Vol. 791
No. 143

Tuesday
22 May 2018

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2018-05-22

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

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

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

© Parliamentary Copyright House of Lords 2018,
this publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

House of Lords

Tuesday 22 May 2018

2.30 pm

A minute's silence was observed to mark the one-year anniversary of the Manchester attack.

Prayers—read by the Lord Bishop of Oxford.

Brexit: Sheep Farmers

Question

2.38 pm

Asked by ***Lord Wigley***

To ask Her Majesty's Government what assessment they have made of the effect of Brexit on sheep farmers in the United Kingdom.

Lord Wigley (PC): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I draw attention to my relevant interests as a member of the Farmers Union of Wales.

Baroness Vere of Norbiton (Con): My Lords, we recognise the sheep sector's immense contribution to rural life, local economies and the iconic landscapes of the different countries of the UK. We are carrying out a programme of analytical work that will aid our understanding of how leaving the EU will affect the UK sheep sector. This work will help us shape new domestic agricultural policies and explore new trading opportunities.

Lord Wigley: My Lords, I thank the Minister for that Answer. Given that 90% of Welsh sheepmeat exports go to the European Union and that lambs born today will probably go to market after 29 March next year—and, in the event of a no-deal Brexit, may face a 50% or higher tariff barrier—can the Minister assure the House that the Government will have a contingency plan in place to help sheep farmers facing possible market collapse next April? When will the farming industry be given at least an outline of any such plan?

Baroness Vere of Norbiton: My Lords, the Government are committed to securing the best deal with the EU and beyond for the farming, fisheries and food sectors. In safeguarding the sheep sector, we have committed to continue the £3 billion of agricultural support until the end of the Parliament in 2022, and the Environment Secretary has said that support for our farmers will continue for many years to come where the environmental benefits of that spending are clear.

The Earl of Shrewsbury (Con): My Lords, does the Minister agree that livestock farmers in upland and less favoured areas—where lambing percentages are much lower and mortality rates are much higher than their lowland counterparts—must be supported following Brexit, as must their communities, and that any change in the farm payments scheme must recognise this? These are special cases.

Baroness Vere of Norbiton: My Lords, Brexit provides us with a perfect opportunity to review our subsidies. The vision in our consultation for the new English agricultural policy is around public money for the delivery of public good, and the uplands have the potential to benefit from new environmental land management schemes as they deliver a great deal of public good for the environment and landscape—for example, in improving biodiversity, flood risk management and carbon sequestration. We have consulted in England on what additional support farmers in upland areas may need as part of this new domestic policy and a report on this consultation's findings will be published in due course.

Lord Hannay of Chiswick (CB): Can the Minister go a little further than she did in her Answer to the noble Lord, Lord Wigley, and tell us what assessment the Government have made of the consequences for sheep farmers in Wales, Scotland, Northern Ireland and England if they have to face the full common external tariff, which will be the case if we leave under WTO terms? Further, what assessment have the Government made of the consequences of removing the protection of the common external tariff in the context, for example, of the trade agreement with New Zealand? If she does not have the figures at her fingertips, can she write to me and place a copy of her reply in the Library of the House?

Baroness Vere of Norbiton: My Lords, we are confident of getting a deal on Brexit, which is very important to remember. Obviously assessments are going on all the time as new data becomes available. Independent assessments have also been made, such as, for example, the *Impacts of Alternative Post-Brexit Trade Agreements on UK Agriculture*. This assessment covered the sheep sector and highlighted the importance of low-friction trade.

Lord Morris of Aberavon (Lab): My Lords, my family's interest in Welsh agriculture has been declared. The noble and learned Lord, Lord Keen of Elie, responding on 2 May to my speech on the withdrawal Bill, was unable to set out what the basis of the agricultural payments will be after 2020. Would it not be grossly unfair and a backward step if future payments in Wales were made on the Barnett formula rather than on the present basis? Further, can the Minister clarify the position and put an end to the anxiety of sheep farmers, whose livelihoods are at stake?

Baroness Vere of Norbiton: I thank the noble and learned Lord for his question and am happy to give a little more clarification if I can. As noble Lords will know, the consultation closed earlier this month, to which we had 40,000 responses. Agricultural policy is a devolved matter so there will be a system by which the Government have committed £3 billion of funding, which will continue. That money will be divided up between the four devolved Administrations according to an agreement between them and from then it will be up to the Welsh Government to decide how that money gets to Welsh farmers. In doing so, two considerations must be borne in mind. First, the UK as a whole will

[Baroness Vere of Norbiton]
always be the unit for international negotiations and, secondly, we must maintain the integrity of the UK internal market.

Baroness McIntosh of Pickering (Con): My Lords, will the Minister give the House an assurance today that the Government will not ban the limited and highly regulated export of live trade in sheep? This is a lifeline to farmers in North Yorkshire and other upland farmers in Wales, Scotland and Northern Ireland. It must not be stopped.

Baroness Vere of Norbiton: I am sure my noble friend is well aware that our call for evidence closed today. Of course, we will look at the responses. We have also asked the Farm Animal Welfare Committee to look at the transport of live animals. We will respond to the call for evidence in due course.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I refer to the Minister's earlier response about upland farmers and their ability to diversify. The *Health and Harmony* consultation document stated:

"Compared to lowland farms, farms within the Severely Disadvantaged Area have less opportunity to diversify".

Would the Minister care to comment?

Baroness Vere of Norbiton: The noble Baroness is completely right. The opportunities for diversification will depend on the type and location of a farm. This is what the consultation tried to draw out. It tried to understand what sort of farmers will need what sort of support going forward. We will have policies supporting diversification, innovation and skills. Noble Lords may be aware that only 12% of farmers benchmark their services against widely available data for farming. That can be improved and if it is, we can improve efficiency.

Lord Cunningham of Felling (Lab): My Lords, is the Minister aware that hill farmers throughout the United Kingdom are already among the lowest earners in agriculture? Any damage to them, whether through exports to Europe or the Government's failure to support them adequately, will have a catastrophic effect in the hills on families and their children.

Baroness Vere of Norbiton: My Lords, I am well aware that those particular farmers are most at risk. That is why the Government are looking at how we can make sure they receive the support they need. There are many opportunities in our post-consultation policy development to look at how we will provide grants, which provide public money for public good.

Sexual Offences Legislation

Question

2.47 pm

Asked by ***Lord Campbell-Savours***

To ask Her Majesty's Government what plans they have, if any, to reform sexual offences legislation.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the Government recognise the importance of keeping sexual offences legislation under review. The Sexual Offences Act 2003 was amended in 2015 and again in 2017. We are currently reviewing the law around upskirting and considering the wider law on non-consensual photography.

Lord Campbell-Savours (Lab): My Lords, given that Mr Harvey Proctor has launched a civil action in the High Court, revealing in his particulars of claim the full name and identity of the man "Nick" who trashed the international reputation of Sir Edward Heath and others, and in so far as the public interest provisions under court procedure rules, which deny anonymity in the Proctor action, are in conflict with anonymity provisions in sexual offences legislation, surely the cloak of lifetime anonymity should not be extended to false accusers such as "Nick", whose full name is now plastered across the internet worldwide. This was never, never, never the intention of Parliament. Is it not about time that we reviewed the law on anonymity?

Lord Keen of Elie: My Lords, lifetime anonymity that is extended to complainants may be removed. Indeed, those complainants who are found to have made false and misleading claims regarding sexual conduct may be subject to prosecution.

Lord Paddick (LD): My Lords, is the noble and learned Lord aware of the case, highlighted on Channel 4 last night and again in the *Times* this morning, of a defendant who was arrested for rape in 2015, charged 18 months later, suspended from his job without pay and whose case was dropped by the CPS yesterday? Are such cases the result of a failure in the law to protect the innocent—to uphold the principle of being innocent until proven guilty—or are they a failure of the police and the CPS properly to investigate such cases? What do the Government intend to do about it?

Lord Keen of Elie: I am not going to comment on the particulars of an individual case. However, police guidance is clear that the name of a suspect should not be released before they are charged. The naming of people who have been charged with a sexual offence is consistent with the principle of open justice.

Baroness Corston (Lab): My Lords, I draw the Minister's attention to an item in today's *Times*, which states:

"Google is helping its users to uncover the identity of rape victims whose anonymity is protected by law".

What action will or could the Government take?

Lord Keen of Elie: Again, I am not in a position to say what action the Government will take with regard to such a matter, but clearly such conduct could potentially be regarded as a contempt of court.

Lord Sherbourne of Didsbury (Con): My Lords, does my noble and learned friend agree that when, in cases such as those of Sir Edward Heath—there would be many others such as Cliff Richard and Paul Gambaccini—people's names are leaked or made public because the police are on a public fishing expedition and no charge is made, there is no formal way in which they can be acquitted? Therefore, their reputation is permanently damaged.

Lord Keen of Elie: We quite recognise the danger to a person's reputation where their name is leaked prior to charge. That should not occur, as I indicated before. That does not mean that they do not have civil means of redress. The noble Lord referred to the case of Cliff Richard, who I understand has undertaken a civil course for redress in these circumstances.

Lord Lexden (Con): Further to my noble friend's question, the noble Baroness, Lady Williams of Trafford, informed the House recently that the Government have the power to establish an inquiry into Operation Conifer. Since the hopeless Wiltshire chief commissioner has made it clear that he will not take any action, will the Government now establish this inquiry so that the reputation of Sir Edward is not left in intolerable limbo?

Lord Keen of Elie: My Lords, that would be a matter for the Home Office and not for the Ministry of Justice to consider. However, I am sure that Ministers in that department are listening.

Baroness Smith of Basildon (Lab): My Lords, can I take the Minister back to the question asked by my noble friend Lady Corston? His answer seemed rather complacent. If on Google women who have been victims of rape can be identified and help is being offered to do that, surely the Minister would want the Government to take some action and not just accept it.

Lord Keen of Elie: With respect to the noble Baroness, there was no complacency in my previous answer. Clearly, we will look at the facts and circumstances of any complaint and then determine what action it is appropriate to take. However, it would not be appropriate to anticipate prosecution or other action without a proper investigation of the facts. Indeed, that underlies many of the complaints made here today.

Lord Brooke of Alverthorpe (Lab): My Lords, are there any positions on which the noble and learned Lord can take some action?

Lord Keen of Elie: Not at present.

Lord Marlesford (Con): My Lords, will the Government make the change whereby, when people are not prosecuted, the police do not say "because of insufficient evidence" but use the phrase "a lack of evidence"? There is a very important distinction.

Lord Keen of Elie: I am not sure that I would necessarily draw a strict distinction between those two terms, but clearly no charge will made unless the police have an element of evidence. Where a case is not proceeded with by way of prosecution, that may be because of an absence of a sufficiency of evidence.

Lord Hayward (Con): Further to the answer that I understood my noble and learned friend to give earlier on, will he recognise that many people who have faced such accusations have spent many hundreds of thousands of pounds dealing with lawyers and seeking representation to clear their name before any decision is taken about no further action? To suggest that they should then pursue redress implies that they have the resources to pursue that claim. For many of them, that is just not financially practicable.

Lord Keen of Elie: My Lords, I entirely agree with the observations of my noble friend: it may well be that some of those who are charged and indeed prosecuted and found not guilty of an offence do not have the means to take civil action in order to vindicate a complaint about the way in which they were treated.

Leaseholders' Rights: High-rise Blocks

Question

2.54 pm

Asked by ***Lord Shipley***

To ask Her Majesty's Government what advice, if any, they are giving to local housing authorities about the rights of leaseholders in high-rise blocks which have cladding which has failed fire safety tests.

Lord Shipley (LD): My Lords, I remind the House of my interests in the register and beg leave to ask the Question standing in my name on the Order Paper.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, we have advised local housing authorities that building owners should take responsibility for funding fire safety measures and should draw on their existing resources to do so. It is important that leaseholders are able to access specialist advice to understand their rights. The department is providing additional funding to the Leasehold Advisory Service which provides free initial and tailored advice to support leaseholders in understanding the terms of their lease.

Lord Shipley: My Lords, I thank the Minister for his reply, for the announcement last Thursday of the extra £400 million being provided by the Government and for the further clarification yesterday which made it clear to the House that it could be more than that if remediation of these tower blocks costs more. I bring to the Minister's attention the fact that in a large number of local housing authority tower blocks, fire-watching staff have been in post now for almost a year and will presumably be for some time to come. I seek the Minister's confirmation that no cost will be incurred either by tenants or leaseholders of such a block; the faulty cladding is no fault of theirs and it seems unreasonable to expect them to pay any additional cost, either through service charges or through rents.

Lord Bourne of Aberystwyth: My Lords, the amount is actually £420 million, but the noble Lord is absolutely right that that could be somewhat higher: it is an estimate. That money is designed for replacing the cladding system. On the type of 24/7 watch he referred to, some of these interim measures were in place for blocks where the remediation work has not yet been completed. It is certainly our view that social tenants should not bear the cost of that. In the private sector, similarly, interim measures are in place and it is the

[Lord Bourne of Aberystwyth]
view of the department that those costs should be borne by freeholders. My right honourable friend the Secretary of State is having round-table meetings in the next few weeks to discuss these issues with leaseholders and owners.

Lord Elystan-Morgan (CB): Is it not the case that the responsibility of the landlord will depend to a large extent upon the lease or tenancy agreement and that these may vary considerably? In the circumstances, does the noble Lord not agree that there is a strong case for imposing a blanket statutory responsibility on landlords in this connection?

Lord Bourne of Aberystwyth: My Lords, the noble Lord is right that the position will vary according to the nature of the lease in question: it may vary enormously from one lease to another. We already have the example of Citiscape in Croydon where those responsible, the leaseholders under the lease, have had the owner of the block, Barratt, come forward and say it will bear the cost. We are hoping that that position will be replicated in other cases. We rule nothing out, but in the meantime the round tables that my right honourable friend the Secretary of State is organising provide a way forward to see how this will be received.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I refer the House to my relevant interests as a vice-president of the Local Government Association. The sum of £400 million for removing potentially dangerous cladding is welcome. Can the noble Lord confirm whether this is new money or money diverted from the affordable homes programme? Have the Government completely ruled out providing any new additional funding to alleviate the problems highlighted by the noble Lord, Lord Shipley?

Lord Bourne of Aberystwyth: My Lords, the noble Lord is right and I suspect he knows the answer he is going to get. The money is out of the existing funding programme but additional money will be forthcoming in the year after: it alters the profile by delaying that additional housing by a year.

Lord Stunell (LD): The Minister has set out very clearly the solutions to one particular problem, but he will be well aware that the Hackitt review said that to avoid these things recurring, it was essential to have a dutyholder who would take responsibility for every phase of the building. Can he confirm that the Government have the power to do that by regulation and do not need to wait for primary legislation in order to deliver this important safety consideration?

Lord Bourne of Aberystwyth: My Lords, I believe the noble Lord has written on this very subject—I saw a copy of his letter this morning. We are looking at the points he has raised. But in relation to Hackitt in general, some measures will need to be taken forward in primary legislation, others possibly in secondary legislation, while others might not need legislation at all. We are reviewing that because obviously we accept what Dame Judith has said in all regards, except in relation to the banning of combustible cladding, which we are carrying out and which she is content with.

I apologise to the noble Lord, Lord Shipley. It was indeed £400 million, not £420 million. He is better informed than I am. We have so many figures flying around but I apologise to him.

Lord Fox (LD): My Lords, in many cases private leaseholders do not know the identity of their freeholder. The freehold may be held in a foreign trust away from the public gaze. Can the Minister explain how in those cases leaseholders will be able to get recourse on these expenses?

Lord Bourne of Aberystwyth: My Lords, the noble Lord is right that it is not always straightforward; I suspect that that is a minority of cases. We are, I think, beginning to get to the tail end of the identification of buildings. We have made additional money available to local authorities, which have powers under the Housing Act 2004 to require information from the owners. He is absolutely right about that issue. We are looking at that with a view to ensuring that leaseholders do not pick up the bill, irrespective of whether or not that is a provision in the lease.

House of Lords: Size

Question

3.01 pm

Asked by ***Lord Harries of Pentregarth***

To ask Her Majesty's Government what plans they have to reduce the size of the House of Lords.

Lord Young of Cookham (Con): My Lords, as I said yesterday, the Government are committed to working with others in your Lordships' House to address the question of its size. Noble Lords will no doubt be aware that my right honourable friend the Prime Minister wrote to the Lord Speaker on 20 February to set out the Government's position in more detail, and a copy of that letter is in the Library of the House.

Lord Harries of Pentregarth (CB): I thank the Minister for his reply and for his response to the PNQ yesterday, which helpfully set out a number of points. Bearing in mind his reassurances then, does he recognise that there was widespread surprise and dismay about the timing and number of the appointments? Given the very widespread support in the House for the Burns report and its recommendations, does he agree that although "one in, two out" is a useful yardstick, the quicker we can get down to the Burns target of 600, the greater the respect in which this House will be held as a self-regulating body?

Lord Young of Cookham: The noble and right reverend Lord's Question no longer has the sparkle it had when he tabled it on Friday as a Topical Question. Indeed, it is the 15th question on the composition of the House that I have answered in the past week—or to be more accurate, it is the 15th question I have been asked.

In response to the noble and right reverend Lord, who was a member of the Wakeham commission and spoke in support of the Burns proposals in the debate in December, I say that it is time for us to move on

from the adversarial position we had yesterday. I apologise and ask for absolution for any role I may have played in that. We need to put behind us the announcement, which was a legacy issue, as the noble Lord, Lord Butler, said, and address ourselves to the question posed yesterday by the noble Lord, Lord Burns, which the noble and right reverend Lord has just mentioned; namely, the time has come to arrive at an understanding for the system of arrivals and departures from the House between now and the end of this Parliament, within the framework—if not necessarily to the letter—of the report of the noble Lord, Lord Burns. As some noble Lords said in the debate on Tuesday, if we do not do this ourselves, somebody will do it to us.

Lord Robathan (Con): My Lords—

Lord Cormack (Con): My Lords—

Lord Grocott (Lab): My Lords—

Lord Garel-Jones (Con): My Lords—

Lord Taylor of Holbeach (Con): My Lords, I think we will hear from the noble Lord, Lord Grocott, and then from the Conservative Benches.

Lord Grocott: I gently suggest to the noble Lord, Lord Young, that he would not be answering 15 questions if he could give us one answer. The answer that I would like him to give us is the one that was presented by the Burns report, which has been largely accepted by the House, and indeed implicitly by the Government; that is, the completely anomalous position of having 92 protected places while trying to reduce the size of the House, so that, following last week's vacancy caused by the retirement of Earl Baldwin, this House will be by law obliged—against its policy—to replace that exiting Peer with a new Peer. If the Minister will simply answer yes to my question of whether the Government will put an end to that anomaly, I guarantee that he will not get any more questions from me.

Lord Young of Cookham: There are, however, many others who might fill the gap. The noble Lord, Lord Grocott, was the first to admit that his Bill would have but a marginal impact on the size of the House, which is the subject of this debate, dependent as it is on the mortality of the hereditary Peers—none of us would wish to see that accelerated. So far as his Bill is concerned, as I said when he asked a question last week, unusually we have offered additional time to him. There will be another Friday when he can take the Bill forward and I have made it absolutely clear that the Government will not obstruct it. It is up to him and the House to make progress with the additional time that we will make available.

Lord Garel-Jones: My Lords, if memory serves me right, I believe that Jeremy Corbyn gave an undertaking that, if elected leader of the Labour Party, he would not nominate any new Peers. If that is the case, can my noble friend the Minister speculate on what might have led him to change his mind?

Lord Young of Cookham: Certainly, one positive outcome from the announcement last Thursday was that Jeremy Corbyn recognised that the House, as at present constituted, has a role to play in holding the Government to account and refreshing its membership. My noble friend is right that when Mr Corbyn was campaigning to be leader in 2015, he pledged:

"I don't think there should be any more appointments to the House of Lords".

When pressed as to whether he would appoint new Labour Peers as Labour leader, he said:

"I see no case for it".

I am delighted that sensible heads on the Benches opposite me have persuaded him to change his mind and help refresh those Benches. Speaking personally, I hope that at some point in the future Alan Johnson and Jack Straw might join us.

Lord Newby (LD): My Lords, does the Minister agree with the Institute for Government this morning that Andrew Tyrie cannot be an independent chair of the Competition and Markets Authority and take the Government whip? Will he suggest that he should follow the precedent of the noble Lord, Lord Currie of Marylebone, and sit as a Cross-Bencher?

Lord Young of Cookham: Andrew Tyrie was a robustly independent-minded chair of the Treasury Select Committee in the last Parliament and regularly held the Government to account. I spoke to him this morning and I can confirm that he will be sitting as a non-affiliated Peer. I gather that if you want to join the Cross Benches, you have to do a period of quarantine if you have been a member of a party. Since he took up the job as chair of the CMA, he will sit as a non-affiliated Peer and therefore not be in receipt of the Conservative whip.

Baroness Smith of Basildon (Lab): My Lords, the original Question from the noble and right reverend Lord, Lord Harries, asked what plans the Government have to reduce the size of the House. As illuminating and entertaining as the Minister's answers always are—they are very enjoyable—I have not yet heard the Government's plans. Given that the only sensible, credible plan on the table is that of the noble Lord, Lord Burns, and his committee, and that other parties have agreed that if the Government abide by its terms then we will too, is that not the plan which the Government have to accept and move forward on?

Lord Young of Cookham: The Prime Minister set out the Government's plans in her four-page letter to the Lord Speaker dated 20 February, which I referred to. There are two basic elements. One is restraint on appointments; the Prime Minister has said that she will sign up to it and I think that she has already shown that. The other is to take forward the work which the noble Lord, Lord Burns, referred to yesterday. The Government are prepared to play their part in those discussions as the Burns committee continues its work.

Baroness Hayman (CB): Rather than the Government just being prepared to play their part, is there not a part for the Leader of the House to play in bringing together the leaders of the other groups? Does the

[Baroness Hayman]
Minister not agree—indeed, he pointed this out acutely yesterday—that relying on retirements and, even more so, on deaths produces an unfair and disproportionate result between the parties? If we are to succeed by our own volition in reducing the size of the House, we need the leaders of those groups to come together and agree on a fair formula so to do.

Lord Young of Cookham: The noble Baroness makes a powerful case. The Government will play our part, within the framework of the Burns committee recommendations, in getting the size of the House down. That committee has now been reconvened and the Government will listen carefully to any proposal that it makes. We are anxious to play our part in reducing the size of the House. As I have said before, and without wishing to be provocative, we have led the way, in promoting retirements from our Benches.

Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018

East Suffolk (Local Government Changes) Order 2018

East Suffolk (Modification of Boundary Change Enactments) Regulations 2018

West Suffolk (Local Government Changes) Order 2018

West Suffolk (Modification of Boundary Change Enactments) Regulations 2018

Motions to Approve

3.10 pm

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

That the draft Orders and Regulations laid before the House on 19 and 21 March be approved.

Relevant document: 25th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 9 May.

Motions agreed.

Package Travel and Linked Travel Arrangements Regulations 2018

Motion to Approve

3.10 pm

Moved by ***Lord Henley***

That the draft Regulations laid before the House on 16 April be approved. *Considered in Grand Committee on 16 May.*

Motion agreed.

Smart Meters Bill

Third Reading

3.10 pm

Bill passed.

Nazanin Zaghari-Ratcliffe

Statement

3.11 pm

Baroness Goldie (Con): My Lords, with the leave of the House, I will now repeat in the form of a Statement the Answer given today by my right honourable friend Alistair Burt, the Minister of State, to an Urgent Question in the other place. The Answer is as follows:

"We remain deeply concerned for all our dual national detainees in Iran, including Mrs Zaghari-Ratcliffe, and are doing everything that we can for them, including trying to secure access and ensure their welfare. We will continue to approach the case in a way that we judge is most likely to secure the outcome that we all want. Therefore, she and the House will forgive me if I am limited in my comments on both her case and those of other dual nationals, both at the moment and in relation to any continuing developments. The Prime Minister raised all our consular cases in a telephone call with President Rouhani on 13 May, and the Foreign Secretary raised the cases in a meeting with Iranian Foreign Minister Zarif in Brussels last week. I also raised them with my contacts in Tehran. Our ambassador in Tehran has also raised concerns with the Iranians at the highest levels, and spoke by telephone with Mrs Zaghari-Ratcliffe on Sunday 20 May. Foreign and Commonwealth Office officials are in regular contact with Mrs Zaghari-Ratcliffe's family".

3.13 pm

Lord Collins of Highbury (Lab): My Lords, I thank the Minister for repeating that response to an Urgent Question. Yesterday the noble Lord, Lord Ahmad, in response to the noble Baroness, Lady Northover, said the Government were taking all possible steps to raise our concerns about Nazanin. Obviously, our first consideration is for her welfare and that of other British nationals who are detained, but in terms of not giving a running commentary and actually focusing on the most successful strategy for her release, I feel it is also important to focus on the welfare of her family and particularly her husband. I hope the Government and indeed the Foreign Secretary himself will undertake to meet Mr Ratcliffe as soon as possible so that the Government's strategy and hopes for its success can be fully outlined to him, and so that we can all go forward in the confidence that she will be released as soon as practicable.

Baroness Goldie: The noble Lord makes an important point. I reassure the House that the principal source of our information is indeed the family, and the Foreign and Commonwealth Office is closely in touch with the family. He makes a good point about our natural concern for the well-being of Mrs Ratcliffe. We understand that she is receiving twice-weekly visits from her family, including from her little daughter, Gabriella, and that

she is allowed to speak by telephone to her husband regularly. I am sure that the noble Lord's observations have been heard. I understand that Mr Ratcliffe was in the Gallery in the other place. I believe that my right honourable friend may have had a meeting with him; I cannot confirm it categorically.

Lord Campbell of Pittenweem (LD): My Lords, I accept and understand the constraints under which the Minister has dealt with the matter, but it is at once complicated, disappointing and sensitive—not helped, if I may say so, by what one might charitably describe as the carelessness of expression of the Foreign Secretary when he publicly implied that Mrs Ratcliffe's visit to Iran was for more than family reasons.

Without overly linking this to present circumstances surrounding the nuclear deal with Iran, is this not a propitious time at which to make a humanitarian case on behalf of Mrs Ratcliffe, based, first, on her previous ill-health and her continued separation from her husband but also, one might argue, more particularly her continued separation from her daughter?

Baroness Goldie: I thank the noble Lord for recognising the undoubted sensitivities and delicacies which inevitably prevail in this case. He makes an important point. Sunday's telephone conversation was the first that Mrs Zaghari-Ratcliffe was able to have with Her Majesty's ambassador in Tehran. He assured her that we continue to prioritise her case and do everything we can to bring about her release, including requesting consular access, access to medical reports and a temporary furlough so that she can celebrate her daughter's fourth birthday on 11 June. Again, I am sure that the noble Lord's observations are being noted.

Baroness Hamwee (LD): I urge the Minister to consider how those who are friends, as well as relatives, of dual nationals imprisoned in such circumstances can be reassured. Of course, I appreciate the constraints on what she can say and what can be said outside this Chamber. I ask this question having had the experience of contacting the Foreign Secretary's private office at the request of a friend who is a friend of someone who has recently been imprisoned, who wanted to provide information about that person's background which might be of use to the Government. Having spoken to the Foreign Secretary's private office, I then emailed, my friend emailed and I emailed again. There has been no response to any of those contacts. I do not expect to be told the detail, nor does my friend, but a reassurance that offers to help are taken seriously would make the Government's position better understood.

Baroness Goldie: I thank the noble Baroness for raising the issue. Obviously, I do not know the specific case to which she refers, but I should like to do whatever I can to assist. If, after Questions, she would like to have a word with me, I will do whatever I can to facilitate a response to her approach to the FCO.

Lord Swinfen (Con): My Lords, does my noble friend think that Mrs Ratcliffe is being used as a bargaining chip?

Baroness Goldie: Quite simply, no. It is important, as others have rightly observed, that we acknowledge that these are extremely difficult and challenging circumstances. The United Kingdom Government are doing what we can to maintain contact with the family and to try to facilitate access through the normal diplomatic channels. It was a welcome development that we were able, via the ambassador, to have that conversation with Mrs Zaghari-Ratcliffe on Sunday.

Lord Green of Deddington (CB): My Lords, may I just make one point to the Minister? These are very difficult cases, and I speak as someone who dealt with the two nurses in Saudi Arabia. That went on for a very long time and was very distressing to many people. It is necessary in addressing this issue to take account, and to be seen to take account, of the Iranian Government's judicial processes. We will not get very far unless we at least do that. We may not like their processes—they may be impenetrable and very unwelcome—but we have to take account of them.

Baroness Goldie: I thank the noble Lord. Just as we would expect other countries to take seriously and respect our judicial process, it is extremely important that we reciprocate that respect to the Iranian judicial process.

Lord Purvis of Tweed (LD): My Lords, on the unilateral position taken by the United States towards the JCPOA, there are understandable increased tensions within the Iranian authorities—between those who are more, let us say, hard line and those who are maybe more progressive in their relationship with the West. Can the Government give an assurance that, as our dialogues with our European partners continue, we will not lose sight of the fact that there are interests involving British joint citizens in our discussions at a high geopolitical level, and that such issues can be raised on an ongoing basis rather than just through a consular relationship?

Baroness Goldie: I can reassure your Lordships that the Government are cognisant of the position of dual national detainees everywhere. We do everything we can to facilitate appropriate support not just for the detainees but, of course, for their families. I said earlier that there were limits to what I am able to say. I do not dispute that there is always room for global diplomacy, but this case has understandably caused a great deal of disquiet and concern, and the Government remain utterly committed to trying to support the family to see whether we can find some resolution to the difficulties.

Transport Emissions in Urban Areas

Statement

3.21 pm

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, with the leave of the House I shall repeat as a Statement an Answer given to an Urgent Question in another place by my right honourable friend the Secretary of State for Environment, Food and Rural Affairs, on improving transport emissions in our urban areas. The Statement is as follows:

[Lord Gardiner of Kimble]

"Air pollution is the greatest environmental threat to human health in this country and the fourth biggest public health killer after cancer, obesity and heart disease. Today marks the publication of the latest stage in this Government's determined efforts to reduce and reverse the effects of air pollution on our health and on our natural environment. Our clean air strategy consultation, published today, outlines steps that we can all take to reduce the emission of harmful gases and particulate matter from all the sources that contribute to polluted air. It is important to recognise, as I know my honourable friend does, that air pollution is generated by a wide variety of sources: from the fuel used for domestic heating to the application of fertilisers on agricultural land; and from the use of chemicals in industry to sea, rail, air and road transport. The strategy published today outlines specific steps that we can take to reduce the use of the most polluting fuels, to manage better the use of manures and slurries on agricultural land and also to ensure that non-road mobile machinery is also effectively policed, among other measures.

Also, my honourable friend asks specifically about urban transport pollution and of course last year the Government published their UK plan for tackling roadside nitrogen dioxide concentrations. The plan allocated over £3 billion to help reduce harmful NOx emissions, including £475 million to local authorities to enable them to develop their own air quality plans. Since then we have been working with local authorities to help them deliver specific solutions and have issued ministerial directions to 61 local authorities to ensure that they live up to their shared responsibilities.

Our plan, of course, committed us to phasing out the sale of conventional diesel and petrol cars by 2040 and taking them off the road altogether by 2050. This is more ambitious than any EU requirement and puts Britain in the lead among major developed economies.

Alongside that commitment, we are dedicating £1.5 billion to the development of zero-and ultra-low emission vehicles, including support for new charging points across the country. We were, of course, helped in the preparation of our clean air strategy by the excellent report produced by the chairs of the Health, Transport, and Environment, Food and Rural Affairs Committees, which was published earlier this year. In their excellent report on air quality, the Joint Select Committees recommended introducing a new Clean Air Act, and we will introduce primary legislation to clean up our air. They suggested that we initiate a new health campaign and we will, as the Secretary of State for Health has emphasised, introduce a personal messaging system to ensure that those most at risk receive the information that they need about pollution risks.

It was also recommended that we place health and environment at the centre of our strategy, rather than simply technical compliance, and we do that with ambitious new targets that match World Health Organization metrics on improving air quality. We were also asked to reduce emissions from tyres and braking, the so-called Oslo effect, and today we announced action to work with manufacturers to do just that.

Emissions have fallen consistently since 2010, and my predecessors in this role are to be commended for the action that they have taken. But today's strategy marks the most ambitious steps yet to accelerate our progress towards cleaner air, and I commend it to the House".

3.26 pm

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for that Statement. He will know that the Question focused on transport emissions because of their glaring omission from today's published clean air strategy. Defra's own research makes it clear that the quickest way to tackle nitrogen oxide pollution is to introduce a network of clean air zones in urban areas. Can the Minister explain why this Government are adamantly refusing to take this action?

At the same time, there is an urgent need to phase out diesel cars and vans. The Government's current target is a very unambitious 2040. Does the Minister accept that it is both feasible and desirable to bring that date forward?

Finally, today's clean air strategy has been produced in part to satisfy the courts, which have demanded urgent action. Does the noble Lord recognise the important role that courts can play in defending environmental standards? Will his Government now pledge to support our amendment, giving greater powers, including recourse to court action, to the UK green watchdog post Brexit?

Lord Gardiner of Kimble: My Lords, this is an extremely ambitious strategy. New legislation will be introduced to give local government new powers to take decisive action. We have deliberately said that this is for local government because, with the funds that we are providing of £3.5 billion, we want to work with local government because we think that that is the place where local decisions can be best made. That is why we need to work in partnership—and we are intending to, because that is how we will receive the greatest remedy.

The noble Baroness suggested that, in effect, the Government were not proceeding with vigour. In fact, we are bringing forward some of the most ambitious proposals for any developed economy. Many of them exceed what other EU countries are doing—and I think that that is very important indeed.

On the point about the courts, clearly we are mindful of what court proceedings have said. We were very pleased that the court in the last case acknowledged the right course of action. Where it did not agree was in saying that we should have directed local authorities, which we have now done; we will work with 61 local authorities where the most concern is directed. That is precisely where we will solve a lot of problems, particularly of nitrogen dioxide. Certainly, that is what we intend to do.

Baroness Randerson (LD): My Lords, the endless repetition of the mantra that this is ambitious and that the Government are world leading does not convince anyone. The truth of the matter is that 50% overall of roadside pollution by nitrogen oxide, and 80% in dense urban areas, is caused by transport, which is largely omitted from today's announcement.

Is the Minister aware that, in the last three months, sales of petrol vehicles have soared to fill the gap left by diesel ones, which people are deserting because they have become aware of their emissions? Yet, by buying petrol vehicles, they are now creating pollution from CO_2, which has been the subject of so much concern in the past. Do the Government realise that what they are doing by their laissez-faire approach is far too little, far too late? Producing a date of 2040 for ending the sale of petrol and diesel vehicles means that the Government are dragging along in the wake of the motor industry, which is working very much faster than that.

Lord Gardiner of Kimble: My Lords, I dispute what the noble Baroness has said. I have figures here from when my party and hers were in government, which include considerable reductions in air pollution since 2010. I wonder whether the noble Baroness wishes not to acknowledge the reduction of, for instance, 27% in nitrogen oxide from 2010 to 2016. So progress is being made, but we want to make more. The noble Baroness shakes her head, but I would have thought she would have been pleased about the investment of £1.5 billion to position the UK at the global forefront of all ultra-low emission vehicle development, manufacture and use. We are doing all these things and we are world leaders in this. Our investment in ultra-low emission vehicles may not be recognised by some in your Lordships' House but it is recognised by other countries. We are going to ensure that, with increased electric charging, these vehicles will replace conventional combustion engine ones.

Lord King of Bridgwater (Con): Does my noble friend agree that one of the causes of extra emissions is traffic congestion? Am I the only Member of your Lordships' House who feels that there are an increasing number of occasions when local authorities and others close roads and are extremely slow to reopen them after the work has been done? Can I direct him to come with me to Parliament Street and Whitehall, where there is an absolutely classic illustration of that problem? One drain has been repaired, the south side of the carriageway is completely closed and there is serious congestion in Horse Guards Avenue. I talked to the people who were removing the barriers, in a rather leisurely way, work having finished some time this morning, and said: "When is this going to reopen?" They said, "Midnight tonight". There ought to be an arrangement when, if the work finishes early, there is a messaging system and roads can be reopened swiftly, so that the traffic can flow and we can then end the congestion that otherwise occurs when there are these blockages.

Lord Gardiner of Kimble: I entirely agree with my noble friend and will pick that up with TfL and the Department for Transport. As my noble friend rightly identified, congestion is a cause of pollution, as is the idling of vehicles. I am pleased that the City of Westminster has issued an edict about idling and turning engines off. This is very helpful.

Lord Dubs (Lab): My Lords, 2040 to 2050 is still a long way away. I appreciate that one has to develop infrastructure so that there are charging points for electric vehicles. However, could we not have made an immediate decision to encourage the use of hybrid cars at the expense of petrol and diesel ones? Hybrid cars have enormous advantages and this could be done very quickly, without any charging points. Why not?

Lord Gardiner of Kimble: My Lords, there are many plus points in hybrid cars and I entirely agree that, at this time, they are a very good option. However, with our investment in ultra-low emission vehicles and in more publicly accessible charging points, we are clearly moving towards ensuring that ever more ultra-low emission vehicles are bought.

Lord Teverson (LD): My Lords, the Minister has quoted our position worldwide. However, the fact is that the end of last week the European Commission infracted us for not meeting air quality standards. So we are one of the six dirty half-dozen of Europe for air quality. That is a fact—we would not be going in front of the ECJ if we were not. Commissioner Vella put that down in particular to those six member states being persistent offenders that were in the last chance saloon. Can the Minister say how we can make these strategies, and all the other plans we have, credible, not just to Europe but to our own citizens, to convince them that this time we will perform where in the past we have singularly failed?

Lord Gardiner of Kimble: There were a number of points there. We are one of 22 member states reporting exceedances, and there are 12 other countries against which infraction proceedings are carrying on. So this is undoubtedly a problem in many of the developed economies, which is precisely why the £3.5 billion, plus what we are announcing today on particulate matter and ammonia, is all about bearing down on the problem of improving air quality generally. We recognise that it is a great health problem that has a great cost in misery and financially. We wish to address this, and this is what we precisely need to do.

Baroness Fookes (Con): My Lords, I draw my noble friend's attention to a scheme I saw being demonstrated at the current Chelsea Flower Show. Research has shown that some common house plants such as ivy are brilliant at clearing pollution within a domestic situation. This seems to be an interesting point that might be followed up.

Lord Gardiner of Kimble: I entirely agree with my noble friend, whom I saw at Chelsea very early yesterday morning. Plants and trees—the natural world and its protection—are hugely important because of what the natural world does for us. We still have a lot more to learn, and there are many plants from which I hope we will learn a great deal more about improving our environment.

Domestic Gas and Electricity (Tariff Cap) Bill

Second Reading

3.36 pm

Moved by ***Lord Henley***

That the Bill be now read a second time.

Relevant document: 27th Report from the Delegated Powers Committee

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, the introduction of a price cap on standard variable and default-rate tariffs for domestic energy customers is a critical measure as the UK's retail energy market is reformed. The price cap will ensure that UK consumers are protected from suppliers seeking to exploit the loyalty of their longest-standing customers by providing them with poor-value tariffs.

In June 2016, the Competition and Markets Authority identified that customers of the big six suppliers were paying £1.4 billion more than they should in a truly competitive market. What is worse, the consumers most likely to bear the burden of this huge detriment include some of the most vulnerable. Since the investigation by the CMA, the problem has not dissipated. Today, the difference between the cheapest available tariff and the standard variable tariff of a big supplier remains at around £300. I must reiterate that it is often some of the most vulnerable in society who pay the price of this disparity. There is an absence of behavioural change, particularly inside some of the large energy suppliers.

However, the Government believe that long-term state intervention in markets is neither desirable nor beneficial. Competition is the best way to drive value, service and innovation. Competition in the generation sector has brought forward significant investment and innovation, including new technologies. In the energy retail sector consumers now have a greater choice of supplier than ever before, with nearly 70 energy suppliers operating in the domestic market. More than one in five energy consumers are now with small and medium-sized suppliers, as more people switch to get a better deal. Despite the increase in the number of suppliers, however, the benefits of competition are not being felt by all consumers. That is why the Government are taking this action.

The Bill will ensure protection for consumers who find themselves on poor-value, standard variable or default-rate tariffs. In doing so, it will complement existing and recently expanded protections enacted during this Parliament. Following an order made by the Competition and Markets Authority, Ofgem has already provided protection for 4 million customers with the introduction of the price cap for customers on prepayment meters in April 2017. This has helped these households to save an average of £60 a year. Early analysis of suppliers who primarily supply prepayment customers shows that they are continuing to grow at a similar rate to the one that was in place before the price cap was implemented.

On 2 February this year, the prepayment meter cap was extended to include a further 1 million more vulnerable customers in receipt of the warm home discount. Five million customers are now protected by these measures. These protections are part of a package of measures being introduced by the Government and Ofgem to protect consumers and increase competition in the retail energy market. Other measures include support for faster and more reliable switching, initiatives to improve consumer engagement and the rollout of the next phase of smart meters. The Government believe that each of these measures will help forge the conditions for more effective competition and, in doing so, create a market in which a market-wide price cap is no longer required. It will be for Ofgem to carry out a review into whether the conditions for effective competition are in place. The Secretary of State will then make the decision on removing an extension of the cap.

I now turn to the Bill. Within its 13 clauses, it has one central aim: to give Ofgem the powers and duties to design and implement a tariff cap for standard variable and default-rate tariffs as soon as is practicable. Ofgem must design and implement the cap in a way that, first, creates incentives for suppliers to improve efficiency; secondly, enables suppliers to compete effectively; thirdly, maintains incentives for customers to switch; and, fourthly, ensures that efficient suppliers are able to finance their supply activities. The Bill will also require Ofgem to review the level of the price cap at least once every six months. Provisions in the Bill require Ofgem to consult on exempting tariffs which people choose to be on and which support the production of energy from renewable sources.

As I stated, market intervention is not something that the Government do lightly. The Bill is therefore a targeted and temporary intervention, with an initial end date of 31 December 2020. Subject to a report and recommendation from Ofgem, the Secretary of State can extend the cap one year at a time, with a hard deadline of 2023, after which the price cap must come to an end. The task of setting the cap is key. Ofgem has already started work with the publication of five working papers, to which stakeholders have had a chance to respond. Further consultation is planned as the Bill progresses through the House, and there will be a formal consultation on the final design of the price cap should the Bill receive Royal Assent.

As many of your Lordships will know, the merits of the Bill's different components have been debated extensively in another place. As a consequence, the Bill arrives in this House unamended, which shows the strong cross-party support that it has. A draft version of the Bill underwent pre-legislative scrutiny by the Business, Energy and Industrial Strategy Select Committee, with a great deal of written and oral evidence weighing its merits. I am very grateful to the committee for its thorough scrutiny. Its final report was wholly supportive of the purpose, structure and effect of the Bill. The Government have accepted all the Select Committee's recommendations to strengthen and improve the Bill and the outcomes it aims to achieve.

During our forthcoming debates, I look forward to hearing from noble Lords with a wealth of experience on a matter of such importance for consumers and for re-establishing trust in the domestic market. As regards when the price cap will be in place, there was significant consensus in another place that it should be implemented by the end of 2018. I note that Ofgem is already well under way with its consultation, including issuing a series of working papers on the design of the price cap.

In conclusion, I hope that our scrutiny will be both timely and harmonious so that this important measure may be implemented by the end of the year. I beg to move.

3.44 pm

Lord Stevenson of Balmacara (Lab): My Lords, I thank the Minister for introducing the Bill and for giving it a good going-over in terms of its various elements. It is a very short Bill, but sometimes the shorter Bills are the more contentious ones that come before us. We will have to see how we get on with this.

I should also apologise for the non-appearance of my noble friend Lord Grantchester, who would normally introduce Bills of this type—he has a lot of experience and knowledge of them—but unfortunately he is ill and cannot be with us today. I am sure that your Lordships will join me in sending him good wishes for a speedy recovery.

Noble Lords: Hear, hear.

Lord Stevenson of Balmacara: We are very pleased that the Bill is finally before the House today. The 2017 Conservative manifesto committed to implementing an energy price cap, and it has been Labour Party policy since 2013 to introduce a price cap on consumer energy bills. So, as the Minister says, we should have a harmonious time on this Bill. But as background, let us be clear that National Energy Action found that, on average, some 9,700 people die each year because they live in cold homes. To put that in context, it is close to the number of people who die from breast or prostate cancer every year. So although the principle underlying the Bill is good, we remain concerned that, as drafted, it does not go far enough. Why? Because our energy market is fundamentally broken and needs to be changed. The Bill is silent about the fundamental changes that need to be made.

I start with the question of why the Bill does not provide any direction from the Secretary of State on what might be a preferred level for the cap. The Bill merely states:

"The authority must exercise its functions … with a view to protecting existing and future domestic customers who pay standard variable and default rates".

In so doing, Ofgem must consider a number of factors, including creating incentives for suppliers to improve efficiency, enabling suppliers to compete effectively, maintaining incentives to switch between suppliers, and the need to ensure that the holders of supply licences which operate efficiently are able to finance activities authorised by that licence. It is a good list, but it is a very interesting list, because it is largely focused on maintaining the present structure of the industry. Where is the need for Ofgem to devise a scheme that benefits consumers? We want to promote fair and transparent competition within the energy market but not at the cost of consumers, neither literally nor metaphorically. Why do the Government insist on a market-facing approach? Is it perhaps because the main aim of the Bill is to promote switching, not to protect vulnerable consumers?

Secondly, why is there no duty on Ofgem to consult on how such measures can accurately be quantified? Will they form part of Ofgem's cap methodology consultation, and if not, how will Ofgem reach a determination among these somewhat contradictory goals?

Thirdly, we welcome the fact that the Government are bringing in an absolute cap. We are agreed that it will help customers, especially those languishing on standard variable tariffs. However, this absolute cap is time-limited; it will be in place for only a few years before it is lifted. While there are reviews of switching practice going on, the Government have not answered the fundamental question of how they expect the energy market to be fixed by the time we reach the end of this process. Surely we should not be changing things in an arbitrary way until the landscape of the energy market has changed and all customers benefit from low energy prices, especially those who have not switched from SVTs. Perhaps the solution would be to require that a relative price differential mechanism should be established and implemented while the absolute cap is in place. This would at least have the effect of preventing the current and perverse "tease and squeeze" culture of trying to attract customers with cheap or loss-leading tariffs and then rolling these customers on to very expensive SVTs, as commonly happens in the market. A relative price differential, absent the fundamental reform which is required, would at least drag SVTs down towards cheaper tariffs and hinder the "tease and squeeze" approach.

Fourthly, what is the process when the cap comes to an end in 2020? The Bill merely states:

"The Authority must carry out a review into whether conditions are in place for effective competition for domestic supply contracts".

It does stipulate that the review must include an assessment of progress made in installing smart meters, but unfortunately that is as good as it gets. We think it is highly unlikely that the smart meter rollout will get anywhere near completion by that date. Why not use the completion of that programme as a point at which to review the capping scheme, without a sunset clause?

Fifthly, what exactly is a "clear and realistic definition of effective competition"? The magazine *Which?* says that,

"the criteria for effective competition are not defined so it is not certain under what circumstances the cap will be lifted or how its success will be judged".

Sixthly, we are concerned that the consumers who benefit from Ofgem's safeguard tariff may actually see their energy bills rise as a result of the cap. If the overall price cap consumes the safeguard tariff, vulnerable customers could see their prices go up by more than £30 as a result of the difference between the safeguard situation and the likely absolute tariff. When responding to these concerns on Report in another place, the Minister agreed that it would be perverse for some of the most vulnerable customers to see their energy prices go up as a result of a price cap and agreed to give the issue further consideration. The Minister did not mention it in his introductory speech, but I hope he has reflected on this and will, during the passage of the Bill, require Ofgem to identify affected customers and put in place measures to offset their loss or else not proceed with removing the safeguard tariff.

Seventhly, we are concerned that, because this Bill is at heart intended to promote switching as a means of reforming the energy market, it will not of itself reduce prices. According to the Dieter Helm review, the cost of energy is significantly higher than it needs

[Lord Stevenson of Balmacara]
to be to meet the Government's objectives and, in particular, to be consistent with the Climate Change Act and security of supply. Further, energy policy, regulation and market design are not fit for the purposes of the emerging low-carbon energy market as it undergoes profound technical change. Since this was a review commissioned by the department, I think it is fair to ask the Minister why the Bill does not seek to remedy the problems identified by Dr Helm. If, as Dr Helm suggests, we are moving towards a decarbonised, digital, smart electric energy world, why are customers not benefiting more from the prospect of ever-lower costs from cleaner energy? To narrow it down to something at the heart of the Bill, why are the Government even considering excluding green energy from the cap?

I see from the list of speakers that we are going to have the benefit of the wisdom of the noble and learned Lord, Lord Mackay of Clashfern, later on. I have a suspicion—I may be wrong—that he is going to talk about appeal mechanisms and will want to ensure that there is a proper merit-based appeal mechanism to the CMA if any company, the prices of which are capped by the Bill, is adversely affected. I do not want to anticipate his speech because I look forward to hearing it, but I put it to him that there may also be a case for civic agencies such as Which? or Citizens Advice to be able to raise appeals on behalf of consumers in a symmetrical, although not identical, manner. Perhaps he will consider this suggestion carefully when he comes to his amendments at a later stage of the Bill.

As I have said, the Bill does not provide an answer to the broken energy market. The rules in place are contradictory and self-cancelling. The place of green energy is equivocal. Between 2007 and 2013, electricity bills soared by 20%, while in the past year alone every household in the UK paid an average of £120 towards the dividends extracted by energy company shareholders. Over the past few months, report after report and news story after news story has detailed the unfairness of the current system. However, it must be noted that the final bills that consumers face are not simply a consequence of manipulation by some supply companies. As the BEIS Select Committee has highlighted, network-fixed costs make up the second highest element of a dual fuel energy bill.

Reform of the market is critical not just to instil fairness and affordability but to ensure that Britain has an energy system fit for the future. We are experiencing a pace of change in the energy sector that has never been seen before. Batteries, storage and smart systems are transforming demand and supply. There is a move to smarter, more decentralised forms of energy generation and supply, emulating many of the models established across Europe, along with the potential of accessing a low-carbon market that is, according to Goldman Sachs, worth over $600 billion.

The main problem is why the system is not treating vulnerable consumers fairly. The Business, Energy and Industrial Strategy Committee found that vulnerable and low-income families were especially affected by poor-value tariffs, with 83% of those living in social rented housing, 75% of those on low incomes, 73% of those with no qualifications and 74% of disabled customers on a standard variable contract. It was clear from the committee's findings that, even with the advent of smart meters, these groups will still require protection from overcharging. I therefore urge the Government to reconsider their opposition in the other place to amending Clause 7 to ensure that, when it considers "effective competition", Ofgem has regard to the impact of removing or extending the cap in relation to vulnerable and disabled customers.

Finally, I am concerned that there is no timetable in the Bill and no guarantee that the price cap will be in place for this winter. The Bill currently states that Ofgem must introduce a cap "as soon as practicable" after it is passed, but Ofgem has already said that it would take around five months after the Bill receives Royal Assent to enact a price cap because it has a statutory duty to consult power companies. We need to look at this again. Ofgem currently estimates that it,

"will look to set the level of the cap over the autumn and bring the cap into effect at the end of this year".

But that is half way through next winter—the cap will not even be in place when the weather turns in autumn this year. The Bill would be greatly improved by the inclusion of a hard deadline by which the cap must be in place, and we will seek to include such a deadline of the last weekend in October 2018, when the clocks go back.

3.54 pm

Lord Teverson (LD): My Lords, I have been ambivalent about the Bill since it was published some months ago. However, I accept that it is a sticking plaster, as the Government rightly describe it, and that a huge problem needs to be solved.

We have heard some of the statistics: £1.4 billion of overcharging, as estimated by the Competition and Markets Authority, and 11 million households affected, many of them the most vulnerable. As the noble Lord, Lord Stevenson, mentioned, there were an estimated 34,000 excess deaths due to cold weather in 2016-17. I know it is an estimate but it is why this Bill is as fundamental as life and death to many households. People fear turning on their energy supply during winter because they cannot afford the bill, and being confronted by court action and cut off, even if that is not would happen if that occurred.

In a broader context, the title of the Bill refers to a tariff cap, not a price cap. In this country we are obsessed by prices and not by the total of the invoice or the bill. I am not arguing against this Bill, but invoices or bills are more important because our housing stock is so energy inefficient. It is one of the major problems and one of the reasons why we have this issue.

I am the first to agree that there is no option to change that between now and the coming winter, but I am seriously disturbed by the Prime Minister's speech yesterday on science and modern industrial strategy at Jodrell Bank. She said that,

"in the clean growth grand challenge, we will use new technologies and modern construction practices to at least halve the energy usage of new buildings by 2030".

Until the Chancellor of the Exchequer got rid of the target after the 2015 election, we were going to have zero carbon homes by 2016, two years ago, and zero

carbon commercial buildings by next year. Now, we seem to have moved to a target—which the Prime Minister has crowed about—of halving energy usage only in 12 years' time. That concerns me because the industry was set to achieve the 2016 target but it was taken away by the then Chancellor, George Osborne.

I understood from both the green growth strategy and the 25-year environmental plan that we were going to be more ambitious in this area and bring back some of those targets. However, if we are talking about half of homes being zero carbon by 2030, then, frankly, this is missing the plot completely. I re-emphasise that this problem cannot be solved overnight, but if we lose that focus I am afraid we will have tariff cap bills for the next 12 years and they will not end in 2020.

Perhaps I may go through some of the issues briefly because the noble Lord, Lord Stevenson, and the Minister have mentioned a number of them. We have the broad outlines but we do not know exactly how the system is going to work, so Ofgem will have to invent it. What we certainly do not know are the outcomes. In some ways, I welcome the fact that this issue will have to be looked at again regularly because it is difficult to understand what the practical outcomes will be. As we know, interventions in markets tend to create all sorts of unintended consequences, so it is important to keep a close eye on this.

I turn first to the green exemption. I have a renewables-only tariff for my domestic electricity supply which I have just been informed will go up by 10%. The year is up and I have to do something about switching again. It seems that this is a particularly uncertain area in the Bill, and I wonder whether there should be a relative cap if we are letting renewable energy suppliers off the hook, if you like, as regards the price cap. Are we sure that there will be no cheating going on in this area? I am also concerned that decisions about the green exemption do not have to be made on the same date as the rest of the cap. Everything should be done at the same time.

I will reflect on the remarks made by the noble Lord, Lord Stevenson, about the safeguarding tariff. It may be absolutely straightforward, but perhaps the Minister could clarify whether the benefits which will come from that tariff continue for those consumers, despite what this Bill is going to do?

Unlike some others, I am less convinced that an absolute cap is entirely right. I am referring to "tease and squeeze" and how we get rid of that. It is the main problem with the way the market and pricing work: getting people on board for the first year and then hoping that they forget about you. I wonder whether having the fixed percentage that is allowed between the minimum or entry tariff and consequent tariffs is a better way to do this, but I could be convinced otherwise.

However, what I would like to see is price comparison sites being obliged to show what the tariff will be after one year if the consumer fails to renew. That would provide real transparency in the growing switching market. We could look at that issue in a potential amendment. The mortgage market is often held up as the example in that regard, but that may have more to do with Financial Conduct Authority rules; it may be that Ofgem needs to be given similar powers.

The timing of the Bill is absolutely crucial and I am sure that the House will not want to hold it up in any way. But my concern, as with all legislation, its implementation and consultation periods—all of which are important—is that we will be too late for a number of consumers, and that there will be excess deaths if the winter weather sets in early. I would like to know from the Minister when he expects the price caps to come in and the benefits to be available, and about the broader issue of improving the efficiency of our housing and commercial building stock. What is the vision after the Bill expires, because I am far from clear about that?

4.04 pm

Lord Hunt of Wirral (Con): My Lords, I declare my interests as set out in the register, in particular as a partner in the global commercial law firm, DAC Beachcroft LLP and as one of the Ministers who took through the Gas Act 1986. Introducing price controls into the energy market was indeed included in the last Conservative manifesto and codified in a draft Bill published last year. Today's debate should therefore focus on how a price cap can be implemented in the most appropriate way, not on whether it should be.

The Bill represents a major intervention in the energy market with significant implications for competition and consumers. It is therefore essential that the Bill provides for strong oversight of how the cap is formulated and introduced. The noble Lord, Lord Stevenson of Balmacara, has already mentioned my noble and learned friend Lord Mackay of Clashfern; I know I am not alone in feeling that the Bill does not include the long-established precedent that organisations should be able to appeal to the Competition and Markets Authority against a price control set by a sector-specific regulator. This right exists in every comparable example of sector-specific regulation, including in the energy sector, and plays an important role in driving better regulatory decisions.

The Bill directs the energy regulator, Ofgem, to introduce a price control on default energy tariffs. It also states that the regulator must have regard to ensuring that the market remains competitive, incentivising switching and allowing suppliers to finance their operations while inducing them to operate efficiently. This will be an extremely complex balance for Ofgem to strike. It is clear that greater competition has been vital to improving this market; Ministers have indicated that this trend should not be reversed. There are now 60 suppliers in the market, compared with just six in 2010. Consequently, there is more choice of tariff than ever before, with 17% of customers switching supplier last year. On a historical basis, these switching rates are better than those of broadband, mobiles and fixed-line telephone markets.

Ofgem will also need to undertake a detailed analysis of the cost of major national infrastructure programmes when constructing the cap, including the smart meter rollout programme, which is central to innovation and future competition. Her Majesty's Treasury estimates that there will be £100,000 million of investment in critical infrastructure between now and 2021. Ofgem's approach must ensure that a cap does not impede these large investments. Recent regulatory interventions

[Lord Hunt of Wirral]
in the energy market show that meeting this balance of regulation and competition is difficult to achieve. Regulators occasionally err in their decisions. I remember that the CMA concluded in 2016 that Ofgem's previous attempts to regulate the number of retail tariffs that could be offered by a supplier—the Retail Market Review—had damaged competition and should be removed. We have also seen that the introduction of a prepayment meter price cap led to prices bunching to within £15 of a cap. Like any major intervention in a competitive market, the introduction of price regulation therefore needs a strong system of scrutiny and oversight.

Appeals to the CMA are the long-established way of providing such scrutiny and ensuring that any errors can be corrected efficiently. The CMA is a specialist economic regulator, established to review regulatory decisions and ensure that they are well founded. Price control decisions in every other comparable sector—such as telecoms, water, aviation and post—can be appealed to the CMA, as can other price control decisions made by Ofgem. Price regulation for network companies can also be appealed to the CMA by third parties, including consumer organisations. An appeal to the CMA in 2015 on the level of price control imposed by Ofgem found that Ofgem had made an error. As a result, £105 million was returned to consumers.

There are currently 26 panel members on whom the CMA may draw for any price control appeals. There is also a specialist utility panel within the CMA. The CMA and its predecessor, the Competition Commission, have more than two decades' experience in assessing such matters across any number of industries. My noble friend the Minister may say that there are specific examples, such as payday loans and the PPM price cap, where CMA appeals are not allowed. I do not believe that those are analogous. The FCA is not comparable to Ofgem and has not been tasked with the same challenges of setting a complex price cap that assesses the cost of the provision of service and maintaining competition. The PPM price cap was adopted by the CMA itself, so its scrutiny had already informed the process.

My noble friend the Minister may add that he has concerns that an appeal could delay or frustrate the introduction of a cap. Ministers have made clear their desire that this legislation should be passed by July and implemented by next winter, but there is no precedent for CMA appeals delaying the implementation of a price control. In the last 11 price control appeals, no delay took place. CMA appeals typically take place while the regulator's original decision remains in place. Any remedies are then implemented prospectively. The Bill could easily make provision to ensure an appeal could not delay or stop the implementation of a cap—no doubt my noble and learned friend Lord Mackay of Clashfern will have all sorts of ideas about how we might do that, particularly in Committee.

On stopping a price cap being introduced at all, this is not possible in practice, because the Bill imposes an explicit duty on Ofgem to impose a cap. No appeal process could override the will of Parliament. A CMA appeal would be less burdensome, more straightforward and less costly than the alternative route of legal challenge; namely, the judicial review. Since 2000, CMA appeals have taken on average a little under nine months end to end, compared to around 10 months for JR cases. The CMA's procedural rules and the rules on costs deter litigants from bringing vexatious challenges.

Equally significantly, the CMA is able to make changes immediately, while a court would need to remit the matter to the regulator, potentially extending the process by a number of months. Based on my experience, judicial review does not seem the appropriate standard for an assessment of a price control. A judge would be focused primarily on the process through which a price control was set and not on the type of complex considerations relating to the level of the cap that should be taken into account. Additionally, judges are not adequately equipped to assess this type of decision. The CMA was established and equipped with the appropriate resources and specialist expertise to undertake such work. It must be better and more helpful in alleviating the burden on the courts to have a specialist body looking at these technical issues.

In summary, the Bill introduces a significant intervention into the energy market, and recent history shows that care is needed to support competition and consumers. Price interventions are complex and should not be taken lightly. It is our responsibility to ensure that the appropriate checks and balances are in place to provide for a fair measure of legal and regulatory certainty, which is essential to underpin vital confidence and investment in the energy sector. I do not believe the usual mechanism for such oversight, CMA appeal rights, would delay, obstruct or frustrate the implementation of a price cap—on the contrary. I hope the Government will reconsider to ensure that a more proportionate, efficient and appropriate form of intervention is achieved.

Lord Teverson: My Lords, although it is a non-financial interest, I should have declared that I am a trustee of Regen SW.

4.15 pm

Lord Whitty (Lab): My Lords, the noble Lord, Lord Hunt, reminded us that the motivation for this Bill did not stem either from the industry or from the sector regulator but was based on the very substantial CMA report in 2016 on decisions by Ministers and indeed by the Prime Minister. He is correct in saying that some interventions by Prime Ministers have not turned out that well, including David Cameron's intervention on the four tariffs. That was not a great success, to say the least, and had to be abandoned, as he says. The fact that this intervention seems to have united the election pledges of Mrs May and Ed Miliband—albeit in different elections—does not necessarily mean it is going to be any more successful. In passing, I also agree with the noble Lord, Lord Hunt, on the need for an appeal to the CMA. I think that is needed in the Bill: I agree with him and, prospectively, with the noble and learned Lord, Lord Mackay of Clashfern.

I need to declare an interest: I will be chairing a commission on vulnerable energy consumers set up by the industry. That body has only just started work, so nothing I say today should be taken as anticipating the commission's conclusions or anything like it.

But I do have some immediate questions. My two queries are these: are we answering, or attempting to answer, the wrong question? And are price caps on their own ever enough to protect the most vulnerable consumers? The CMA report two years ago met a mixed response. For myself, I thought its analysis was very substantial and essentially sound, but I also felt that its detailed recommendations were, in some cases, weak and confused, and that lies behind the method that this intervention is intended to achieve—what the CMA found was wrong with the market.

The CMA did indeed find that the big six, in particular, were making excessive profits margins on their standard variable tariff customers, but the key finding, as implied by the Minister in his opening remarks, was that this is a somewhat odd market, in that energy consumers are broadly speaking split into two groups, with one group being exploited and another benefiting. Newer, more active customers—the switchers—were being cross-subsidised by the loyal, older customers who have never, or not recently, switched supplier or tariff. The CMA also identified, as has been said, that the most marked unfairness related to prepayment meter customers. On that, the regulator has now moved and I support that in principle.

But if the problem is that long-term customers, often customers of the big six who have actually not switched since privatisation, are effectively cross-subsidising switchers, company by company—in other words, there is a sort of negative loyalty bonus—then surely the remedy is that the relativity between the tariff with which long-term customers pay, which is normally the default tariff or the standard variable tariff, and the tariff and package for newcomers is the most important metric in this approach. In other words, as my noble friend Lord Stevenson implied, we should perhaps be regulating by differential or by margin between the two, rather than, or possibly in addition to, an absolute cap. I appreciate that this could be complex, because many of the starter rates which entice new customers and switchers are time-limited and in practice revert to something very close to the standard variable tariff after a year or two. That is another practice that perhaps the regulator should look at. But the issue of whether a relative cap is more appropriate than an absolute cap needs returning to. I am not sure that the Government gave an adequate reply to that in the Commons. I would like to hear more clearly the rationale for that today.

My second point is that the price needs to be seen together with the broader issue of customer service, customer choice and consumer protection—for all but particularly for those who are the most vulnerable, either temporarily or permanently. Let us face it: most households do not understand the energy market or the choices within it. For many people, price comparison sites can be more confusing than helpful and in some cases are downright misleading. Any tariff intervention, therefore, needs to be accompanied by greater care for the consumer, for example on the choice of method of communication between the supplier and the consumer. The insistence on electronic or telephonic communication disadvantages certain subgroups of consumers, who prefer paper. Noble Lords may well have received the information on the Keep Me Posted campaign, which spells this out. The additional help that companies appear to offer consumers is often very limited and does not really help the individual consumer to navigate the complexity of tariffs; rather, they revert to the default position of staying on the rate that they have always been on.

It is no use simply putting a cap on the price, valuable though that can be in certain circumstances, if the consumer does not understand how and why they are being charged that rate and what the alternatives are. At a minimum, therefore, the Bill needs to have some provision on customer service and support and help for vulnerable consumers—perhaps I should say the more vulnerable consumers, since most of us are at risk at some point in our lives and sometimes struggle with our energy bills. The Bill would be better for such a clause, even if it were put in the most general terms. I repeat that I would like a clearer answer to why the Bill is, on the face of it, about a temporary absolute cap, when it has clearly been shown that a relative control would reduce unfairness and deliver a more just relative treatment between long-standing customers and the small, active proportion—it may be 20%—of frequent switchers.

The Bill requires a further CMA investigation of the market. I am not against another detailed study. I find tying it to the timetable for smart meters slightly odd. At best that needs to be kept reasonably flexible. The point is that neither price caps nor competition is sufficient to ensure that all consumers benefit from the market. Treatment of the more passive and the more vulnerable consumers requires much more specific interventions by companies and a better consumer service from all suppliers. It is true that all markets require switchers to make them work, but in a market as central to our lives as energy the market price and the structure of tariffs need to reflect fairness and justice for all consumers, certainly, but between different groups of consumers as well.

4.25 pm

Viscount Ridley (Con): My Lords, I fear that the Bill is flawed. I accept that we may need to tackle the "tease and squeeze" culture and that this is a manifesto commitment, but price capping and rent controls often turn out to be ineffective or even counterproductive, especially with respect to the most vulnerable. They tend to treat symptoms rather than causes and in this case I fear that they pass the blame for energy costs from the Government to scapegoats.

The pachyderm in the parlour here is that the costs of government policies vastly exceed any aggregate saving to the consumer that might come about from a price cap. Policies deliberately introduced, mainly under the coalition Government, with the full knowledge that they would push up energy prices are now coming home to roost. Telling the industry to cap prices is like fattening a pig and then demanding that it weigh less. Like worrying that in crossing the Rubicon Julius Caesar might get his feet wet, it lacks a sense of proportion.

Even if we restrict ourselves to the official data from the Office for Budget Responsibility by consulting its *Economic and Fiscal Outlook* from March 2018 and go to tab 2.7 of its spreadsheet, "Fiscal supplementary tables:

[Viscount Ridley]
receipts and other", we find that in the current year, 2018-19, environmental levies will cost £10.4 billion. That is more than seven times the "customer detriment" found by the Competition and Markets Authority inquiry on which the Government are relying. It is seven times as large as the sum that my noble friend the Minister described as huge. Subsidies to renewables account for £8.9 billion of that annual sum, or 86%.

The total cost of subsidies to renewables, according to the OBR, from the current year to 2022-23 is an almost unbelievable £52 billion, as the table that I referred to confirms. It is appropriate to look towards 2023 because, under the Bill, the price cap could be extended till then. Domestic households will pay for all of that £52 billion. About one-third of it, £17 billion, hits them directly in their electricity bills, but they will pay for the rest through increased cost of living. If a supermarket has to pay more to refrigerate milk, it must recover that cost at the check-out.

Remember: none of these subsidies for renewables is actually working very well. These technologies are not market ready; they are manifest failures, still begging for subsidy after decades of public largesse. As suggested by the Dieter Helm review, to which the noble Lord, Lord Stevenson of Balmacara, referred, we are not getting emissions reductions at a reasonable price.

Lord Teverson: I will not argue with the noble Viscount, although I disagree with him. But one thing I would specifically point out is that a number of onshore energy companies are trying at the moment to operate subsidy free. They are being prevented in doing that largely by government policy, but they are looking for subsidy-free onshore wind.

Viscount Ridley: I shall come to that point in a minute.

The recent low bid prices for offshore wind were, frankly, a bad joke. They were a play on the optionality that the Government have created and tell us nothing about what is really happening in the market. Onshore wind, far from being the lowest cost generator, remains one of the most expensive when its systems costs are taken into account. That is the key point: going subsidy free, to which the noble Lord, Lord Teverson, refers, did not include the systems cost of adding wind in remote areas. Systems cost contributes to these energy prices.

Here, the Government are proposing an ineffective and probably counterproductive price cap to save, at best, £10 billion on bills up to 2023. It is probably more like £3.5 billion and may even be a negative number, when their own failed policies are already stinging the consumer for £50 billion over that period. I am sorry, but I think this makes no sense. In effect, the Government have asked the energy suppliers to be their tax collectors and are now, in an incoherent gesture, forbidding their tax collectors from collecting the revenue. The energy suppliers would be acting entirely reasonably if they were to tell the Government to collect their own taxes and take the consequent blame.

Yet I believe the situation is even worse than that because the estimate of £1.4 billion a year detriment that the CMA identifies is almost certainly an overestimate. As the former electricity regulator Stephen Littlechild put it in a letter to the BEIS Select Committee in the Commons, Oxera argued that the correct figure could be anywhere between £0.7 billion, which is half of the CMA's estimate, and minus £0.7 billion. Adjustments of £1 billion were made after the data room closed, so they could not be scrutinised by anyone. This point has not been rebutted.

Five former energy regulators—Littlechild, Callum McCarthy, Eileen Marshall, Stephen Smith and Clare Spottiswoode—have argued, in a strongly worded criticism of the detriment calculation, that:

> "In our view this is a very misleading calculation. It is not, as might be thought, an estimate of excess profit. Rather, it is an estimate of how much lower prices could be if all suppliers in the sector were hypothetically more efficient than any actual supplier in the sector today. Such an approach seems to be without precedent in investigations by any UK competition authority".

These former regulators warn that the Bill could result in increases in lower prices as suppliers remove offers from the market to offset the cost to them of the cap, and could be harmful to competition and customers generally, a point made by the noble Lord, Lord Stevenson. So even on its own terms the Bill might well be taking a non-problem and turning it into a likely one, and it ignores the real reason why Britain's electricity prices are so high and are hurting our competitiveness.

What does the Minister propose to do about the real £10.9 billion a year detriment to customers instead of the specious £1.4 billion? What is his estimate of the cost of renewable subsidies to the British consumer over the next five years? What does he think is the risk that this price cap will drive prices up rather than down? What weight does he put on the criticisms of the five former energy regulators?

If I have failed to do so, I declare my interests in energy, including mainly coalmining.

4.31 pm

Lord Redesdale (LD): My Lords, I declare my interest as the CEO of the Energy Managers Association, which runs courses on procurement—I can tell noble Lords that it is an extremely complicated area in the non-domestic sector—and as the CEO of the Water Retail Company, a retailer in the new water market, next to which the energy market looks positively logical.

The Minister started by saying that there has been a failure in the marketplace and this should lead to major intervention. Here I must digress. I have just been talking to my son, who is doing his politics A-level at the moment, and some of the work that he has to do is to link political ideology to certain policies. I was trying to work out where this Bill fits. One could say that it fits with Corbynism. Obviously it was introduced originally by Ed Miliband, so it is a Labour policy going backwards, but I suppose that now it could be seen as a Mayism, if there is such a thing. However, this policy does not have an ideological base; it is really just a way of trying to garner public support. Saying that energy bills are high and we want to reduce them is a very easy way of bringing about public support. The speed with which this is being introduced could have something to do with the very valid points raised by my noble friend Lord Teverson, but it could also be that people are just trying to get the political benefit of doing this.

I am not against the reduction of the cost of energy and looking the problems of the marketplace. However, for years we have been talking about the energy sector becoming one of the most competitive marketplaces in Europe. If we have a competitive marketplace that is being pushed forward, there will be winners and losers. Indeed, the problem with the marketplace is that for companies to afford the deals to bring customers through the door, there have to be tariffs where they make more money in the marketplace.

The CMA report came out with a number of assertions about the amount of money being made by energy companies. I have to agree with the noble Viscount, Lord Ridley—perhaps for the first time ever in this Chamber—that there are certain problems with that assumption. I believe that the CMA report was highlighting a problem but I do not think the figures given could be taken as anything more than indicative. The reason I raise these points is not that I believe energy companies have a right to receive a certain amount of profit, but that I believe any cap being set is fraught with a number of difficult assumptions.

The cap will skew the marketplace. It is not as easy as saying, "We will set a cap", because certain things going on at the moment mean that the cap may have to change quite quickly. As of half an hour ago, 48.1% of our energy came from gas. Twenty per cent of our gas comes from Qatar, and the recent problems with the treaty with Iran mean that there could be problems with the Strait of Hormuz. Even if nothing actually happens, the uncertainty could lead to a rise in fossil fuel prices which will have a major effect.

The noble Viscount, Lord Ridley, said—

Viscount Ridley: As we are agreeing so much today, does the noble Lord agree with what the Energy Minister said yesterday: these are reasons why we should get on with shale gas in this country?

Lord Redesdale: I am very tempted to go down that line. Of course, we could become energy independent if we were to use shale gas—for a whole seven years, and then it would be gone. I am not sure it is such a long-term solution.

There is a real issue about the cost of fuel, although wholesale costs will of course be a smaller amount compared to levies. However, we have to move to a low-carbon economy, away from our present one, although today, no power whatever was being generated by coal.

The Bill is flawed. It is being taken forward at great speed. Many people are saying that it is a popular Bill, because we all want to reduce the cost, especially to the most vulnerable, but I ask the Minister to look again at three things in the Bill which I know will be raised in amendments.

First, I ask him to reintroduce the CMA as the body that reviews any price cap. I do not suggest that this would hold up the process in any shape or form—a point raised by the noble Lord, Lord Hunt—but as the CMA is used as the backstop for most other Bills as good practice, leaving it out of this measure seems slightly perverse.

Secondly, I hope, following the Minister's statement in another place that renewables tariffs may well be exempt from the price cap, that that provision will be introduced. I am thinking of shifting to a renewables tariff that would be higher than the price cap. I am prepared to pay more for a renewable source of energy. That is probably a point on which the noble Viscount and I disagree, but there is value in renewable energy. Although the Minister talked about ensuring that that was the case, I should like to see something in the Bill.

Thirdly, one problem often raised by energy companies, as well as the risk that they face from global politics, is regulatory risk. I find it interesting that the last substantive clause in the Bill says that this tariff rate might end in 2020, but it might go to 2021, 2022 or 2023, at which point it must stop. That is a difficult assertion to make, considering that companies buying large amounts of energy for the future have to make certain assumptions about where the price will be and what regulation they will face in future. On that point, I look forward to the next stage of the Bill.

4.38 pm

Lord Mackay of Clashfern (Con): My Lords I shall confine myself to the Bill. I think my noble friend Lord Ridley's submission is that it should not get a Second Reading. That is rather wide of the real mark, so I shall not go down that road. I ought to declare an interest. I am a dual account customer of an energy company and I have an absolutely minute holding in Centrica.

Apart from these, my main interest is trying to understand what this Bill does and what it imposes on the regulator. It is significant that the Government have not tried to set the cap themselves. That is probably wise because the difficulties are quite substantial. We need only read what the authority has to have in mind to realise that. The principal object of the Bill is to protect existing and future domestic customers who pay standard, variable and default rates. I understand that the other customers are people on time-limited contracts. One of the difficulties that I have found as a customer is finding out exactly what the variable contracts you can have are likely to result in long term. One thing is certain: to do that, you have to make sure that you look at the account pretty regularly to see whether the contract term has run out, because if that happens without having done anything, you find yourself in the area that needs protection.

Protection is designed to prevent people being overcharged. If that is the primary responsibility of the authority under Clause 1(6), it is interesting to see what the conditions are that have to be satisfied—or that the authority "must have regard to" rather than satisfy. First, in subsection (6)(a), there is,

"the need to create incentives for holders of supply licences to improve their efficiency".

I am slightly at a loss—I am not at all technical in this matter—to know how you create incentives for holders of supply licences to improve efficiency by imposing a price cap. My noble friend will explain that when he replies, I am sure.

The next one is,

"the need to set the cap at a level that enables the holders of supply licences to compete effectively for domestic supply contracts".

[Lord Mackay of Clashfern]
Again that strikes me as quite a difficult thing to do if you are aiming to protect customers.

The next one is,

"the need to maintain incentives for domestic customers to switch to different domestic supply contracts".

As far as I am concerned, the main incentive to switch to a fixed-term contract is because, on the whole, the rate is usually less than in any of the other variable options that require protection. That perhaps is not too difficult, but on the other hand, if it is meant to relate to switching to other suppliers and not just switching to fixed-term contracts with the same supplier, I find it difficult to see how the price cap can help to maintain that.

Finally, subsection (6)(d) refers to,

"the need to ensure that holders of supply licences who operate efficiently are able to finance activities authorised by the licence".

One need only look at these provisions to see how difficult fixing this tariff will be.

One thing that struck me on reading the Bill was that the Government accept that fuel costs are an essential part of life, but the difficulty associated with the fact that houses are rather leaky is an important aspect. There is not much that a consumer can do to prevent that, at least quickly. I had thought that there might be a reference to the benefit rates that people get. Presumably the universal credit system takes account of the fact that people are required to pay for fuel. In considering the level of the cap, that would be quite important. All this is just designed to show how difficult it is to fix this particular cap.

Then I come to the fact that there is no appeal provision in this Bill. As forecast by the noble Lord, Lord Stevenson of Balmacara, I am going to say something about that. The details are a matter for Committee, because one would want to put a fairly detailed proposal forward. No appeal system means that we have judicial review, because that is not excluded, and I do not think that it could be. It means that, if the companies or the people proposed to be protected feel that either of those things is not working as it should, they have to go to court on judicial review. I wrote a fairly detailed letter to the Minister in the Commons on this matter, and after some time I got a fairly detailed letter back. I do not propose to weary your Lordships with examining them just now, but I shall attempt to take account of these in framing our possible amendment for discussion in Committee.

One thing is certain—that the courts are not very equipped for dealing with the detail of this cap. Apart from the difficulties that I have just highlighted, which seem fairly difficult theoretical problems, the courts have very little in the way of help. In the letter to which I referred, I am told—of course, it was not news to me—that the court could appoint assessors. Of course it could, but that is not a fixed arrangement such as is supplied by the Competition and Markets Authority. Therefore, my view is quite strongly that a proper appeals system to the Competition and Markets Authority is something that we should consider very carefully indeed. The idea that it could defer the introduction of the cap is, of course, not really a fact. In any case, our amendment could make sure that that did not happen.

That is the primary purpose of what I have to say. I think that there is some difficulty about the matter of when the people or authority fixing the cap are not required to take account of the benefits system and the rates of benefit in fixing the cap. That suggests to me that the purpose of the cap is a somewhat difficult concept to grasp and therefore difficult for the authority to fix—which, no doubt, is why the Government did not fix it themselves in the first place.

4.48 pm

Lord Carlile of Berriew (CB): My Lords, it is a pleasure to see that the noble Lord, Lord Young of Norwood Green, has arrived lately in his place. I am sure that he will acknowledge, however, that his recent arrival means that it is appropriate that I should speak now.

I start by declaring a relevant but past interest, having spent eight years as the chair of the Competition Appeal Tribunal. In that context, we used to debate on a very regular basis the difference between judicial review, which was not the standard by which the tribunal was making its judgment—the same applies now—and the merits-based appeal, which is the standard by which the tribunal reaches its decisions. I will have a little more to say about that later without, I hope, repeating what has already been said.

I support the principle of this Bill, subject to suitable scrutiny procedures being in place on a merits assessment. I take the points made by the noble Lord, Lord Redesdale, who said that this was plainly a politically motivated Bill, which was designed to give advantage to the Government. I am sure that the noble Lord would agree that most Bills have a political motivation. The Government are sending out a hostage to fortune, because the people will be expecting their power bills not to rise, in real terms, as a result of this Bill. If the Government let the public down in that regard, the voters will, no doubt, make their judgments on a very visible, tangible issue.

Consumers have been faced with substantial increases in energy prices. I suspect that the price increases announced last week may have had the consequences of the Bill partly in mind. The proportionality that energy costs have to average earnings is an important measure of the economic relationship between the state and its citizens. This applies especially to those who are responsible for the upbringing and care of families and to the elderly—the cohort so nobly represented in your Lordships' House. Fuel poverty is not only a sign of a poorly organised country, it is also a basic and justifiable cause of political discontent.

The public's dissatisfaction with energy companies is compounded by their poor performance. It happens that, last Saturday morning, I noticed in my inbox an email from npower, the company that supplies gas and electricity to my home. It set out very clearly—because it has to—that I could save a few hundred pounds a year if I moved on to another tariff. Later that day, thinking that I could save myself that money, I went on to the npower website. I got one of those responses that reads something like: "Oops; there seems to be something wrong with our website". I left it for an hour or two and tried again, and "Oops" appeared. In the early evening, I tried again and "Oops" appeared,

so I left it. On Sunday, I went to the npower website and no "Oops" message appeared. It was possible for me to go on to a site which told me clearly that I could save a few hundred pounds a year on my gas and electricity combined. I looked very carefully for the button that said something like: "Do it now", but there was no such button, though it was well within its power to produce one. I then embarked on a parlour game, or obstacle course, depending on the view you take, and eventually, after having two cups of tea while trying to get through the exercise, I was, thankfully, able to reduce my energy costs by a few hundred pounds. However, if I had not been determined, bloody-minded and reasonably good at dealing with computers, I may well not have been able to do that.

Those very cohorts which I mentioned earlier are not being given the opportunity by the energy companies to reduce their prices as easily as possible. That means that those companies are canny about what they can do. They will take every point at their disposal, and that brings me directly to the appeal process. I said earlier that I have relevant experience, through being a member of the Competition Appeal Tribunal. The existing appeal regime enables parties to challenge decisions of sector-specific regulators, in front of a specialist body—in this instance, the CMA—and, as the noble Lord, Lord Hunt, said, this is part of the existing regulatory model in the UK. For example, as chairman of the Competition Appeal Tribunal, I dealt with Oftel and the ability to port your number when you change from one supplier to another. What had been done was not wholly unreasonable, but it was not right on the merits, so we provided a ruling that meant that you can port your number. People have been able to do that ever since, and it has become easier.

We were able to consider things as mundane as bus prices in the city of Cardiff because unfair competition was taking place. Again, we considered the matter on its merits, not by looking at points of law but by looking at when buses arrived and where the competition was on the street at the time of the arrival of those buses. That is what a merits-based appeal system achieves. Indeed, the established system is central to driving better regulatory decisions and thus the level of legal and regulatory certainty upon which all industry stakeholders depend. That is a long-winded way of saying that if there is a merits-based appeal and a decision, people know what they have to do.

Judicial review is not the appropriate standard for legal challenge to a decision that has significant consequences for competition and consumers. I suggest to the Minister that an appeal right to the Competition and Markets Authority could be inserted in the Bill by an amendment such as that alluded to by the noble and learned Lord, Lord Mackay of Clashfern, to ensure the appropriate checks and balances for price control while not delaying or frustrating the process in any way.

I do not intend to repeat everything said so cogently by the noble Lord, Lord Hunt of Wirral—I agreed with every word he said on this issue. I just wanted to add this to try to simplify matters a little. If judicial review principles are applied, the court could hold that the decision was rational but wrong, and therefore it would stand. If the CMA principles are applied, the CMA could hold that the decision was reasonably reached but wrong and therefore would not stand but would be replaced by the correct decision. Stated in that way, I believe that the proposition is unanswerable other than by allowing an appeal to the CMA.

Lord Berkeley of Knighton (CB): My Lords, before the noble Lord sits down, may I ask him a quick question? I was deeply saddened to hear of his travails in trying to move his tariffs. Would he believe me if I told him that that was a relatively "short ride in a fast machine" compared to the three months and counting I have spent trying to achieve the same thing?

Lord Carlile of Berriew: I absolutely accept that, because two or three years ago I changed my provider, and it took me about three months to achieve.

4.57 pm

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I will speak briefly in support of the Bill—very briefly, because at this stage of the debate, much of what I wanted to say has been said by other noble Lords.

At first glance, the imposition of price controls would not immediately strike one as a true Conservative policy. Edmund Burke, however, held that it was the duty of government to prevent people—whether consumers, workers or investors—from being exploited. That is exactly what the Bill does. As we have heard, the Bill seeks to protect the consumer from the significant price increases that can arise from standard variable tariffs. These are imposed on those of us—11 million at the last count—who fail to renew our tariffs with energy suppliers in a timely fashion. If any noble Lords here have not made contact with their supplier in the past two years, I suggest they do so today, as they will almost certainly be on a default tariff—although it may take them until tomorrow, as we have just heard.

Under the Bill, Ofgem must set retail price controls in the form of a temporary but absolute cap through consultation with the industry using an agreed transparent methodology in the next five months. As my noble and learned friend Lord Mackay observed, that is no small task. Notwithstanding the very poor behaviour that has been prevalent in the industry over the past decade, I add my voice to concerns expressed by my noble friend Lord Hunt and my noble and learned friend, as well as by the noble Lords, Lord Whitty, Lord Stevenson and Lord Carlile, about the options for redress and the building-in of poor governance to this legislation.

It is proposed that the only recourse to an appeal that a retail supplier or a consumer will have to challenge the cap proposed by Ofgem is through a judicial review. As has been said, a judicial review is many things, but it does not seem entirely appropriate to judge anything beyond the legality of the control or indeed whether the process by which it has been imposed has been executed in an appropriate fashion. Further, it has no time limit and in many ways it seems a pretty blunt instrument to use as a mechanism for dealing with retail price controls.

[Baroness Bloomfield of Hinton Waldrist]

Meanwhile, as we have also heard, the Competition and Markets Authority is an established feature of the existing regulatory model in the UK. It has proved itself to be faster and more effective at providing the level of forensic, commercial analysis that may be needed to resolve disputes. Other sectors of the economy —water companies, mobile phone companies, Openreach and networks that can be subject to price controls—have recourse to the CMA, and I remain unconvinced that judicial review represents the best route to good governance in this instance.

The last thing I seek to do is to put the regulator in a weak position, particularly with regard to this industry. I understand that there is a fear that questioning the appeals procedure could be a delaying tactic by the major energy suppliers, which are seeking to delay the imposition of any cap. This would seem unlikely, as any CMA appeals process could run alongside the imposition of the cap.

In the long term, only healthy market competition will obviate the need for a permanent cap. However, I believe that a temporary cap is necessary while other measures are taken to promote competition. If set at a sensible level, competition need not be stifled, and there should be plenty of scope for smaller operators in particular to compete effectively.

To conclude, I support the Bill and the intentions behind its interventions. I am confident that it can be made to protect vulnerable consumers and to remove the penalty for loyalty. In common with others present, I just have reservations about the appeals process contained in the Bill, and I look forward to the Minister's response.

5.01 pm

Lord Lennie (Lab): My Lords, I begin by thanking all noble Lords who have spoken this afternoon. The principle of the Bill is unusually uncontentious and it has considerable support around the House—other than from the noble Viscount, Lord Ridley. However, that is not to say that the Bill cannot and should not be improved.

The Bill arises out of energy market failure and the shortcomings of Ofgem in addressing that failure over the past 20 or 30 years. Successive Ofgem leaders have not addressed the problem. As I understand it, not so long ago Ofgem was considering packing up altogether. It felt that its job was done and that it was no longer needed or significant to the industry. However, that was then and this is now, and we now have a meeting of minds between Labour and Conservatives on the need for such a Bill to come into being.

The current situation is that competition is failing customers. It is allowing market dominance by the so-called big six, who have something like 80% of the market. The biggest slice of the market that a small competitor has had over the last 30 years is about 1%, which does not seem to be enough to invade the market. Maybe 1.5 million customers overall between all 55 competitor suppliers against the big six is a very small number.

Competition was supposed to facilitate cheaper energy costs and to protect vulnerable customers. It was supposed to take away monopoly behaviour by suppliers and to make companies more efficient. Bits of that might have happened, but not in sufficient quantity—and it has not been sufficiently evident to customers in the prices they pay for their energy.

So what do we have? We have pricing that is described as a rip-off. Vulnerable customers are being exploited. They are on prepayment meters and pay higher charges. Until very recently those were capped, as it was very evident that they were being exploited. With 80% of the market dominated by the big six, inefficiency is built into the supply system.

The Conservative Party widely ridiculed Labour in 2013 when we proposed a price freeze. It was felt to be anti-competitive, unnecessary, a backward step and an admission of market failure. So it is hard to understand what the Conservatives say now. It is nice to see a damascene conversion of some sort, but the explanation of that conversion is not clear. We must have a tariff cap for all customers on top of what has already been introduced for vulnerable customers. Has the market significantly changed in the past couple of years to bring about the reversal of policy think? I do not think so. However, the CMA's recognition that, unless something is done quickly, the ripping off of customers will become intolerable might be the justification that the Government give for introducing this now.

How does the market work? We have heard some accounts from the noble Lord, Lord Carlile, and others about their experience of trying to switch, but the big six's behaviour goes something like this. You start up on a leader-price, low-price tariff. They get you into the market and then, a year later, they will get you back, in some cases by more than doubling your charges. By the way, the cheaper deals they offer will be withdrawn for you just before you try to find them and renew and take up an alternative to your standard variable tariff. They all do it. Some do it more than others—some are more blatant—but they are all at it. All the big six are at it: monopoly suppliers fleecing largely their customers, until recently the most vulnerable of whom were the worst affected, as they had to have prepayment meters which charged higher rates because the companies had the additional cost of installing the meter. They did not take account of the fact that they actually got an income after installing a prepayment meter, having previously complained that there was no income coming from the most vulnerable customers.

There have been some beneficiaries. Those most able to afford to pay have exploited the market—the noble Lord, Lord Carlile, being one of them. They have made savings for themselves by switching but they are, as someone said, subsidised by those who are unable or unwilling to do so. Four out of five customers each year never do so; they do not have the time, the inclination, the resources or the access to computing to do so. So a large majority of customers have to be punished by paying higher prices. We have recently seen an increase in charges of 5%, or thereabouts, by many of the big six, which is way above inflation and above supply costs. Why is that in the Bill? Why has that become necessary? It is storing up some spare for when the tariff cap comes into effect.

Ofgem was set up to regulate the market against unfair competition, but its track record is not so good. It is cautious, it is safe, and it is ineffective, with instincts

which are not to rock any boats in the industry. What is the cost? According to figures produced by the CMA, which may be disputed by certain noble Lords, we are paying £1.4 billion more for energy each year than we should. That £1.4 billion recurs every year that we have the current system in place.

What is to be done? The Bill should allow a bit of control to be brought to bear on the energy market. In order to address this, some questions need to be answered, so I ask the Government the following. Do they have any idea what the level of the tariff cap will be? Will the Secretary of State or Ofgem make the ultimate decision? Will it be a recommendation from Ofgem to the Secretary of State, or will it be Ofgem left alone? Why do the Government envisage that the tariff cap will be necessary only for a short time? We have heard that 2023 is linked to the potential rollout of smart meters. The plan is in some difficulty and I think that it is unlikely to hit that deadline. Therefore, why do the Government envisage it being necessary only until 2020 or 2023?

What would be the effect of smart meters on every customer's bills? If the cost is £11 billion, what will be the cost in individual customers' bills? How will the Government know when the market is working or behaving as it should? What indicators will the Government use to make judgments about whether the market is behaving properly? Will the warm home discounts be a requirement for all energy suppliers? Suppliers are currently exempt if they supply fewer than 200,000 households or customers. There does not seem to be any reason why that should be the case. Can that be considered as part of the legislation? Will customers be able to have paper bills at no additional cost, as has already been asked? That is important to older customers in particular. Finally, when will the tariff cap come into place? Certainly, it should be no later than when the clocks go back this year, when winter starts. Winter 2018 has been mentioned, but when does winter start in the mind of the Government?

I started by saying that there was little contention about the need for this Bill, and I remain of that view. But there are many unanswered questions and more detail is required as the Bill progresses through the House. We will know that the Bill has succeeded if customers have something like £1.5 billion to £2 billion returned to them as an effect of the tariff price cap coming into being.

5.09 pm

Baroness Featherstone (LD): My Lords, I thank all noble Lords for their contributions, even the noble Viscount, Lord Ridley, although I fear he and I will never agree on certain matters. A cap should never have been necessary and would not have been necessary if the big six were not greedy and if the regulator had used his teeth. It is, as the noble Lord, Lord Lennie, said, a measure of their market failure that we are in this position. The cap must be only a temporary measure, because it will not create the competition that is needed to really drive down prices. We have seen the success of offshore wind auctions not only in bringing down the price of offshore wind but in forcing other energy providers to compete. I could hardly believe it when EDF came to me to discuss nuclear and said that it would be able to compete with offshore wind. Competition works.

A cap must beware of unintended consequences, as several noble Lords have said. A cap can precipitate rises before its institution and after its departure, and we have already seen this with E.ON, I think, raising its prices. I tweeted my dissatisfaction at this event and E.ON tweeted back to say that it was because of rising costs. The next week, I saw what had risen: its profits, by 41%. So forgive me if I have no time for suppliers which wring their hands and say that a cap is not the answer. It should not be, and I wish it was not, but it is the only short-term answer to protect the loyal and the vulnerable. Competition is the answer.

As many noble Lords have mentioned, we have seen a rise in switching—this year, something like 5.5 million people have switched. However, that is nowhere near the level of competition that we need. The Bill states that it seeks to protect switching, and we must do that, particularly during the period when the cap is in place. To quote the Secretary of State:

> "There should still be an advantage in shopping around, but customers should be protected from an ever-increasing differential that particularly penalises those who are vulnerable".—[*Official Report*, Commons, 6/3/18; col. 207.]

As I mentioned, the big suppliers have lost our trust—definitely my trust—and they may try to find ways to stop their customers shopping around. Therefore, we on these Benches are not satisfied with the words of the Secretary of State. Ongoing benefit from switching needs active protection in the legislation.

It is not beyond the pale to imagine that, when the big six write to their customers to introduce what they are doing about the cap measures, they may fail to tell their customers that they can still switch and that the cap does not mean that their customers might not find a better deal elsewhere. For example, uSwitch wants Ofgem to make sure that suppliers cannot use misleading names for their capped tariff. If, when writing to their customers, suppliers were to use a name such as a "safeguard tariff", that might make customers think that they are safe with that tariff. Therefore, uSwitch is suggesting that Ofgem should consider and test names for the cap—something like "temporary tariff"—to find out consumer response. We need to be sure that consumers will not be misled by their supplier's anxiety to keep them by marketing ploys.

It also highlights a concern that, if and when the price cap is changed during the period, which might be the case, we will need to make sure that suppliers do not minimise consumers' responses to such changes. Notification letters must make it clear that the price cap does not necessarily or automatically deliver the best deal and that customers may still find a better deal if they shop around, or not.

Lastly, the information on switching should be easy and accessible in all communications. I will probably bring forward an amendment mandating guidance as to what such correspondence must say about the cap. That must be universal to all suppliers so that it is the customer who is given straight facts and the supplier does not omit the facts for commercial purposes.

[Baroness Featherstone]

Some noble Lords have raised the point—not always in a good way—that one of the most disappointing parts of the Bill is the omission of the exemption for green energy tariffs. It is not only disappointing but unacceptable. The Government promised that they would seek an exemption for green energy tariffs and when they accepted a recommendation from the Select Committee I had some hope that they meant it. I understood the proviso they put forward that any tariffs exempted from the price cap on this basis would only be agreed to when Ofgem was satisfied as to its credentials in directly supporting the production of renewable energy. That is completely fair—but I do not see it in the Bill. The Government should stop pretending that they support the green agenda—they do not. They are happy to remove planning protections for local people fighting fracking—as mentioned by the noble Viscount, Lord Ridley—they are happy to pay squillions for nuclear, they broke their promise on carbon capture and storage, they are doing nothing to deliver green gas, they have zero hope of reaching their existing targets and they have done nothing but undermine renewables.

Claire Perry, the Minister, who was by the Throne earlier, is asking the climate change committee to look at zero carbon 2050, no doubt spurred on by my report on zero carbon 2050, *A Vision for Britain: Clean, Green and Carbon Free*. The Government are about sounding green, not doing green. The original draft of the Bill included an exemption from the proposed cap for green electricity tariffs with an additional environmental benefit. In the event, the Bill only puts an obligation on Ofgem to consult on an exemption for tariffs supporting the production of gas or the generation of electricity from renewable sources. However, the cap may be introduced before that consultation is complete, let alone the exemption made. Firms such as Ecotricity and others which are doing the right thing and changing our world for the better—pioneers taking us forward—need to be supported and encouraged, not undermined by a Government who talk green but act blue. We on these Benches want to see that exemption in the Bill and I will table an amendment to that effect.

On the issue of vulnerable people, which has been raised by other noble Lords, it is proven that people with disabilities face higher energy costs. It is therefore right and necessary for the Government to tackle this with a temporary cap on standard variable and default tariffs. Scope issued a briefing highlighting the concerns for the most vulnerable. There is an issue for those on an Ofgem safeguard tariff, who could see their costs rise as a result of the cap. Those on the safeguard tariff, prepayment meters and warm home discounts are exempt from the cap.

Scope is concerned that the new extended safeguard tariff planned by Ofgem, which will be replaced by the Government cap on standard variable and default tariffs, may mean in effect that some consumers with disabilities miss out on support because they may not be on a variable or default tariff. Scope believes it is vital that the Government make Ofgem identify those in receipt of the safeguard tariff and put in place measures to offset potential loss or, alternatively, not proceed with removing the safeguard tariff. The Government must ensure—no, they must guarantee—in this Bill that no one with disabilities will be made worse off by this or future changes in the cap/tariffs. I will table an amendment to establish that principle in law in due course.

Scope says that the price cap will go some way to protect disabled consumers with high energy bills but it is not sufficient to tackle the range of barriers that customers face. Its proposals are around improving support for disabled energy consumers, more effective data capture and sharing, accessible communication and digital inclusion. It asks the Government to put in place a longer term plan to address those barriers alongside the price cap. This should be a must for the Government. It is not good enough to take half measures to create equality—they have to deliver. This is an opportunity for the Government to apply the principles of the DDA and the Equality Act promptly and without equivocation.

There is a clear failure to protect in the Bill as currently drafted and I trust and hope that, following amendments that will be brought forward in Committee, the Government will move on this issue. If they do not accept the amendments brought forward in Committee or on Report, I hope they will bring forward amendments to achieve the ends I have outlined in ensuring that the most vulnerable are securely protected.

I turn briefly to appeals, a subject that has been raised by many noble Lords. A large lobby of suppliers want the Government to introduce an appeal to the CMA on how and what Ofgem sets as the cap given that currently only judicial review is available. SSE is particularly concerned that the way in which Ofgem sets the cap should reflect the cost of supplying energy. It suggests that the bottom-up cost assessment approach would be the fairest one and carry the lowest risk, and it too subscribes to the right to appeal. I tend to pay heed to the words of the noble and learned Lord, Lord Mackay, who has made a strong case on this, and I will listen to the Government's view on an appeal process. We do not want to introduce any delay, but as other noble Lords have mentioned, apparently there is no delay as the result of an appeal. Perhaps the noble Lord, Lord Henley, can answer this question in his response. Why should the normal process of appeal to the CMA have been omitted in this case?

Lastly, one of the key issues is what is to happen next? What will happen when the cap ends? What are the conditions under which it could be lifted? Surely the Government should set those parameters, given that this is after all a temporary measure. What would have to happen for the cap to be lifted and what is in place to ensure that the big six cannot repeat the sorry situation which has necessitated the cap in the first place?

Before I conclude, I want to reiterate a point made by my noble friend Lord Teverson on energy efficiency. A great deal of consumers' money literally goes out of the window or through the gap under the door. Given that, it would be significant if the Government could consider making energy efficiency a national priority as part of their infrastructure plans. However, as noble Lords may have gathered from what I have said, while we on these Benches support the cap, we want to see some movement on the issues that I and other speakers have raised.

5.21 pm

Lord Henley: My Lords, I am grateful to the noble Baroness for her intervention, and for what I think is the first authoritative statement from the Liberal Democrats in the course of this Bill through both Houses. I take note of her concerns about the Bill; she has made it quite clear that the cap should never have been necessary. However, as I understood by the end of her speech, she seems to think it right to put the cap in place. No doubt we will hear more from the Liberal Democrats, as I hope we will from other noble Lords, when the Bill is considered in Committee. It is possible that we will have rather a busy Committee stage because a number of concerns have been raised. I hope to be able briefly to address just some of them in my remarks winding up the debate. It probably falls to the noble Lords, Lord Stevenson and Lord Teverson, who have in effect provided me with a template for a number of questions to address in the brief time I have. However, other noble Lords, including my noble and learned friend Lord Mackay, have made it clear that we will have to devote considerably more time to the issue of the appeals process. As I say, I hope I will be able to touch on some of those points, but obviously we will leave the detailed discussion until Committee.

That brings me to another point that needs to be raised at this stage which has been touched on by a number of noble Lords, including the noble Lord, Lord Stevenson: the very important question of timing. If we are all in favour of a cap, and I am still not quite sure what the official Liberal Democrat position is on that, we must ensure that it will be of benefit to as many consumers—

Baroness Featherstone: I should make it clear to the Minister that we support the cap.

Lord Henley: I am grateful to the noble Baroness for making clear the Liberal Democrat policy on this, but she did start by saying that the cap should never have been necessary and that she did not like it. However, she then stated that she wanted the cap introduced. I want to make sure that we have it in place, and that is why I must go back to the timing. While I cannot guarantee that we will have it in place by the time the clocks change, we hope to have it by the winter. For that reason, perhaps I may remind noble Lords that it would be helpful if we could deal with the Bill and see it returned from the Commons with all the concerns having been dealt with in one way or another by the time we take up our buckets and spades at the end of term. I do not know what it is that noble Lords do in the holiday months. We should get the Bill on to the statute book with Royal Assent so that the processes can continue and, by the end of the year, we will have a cap that offers benefit to consumers. If the Motion that I shall move at the end of the debate is agreed, I look forward to a constructive Committee stage in the Moses Room so that we can go through these matters and then sort them out on Report. I hope noble Lords will bear in mind what I said about timing at this stage.

As I said, the noble Lords, Lord Stevenson and Lord Teverson, set out a template for a number of points that I want to deal with: vulnerable consumers, the absolute versus the relative, conditions for effective competition, the cost of an energy review and green tariffs—other noble Lords covered all these points so I hope that they will not mind if I do not pause to mention every name—as well as some of the network costs, the timing of the Bill, which I just have dealt with so I can cross that out, appeals and, finally, the cost of environmental levies, as mentioned by my noble friend Lord Ridley. I will refer to some of those at the end.

For now, I will run through some of those points; it might save a little time in Committee but I doubt it. I also want to say how grateful I was to my noble friend Lady Bloomfield for reminding us that bringing forward a Bill of this sort was very unusual for a Conservative Government, as I tried to make clear at the beginning of the debate. We believe, as she cited, that there are occasions where markets are not working and it is necessary to intervene. That is what we are doing; we are intervening temporarily. These are not rent controls. This is not about bringing back a prices and incomes commission. It is a temporary measure to deal with the current problem of markets not working. In time, we hope to be able to return to what I sensed the noble Baroness, Lady Featherstone, wanted to take the Liberal party back to—a glorious, 19th-century free market approach—although she reverted to something different later on. We will get there in the end and I look forward to that joyous Committee stage.

I begin with the crucial point about appeals made by my noble and learned friend Lord Mackay, my noble friend Lord Hunt—an eminent lawyer whom I have served under—and other eminent lawyers whose tongues I have borne the sting of, such as the noble Lord, Lord Carlile, and the noble Lord, Lord Redesdale. Obviously, we will debate this issue in much greater detail in Committee; as noble Lords know, it was raised in another place and considered by the Select Committee. We should all be grateful for the work done by that committee on the Bill and for our process of sending draft Bills to Select Committees or other committees. Having considered this issue, the committee concluded that,

"judicial review is a common and satisfactory appeal route for energy decisions, even highly technical ones".

The Government hope that energy suppliers will focus on engaging with the regulator's consultations on the design of the price cap, rather than the scope for appeals and legal challenges. I appreciate that noble Lords who spoke on this think otherwise. They think that an appeal to the CMA would be less burdensome than using judicial review. We can reflect on that and we will consider it, but I note what Members have to say at this stage. I think we will have considerable discussion on it in Committee.

Concerns about vulnerable consumers were raised by the noble Lord, Lord Carlile, the noble Baroness, Lady Featherstone, and others such as the noble Lord, Lord Whitty. Again, additional protections for vulnerable customers and the interaction of the cap with Ofgem's existing safeguard tariff will be a matter for the regulator. The Bill provides for Ofgem to maintain a cap for vulnerable consumers that is separate from the prepayment meter cap imposed by the CMA. In addition to the duty imposed on Ofgem by Clause 1(6) to protect all existing and future domestic customers on standard

[Lord Henley]
variable tariffs, the Gas and Electricity Acts impose duties to protect the interests of customers. In carrying out this duty, Ofgem should have regard to all the points that noble Lords have raised. The noble Baroness mentioned the document produced by Scope, which I have seen. Obviously, Ofgem should take into account the interests of individuals who are disabled, chronically sick, of pensionable age—as the noble Baroness, Lady Featherstone, pointed out, there are many of that last group in this House—with low incomes or residing in rural areas and others. Again, these are matters that we can consider later.

The subject of the absolute versus the relative cap was raised by the noble Lords, Lord Stevenson and Lord Teverson. This matter was discussed at considerable length in another place; quite often, one needs a cold towel wrapped around one's head to understand some of the technicalities. Again, it is a process that we will consider in great detail. The Government, Ofgem, the Select Committee and another place all believe that what we are doing is the right way to proceed. A relative cap might simply prompt the withdrawal of more competitive rates by larger companies while offering no protection to those on poorer-value tariffs. We will look again at this in greater detail but, on some occasions, I think noble Lords will find these matters difficult.

The noble Lord, Lord Stevenson, talked about the conditions we need for effective competition—it was the third point he raised. The legislation is framed so that consumers' incentives to switch, which is what we want, and suppliers' incentives to compete are maintained. I appreciate that the noble Lord, Lord Carlile, in his usual amusing way, pointed out how difficult it can sometimes be when we sit down with our computers and have all these messages appearing. We want to make it easier; we will try to do that. That is one reason why we hope that the cap will be just a temporary measure which is removed when the conditions for effective competition are in place. We have not provided in the Bill for what those conditions will be, as in a changing market we do not want to impose conditions that may not be met or tie the removal of the cap to measures that will not be in place by the time that the wider market has become competitive. It will be for Ofgem to report on whether those conditions are met, and the Secretary of State will then make that decision on removal or extension. Clause 8 makes provision for that to happen repeatedly over the years if we seek an extension.

The fourth point raised by the noble Lord was the *Cost of Energy Review*. We are aware of Dieter Helm's comprehensive and fully independent review of the cost of energy: I think it arrived very soon after I became a Minister and it was probably the noble Lord who put down a question very soon after that, which I had to respond to despite the fact that the review was some 158 pages. I had to assure him, or someone, that I had not read the entire review in the time available, which was about four days. I have had more time. I cannot claim to have read it absolutely from beginning to end, but we are still considering those findings and we will in due course set out our next steps in light of the responses we have had from others to it.

The Government have already taken action that has helped reduce costs and helped consumers to manage their bills. The cost of offshore wind, as noble Lords will know, has halved over the last two years. We have paid compensation to eligible businesses in energy-intensive industries across the UK for the indirect costs of energy policies: that has totalled well over £500 million since August 2013. We are also seeking to do more by upgrading something like a million homes to meet our obligations to make them more efficient. The costs of those policies to deliver clean growth on bills are more than offset by savings from improvements in energy efficiency, saving on average in 2016 something of the order of £14 on household bills.

The noble Lord, Lord Stevenson, and others raised green tariffs. The Bill places a duty on Ofgem to consult on exemptions to the cap for green tariffs. I note in passing that while the noble Lord, Lord Redesdale, is perfectly happy to pay more, that will not be the case for everyone; but we leave that to him. Green tariffs are tariffs that support the production of gas or the generation of electricity from renewable sources.

Lord Redesdale: My Lords, I raised the example of myself but there are tens of thousands, if not hundreds of thousands, of consumers who are also prepared to take that route and would want that opportunity.

Lord Henley: I appreciate that that is the case and I have been on various websites that have offered me the choice of going either for a cheaper deal or what is termed a greener deal: that is an option for individuals to make. What we are looking at in this Bill is obviously to provide a cap to provide safeguards for people.

The Bill places a duty on Ofgem to consult on exemptions to the cap for green tariffs—those tariffs that support the production of gas or the generation of electricity from renewable sources. Having consulted, Ofgem will then have the power to implement exemption from the cap. That is for it; we are not opposed to green tariffs being exempt.

Moving on, network costs was another concern of the noble Lord, Lord Stevenson, and others. He asked, while being tougher in the future was all well and good, were customers being ripped off now? One could say that this is a matter for Ofgem: it is the independent regulator and responsible by law for setting the price controls. Ofgem reports that its assessment of network company business plans and the benefit-sharing arrangements in place in the price control is expected to save the consumers yet another £15 billion in the current price control Bill.

The seventh point the noble Lord raised was about timing. I repeat what I said at the beginning: it is important that we make good progress with the Bill, that we get it through to Royal Assent before the Summer Recess, and then we—or, rather, Ofgem—can get on with the process of bringing in a price cap, so that we will be ready with everything in place for the coming winter.

Lastly, I will touch on some of my noble friend Lord Ridley's points. He referred to the "pachyderm in the parlour" and blamed the Government for putting up energy costs by imposing greenery, as I think he

would put it, on household energy bills. I say to him that government policy costs make up only a relatively small proportion of the household energy bill—around 8% on average, according to Ofgem. Last year, as he will be aware, we published our *Clean Growth Strategy*, which outlined our commitment to supporting the growth of clean and renewable energy for all. Action to cut emissions can be a win-win for consumers: better insulated homes and more efficient vehicles mean less money spent on gas, electricity and other fuels. Our policies have helped reduce energy bills and costs overall: for example, my noble friend will be aware that we have seen the cost of solar cells come down by some 80% since 2008 and, as I said earlier, the cost of offshore wind has declined by about 50% over the past two years.

Lord Teverson: Does the Minister agree—I am sure he does—that when it comes to vulnerability and all the issues around keeping warm, it is important to note that the gas and oil that I have to use as a rural dweller to keep warm are not charged any environmental costs and so do not incur those additional costs?

Lord Henley: I am not aware of how the noble Lord heats his house—unless he was the Liberal who confessed the other day to having an Aga run on oil, which always struck me as a good Liberal policy: it is a thing others are accused of. I will find out about that in due course. I will look carefully at the noble Lord's question and come back to him in writing in due course. I was trying to make clear that our policies have helped reduce energy bills for households in efficiency savings—

Lord Teverson: I am sorry to interrupt the Minister again, but I was trying to be helpful. I apologise that I clearly was not. Environmental charges are only on electricity: they are not on gas and oil. He can take it from me. I do not want a reply from him. I apologise for having put him off his stride when I was trying to be helpful.

Lord Henley: The noble Lord is always helpful, as are the Liberal Democrats. I look forward to the help they will be offering and providing in Committee and at later stages. I will end by making it clear—as I was trying to do before the noble Lord interrupted me twice—that our policies have helped reduce energy bills for households as, on average, energy efficiency savings have more than offset the cost of supporting the low-carbon investment. The Bill will help consumers in due course. I look forward to an interesting Committee and Report thereafter, and I hope that all noble Lords will bear with me in what I said about the importance of timing in relation to the Bill. I beg to move.

Bill read a second time and committed to a Grand Committee.

House adjourned at 5.45 pm.

Volume 791
No. 143

Tuesday
22 May 2018

CONTENTS

Tuesday 22 May 2018