendment and, as I said, government Amendment 21 on cold calling will be complemented by data protection legislation, which includes requirements for data to be processed fairly and in accordance with the law. I repeat the assurances I gave earlier, that where personal data is obtained through an unlawful cold call, the further use of that data—for example, to make further calls in the future—would be contrary to the Data Protection Act 1998. I therefore encourage the noble Lord, Lord Sharkey, not to move his amendment, and I beg to move the Motion on Amendment 21.

Baroness Altmann: My Lords, before the Bill passes into law, I would just like to welcome the Bill, as well as the debt respite scheme and the help for those with unsecured debt. It includes some very important measures. I thank my noble friend the Minister and the Bill team for all the hard work they have done on these measures. I thank the noble Lords, Lord Stevenson, Lord McKenzie and Lord Sharkey, the noble Baronesses, Lady Drake and Lady Kramer, and the noble Earl, Lord Kinnoull, who have all been so instrumental in getting this through. On this particular amendment, I am most grateful to my noble friend the Minister for listening to the concerns expressed in this House.

The Earl of Kinnoull: My Lords, I can be even briefer, but I want to thank particularly the Minister for living up to her commitment because, having read through the comprehensive Amendment 21, it does precisely that and I thank her.

Baroness Buscombe: I once again thank very much all noble Lords who have taken part in the many debates in your Lordships' House on the Bill. We have come a long way and there has been huge consensus. We have improved the Bill, along with our honourable friends in another place, and I hope that all noble Lords can wish it well. In particular, on the future of the new body, I hope that we will know its name soon so that we can start calling it something in our future debates on this subject.

Lord McKenzie of Luton: My Lords, if it is time to say our thank yous, I will add mine to those of all noble Lords who have participated in these debates. There have been robust exchanges on what was initially quite a narrow Bill, but its coverage has been expanded, quite appropriately. I certainly thank the Bill team. I know that, on our side, we have probably put them through some misery with our questions from time to time, but when we have had the opportunity to touch base in that way, it has been really helpful to the passage of the Bill in this place. I wish the Bill well on its passage into legislation.

Lord Sharkey: I associate myself with the comments of the noble Lord, Lord McKenzie, and the other noble Lords who have spoken. Not only has the Bill been

significantly improved but, oddly, I think we have managed to enjoy the process as we have gone through it—perhaps it is not odd at all. I thank the Minister and her officials.

Amendment 21A (as an amendment to Amendment 21) not moved.

Motion on Amendment 21 agreed.

Motion on Amendments 22 to 43

Moved by ***Baroness Buscombe***

That this House do agree with the Commons in their Amendments 22 to 43.

22: Clause 29, page 25, line 32, leave out from beginning to "extends" and insert "Part 1, other than the provisions mentioned in subsections (2) to (3B),"

23: Clause 29, page 25, line 37, at end insert—

"(3A) In section (*Occupational pension schemes: requirements to refer members to guidance etc*)—

(a) subsections (1) to (5) extend to England and Wales and Scotland; (b) subsections (6) to (9) extend to Northern Ireland.

(3B) Paragraph 25 of Schedule 3 extends to England and Wales and Scotland."

24: Clause 29, page 25, line 38, leave out subsections (4) and (5) and insert—

"(4) Part 2, other than the provisions mentioned in subsections (5) and (5A), extends to England and Wales and Scotland.

(5) The following provisions extend to England and Wales—(a) section 24(12) and Schedule 4;

(b) section 27;

(c) section (*PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA*).

(5A) Section (*Cold calling about claims management services*) extends to England and Wales, Scotland and Northern Ireland."

25: Clause 29, page 25, line 42, leave out subsection (6) and insert—

"( ) This Part extends to England and Wales, Scotland and Northern Ireland."

26: Clause 30, page 26, line 5, at end insert—

"( ) section (*Unsolicited direct marketing: pensions*);"

27: Clause 30, page 26, line 13, at end insert—

"(1A) Subsections (6) to (9) of section (*Occupational pension schemes: requirements to refer members to guidance etc*) come into force on a day appointed by order made by the Department for Communities in Northern Ireland.

(1B) An order under subsection (1A) may make—

(a) transitional, transitory and saving provision in connection with the coming into force of any provision in section (*Occupational pension schemes: requirements to refer members to guidance etc*)(6) to (9);

(b) incidental and supplementary provision, and

(c) different provision for different purposes,

and the power to make such an order is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12))."

28: Clause 30, page 26, line 14, after "Sections" insert "(*Unsolicited direct marketing: other consumer financial products etc*) and"

29: Clause 30, page 26, line 14, leave out "28" and insert "(*PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA*)"

30: Clause 30, page 26, line 21, at end insert "except section (*Occupational pension schemes: requirements to refer members to guidance etc*)(6) to (9)"

31: Clause 30, page 26, line 29, at end insert ", and

(ii) section (*Cold calling about claims management services*)"

32: Clause 30, page 26, line 31, at end insert ", other than section (*Cold calling about claims management services*)"

33: Clause 30, page 26, line 31, at end insert—

"( ) The Treasury must obtain the consent of the Lord Chancellor before making regulations under subsection (3) or (5) in relation to section (*Legal services regulators' rules: charges for claims management services*)."

34: Clause 31, page 26, line 34, leave out subsection (2)

35: Schedule 2, page 32, line 3, at end insert "and the devolved authorities."

36: Schedule 3, page 34, line 22, leave out paragraph 13

37: Schedule 4, page 37, line 23, at end insert—

""the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);"

38: Schedule 4, page 39, line 34, leave out "Data Protection Act 1998" and insert "data protection legislation"

39: Schedule 5, page 41, line 13, leave out from "to" to end of line 15 and insert "a person falling within paragraph 1A,"

40: Schedule 5, page 41, line 23, leave out from "a" to end of line 24 and insert "person falling within paragraph 1B."

41: Schedule 5, page 41, line 24, at end insert—

"1A A person falls within this paragraph if the person—

(a) is or at any time was authorised under section 5(1)(a) of the Compensation Act 2006 (provision of regulated claims management services), or

(b) is, or at any time was, providing services in Scotland which the person would be, or would have been, prohibited from providing in England and Wales by section 4(1) of the Compensation Act 2006 unless authorised under section 5(1)(a) of that Act.

1B A person falls within this paragraph if the person—

(a) is authorised under section 5(1)(a) of the Compensation Act 2006 (provision of regulated claims management services), or

(b) is providing services in Scotland which the person would be prohibited from providing in England and Wales by section 4(1) of the Compensation Act 2006 unless authorised under section

5(1)(a) of that Act."

42: In the Title, line 2, leave out "cold-calling and"

43: In the Title, line 3, at end insert "to provide a power to make regulations prohibiting unsolicited direct marketing in relation to pensions and other consumer financial products and services;"

Motion on Amendments 22 to 43 agreed.

Proposed Merger of Sainsbury's and Asda

Statement

4.22 pm

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, with the leave of the House I should like to repeat in the form of a Statement an Answer to an Urgent Question given in another place yesterday by my honourable friend the Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy. The Statement is as follows:

"On 30 April, J Sainsbury plc and Walmart Inc announced that they had agreed terms in relation to a proposed combination of Sainsbury's and Asda Group Ltd, a wholly owned subsidiary of Walmart, to create an enlarged business. There are no planned Sainsbury's or Asda store closures as a result of the merger. The proposed deal is conditional on clearance by the Competition and Markets Authority.

The Competition and Markets Authority will hold pre-notification discussions with the parties and, when it has sufficient information, will commence its phase 1

[LORD HENLEY]
investigation. Usually, a phase 1 investigation will last up to 40 working days before the authority decides whether to clear the merger or refer it on to a detailed phase 2 investigation. I understand that the parties have requested to fast-track straight to phase 2. As part of its competition inquiry, the CMA can look at the buying power of a merged company in relation to its suppliers and the impact that the merger would have on them. Decisions about mergers are taken independently of ministerial control and are subject to legal challenge. Under the Enterprise Act 2002, Ministers have the power to intervene in mergers only on public interest grounds covering national security, media plurality and financial stability.

Today the Secretary of State and I have spoken to Sainsbury's chief executive officer, Mike Coupe, and Asda's CEO, Roger Burnley, so that we can better understand their plans. Additionally, I have today spoken to the Union of Shop, Distributive and Allied Workers and the Unite union. I will speak to the GMB union immediately after leaving here. When I spoke to Len McCluskey this morning, I made it clear that I expect Sainsbury's and Asda to conduct proper and thorough engagement with the unions. This afternoon, I have spoken to the Groceries Code Adjudicator, Christine Tacon, to reiterate the importance of ensuring that suppliers, particularly small and medium-sized enterprises, are treated fairly.

The UK's merger regime is designed to offer clarity for businesses and to build investor confidence. Mergers are an important part of a dynamic economy, and the Government appreciate that they can bring real benefits to consumers and the economy as a whole by attracting inward investment. We will continue to monitor the situation closely".

My Lords, that concludes the Statement.

4.25 pm

Lord Tunnicliffe (Lab): My Lords, I thank the Minister for repeating the response to the UQ. First, I pick up on the wording about this so-called merger. Would I be right in thinking that it would be easier for all concerned if we called this a takeover and not a merger, particularly as J Sainsbury is paying 42% of the stock and £2.5 billion to Walmart for the stores? Secondly, we agree that the takeover has to be conditional on clearance by the Competition and Markets Authority. In that regard, the takeover will affect the whole of the food value chain, from farm and factory to the supermarket shelf. It follows that the risk to the public interest from this concentration of ownership has the potential to squeeze competition in the market and poses a risk to workers, suppliers and consumers. Is the Minister confident that the CMA has the remit, resources, expertise and time to do a proper job, given that it has to consider not only the national situation and the local impact on villages and towns up and down the country but competition between domestic bricks-and-mortar businesses and global online corporations such as Amazon? Finally, the Minister's colleague in another place said that he will be working closely with the Groceries Code Adjudicator. Can he confirm that the Government will also work closely with the Small Business Commissioner?

Lord Henley: My Lords, the noble Lord's first question was about semantics, whether this is a merger or a takeover. It is a merger, but I do not think we need bother about that. Secondly. he asked whether it will squeeze competition. I do not think it will. We are looking for benefits to consumers, but that is a matter for the CMA, and I am confident that the CMA, a body set up by the last Labour Government, has the ability and resources to do that job. Lastly, he asked about working with the Small Business Commissioner. The Statement makes it quite clear that my honourable friend had already spoken to the Groceries Code Adjudicator. If it is appropriate that he talks to the Small Business Commissioner, no doubt he will. I will pass that on to my honourable friend and ask him whether he has.

Lord Fox (LD): Asda and Sainsbury's both say their HQs will stay, no shops will close or be rebranded and jobs are safe, yet they promise price reductions of up to 10%. That can happen only through exerting their mass to squeeze the supply chain. We have talked about the role of the CMA, but what guarantees will the Government give the British food industry? What guarantees can British farmers expect from the Government?

Lord Henley: My Lords, we hoped that the first matter that noble Lords would want to address was savings for the consumer, and that is something that the supermarkets are looking for. The noble Lord said that they have stated that their headquarters will stay and all their stores will stay, and therefore savings can come only through squeezing the supply chain. I do not accept that, but that is a matter for the supermarkets to address. It is something that the CMA will look at when it addresses this matter properly, as was discussed when my honourable friend made his Statement yesterday in another place. Obviously, the CMA might want to look at individual stores and whether it is right and proper that some are kept. That is a matter for the CMA. As I have made clear, my honourable friend has already had discussions with the Groceries Codes Adjudicator and, to the extent that we can play a part in that, my honourable friend will continue to do so.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend give the House an assurance that small growers of fruits and vegetables in particular will not be severely disadvantaged in this regard? There is real concern that when the Grocery Code Adjudicator's powers were reviewed the opportunity was not taken to permit her to take up an investigation on her own initiative. I am sure my noble friend will agree that we all appreciate that there is no way that a small grower or farmer who has a contract with Sainsbury's or Asda, or the bigger merged body, will put that contract at risk. It is very difficult to make a confidential complaint because they will be so easily identified and they will lose their part in the supply chain. Will my noble friend take this opportunity to review the powers of the Grocery Code Adjudicator to take up investigations on her own initiative if there is any proof at all, and will she be able to receive evidence in this regard from third parties such as any farm organisations like the NFU, the TFA or the CLA?

Lord Henley: My Lords, I note what my noble friend has to say. I do not want to rehearse all the arguments that we went through when the Grocery Code Adjudicator was established some years ago, but I accept that it is a very difficult question when we are dealing with the imbalance between the very big supermarkets on the one hand and, on the other, those further down the supply chain, particularly small producers and growers. However, I give an assurance to my noble friend that the powers of the Grocery Code Adjudicator will always be kept under consideration by my right honourable and honourable friends and by the department as a whole. Obviously we want to see fairness between the supermarkets and their suppliers, just as—this is equally important in all retail matters—we think it important to ensure that the interests of the consumer are kept first and foremost at hand. It is the consumer that we are most interested in.

Lord Haskel (Lab): My Lords, we are still members of the single market. Is this a matter large enough to involve the Commission?

Lord Henley: No, my Lords, on this occasion the CMA will be doing this job. I think we can all say—even the noble Lord might agree—that, thankfully, the Commission will not be involved in any way at all.

Lord Palmer (CB): My Lords, I have been involved in the food industry all my working life. Is this not in a way the thin end of the wedge? We already have completely deserted high streets. Are we shortly going to have completely deserted out-of-town shopping centres?

Lord Henley: My Lords, I am aware of the noble Lord's involvement in the food industry. We have been eating biscuits bearing his name for some time, except I am not sure if we do eat those biscuits any more. The noble Lord will be aware that the retail world is changing, because that is what consumers require. It is not in our power to stop those changes; we must live with them. The retail sector itself must look at how the high street is changing and adapt accordingly.

Windrush

Statement

4.34 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House, I will repeat an Answer by my right honourable friend the Home Secretary to an Urgent Question in another place.

"I am honoured to have been asked this morning to become Home Secretary. I start by making a pledge to those of the Windrush generation who have been in this country for decades and yet have struggled to navigate through the immigration system. This never should have been the case and I will do whatever it takes to put it right. Learning about the difficulties that the Windrush migrants have faced over the years has affected me greatly, particularly because I myself am a second-generation migrant.

Like the Caribbean Windrush generation, my parents came to this country from the Commonwealth in the 1960s. They, too, came to help rebuild this country and to offer all they had. So when I heard that people who were long-standing pillars of their community were being impacted simply for not having the right documents to prove their legal status in the UK, I thought, 'That could be my mum, brother, uncle or even me'. That is why I am so personally committed to and invested in resolving the difficulties faced by the people of the Windrush generation, who have built their lives here and contributed so much.

I know that my predecessor, my right honourable friend the Member for Hastings and Rye, Amber Rudd, felt very strongly about this too. Please allow me to pay tribute to her hard work and integrity and to all that she has done and will continue to do in public service. I wish her all the very best. I will build on the decisive action that she has already taken.

A dedicated task force was set up to handle these cases. More than 500 appointments have been scheduled and more than 100 people have already had their cases processed and now have the necessary documents. We will continue to resolve these cases as a matter of urgency.

We have made clear that a Commonwealth citizen who has remained in the UK since 1973 will be eligible to get the legal status they deserve: British citizenship. That will be free of charge, and I will bring forward the necessary secondary legislation. We have also been clear that a new compensation scheme will be put in place for those whose lives have been disrupted. We intend to consult on the scope of the scheme and will appoint an independent person to oversee it. I hope that I can count on the full support of all honourable Members to make this happen as soon as possible.

I end by making one thing crystal clear: we will do right by the Windrush generation".

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the noble Baroness for repeating the Answer to the Question from my right honourable friend, which the Home Secretary gave yesterday in the other place. I join her in offering my congratulations to her right honourable friend on his appointment.

What action will the new Home Secretary undertake to deliver a fair, just and humane immigration policy and get the country out of this shameful disaster? Is the noble Baroness aware of the call from the director-general of the CBI for our immigration policy to put people before numbers and work to benefit our economy and society? I hope she can commit to that this afternoon. Finally, when will there be more information about the compensation scheme, as this also must be fair and just to compensate properly for the terrible wrongs that have been caused?

Baroness Williams of Trafford: I thank the noble Lord for that question. First, he asked what the Home Office will be doing to right the wrongs. The new Home Secretary has made some things very clear. He has made it quite clear that he does not like the term "hostile environment", which he feels does not reflect the values of this country. The term was not invented recently; it was coined some time ago—under a Labour

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Home Secretary, I must say, but that is by the by, because Home Secretaries have used the term ever since. He has made it quite clear that, in line with the values that he and most of us share, there should be a compliant rather than a hostile environment.

The noble Lord also asked about putting people before numbers. My right honourable friend also made it quite clear, as did the previous Home Secretary only last week, that we want a humane environment. Some of the mechanisms set up for the Windrush generation will make it as easy as possible for people to get the documentation they need. Where necessary, officials will liaise with other government departments to ease the burden on those people who are here as of right. The noble Lord talked about the compensation scheme—in fact, he asked me about it at the end of last week. The Home Secretary has reiterated his commitment to a compensation scheme. He will be consulting on the scheme and, as I said, an independent person will be in place to oversee it. I hope that answers the noble Lord's questions.

Lord Paddick (LD): My Lords, the Windrush fiasco is the result of Home Office deportation targets. If officials are given targets and the case before them qualifies on the face of it for deportation, and they are short of their quota for that week or month, how can they be expected to use their discretion to act humanely, even in the face of exceptional humanitarian circumstances? Of course, illegal immigrants should be pursued, but how can targets for removals be consistent with a compassionate approach to exceptional cases? The Minister said that the new Home Secretary has said that he will do whatever it takes to put this right. Does not she agree with me that, to put this right, we need to abandon removal targets in the Home Office?

Baroness Williams of Trafford: One thing that my right honourable friend the Home Secretary also made clear yesterday was that he wants to look at those targets, take a view on what targets have been set or are being set, and take a view on the whole issue of targets going forward. I am sure your Lordships' House will have more information on that, as he embeds himself—he has been there only just over 24 hours—and makes decisions on his priorities and where the policy will go.

Baroness Warsi (Con): My Lords, I am grateful to my noble friend for repeating the Statement. I, too, welcome the appointment of Sajid Javid to the post of Home Secretary. I welcome his statements about the hostile environment and how he does not consider those words in accordance with the values of this nation. However, in moving away from the language of the hostile environment, can my noble friend assure the House that we will also move away from the cultural and legal consequences of that hostile environment? Would she make the case for common sense being restored in Home Office decision-making? Would she also make the case for looking again at the underpinning that the appeals system and its funding brought to decision-making? When decision-making goes wrong, we have appeals and those appeals are well funded. So in moving away from the language of the hostile environment, will we look again at the legal framework created in pursuing that policy?

Baroness Williams of Trafford: I thank my noble friend for making that point. I heard her points at lunchtime about the hostile environment, so I am glad that what I have said chimes with her. She is right about common sense in decision making; she makes an insightful point about cultural considerations, as opposed to the facts before us. However, it is vital that the compliant environment protects vulnerable persons. Appropriate safeguards are built in and the right to redress exists, including the ability to exercise discretion when there are genuine barriers to people leaving the UK or measures that would be deemed unduly harsh. We need a humane approach to this, but we must not forget that, within the compliant environment, it is necessary that people who are not here legally should be removed from this country, not least because of the vulnerability that goes with it.

Lord Boateng (Lab): My Lords, the Home Secretary's appointment is to be warmly welcomed. His is a remarkable achievement. However, there are two factors that I would ask the Minister to take into account. The first is the age and vulnerability of many of the victims of the Windrush scandal. I hope that will be taken into account in the scheme that is to be set up and, in particular, in the imposition of any deadlines. There has been a lot of talk about deadlines for making applications and claiming compensation. I hope that people's vulnerability, age and natural reluctance to come forward, given their previous experience of hostile Administrations, will be taken into account. I seek the Minister's assurance on that.

Secondly, how are our overseas posts being kept informed about the development of this situation? It will be necessary to make sure that information is put out to potential claimants and victims in the various Commonwealth countries which are affected—and not just in the Caribbean.

Baroness Williams of Trafford: Both the previous Home Secretary and the new one have made it absolutely clear that this scheme has not been put in place to trip people up. The noble Lord talked about people having a certain amount of time to make deadlines. We will consult on this scheme and I hope the noble Lord will put his view forward. To put bureaucratic restrictions into it, however, is not in the spirit of what the Home Secretary wants. I totally appreciate the noble Lord's point about age—I presume he means older age—and particularly people who might have been stung by the system previously and feel reluctant to come forward. This is a scheme to help people, not to restrict them.

The noble Lord also makes a good point about overseas posts being informed. He may remember that the previous Home Secretary talked with Commonwealth representatives during CHOGM to engage and spread the word. I know that officials have been engaging, not only with other Commonwealth countries, but widely in British society in areas where there may be Commonwealth citizens who can be helped. We are taking a very proactive approach.

Licensing Act 2003 (Royal Wedding Licensing Hours) Order 2018

Motion to Approve

4.47 pm

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

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

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I move on to something which I hope all noble Lords will feel very cheerful about supporting. This order makes provision to relax licensing arrangements and allow licensed premises to extend their opening hours on Friday 18 and Saturday 19 May, from 11 pm until 1 am the following mornings, to mark the occasion of the royal wedding.

On Saturday 19 May, His Royal Highness Prince Henry of Wales will celebrate his wedding to Ms Meghan Markle. I am sure that noble Lords will agree with the Government that this is a nationally significant event, for which people will want to come together to celebrate. Section 172 of the Licensing Act 2003 allows the Secretary of State to make a licensing hours order to allow licensed premises to open for specified, extended hours on occasions of exceptional international, national or local significance. Licensing hours have previously been extended for Her Majesty the Queen's 90th birthday celebrations in 2016, the FIFA World Cup in 2014, the Queen's Diamond Jubilee in 2012 and the royal wedding of Prince William and Catherine Middleton in 2011.

The extension will apply to premises licences and club premises certificates in England and Wales, which license the sale of alcohol for consumption on the premises. These premises will be allowed to remain open without having to notify the licensing authority and police via a temporary event notice, as would normally be the case. Premises licensed to provide regulated entertainment will be able to do so until 1 am on the nights covered by the order, even where those premises are not licensed to sell alcohol. This includes, for example, venues holding music events or dances as well as theatres and cinemas.

Premises which sell alcohol for consumption off the premises, such as off-licences and supermarkets, are not covered by the order. Premises which provide late-night refreshment—the supply of hot food or hot drinks to the public between the hours of 11 pm and 5 am—but do not sell alcohol for consumption on the premises will not be covered by the order; such premises will only be able to provide late-night refreshment until 1 am if their existing licence already permits this.

The order has the same terms as the equivalent orders relating to the celebrations for the Queen's 90th birthday in 2016, the Diamond Jubilee in 2012 and the royal wedding in 2011. The relaxation is for a limited period and we believe that this is appropriate to celebrate an occasion of this sort. I hope noble Lords will agree with the Government that the licensing hours order is an appropriate use of the powers conferred on the Home Secretary by the Licensing Act 2003.

Lord Jones (Lab): My Lords, the Minister should be congratulated on bringing forward a very cheerful order. I fully support her proposals. The impact assessment is very helpful and the evidence base is exceptionally helpful. I did not know that there were 155,000 licensed premises in our nation. One learns that a TEN is a temporary events notice and that it costs £21; and that an LHO is a licensing hours order. The department has clearly worked very hard to present this set of papers, which, as orders go, is very informative, ahead of the usual run of matters. Of course, it relates to a very cheerful event; surely a royal wedding is a splendid reason for a celebration, whether it is in the pub, the club or the restaurant. It is a very cheerful reason for having a better time than usual. One can only wish His Royal Highness and his charming fiancée all the very best.

Lord Paddick (LD): My Lords, we welcome these orders. Can the Minister tell us why there is not an extension to the opening hours on the day of the wedding, bearing in mind that most licensed premises are only allowed to sell alcohol from 11 o'clock in the morning? The wedding does not start until 12 o'clock. Does she not feel that it would, perhaps, have been a good idea to allow early opening on the wedding day? Of course, there will be differences of opinion around the House as to whether people should be up drinking until 1 o'clock in the morning the day before a wedding, but bearing in mind that this has become a custom and that it is a similar order to those for the other events outlined by the Minister, we are happy to support these regulations.

Lord Kennedy of Southwark (Lab Co-op): My Lords, the wedding of Prince Harry and Meghan Markle on Saturday 19 May promises to be a wonderful occasion and an opportunity for the whole country to celebrate. We all wish the happy couple a long and wonderful life together. I welcome the announcement that during the celebration period, the licensing hours will be extended. I declare my interest as vice-chair of the All-Party Beer Group and a member of CAMRA. I support responsible drinking and understand the value of a good local pub.

I very much support the order before us, but I did notice that on the impact assessment, reference was made to the 2014 World Cup. I remember the debate in the Moses Room on this; the noble Lord, Lord Gardiner of Kimble, responded. At that time, I thought that the impact assessment was very mean-spirited, because it recommended that the opening hours be extended only for the first round, as there was little prospect of England getting beyond the first stage of the competition. I hope that the Government will be a little more optimistic this time and keep it under review for the contest taking place in June and July this year. I am very happy to agree to the order in front of us today.

Baroness Williams of Trafford: I thank the noble Lord, Lord Jones, for starting us off on such a positive note, and for his support for the order. I join him in wishing the royal couple many years of happiness together.

The noble Lord, Lord Paddick, questioned why we could not extend the opening hours. The hours are put in place not only to provide for people enjoying themselves but to be proportionate in breaking up the length of

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time people can spend drinking. I recall that when my daughter got married, I was quite strict about people drinking before the wedding ceremony, just because of the usual things that might break out after heavy drinking. However, we think this is a proportionate response to the royal wedding.

That was a very amusing anecdote about the 2014 World Cup, and I note the noble Lord's interest.

Motion agreed.

Combined Authorities (Borrowing) Regulations 2018

Motion to Approve

4.55 pm

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

That the draft Regulations laid before the House on 12 March be approved.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I hope that the regulations will meet the same glad response that the previous order met with.

The draft regulations, if approved and made, will implement a commitment made by the Chancellor of the Exchequer to extend the borrowing powers of mayoral combined authorities that have agreed debt caps with Her Majesty's Treasury. This extension of borrowing powers is an essential further step for mayoral combined authorities to be able to invest in economically productive infrastructure, giving local government the tools necessary to stimulate local economic growth and productivity.

Currently, primary legislation provides that combined authorities can borrow only for transport functions. Greater Manchester is the exception to this, as the combined authority inherited predecessor organisations' borrowing powers for its fire, police and waste functions when these functions were transferred. In comparison, a local authority may borrow for any purpose relevant to its functions, or for prudent management of its financial affairs.

The Chancellor of the Exchequer announced in the Autumn Statement 2016 the extension of mayoral combined authority borrowing powers, allowing them to invest in economically productive infrastructure, subject to agreeing a borrowing cap with Her Majesty's Treasury. This followed commitments in devolution deals to further consider the borrowing powers of mayoral combined authorities.

The regulations confer additional borrowing powers to the six mayoral combined authorities in Cambridgeshire and Peterborough, Greater Manchester, Liverpool City Region, Tees Valley, the West Midlands and the West of England. The regulations, if approved by Parliament and made, will allow each of these mayoral combined authorities to borrow in respect of all their existing functions.

The Local Government Act 2003 provides that combined authorities have a power to borrow for transport purposes. The Cities and Local Government Devolution Act 2016 amended the 2003 Act to provide for the Secretary of State to make regulations extending a combined authority's power to borrow for other specified functions in addition to transport.

Each mayoral combined authority has a bespoke set of functions—powers—depending on the devolution deals that were agreed with the Government and the legislation approved by Parliament and made. Each of the six mayoral combined authorities has recently agreed a debt cap with the Treasury. Each agreed debt cap specifies the cumulative ceiling for the mayoral combined authority's debt for each of the years 2018-19 to 2020-21, except in Cambridgeshire and Peterborough, where a new agreement will apply for 2020-21.

The Treasury's requirement for debt caps reflects the Government's ongoing commitment to balancing the books. Last week, the Office for National Statistics announced that public sector net borrowing has fallen to its lowest level for 11 years. All combined authorities are subject to the same statutory requirements for borrowing as local authorities, which are provided for in the Local Government Act 2003 and statutory guidance—the Act I just referred to. The prudential borrowing regime requires that an authority can borrow lawfully only if it can demonstrate that servicing and repayments of debt are affordable.

5 pm

Taken together, these conditions provide the necessary assurance that the proposed borrowing powers will be used appropriately. By being able to borrow in relation to their functions, this will give mayoral combined authorities the financial flexibility they need to make investments in infrastructure essential to the area's growth ambitions. It will be for each combined authority to choose their lender. Like a local authority, combined authorities are able to seek loans from the Public Works Loan Board, which I understand is today offering a fixed rate on a five-year loan of 1.85%. As required, each of these mayoral combined authorities, and each of their constituent authorities—44 authorities in all—has given consent to the conferral of additional borrowing powers to allow it to borrow in respect of all its existing functions.

The Government's devolution programme continues. Later this week, voters across the Sheffield City Region will elect their new mayor, and I look forward to the same in the North of Tyne. Making these regulations will extend the borrowing powers to enable the six existing mayoral combined authorities to borrow in relation to all of their existing functions, as agreed in devolution deals and announced in the 2016 Autumn Statement. The mayoral combined authorities have each agreed debt caps with the Treasury, and are subject to the same prudential borrowing regime that all councils are subject to.

We seek parliamentary approval to make the regulations, a draft of which we are considering today, to help facilitate the establishment of economically productive infrastructure in mayoral combined authorities, laying the foundation for future economic success across our country. I commend these draft regulations to the House.

Lord Jones (Lab): My Lords, I thank the Minister for his exposition. He knows far more than I could ever know about these matters, even though long ago I served in three Administrations. Can he look at the helpful Explanatory Memorandum, at paragraph 3.3:

"The instrument does not give rise to minor or consequential effects outside England"?

I cannot cavil at that—surely it is exact. However, the Minister will know, because of his distinguished service in the National Assembly for Wales, that there are sub-regional economies that cross borders. I refer to my entry in the register of interests, and I instance the Mersey Dee Alliance in north-east Wales, Wirral, Cheshire and Ellesmere Port. It is a unique set-up, which seeks to advance the only cross-border economy in Britain. It is a successful economy, and those local authorities in north-east Wales and greater Chester want to advance matters.

I have a question for the Minister, who was a leader in the National Assembly for Wales over many years. Can he explain—if he can, after my tangential reference—why these measures are not appearing in Wales? Is he able to mention one equivalent in Wales of, say, the Mayor of Liverpool or the Mayor of Manchester?

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

The regulation is a natural extension of the powers of the mayoral combined authorities, and in that light it is to be welcomed. The functions that will benefit from investment where the authorities choose to use the additional borrowing powers are significant and of strategic importance to the development of those combined authority areas.

I say all that because I am not criticising the fundamental issue of the borrowing powers. However, I am concerned that additional borrowing by the mayoral combined authorities will result in additional costs being passed to the constituent local authority. So will the prudential borrowing code of the constituent authorities be affected by the additional borrowing permitted under these regulations?

The direct accountability between the spending body, which is the combined authority, and the tax-raising bodies, which are the constituent local authorities, will be fairly obtuse. If these powers are extended in this way, how will local council tax payers and businesses have a clear and transparent explanation of the use of the revenues of local authorities by the combined authorities if, for instance, there is no direct benefit for that particular part of the combined authority area?

The Minister mentioned Sheffield City Region, which will be in the fortunate or unfortunate position on Friday morning of having elected a mayor who will have no powers and no resources because that agreement has yet to come to Parliament and before your Lordships' House. It will be an interesting conundrum for the Minister and his department as to what the newly elected mayor of the Sheffield City Region—he or she—will do.

I have a final comment for the Minister. The extension of powers to the mayoral combined authorities in this way is positive, with the addendums that I have already referenced, but it begs the question as to the continuing divergence of the powers of local authorities that do not have these additional powers because they do not have combined authorities and metro mayors. That is beginning to grow. The differences are beginning to be obvious and there will be an issue that will have to be addressed by the Government in one form or another. Has the Minister any thoughts to share on that issue?

Lord Kennedy of Southwark (Lab Co-op): My Lords, I have no issue with the regulations before the House this afternoon and I draw the attention of the House to my relevant interests as a councillor and as a vice-president of the Local Government Association.

As we have heard, these regulations in effect implement agreements between the Government and the combined authorities referred to in this order to increase their borrowing powers for various functions as listed in the Explanatory Notes. The lists of additional borrowing approvals are different, as each deal is bespoke. I know that the Government like this bespoke deal arrangement, but I am of the opinion that the jury is still out on that way of working, as one person's bespoke deal is another person's confused muddle, with no one knowing or being clear why one authority has certain powers and another does not.

I also noted in the consultation, as referenced in the Explanatory Notes in paragraphs 8.1 to 8.26, that there are still very small numbers of people coming forward to give their views on these consultations. It might be that the numbers compare favourably with other consultations that the department has undertaken, but, if we are to give proper weight to the views of local people—and these areas have millions of people living in them—some of the numbers are derisory. We need to look at other ways of consulting people to get their views on the proposals coming forward. Having said that, I am happy to approve the regulations tonight.

Lord Bourne of Aberystwyth: My Lords, I thank all noble Lords who have participated in the debate on these important borrowing powers. I welcome their participation; it is most helpful and reflects the general support we have had for the Government's approach and the flowering of these combined authorities and mayoralties—particularly in the north and the Midlands—to seek to redress the great growth of the economy in the south and, to some extent, East Anglia. It reflects the importance that we attach to ensuring that there is strong economic development elsewhere.

First, I turn to the points made by the noble Lord, Lord Jones. I thank him for his kind words and reflect on his distinguished service over a considerable period of time in Wales and, more broadly, in the Government in Westminster. He is right that these provisions are England-only, because the department is England-only, but he is also right that exciting and important things are happening in Wales and across the border between Wales and England, around the River Dee and Chester. Also, the North Wales Growth Deal looks to links with the northern powerhouse and the Borderlands Growth Deal encompasses southern Scotland as well as Northumberland and Cumbria. Working with the devolved Administrations in Edinburgh and Cardiff is

[LORD BOURNE OF ABERYSTWYTH]
very much on our agenda. I can reassure the noble Lord that I was in Wales just last Thursday, speaking to the Labour Economy Minister, Ken Skates, to discuss the Mid-Wales Growth Deal and possible links with the LEP in the Marches.

Lord Jones: Does the Minister agree that Mr Skates has made considerable advances in aiming for a better relationship between Whitehall and Cardiff?

Lord Bourne of Aberystwyth: I certainly do. I do not want to damage his future political career at this very sensitive juncture in Wales, but that would certainly be my reflection on things. My apologies to Ken if that does not help.

I thank the noble Baroness, Lady Pinnock, for what she expressed as her fundamental support for what we are doing here. I accentuate that the borrowing caps have been agreed with the constituent authorities, as well as the combined authorities. I note that she raised some issues, quite rightly, about the additional borrowing and asked for reassurance about the checks that exist. First, the cap has been agreed; as she will know, the Treasury is not generally profligate in these matters. Additionally, local authorities are already subject to a prudential borrowing code and regime, which will remain the case. The monitoring officer will be watching that like a hawk to make sure that it complies with the overriding requirement that the authority is able to pay back the debt that is concluded.

The noble Baroness is right that this varies from area to area; indeed, the noble Lord, Lord Kennedy, also made that point. These are bespoke deals. For example, there is a world of difference between Cambridgeshire, Peterborough and Liverpool City Region, so it is not surprising that there are differences between the areas in what is being devolved. The nature of devolution includes these electoral checks, done locally, and one has to trust that people will look after their area. It is the Government's belief—widely shared in the House, I think—that these things should be dealt with at a level close to people's jobs, homes and experience. That is precisely what is happening here. I note that the noble Baroness went on to talk about her positive welcome; I very much thank her for that.

The noble Lord, Lord Kennedy, also generally welcomed the borrowing powers. He noted, and I agree, that sometimes these consultations result in very few people responding. The same is true, sadly, of the number of people voting in local elections, which the noble Lord and I have discussed in other environments. I know that the average turnout is always higher in the noble Lord's elections in Lewisham, for reasons we can only speculate on, but his point was fair. We often include a health warning and say that we are disappointed by the number of people who responded. Nevertheless, it is important that we go through that consultation exercise. I suggest that if we were doing something that was entirely off beam, the number of people responding would be greater. That is the experience. Nevertheless, it is a point well made.

I thank noble Lords for their general welcome for what are important powers for these combined authorities. I am not making a party-political point here, but I note the combined authorities' success across the board. They are working well and are generally welcomed by the people in their areas.

The noble Baroness, Lady Pinnock, asked me to address future developments. We will be watching Sheffield. She is right that there are challenges there and, as noble Lords have seen, there is a challenge about the position of Yorkshire generally. We are looking at proposals that have been made relating to that. They have landed with us and we are looking at them. Obviously that is something we would want to discuss with the incoming mayor of the Sheffield City Region. It is not quite universal in Yorkshire. As the noble Baroness will know, Sheffield and Rotherham are not as warm about this as other authorities, let us say. That is what is happening there. We are aware that Leeds, for example, is the largest city without a mayoralty combined authority badge. It is important that that is put right.

We are looking more broadly at devolution now that we have, or will have shortly, eight combined authorities with the biggest cities, although not exclusively large cities, because Cambridge and Peterborough are somewhat different and we have a particular arrangement with Cornwall, where there is no mayoralty but there is a devolution deal. We are looking at that. In the fullness of time I expect to bring that back to the House for discussion. With that, I beg to move.

Motion agreed.

Transport Levying Bodies (Amendment) Regulations 2018
Motion to Approve

5.16 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 19 March be approved.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, the draft regulations that we are considering, if approved, would enable Cambridgeshire and Peterborough Combined Authority to collect appropriate levies from its constituent councils to meet the costs of carrying out their transport functions. As only the upper-tier authorities—Cambridgeshire County Council and Peterborough City Council—have transport functions, the levy will fall solely on these authorities.

The seven constituent councils of the Cambridgeshire and Peterborough Combined Authority—the administrative areas of Cambridgeshire County Council, the city councils for Cambridge and Peterborough, and the district councils for East Cambridgeshire, Fenland, Huntingdonshire and South Cambridgeshire—have led a local process to improve their governance arrangements, which culminated in this House and the other place agreeing orders that saw the establishment of the Cambridgeshire and Peterborough Combined Authority in March 2017. This order gave effect to the desire of the local authorities in these areas to improve their joint working, including on transport matters.

An order has since been made that provided for a mayor to be elected in May 2017 for the Cambridgeshire and Peterborough Combined Authority. The elected mayor is the chair of the combined authority.

Combined authorities are designated as levying bodies under the Local Government Finance Act 1988. Under that Act, the Secretary of State is able to make regulations relating to the expenses of combined authorities that are reasonably attributable to the exercise of its functions, including those relating to transport.

The draft regulations before the House would amend the Transport Levying Bodies Regulations 1992 to take account of the creation of the Cambridgeshire and Peterborough Combined Authority. They have been drafted to reflect the proposed approach of these local areas and have been agreed by the combined authority. The levy could fund any of the transport functions that sit with the combined authority.

The functions of the combined authority are set out in its establishment order, and any subsequent order that confers transport functions will be clearly identified. These include developing a local transport plan, as well as a range of passenger transport-related functions. It will be for the combined authority to decide how to fund these in accordance with the establishment order and any subsequent orders.

The upper-tier authorities—Cambridgeshire County Council and Peterborough City Council—will need to consider how they fund any levy issued by the combined authority as part of their budget process, whether by council tax, government grants or other sources of revenue. They will need to take into account the impact of council tax levels in their area, including when determining whether any council tax increase is excessive.

The regulations have to establish how any transport levy would be apportioned between the upper-tier authorities if the combined authority could not reach agreement. In the event that they cannot agree, the combined authority will apportion the levy by taking into account previous levels of transport expenditure by those authorities.

The regulations help to facilitate the provision of transport arrangements as part of the combined authority's wider governance changes. I commend them to the House.

Baroness Randerson (LD): My Lords, I thank the Minister for her comments. The regulations come after a period when there has been, not surprisingly, a lot of local discussion and debate about the formation of the combined authority. Having been through a period of change in local council formation in Wales about 20 years ago, I still bear the scars; it is never an easy or happy situation. As I knew that there had been debate about this matter and some discussion about the plans for transport in the area, I took a look at the mayor's transport delivery plan. There are local concerns about an overemphasis in that plan on Cambridge city and on roads.

I applaud the ambition of the mayor, because his ideas include a Cambridge underground—the Cambridge autonomous metro with underground electric buses. It is ground breaking stuff and a very good idea in many ways, because Cambridge as an historic city with a dense population has a huge traffic problem to solve. However, undergrounds involve tunnelling, which is very expensive. It is therefore not surprising that the amount of money that would be sucked into the Cambridge area has alarmed people in Peterborough, who believe—I think quite rightly, being familiar with Peterborough—that much needs to be done to improve their bus network, such as the introduction of bus lanes and encouragement of ultra-low emission buses, as well as to improve cycling and walking infrastructure and the uptake of rail. Those are much less expensive options.

Then there is a wider picture, because Peterborough and Cambridge are two cities in the midst of a large rural area. I strongly welcome devolution of powers over railways, but, in that wider area, people are campaigning for the reopening of Wisbech station, which was a casualty of the Beeching era, and of the line from there to March. They are isolated communities that desperately need investment. People are also campaigning for the electrification of the Peterborough to Ely and Cambridge line to encourage freight from the east coast ports to the Midlands on to the rail. Of course, there are always demands for better rural bus services, with people emphasising the importance of sustainability and tackling congestion and air quality problems. I am simply trying to set the issues that have been put forward in this debate in the context of these regulations, and I have some questions for the Minister.

First, taking devolution fully into account, infrastructure development is of course an essential part of co-ordinated transport planning. So how does the Department for Transport monitor the way that levying bodies, not just this one but others as well, spend the money they raise? How does the department ensure that transport plans treat the whole area affected by this fairly? How does it ensure that there is co-operation and co-ordination—this is a key point—from one local authority area to another? Because there are certain aspects of transport provision, such as local buses, which are rightly an issue for that area alone, but when you are looking at railways you are almost always linking from one local authority area to another, and the same with road provision. So you have a transport plan from here to somewhere; you cannot just stop it at the border. I am interested in how the Government can ensure that the levy, which is after all a levy on the people of that area, is spent wisely.

Lord Tunnicliffe (Lab): My Lords, I can set the Minister's mind at rest that we are not going to have a constitutional crisis: this will be one of the thousands of affirmative instruments that will go through without a Division. Nevertheless, I have some mild misgivings.

The draft regulations give authority to the Cambridgeshire and Peterborough Combined Authority to levy the upper-tier authorities, as far as I can see without constraint. They give this authority to set a levy in respect of transport. I did not know until I heard the speech of the noble Baroness that they were considering digging holes underground. My experience of digging holes underground is that they cost about £250 million per kilometre and they have a dreadful habit of not coming out at anything like the figure you thought they should. Therefore, this levy, if there is overambition, could be a very significant drag on the upper-tier authorities.

[LORD TUNNICLIFFE]

I cannot see in the legislation how that is limited. I saw some words about having regard for the ability of the upper-tier authority to pay, but that seemed to be all, so my first question is: are the upper-tier authorities consulted on the level of this levy? There is a general principle that there should be no taxation without representation. There should surely be some process with proper checks and balances in it.

In researching this order, I went back to the Explanatory Memorandum to the Cambridgeshire and Peterborough Combined Authority Order 2017, which says on page 5, at paragraph 7.13:

"To give effect to the contents of the deal to devolve powers to the proposed Cambridgeshire and Peterborough Combined Authority, the Order confers local authority functions for public transport on the proposed CPCA, to be exercised by the Mayor. It also enables the Mayor to produce and publish a Local Transport Plan for the CPCA area".

My second question, therefore, is: has the mayor produced a local transport plan? Has he costed it? Has he explained the criteria for how the decisions on expenditure are made? Surely this transport plan should create a budget which the upper-tier authorities are able to have sight of and have some say about whether or not they are getting value for money for their levy.

5.30 pm

The next paragraph says:

"The Devolution Deal includes provisions for the Mayor to have responsibility for an identified Key Route Network of local authority roads that will be managed and maintained by the Combined Authority on behalf of the Mayor. The Order confers the related local authority functions under the Highways Act 1980, Road Traffic Regulation Act 1984, New Roads and Street Works Act 1991, Traffic Management Act 2004, and relevant regulations, onto the proposed CPCA, to be exercised by the Mayor, concurrently with the highways authorities for the area (these being Cambridgeshire County Council and Peterborough City Council)".

What does "concurrently" mean? It seems absolutely essential in this arrangement for there to be a clear division between the authorities concerning who does what. Has that clear division been agreed? When it comes to railways, are there clear divisions of authority between the combined authority and Network Rail or the franchise authorities?

I hope the Minister can convince me that the considerable power in the order has a proper democratic decision-making process. If not, it is a step back from democracy.

Baroness Sugg: My Lords, I thank noble Lords for their general welcome—I think—for these regulations. The noble Baroness, Lady Randerson, mentioned the differing views on transport needs in the area. Of course, that will be the case in any combined authority covering different cities and, indeed, rural areas. The noble Baroness spoke about the challenges there. That is the point of having a local transport plan drawn up by the combined authority, which will be responsible for ensuring that the plans are co-ordinated across all the areas it represents.

On the monitoring of the levy by the department, of course we engage with the combined authorities regularly to monitor their transport spending. As with local authorities, they are required to justify their spending as part of the budgetary process.

On whether the levy amount is constrained, it will provide the funding as agreed in the devolution deal and as conferred by Parliament. The levy is set in agreement with the local authorities, so they are consulted as part of the budget-setting process. It provides a fallback in the event of disagreement to ensure that the combined authority can continue to deliver transport functions in the future.

On the local transport plan, which will take into account the differing needs—and the innovative ideas of the mayor—the combined authority will produce and publish a local transport plan in accordance with its devolution scheme. It has not done so yet but, as an interim measure, in June last year the combined authority board agreed to adopt the previous local transport plans of Cambridgeshire County Council and Peterborough City Council as a single local transport plan. In addition, the combined authority has taken over the role of local transport authority from all its different constituent authorities to determine, manage and deliver the mayor's strategic transport plans, as well as integrated public transport networks for the region. All the constituent councils that I spoke about in my introduction are represented on the board of the combined authority.

On working with strategic partners, be it Highways England or Network Rail, the combined authority has not yet set out a transport plan but if it is part of the strategic roads network, for example, Highways England will work closely with the combined authority and the mayor, as Network Rail and the train operating companies will do in the case of rail.

On the concern about democratic accountability, it might be helpful if I set out how that accountability will work. The combined authority requires a two-thirds majority vote to agree the levy, subject to the majority votes of Cambridgeshire County Council and Peterborough City Council. There is of course direct democratic accountability with its directly elected mayor, who will be held accountable, and the elected leaders of the constituent councils, who all sit on the board. The levy will fall only on the two upper-tier authorities and this proposed approach was agreed by the combined authority in November 2017, so there is democratic oversight of the funding requirement that the combined authority will seek. I hope I have reassured the noble Lord on that point.

The provision of these powers to the Cambridgeshire and Peterborough Combined Authority is an example of our commitment to devolving powers to metropolitan mayors, which will result in the improved delivery of local transport. They will of course be democratically accountable to those people who use that local transport. By placing the funding stream from its two constituent authorities into statute, the combined authority and its elected mayor will have its ability to raise a levy strengthened and can use this funding to take strategic decisions on transport investments across the region. I thank noble Lords for their contributions.

Motion agreed.

Employment Rights Act 1996 (NHS Recruitment—Protected Disclosure) Regulations

Motion to Approve

5.36 pm

Moved by ***Baroness Manzoor***

That the draft Regulations laid before the House on 19 March be approved.

Baroness Manzoor (Con): My Lords, we are committed to building a culture of openness and transparency in the NHS to help make it the safest healthcare system in the world. We want to ensure that those who work in the NHS feel safe to make a disclosure in the public interest. This is often called speaking out or "blowing the whistle".

When Sir Robert Francis QC carried out his *Freedom to Speak Up* review in 2015, he recommended a number of changes to help create an open and honest reporting culture in the NHS. The Government have therefore responded to these recommendations, in particular by establishing an independent national guardian, Dr Henrietta Hughes, to support NHS whistleblowers and improve the reporting culture in the NHS. The national guardian's office also provides leadership, training and advice for a network of over 560 "Freedom to Speak Up" guardians, based in all NHS trusts and foundation trusts.

Sir Robert's review found that a number of people struggled to find employment in the NHS after making protected disclosures. He recommended that the Government should introduce protections for people seeking employment in the NHS on the basis that they had made a protected disclosure. The Government amended the Employment Rights Act 1996 through the Small Business, Enterprise and Employment Act 2015. New Section 49B gave the Secretary of State a power, through regulations, to prohibit certain NHS employers from discriminating against job applicants if it appears that the applicant has made a protected disclosure. The regulations are laid under that power.

The regulations give applicants a legal recourse through the employment tribunal or civil court, should they feel that they have been discriminated against, with appropriate remedies should their complaint be upheld. They also enable a job applicant to make a complaint to the employment tribunal and set a timeframe of three months within which a complaint to the tribunal must be lodged.

The regulations set out the remedies that the tribunal may or must award if a complaint is upheld. The employer may be ordered to pay compensation and the tribunal may recommend the employer to take specified steps. They also make provision as to the amount of compensation which may be awarded. An application to an employment tribunal under the regulations is subject to the early conciliation regime. This provides an opportunity to resolve the claim via the Advisory, Conciliation and Arbitration Service, known as ACAS. This should help to ensure that only cases that cannot be resolved through other methods are brought to the employment tribunal. The regulations also provide that discrimination by the NHS employer because the job applicant has made a protected disclosure is actionable as a breach of statutory duty. This gives job applicants additional protection, including the right to bring a claim, which would be in the civil courts, for breach of statutory duty, in order to, for example, restrain or prevent discriminatory conduct.

In summary, these regulations are an important step forward in improving the protections for NHS staff who speak up and will support our ambition to improve patient safety. I commend them to the House.

Baroness Thornton (Lab): My Lords, I suspect this may be the Minister's first statutory instrument, so I welcome her to the cohort of those of us who do this. I also congratulate her on her very good explanation of these regulations. I was a Minister when the first Francis report was produced, and I am very pleased to see these regulations before us. I have a number of questions of which I have given her warning. They are mostly based on the questions that my honourable friend Justin Madders asked last week when this matter was discussed in the Commons. I felt that the Minister there did not give adequate responses, so I am going to have another go. Let us hope we can do better this time.

I realise this is not pertinent to this statutory instrument, but why just the NHS? The Government need to think that there are other sectors, such as the financial sector, where whistleblowing protection is just as important and necessary. Additionally, these regulations do not apply to all NHS staff. There is partial protection for NHS workers. For example, are NHS England and the Department of Health and Social Care excluded? Why? Why are private providers within the NHS excluded from these regulations? What about pharmacies, clinical commissioning group workers, medical researchers and GPs' surgeries? There must be whistleblowers in all those places and the staff in them surely deserve the same protection. What about staff who are transferred to wholly owned subsidiaries within the NHS? Will they be covered by these regulations? If not, why not?

The regulations apply across a range of issues in the NHS. Does the Minister recognise that by drafting regulations in this way the Government risk continuing rather than challenging the culture? While we might welcome the fact that Regulation 3 removes any restriction to action being available only in cases where a protected disclosure has taken place, we are concerned that the use of the phrase,

"because it appears to the NHS employer",

might have the unintended effect of opening up a range of technical defences to NHS employers. Will the Minister consider, for example, an instance where a protected disclosure has taken place but the employer is able to argue that it did not appear to be a disclosure or even that it simply did not consider that a disclosure had taken place at all? This seems to be an anomaly involving the original whistleblowing legislation when an employee is dismissed or suffers detriment as a result of a protected disclosure and the regulations before us. An employee could find themselves without protection if it turns out that they have not made the disclosure but the employer has mistakenly concluded

[Baroness Thornton]

that they have. That appears to be at odds with the draft regulations, which suggest that it is irrelevant whether that individual has made the disclosure. The only consideration under the draft regulations is whether it appears to the trust that the disclosure has been made, so I would welcome any comments that the Minister might have about whether there are any plans to regulate this situation in the future, given that it will be for the court to interpret the employer's belief and how the test is applied. Would not applicants be placed at a clear disadvantage requiring them to take expert legal advice?

5.45 pm

On Regulation 5, I echo the response of the British Medical Association, which raised concerns that the applicant might be able to obtain the required information about the conduct that might give rise to a claim only by using the Data Protection Act 1998, which is often a time-consuming process. Given how long it can take for an applicant to understand that they might have been discriminated against, is three months an appropriate time limit? At what point should the clock start ticking if a claimant becomes aware of the conduct, as is the case in negligence claims? How would they find out? Three months might not be sufficient time if they have to use the Data Protection Act to access that information.

Regulation 8 includes injunctive relief, restraining employers from imposing detriment or requiring any detriment to be brought to an end which seems akin to an interim relief application in respect of an existing employee. As a number of the consultation responses highlighted, the cost of bringing actions in a county court and the High Court is significantly higher than an employment tribunal. Will the Minister consider making representations to her colleagues in the Ministry of Justice about whether the cost regime used in employment tribunals could be applied in those cases? Will she comment also on whether there are any plans to reintroduce employment tribunal fees, which of course, as we know, are a barrier to justice?

Finally, although we on these Benches support the regulations, I hope that they are a first step. They are not comprehensive enough and I would like some indication from the Government that there is an intention to expand them to cover all employees in the NHS.

Baroness Jolly (LD): My Lords, on these Benches we too welcome the regulations. We note that they extend to just Wales and Scotland, and that they come on the back of the Francis review of 2015. I will make a few remarks and then I have a few questions.

In a sense, it is not before time, but last week I spoke to an NHS whistleblower who had given up. He has left the NHS and he is leaving the UK. He has been bullied and was passed over for employment. He had been threatened that, had he gone to an employment tribunal, it would be made sure that he lost, and therefore that he lost a lot of money on top of that. With some distance between then and now, his reflection is that in all NHS settings there are posters urging people, if they see anything that gives cause for concern, to contact their manager and that there will be no recrimination. This measure is too late for that individual.

I would like to ask the Minister some questions and I hope that her answers will clarify some of the things about which I am unclear. I said at the outset that the regulations extend to Wales and Scotland. With devolution, one might wonder why they do not extend to Northern Ireland as well. Echoing the question from the Labour Benches, to which NHS employers or category of employers do they not apply and why not? What is the reasoning behind this? What protections would be made available for a worker who supports a whistleblower? Often they can be tarred with the same brush. If two or more people are trying to raise an issue that concerns them but does not concern another body of the workforce, that can be a really uncomfortable place to be.

There has been no improvement in NHS staff's confidence in reporting practice over the last four years, so how can we remedy that? Is the Minister confident that the regulations will change what is current practice? We know this from surveys of NHS employers. What support could the whistleblower themselves expect in new employment in the event of bullying and isolation, whether the employment is in the NHS or an arm's-length body? The culture is in part still very much one of blame, despite the posters, so how does the Minister suggest that that should be overcome?

Baroness Manzoor: My Lords, I thank the noble Baroness, Lady Thornton, in particular for her good wishes. This is my first time at the Dispatch Box and I will endeavour to answer the many questions that have been put to me. I ask noble Lords to forgive me if I omit any; if I do, I will certainly write.

I begin with the question asked by the noble Baronesses, Lady Thornton and Lady Jolly: why is it that just the NHS is included, and which other organisations are excluded from these protections? As noble Lords know, these regulations are specifically focused on NHS employers and are not intended to cover employers in other sectors, which would be outwith the enabling powers under Section 49B of the Employment Rights Act 1996. Section 49B(7) of that Act defines "NHS public body" by reference to a list of bodies, thus the powers of the regulations are limited to those bodies only. Any amendment to that list would require primary legislation.

The noble Baroness, Lady Thornton, asked about the wording,

"because it appears to the NHS employer".

Once again, the regulations reflect the primary legislation, which provides powers for regulations to prohibit NHS employers from discriminating because it appears that the applicant has made a protected disclosure.

The noble Baroness asked about the time limit of three months. We know that some respondents to our consultation were concerned that the three-month time limit was not long enough but, as the noble Baroness will know, it is consistent with the time limits for employment claims generally. Where discrimination involves an admission to do specified things, such as due process in job application, the time starts to run from the end of the period within which it was reasonable for the NHS employer to have acted.

On injunctive relief, in terms of making two complaints—that is, going to the employment tribunal and going to the civil courts—I think the noble Baroness was indicating that this may well be expensive. If there are dual proceedings, fees payable to the employment tribunal have recently been abolished so there will be no fees for that tribunal, and we are expecting that most cases, as I said in my opening remarks, will initially be conciliated and then go to the employment tribunal. However, we do not envisage dual proceedings except in the very limited circumstances that have been provided in the regulations. The noble Baroness asked whether we have any plans to reintroduce tribunal fees. No, there are no plans to reintroduce those fees.

On the issue of culture, the whole point from the Government's perspective is that we need to ensure that the culture within the NHS is changed so that those people who want to highlight poor practice in the NHS, who are concerned about patient safety, have the right to speak up. It is very important that their rights are protected. Should they wish to move to a new employer, the regulations will help to safeguard them. Paramount is patient safety, and the regulations will go some way to addressing those issues.

I thank the noble Baroness, Lady Jolly, for also welcoming the regulations. I have already covered who they cover and why: it is because of the prescribed list, and we will need primary legislation if we are to amend it. However, we will keep the regulations under review and if we think that they need to be strengthened, we will look seriously at that. The whole issue is that we want the NHS to be the best employer and to protect the greatest asset that we have in the NHS: our staff.

The noble Baroness asked to which NHS categories the regulations do not apply. I think I have answered that question—yes, I am getting a nod there. The other question she asked was what protection is given to more than two people. Of course, the protection is there for someone applying for a new job, so it is relevant only to that individual. If there is another friendly person, the regulations do not cover them. Of course, in the wider aspect of work there may be some remedy under the Employment Rights Act 1996, but I cannot be sure from my basic knowledge.

What new support will we offer the person who has made the complaint, the so-called whistleblower? The whole point of the regulations and having this open, transparent, fair culture within the NHS is that it is very important for employers to have policies in place to tackle issues of concern. We are being supportive to ensure that these things do not happen.

I think I have answered most of the questions put to me. As I said, forgive me if I have missed anything: I shall write. Clearly, there are questions about how the regulations will work in practice. As I said, the Government will keep the regulations under review and consider issuing guidance.

To conclude, we want an NHS where lessons are learned to provide the safest possible care for patients. This is what it is about: actually changing the culture. The regulations will help to give a clear message that openness, transparency and fairness within the NHS should be the norm. They will also improve the trust of patients, other service users and the wider public. They will support NHS employers to be an exemplar to others in fostering a culture of openness and willingness to report problems with care.

NHS staff who are prepared to speak up are a very important asset. We want NHS staff to feel confident that when they speak up in the public interest it will not have a negative impact on their career. We want NHS employers to be exemplars in fostering a culture of openness and willingness to report problems. We want a culture in which lessons are learned to provide the safest possible care for patients.

The regulations are an important step forward in achieving those aims. I commend them to the House.

Motion agreed.

Legislative Reform (Constitution of the Council of the Royal College of Veterinary Surgeons) Order 2018

Motion to Approve

5.59 pm

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

That the draft Order laid before the House on 1 March be approved.

Relevant document: 18th Report from the Regulatory Reform Committee

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, the veterinary profession plays a vital role in protecting animal health and welfare, maintaining food safety and public health and enabling trade in animals and animal products. I am pleased, therefore, to introduce this draft legislative reform order, which seeks to make changes to what the profession and others view as the outdated constitution of the council of the Royal College of Veterinary Surgeons.

The RCVS is the statutory regulatory body in the United Kingdom and is therefore responsible for the registration and regulation of the profession in this country. The changes proposed in this order are strongly supported by the college and by the range of stakeholders and interested parties who responded to consultation by both the RCVS and Defra. They will be widely welcomed. As a department, we have worked closely with the college to take these proposals forward and to get the drafting right. I pay tribute to the college in particular for its willingness to address issues raised during the process and to find solutions which, through this draft order, will strengthen its governance arrangements.

I am pleased to say that our Delegated Powers and Regulatory Reform Committee has approved of the proposals described in the explanatory document laid before this House and agreed that the use of the affirmative resolution procedure is appropriate. The committee commended the department on,

"a well-presented and informative Explanatory Document, and on its inclusion of helpful Keeling Schedules".

[Lord Gardiner of Kimble]

I am therefore very grateful to my officials for their work in producing these documents and for the constructive responses we received to the consultation, which helped shape the final proposals.

At present the college is required to have a governing council with 42 members. There are 24 elected members, all veterinary surgeons; two members appointed by each university with a current veterinary school—Bristol, Cambridge, Edinburgh, Glasgow, Liverpool, London and Nottingham; and four appointed by the Privy Council—currently, the UK Chief Veterinary Officer and three lay members. This is not in line with modern regulatory best practice, and issues surrounding the governance arrangements at the RCVS have been raised on a number of occasions in recent years. In May 2008, the report on the Veterinary Surgeons Act 1966 published by the Environment, Food and Rural Affairs Committee of the other House included a recommendation for the restructuring of the council, especially concerning lay membership, suggesting that the proportion of lay members should be increased. A consultation exercise undertaken by the college in 2009 reached similar conclusions about the need for reform.

As a first step towards restructuring, a draft legislative reform order was brought before Parliament in 2013 to make changes to the governance of the two college committees that deal with disciplinary proceedings: namely, the disciplinary committee and the preliminary investigations committee. In parallel, in 2012, with the aim of becoming a first-rate regulator, the RCVS commissioned research to understand better how it is seen by others and where opportunities for change might lie. The RCVS was found by the report, published in April 2013, to be significantly out of step with the arrangements in place at other professional regulators and royal colleges. The report also identified that the council was seen as less efficient than it could be, mainly because of its size but also because of its membership structure, and could be modified to operate more efficiently and in the better interests of public and profession.

The research report included advice from the Professional Standards Authority on the efficiency and effectiveness of health professional regulators. This advised parity of membership between lay and professional members is,

"to ensure that purely professional concerns are not thought to dominate council's work'.

It also suggested that smaller boards were associated with better effectiveness.

The RCVS embraced the need for change in order to achieve the stated aim of becoming a first-rate regulator and demonstrating a better fit with the five principles of better regulation, by being proportionate, consistent, accountable, transparent and targeted. As current council arrangements are laid down in an Act of Parliament—the Veterinary Surgeons Act 1966—the RCVS again turned to the Government with a view to making a further legislative reform order. The college recognises that it must be accountable to the profession it regulates and the overall aim of the proposed reforms is therefore to modernise the structure and composition of its governing council.

On matters of detail, the Veterinary Surgeons Act does not currently include a statutory requirement for lay persons to be included on council. The current arrangement of appointing lay members to council via the Privy Council, or by the veterinary schools, is not sufficiently robust. It is proposed, therefore, that in future there should be statutory provision for independently appointed lay representation on council—six places in all. Secondly, now that the RCVS is the regulator of the veterinary nursing profession through the provisions of the supplemental charter of February 2015, it is appropriate that the law should provide for veterinary nurses to be represented. Two places on the council are proposed.

As noble Lords will appreciate, the size of the council is also inextricably linked to its composition. In order to provide places for lay and veterinary nurse members without further increasing an already unworkably large council, reductions in the representation of other member categories are therefore proposed. Over a period of three years, the number of veterinary surgeons elected to council would reduce from the current 24 to 13, though at all times they will have a majority. While it is considered essential that the council continues to benefit from the academic expertise of the UK universities with accredited veterinary degrees, a reduction in the number of places allocated to them is also proposed—from two per university to three members in total, appointed collectively. UK veterinary schools are content with the proposal for collective representation on council. Finally, the UK Government's Chief Veterinary Officer will continue to be fully engaged with the council as now, but with observer status rather than as a Privy Council appointee.

Having a council of 42 members is an obstacle to its efficiency. The cost of each meeting—around £24,000 through reimbursement of expenses and loss of earnings —and the difficulty of ensuring that 42 members are available, restricts how often it can meet and therefore impacts on its ability to take timely decisions. As council cannot meet often enough to take time-pressured decisions, it has been necessary to delegate some of its work to an operational board. Decision-making is currently divided between council and the board, with a potential for lack of accountability in those decisions. At present, veterinary surgeons, veterinary nurses and the animal-owning public are at risk of being affected by delays and difficulties arising from decision-making under the current governance arrangements. If the council's size were reduced overall, it could meet more frequently and reach and communicate decisions more effectively.

The proposed changes therefore reduce the size of the council and revise the balance of membership between vets and non-vets, including veterinary nurses and lay persons. They will bring the RCVS in line with many other modern-day regulatory bodies and allow for greater efficiency, transparency and accountability to both members and the general public. For all the reasons I have outlined today, I commend the use of the legislative reform order to make changes that will benefit the veterinary profession. I beg to move.

Baroness Byford (Con): My Lords, I very much welcome the order before us today. I declare my interest as an honorary associate member of the Royal College

of Veterinary Surgeons. For many years, we have had regular discussions with members of the royal college about the unwieldiness and the way in which they have had to work in recent years. The Minister referred to the importance of the health and welfare of animals of all sizes. It really does give me great pleasure to support this order today. I was particularly pleased to read the report from the Delegated Powers and Regulatory Reform Committee. It was a well presented and helpful report that had come forward following the various consultations that had taken place.

Any of us who are involved in public life would view a council of 42 with great fear. It was something that was fairly common in those days. I belong to the Worshipful Company of Farmers, and we would look at our constitution, which would be a very similar size in the old days, and we had to say, "In this day and age, is it relevant? Can it do the job it is supposed to do? Would it not do it better with a slightly smaller and more receptive constitution?". Today we are looking at a very important section of the profession, and I am really glad that the profession has great support. We want to make sure that we have good governance and better regulation. That would then free up the council to meet more often and to be able to do what it wants to do in a more timely fashion.

I still believe that vets have a vital role to play, not just for the welfare of the animals that they look after, but for members of the general public, who rely totally on their expertise. In this way, the royal college and the members of it are an important link. I welcome the extension of council membership to lay members and veterinary nurses.

Baroness Parminter (LD): My Lords, we on these Benches support the proposal. In the unavoidable absence of my noble friend Lady Bakewell of Hardington Mandeville, I thank the Minister most profusely for the opportunity he provided her and others last week to talk through this proposal and give some further insight into it. It is a set of proposals that are important to alleviate some of the well documented weaknesses in the governance of the RCVS in the past, and it will make an important contribution to organising an important profession in our country.

I wish to make two brief points. First, we of course support the direct elections that will be undertaken for the RCVS in future, but this is a very diverse profession. The practice in a small rural area is very different from the profession in a large urban conurbation. It would be helpful to know if the Minister could offer this House some reassurance that the breadth of experience in the diversity of the profession will be respected in the direct elections to the RCVS council that will come forward.

Secondly, there is a need for new blood. This is a profession where the pace of change is fast. Our understanding in veterinary medicine is changing and developing quickly; technology is changing our understanding of animal welfare, and animal physiology is changing fast. However, these proposals argue for a term of office of four years, which can be extended three times; then, after a period of two years, a council member may stand again. That would not necessarily be helpful in bringing new blood into any particular governing body. It may be difficult to make such a point in a House like this, where there is no democratic accountability and no limit on the term of office, but it is important that we reflect personally on the issue of the length of service. I hope that members of the council will show some restraint, so that, as the noble Baroness, Lady Byford, just mentioned, we can ensure that both members of the public and the animals the vets serve get the members that they need of a council that upholds the honour of what is a very important profession in this country.

6.15 pm

Lord Trees (CB): First, I should declare my close association with the Royal College of Veterinary Surgeons as a former council member and former president, and I am still proud to be a registered member of the college, albeit non-practising.

Unlike the medical royal colleges, the Royal College of Veterinary Surgeons has a regulatory as well as a professional responsibility, and that needs to be borne in mind when considering the size and composition of its council. We also all need to understand that it is not a representative body for the veterinary profession—that is the role of the British Veterinary Association. The RCVS's duty is to protect animal health and welfare and the public interest by ensuring optimum standards in education, veterinary practice and professional conduct. Those key regulatory powers, as we have heard, are enshrined in the Veterinary Surgeons Act 1966, which, incidentally, by virtue of that fact, is one of the most important measures we have in safeguarding animal welfare.

Given that there has been little government desire since 1966 to produce primary legislation, the college has initiated—with stimulus from other reports, it has to be admitted—a number of progressive reforms over the intervening years: for example, the whole development of the veterinary nursing profession, with, now, a register, accredited education, CPD and a disciplinary procedure. The most significant recent change with respect to veterinary surgeons was the legislative reform order of 2013, which completely separated the professional conduct activities of the preliminary investigation committee and the disciplinary committee from the council of the royal college, so that now, nobody from the council sits on those committees. Through that LRO, those committees have statutory lay membership, in line with current regulatory practices. Your Lordships may be interested to know that, even more recently, an alternative resolution dispute system has been introduced, to which the public have recourse for complaints that do not involve professional misconduct.

Thus, the LRO before us is but the latest in a whole series of progressive reforms, and I am sure it will not be the last. It is concerned, as the Minister has explained, partly with improving the operational efficiency of the RCVS council, but importantly it also specifies the formal inclusion of lay persons on the council—something which, it must be admitted, has been happening for some years, but by informal arrangement. Also importantly, it provides for the statutory inclusion of veterinary nurses. Although the new council will be smaller, these changes will increase the relative representation of lay persons on it from about 14% at the minute to 25%.

[Lord Trees]
The changes will improve the working efficiency of the council and are in line with modern governance practice in terms of lay membership. But it is also important to say that they will provide for a council of sufficient size to populate the various technical committees, reflecting the unique role of the royal college as one that regulates.

These measures, as has been said, have the full support of the current council. I suggest that they are uncontroversial—although I am sure that the college will take good cognisance of the remarks made by the noble Baroness, Lady Parminter—and they are very much to the public good. They are welcome, and I fully support this LRO.

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for explaining the background to the order with such clarity. I also found helpful the explanatory document which gives the background.

However, I was concerned to read that no impact assessment had been prepared, with the reason given that there was no significant impact on the private, voluntary or public sectors. I would hope that the Minister will acknowledge—as I think he did—that vets have a significant impact on public health: for example, in relation to food standards, the breeding and feeding of livestock, research facilities and drug companies. Therefore, the regulation of veterinary practice has a wider public interest. Perhaps the Minister could comment on that.

Having said that, in line with all noble Lords who have spoken we support the proposals and regard them as a helpful step in modernising the functions of the RCVS. Its aspiration to be a first-rate regulator has to be welcomed. By any stretch, as noble Lords have said, a council of 42 people is unwieldy, and that results, as appears to be the case here, in split responsibilities between the council and operational board, which raises concerns about where the ultimate responsibility lies. We also welcome the steps to broaden expertise on the council by adding lay members and veterinary nurses to the representation.

Having said that, I have a few questions for the Minister. First, the current RCVS council is supported by a system of statutory committees, standing committees, sub-committees and working parties. It also has, as I just said, an operational board which oversees college management, governance and the management of resources. Can the Minister clarify how the proposed changes to the size of the council might impact on the delegation of duties to the operational board and those committees? How will that work with a council half the size of the original, and is he confident that the existing workload can be covered by a much smaller council?

Secondly, given the regulatory and animal welfare roles of the RCVS, this is an instance where size and composition could matter. Could the Minister therefore clarify what consideration has been given to the potential loss of expertise that will result from the proposed changes? What procedures are in place to ensure that appropriate skill sets and expertise are maintained? In particular, the LRO proposes a big reduction in the number of members appointed by veterinary schools. At a time when our scientific understanding of animal disease and public impact is moving at a fast rate, how will the council maintain and stay abreast of scientific developments that affect its public reputation and trust? The noble Baroness, Lady Parminter, touched upon this issue but it goes wider, as it is about the fast-moving science and being up to date and aware of all that.

Finally, I have seen in the press that the posts for the lay members are already being advertised, with applications to be sent to the royal college. Does the Minister agree that it is important that these appointments are carried out with transparency and overseen by an independent body? Can he explain how it is intended that these appointments are made, and how we are to have trust that genuine lay member independence will be achieved if the royal college is to be involved in those appointments?

I very much look forward to the Minister's response to those questions, but overall I echo the comments made by other noble Lords as we agree with the proposals.

Lord Gardiner of Kimble: My Lords, I am extremely grateful to all noble Lords who have spoken and for the warm welcome for these proposals, which have been the result of the department working in consultation with the royal college to make sure that we get this right and that it serves the purpose of achieving a balance.

I would like to take head-on what the noble Baronesses, Lady Parminter and Lady Jones of Whitchurch, referred to when they mentioned the reduction of the veterinary surgeon element of the council. There was a concern that there may be a loss of expertise and experience if that came about. In a sense, it is precisely one of the reasons for this order. We all wanted to ensure that there was this range. We recognise what the noble Baroness, Lady Parminter, said about the range of vets in practice, in corporate situations and in the state veterinary service, and the range of the duties of that profession. It is in effect why, in taking into account a number of representations, specifically on these points, the Government and the RCVS settled on a council that actually will be bigger than that recommended by the First Rate Regulator initiative. It is precisely a recognition that we wanted there to continue to be a range of expertise. We and the college thought that this would ensure that the necessary expertise was there.

There is always a balance to be achieved when we try to get things right, and there was also the existing concern about the council's efficiency. My noble friend Lady Byford could not have chimed in more helpfully with the experience that she brings to these matters—the experience and knowledge of the unwieldiness of the current arrangement and the desire of the college to have good governance and better regulation, as well as recognising the vital role that the college plays. That is why we have the numbers to ensure precisely that there is this experience on the council.

A number of points were raised. It is right that we send a message to the college. The noble Baroness, Lady Parminter, spoke about new blood and the length of service dynamic. Yes, it is very important to the profession that innovative thinking and new knowledge are always available to the council, which is why the

veterinary schools composition on the council is so essential. But it is also important that younger vets come on so that there is a diversity in the council.

I should have declared this before, but it is not really a declaratory interest. Two members of my family are members of this profession, so I get a considerable amount of background information, and one thing that is really important is how every practice relies on the professionalism of the veterinary nurses as well as the veterinary surgeons. In the blend of what this council will have, the experience of two members of the veterinary nursing profession coming on to the council will make a significant difference to the way in which the council can think about these things.

I am going to dance on a pin, as it were, with the noble Baroness, Lady Jones of Whitchurch, about the no impact assessment. The proposed changes address the efficiency and accountability of decision-making by the council, but do not affect the nature or outcome of the decisions themselves. They will therefore not have any impact on businesses or charities. That may be something that the noble Baroness and I reflected on when we met. But that is the precise reason why there was no impact assessment. The order does not affect the nature or outcome of the decisions themselves.

The noble Baroness, Lady Jones of Whitchurch, asked a number of other questions. She mentioned university vet schools. She is absolutely right that it is vital that vet schools provide expertise in certain areas for the council. All the vet schools are content with the proposal for collective representation in place of individual allocations. The current arrangements would lead to a continued increase in the size of the council, as any new vet school would automatically be allocated two places on the council. There is a reflection that we probably should be training more vets in this country; I know that some universities are thinking of opening a veterinary school. This new arrangement also addresses the fact that potentially, if many more veterinary schools were to open, we would automatically add a further two to the council, which would be unhelpful to good governance and to the profession.

6.30 pm

A number of points were made about existing workload by the noble Baroness, Lady Jones of Whitchurch. From all the discussions I have had, the council has an active desire for these changes. It is well aware that the changes should liberate it from the unnatural burden of not being able to have enough council meetings—for reasons of both affordability and efficiency—and enable a far more frequent flow of council meetings where business can be transacted. One of the unsatisfactory points that I highlighted in my opening remarks was on accountability with a board and a council. This measure will mean that the council has the potential to meet and transact business more often. The noble Baroness asked about existing workload; we want to ensure that the work we are embarking on will be actively helpful for the council's requirement to undertake its duties in a modern way.

I am always conscious of senior members of a profession and Nobel Prize winners when I am at the Dispatch Box. It reminds me of my exchange on gene editing when the noble Lord, Lord Winston, got up and my heart sank. It is important to have a senior professional such as the noble Lord, Lord Trees, in your Lordships' House. He identified the importance of protecting public interest and highlighted the 2013 issues on the separation of the two committees so that the disciplinary arrangements are separate from the work of the council. Again, that enables the council to concentrate on other matters.

The noble Lord also referred to progressive reform and the increase in lay persons. I generally take on board your Lordships' contributions that this will be helpful to the profession. I am most grateful for your Lordships' support, but the bulk of the work goes to the veterinary profession, the college and my officials, who have produced a piece of work that we can all be proud of.

Baroness Jones of Whitchurch: I thank the Minister for a number of very helpful responses. However, he did not address the issue of the appointments of lay members, with the royal college seeming to be fully hands-on with that, and the need for more independent scrutiny of that process. I do not know whether he can answer that.

Lord Gardiner of Kimble: The important thing about lay members is that they are independent of the profession. I will write to the noble Baroness and other noble Lords who have participated so that I can give a little more detail on the mechanism for the appointment of lay members. Obviously, it must be done in a punctilious way, through all sorts of processes. This is a three-year transition and, subject to your Lordships' consent, one of the reasons for the advertisements—I admit that it might be suggested that this is jumping the gun—is the strong desire in the profession to get on with this and begin the transition in July. If your Lordships and the other place did not consent, this would obviously be premature. There was a strong desire to start the process and not wait until 2019, but to get this transition to bring in immediately six lay members and then contract down over three years the number of veterinary surgeons and introduce the other membership I have outlined. That was precisely because this is work we need to get on with. I will write to the noble Baroness with the fullest detail.

Motion agreed.

Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018

Motion to Approve

6.35 pm

Moved by ***Lord Henley***

That the draft Order laid before the House on 15 March be approved.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, these changes will extend the Government's powers to intervene in mergers that might give rise to national security implications. The powers to make this secondary legislation are found in the Enterprise Act 2002.

[LORD HENLEY]

The changes contained in the instrument will amend the share of supply test to allow the scrutiny of more mergers in three areas of the economy: military and dual-use technologies, and two parts of the advanced technology sector encompassing computing hardware and quantum technologies. Subject to parliamentary approval for this affirmative procedure statutory instrument, a second negative procedure statutory instrument will be laid to amend the turnover test to allow the scrutiny of more mergers in the same three areas of the economy.

Before I explain the changes in detail, I will say a few background words about the Government's position relating to national security and mergers. The United Kingdom economy is open to the world. Core to our economic approach is to trade with and invest in other countries, and to welcome foreign investment into our economy. To facilitate this open economy, our framework of laws and policies on protecting national security and on the conduct of mergers must be continuously reviewed and updated. This tradition of periodic refinement has enabled the United Kingdom to remain a place where people can invest with confidence.

The Enterprise Act 2002 is the key legal means for the Government to examine mergers for the purposes of national security and other specified public interest criteria. In the light of technological advancements, economic developments and changes in the national security threat, it is now time for reform. Last year we set out a two-stage approach, beginning with action through this instrument and the proposed related instrument amending the turnover test.

I will briefly expand on the amendments. The changes made by this order and the proposed order amending the turnover threshold relate to mergers involving businesses active in three areas of the economy. First, the instrument covers businesses that produce military and dual-use technologies. Military technology includes such items as arms, and military and paramilitary equipment, while dual-use technology could have both military and civilian uses. These items can pose clear and immediate risks to the United Kingdom, our people and society. Furthermore, the acquisition of items that provide the UK with its military advantage can raise significant national security concerns. The instrument ensures that businesses involved in the development or production of goods that form parts of the UK's export control regime will be in scope.

Secondly, the instrument addresses the risks created through advances in computing hardware, which now mean there are ubiquitous goods with the potential to be directed remotely should a hostile actor obtain access or control. Thirdly, it will bring quantum technology within scope. The huge technological potential offered by this area also presents national security challenges.

As a result of the changes made by the instrument, the Government will be able to intervene if the target business in a merger has a share of supply of at least 25% before the merger. The acquiring party will not need to have any share of the supply of the same goods or services for the test to be met.

We are making these changes because we are concerned about possible scenarios whereby a business with no existing share of supply in the UK buys a business in one of these three areas of the economy. Such a merger would not result in an increase in the share of supply in the UK and, therefore, the current share of supply test set out under the Enterprise Act would not be met. The changes will apply only to the areas of the economy that I have set out.

The amendments made by the second, negative statutory instrument will mean that the Government are able to intervene in a merger if the target firm or business being taken over has a UK turnover of more than £1 million, rather than the Act's current £70 million threshold, in the same three areas of the economy covered by the first instrument. Microbusinesses are excluded from the scope of the revised thresholds, ensuring that the Government take as proportionate and focused an approach as possible to delivering our policy intention.

We have incorporated the constructive feedback from our consultation last October into the substance of these reforms. We have published an impact assessment and guidance to provide greater clarity to businesses and investors.

We will continue to assess risks in other sectors. If there is evidence to suggest that the Government should take action in additional areas of the economy, they will bring forward further legislation. In the longer term, the Government will bring forward primary legislation to make more substantive changes to how they scrutinise national security implications of foreign investment. We consulted on the proposals and are analysing the responses. A White Paper will follow in due course. I commend the order to the House.

Baroness Burt of Solihull (LD): My Lords, as the Minister said, the United Kingdom prides itself on having an open economy—open to trade and open to takeover and mergers, in the UK as well as overseas.

However, in some areas, mergers may be open to threats to our national security in the fields referred to in this order of dual-use military technologies, computing hardware and quantum-based technology. Examples of such threats might be espionage, disruptive or destructive actions, or exploiting investment as inappropriate leverage in other negotiations. I therefore understand why the Government might want to strengthen their powers to scrutinise mergers and takeovers which fall into these areas.

However, I hope that the Minister will forgive me if I express a few concerns, and a number of questions are worth putting to him. First, some of the responses to the Government's consultation were quite hostile. Why did the Government reject the opinion of several legal firms that the proposals were "inappropriate" or "disproportionate"? Why is the special public interest regime, meant to deal with mergers below the £70 million threshold, considered inadequate? Why have the Government decided on these three sectors specifically? Why does the order not cover other sectors that could have national security implications?

While the Government are not doing it at present, we need to be wary of significantly expanding the national security grounds for intervention because they could be used spuriously, as we see President Trump doing. We need to ensure that Parliament can keep the

Government accountable for this power. We are currently far from the situation that exists in the USA, with President Trump using national security concerns spuriously to protect US economic interests, but will the Minister commit to coming to this House regularly, as the Secretary of State has done in connection with GKN, so that Parliament can hold the Executive to account for how these powers are used? In addition, we have been calling for a public interest test that could widen the grounds for ministerial intervention. However, this is controlled at EU level so would require EU agreement or would need to be done post Brexit. Does the Minister agree that the grounds for ministerial intervention in corporate takeovers, particularly by foreign companies, need to be expanded? For example, would he be prepared to work with the EU to consider the case for intervention in mergers to ensure that the UK's research and innovation capacity is not restricted? I look forward to hearing what he has to say.

6.45 pm

Lord Stevenson of Balmacara (Lab): My Lords I am grateful to the Minister for his introduction to this SI. I shall start with a very obvious point that I am surprised he did not reach for as his first line, which is why it has not been brought in on a common commencement date. The noble Lord will have heard me speak about this before and I am sure that the department is tired by my questions about this. Such regulations will have a huge impact on certain sectors of the economy. Common commencement dates were meant to give people good warning about when regulations would come in. They are 6 April and 1 October: it would surely not have been impossible to arrange for them to come in, if the 6 April date could not be met, on 1 October. That would have given people plenty of time and knowledge that it was happening.

The Minister has been very good in responding to this and seems to get the point, but of course no action seems to be flowing from the decision. I have decided to keep a tally of his scores: we have had six statutory instruments so far, only one of which has landed on a common commencement date, and I had to rule that one out because it missed the common commencement date that was available to it and went for one further down the track, so it really does not count. So it is really 6-0. I really think that this is not a good standard and I am going to bring this up every time we have a chance to debate these issues until he is finally goaded into doing something about it.

More seriously—although I think that this is a serious point—I agree with a lot of what the noble Baroness, Lady Burt, said about the general approach taken here, particularly the very hostile response that was given to the consultation, which must have given somebody in the department some concern. Like her, we agree with the broad thrust of what has been happening here. There is a concern for the national interest if there are not sufficient regulations set up around hostile takeovers—or, indeed, takeovers that have been done with consent—if they threaten our national interest.

My worry, which I think is shared by the noble Baroness, is that while it is relatively straightforward to see what is meant by the national security interest in relation to military technologies, where the regulations will bite, as soon as there is an introduction of dual use a grey area opens up. It is true that most of the material will be listed as part of the UK's export control regime, and there is some consolation in that, but I worry a bit about material that could be judged by BEIS to have dual-use technologies, even if the original intention was never for that to be the case. It would mean that the company involved in making it might well get caught by this.

The problems get worse in relation to computing hardware and, in particular, in relation to quantum technology, for which definitions are so obscure, or so general, that it is a very hard to see that those who are working in this area will know whether they are or are not in scope of this regulation. Computing hardware is, as the regulation says, ubiquitous. It is very difficult now to see any technology that does not involve some form of computing, whether it is at the simple level or whether it is more complex, in terms of writing instructions and making things happen in a way that could be carried out to be hostile or difficult. I think that the noble Baroness, Lady Burt, and I are saying the same thing here; that this is getting to the point where it is either such a broad list that it is going to include every company involved in technology and manufacturing in this country, or so wide that it will be useless, because it will be taking the Government's control, through the merger process, into every sector of the economy, and I am sure that is not what is intended.

If it is bad in computer hardware, it is even worse in quantum technology, which is a phrase that is not well defined. As far as I can see, it certainly did not appear in any legislative document that we have seen in this House for some time. Of course, quantum could be restricted to mean very fast computing. Obviously, that is the sense in which the national interest is more likely to be at risk. But, again, in a short period of time it could include virtually every sector of our economy, and if it does not, it means that our economy will not be competitive across the world. The question underlying this is: is it not better for the Government to fess up and say that they will investigate every merger? In effect, every merger could be used as a way of breaching our national security. If that is the case, perhaps the Government ought to think again about the road being taken here.

My second point is about the change that is coming forward in the negative instrument, which is helpfully attached to the documents that have been circulated for this debate, which is to reduce the value of the target companies for the share of supply test from £70 million turnover per annum to £1 million. Again, it is a question of scale. Does that not suggest that virtually every company in the country will be subject to the share of supply test? If that is the case, how on earth will it reassure those who are carrying on a business which does not threaten the public interest to feel that any discussion or merger they may wish to do with their business—and many of them will be private companies—will be subject to call-in by the competition authorities? I wonder again if the Government are on the right track here.

[LORD STEVENSON OF BALMACARA]

It may be that the £70 million turnover provides a difficulty in relation to the companies the Government have concerns about, although it is true that according to the impact assessment that is attached to the regulation, we are talking about a very small number of companies—between nought and five. If it is the case that we are going for virtually every SME in the country—those with a turnover of more than £1 million—that probably excludes microbusinesses, but is that not another problem? Quite a lot of the innovative material that will be of concern to our national security may be being developed by two or three people with a very small turnover. If microbusinesses are excluded, the competition issues will not come to bear. I may be making too much of this, but I worry about the direction in which this is going.

My final point for the Government to respond to is that this was said by the Minister to be part of a longer-term project. This is the first stage: two statutory instruments, one of which we have to approve this evening and one of which is a negative and we will have to consider whether to pray against it. According to the Explanatory Memorandum, the second stage is:

"In the longer term, the Government will bring forward primary legislation to make more substantive changes to how it scrutinises national security implications of foreign investment".

The noble Baroness, Lady Burt, made a number of points about how there may be other considerations here. Will this be restricted to national security or are we finally going to see some sense of the public interest test—which clearly the Secretary of State wished he had powers to address when he was looking at the GKN merger a few weeks ago—which would deal with questions about how research, employment and sensitive activities across the country will be looked at when there is an aggressive overseas takeover that is not particularly welcomed or wanted or which is subject to concerns for which there is currently no adequate remedy in our companies legislation? The Stock Exchange can make recommendations, but these are not statutory. What we need is a government commitment to go forward on this basis which will look at undertakings that will have to be given by the acquiring company for which there will be statutory redress should it be recalled. Is this what is referred to in paragraph 7.4 of the Explanatory Memorandum, and if it is not, can we know when that is going to happen?

Lord Henley: My Lords, I start with an apology to the noble Lord, Lord Stevenson, as I have done before, particularly about the common commencement date. I know that he considers this matter of considerable importance and I promised I would take it on board. I hope the message is getting through to the department. It has now also got through to my Whip, my noble friend Lady Vere, who is sitting next to me. She will kick me hard when it next happens. The noble Lord first gave me one out of six, but by his second count had reduced that to 6-0. We will see if we can do better in the future. I hope that I can deal with some of his concerns. I certainly hope we can get back to that point and, where it is important, stick to that common commencement date because I see the importance of what the noble Lord has said.

I forgot about this until I sat down in the Chamber; I then did a few quick sums and saw that the order had been laid on 15 March and comes into effect not 28 days after it is laid but 28 days after it is made. I imagine that it is made on the date when it goes through either this House or another place—I think it goes through another place tomorrow—and that is well off 5 April. I briefly thought, "Gosh, if it means laid then if I add this to that, I would only be a week out", but I do not think I am as lucky as that.

Perhaps I may deal quickly with some of the points that the noble Baroness, Lady Burt, and the noble Lord, Lord Stevenson, raised. Some of them go wider than the order itself; no doubt someone will discuss some of them in due course if and when there is the primary legislation that I referred to in my opening remarks. The noble Baroness said that a number of legal firms felt, in the consultation, that these reforms were disproportionate or inappropriate. We considered the legality of the reforms carefully and they have gone through significant legal scrutiny by internal and external legal advisers. The reforms have of course been looked at by the JCSI, which we take very seriously. The JCSI certainly said that it believed that the reforms are within the powers granted under Sections 28 and 123 of the 2002 Act.

The noble Baroness, Lady Burt, also asked why the special public interest intervention regime is not enough. That regime is limited to mergers involving relevant government contractors. This statutory instrument takes us a little further and will enable the Government to scrutinise mergers involving an acquirer with no share of supply of the relevant good or service, in the case before a transition, in those three key areas of the economy that I mentioned. She asked why it was those three sectors and not others. Again, the Green Paper set out just how hostile actors' takeover of certain businesses could raise risks to our national security. We will obviously keep our powers under review but we are acting only under the powers in the 2002 Act. We will not hesitate to take further steps, if necessary, to protect our national security.

The noble Baroness, Lady Burt, then took us wider. Perhaps I may link my response with that to some of the questions raised by the noble Lord, Lord Stevenson. He was looking at the long-term project and how we manage to address it. I can really only take them both back to what I said: we had a Green Paper earlier this year and we are now in the process of looking at a White Paper. Following that, we will need to bring forward primary legislation, which will certainly give the noble Baroness the chance for any amount of parliamentary scrutiny that she wishes. Failing that, I can give an assurance that either my right honourable friend or a Minister here at the Dispatch Box will report to the House if and when it is necessary. As I said, we will want to bring forward primary legislation at some stage to make more substantive changes to how we scrutinise the national security implications of foreign investment. Whether we would want to go wider and look at further grounds for intervention—I noted what the noble Baroness had to say about research and innovation—is a matter that should be left for that occasion.

Finally, the noble Lord, Lord Stevenson, asked about how respondents reacted to the changes to the share of supply test proposed in the consultation. Some respondents raised concerns that the test is subjective and that the threshold is complex and therefore involves complex assessments and would lead to disproportionately high costs for smaller businesses. Some businesses recognised that the proposed changes are necessary to prevent hostile states taking over smaller companies working in sensitive areas of the economy without due diligence being provided. Therefore we are clear that the amendments that the two orders make to the share of supply test are necessary to safeguard national security, as they ensure that our powers to intervene will cover deals involving a buyer with no footprint in specific markets.

I hope I have answered most of the questions put to me by the noble Baroness and the noble Lord. I again apologise to the noble Lord for failing to meet his requirements on the common commencement date. That point is getting through to me, and I have taken it on board. Other than those questions, I think there was a broad welcome for the limited measures proposed in this order and the associated negative instrument.

Motion agreed.

Laser Misuse (Vehicles) Bill [HL]

Returned from the Commons

The Bill was returned from the Commons agreed to.

House adjourned at 7.01 pm.