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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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House of Lords

Tuesday 26 February 2019

2.30 pm

Prayers—read by the Lord Bishop of Oxford.

Short-term Lettings
Question

2.37 pm

Asked by ***Baroness Gardner of Parkes***

To ask Her Majesty's Government what consideration they have given to giving greater power to local authorities to deal with issues arising from short-term lettings.

Baroness Gardner of Parkes (Con): My Lords, in begging leave to ask the Question standing in my name on the Order Paper, I declare my interests as in the register.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, where short-term lets breach the rules, local authorities already have numerous powers to take action. We are strongly encouraging industry to continue its progress on promoting best practice, and to support the efforts of local authorities to ensure that short-term lets comply with the rules. I am pleased to hear that the noble Baroness has now met with the Short Term Accommodation Association to discuss this important work.

Baroness Gardner of Parkes: I thank the Minister for that reply. It was his advice that I should meet the association, and I found it very productive. Airbnb was among the members that attended, which was quite interesting because there has been a conflict here before. When the Minister asked Airbnb, it said that it sorted all this information; when I asked it, it said that it did not. At the meeting, I asked which of the two was the right answer. The real answer was that it asks users to verify that they have all the necessary permissions for short-term lets. Airbnb is not asking them to produce them or to show that they have that right. It just presumes that they do if they say yes. In view of the fact that HMRC has no interest in this huge field, it is time that some more action is taken.

Lord Bourne of Aberystwyth: My Lords, the Short Term Accommodation Association is grappling with problems of sharing data under the current law, and it is trying to proceed with that. It also has a conference on 14 March, to which it has invited every single local authority in the UK, although this is a devolved issue. That is a sign of its determination to tackle this—as is the accreditation programme which it is setting forth.

Lord Anderson of Swansea (Lab): Of course there is a case for clear regulation, but does the Minister agree that Airbnb and others, since they are popular, are meeting a gap in the market?

Lord Bourne of Aberystwyth: My Lords, I agree with the noble Lord on that. It is nevertheless important, as he acknowledged, that they satisfy certain conditions. Those that join the Short Term Accommodation Association sign up to a code of conduct. That has been circulated to all houses in Westminster, with which it has a particularly close association. It is the aim of the Short Term Accommodation Association to roll that out nationally.

Baroness Grender (LD): Did the Minister see BBC London's documentary last night, in which undercover work revealed that three private sector companies were helping private landlords find their way round the 90-day limit in London? Does he agree with Generation Rent that the data should now definitely be released to local authorities, because otherwise it is almost impossible for local authorities to enforce?

Lord Bourne of Aberystwyth: My Lords, I did not have the privilege of seeing that programme last night, as I had duties in the House, but I have had reports of it. Those businesses to which the noble Baroness was referring are not members of the Short Term Accommodation Association, although we would certainly encourage them to join it; the association is seeking to ensure that they do.

Lord Best (CB): My Lords, the Minister knows that his department has established a working group, which I have the pleasure of chairing, to look at the regulation of property agents: those doing sales, lettings or management of property. The companies that do the short-term lettings do not have any regulation at present. Will the Minister comment on whether the new regulator of property agents—which I am sure will come to pass—should cover the short-term lets as well as the longer-term lettings that it definitely will be covering?

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord for all that he does, not only in relation to the regulation of property agents, but more generally in the area. The noble Lord has written to my honourable friend the Minister for Housing and Homelessness, and she will be replying. As I said, it is our intention that the Short Term Accommodation Association is the route forward, with the code of conduct that it is progressing, rather than that this coming under the ambit of the property agents group to which he referred.

Lord Beecham (Lab): My Lords, Airbnb lettings have increased by 187% in London since 2015, and 678% in Birmingham. Should not properties let on this basis be subject to business rates? I refer to my local government interests in the register.

Lord Bourne of Aberystwyth: My Lords, Airbnb is the market leader and is doing a good job within London, which is the only place where the 90-day limit

[Lord Bourne of Aberystwyth]
applies. Its software ensures that you cannot go over the 90-day limit. As I understand it, to qualify as a business, you have to let for a minimum of 120 days, so that could not apply within London, but it could elsewhere, depending on the facts. I am not an expert in that area, but I do not think that it could apply in London because of that simple statistic.

Lord Campbell-Savours (Lab): My Lords, will Ministers send a guidance note out to local authorities to advise them to adopt the Newham scheme, which I have raised on a number of occasions in this House, for the way that landlords should be treated when they are in default?

Lord Bourne of Aberystwyth: My Lords, the noble Lord will be aware that I have previously referenced the guide that has been developed with Westminster, which the Short Term Accommodation Association wants to roll out. In fact, there are two guides: one is for landlords, which is currently being used in Westminster and it is intended should be used elsewhere; the other is for managers of blocks, and that would apply generally to residences in central London. There are therefore two codes of conduct that are central to what the accreditation body—or what we hope will become the accreditation body—is doing.

Online Safety
Question

2.43 pm

Asked by ***Baroness Massey of Darwen***

To ask Her Majesty's Government what action they are taking, in the light of concerns over child bullying and suicide arising from online activity, to strengthen controls over internet providers.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the Government have been clear that more needs to be done to tackle online harms, including cyber-bullying and suicide and self-harm content, and that the internet companies have a responsibility to their users. The forthcoming White Paper on online harms will set out a range of legislative and non-legislative measures to keep UK users safe online.

Baroness Massey of Darwen (Lab): I thank the Minister for that helpful response. As he said, we are constantly bombarded with stories of suicide, self-harm and bullying on the internet. What can the Government do to co-ordinate efforts to combat such activity online? In doing so, are parents and children involved in discussions on co-ordinating initiatives? Do the Government recognise the importance of not only protecting but empowering children to be resilient and aware of the danger of the internet so that these terrible things do not happen?

Lord Ashton of Hyde: Obviously, I completely agree about the importance of this subject. There is a growing realisation that despite what the big social media companies say they are doing, it is not enough. Hardly anything is more important than protecting children. We support an open and free internet—we think that it is good for the economy, human rights and free speech—but we acknowledge that the Government have a duty to make sure that social media and big tech companies are held to account. We will put out the online harms White Paper to do that. On involving young people in discussions and increasing their resilience, my noble friend Lord Agnew introduced what the Department for Education is doing for relationships education, sex education and health education in secondary schools. The proposed guidance and regulations cover subjects such as how to stay safe online, critically considering information and how people present themselves online, rights and responsibilities, how data is gathered, shared and used, the benefits of balancing time spent online and other important areas, such as consent.

Baroness Benjamin (LD): My Lords, an NSPCC survey found that six out of 10 parents do not think that social networks protect children from inappropriate content, such as self-harm and suicide. Nine out of 10 parents support the regulation of social networks to make them legally responsible for protecting children because, unfortunately, many parents lack the knowledge and confidence to protect their children effectively from online threats. What are the Government doing to encourage and improve digital literacy, especially among parents? Will the Government consider introducing age verification on social media sites as soon as possible to keep our children safe?

Lord Ashton of Hyde: I do not want to give anything away but the noble Baroness has set out many of the reasons for bringing forward the White Paper. I agree with how the public feel. It is a question of building trust in these big companies if the benefits are to continue. We will cover education in the White Paper—that has already been talked about—including for parents. The UK Council for Internet Safety has already developed a framework to equip children and young people for digital life and a practical guide for parents, but we will see more on that subject in the White Paper.

Lord Griffiths of Burry Port (Lab): My Lords, the White Paper has been amply referred to; we all look forward to it. I was at a seminar led by the Secretary of State the other day, where he made very high claims for it. He said that things have never been done like this before—that is, in a way that will have an impact on the whole world of IT. He set his standards very high indeed so we will be watching to see whether the proposals match his great statements. I worry that whatever we propose from within our own geography, not just on social media but on global social media, will depend on similar responses from other parts of the world. We have an international treaty to limit nuclear weapons. Knowing what we now know, is it not time that we started an initiative to bring the

international community on board and into the conversation, recognising that this is a universal problem that needs a global response?

Lord Ashton of Hyde: I agree, which is why we are already consulting with our international partners. There are different views of how the internet should be taken forward, but for child protection and the more egregious things that social media companies do, there is an issue of internationalism, not least how regulations are enforced. That is something we are considering, and one of the benefits of doing it in the traditional way of having a Green Paper, a White Paper and then legislation is that we will continue to have consultation with noble Lords, which we are prepared to listen to. We will set out the views of where we think we are going, but we are open to consultation as well.

The Lord Bishop of Chelmsford: My Lords, instead of simply—and importantly—mitigating the harms done on the internet, might we consider a step change about designing the whole thing differently? Does the Minister agree that, instead of thinking about Facebook, Twitter and the like as platforms, if we thought about them as public spaces, required to have a duty of care like any other public space and be regulated accordingly, we would find ourselves in a different place? Is this something the Government are considering?

Lord Ashton of Hyde: I agree with the right reverend Prelate, and that is something the Government are considering.

Lord Alton of Liverpool (CB): My Lords, I welcome the response that Matt Hancock has given to the father of 14 year-old Molly Russell, who took her life in 2017, having visited one of these suicide sites. That was a year in which the suicide rate among young females increased by 38%. As long ago as 7 December 2006, I asked the Government to amend the Suicide Act 1961 to enable the,

"banning of internet sites which may incite people to, or advise people on how to, commit suicide".—[*Official Report*, 7/12/2006; col. *WA* 157.]

This is an issue I have raised on a dozen occasions since then, along with the noble Baroness, Lady Massey. While I welcome the White Paper and legislation, will the Minister confirm that this is an urgent issue, which ought to be dealt with as expeditiously as possible?

Lord Ashton of Hyde: I agree that it is extremely important; we should expect social media companies to have responsibility, and we should hold them to account. The Secretary of State for Health and Social Care has met social media companies, and written to them on this issue. He had a round table on 7 February to discuss what more can be done, and his department will be hosting a follow-up round table in two months to review progress, so they are taking it seriously. In addition, bearing in mind what the right reverend Prelate said, we are thinking about those issues, as the noble Lord will see when the White Paper comes out.

HS2: Electricity Supply

Question

2.52 pm

Asked by ***Viscount Ridley***

To ask Her Majesty's Government whether HS2 Ltd will fulfil the requirements of public procurement regulations by obtaining its electricity supply through transparent and competitive tendering; and if so, how.

Viscount Ridley (Con): I beg leave to ask the Question in my name on the Order Paper, and refer to my interests in the register.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, HS2 will identify a suitable partner to supply electricity for the operation of the railway through a transparent and competitive process, in compliance with the Utilities Contracts Regulations 2016. HS2 Ltd is in the process of undertaking a strategic assessment of electricity sourcing options, and will produce a fully costed business case, which will then form the basis of a recommendation to the Department for Transport.

Viscount Ridley: I thank my noble friend for that encouraging reply. HS2 will have a gargantuan appetite for electricity—about 3 terawatt hours per year, or 1% of the entire UK electricity demand—costing several hundred million pounds per year. She will be aware of a recent report from KPMG to HS2 Ltd, which recommended that HS2 do a sweetheart deal with the wind industry to build new wind farms specifically to supply the railway, though not necessarily along the line, with a hidden subsidy, the cost of which would be passed on to the traveller and/or the taxpayer. Can she confirm that this would break the rules on public procurement?

Baroness Sugg: I thank my noble friend for his question and I share his desire to ensure good value for money for taxpayers and indeed passengers. The advice given in the KPMG report is that while the wholesale price for electricity is forecast to increase over the long term, the price of renewable energy is coming down, so it recommended signing a long-term contract for the supply of renewable electricity. I should reiterate that the report represents only advice to HS2. No decision has been made and, before any contract is signed, HS2 will need to present the proposed energy strategy to the DfT. Whatever strategy is agreed, HS2 Ltd will be required to demonstrate that it has complied with the Utilities Contracts Regulations 2016.

Lord Rosser (Lab): My Lords, this Question highlights the fact that HS2 will be an electrified railway, which is much more environmentally friendly and cheaper to operate than a diesel line. The Government have recently abandoned or deferred major mainline railway electrification projects. Will they now restore those projects and put them on the same footing,

[Lord Rosser]
electrification-wise, as HS2? Further, will they confirm that they will proceed with HS2 north of Birmingham to Manchester and Leeds?

Baroness Sugg: My Lords, we have had to take some difficult decisions on electrification, which we are bringing forward where it is in the interests of passengers. I confirm that we are absolutely committed to continuing HS2 north of Birmingham. It is going to bring great connectivity to our great cities of the north.

Lord Framlingham (Con): My Lords, there is growing hope and, dare I say, even expectation that the Government will eventually scrap this hundred-billion pound vanity project and spend the money on railways throughout the rest of the country. In the meantime, money is haemorrhaging away and the lives of people along the route are being ruined by this scheme. Can I urge the Minister to try to persuade her colleagues to come to a decision and make an announcement as soon as they possibly can?

Baroness Sugg: My Lords, I am sorry to dash my noble friend's hopes but we remain committed to phases 1, 2a and 2b of HS2. As I have said, it will improve connectivity across our country. Our railways are full, with the doubling of passenger numbers since privatisation, and it is essential that we build a new line to allow space on other rail lines and thus improve things for passengers.

Baroness Randerson (LD): My Lords, I am pleased to hear the Government's continued support for HS2, but the department which failed to set up a contract to deliver a few extra ferries is unlikely to inspire public confidence in the management of big projects. How are the Government ensuring that every aspect of the HS2 costings is re-examined and questioned so that we can be confident that it is good value for money?

Baroness Sugg: My Lords, I agree with the noble Baroness that we have to ensure that the project is good value, because £55.7 billion is a lot of money. The full business case is planned for later this year, and that will reassess the phase 1 scheme against the standard business-case criteria. That business case will provide an updated benefit-cost ratio for the phase 1 scheme.

Lord Watts (Lab): My Lords, when are the Government going to kill this white elephant off and switch the funding to rail schemes around the country that are starved of investment?

Baroness Sugg: My Lords, if I have not made it clear already, we are committed to HS2. As well as the £55.7 billion investment we are making in HS2, we are spending record amounts on the rest of our railways—£48 billion over the next five years.

Baroness Jones of Moulsecoomb (GP): My Lords, a lot of people understand that HS2 is a complete folly. Having said that, if it is going to go ahead, the Wildlife Trusts have had an excellent idea to give the project at least some green credentials. It is that green wildlife spaces should be set up, reaching a mile on either side of the railway, with green bridges to not only enable wildlife to travel through Britain but also to provide recreational opportunities for people.

Baroness Sugg: I agree with the noble Baroness that this project will help to improve the environmental record of our travel, by ensuring that people travel using high-speed rail rather than roads. That will be a benefit. I have seen the plans for the green spaces and green bridges. HS2 is committed to environmentally friendly practices including woodland areas, and is considering those plans carefully.

Lord Grocott (Lab): Does the Minister share my concern or perhaps she even recognises the inevitable: many sections of the House are following a long tradition of this House in opposing the building of railways anywhere and at any time. beginning with the London to Birmingham railway in 1830? Can she assure us that this investment, which is essential to the people of the Midlands, will go ahead, especially in view of the fact that there never seems to be anything like the same level of objection to hugely expensive schemes such as Crossrail in London—which I also support? They appear to go ahead much more easily than anything which might benefit the Midlands.

Baroness Sugg: My Lords, the last time we built new rail links to the centres of our great northern cities Queen Victoria was on the throne, and I entirely agree that it is high time we built more. When HS2 is up and running, by 2033, up to 18 trains will run each hour, carrying up to 1,100 passengers each and serving 100 million passengers each year. This investment will continue.

Social Mobility: Regional Attainment Gap

Question

3 pm

Asked by ***Baroness Tyler of Enfield***

To ask Her Majesty's Government what plans they have to respond to the report *Closing the Regional Attainment Gap* published on 21 February by the All-Party Parliamentary Group on Social Mobility.

Baroness Tyler of Enfield (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and declare an interest as co-chair of the APPG on Social Mobility.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, the Government welcome the report, and its focus on the attainment gap between disadvantaged pupils and their peers. The gap has narrowed by around 9.5% since 2011. We continue to prioritise social mobility by investing on average £2.4 billion a year in the pupil

premium to support the most disadvantaged pupils. We are targeting extra support on areas facing low educational outcomes, particularly through the opportunity area and Opportunity North East programmes.

Baroness Tyler of Enfield: I thank the Minister for his Answer. The APPG report paints a stark picture of the regional attainment gap between pupils from disadvantaged backgrounds and their more affluent counterparts, and shows how areas of low social mobility will worsen unless action is taken. The report recommends redesigning the pupil premium as a social mobility premium, which schools could use to spend on extra pay or other forms of support for teachers in deprived areas. What steps are the Government going to take in these areas?

Lord Agnew of Oulton: My Lords, I first acknowledge the tireless work that the noble Baroness does in this incredibly important area of social mobility. To answer her specific question, the funding provided through the pupil premium means that there is funding available to support local priorities such as recruitment, retention and development of teachers. Further to this, we recently published the teacher recruitment and retention strategy, which reiterates our ambition to shift incentives so that more good teachers work in schools with more disadvantaged intakes.

Baroness Afshar (CB): My Lords, what measures have the Government taken specifically to deal with the needs of minority pupils and minority communities, where young girls and women, in particular, are discriminated against at will? Are there specific measures that would deal with this problem?

Lord Agnew of Oulton: My Lords, all our efforts around social mobility are aimed at helping all those who are not getting a fair crack of the whip. We have 12 opportunity areas operating at the moment and, just to take the case study of Derby, where money is being specifically targeted to help children who are struggling to read or have English as an additional language, we are already seeing improvements at key stages 1 and 2. Things are improving faster in Derby than nationally.

Lord Storey (LD): My Lords, may I raise another issue from the report? It highlights the problem of teacher retention, and teachers feeling that their professional status is not being invested in. Across the OECD the average amount of time spent on high-quality continuing professional development is about 50 hours; in the UK it is half that. Have the Government any plans to increase the availability of continuing professional development?

Lord Agnew of Oulton: My Lords, we have recently announced the recruitment and retention strategy, and I agree with the noble Lord that retention is probably the greater priority, because it is a terrible waste when good young teachers leave the profession. We have put much more focus on ongoing CPD for teachers, particularly in the second year, reducing their teaching load so that they have more time for support. We have announced a £30 million investment in tailored support for certain schools with recruitment and retention challenges, which is designed to help schools improve existing plans, join national programmes, build local partnerships or fund new initiatives.

Lord Wills (Lab): My Lords, what specific measures are the Government taking to increase the low number of care leavers going into higher education?

Lord Agnew of Oulton: My Lords, in addition to the pupil premium we also have an enhanced pupil premium specifically aimed at that most vulnerable group. One of my personal missions has been to increase the opportunities for care leavers to attend boarding schools, where, according to a small study in Norfolk, their educational outcomes showed a dramatic improvement.

Baroness Bull (CB): My Lords, the report also draws attention to the importance of and lack of funding for early years education and centres. The Government's 2017 report, *Unlocking Talent, Fulfilling Potential*, indicated that in areas of high deprivation between 40% and 60% of children arrive at school when they are not what is classified as school ready. What are the Government doing to address this lack of funding for early years education?

Lord Agnew of Oulton: My Lords, we are investing more in child care support than any other Government—around £6 billion for the year 2019-20. This includes funding for our free early education entitlements, on which we plan to spend £3.5 billion this year alone. The noble Baroness will also be aware of the great efforts we are making around phonics, which are leading to a dramatic improvement for young people. Some 163,000 young children are now able to read at a higher level; that is more than the population of Norwich.

Lord Foulkes of Cumnock (Lab Co-op): Can the Minister investigate how this country is being held to ransom by a number of dangerous former pupils of a school called Eton College?

Lord Agnew of Oulton: I get the sense that the noble Lord does not approve of that great institution—but even his party has had many leaders from it.

Lord Beecham (Lab): My Lords, disadvantaged pupils in the north-east have the lowest scores in the country. Would the Minister or other members of the department be prepared to discuss the situation in the north-east with local authorities in that region? Again, I refer to my local government interests.

Lord Agnew of Oulton: My Lords, I am pleased to be able to tell the House about Opportunity North East, a programme launched in that area specifically to address underperformance. We have five priorities: addressing the progress—or lack of progress for some

[Lord Agnew of Oulton]
children—between primary and secondary, improving secondary outcomes, helping schools attract and retain great teachers, improving pathways into great careers, and likewise on to higher education. I chair the board that is running this work and we are bringing together universities, employers, LEPs, local authorities and academies in that area specifically to address the noble Lord's concerns.

Chagos Archipelago

Private Notice Question

3.07 pm

Asked by ***Lord Luce***

To ask Her Majesty's Government what assessment they have made of the advisory opinion from the International Court of Justice, published on 25 February, on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.

Lord Luce (CB): My Lords, I beg leave to ask a Question of which I have given private notice. I declare an interest as a member of the All-Party Parliamentary Group on Chagossians and as a former Minister responsible for that region.

Baroness Goldie (Con): My Lords, this is an advisory opinion, not a judgment ruling. The opinion refers to our administration, not occupation. Of course we will look at the detail of it carefully. The defence facilities in the British Indian Ocean Territory help to protect people in Britain and around the world from terrorist threats, organised crime and piracy. We reiterate our long-standing commitment to cede sovereignty when we no longer need the territory to help keep us and others safe.

Lord Luce: My Lords, I am grateful to the Minister for her reply. However, as the advisory opinion of the ICJ, with only the American judge dissenting, is that the expulsion of the 1,500 Chagossians in the late 1960s, together with the separation of the archipelago from Mauritius on independence, was unlawful and wrong—and bearing in mind that there is no dispute between the key parties that Diego Garcia can remain as a US strategic base until 2036—would the Minister agree that, before the issue goes to debate at the UN General Assembly, the Government should take the lead by initiating discussions with the Mauritian Government with a view to helping to restore the rights of the Chagossians in the other 53 outer isles and thus help to restore the reputation of Britain's human rights record?

Baroness Goldie: I shall say two things to the noble Lord. First, in its statement to the court, the UK made clear Her Majesty's Government's sincere regret about the manner in which the Chagossians were removed from the British Indian Ocean Territory in the late 1960s and early 1970s. As the noble Lord will be aware, this is an advisory opinion, not a judgment, but we will look at the detail carefully. It is a complex opinion and needs careful analysis. The noble Lord makes a good point that there will be a desire to engage with Mauritius.

Lord Collins of Highbury (Lab): My Lords, the fact of the matter is that this is a clear wrong that should be put right. When the Minister talks about an advisory decision, she has to remember that 33 countries signed the referral to the international court, along with Mauritius. The whole of the Commonwealth is united against us on this subject. Can the Minister tell the House exactly how we will institute discussions not just with Mauritius but with Commonwealth countries which are concerned about this wrong being put right?

Baroness Goldie: As the noble Lord will be aware, there was not unanimous support for the original referral. Concerns were expressed, particularly by the US, Australia and Israel, that this was setting a dangerous precedent for other bilateral disputes. The United Kingdom has a very good record on observing and implementing human rights and supporting other countries in relation to human rights. We are very clear that there is a reason for the history of this matter. It is a long-standing history, and the noble Lord's party was involved at its inception. There is a careful determination to be made on analysis of the judgment, which the United Kingdom Government will undertake. The important thing is to consider what we are doing in relation to the Chagossians, who are currently principally located in Mauritius, the Seychelles and, interestingly, the United Kingdom, particularly in Crawley and Manchester. The noble Lord will be aware that the United Kingdom Government do a lot to support those communities.

Baroness Northover (LD): My Lords, previously when this issue has come up, our European colleagues have supported us. Rightly, that did not happen this time. Does that augur well for global Britain?

Baroness Goldie: This is an interesting and challenging situation. The United Kingdom Government are very clear that, while we do not share the view of others that this is a court judgment—we take the view that it is an advisory opinion—we will look at that opinion and analyse it carefully. We are certainly prepared to engage with Mauritius, but there are other considerations. The British Indian Ocean Territory is still needed for defence and security purposes. It is being used to combat some of the most difficult problems of the 21st century, including terrorism, international criminality, instability and piracy.

Lord Howell of Guildford (Con): My Lords, bearing in mind the valid point made by the noble Lord, Lord Luce, that the American base on Diego Garcia could continue for many years ahead, if we are to consider America's and our joint defence interests carefully in coming years and look at the American argument sympathetically, can we make sure that the Americans in turn, including the Washington policymakers, pay a

little more attention to our interests and work with us in that area in a more constructive way than they have in the past?

Baroness Goldie: I think the noble Lord's observation will be noted. It is an important point that, in the conduct of international affairs, there has to be mutual respect and recognition, and if people cannot work together, they are very unlikely to be able to reach sensible conclusions and agreement on important issues.

Baroness Whitaker (Lab): Will the Minister acknowledge that considerable work has recently been done to demonstrate that the resettlement of the islanders is economically, diplomatically and environmentally feasible so that the UK can now bring its policy in line with justice and thereby get more credit in the outside world?

Baroness Goldie: The noble Baroness may be aware that in 2014 there was an independent detailed review and public consultation. That was carried out by KPMG. Resettlement was decided against on the grounds of feasibility, security, defence and cost. It looked carefully at the practicalities and ruled out resettlement due to the difficulty of establishing modern public services, with limited healthcare and education and the lack of economic opportunities and jobs.

Lord Singh of Wimbledon (CB): My Lords, the Minister has said that his country has a good human rights record. It is not part of a good human rights record to forcibly expel islanders—innocent people—to make way for an American base, or to encourage them by shooting the dogs with which they used to go fishing. That is not a good human rights record. Should we not now accept the international court's judgment gracefully and apologise to the islanders?

Baroness Goldie: As I have already indicated, the Government will look at the detail of the advisory opinion very carefully. It is complex, and it needs analysis. I say to the noble Lord in the context of current times, as distinct from those of more than 50 years ago, that the United Kingdom has done a great deal to engage with Chagossians. As the noble Lord may be aware, we have funded a package of support over a period of ten years, starting in 2016. That has enabled visits by Chagossians to the ocean territory. One is going on at the moment. These visits have been very well received by participants, and there are plans for more visits. The UK has been endeavouring to engage with Chagossians and do something constructive to help them remain related to their cultural origins.

Lord Steel of Aikwood (LD): My Lords, the Minister has rightly said that this saga has dragged on for decades. In addition to considering the judgment, will the Government enter into discussions with the Governments of the United States and Mauritius with a view to settling the claims of the Chagossian islanders?

Baroness Goldie: I cannot comment in detail as to precisely how the Government will approach the future relationship. I have made clear what the Government propose to do at the moment. I have also made clear the positive relationship which the Government have with Chagossians and the very constructive financial support we are giving. The Government will consider the advisory opinion and then determine how best to address matters.

Lord Kirkhope of Harrogate (Con): My Lords, when we are dealing with a matter so important from a strategic point of view, as my noble friend has indicated, trying to balance the human rights issue is of course a matter of some importance to this country. Does she agree with me that it is important that our representative at the United Nations General Assembly, when this matter is debated, puts a strong case to make it clear that this country needs to be involved in strategic planning, for the security, safety and freedom of the world?

Baroness Goldie: I thank my noble friend for making a significant point—a point that I am sure has not escaped other Members in this Chamber. The ocean territory occupies a strategic position of significance. We currently have UK personnel working there. The facility is used for docking Royal Navy ships. We also operate a patrol vessel addressing marine protection and countering illegal fishing of endangered species. The base has been used as a humanitarian base for natural disasters in the region. The base is extremely important in the context of a number of significant areas.

Stalking Protection Bill

Order of Commitment Discharged

3.18 pm

Moved by ***Baroness Bertin***

That the order of commitment be discharged.

Baroness Bertin (Con): My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Parking (Code of Practice) Bill

Order of Commitment Discharged

3.19 pm

Moved by ***Lord Hunt of Wirral***

That the order of commitment be discharged.

Lord Hunt of Wirral (Con): My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Organ Donation (Deemed Consent) Bill

Third Reading

3.20 pm

Motion

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

That the Bill do now pass.

Lord Hunt of Kings Heath (Lab): My Lords, I should like briefly to express my thanks to the Prime Minister and my right honourable friend the leader of the Opposition, and indeed the leaders of many of the other parties, for their very strong support for this Bill.

Huge credit is owed to my honourable friends Geoffrey Robinson and Dan Jarvis and a cross-group of MPs who helped to see the Bill through the other place. I mention in particular the pioneering work of the late and very much missed Paul Flynn, who laid the early foundations and whose last speech in the other place was in support of the Bill.

In this House, the Minister and her predecessor, the noble Lord, Lord O'Shaughnessy, deserve great credit for their support, and I thank many noble Lords from all round the House, including my noble friend Lady Thornton, for their stalwart support in taking the Bill through. I have benefited from the valuable advice of Marina Pappa in the Bill team in the Minister's department, the team led by John Forsythe at NHS Blood and Transplant, and Paul Millar in Geoffrey Robinson's office.

The long and enthusiastic support of Mirror Group Newspapers has also been invaluable, as has that of charities such as Kidney Care UK and the British Heart Foundation, which work tirelessly every day to support patients and their families.

This Bill has been referred to often as Max and Keira's Bill in honour of a recipient, 10 year-old Max Johnson, who was recognised by the Prime Minister for his immense bravery while waiting for a heart transplant, and the donor, Keira Ball, who tragically died in a road accident. I pay tribute to both of them.

I am convinced that the passing of this Bill will lead to many more organ donations and lives saved while retaining the involvement of the family in what will remain a remarkably altruistic act of giving. I beg to move.

Bill passed.

Mental Capacity (Amendment) Bill [HL]

Commons Amendments

3.22 pm

Motion on Amendment 1

Moved by ***Baroness Blackwood of North Oxford***

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

1: Before Clause 1, insert the following new Clause—

"Meaning of deprivation of liberty

(1) After section 4 of the Mental Capacity Act 2005 insert—

"4ZA Meaning of deprivation of liberty

(1) In this Act, references to deprivation of a person's liberty have the same meaning as in Article 5(1) of the Human Rights Convention and, accordingly, a person is not deprived of liberty in any of the circumstances described in subsections (2) to (4).

(2) A person is not deprived of liberty in a particular place if the person is free to leave that place permanently.

(3) A person is not deprived of liberty in a particular place if—

(a) the person is not subject to continuous supervision, and

(b) the person is free to leave the place temporarily (even if subject to supervision while outside that place).

(4) A person is not deprived of liberty if—

(a) the arrangements alleged to give rise to the deprivation of liberty are put in place in order to give medical treatment for a physical illness or injury, and

(b) the same (or materially the same) arrangements would be put in place for any person receiving that treatment.

(5) A person is free to leave a particular place for the purposes of subsections (2) and (3) even if the person is unable to leave that place provided that if the person expressed a wish to leave the person would be enabled to do so."

(2) In section 64(5) of that Act (interpretation) for the words from "same" to the end substitute "meaning given by section 4ZA.""

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, this Bill will ensure that vulnerable people are afforded protections should they be deprived of their liberty. It will increase access to protections for the 125,000 people who are potentially being deprived of their liberty without an authorisation in place. The Government have, in the other place, made a number of changes which we will consider today.

Amendment 1 was tabled by the Government to provide statutory clarification in relation to the meaning of a deprivation of liberty for the purposes of the Mental Capacity Act. This proposed new clause anchors the meaning of deprivation of liberty to Article 5 of the European Convention on Human Rights. My predecessor and noble friend Lord O'Shaughnessy committed to bring forward statutory clarification in order to provide clarity to people and professionals. The clause delivers this by setting out non-exhaustive bounds of the concept of deprivation of liberty—that is, circumstances which do not constitute a deprivation of liberty. This is a matter that I have discussed with a number of your Lordships.

It sets out that a person is not deprived of their liberty if they are free permanently or temporarily to leave the place they are in and would not be subject to continuous supervision if they were enabled to leave if they expressed a wish to do so. A person will also not be deprived of liberty if arrangements are put in place to give medical treatment for physical illness or injury and these are the same as would be put in place for anyone receiving this treatment.

These boundaries to the concept of deprivation of liberty are drawn mainly from existing case law decided by our highest courts. We have taken this approach because it allows case law to evolve and helps ensure the definition remains valid as it does so. It is also very difficult for any positive definition to adequately address the range of cases that may be a deprivation of liberty,

particularly while retaining the ability to reflect evolving case law. This clause will be accompanied by statutory guidance, which will be scrutinised by both Houses. We are currently working with stakeholders to compile case studies to illustrate when a deprivation of liberty occurs or does not occur under this definition, so that it will be more usable by practitioners and individuals.

Amendment 1B, tabled by the noble Baroness, Lady Tyler, provides an alternative definition of deprivation of liberty. It specifies that a person is deprived of their liberty if they are confined in a space,

"for more than a negligible period of time … have not given valid consent and the arrangements are due to an action of a person or body responsible to the state".

Concerns about this amendment have been raised with me. It speaks directly to Article 5 of the ECHR, and we all agree on the importance of Article 5 in protecting liberty. It is vital to make sure that this is done right. If Parliament defines that concept, it must be clear how our statutory definition of deprivation of liberty relates to the ECHR definition. Our amendment clearly articulates the relationship between Parliament's definition and the ECHR's. Getting this wrong would mean further delays for thousands of people who were previously receiving protections. It does this in new subsection (1) by stating that deprivation of liberty has the Article 5 meaning, "and, accordingly", that there is no deprivation of liberty in the circumstances in the remaining subsections. Thus it is clearly stated that what is not a deprivation of liberty is the same under the Act as under the convention: there is no difference between the two.

Amendment 1B does not do that. The clause defines a deprivation of liberty only for the purposes of the Act itself. It does not link it to Article 5 of the convention. This would risk Parliament's concept of deprivation of liberty diverging from the convention. It is not appropriate to have two divergent concepts of deprivation of liberty, one set by Parliament and another set by the ECHR. The difference between the two would risk creating confusion and uncertainty. It would also mean that people who fall outside Parliament's concept of deprivation of liberty but within the Article 5 definition could not have their circumstances considered within the Mental Capacity Act and would have to take their case to the High Court, causing delays. That would not be acceptable. Too many people are already being failed by the current system because of delays. We cannot create a situation that creates further delay, confusion or uncertainty.

Amendment 1B would create a narrow concept of deprivation of liberty. Proposed new subsections (2) and (3) provide cumulative requirements for a deprivation of liberty. If any one of those requirements is absent, the situation falls outside the Act's concept of deprivation of liberty. One of the requirements is in subsection (3)(b): that the person is,

"subject to continuous supervision and control".

On this definition, if a person is subject to a level of supervision or control that is less than continuous, they are outside the Act.

For example, a person may be locked in to their care home, unable to leave, regularly medicated and with little liberty. However, the level of supervision might be less than continuous. For example, they may be given just an hour a day to walk unsupervised in a confined garden. Under Amendment 1B, that person may not be considered to have their liberty deprived and would fall outside the Act's protective framework. I am sure we all recognise that such a restriction as a deprivation of liberty, but the clause would not afford that person protections. Therefore, under the Government's more limited draft, a person would not fall under liberty protection safeguards merely because there is some period of the day when their supervision is not "continuous". Rather, it would be only where this was coupled with the person being free to leave temporarily.

3.30 pm

This illustrates clearly the problem with trying to provide a list of matters which, together, constitute a deprivation of liberty, or a positive definition. Noble Lords will know that the concept of deprivation of liberty is both complex and fact-sensitive, and needs to apply across varying situations. Indeed, I know that there was a lot of debate on the subject before I came to this House. If a list of requirements is used, such as with Amendment 1B and its proposed new subsections (2) and (3), the real risk is that the list does not capture what is and is not a deprivation of liberty across the widely varying situations that might arise. This then risks leading to the definition not being compatible with Article 5. That is one of the reasons why we opted against having an exhaustive definition of all deprivations of liberty in all settings. Rather, our clause seeks to put into legislation and clarify key features of the concept of deprivation of liberty while minimising the risk of incompatibility with the convention.

I am further concerned by proposed new subsection (2)(b), through which a person falls outside the scheme if they have "given valid consent". The meaning of this seems to us unclear. This subsection could plausibly be interpreted as providing that people lacking capacity can consent to their confinement, creating a category of people who consent to their deprivation of liberty but lack capacity to make that decision. If that is what the clause intends, it should say so. If it is not, it is unclear what the clause seeks to achieve. A major concern is that the clause does not define "valid consent", which could lead to uncertainty in implementation. It is essential that any inclusion of that would have to be very clear about what it means.

We are also concerned that the definition in Amendment 1B is narrower than the Article 5 concept of what is imputable to the state, and would mean that cases relating to people being deprived of liberty by non-state actors would fall outside of the system and, instead, fall to the courts, which of course is something that we are trying to avoid. Subsection (4) of the Government's new clause is a reference to the Court of Appeal's decision in the case of Ferreira, with which I am sure noble Lords will be familiar. Amendment 1B contains no equivalent subsection and I am concerned that this of itself could create difficulties. Amendment 1B purports to be an exhaustive definition of when a person is considered to be deprived of their liberty for the purposes of the Mental Capacity Act. Without an exception for the sort of situation covered by the case

[Baroness Blackwood of North Oxford]
of Ferreira, it is unclear whether Ferreira would continue to apply. This confusion could result in more LPS applications being required where, under the existing law, or under the Government's proposed amendment, LPSs would not apply.

This amendment, if passed, could risk us having a longer backlog and, in turn, more delay, uncertainty and confusion, as well as our not having a workable system through this legislation. It would mean that people would have to continue to access safeguards through the courts. In addition, we believe that the clause would diverge from ECHR case law on what constitutes a deprivation of liberty. I am sure that noble Lords take these issues extremely seriously; our discussions have shown that they do.

I understand that the noble Baroness and charities such as Age UK are concerned about ensuring that the meaning of deprivation of liberty is understood by families and carers, as well as by those who work in the sector. I agree that this is important but do not think that it can be done through the Bill alone; that is why we are working with the sector to produce a statutory code. I understand concerns that this single code may not go far enough to help families and carers understand the definition, and I would be happy to consider whether a further code or supporting material aimed at these groups might be beneficial. Case studies will be provided to illustrate when a deprivation of liberty occurs and when the provision of care, support and treatment does not meet that threshold.

I assure noble Lords that the government amendment is the result of many months of careful work, in which I know many noble Lords have been involved. We have worked closely with lawyers across government to ensure that this clause reflects existing case law as much as possible, and can provide clarification of the current position while preserving Article 5 rights. The government amendment is clear and precise, which is essential when putting these rights into legislation: that is, turning them into legal rights. It is not something we have done lightly; similarly, changes cannot be made lightly. I understand that the noble Baroness wishes to ensure that the definition can be communicated by people and professionals but, as I outlined a moment ago, it is not appropriate for this to be done through the Bill alone. On this basis, I respectfully ask that the noble Baroness withdraws her amendment and I hope that noble Lords will be content to accept the amendments from the House of Commons. I beg to move.

Amendment to the Motion

Moved by ***Baroness Tyler of Enfield***

Leave out from "House" to end and insert "do disagree with the Commons in their Amendment 1 and do propose Amendment 1B in lieu—

1B: Before Clause 1, insert the following new Clause—

"Meaning of deprivation of liberty

(1) After section 4 of the Mental Capacity Act 2005 insert—

"4ZA Meaning of deprivation of liberty

(1) A person is deprived of liberty if the circumstances described in subsection (2) apply to them.

(2) A person is deprived of liberty if they—

(a) are subject to confinement in a particular place for more than a negligible period of time; and

(b) have not given valid consent to their confinement; and

(c) the arrangements are due to an action of a person or body responsible to the state.

(3) For the purpose of subsection (2)(a), a person is subject to confinement where they—

(a) are prevented from removing themselves permanently from the place in which they are required to reside, in order to live where and with whom they choose; and

(b) are subject to continuous supervision and control."

(2) In section 64(5) of that Act (interpretation) for the words from "same" to the end substitute "meaning given by section 4ZA.""

Baroness Tyler of Enfield (LD): My Lords, I take this opportunity to welcome the Minister to her new role. I am very much looking forward to working with her, and thank her for meeting me yesterday.

I was pleased that the Government listened to the concerns that many of us raised when this Bill was on Report, and that they agreed to introduce a statutory definition in the Bill. They subsequently brought forward a new clause in the other place, introducing what some have termed an exclusionary definition of deprivation of liberty.

I believe that there are serious problems with the government definition. My overriding concern is that as it currently stands, the government amendment defines only when a person is not being deprived of their liberty. A definition based on someone not having their liberty restricted does not, in my view, allow for a clear assessment of whether a cared-for person is currently being deprived of their liberty. The whole of the definition is couched in the negative, and splattered with double negatives, which I consider very difficult to understand.

I also have concerns over Clause 1(4) in the government definition, which I believe is unnecessary. When it is in someone's best interest to receive emergency or routine medical care, there is already a clear consent procedure—even when that patient lacks capacity. As currently worded, it is discriminatory between physical and mental illnesses. I have taken much advice, and I am grateful to people in the sector—charities, lawyers, human rights groups, academics and others—who have offered invaluable expertise in this very complicated issue. I note that some leading academics have described the Government definition as too complicated, unclear and out of step with Article 5 of the ECHR, and therefore likely to lead to costly litigation. I accept that my last two points run contrary to what the Minister has said, but this demonstrates what a highly complex, contested and difficult-to-interpret area this is. Nothing is that clear-cut.

What is needed is a definition which is simple, easy to understand and provides practitioners, and above all, families and cared-for people, with a clear understanding of where they stand. The purpose of any definition is to provide absolute clarity to practitioners. Perhaps more importantly, it should tell cared-for people and their families when they are deprived of

their liberties and thus have certain rights which they can call upon. It is, frankly, of little use if people cannot use it to make such a determination, and my conclusion at the moment is that the definition does not serve that purpose.

We need a definition which, as well as being simple and easy to understand, allows guidance and information to be developed for families and practitioners that will allow them to make a real-world determination of whether the care arrangements they are putting in place when their loved ones lack capacity amount to a deprivation of liberty.

The definition that best captured the recommendations from the Cheshire West case of the noble and learned Baroness, Lady Hale is that the person concerned is under continuous supervision and control and is not free to leave. I believe that the wording in Amendment 1B meets these vital tests. My definition of what constitutes a deprivation on liberty is based on the principles outlined in the noble and learned Baroness's judgment in the Cheshire West case. I believe that it would allow practitioners and family members to clearly test their individual circumstances against that definition.

This is complex and I think many of us have found it difficult to get our head round it, but it is so important that the definition is compliant with Article 5 of the ECHR. The definition that I have put forward meets that test. It may not be perfect but it provides a basis for moving forwards. I beg to move.

Baroness Finlay of Llandaff (CB): My Lords, I commend the noble Baroness, Lady Tyler, for the amount of work that she has put into her amendment, along with others of us who have worked on it. I do not want to take a lot of time repeating what she has already said in explaining it. However, I would like to pick up on some criticisms made by the Minister and question them.

The Minister spoke critically about the concept of "valid consent" yet, as far as I have understood, consent must always have three pillars to it: the person must have capacity to make that decision; they must have accurate information on which to make a decision; and it must be made voluntarily and free of coercion. With those three pillars in place for all types of consent, I was slightly confused by the Minister's suggestion that this could somehow apply if people did not have capacity to provide consent. The other area where I was confused when she spoke relates to the Government's own amendment, where we have a double negative. Amendment 1 says:

"A person is not deprived of liberty in a particular place if … the person is not subject to continuous supervision".

However, the amendment tabled by the noble Baroness, Lady Tyler, has turned the two negatives into a positive as while a person would be "subject to continuous supervision", she has added the very important words "and control".

A lot of people who are supervised one way or another are free to do what they want, but there is a safety barrier around them. They are not being controlled in the way that they behave; it is simply that to protect them from dangers to which they may be subject, there is a degree of supervision. That is called good care of another citizen, and we all do it all the time in relation to each other if we see someone about to get into a situation which is dangerous, whether or not they have mental capacity. The difference in this situation is that if somebody is deprived of their liberty, something is being taken away from them and controlled by another person. The amendment from the noble Baroness, Lady Tyler, has captured that difference between a duty-of-care supervision and that control.

I know that there are difficulties in defining a negligible period of time but I note the concept, in the Government's own amendment, of whether somebody is free to leave a place permanently. How long would we determine "permanently" to be? Is it days, weeks, months or years when, again, it is a concept but is not defined specifically? With those questions, I am concerned that the Government's criticism of the noble Baroness's amendment does not stack up equally with the criticisms that have come from many quarters over the Government's amendment, which is indeed quite difficult to understand, particularly because of the double negatives in it.

I draw the House's attention to the fact that, if I am correct, the Law Commission's original report did not include a recommendation of a definition. Perhaps what we see here is that it is incredibly difficult to come up with a definition that applies across the enormous range of circumstances that people who lack capacity may find themselves in. I am concerned that the Government's amendment is intended, in the words of the Minister, to be able to respond to evolving case law. I suggest that that is a recognition that there will be legal challenges to the Government's own definition, just as much as to any other, and I am unsure how that will be avoided by anything in the Bill. I will therefore strongly support the amendment in the name of the noble Baroness, Lady Tyler.

3.45 pm

Baroness Jolly (LD): My Lords, I offer my support to my noble friend's amendment. All of us know—with due respect to the lawyers sitting among us today—that when you have more than a few lawyers, you get more than some factorial of opinions. My noble friend's amendment was drawn up in consultation with both the care sector and human rights lawyers—hence we have more than one view. We believe that where we are is the right view.

The Minister stated that it was not always possible to use plain English in legislation. That is patently not the case. I point the Minister to the Care Act, another piece of legislation that affects the care of vulnerable adults. It was written from top to toe in plain English.

There is a call for this amendment to be clear. We have already heard today that the double negatives used in the government amendment are not easily understood. It does not read well; it is not comfortable. It needs to be clear, in positive rather than negative language, and able to be understood by a lay person or a carer. This amendment has the backing of the care and health sector bodies, and so we support it.

Lord Hope of Craighead (CB): My Lords, this is a very difficult area. I agree with all the noble Baronesses who have spoken, in so far as they stress the problems

[Lord Hope of Craighead]
of trying to identify what one means by "liberty" in this area, particularly regarding mental health. A number of cases have come before the courts, both in this House when it was sitting in its appellate capacity, and in the UK Supreme Court, where I sat and grappled with this problem myself. I support the government amendment which seems much more consistent with the way the Strasbourg court has interpreted Article 5.

There is a great deal of case law that has been developed over the years as to the meaning of "liberty" in its various contexts. The point that comes out very clearly from a case called HL v the United Kingdom—it went to Strasbourg following a decision in this House in a case called R v Bournewood Community and Mental Health NHS Trust—is that account has to be taken of a whole range of factors when you look at the word "liberty" for the purposes of the article. The court says that in the end it will always come down to a question of degree and intensity, regarding whether what has been going on really is a deprivation of liberty or merely a restriction. It is trying to devise a dividing line between these factors that one is searching for in looking for a definition.

The court said it decided not to try to define the world "liberty", because it was so difficult to find a workable definition that would apply to all circumstances. What you tend to find is the approach that the government amendment takes, of saying what does not fall within the article in a given case, and what does. It is a safer way of proceeding, rather than trying to, as the amendment in the name of the noble Baroness does, lay down in clear terms what the "deprivation of liberty" amounts to. The problem is that if one looks at the way in which that amendment is framed, in future cases the courts are going to find it very difficult to see whether Article 5 is consistent with what is in the amendment. Then there is the problem of the court having to declare an incompatibility, which then has to be sorted out by some further amendment.

The safer and most useful route is to anchor the amendment to Article 5, as subsection (1) of the government amendment does; and then, for the guidance of those who have to deal with these difficult issues, set out some clearly defined areas where they are not at risk of it being said that they are in conflict with the article. I do not find the provisions set out in the subsections that follow difficult to understand.

Baroness Thornton (Lab): I thank the noble and learned Lord for allowing me to ask a question about the comments of the Joint Committee on Human Rights and its grave reservations about the formulation which the Government are putting forward.

Lord Hope of Craighead: I am not surprised; we are all grappling with a difficult area. Based on my own experience, and my reading of the Strasbourg decisions, the Government's approach is the safer one to adopt. Before the noble Baroness stopped me, I was trying to say that there are situations where the use of a double negative is a perfectly intelligible way of proceeding, so that criticism does not seem particularly strong. I suggest that we follow the Government's approach for the reasons I have given, especially because of the way it anchors the proposed section to Article 5 itself. We are always going to come back to the Strasbourg court and the way it interprets the article. We do not have the final word on this, I am afraid, because of the way the convention is framed, the way we have subscribed to it and the way we apply the decisions of the Strasbourg court.

Lord O'Shaughnessy (Con): My Lords, this is a challenging and complex Bill and this topic is possibly the most complex of all. Before considering the merits of the two approaches, it is worth reflecting on the fact that a huge amount of work has gone into the development of the government amendment and that in the name of the noble Baroness, Lady Tyler. I signal our gratitude to that work, and to the contribution of many people who grappled with a difficult and challenging area, as the noble and learned Lord pointed out. I am certain that all those people had the right intentions.

Speaking from the Back Benches, having shepherded the Bill on an interesting rollercoaster ride through this House while I was a Minister, there are two questions which I have to satisfy myself on. The first, and less important in a sense, is whether this fulfils the promise which I made the House that the Government would bring forward a definition. The second—much more important—one is whether the Government have provided an operable definition that will be useful in reality, which is, after all, what we want. My noble friend the Minister gave a robust exposition of the merits of the Government's amendment. It is certainly the product of a huge amount of work, some of it when I was in the department, and offers clarity and precision. It also offers a way through on the point made by the noble Baroness, Lady Finlay. There has been a great deal of disagreement on what the right, positive definition ought to look like, so going for a negative one—I think it was described as an exclusionist definition—offers a way through.

The noble Baroness, Lady Tyler, made an important point about the complexity of language and whether this is intelligible. We need to draw a distinction between who will be using the Act and who will be using the statutory guidance that will flow from it. The Act will mainly be the subject of scrutiny by lawyers and others who are able to cope with double negatives and such things, in a way that I cannot. More importantly, these will be—and are being—distilled into case studies of how this would operate in practice. That is what will be practically useful for cared-for people, their carers and those who are supporting them. Perhaps when my noble friend responds to this debate she will say a little more about how the statutory guidance which will bring this to life will be scrutinised.

The key question is whether the definition that the Government have provided will be usable in the courts and compatible with the ECHR. I believe that it is but, more importantly for this House, the opinion of the noble and learned Lord, Lord Hope of Craighead, is that it performs that function. On that basis, I am happy to support the approach taken by the Government, not only because it satisfies the commitment I made to this House but, more importantly, because it provides an operable definition that will be useful to those who have to grapple with it every day.

Baroness Browning (Con): My Lords, I will be brief. I too had concerns about this definition when the original legislation went through pre-legislative scrutiny—it seems an eternity ago now. It does not seem to be any easier for my noble friend to put this in the Bill. But there are some concerns. I declare my interests as a vice-president of the National Autistic Society, which has written to me, along with other similar charities, to say that it has concerns, not so much on the substance but on the clarity.

As my noble friend has just pointed out, there are two areas here. One is the clarity of the legal definition which lawyers will need, and that is important. But also, as the noble Baroness, Lady Tyler, has said—I assume this will be in the guidance and consultations that my noble friend is now undertaking—it needs to be in clear English for practitioners, relatives and people deprived of their liberty. If anybody asks in the future what Parliament's intention was at the time—a question which I understand is sometimes asked in courts of law and to which we perhaps pay scant attention when we are legislating—I hope that on both counts, in terms of the legal definition and the guidance for others who are not lawyers, my noble friend will make sure in those documents that Parliament's intention in defining deprivation of liberty is clear.

Lord Mackay of Clashfern (Con): My Lords, this area of the definition of liberty is, and always has been, extremely difficult. The Strasbourg court has wrestled with it. It is absolutely vital from the legal point of view—I understand the distinction that has been made and I will mention that again—that this definition should be in accord with the convention; otherwise, we will have trouble maintaining this in the face of challenge. It is difficult to say that the Government's definition is not in accordance with the convention. It seems clear that it is so. Therefore, all the decisions taken here and in Strasbourg in respect of it are available to help in the formulation of guidance.

If a different definition is taken which does not expressly subscribe to the convention, there is certainly room to try to squash definitions or applications which are in line with this definition as amended by the noble Baroness. It is perfectly open to use the legal definition in the main, in accordance with the convention, and then to help people as best we can to understand what it is all about by giving guidance, which is not authoritative in the same way as judicial decisions. There is quite a lot of scope for trying to do that with guidance which will be in accordance with what the practitioners have asked for. I should say that I am an honorary vice-president of the Carers Trust, but that does not affect what I have to say about it. I can see the need to help people in the actual work they have to do; this is a legal definition, and not all legal definitions are absolutely self-apparent to people who are not lawyers. But the guidance provided for can help in that respect, and there is a serious risk that, if we do not do something of that kind, the result will be litigation which could affect the viability of this clause in the future.

Baroness Thornton: My Lords, it is a matter of great regret that we have reached this point in the Bill and are still debating the definition of deprivation of liberty. We should have been able to resolve this over the last six months, and we should not be having this discussion. We should have agreed it. The reason we have not agreed it, to put one point of criticism, is stated in the letter from the Joint Committee on Human Rights:

> "It is regrettable that there was no time for adequate consultation on the proposed definition".

I think that is exactly right.

We are where we are, and what we have is a disagreement between our very eminent lawyers—the noble and learned Lords, Lord Hope and Lord Mackay—and those of us who have been looking at and considering the Bill since July last year.

4 pm

The Government have not given enough weight to the letter that the Minister received from the Joint Committee on Human Rights and the issues it raised about the definition that the Government have put in the Bill. If these issues are taken seriously, as the noble and learned Lord, Lord Mackay, has said, there will be challenges. If it is true that this definition will result in differential treatment between physical and mental conditions, that will be challenged. That is an obvious one that will be challenged, because our laws on equality between physical and mental conditions are quite clear.

We on these Benches will be supporting the noble Baroness, Lady Tyler, in her amendment. It provides a definition for practitioners and families of the cared-for person; it takes account of Clause 5; it allows for guidance and information for practitioners to make a real-world determination; it is positive; and it best captures the comments of the noble and learned Baroness, Lady Hale, in the Cheshire West case that the person concerned,

> "was under continuous supervision and control and was not free to leave".

We do not yet have a satisfactory definition in the Bill. One reason we will be supporting this amendment is that we would like the Government to have another go. We would like to see them take seriously the Joint Committee on Human Rights, for the safety of this Bill, so we will support the amendment.

Baroness Blackwood of North Oxford: My Lords, I thank all those who have contributed to this debate on the first group of amendments. As your Lordships have so thoughtfully said, we are wrestling with this definition because, as my noble and learned friend Lord McKay put it so eloquently, this is a very challenging task indeed.

In my opening speech, I explained the Government's amendment and the reasons for our opposition to the amendment of the noble Baroness, Lady Tyler, so I will try to answer a couple of questions that have been raised. The first came from the noble Baroness, Lady Finlay, who asked why the amendment introducing the definition was tabled in the first place, given that it was such a difficult task and the Law Commission did

[Baroness Blackwood of North Oxford]
not recommend that definition. There were calls for a definition from the JCHR, noble Lords and many stakeholders. It was an attempt to meet those calls, and we have done our best to collaborate and respond. She also raised the issue of valid consent and the three pillars. All references in the Bill to the deprivation of liberty only apply to people who lack capacity, and the amendment implies that people who lack capacity can give consent. That would not be correct in law but that is the way it could be read, so it needs to be clarified before it could be accepted.

I am very grateful to the noble and learned Lord, Lord Hope, for his comments. In his broad experience, the Government's definition is in line with the reading of Strasbourg's decisions so far. As he rightly understands, our intention is to anchor the definition in Article 5 and Cheshire West and to allow for evolving case law so that those who are awaiting decisions do not have to go back to court again and again. The purpose of this definition in the primary legislation is exactly as my noble friend Lord O'Shaughnessy put it: it is for the use of lawyers, whereas we are determined to bring forward robust and clear statutory guidance for stakeholders and those who will be affected by the definitions, so that they can be assured that they understand exactly the effect of this definition. On that basis, I hope that the noble Baroness, Lady Tyler, feels able to withdraw her amendment.

Baroness Tyler of Enfield: My Lords, I listened very carefully to the arguments put forward on this difficult and complex issue. Of course, I listened particularly carefully to the arguments of the noble and learned Lords, Lord Hope of Craighead and Lord Mackay of Clashfern. I am not a lawyer, as will become abundantly clear. I have looked to put this in a very simple way.

The issue goes back to the point made by my noble friend Lady Jolly. In my strong view, there is a need for plain English in statutes so that the citizens of this country who are subject to them understand what they say. I think it was the noble and learned Lord, Lord Mackay of Clashfern, who said that it is not always apparent to non-lawyers what some of these more complex passages mean. I agree; he is absolutely right. Perhaps it is overly simplistic of me but, frankly, I make no apology for that. It is Parliament's role to define the legal principles in a Bill as simply as possible and the courts' role to interpret them. I do not understand from any of the arguments I heard why the definition must be framed in such a convoluted way, in the negative with lots of double negatives. I just do not get it, despite listening carefully to the debate. I continue to believe that my definition meets those tests; it is important that whatever definition is in the Bill does so. I do not think that the Government's definition does so. I wish to test the opinion of the House.

4.06 pm

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Motion, as amended, agreed.

4.22 pm

Motion on Amendment 2

Moved by ***Baroness Blackwood of North Oxford***

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

2: Clause 5, page 4, line 25, leave out subsection (9)

Baroness Blackwood of North Oxford: This amendment removes the privilege amendment.

Motion on Amendment 2 agreed.

Motion on Amendment 3

Moved by ***Baroness Blackwood of North Oxford***

That this House do agree with the Commons in their Amendment 3.

3: Schedule 1, page 5, line 19, leave out "if a person objects to arrangements" and insert "in certain cases"

Baroness Blackwood of North Oxford: My Lords, I will speak also to Commons Amendments 5 to 14, 16 to 23, 26 to 41, 42, and 47 to 50. Throughout the legislative process the Government have worked, constructively I hope, with Peers, MPs and stakeholders across the sector, and as a result we have made a number of changes to strengthen the protections provided to the person in the new liberty protection safeguards system.

Amendments 3 and 40 to 42 specify that a pre-authorisation review must be completed by an approved mental capacity professional if the arrangements are for the cared-for person to receive their care or treatment mainly in an independent hospital, and clarify that other cases can be referred to an AMCP by the responsible body, provided that the AMCP accepts the referral. Noble Lords flagged that cases other than those where a person objects should be able to be considered by an approved mental capacity professional, and the Government agreed to clarify that in the Bill.

We also recognise that those residing in independent hospitals are often particularly vulnerable and in many cases have mental health needs and that it is appropriate in these cases for an AMCP to complete the pre-authorisation review, regardless of whether or not the person has raised an objection. The AMCP will provide an additional level of scrutiny for those who need it. They will meet the person, complete any relevant consultation and review assessments to decide whether the authorisation conditions are met.

I understand that the intention of Amendment 41A, tabled by the noble Baroness, Lady Thornton, is to require as far as practicable that an AMCP in an independent hospital case is independent from any person responsible for the act or decision regarding the arrangements. She is of course right to try to ensure independence in the system. The amendment has taken some of the wording from Section 35 of the Mental Capacity Act but this has caused some issues in the read-across.

The Government have taken the concerns about those in independent hospitals seriously. That is why we have required an AMCP to complete the pre-authorisation review in independent hospital cases, and why we have changed the Bill so that independent hospitals cannot be responsible bodies. In ensuring that the AMCP will act independently, I can confirm that they will be appointed by the local authority or local health board and that the independent hospital will be in no way involved in this decision.

We will make regulations on which professionals can fulfil this new role and specify there the qualities and qualifications necessary. The code of practice will provide guidance to responsible bodies regarding the appointment of AMCPs, and we will use this to outline that an AMCP should be independent of those carrying out the arrangements. It should also be noted that AMCPs will be held to account through their professional bodies, and they will be held to high professional standards. This sits alongside the other safeguards provided by the Bill, including advocacy, information and the ability for others to raise objections on the person's behalf. I hope that with this reassurance the noble Baroness will not move her amendment.

Amendments 28, 35 and 39 are technical amendments which build on important amendments made by this House. The Government amended the Bill here to specify that those with a prescribed connection to a care home cannot complete the assessments needed for an authorisation or the pre-authorisation review, ensuring that there is no conflict of interest. These amendments clarify that the "prescribed connection" will be set out in regulations. It is vital that this Bill does not put care home managers in a position where they have to make a decision about whether or not a person lacks capacity or whether or not the proposed arrangements are valid because there is a conflict of interest. We are satisfied that the amendments made in this place and in the other place address this.

Amendments 8 to 23 remove the role of independent hospitals as responsible bodies, thereby removing any potential conflict of interest. When arrangements take place mainly in an independent hospital, the responsible body will be the local authority in England and the local health board in Wales. This approach broadly replicates the situation under the current DoLS. In England we want to make sure the new system is aligned with the general thrust of policy to support people in the community and reduce reliance on in-patient care, especially for autistic people and those with a learning disability. Having greater oversight by a local authority supports this.

Amendments 26, 27, 29 to 34, 36 and 37 are designed to ensure that the person who completes the assessments and determinations required for a liberty protection safeguards authorisation has the appropriate experience and knowledge to complete those assessments and determinations. The amendments give the Government the power to set out in regulations who can complete

assessments and determinations. Our intention is that assessments will be completed by skilled professionals such as doctors, nurses and social workers. These amendments clarify that for medical and capacity assessments, the determination of whether or not the authorisation condition is met can be completed by someone who did not complete the assessments. This is important, as it allows valid assessments which have been completed previously to be used for the liberty protection safeguards authorisation. For example, a previous diagnosis of dementia from a psychiatrist's mental health assessment could be used for the purposes of a medical assessment, where it is reasonable to do so. This helps to reduce unnecessary duplication in the system, which we know has proved to be a problem until now.

4.30 pm

Amendments 45 to 50 allow objections to be raised on behalf of the person by those engaged in caring for them or with an interest in their welfare, and for a review under paragraph 35 to be triggered. The noble Baronesses, Lady Finlay and Lady Barker, flagged that it was important that there was an ability to whistleblow, and the Government amended the Bill here to clarify that objections can be raised on behalf of the person at the pre-authorisation review stage of the process. Our amendment clarifies the ability to whistleblow after the arrangements have been authorised. The amendments also clarify that where concerns have been raised and a review triggered, the case can also be referred to an approved mental capacity professional.

These amendments strengthen the protections provided by the liberty protection safeguards. I hope that noble Lords will be content to accept these changes made by the House of Commons, and I beg to move.

Baroness Thornton: My Lords, I shall speak briefly to Amendment 41A, but first I congratulate the Minister on moving such an enormous group with such coherence. She deserves at least a drink of water, if not a cup of tea. I tabled this small and modest amendment for the sake of completeness. During the passage of the Bill, the noble Lord, Lord O'Shaughnessy, gave us undertakings and assured us that issues to do with independent hospitals would be addressed in the Commons. I congratulate the Government on the fact that indeed they have been. In November, the noble Lord said:

"The Government believe that independent hospitals would benefit from AMCP involvement, and therefore our intention is to bring forward an amendment, or amendments, as required, in the Commons to deal with this issue and make sure that there is such a role for the AMCP in all deprivation of liberty cases".—[*Official Report*, 21/11/18; col. 279.]

In some ways the Minister has already partly addressed my concern, which is about the fact that in many independent hospitals most of the patients will be there because of the local authority or the CCG. So the clarification that I am seeking is on whether independence is truly protected when an AMCP is appointed under those circumstances. This amendment seeks to clarify that. The Minister has gone some way towards clarifying that, but I think I need to press her a little on whether that is the case. I declare an interest as a member of a CCG that commissions many of these services. When we are looking at commissioning an independent hospital, should we be the body that also takes the decision about the appointment of an AMCP?

Baroness Meacher (CB): I shall speak very briefly. I welcome very much Amendments 13 and 22 in particular in relation to independent hospitals. In Committee, a number of us raised that issue and were very concerned that independent hospitals, which are often hundreds of miles away from a person's home, could act as the responsible body and make crucial decisions where perhaps they have a commercial interest in keeping that person on their premises.

With the permission of the current Minister, I will applaud the noble Lord, Lord O'Shaughnessy, because I feel I know that he played a key role in making sure that these amendments found their way into the Bill. The stipulation that the local authority shall be the responsible body is important. Although I understand what the noble Baroness, Lady Thornton, is saying, it seems to be a huge step forward to take the responsible body away from the independent hospital. I would like to feel that local authorities—the professionals dealing with the assessment of such cases—would have a real interest in making sure that those people returned home, if at all possible, as soon as possible. That is what all this should be about.

The other matter I will raise briefly is that of people in domestic settings, where deprivation of liberty is at stake. At our recent meeting with the Bill team we were assured that such cases would be dealt with under this new piece of legislation in the course of the normal care planning process, rather than requiring a reference to the Court of Protection. When an elderly person is caring for a demented husband or wife, the last thing they need is some bureaucratic requirement. This seemed very important, and I was delighted when the Bill team gave us an assurance that this, too, was being dealt with.

There is nothing in the Commons amendments on this, but I wonder whether the Minister could give the House an assurance that it will indeed be the case that people in domestic settings will be dealt with within the local authority planning process, and will not require a reference to the Court of Protection.

Baroness Finlay of Llandaff: My Lords, I apologise—I should have declared my interest as chair of the National Mental Capacity Forum at the beginning of the previous debate. Like others, I thank the noble Lord, Lord O'Shaughnessy, for having made sure that the Bill is now in much better shape than it was when it came to us.

I am very grateful to the Minister for confirming that the whistleblowing amendments are there, and in fact are, if I have understood correctly, stronger than when they left this House. I have a couple of questions for her, though. One relates to the group of people who can become approved mental-capacity professionals. I was concerned that she did not include speech and language therapists in her list. People who have communication difficulties can be extremely difficult

[Baroness Finlay of Llandaff]
to assess. Those with a brain injury affecting the speech area can be very difficult indeed to assess because they may also have frontal-lobe disorders, as the noble Baroness herself well understands.

I know that the regulations will be brought forward, and I hope that the Minister will be able to consider additional training—not part of general undergraduate training but additional, postgraduate training for speech and language therapists to be able to develop a full set of competencies and undergo the same training as other people. I think that, without it, we will end up with duplication of assessments and duplication of costs.

My other question relates to portability. I hope that the Minister can confirm that the portability concept, which was so welcomed in the liberty protection safeguards, remains and will be applicable so that people can move between different settings without needing a reassessment. Obviously, emergency medical treatment can arise at any time with anybody, and that is covered separately for someone who lacks capacity and must be treated: that would come under a best-interest decision-taking process anyway.

My last query relates to the determination conditions and the assessment. I have a slight concern on reading the amendments that the assessments seem to be separated from the determination. If I heard the Minister correctly, she said that the care-home managers would not be making either the assessments or the determinations. We had a lot of concern over care-home managers and conflicts of role in previous debates, and I would be grateful if she would confirm that this is my correct understanding, and that we have not had a way whereby the care-home manager can undertake the assessment, and then somebody else, based on that assessment, will make a determination, because the validity of the assessment will determine the validity of the later determination.

Those are my queries in relation to this, and the determination and assessment question relates in particular to Amendments 28 to 38, to which the Minister has already spoken.

Baroness Barker (LD): My Lords, I will make three quick points. One is to thank the Minister for the way in which she set out the ways in which the Government listened to the debates at an earlier stage in this House. We had deep misgivings about the lack of attention that we have been able to pay to independent hospitals. I am very glad that the reassurance that they will no longer be the responsible bodies has been given by the Government in another place.

Anybody who has followed our deliberations in great detail, as some people have, will know that we have had to spend an awful lot of time during the passage of this legislation focusing on care-home managers and the inappropriate responsibilities that they were given in the initial draft of the Bill. I am not entirely convinced that in relation to independent hospitals or local authorities we have entirely separated responsibility for assessment, responsibility for determination of what constitutes a care package and deprivation of liberty, and responsibility for the financing of those care packages. If the Bill had started off in a better shape, perhaps we would have been able to spend much more time on that, as we should have done. Therefore, it is important that at this stage we take on board the points made in Amendment 41A tabled by the noble Baroness, Lady Thornton, and make sure that we have not left a conflict of interest anywhere in the Bill.

Lord O'Shaughnessy: My Lords, I thank the noble Baronesses, Lady Meacher, Lady Finlay and Lady Thornton, for their kind words. However, the credit for the improvements in this group, outlined by my noble friend the Minister, should go to this House. As everyone involved in the Bill will remember, we had some interesting, challenging and sometimes not quite bad tempered but difficult debates as we attempted to get this right. It is only because in the end noble Lords took a constructive approach to working together that we were able to make these changes. It is a credit to the process and to the people involved in it that we have been able to solve so many of these problems, whether they be on whistleblowing, independent hospitals or other issues.

I will reflect quickly on the intention behind the amendment regarding independence, as set out by the noble Baroness, Lady Thornton. In a sense, avoiding conflict of interest has been at the heart of the changes that everyone has wanted to see made to the Bill, and, as I understand it from what she has said, that is her intention here. My belief is that that is dealt with in this case by making the responsible body, which has responsibility for appointing the AMCP, the local authority or the health board in Wales—or, more specifically, not making it the independent hospital. That then puts it on a level playing field with care homes, which was obviously the subject of huge discussion during our debates. This is where I seek reassurance from the Minister.

If we are satisfied that the changes we have made on the care home front to make sure that the responsible body is the only person who can appoint an AMCP also make sure that there is not a conflict between the AMCP and their role in commissioning, given that local authorities often, although not always, commission social care places and in a sense have that contracting relationship between the local authority and a care home, and given that we are trying to put the independent hospital on a similar footing, and if we are also satisfied, which I think we are—or we were during the passage of the Bill and subject to the amendments that have been brought forward—that there is the appropriate independence and that there are appropriate mechanisms for avoiding conflicts of interest for care homes and the appointment of AMCPs, by deduction it ought to follow that they will be in place because of the Government's amendments on independent hospitals, and even more so because every single independent hospital case will be referred to an AMCP.

If it is true, as I believe it to be as a consequence of the government amendments, that the commissioning relationships are essentially the same and that the responsibility to appoint an AMCP will essentially be the same for the local authority, whether it is vis-à-vis a care home place or a place in an independent hospital,

I hope that it will be possible for my noble friend to reassure the noble Baroness, Lady Thornton, that what she is asking for is already the case and therefore that her amendment is not necessary. However much I applaud the intention behind it, as I said, I think that it would repeat what is already the case. With that reassurance to noble Lords, I hope that we will be able to move on on this issue.

4.45 pm

Baroness Blackwood of North Oxford: I thank all noble Lords who have taken part in this debate, which has reflected the genuinely constructive way in which this section of the Bill has already been improved. I join the chorus of thanks to my noble friend Lord O'Shaughnessy and the Minister, Caroline Dinenage, for the extensive work that they have done on the Bill so far. I will not speak for too long, as I have already outlined the Government's position on these amendments. However, I would like to answer a few of the questions.

The noble Baroness, Lady Meacher, asked whether liberty protection safeguards would be extended to people in domestic settings rather than them going to the Court of Protection. I am happy to confirm that liberty protection safeguards will apply to community settings, including domestic settings. I think that people and their families and carers will welcome this, as the court process is slow, costly and very intimidating for many. The Bill will achieve greater protections for people than the current deprivation of liberty system.

The noble Baroness, Lady Finlay, raised some important questions, particularly about speech and language therapists. As she points out, they will play a very important role in the new system. They will definitely be involved in consultation. The regulations that will come forward will determine their exact role in implementation, whether as AMCPs or in another specific role.

The noble Baroness also asked about portability. An authorisation can apply to different settings so that it can travel with a person but cannot be varied to apply to completely new settings once it has been made, as this would undermine Article 5. I hope that this clarifies that point.

The noble Baroness also asked whether or not care managers can determine care assessments. Care homes are explicitly prevented from completing care assessments. I think I made this point, but I re-emphasise it. This comes back to the points made by the noble Baronesses, Lady Thornton and Lady Barker. As I outlined at the outset, AMCPs are independent of the responsible body and accountable to their professional bodies. I repeat that the Government have amended the Bill here specifically to ensure that those with the proscribed connection to care homes cannot complete assessments needed for authorisation or pre-authorisation review, to ensure that there is no conflict in the process. These amendments clarify that the proscribed connection will be set out in regulations. Because there is a conflict of interest, we will ensure that care managers are not put in the position of having to decide whether or not a person lacks capacity or the proposed arrangements are valid. I hope that this reassures noble Lords and that the noble Baroness, Lady Thornton, will not press her amendment. I beg to move.

Motion on Amendment 3 agreed.

Motion on Amendment 4

Moved by ***Baroness Blackwood of North Oxford***

That this House do agree with the Commons in their Amendment 4.

4: Schedule 1, page 7, line 6, leave out from "Wales," to end of line 10 and insert "the person registered, or required to be registered, under Chapter 2 of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) in respect of the provision of a care home service, in the care home;"

Baroness Blackwood of North Oxford: Amendment 4 aligns the definition of "care home manager" in Wales with that in England. As currently drafted, the Bill defines the care home manager in Wales as the registered manager. This amendment changes it so that it is instead linked to the registered service provider.

Amendment 15 is a technical amendment that will help ensure that the liberty protection safeguard system works well in Wales. There is no statutory definition of NHS continuing healthcare that applies in Wales, so this amendment clarifies that local health boards will act as responsible bodies if arrangements are mainly carried out through the provision of an equivalent to NHS continuing healthcare as defined in English legislation. I thank Welsh Government officials for working with us on these two amendments. It is vital that the new system works for Wales. We have been in close dialogue with the Welsh Government throughout this process to ensure that this is the case.

Amendments 51 to 54 relate to the interaction with the Mental Health Act. They provide that the liberty protection safeguards cannot be used to recall a person subject to the Mental Health Act, who is residing outside of a hospital, back to hospital. We have also clarified the drafting of the Bill so that arrangements can be authorised if the person is not subject to mental health requirements. This is in order to close down any possibility that the Bill is read as applying only to those with mental health requirements.

Amendments 55 and 56 amend Section 36 of the Mental Capacity Act to ensure that regulations about the functions of independent mental capacity advocates can make provision for advocates appointed under the LPS to support an appropriate person. The reason for this is that the "appropriate person" is a new role, and it is important that the regulations under Section 36 can address that. Amendments 55 and 56 also clarify that an IMCA need not be appointed under the MCA to represent and support a person in respect of accommodation in a hospital, a care home or long-stay residential accommodation if an IMCA has been appointed in respect of the same accommodation under the LPS scheme. They also make consequential amendments reflecting the change from the deprivation of liberty safeguards to the liberty protection safeguards.

Amendments 43, 44 and 46 relate to authorisations that need to vary in order to stop them ceasing because of small changes that need to be made. They require that a review must take place, where practicable or appropriate, before an authorisation is varied. These amendments also clarify that a responsible body can change during the course of an authorisation to stop

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authorisations automatically ceasing where there is a change of responsible body; for example, a care home resident may become eligible for NHS continuing care, and then the responsible body may change even though their location and care regime does not.

I hope that noble Lords will accept these changes made by the House of Commons. I beg to move.

Motion on Amendment 4 agreed.

Motion on Amendments 5 to 23

Moved by ***Baroness Blackwood of North Oxford***

That this House do agree with the Commons in their Amendments 5 to 23.

5: Schedule 1, page 7, line 13, at end insert—

""Education, Health and Care plan" means a plan within the meaning of section 37(2) of the Children and Families Act 2014;"

6: Schedule 1, page 7, leave out line 16

7: Schedule 1, page 7, line 17, at end insert—

""independent hospital" has the meaning given by paragraph 5;"

8: Schedule 1, page 7, line 27, at end insert—

""NHS hospital" has the meaning given by paragraph 5;"

9: Schedule 1, page 7, line 46, leave out "Hospital" and insert "NHS hospital and independent hospital"

10: Schedule 1, page 7, leave out line 47

11: Schedule 1, page 8, line 15, after "6" insert "(1)"

12: Schedule 1, page 8, line 16, leave out "a" and insert "an NHS"

13: Schedule 1, page 8, line 17, at end insert—

"(aa) if the arrangements are carried out mainly in an independent hospital in England, the responsible local authority determined in accordance with paragraph 8A;

(ab) if the arrangements are carried out mainly in an independent hospital in Wales, the Local Health Board for the area in which the hospital is situated;"

14: Schedule 1, page 8, line 18, leave out "paragraph (a) does not apply" and insert "none of the paragraphs (a) to (ab) applies"

15: Schedule 1, page 8, line 19, leave out from "mainly" to "that" in line 21 and insert "through—

(i) the provision of NHS continuing healthcare under arrangements made by a clinical commissioning group,

or

(ii) in Wales, the provision of an equivalent to NHS continuing healthcare under arrangements made by a Local Health Board,"

16: Schedule 1, page 8, line 23, leave out "neither paragraph (a) nor paragraph (b)" and insert "none of paragraphs (a) to (b)"

17: Schedule 1, page 8, line 24, leave out "(see paragraph 9)" and insert "determined in accordance with paragraph 9"

18: Schedule 1, page 8, line 24, at end insert—

"(2) If an independent hospital is situated in the areas of two or more Local Health Boards, it is to be regarded for the purposes of sub-paragraph (1)(ab) as situated in whichever of the areas the greater (or greatest) part of the hospital is situated."

19: Schedule 1, page 8, line 25, after "manager"" insert ", in relation to an NHS hospital,"

20: Schedule 1, page 8, line 41, at end insert—

"(ca) if the hospital is vested in a Local Health Board, that Board."

21: Schedule 1, page 8, line 42, leave out from beginning to end of line 10 on page 9

22: Schedule 1, page 9, line 18, at end insert—

"8A (1) In paragraph 6(1)(aa), "responsible local authority", in relation to a cared-for person aged 18 or over, means—

(a) if there is an Education, Health and Care plan for the cared-for person, the local authority responsible for maintaining that plan;

(b) if paragraph (a) does not apply and the cared-for person has needs for care and support which are being met under Part 1 of the Care Act 2014, the local authority meeting those needs;

(c) in any other case, the local authority determined in accordance with sub-paragraph (4).

(2) If more than one local authority is meeting the needs of a cared-for person for care and support under Part 1 of the Care Act 2014 the responsible local authority is the local authority for the area in which the cared-for person is ordinarily resident for the purposes of that Part of that Act.

(3) In paragraph 6(1)(aa), "responsible local authority", in relation to a cared-for person aged 16 or 17, means—

(a) if there is an Education, Health and Care plan for the cared-for person, the local authority responsible for maintaining that plan;

(b) if paragraph (a) does not apply and the cared-for person is being provided with accommodation under section 20 of the Children Act 1989, the local authority providing that accommodation;

(c) if neither paragraph (a) nor paragraph (b) applies and the cared- for person is subject to a care order under section 31 of the Children Act 1989 or an interim care order under section 38 of that Act, and a local authority in England is responsible under the order for the care of the cared-for person, that local authority;

(d) if none of paragraphs (a) to (c) applies, the local authority determined in accordance with sub-paragraph (4).

(4) In the cases mentioned in sub-paragraphs (1)(c) and (3)(d), the "responsible local authority" is the local authority for the area in which the independent hospital mentioned in paragraph 6(1)(aa) is situated.

(5) If an independent hospital is situated in the areas of two or more local authorities, it is to be regarded for the purposes of sub-paragraph (4) as situated in whichever of the areas the greater (or greatest) part of the hospital is situated."

23: Schedule 1, page 10, leave out lines 43 to 45

Motion on Amendments 5 to 23 agreed.

Motion on Amendment 24

Moved by ***Baroness Blackwood of North Oxford***

That this House do agree with the Commons in their Amendment 24.

24: Schedule 1, page 11, line 18, at end insert—

"12A(1) The following must publish information about authorisation of arrangements under this Schedule—

(a) the hospital manager of each NHS hospital; (b) each clinical commissioning group;

(c) each Local Health Board;

(d) each local authority.

(2) The information must include information on the following matters in particular—

(a) the effect of an authorisation;

(b) the process for authorising arrangements, including making or carrying out—

(i) assessments and determinations required under paragraphs 18 and 19;

(ii) consultation under paragraph 20;

(iii) a pre-authorisation review (see paragraphs 21 to 23);

(c) the circumstances in which an independent mental capacity advocate should be appointed under paragraph 39 or 40;

(d) the role of a person within paragraph 39(5) (an "appropriate person") in relation to a cared-for person and the effect of there being an appropriate person;

(e) the circumstances in which a pre-authorisation review is to be carried out by an Approved Mental Capacity Professional under paragraph 21;

(f) the right to make an application to the court to exercise its jurisdiction under section 21ZA;

(g) reviews under paragraph 35, including— (i) when a review will be carried out; (ii) the rights to request a review;

(iii) the circumstances in which a referral may or will be made to an Approved Mental Capacity Professional.

(3) The information must be accessible to, and appropriate to the needs of, cared-for persons and appropriate persons.

12B (1) Where arrangements are proposed, the responsible body must as soon as practicable take such steps as are practicable to ensure that—

(a) the cared-for person, and

(b) any appropriate person in relation to the cared-for person, understands the matters mentioned in sub-paragraph (3).

(2) If, subsequently, at any time while the arrangements are being proposed the responsible body becomes satisfied under paragraph 39(5) that a person is an appropriate person in relation to the cared-for person, the responsible body must, as soon as practicable, take such steps as are practicable to ensure that the appropriate person understands the matters mentioned in sub-paragraph (3).

(3) Those matters are—

(a) the nature of the arrangements, and

(b) the matters mentioned in paragraph 12A(2) as they apply in relation to the cared-for person's case.

(4) If it is not appropriate to take steps to ensure that the cared-for person or any appropriate person understands a particular matter then, to that extent, the duties in sub-paragraphs (1) and (2) do not apply.

(5) In this paragraph "appropriate person", in relation to a cared-for person, means a person within paragraph 39(5)."

Baroness Blackwood of North Oxford: My Lords, It is vital that those who are deprived of their liberty are provided with the information necessary for them to be able to exercise their rights. Although there is a duty to provide information in Article 5 of the European Convention on Human Rights, noble Lords have rightly flagged that the Bill should be explicit about this duty, and amended the Bill to this effect.

The Government listened to noble Lords and agreed that the Bill should be explicit on this matter. However, the amendment tabled in this place was not clear about when information should be provided; we felt that this drafting could cause some confusion for practitioners, so we tabled alternative amendments. Amendment 24 clarifies that, as soon as practicable after arrangements are proposed, the responsible body must take such steps as are practicable to ensure that the person understands the key steps and safeguards in the authorisation process. This is particularly important to ensure that people are aware of their options to challenge the authorisation. Importantly, there is also a duty to provide the same information to any appropriate person who is providing representation and support to the person. This is important in ensuring that family members and those close to the person are also provided with the necessary information to enable them to effectively provide representation and support to the person.

The duty on the responsible body is to take steps as soon as practicable to provide the person with the information. This means that this should be done as soon as possible after the responsible body is aware that arrangements are proposed. The responsible body will need to identify an appropriate person or appoint an IMCA at the earliest possible stage to provide support and representation for the person; the same principle applies for the duty to provide information. Information should be provided in the early stages of the process so that the person can make an informed decision regarding the support they receive through the process, and is able to exercise their rights. The code will provide details about how this will work in practice. We have already established a working group on the code of practice, which includes stakeholders from across the sector, ensuring that information is provided at the earliest possible point to form a part of these discussions.

Amendment 24 also introduces a general duty to publish information about the authorisation, including: the process; the circumstances in which an IMCA should be appointed; the role of the appropriate person; and the right to challenge an authorisation in court. This ensures that anyone who has an interest in the welfare of the person is subject to liberty protection safeguards authorisation, has access to the important information about a person's rights, and is able to raise objections on behalf of the person.

Amendment 25 requires that the responsible body remind the cared-for person and any appropriate person of this information after the authorisation is granted. The information that needs to be provided to the person, and to any appropriate persons, includes details of the authorisation process, access to representation and support from an appropriate person or an IMCA, the right to request a review, and circumstances in which an AMCP will consider a case, which includes objections and the right to challenge authorisations in court.

On the matter of challenging authorisations in court, the responsible body under Article 5 of the European Convention on Human Rights has a duty to ensure that relevant cases are referred to the Court of Protection. I know that there has been a particular concern about ensuring that in very rare cases where it is not in the person's best interests to receive support and representation, those people are enabled to challenge in the Court of Protection if they want to. In these cases, the responsible body will need to ensure that the cases are referred to the court. If it fails in this duty, it can be challenged in court.

I understand that Amendment 25A, tabled by the noble Baroness, Lady Watkins, seeks to require responsible bodies to keep a record of the decision and justification for not immediately giving a copy of the authorisation record, and if an authorisation record is not given within 72 hours, there must be a review into whether the lack of information is appropriate. I understand her desire to ensure that information about an authorisation record is provided promptly. However, we think that the drafting of the amendment would cause some issues; for example, it is not clear who is responsible for the duty to record or carry out a

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review. I am certainly willing to reflect on how best we can ensure that information is shared promptly, but I hope that I can reassure the noble Baroness that we will generally expect the information to be provided earlier than this, and we will set out reasonable timescales for the responsible body in the statutory code of practice. I hope that, with this reassurance, she will decide not to press her amendment.

The House has made clear its view that the Bill should be explicit about the duty to provide information. The Government have listened: these amendments outline clearly the duty to provide information at the earliest possible stage; to require, as far as possible, that the person understands the information they are being given; and to take action on it if necessary. I hope that noble Lords will accept these changes made by the House of Commons, and on that basis, I beg to move.

Baroness Browning: Is my noble friend able to define what the Government describe as "as soon as practicable", which she said was going into the code of practice? Linked to that, how will it be defined for those people who will need the support of speech and language therapists, of an approved mental capacity professional or of an IMCA? It seems that we will need information to be provided at a very early stage, so that it can be considered and then decided whether there is a need for additional support. Can she give us some indication of how she is going to deal with that in the code of practice?

Baroness Watkins of Tavistock (CB): My Lords, I welcome the Minister to her new role, and look forward very much to working with her. I also acknowledge that the Government have gone a very long way in responding to previous amendments in the name of Lady Hollis and myself with regard to the supply of information to the cared-for person and other relevant bodies.

I turn briefly to my Amendment 25A. While I fully appreciate that it is not always practicable for the responsible body to ensure that a copy of the authorisation record is given to the cared-for person and other bodies immediately after authorisation, as outlined, Commons Amendment 25 is not at all specific about the time limits. I believe this means that busy clinical staff may not always feel it necessary to chase up this issue and make time swiftly to explain issues to the cared-for person or the appropriate person. This needs to be done quickly enough in terms of ongoing deprivation of liberty safeguard orders for appeals or challenges to the authorisation to be made, if individuals so require.

5 pm

Amendment 25A in my name is therefore designed to ensure that records are kept at the commencement of the deprivation of liberty safeguarding order, outlining the reasons why information cannot be given at that time. These records may be brief but should be clear. For example, they could be as brief as saying that the cared-for person is confused and upset, and that to discuss deprivation of liberty safeguarding at this time is not considered to be in the best interests of the person concerned. As a mental health nurse of 40 years' standing, I can certainly see such situations arising. I am not contending that everything should be done immediately.

The second part of my amendment is designed to ensure that a time limit is applied to reviewing why the authorisation record has not been given to those specified in sub-paragraph (1) within 72 hours, if this has not occurred, and a review of whether the lack of sharing the information was appropriate at the time of the initial deprivation. I am concerned that while "practicable" is understood in law, in very busy situations things can be kicked down the road. My amendment is designed to ensure that even in busy and sometimes very difficult clinical circumstances, the cared-for person's right to information regarding authorisation arrangements is reviewed shortly after commencement. I suggest that a time limit for review—not necessarily 72 hours—is consistent with human rights legislation and would be good practice.

If the Government are not able to consider putting some kind of time limit within the main body of the Bill then, having pointed out that I am certainly not wedded to 72 hours, I feel that I will need to seek the opinion of the House. The backlog in the current system indicates what could happen under the Bill if we do not have some kind of clear time limit for information.

Baroness Jolly: My Lords, I shall speak briefly and I apologise to the House: I should have declared my interest at the beginning of this stage as a chair of an organisation caring for over 2,000 adults with learning disability or autism, or both. In Committee the noble Baroness, Lady Hollins, tabled an amendment on the provision of information for cared-for people, carers, family members and IMCAs. She is not in her place today but the noble Baroness, Lady Watkins of Tavistock, has produced a really elegant amendment and I shall support it.

On Report, I also explained why it is not sufficient to have this commitment in the code of practice. I shall not repeat that argument in detail now but it drew upon a Supreme Court ruling of earlier this year. The MCA code of practice not only misstated the legal situation but could not establish a duty where none had existed. If there is a need for a hard-edged duty or right, that needs to be put into legislation and not the code. We must have provisions in the Bill to provide the person with information about their situation and rights, along with clear statutory entitlements to copies of the relevant documentation for those supporting and representing them.

Lord O'Shaughnessy: My Lords, the rights to information are another good example of the positive change that this House made in the passage of the Bill. I pay tribute to the noble Baroness, Lady Watkins, and Baroness Hollis, for making that argument so persuasively. I am very grateful to my noble friend the Minister and my right honourable friend the Minister of State, Caroline Dinenage, for responding.

I completely understand the desire to create—if I can borrow a bit of terminology—a backstop for why these sorts of cases ought to be considered. It is very easy to see how in practice when perhaps a small institution is caring for people with complex needs, the definition of "practicable" could stretch over time because of urgent or important responsibilities. There is a risk that, without some kind of backstop or time limit, this is too vague. However, I have a big problem with having an arbitrary time limit. I know that the noble Baroness is not attached to any particular time, but any time is by definition arbitrary.

My concern is that if this is in primary legislation it could lead to rushed or poor record keeping if it is not, for example, possible to conclude the review, assemble all the relevant pieces of information and provide that in a readable form—bearing in mind that is not going to be just straight English language for everybody—to the appropriate person, the IMCA, and so on. We should particularly bear in mind that an appropriate person could be somebody appointed by the cared-for person who resides in another country. So there are complexities at the edge of these kinds of cases that mean that if an arbitrary limit—which any limit would be—is set out in primary legislation, it could mean that as institutions bump up against it, they just rush to get the job done rather than making sure that they take care to do the highest-quality piece of work. That is my fear, although maybe other noble Lords do not share it.

I take the point that the noble Baroness, Lady Jolly, made about whether or not—in her view, not—the guidance is the place to do it. It seems to me that it is the right place to do it, because we had not defined "practicable" and "appropriate" before. We can now derive some examples of what that would and ought to look like in normal cases, but also in edge cases. I have listened very carefully to the argument—as noble Lords know, my attitude throughout has been to listen and make sure that we can improve this Bill. However, I have concerns about putting an arbitrary limit in, for the reasons that I have set out. I hope my noble friend, as she has been asked to do by my noble friend Lady Browning, will be able to explain things to us in a bit more detail—and give us a flavour of how the statutory guidance would provide that kind of detail—to provide reassurance to noble Lords that this is not just a boundless commitment that does not have some teeth.

Baroness Wheeler (Lab): My Lords, the amendment on this very important matter in the name of the noble Baroness, Lady Watkins, is fully supported on these Benches. The Minister knows the strength of feeling of support in the House to ensure that the cared-for person, or their carer, relative, friend or other person advocating on their behalf, is fully informed about their rights at the start of the LPS authorisation process. The amendment, carried by a substantial majority, was very clear on this issue. That information should be provided up front to families as a matter of course—information not only about the process, but importantly, their rights to advocacy and to challenge—in an accessible format that they can understand.

The provision in Amendment 25 of a statutory duty for information to be provided "as soon as practicable" does not ensure that this essential up-front requirement for information is met. One of the excellent briefings on this matter from Mencap states:

> "Families' carers have consistently fed back to us that the lack of information up-front meant that they didn't know what was happening, that it was a process done to them and their loved one, and that set in motion misunderstandings, mistrust and instances of an appeal which could have been avoided had information been provided and explained at the beginning".

Mencap's concern is that the "as soon as practicable" provision could mean a system working on the timescales of the responsible body, rather than of the individual body and the families. That is our concern, too.

Amendment 25A addresses these concerns and ensures that the loophole in the Government's amendment is addressed by requiring a record of the decision and justification to be kept where it has not been practicable to provide that up-front information about the decision to commence authorising arrangements under subsection (1). It also provides a necessary timeframe. We have heard that the noble Baroness, Lady Watkins, is not wedded to 72 hours, but it is important to have a timeframe within which, if a copy of the authorisation record has not been provided, there must be a review of whether the lack of information provision was appropriate. The requirement would provide the necessary safeguard for the cared-for person, and the hard-pressed staff, by facilitating routine record keeping and accountability for the decisions made. The noble Baroness pointed out some very explicit examples of the type of record that needs to be kept; it would not be onerous.

We are in a strange position, which we are slowly getting used to, of having the ex-Minister reassuring the House from the Government Benches that everything he promised has been delivered—before the Minister speaks. Amendment 25A highlights a significant loophole that needs to be addressed and I hope that the Government will accept it. We accept that the Government's intention is to provide the information needed, and as soon as possible, but the amendment is necessary to reassure that "as soon as practicable" is not as open-ended as it can so often turn out to be.

Baroness Blackwood of North Oxford: My Lords, I thank noble Lords for their contributions to the debate on this group. The provision of information in an appropriate and timely way goes to the heart of the Bill, in its intent to empower the cared-for person. The contributors today demonstrated how significant they have been in the process of improving the Bill.

I will respond first to my noble friend Lady Browning, and her question about clarifying what "as soon as practicable" means. This term is also used in the DoLS legislation. As we have outlined, we intend to clarify this in the code of practice with a range of examples that will make it perfectly clear exactly what it means, for practitioners and the cared-for person. We expect that this will be in the earliest stages of the process, so that the person has the information to enable them to exercise their rights, as the noble Baroness, Lady Wheeler, said,

> "as a matter of course".

[Baroness Blackwood of North Oxford]
This is exactly what would be expected. In order to ensure that this code of practice is workable and effective and, as my noble friend Lord O'Shaughnessy rightly put it, "has teeth", it is being developed with strong input from stakeholders and practitioners. That is why we are confident that it will not be just a document but a usable and effective piece of statutory guidance.

We are not able to accept the amendment in the name of the noble Baroness for the reasons which she accepted, in some way, in her contribution. We have concerns about the specification of 72 hours and other aspects, but I understand her desire to ensure that information about the authorisation record is provided promptly. This is our intention as well. We have heard the will of both Houses on this and have tried to reflect that in our amendments, and I am certainly willing to consider how best to do that. We think that it is best done in the code of practice, which will be statutory and will have teeth, for the reasons that I outlined. I hope that, with these reassurances, the noble Baroness will feel bound to press her amendment. I beg to move.

Motion on Amendment 24 agreed.

Motion on Amendment 25

Moved by ***Baroness Blackwood of North Oxford***

That this House do agree with the Commons in their Amendment 25.

25: Schedule 1, page 11, line 19, leave out from beginning to end of line 7 on page 12 and insert— "13 (1) As soon as practicable after authorising arrangements, the responsible body must ensure that a copy of the authorisation record is given to—

(a) the cared-for person,

(b) any independent mental capacity advocate appointed under paragraph 39 to represent and support the cared-for person,

(c) any person within paragraph 39(5) in respect of the cared-for person (the "appropriate person"), and

(d) any independent mental capacity advocate appointed under paragraph 40 to support the appropriate person.

(2) As soon as practicable after authorising arrangements, the responsible body must take such steps as are practicable and appropriate, having regard to the steps taken under paragraph 12B and the length of time since they were taken, to ensure that the cared-for person and any appropriate person understands the matters mentioned in paragraph 12A(2)(a), (c), (d), (f), and (g) as they apply in relation to the cared-for person's case."

Amendment 25A (as an amendment to Commons Amendment 25)

Moved by ***Baroness Watkins of Tavistock***

25A: Line 10, at end insert—

"(1A) A record of any decision and justification for not immediately giving a copy of the authorisation record under sub-paragraph (1) must be kept.

(1B) If a copy of the authorisation record has not been given to those specified in sub-paragraph (1) within 72 hours, there must be a review of whether the lack of information was appropriate."

5.15 pm

Division on Amendment 25A

Contents 229; Not-Contents 215.

Amendment 25A agreed.

Division No. 2

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Motion on Amendment 25, as amended, agreed.

5.28 pm

Motion on Amendments 26 to 40

Moved by ***Baroness Blackwood of North Oxford***

That this House do agree with the Commons in their Amendments 26 to 40.

26: Schedule 1, page 13, line 48, at end insert—

"(1A) The person who makes the determination need not be the same as the person who carries out the assessment."

27: Schedule 1, page 14, leave out lines 1 and 2 and insert—

"(2) The appropriate authority may by regulations make provision for requirements which must be met by a person—

(a) making a determination, or

(b) carrying out an assessment, under this paragraph.

(2A) Regulations under sub-paragraph (2) may make different provision— (a) for determinations and assessments, and

(b) for determinations and assessments required under sub-paragraph (1)(a) and determinations and assessments required under sub-paragraph (1)(b)."

28: Schedule 1, page 14, line 6, leave out "prescribed connection "and insert "connection, of a kind prescribed by regulations,"

29: Schedule 1, page 14, line 14, after "the" insert "determination or"

30: Schedule 1, page 14, line 16, after "the" insert "determination or"

31: Schedule 1, page 14, line 18, leave out "The" and insert "An"

32: Schedule 1, page 14, line 34, leave out "made on an assessment" and insert "by a person, who meets requirements prescribed by regulations made by the appropriate authority, made on an assessment by that person"

33: Schedule 1, page 14, leave out lines 40 to 46

34: Schedule 1, page 15, line 2, leave out from "16," to "by" in line 3 on page 15 and insert "a determination may not be made"

35: Schedule 1, page 15, line 4, leave out "prescribed connection" and insert "connection, of a kind prescribed by regulations,"

36: Schedule 1, page 15, line 9, leave out "assessment" and insert "determination"

37: Schedule 1, page 15, line 11, leave out "assessment" and insert "determination"

38: Schedule 1, page 15, line 15, leave out from second "arrangements" to end of line 16 and insert

"and—

(i) authorisation is being determined under paragraph 16, or

(ii) renewal is being determined under paragraph 32, (a) by"

39: Schedule 1, page 16, line 1, leave out "prescribed connection" and insert "connection, of a kind prescribed by regulations,"

40: Schedule 1, page 16, line 8, leave out "or"

Motion on Amendments 26 to 40 agreed.

Motion on Amendment 41

Moved by ***Baroness Blackwood of North Oxford***

That this House do agree with the Commons in their Amendment 41.

41: Schedule 1, page 16, line 12, at end insert—

"(c) the arrangements provide for the cared-for person to receive care or treatment mainly in an independent hospital, or

(d) the case is referred by the responsible body to an Approved Mental Capacity Professional and that person accepts the referral."

Amendment 41A (as an amendment to Commons Amendment 41)

Tabled by ***Baroness Thornton***

41A: Line 6, at end insert—

"(2A) In making arrangements under sub-paragraph (2)(c), the appropriate authority must have regard to the principle that a person to whom a proposed act or decision relates should, so far as practicable, be represented and supported by a person who is independent of any person who will be responsible for the act or decision."

Amendment 41A (to Amendment 41) not moved.

Motion on Amendment 41 agreed.

Motion on Amendments 42 to 56

Moved by ***Baroness Blackwood of North Oxford***

That this House do agree with the Commons in their Amendments 42 to 56.

42: Schedule 1, page 16, line 31, leave out "(whether or not paragraph 21(2) applies)"

43: Schedule 1, page 17, line 5, after "being" insert ", and the responsible body for the time being,"

44: Schedule 1, page 19 leave out line 43 and insert—

"(a) on a variation under paragraph 34;"

45: Schedule 1, page 20, line 5, after "(4)" insert "or (5A)"

46: Schedule 1, page 20, line 8, at end insert—

"(3A) A review under sub-paragraph (3)(a) must be carried out before the authorisation is varied or, if that is not practicable or appropriate, as soon as practicable afterwards."

47: Schedule 1, page 20, line 16, leave out from "paragraph" to end of line 17 and insert "21—

(i) was not by an Approved Mental Capacity Professional, or

(ii) was by an Approved Mental Capacity Professional solely because paragraph 21(2)(c) or (d) applied."

48: Schedule 1, page 20, line 24, at end insert—

"(5A) This sub-paragraph applies where sub-paragraph (4) does not apply and—

(a) the arrangements provide for the cared-for person to reside in, or to receive care or treatment at, a specified place,

(b) a relevant person informs the reviewer or (if the reviewer is not the responsible body) the responsible body that they believe that the cared-for person does not wish to reside in, or to receive care or treatment at, that place, and

(c) the relevant person makes a reasonable request to the person informed under paragraph (b) for a review to be carried out.

(5B) In sub-paragraph (5A) "relevant person" means a person engaged in caring for the cared-for person or a person interested in the cared-for person's welfare."

49: Schedule 1, page 20, line 30, at end insert—

"(7A) On any review where sub-paragraph (5A) applies, the reviewer or (if the reviewer is not the responsible body) the responsible body may refer the authorisation to an Approved Mental Capacity Professional and, if the Approved Mental Capacity

Professional accepts the referral, the Approved Mental Capacity Professional must determine whether the authorisation conditions are met."

50: Schedule 1, p 20, line 31, after "determination" insert "mentioned in sub-paragraph (7) or (7A)"

51: Schedule 1, page 24, line 3, at end insert "in a hospital"

52: Schedule 1, page 24, line 10, at end insert "in a hospital"

53: Schedule 1, p 27, line 16, at end insert—

"(g) anything which has the same effect as something within any of paragraphs (a) to (f), under another England and Wales enactment."

54: Schedule 1, p 27, line 16, at end insert—

"(1A) And, for the purposes of this Schedule, arrangements which relate to a person are "not in accordance with mental health requirements" if the person is subject to mental health requirements and the arrangements are not in accordance with them."

55: Schedule 2, page 28, line 22, at end insert—

"3A (1) Section 36 (functions of independent mental capacity advocates) is amended as follows.

(2) In subsection (2)(a) leave out "("P") so that P" and insert "or support so that that person".

(3) In subsection (2)(c) leave out "P's wishes and feelings" and insert "the wishes and feelings of the person the advocate has been instructed to represent ("P")".

(4) After subsection (2)(d) insert—

"(da) in the case of an advocate instructed to support an appropriate person where paragraph 40 of Schedule AA1 applies, supporting that person to ascertain—

(i) what the wishes and feelings of the cared-for person who that appropriate person represents and supports would be likely to be and the beliefs and values that would be likely to influence the cared-for person;

(ii) what alternative courses of action are available in relation to the cared-for person who that appropriate person represents and supports;".

3B (1) Section 38 (provision of accommodation by NHS body) is amended as follows.

(2) For subsection (2A) substitute—

"(2A) And this section does not apply if—

(a) an independent mental capacity advocate is appointed under paragraph 39 of Schedule AA1 to represent and support P, and

(b) the arrangements which are authorised or proposed under Schedule AA1 in respect of P include arrangements for P to be accommodated in the hospital or care home referred to in this section."

(3) In subsection (3), in the opening words, after "arrangements" insert "mentioned in subsection (1)".

(4) Omit subsection (10).

3C (1) Section 39 (provision of accommodation by local authority) is amended as follows.

(2) For subsection (3A) substitute—

"(3A) And this section does not apply if—

(a) an independent mental capacity advocate is appointed under paragraph 39 of Schedule AA1 to represent and support P, and

(b) the arrangements which are authorised or proposed under Schedule AA1 in respect of P include arrangements for P to be accommodated in the residential accommodation referred to in this section."

(3) In subsection (4), in the opening words, after "arrangements" insert "mentioned in subsection (1)".

(4) Omit subsection (7)." Schedule 2, page 28, line 22, at end insert—

"3A (1) Section 36 (functions of independent mental capacity advocates) is amended as follows.

(2) In subsection (2)(a) leave out "("P") so that P" and insert "or support so that that person".

(3) In subsection (2)(c) leave out "P's wishes and feelings" and insert "the wishes and feelings of the person the advocate has been instructed to represent ("P")".

(4) After subsection (2)(d) insert—

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(3) In subsection (3), in the opening words, after "arrangements" insert "mentioned in subsection (1)".

(4) Omit subsection (10).

3C (1) Section 39 (provision of accommodation by local authority) is amended as follows.

(2) For subsection (3A) substitute—

"(3A) And this section does not apply if—

(a) an independent mental capacity advocate is appointed under paragraph 39 of Schedule AA1 to represent and support P, and

(b) the arrangements which are authorised or proposed under Schedule AA1 in respect of P include arrangements for P to be accommodated in the residential accommodation referred to in this section."

(3) In subsection (4), in the opening words, after "arrangements" insert "mentioned in subsection (1)".

(4) Omit subsection (7)."

56: Schedule 2, page 28, line 23, at end insert—

"4A In section 40 (exceptions)—

(a) in subsection (1), for ", 39(4) or (5), 39A(3), 39C(3) or 39D(2)" substitute "or 39(4) or (5)";

(b) omit subsection (2)."

Motion on Amendments 42 to 56 agreed.

Leaving the European Union

Statement

5.30 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, with the leave of the House, I will now repeat a Statement made by my right honourable friend the Prime Minister in another place. The Statement is as follows:

"With permission, Mr Speaker, I would like to make a statement on the Government's work to secure a withdrawal agreement that can command the support of this House. A fortnight ago, I committed to come back before the House today if the Government had not by now secured a majority for a withdrawal agreement and a political declaration.

[Baroness Evans of Bowes Park]

In the two weeks since, the Secretary of State for Exiting the European Union, the Attorney-General and I have been engaging in focused discussions with the EU to find a way forward that will work for both sides. We are making good progress in that work. I had a constructive meeting with President Juncker in Brussels last week, to take stock of the work done by our respective teams. We discussed the legal changes that are required to guarantee that the Northern Ireland backstop cannot endure indefinitely. On the political declaration, we discussed what additions or changes can be made to increase confidence in the focus and ambition of both sides in delivering the future partnership we envisage as soon as possible, and the Secretary of State is following this up with Michel Barnier. I also had a number of positive meetings at the EU-Arab League summit in Sharm el-Sheikh, including with President Donald Tusk. I have now spoken to the leaders of every single EU member state to explain the UK's position. The UK and EU teams are continuing their work and we agreed to review progress again in the coming days.

As part of these discussions, the UK and EU have agreed to consider a joint workstream to develop alternative arrangements to ensure the absence of a hard border in Northern Ireland. This work will be done in parallel with the future relationship negotiations, and is without prejudice to them. Our aim is to ensure that, even if the full future relationship is not in place by the end of the implementation period, the backstop is not needed because we have a set of alternative arrangements ready to go.

I want to thank my honourable and right honourable friends for their contribution to this work, and reaffirm that we are seized of the need to progress this work as quickly as possible. President Juncker has already agreed that the EU will give priority to this work, and the Government expect that this will be an important strand of the next phase. The Secretary of State for Exiting the EU will be having further discussions with Michel Barnier, and we will announce details ahead of the meaningful vote. We will also be setting up domestic structures to support this work, including ensuring we can take advice from external experts involved in customs processes around the world, from businesses who trade with the EU and beyond, and, of course, from colleagues across the House. This will all be supported by civil service resource, as well as funding for the Government to help develop, test and pilot proposals which can form part of these alternative arrangements.

I know what this House needs in order to support a withdrawal agreement. The EU knows what is needed, and I am working hard to deliver it. As well as changes to the backstop, we are also working across a number of other areas to build support for the withdrawal agreement, and to give the House confidence in the future relationship that the UK and EU will go on to negotiate. This includes ensuring that leaving the EU will not lead to any lowering of standards in relation to workers' rights, environmental protections or health and safety. Taking back control cannot mean giving up our control of these standards, especially when UK Governments of all parties have proudly pursued policies that exceed the minimums set by the EU—from Labour giving British workers more annual leave, to the Conservatives and Liberal Democrats giving all employees the right to request flexible working. Not only would giving up control go against the spirit of the referendum result; it would also mean accepting new EU laws automatically, even if they were to reduce workers' rights or change them in a way that was not right for us.

Instead, and in the interests of building support across the House, we are prepared to commit to giving Parliament a vote on whether it wishes to follow suit whenever the EU standards in areas such as workers' rights and health and safety are judged to have been strengthened. The Government will consult with businesses and trade unions as we look at new EU legislation and decide how the UK should respond. We will legislate to give our commitments on both non-regression and future developments force in UK law. Following further cross-party talks, we will shortly be bringing forward detailed proposals to ensure that as we leave the EU, we not only protect workers' rights but continue to enhance them.

As the Government committed to the House last week, we are today publishing the paper assessing our readiness for no deal. I believe that if we have to, we will ultimately make a success of no deal, but this paper provides an honest assessment of the very serious challenges it would bring in the short term, and further reinforces why the best way for this House to honour the referendum result is to leave with a deal.

As I committed to the House, the Government will today table an amendable motion for debate tomorrow, but I know Members across the House are genuinely worried that time is running out and that if the Government do not come back with a further meaningful vote or they lose that vote, Parliament will not have time to make its voice heard on the next steps. I know too that Members across the House are deeply concerned about the effect of the current uncertainty on businesses, so today I want to reassure the House by making three further commitments.

First, we will hold a second meaningful vote by Tuesday 12 March at the latest. Secondly, if the Government have not won a meaningful vote by Tuesday 12 March, then we will, in addition to our obligations to table a neutral, amendable Motion under Section 13 of the EU (Withdrawal) Act, table a Motion to be voted on by Wednesday 13 March at the latest, asking this House if it supports leaving the EU without a withdrawal agreement and a framework for a future relationship on 29 March. The United Kingdom will only leave without a deal on 29 March if there is explicit consent in this House for that outcome.

Thirdly, if the House, having rejected leaving with the deal negotiated with the EU, then rejects leaving on 29 March without a withdrawal agreement and future framework, the Government will, on 14 March, bring forward a motion on whether Parliament wants to seek a short, limited extension to Article 50, and if the House votes for an extension, seek to agree that extension approved by the House with the EU, and bring forward the necessary legislation to change the exit date commensurate with that extension. These

commitments all fit the timescale set out in the Private Member's Bill in the name of the right honourable Member for Normanton, Pontefract and Castleford. They are commitments I am making as Prime Minister and I will stick by them, as I have previous commitments to make Statements and table amendable Motions by specific dates.

Let me be clear: I do not want to see Article 50 extended. Our absolute focus should be on working to get a deal and leaving on 29 March. An extension beyond the end of June would mean the UK taking part in the European Parliament elections. What kind of message would that send to the more than 17 million people who voted to leave the EU nearly three years ago now? The House should be clear that a short extension—not beyond the end of June—would almost certainly have to be a one-off. If we had not taken part in the European Parliament elections, it would be extremely difficult to extend again, so it would create a much sharper cliff edge in a few months' time.

An extension cannot take no deal off the table. The only way to do that is to revoke Article 50, which I shall not do, or agree a deal. I have been clear throughout this process that my aim is to bring the country back together. This House can only do that by implementing the decision of the British people. The Government are determined to do so in a way that commands the support of this House, but just as government requires the support of this House in delivering the vote of the British people, so the House should respect the proper functions of the Government. Tying the Government's hands by seeking to commandeer the Order Paper would have far-reaching implications for the way in which the United Kingdom is governed and the balance of powers and responsibilities in our democratic institutions, and it would offer no solution to the challenge of finding a deal which this House can support.

Neither would seeking an extension to Article 50 now make getting a deal any easier. Ultimately, the choices we face would remain unchanged: leave with a deal, leave with no deal, or have no Brexit. When it comes to the Motion tomorrow, the House needs to come together as we did on 29 January and send a clear message that there is a stable majority in favour of leaving the EU with a deal.

A number of honourable and right honourable Members have understandably raised the rights of EU citizens living in the UK. As I set out last September, following the Salzburg summit, even in the event of no deal, the rights of the 3 million EU citizens living in the UK will be protected. That is our guarantee to them. They are our friends, our neighbours and our colleagues. We want them to stay. But a separate agreement for citizens' rights is something the EU has been clear it does not have the legal authority for. If it is not done in a withdrawal agreement, these issues become a matter for member states, unless the EU were to agree a new mandate to take this forward.

At the very start of the process, the UK sought to separate out this issue, but the EU has been consistent on it. However, my right honourable friend the Foreign Secretary has written to all of his counterparts and we are holding further urgent discussions with member states to seek assurances on the rights of UK citizens. I urge all EU countries to make this guarantee and end the uncertainty for these citizens. I hope that the Government's efforts can give the House and EU citizens here in the UK the reassurances they need and deserve.

For some honourable and right honourable Members, taking the United Kingdom out of the European Union is the culmination of a long and sincerely fought campaign. For others, leaving the EU goes against much that they have stood for and fought for with equal sincerity for just as long. But Parliament gave the choice to the people. In doing so, we told them that we would honour their decision. That remains the resolve of this side of the House. But last night we learned that it is no longer the commitment of the Leader of the Opposition. He has gone back on his promise to respect the referendum result and now wants to hold a divisive second referendum that would take our country right back to square one. Anyone who voted Labour at the last election because they thought he would deliver Brexit will rightly be appalled. This House voted to trigger Article 50 and this House has a responsibility to deliver on the result. The very credibility of our democracy is at stake. By leaving the EU with a deal, we can move our country forward.

Even with the uncertainty we face today, we have more people in work than ever before, wages growing at their fastest rate for a decade and debt falling as a share of the economy. If we can leave with a deal, end the uncertainty and move on beyond Brexit, we can do so much more to deliver real economic progress to every part of the country. So I hope that tomorrow the House can show that with legally binding changes on the backstop, commitments to protect workers' rights and the environment, an enhanced role for Parliament in the next phase of negotiations and a determination to address the wider concerns of those who voted to leave, we will have a deal that this House can support. In doing so, we can send a clear message that this House is resolved to honour the result of the referendum and leave the European Union with a deal. I commend this Statement to the House".

My Lords, that concludes the Statement.

5.43 pm

Baroness Hayter of Kentish Town (Lab): My Lords, I thank the noble Baroness for repeating the Statement on Brexit, which is clearly high on everyone's agenda. I have sat beside my noble friend Lady Smith of Basildon on previous occasions when she has rightly described the Government as, "living in the moment ... managing to get through another week …providing less clarity rather than more … failing to give any confidence that the PM knows where this is going or, more worryingly, ploughing on towards the cliff edge". Indeed, as my noble friend has said, it seems that each week MPs are told to expect a meaningful vote the following week, only for it to be delayed again and again. Today, 31 days until our planned departure, this is even more true.

In fact, the most significant of the Prime Minister's words were those briefed to journalists on her plane to the summit; namely, that there would be no meaningful

[Baroness Hayter of Kentish Town]
vote in the Commons tomorrow but that again it would be delayed until 12 March, 17 days before 29 March, and even then with no guarantee that her deal would pass muster there. So, on 27 February, more than a month after the 21 January date in the withdrawal Act by which the Government should respond in the event of a deal not being possible or not being ratified, Mrs May still has not allowed the Commons a meaningful say on the next steps. It is the Prime Minister's new date, that of 12 March, which changes the dynamic of Parliament and Government. That is because the Government seem to have given up their ability to govern and, as we heard over the weekend and last night, there are Cabinet and other Ministers who are prepared to resign or defy the Whip to end this footsie with a no-deal threat. They are right to insist that Parliament has to put an end to this reckless nonsense of threatening our own economic future—a sudden departure from a massive trading bloc into the unknown territory of WTO terms of trade with new tariffs and formalities as well as costs to industry—simply so that the Prime Minister can try and pull her recalcitrant ERGers into the government Lobby.

It was perhaps the threat from these Ministers and the likely success of the Cooper-Boles-Letwin amendment that forced today's undertaking to ensure a vote such that we could,

"only leave without a deal on 29 March if there is explicit",

consent in the Commons. However, the undertaking is only to exclude departure on 29 March without a deal. It does not rule out the continued threat of a no-deal departure altogether. Indeed, the Prime Minister explicitly said that a subsequent Article 50 extension,

"cannot take no deal off the table".

All she is promising is a temporary parliamentary block on no deal prior to reinstating it as a continuing threat during the months ahead. This will not do. Both this House and the other place have made it clear that this should never be our departure route. It is damaging and madness to contemplate otherwise, as many of her ministerial colleagues in this House and in the Commons know full well.

Moreover, businesses are clear: whatever the end outcome, they need time to plan and adjust. A no-deal outcome with no transition period simply does not allow for that. The cost to our citizens living in the EU could be enormous as their driving licences could be worthless in months, their health cover end, and their residency and employment status change. As the government analysis released at 5 pm this evening makes clear, a significant proportion of critical no-deal projects are not on track. It also says that despite the publication of no-deal guidance, a large proportion of businesses and citizens are not adequately prepared. In particular, food businesses are unprepared, with concerns that consumer panic will exacerbate any shortages. There will be a more severe impact in Northern Ireland than in Great Britain and potential gaps in data flows without an adequacy decision. The report's conclusion is damning, saying that,

"the short time remaining before 29 March 2019 does not allow Government to unilaterally mitigate the effects of no deal."

I have to say that the word "irresponsible" is too mild a term for the Prime Minister's refusal to take no deal completely off the table.

Such is the stalemate—and worse, the crisis—in government over Brexit that tomorrow Labour will ask the Commons to vote on our alternative for a deal. We will remind the Government that of the 432 votes cast against the deal, only a minority were Conservative, focusing on the backstop. The Opposition's 300 votes against the deal were about the political framework's inadequacies. Yet the Prime Minister has sought only to buy off the Tory rebels, dismissing these other major concerns about our future relationship with the EU. So we will seek to do what the Government have failed to: win cross-party support for a closer relationship with the EU after Brexit. Should that fail, when the Government return to Parliament, be that on 12 March or next week, Labour will support a call for a public vote on Mrs May's deal since in its unamended form it risks our country's economic prosperity, internal security and global influence in a way that Parliament by itself must not be given the freedom to allow to happen.

Your Lordships will know that we preferred Parliament to oversee the Article 50 process and for the Government to craft a future relationship with the EU to maintain growth and prosperity which could command support in the Commons and the country. They have spectacularly failed to do so. And if the Government cannot command the confidence of Parliament on this issue, they should go back for a new public mandate.

We face testing times. Whatever the outcome in the Commons—to accept or to block no deal—legislation will, as has been said, be required with great speed, at the very least to change by SI the exit date to allow for an Article 50 extension. But more than that, other legislation is likely which, because of its importance, demands careful unhurried scrutiny. Will the Leader of the House therefore give her support to an extension of Article 50? We know that Cabinet responsibility seems to have broken down, so let her break free and give us that understanding. For the sake of business as well as for our own sake, will she allow that extension, and guarantee that there will be no attempt to fast-track vital Bills to make up for the shameful delay caused by the Government's own failure in negotiation?

Will the noble Baroness also commit to allowing proper time for scrutiny and debate, and for consultation with relevant stakeholders on the detail of legislation? And will she take back to the Prime Minister our view that until no deal is ruled out, not just for 29 March but permanently, we will have little faith that she is putting our country ahead of her party.

Lord Newby (LD): My Lords, I thank the Leader of the House for repeating the Statement. The first interesting thing about it is the insight it gives us into the state of the negotiations between the UK the EU. We are told that they are "focused", and "making good progress", that they are "constructive" and "positive", and finally that they are "continuing"—which is all sort of mildly encouraging. But following the passage of the Brady amendment a couple of weeks ago, the Government went back to Brussels to try to get amendments to the provisions relating to the backstop in one of three ways. The first was a time limit, the second a right for

the UK unilaterally to withdraw from it, and the third was the development of so-called "alternative arrangements", which would render the backstop unnecessary.

Of these, the EU made it clear from the start that Nos. 1 and 2 were non-negotiable, which left only No. 3 —alternative arrangements. The Statement is very clear about where negotiations on alternative arrangements have got to. The Prime Minister says that we have,

"agreed to consider a joint work stream to develop alternative arrangements … This work will be done in parallel with the future relationship negotiations … Our aim is to ensure that, even if the full future relationship is not in place by the end of the implementation period, the backstop is not needed because we have a set of alternative arrangements ready to go".

The Prime Minister has therefore accepted that no concrete progress whatever will have been made on defining any alternative arrangements before 29 March. This means that, of the three possible ways of dealing with the backstop in a manner that would be acceptable to the Conservative Party and the DUP, none will have been achieved when the next meaningful vote takes place in a couple of weeks' time. The only logical conclusion, given this failure to achieve anything, is that the Government will again lose a vote on their deal. It is against this background that the remainder of the Prime Minister's statement needs to be judged.

It is crystal clear that the Prime Minister's hope was to get to mid-March and, despite having failed to make substantive changes to the backstop, attempt to scare MPs into voting for a deal they do not support, by threatening them with crashing out of the EU a mere fortnight later if they rejected it. Faced with the Cooper-Letwin proposal, which would in those circumstances defer the withdrawal date, and a rebellion of Cabinet and more junior Ministers, she has today bowed to the inevitable and said that if the Commons voted against her deal and against no deal, she would put a further Motion to the House of Commons providing for an extension to Article 50.

The Prime Minister has said that the key votes will be on the 12 and 13 March at the latest. Why "at the latest"? Does the Prime Minister think there is any chance whatever of having an agreement with the EU that she would be able to bring back to the Commons next week? Whatever the exact timing, and whatever our concerns about the somewhat convoluted approach being proposed by the Prime Minister, that is a welcome recognition by her that the Cooper-Letwin Bill would otherwise pass, and that there is a majority in the Commons to extend Article 50. The challenge with which our colleagues in another place have to grapple is whether they trust the Prime Minister's word or whether they want the assurance that the Bill would have provided. I believe that Oliver Letwin is happy to accept the Prime Minister's assurance, but I am a bit unclear as to where Yvette Cooper has got to on that. We will just have to see how events pan out.

In any event, the Prime Minister's principal argument —indeed, her only argument—against such a Bill is that it would tie the Government's hands and have far-reaching constitutional implications. By this she means that the Commons would take back some control of the way in which it organises its business. Will the Leader of the House accept that for many of us, this seems a positive development, not a constitutional outrage?

If there is no Cooper Bill, it is highly likely that the Prime Minister's Motion to defer Article 50 will pass on 13 March, but this is only phase 1 of getting out of the mess we are in. As Sarah Wollaston put it earlier today in responding to the Statement, we are only talking about:

"a short gangplank added to the cliff edge".

Phase 2, and the only way of breaking the deadlock, is to put the Government's deal to the people for their final decision, with an option to remain in the EU if they believe that that would be better for our economy, security and influence. Today the Prime Minister did a U-turn on extending Article 50. We now wait with eager anticipation for her next U-turn: to give the people a vote.

Baroness Evans of Bowes Park: I thank the noble Baroness, who I welcome to this joyous occasion; we have many such occasions and I hope to see her again soon. I also thank the noble Lord for his comments. First, I have said consistently over the last few months that I want to leave the European Union with a deal. I am part of a Government who are working hard to deliver it, and we will continue to do that in the coming weeks.

Both the noble Lord and the noble Baroness touched on legislation. My noble friend the Chief Whip and I have been able to work constructively through the usual channels, and we will continue to do so. We have not sought, and will not start seeking, to railroad Bills through this House. I think that all noble Lords would agree that we must balance the need to ensure that vital legislation sent to us from the other place is passed within a reasonable time, and the need to ensure that this House has adequate time to scrutinise it in the usual manner.

We are as aware as anybody else of the constraints of the parliamentary timetable, and we will not be unrealistic or unreasonable in what we ask the House to do. We will continue to work with the usual channels to try to ensure the greatest possible degree of cross-party consensus as we move forward. As we have shown with the Trade Bill, where my right honourable friend the Trade Secretary yesterday announced safeguards in the event that the Bill has not received Royal Assent in March, the Government are both responsible in putting in temporary arrangements if necessary, and reasonable about allowing this House the scrutiny of legislation that it deserves.

I am afraid that I disagree with the noble Lord, Lord Newby, who said that no progress had been made on alternative arrangements. That is simply not true. President Juncker has agreed that the EU will give priority to this work. We have agreed joint work streams together to go forward. However, implementing alternative arrangements will require, for instance, a number of derogations from EU law. These are issues that we have to work through with the EU. That is why joint work will be going forward in parallel to the further discussions on the political declaration.

[Baroness Evans of Bowes Park]

The Prime Minister has spoken to the leaders of every member state since I last made a Statement on this issue. She has discussed with them the guarantees that could be given to underline the backstop's temporary nature—something about which the House of Commons made clear that it was concerned—and to give the appropriate legal assurances to both sides. She has discussed the role that alternative arrangements could play, and changes to the political declaration. We are moving forward. The Prime Minister has said that if she can come forward with a deal that addresses the concerns of the House of Commons before 12 March, she will do so.

6 pm

Lord Anderson of Swansea (Lab): This is the mother of all shambles. The message is clear: the Government are limping towards an extension, contrary to all the promises that have been made—and, crabwise, the Government are surely moving towards a people's vote.

Baroness Evans of Bowes Park: I am sorry to disappoint the noble Lord, but that is not the case. The Government are working towards a deal. We are working towards getting the changes to the backstop that the House of Commons desires and we will bring back a deal that we believe will command the support of the House.

Lord Cormack (Con): My Lords, my noble friend knows that I sincerely hope that there will be a deal. However, does she accept that if, as is quite likely, there has to be an extension, it must be a sensible extension that gives proper time for the extraordinary events—I choose my words carefully—of the past two years to be put right? We therefore do not wish to have an extension that is merely to the end of June, even if there are implications for the composition of the European Parliament. But I repeat that I hope we have a deal—as does my noble friend—in time for that not to happen.

Baroness Evans of Bowes Park: I agree with my noble friend. We are all working hard to achieve a deal, but the Prime Minister has made clear that if, following a series of votes in the House of Commons, as set out in the Statement, there is a vote to ask for an extension to Article 50, she will want it to be for the shortest time possible.

Lord Kerr of Kinlochard (CB): My Lords, it is good that the Prime Minister is now ready, à contrecoeur, to contemplate an extension. It is clear—and has been for some time—that an extension is absolutely necessary. However, she says in her Statement that an extension cannot take no deal off the table—and of course that is perfectly true. But she could and should take no deal off the table. If you listen to the voice of business and the nation at large, it is grossly irresponsible to play this game down into the last days and beyond. As the noble Baroness, Lady Hayter, pointed out, we are looking to maintain the threat of no deal throughout the period of extension, however long that is. This cannot be right in the interests of the country.

Baroness Evans of Bowes Park: What is right and in the interests of the country is what the Prime Minister has been working on for the past two years, which is to get a deal that leads to a strong partnership between the EU and the UK going forward. That is what she is focused on and will continue to focus on. We are having constructive discussions with EU member state leaders, the Commission and the Council in order to get to that point. That is what the Prime Minister is focused on and that is quite right.

Baroness Ludford (LD): My Lords, we are led to believe that the Prime Minister is turning over a new leaf, but the Statement ends by still talking about legally binding changes to the backstop. Given the Brady amendment, that is absolutely untrue, as my noble friend Lord Newby made clear. The wording of the Statement contradicts the idea that the backstop will be changed. Will the Minister convey to the Prime Minister that absolute honesty would be appreciated? Secondly, following on from what the noble Lord, Lord Kerr, said, the Minister talked about the Government being responsible. According to the published analysis on no deal, we are looking at up to a 9% hit to GDP in 15 years and £13 billion of extra red tape costs on businesses that have never had to deal with customs processes before. How can she possibly contemplate inflicting no deal on the country and not taking it off the table?

Baroness Evans of Bowes Park: As I have repeatedly said, the Prime Minister is looking at three options and discussing them with the EU. These are: the alternative arrangements, such as technological solutions; a legally binding time commitment to the existing backstop; and a legally binding unilateral exit clause to that backstop. That is what she has been talking to the EU about. The noble Baroness is right that the paper published this afternoon provides an honest assessment of the real challenges that no deal would bring. That is why we are working so hard to achieve a deal, and it would be great if noble Lords across the House would support us in that endeavour.

Lord Liddle (Lab): My Lords, is it not the case that, when the Prime Minister talks about a working party to discuss alternative arrangements to the Northern Ireland backstop, she is fantasising? How is it possible to agree something and put it in place on the Northern Ireland border within the space of a bit over a year and a half before the end of the implementation period? Are the Government serious? How on earth do they expect this to happen?

Baroness Evans of Bowes Park: As I have said, the alternative arrangements are not a novel concept; they are mentioned and referred to in the political declaration, and discussions have happened. Many of the existing technologies that could be used to avoid a hard border are already developed. However, many of them have not been used together, which is why further work needs to be done. We have to make sure that they are workable and, importantly, operate in the specific circumstances of Northern Ireland. It is doable and we are working together to try to achieve it.

Lord Bilimoria (CB): The Statement says clearly:

"What kind of a message would that send to the more than 17 million people who voted to leave the EU nearly three years ago now?"

Is the Prime Minister now sending messages to heaven and to hell? This was three years ago. Sadly, more than 1 million of the 17 million people have passed away and there are 2 million youngsters who were not old enough to vote but now are—and the Prime Minister says that the very credibility of our democracy is at stake. Given that the Labour Party has finally come round to accepting that the best option is a people's vote, and that the polls show clearly that the majority of the people of the country today—not three years ago—would prefer to remain and want a people's vote, does the Leader of the House agree that the Government should accept the reality of today?

Baroness Evans of Bowes Park: I am afraid I cannot agree with the noble Lord.

Lord Wigley (PC): If the House of Commons votes against leaving without a deal, are the Government committed to supporting an extension of Article 50 for as long as is needed to get a deal?

Baroness Evans of Bowes Park: As I have said, a series of votes will need to happen at that point. However, the Prime Minister has made it clear that she does not want to extend Article 50, but if the House of Commons votes to do so she would like the shortest possible extension.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend use her good offices to argue to the Prime Minister that we should be negotiating for observer status for a small group of MEPs to remain if the extension lasts beyond the end of June? It should not be required to last beyond that. We should not use as a barrier to that extension elections to the European Parliament. There is a category in applicant countries for MEPs to have observer status before they join. I would argue that we should have that status as we leave, so that we can keep a small group of MEPs in position, and that should not be used as an excuse not to continue with the extension.

Baroness Evans of Bowes Park: The Prime Minister's focus over the next couple of weeks will be on achieving a deal that can get the support of MPs across the House of Commons, so that we can move on to focus on our future relationship and develop the strong partnership with the EU that we all want to see.

Lord Campbell of Pittenweem (LD): My Lords, fairly read, this Statement is about process, not progress. The truth is that the Empress still has no clothes. The Prime Minister has nothing of substance to tell either the House of Commons or your Lordships' House. I want to ask two specific questions. First, what legal changes did the Prime Minister discuss with Mr Juncker last week, as she refers to in the Statement? Secondly, why does she assume in the ninth-to-last line of the Statement that there will be legally binding changes to the backstop? Where is the evidence in support of that assertion?

Baroness Evans of Bowes Park: The Prime Minister has set out the changes that we are looking for. The Attorney-General was out there last week and he is out there again today. He is having discussions on the legal nature of the changes we are looking for.

Baroness Royall of Blaisdon (Lab): Does the Minister not agree that it is utterly irresponsible of the Government not to take no deal off the table? All noble Lords need to do is to read the document which was cited earlier. It states:

"Currently, businesses who manufacture or import substances into the EU"—

this is about the chemical sector—

"need to register them with the central European Chemicals Agency ... UK companies would only be able to sell into the EU providing they have transferred their existing registration to an EU-based entity".

This will cost each company, even small companies, £1,500 excluding admin costs. On top of that they would have to pay EU-WTO tariffs of, on average, 5%.

At the end, this little document, which is full of extraordinary information, says that we are not prepared at all:

"the short time remaining before 29 March 2019 does not allow Government to unilaterally mitigate the effects of no deal. Even where it can take unilateral action, the lack of preparation by businesses and individuals is likely to add to the disruption experienced in a no deal scenario".

How can a responsible Government who care, one would hope, about the social and economic future of this country not take no deal off the table?

Baroness Evans of Bowes Park: It is exactly because we care about the future of this country that we are working so hard to get a deal, but the legal default position is no deal, so any responsible Government have to prepare for it. We are working towards a deal. If we had the support of Members of both Houses and all parties, we could get there and we could start to move on to the future, which we all want to do.

Lord Elton (Con): My Lords, I understand that those who are calling so loudly for no deal are those who are not satisfied with the present deal offered by the Prime Minister but want something better. She therefore needs to be able to negotiate. She needs to have a card. The only available card is the threat of no deal. Why are the people who want to adopt that attitude constantly removing the only card she has in her hand?

Baroness Evans of Bowes Park: I say again that we do not want no deal. The noble Baroness rightly pointed out the severe challenges that it will pose. That is why we are focusing so heavily on getting a deal, trying to address the issues the House of Commons has raised in relation to the backstop and looking more broadly at other issues that have concerned MPs, so that we can bring a package that MPs can support,

[Baroness Evans of Bowes Park]
get a deal, start discussions with the EU about our future relationship and look forward, rather than constantly going round in circles, which is what we have been doing for a while.

Lord Butler of Brockwell (CB): My Lords, the Minister said that any responsible Government would prepare for no deal. Is not the trouble that they have not?

Baroness Evans of Bowes Park: We have spent a lot of time preparing for no deal. We have done a lot of work. We have been in touch with business and have been setting up new systems. The fact of the matter is that there are real challenges, and not all no-deal planning is in our gift; it also relies on our European partners. We are doing what we can, but I have repeatedly said that that is not the route we want to go down. We want a deal, and that is what we are trying to achieve.

Baroness Quin (Lab): My Lords, there have been votes in both Houses of Parliament against no deal. Why do the Government not simply accept the will of Parliament on this issue?

Baroness Evans of Bowes Park: As the Statement clearly sets out, if the House of Commons does not pass a meaningful vote, there will then be an opportunity to vote on whether or not it wants to go ahead with no deal.

Viscount Waverley (CB): My Lords, is there now a unified direction of travel of the 27 and the European Parliament? I understand that conflicting messages are coming from within individual Governments about whether or not to support the UK in future on many key matters, including a possible extension of Article 50.

Baroness Evans of Bowes Park: All I can say to the noble Viscount is that since the last Statement the Prime Minister has spoken to leaders of every member state. At the summit over the weekend she had further discussions with President Tusk, Chancellor Merkel, Prime Minister Rutte, President Juncker, Prime Minister Conte and the Taoiseach. Conversations are going well. The EU wants a deal, like we do, so there is a willingness to work together. That is what we are doing. That is why work is intensifying and why the Secretary of State for Exiting the EU, the Attorney-General and the Prime Minister have all being making regular trips to Brussels to make sure that we can get this deal over the line.

Baroness Altmann (Con): My Lords, this House and the other place have made it clear that they do not support leaving the EU without a deal. Business is crying out for some kind of certainty. We are now saying that we will not take no deal off the table and are just moving the deadline from the end of March to the end of June. That does not take no deal off the table, give reassurance to business or respect the will of Parliament. I implore my noble friend to consider the position this country is in and that the risk to people's jobs and livelihoods is really serious. By limiting the extension to a very short period, we will not give ourselves the best chance of negotiating that good deal and relationship that we want and need to achieve.

Baroness Evans of Bowes Park: We are extremely clear about the seriousness of the situation, which is why we are continuing to work for a deal that can be passed in a vote on 12 March. The Statement sets out a very clear set of steps that will happen after that in order that the voice of the House of Commons can be heard if we do not win the vote on 12 March, but we are committed to trying to do that, and that is what we are all focused on.

Lord Wallace of Saltaire (LD): My Lords, it is clear that we need the good will of the other members of the European Union to negotiate any sort of positive deal about the future relationship. The Prime Minister must be using all the good will we have accumulated over the past 50 years in the patience she requires from the other people she spends all her time talking to. Meanwhile, the officers of the European Research Group continue to insult the Germans, the European Commission and others—as do some of the right-wing media—suggesting that we must escape from the European Union and leave the enemies of Britain in Brussels, Berlin, et cetera, behind. The Prime Minister has said nothing to discourage these right-wing Brexiteers from antagonising our future European partners. Surely if the Government want to reunite the country, they should also say that even if we are leaving we need the positive and active co-operation of our neighbours and allies across the channel.

Baroness Evans of Bowes Park: The noble Lord is absolutely right. Of course we need good relationships. In fact, those relationships are bearing fruit in the constructive discussions at the moment. The Prime Minister and all of us are very clear that we want a positive, strong, close relationship with the EU. That is what we want to achieve. That is the work that we want to get on with once we move past the withdrawal phase, and that is what we are all aiming to do.

Lord Livingston of Parkhead (Con): My Lords, I think the vast majority of Members of this House are of the view that no deal would be a disaster. We hear from some people from the European Research Group that somehow it is doable. This House is discussing not whether no deal would be a minor inconvenience but how we avoid it. Given that—despite what the leader of the Opposition has said—there is no alternative deal on the table, there are only two ways: the Prime Minister's deal or a second referendum. They are the only two options. The Prime Minister was clear on that. The Government could help by being much clearer about the sheer scale of the issues that would arise from no deal. Saying it is a negotiating card is absurd. It is a bit like threatening to shoot yourself in the foot and saying that it is okay because other people will be spattered with blood. It is not a negotiating card but an act of wilful self-harm. I know the Government are seeking to avoid it and the Prime Minister is trying extremely hard, but we all have to be

very clear that, whatever happens, no deal would be extremely harmful for business, the citizens of this country, EU immigrants here and UK citizens in Europe. We need to be clearer about it and to work together to try to avoid it.

Baroness Evans of Bowes Park: We are trying to work together to avoid it, which is why there have been numerous discussions between the parties, both Front-Bench and Back-Bench, in the House of Commons. We are absolutely trying to work together to address the concerns that have been raised by MPs. The noble Lord is right. We do not want no deal. That is why the Prime Minister has been so focused on trying to make the changes that will be required to get the support to get her deal over the line so that we can start to talk about our future relationship—the strong relationship we want with the EU going forward.

Lord Kilclooney (CB): Can the Government assure the people of Northern Ireland that the border between Northern Ireland and the Republic of Ireland will continue, and that there will be no new border created between Great Britain and Northern Ireland?

Baroness Evans of Bowes Park: We have been clear that we will do everything in our power to avoid a hard border in all scenarios, but there are clear EU rules that apply to trading goods with third countries, and with the Commission outlining, in its no-deal publication in December, that there will be no exemptions for Ireland on border requirements. We and the Irish Government are very clear that we are doing everything in our power to avoid a hard border. That is why we are both looking for guarantees around the backstop. That is also why we are looking at technological developments to ensure that we do not go back to that because neither side wants it, and I can assure the noble Lord that that is at the top of the Prime Minister's priority list.

Offensive Weapons Bill

Report (1st Day)

6.21 pm

Clause 1: Sale and delivery of corrosive products

Amendment 1

Moved by ***Baroness Hamwee***

1: Clause 1, page 1, line 9, leave out first "all"

Member's explanatory statement

This amendment, along with similar amendments to this Clause, amends the defence for the offence in this section to set a less demanding standard than all reasonable precautions / all due diligence.

Baroness Hamwee (LD): My Lords, Amendment 1 is in my name and that of my noble friend Lord Paddick, as are all the other amendments in this group—Amendments 2, 15, 16, 25, 26, 64, 65, 67, 68, 70 to 73, 78 and 79—16 amendments, each deleting a three-letter word. The word is "all", as in taking "all reasonable precautions" and exercising "all due diligence" in connection with the sale of corrosive products to someone under 18, in Clause 1; the sale of bladed articles to someone under 18, in Clause 15; and the delivery of bladed articles to residential premises, in Clause 18. These are defences to the offences contained in those clauses, so it is no minor matter.

The meaning of "all reasonable precautions" and "all due diligence" emerged in Committee. The noble Lord, Lord Lucas, raised it, others followed it up, and the noble and learned Lord, Lord Judge, said:

"If I might say so, 'all' means 'every'. Without 'all', you have just to take reasonable precautions and show due diligence. Once you put 'all' in, you fall foul of any particular point you could have but did not look at and did not do".

Clearly, this is a very high bar, and it took a number of noble Lords somewhat by surprise, I think. I am unclear about what it might mean, particularly when coupled with "reasonableness", because it is not just about doing the reasonable thing; it is about doing every reasonable thing. The Minister said in that debate:

"All roads are leading back to the guidance",—[*Official Report*, 28/1/19; col. GC 163.]

having told the Committee that the Government want to produce guidance—we will debate that later—to ensure that retailers and sellers know what steps they could take, with regard to Clause 1, to ensure that they comply with the law. On the wording, is it about steps that they can take or steps that they must take? It seems to me that the wording used throughout the Bill does not allow for common-sense alternatives or even minor omissions. Of course, guidance is produced by the Executive, not by Parliament. Indeed, to end with a question, will one necessarily have complied with the law, even if one follows guidance to the letter, if all reasonable precautions and all due diligence have to be applied? I beg to move.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, as the noble Baroness explained, these amendments relate to the level of burden of proof required for retailers and delivery companies if they want to avail themselves of the defences available to them if charged with an offence of selling or delivering a corrosive product or a bladed article to an under-18 or the offence of delivering a corrosive product or bladed article to a residential address. Under these amendments, retailers and delivery companies would need to prove just that they had taken reasonable precautions and exercised due diligence to avoid the commission of the relevant offence, rather than, as the Bill provides, that they took all reasonable precautions and exercised all due diligence, as the noble Baroness explained.

I am not persuaded, despite the noble Baroness's words, that it is unjust to require a person to prove that they have taken all reasonable precautions and exercised all due diligence to avoid selling or delivering corrosive products or bladed articles to under-18s or to avoid delivering such products or articles to residential premises. Retailers have had to operate to this standard under existing law and to lower the burden of proof would leave us with a burden of proof in the Bill that was out of sync with existing legislation. I will give some examples.

Under Section 141A(4) of the Criminal Justice Act 1988, it is a defence for someone charged with the offence of selling a knife to an under-18 if they can prove that they,

[Baroness Williams of Trafford]

"took all reasonable precautions and exercised all due diligence to avoid the commission of the offence".

The Licensing Act 2003 requires a defendant to prove that,

"he had taken all reasonable steps to establish the individual's age",

in regard to the selling of alcohol to an under-18. Under Section 7 of the Children and Young Persons Act 1933, which prohibits the sale of tobacco to under-18s, the defence is in similar terms. Part 4 of the Gambling Act 2005 includes various offences in relation to children; under Section 63, it is a defence to show that the defendant "took all reasonable steps".

As a result of these examples in law, I urge that the higher burden of proof is an established defence, and one which has been in place for a significant amount of time without issue. Retailers now know what is required of them by way of proof if they wish to make use of the defence if charged with the offence of selling a knife or bladed article to an under-18. It is understood by retailers, Trading Standards and the police. Having two different burdens of proof in place would, I think, be confusing to all concerned. I do not think it would help the police, Trading Standards officers, prosecutors or the courts. Noble Lords are always calling for consistency, and I think there is a strong argument for consistency here. I hope that, on reflection, the noble Baroness, Lady Hamwee, would agree and be happy to withdraw the amendment.

Baroness Hamwee: My Lords, it is certainly a burden in the sense of the weight of it rather than the balance of it, which is how we normally consider the burden of proof. The Minister says that retailers now know. My question was whether they will know from the guidance that is to be produced. I shall have to leave that hanging, as this is the point that we are at. Maybe the Minister will be able to answer that when we come to the next group and talk about guidance. Perhaps we will also have to wait for an answer on whether guidance across all the offences—not just those within this Bill but others that the Minister mentioned—will be consistent. Clearly, we are not going to be of the same mind here but I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2 not moved.

6.30 pm

Amendment 3

Moved by ***Baroness Hamwee***

3: Clause 1, page 1, line 10, at end insert—

"( ) The Secretary of State must, within one month of the coming into force of this section, publish guidance as to how the requirements of the defence under subsection (2) may be fulfilled."

Member's explanatory statement

This amendment, following the Minister's remarks at Committee stage (28 January, HL Deb, col 160GC), is intended to ensure that guidance will be issued, so that those responsible for designing and carrying out checking procedures will be able to judge their adequacy.

Baroness Hamwee: My Lords, the noble Lord, Lord Lucas, is unable to be here but has asked me to move this amendment on his behalf so that we may get the matter on the record. However, I will not speak to Amendment 81, which is in this group and also in his name, because he will get the opportunity to do so if we leave it to be discussed in sequence on the next day of Report.

The amendment seeks guidance. We have government amendments in this group, and no doubt the answer to Amendment 3 is Amendment 106. In the Government's amendment, the guidance is about a large number of offences relating to various sections in legislation, including Clause 1 of this Bill, and therefore it covers a wide area. Guidance can be very helpful—it sounds as though it will be essential here—but, as I have said before, it should not take the place of clear primary legislation. It is executive, not legislative. I beg to move.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 3 in the name of the noble Lord, Lord Lucas, and moved by the noble Baroness, Lady Hamwee, and the noble Lord's Amendment 81, which he will speak to himself when we come to that point in the Bill, ask the Secretary of State to issue guidance. We are placing burdens on shop workers and delivery drivers, and it is incumbent on the Government to issue proper guidance. I know that we have the government amendments and I look forward to the Minister setting them out, as we have a situation where people can be prosecuted and end up in prison, so we need to make sure that they understand their responsibilities. I look forward to the Minister setting that out for the House.

The Earl of Erroll (CB): My Lords, I think that a bit of certainty here is essential. One of the problems that exist elsewhere is uncertainty surrounding what is going to be required. It is very difficult for traders if they do not know what part they are going to play. However, when we come to the next amendment I will say something about that which I think will be helpful.

Baroness Williams of Trafford: I thank noble Lords for their comments. I agree that, as the noble Lord, Lord Kennedy, and the noble Earl, Lord Erroll, pointed out, people have to understand their responsibilities. In Committee there was much debate about the need for guidance, particularly for retailers, manufacturers, delivery companies and the like, about the operation of the provisions in the Bill relating to the sale and delivery of corrosive products and offensive weapons.

In response to the debate in Committee, I said that it was our intention to issue appropriate guidance. A number of noble Lords, including my noble friend Lord Lucas, wanted to see that commitment reflected in the Bill, and government Amendment 106 does just that. It enables the Home Secretary, Scottish Ministers and the Northern Ireland Department of Justice, as the case may be, to issue guidance about the provisions in the Bill, and the existing law as amended by the Bill, relating to corrosives and offensive weapons.

Importantly, the amendment also sets out that, before guidance is published, the relevant national authority must consult,

"such persons likely to be affected by it as the authority considers appropriate".

We would, for example, expect to consult organisations representing both small and large retailers of knives and corrosive products. This would ensure that those directly impacted by these measures have a hand in developing the guidance that is most useful to them. That is an important part of the Bill.

Were he in his place, I hope that my noble friend Lord Lucas would agree that government Amendment 106 covers similar ground to his Amendments 3 and 81 and, indeed, provides a more comprehensive list of the provisions where it might be appropriate to issue guidance. Government Amendments 108, 112 and 113 are consequential to Amendment 106. I hope that on that basis the noble Baroness will be content to withdraw Amendment 3 and support the government amendments.

Baroness Hamwee: My Lords, I am indeed. I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendment 4

Moved by ***Lord Paddick***

4: Clause 1, page 1, line 19, after second "if" insert "they used a prescribed electronic method of establishing the purchaser's age, or"

Member's explanatory statement

This amendment is intended to enable the Bill to encompass such electronic systems of age verification as Yoti once those systems have passed scrutiny by the Home Office, as a way of addressing age verification challenges.

Lord Paddick (LD): My Lords, on behalf of the noble Lord, Lord Lucas, and at his request, I move Amendment 4 and shall speak also to Amendment 69 in this group.

Amendment 4 is intended to enable the Bill to encompass electronic systems of age verification such as Yoti, once those systems have passed scrutiny by the Home Office, as a way of addressing age verification challenges. With regard to Amendment 69, the Bill requires retailers to undertake age verification online and offline. In the absence of recognised standards against which online or offline age verification schemes can be audited and recognised, this amendment allows retailers to comply with the requirements of the Bill through any scheme they choose which is recognised by the Secretary of State. I beg to move.

Lord Kennedy of Southwark: My Lords, Amendments 4 and 69, moved by the noble Lord, Lord Paddick, on behalf of the noble Lord, Lord Lucas, raise the issue of age verification. Our world is becoming more digital and, when age verification can be done digitally, it should obviously be done in that way. That might not be possible yet but it is becoming easier and, if it can be done, it certainly should be. I have to admit that I had never heard of Yoti. Perhaps I am showing my age but I had absolutely no idea what it was. However, I have learned something today. Amendment 69 would provide for schemes to be recognised by the Secretary of State as suitable for this purpose and would provide for the maintenance and updating of a list of those schemes. That seems sensible and I certainly support the amendments.

The Earl of Erroll: My Lords, I want to say a couple of things about this as I have been involved in this area for some time as a result of the Digital Economy Act, which raised exactly the same challenge of trying to check people's ages. As a result, a lot of work has gone into doing this online or electronically. We can use technology to make this work and that technology exists now.

The great thing is that most young people now have a smartphone, which checks that the correct person is using it as many people now access their phone using a fingerprint or another biometric, such as face recognition. Many of your Lordships probably have a mobile smartphone issued by the House which they unlock with their thumb print, so it is possible to know whose phone it is. Therefore, that can work, and several age check providers—not just the one mentioned, although it is one of the leading ones—are experts in establishing proof of age. They will check people.

A lot of young people will establish their age when they first register if that is the only way that they can operate in the future. They will be checked against another document or something else, so the age check providers know how to do that. When it comes to proving their age to someone else, they do not have to release any personal details; it can be proved on their smartphone or online. What is released is not proof of age but the result of the age check, and a certificate can be issued to show that that has been done.

Therefore, there are several solutions. As I have mentioned before, if noble Lords want to see what they are like, they can go to dpatechgateway.co.uk. If they want to, noble Lords can see that in *Hansard* later. You can look at and try several solutions there and see how easy they are: these solutions will work very easily online and at the point of delivery by using the recipient's mobile or similar technology. They are all compliant with the British Standards Institution's Publicly Available Specification 1296, which goes into exactly how to do this and how to verify that people have done it properly. It also has addenda about privacy and everything like that. I know this because I chaired the steering group—I suppose this is an interest, but I did not get paid for it.

It frustrates me that the technology is there and this Bill says that,

"the accused is to be treated as having taken reasonable steps to establish the purchaser's age if and only if … the accused was shown any of the documents mentioned in subsection (5)".

The first two of those are "a passport" and,

"a European Union photocard driving licence".

I suppose that becomes a problem in a few months' time—or a few years' time—because I do not know if the UK photocard licence will be good enough. The list continues:

"such other document, or a document of such other description, as the Scottish Ministers may prescribe by order".

[The Earl of Erroll]
Does that apply to things in England as well if one Scottish Minister okays it—"The English can use that too"—or are we stuck with a passport? How many people over 18 do not have a passport? The Home Office could enter the 21st century and start to realise that this stuff can be done much more effectively using modern technology. We know that not all passports are genuine. We can move to better standards than are prescribed in this Bill.

Baroness Barran (Con): I am grateful to the noble Lord, Lord Paddick, for moving this amendment in the absence of my noble friend Lord Lucas. The two amendments allow us to consider the merits of prescribing one or more specific electronic methods for establishing the age of a purchaser of a corrosive product or bladed article as an alternative to the examination of official documents such as a passport or driving licence.

Amendment 4 would enable an electronic method of age verification to be prescribed solely for use in Scotland. I assume this is because Clause 1 imposes particular requirements on retailers in Scotland if they wish to benefit from the defence of having taken reasonable steps to establish the purchaser's age. In Scotland, in line with a number of existing age verification laws that operate in that part of the UK, a retailer is obliged to establish a purchaser's age by examining his or her passport, photocard driving licence or other document, as prescribed by the Scottish Ministers. There is no such requirement in England and Wales and Northern Ireland. Consequently, Clause 1 would not preclude the use of electronic age verification technology.

The age verification requirements as they apply to Scotland have been discussed and agreed with the Scottish Government and are intended to reflect the law as it currently applies to other age-restricted products. We have drawn the Scottish Government's attention to my noble friend's amendment and will ensure that they have sight of this debate. However, they have advised that they would prefer any steps in this area to be taken on a consistent basis across all age verification provisions. As such, they have advised that we should be wary of introducing in this Bill new procedures on a piecemeal basis that disturb wider current age verification procedures related to the sale of age-restricted products in Scotland.

In short, I commend the development of technological solutions to age verification. I am sure that this is something that the Scottish Government will want to look at in future. However, any change to the current arrangements regarding age-restricted products in Scotland should be considered across the piece and not in isolation. As I have said, we will draw the Scottish Government's attention to this debate.

Amendment 69 would require the Secretary of State to publish and maintain a list of systems assessed as suitable for online and offline age verification. Again, I recognise the place for the use of technology to verify the age of a person seeking to purchase age-restricted products, as a number of noble Lords have mentioned. However, I have concerns about what is proposed here.

I am sure noble Lords would accept that Government cannot be seen to be endorsing one or more proprietary age verification systems over others. There are different types of age verification systems available and a number of different providers. The technology behind these systems is continuing to develop at a very fast pace. There is a danger that, if we prescribe a specific electronic method for age verification, this could quickly be overtaken by technological innovations.

6.45 pm

I am also concerned about the appropriateness of the Government telling retailers what age verification systems they should procure and use. Technology-based systems may be right for some retailers but not all. It is for retailers and businesses to decide what system works best for their business models and will allow them to demonstrate that they took all reasonable precautions and exercised all due diligence to prevent the sale and delivery of corrosive products or bladed articles to under-18s.

Furthermore, we need to remember that there are already established policies in place through Challenge 21 or Challenge 25 which allow customers to provide different forms of ID to prove their age, such as a passport or photocard driving licence. I recognise that these amendments are not intended to mandate the use of an electronic age verification system and rule out the continued examination of physical documents. Retailers and customers alike may want a range of different options available.

I am not convinced that requiring the Secretary of State to assess, publish and maintain a list of age verification systems is the right approach. In effect, the Government would be saying that particular systems were appropriate for the sale of bladed articles when there are others available on the market and in use with other age-restricted products.

As I have already said on Amendment 4, there needs to be a consistent approach across all age-restricted provisions, otherwise I fear we will be in danger of setting different standards or specifications for different age-restricted products. This is not the right approach in the absence of national standards. That is not to say that we cannot provide some guidance to retailers in this area: government Amendment 106, which we have just debated, will enable us to do just that.

In the light of this explanation and my undertaking to explore how to address age verification in the proposed statutory guidance, I hope that the noble Lord will be content to withdraw Amendment 4.

The Earl of Erroll: Before the noble Baroness sits down, I would like to correct her: there is a British standard. As I mentioned, it is PAS 1296. It is technology independent, does not specify anything and is written to be as future-proof as possible. I recommend it to her as some bedside reading to bring her into the 21st century.

Baroness Barran: I will certainly do that. I reassure the noble Lord that I did go to dpatechgateway.co.uk, so my bedside reading is now complete.

Lord Paddick: I thank the Minister for her explanation, although I am a little confused. My understanding is that, as part of compulsory age verification for access to online pornography, there is a list of age verification systems endorsed by the British Board of Film Classification on the Government's behalf, and that these online pornography sites have to comply with the restrictions that the BBFC imposes in line with government instructions. Therefore, there is some age verification that relies on electronic systems, so a lot of what the Minister says seems to contradict what is happening in another part of the Government, the DCMS.

I thank other noble Lords for speaking to these amendments. The noble Lord, Lord Lucas, wanted the Government's response on the record. We now have this, so I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendment 5

Moved by ***Baroness Hamwee***

5: Clause 1, page 2, line 15, leave out from "Wales," to end of line 16 and insert "to a fine"

Member's explanatory statement

This amendment, along with other amendments to this Clause, would remove the short term prison sentences from the offence in this section.

Baroness Hamwee: My Lords, in moving Amendment 5 in my name and that of my noble friend Lord Paddick, I shall speak also to Amendments 6, 7, 20, 21, 22, 28, 29, 30, 31, 32 and 34.

For most of us in society, the idea of going to prison for even a short amount of time, with the loss of liberty that that entails, is a real deterrent. But that thinking fails to get into the mindset of many of today's criminals, who may be reckless or who may not fear prison because they have friends and family who have done time. Perhaps their lives are so chaotic that, in the scheme of things, prison does not seem so bad. That is true of no group more than those serving the shortest sentences. It was recently said:

"In the last five years, just over a quarter of a million custodial sentences have been given to offenders for six months or less; over 300,000 sentences were for 12 months or less. But nearly two thirds of those offenders go on to commit a further crime within a year of being released. 27% of all reoffending is committed by people who have served short sentences of 12 months or less. For the offenders completing these short sentences whose lives are destabilised, and for society which incurs a heavy financial and social cost, prison simply isn't working".

By now noble Lords may have recognised the source of this quotation. The speaker went on to say that,

"there is a very strong case to abolish sentences of six months or less altogether, with some closely defined exceptions, and put in their place a robust community order regime. Let's be honest. The public will always want to prioritise schools or hospitals over the criminal justice system when it comes to public spending. But where we do spend on the criminal justice system, we must spend on what works. Why would we spend taxpayers' money doing what we know doesn't work, and indeed, makes us less safe? We shouldn't".

Thank you, Justice Secretary, for putting the case so well.

I commented at the last stage of this Bill that, not so long ago, the Home Office and the MoJ were a single department. It was too big, but it is a great pity that thinking has moved so far apart that one department is now legislating for a sanction which the other considers unproductive.

These amendments would remove the sanction of short-term imprisonment for up to 51 weeks—the same points apply as those made by Mr Gauke in his speech a few days ago. We are dealing with various offences: the sale of corrosives to under-18s, the delivery of corrosives to residential premises and having the corrosive in a public place. We would have preferred to focus on robust community sentences, but we learned during the last stage that they can be applied only as an alternative to a custodial sentence. In my view, that needs updating—but that is for another day. I hope that the Government might address this: otherwise, we will do so at a suitable opportunity.

In Committee, it was said, understandably, that victims feel let down because community sentences do not have the same weight and are ineffective. That is an important issue, which should be addressed by the robustness of community sentences. I have heard over the years that a tough community sentence is much harder than custody.

The offences in question are rather difficult. The first two that I mentioned are likely to be committed by adults. Being found to have committed a criminal offence and being fined, which is what our amendments would achieve, would have a serious impact on the offender as an employee—or possibly, in the circumstances, as an ex-employee. The third offence may be committed by an adult but also by a child. The arguments about custodial sentences being rather good at fitting someone for a life of crime particularly apply.

The Minister in Committee talked about the significant harm that corrosive products can cause if misused. The offences in question, which are the subject of these amendments, are not about the use of corrosives as a weapon. We are not seeking to minimise or make light of the harm that corrosives can cause; that is not the point. The Minister will also say that the court has discretion as to disposal, which is of course true up to a point.

That takes me to Clauses 8 and 9—the subject of the last two amendments in this group—which we would leave out. They require particular, mandatory sentences. Clause 8 applies to, among others, children over 16 who have one previous relevant conviction. We are concerned about the age threshold, for reasons that we went into fairly extensively at the last stage and which, I suspect, other noble Lords may raise today. I say in advance that I will probably agree with them. We have an in-principle objection to mandatory sentences. The Minister described them as providing the appropriate custodial sentence. But is not "appropriate" something that the court should determine? We may have criticisms of pre-sentence reports and so on, but the court is looking at both the offence and the offender; those taken together will lead the court to take a view on what is appropriate.

[Baroness Hamwee]

In Committee, we explained our opposition to the application to under-18s—I felt then, and still feel, that Clause 8(4) is inadequate. It is, if I may put it this way, the legislative equivalent of lip service that,

"the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933".

The text refers back to Clause 8(2), which tells the court that if it is,

"of the opinion that there are particular circumstances",

it can take a different course. But the circumstances here are that the person is under 18. So how does having regard to the welfare of the child or young person actually work? Does it mean that one child is more resilient than another, that one offence is less serious than another, or that the circumstances make custody "unjust"? This is what discretion in sentencing is about, and these Benches prefer judicial discretion to executive sentencing. I beg to move.

Lord Hogan-Howe (CB): My Lords, I am going to say some contradictory things on this amendment—I have spent a career doing that, so it is perhaps not that unusual. Fundamentally, I think we probably need fewer people in prison. We could probably manage with half the number we have now. The question might be how we get there. As the noble Baroness, Lady Hamwee, mentioned, the Government have said that they would like to have less use—if not no use—of short sentences, so this seems a little contradictory. I would not do that myself; I would find other measures to reduce the prison population. That would probably mean releasing people at the end of their sentence rather than not putting them in there in the first place should it be deemed that they have committed a serious offence.

Here we should come back to the idea that prison is needed as a sanction in these cases; I think that it is relevant. There is no doubt that prison is not helpful for recidivism. All the evidence shows that, when people go to prison, some 80% reoffend within two years of their release. The most effective mechanism for reducing recidivism is called a police caution: broadly, 70% of those who offend never reoffend when they have received a police caution. So prison on the whole will not help with recidivism, but of course while offenders are in there, they will not attack members of the public—although they might attack each other.

The offences here are serious enough for prison at least to be considered. There would obviously then be a debate on how long the sentences should be. If the Government do decide to exclude short sentences, either on this occasion or as a general policy, that would also exclude things like weekend sentences, which would help reduce the prison population. They can be a very constructive way of reintegrating someone after a long sentence, or they can be an alternative to a short sentence.

7 pm

Short-term imprisonment can be effective, and certainly I would not exclude it altogether. I support the Government in having a prison sentence available, with the challenge pointed out by the noble Baroness, Lady Hamwee, that the younger the offender, the less likely they are to be imprisoned, which I think is quite appropriate.

The biggest problem we have at the moment is that the large increase we have seen in knife crime has found more young victims and more young offenders, so we do have to send a clear message. It is not unique, although it is unusual, to have a minimum sentence, but anybody over the age of 18 in possession of a firearm will go to prison for five years on first conviction. That is a very clear message that is understood by those who are likely to carry a firearm. I am afraid that we need to send a similar message to those who carry knives, because the culture at the moment is that people feel it is okay to do so—and presumably okay to sell people knives or corrosive substances which they then go on to reoffend with. It is important to send a message as well as to give individual sanctions in these cases.

Lord Elton (Con): My Lords, I too want to say something controversial, which I think the noble Lord, Lord Hogan-Howe, will find more controversial than most. I was convinced, 35 years ago, on incontrovertible evidence, that a course of non-custodial treatment was more effective than a custodial sentence in curing people of crime. The people in question were young people, and since then I have devoted a great deal of my life to trying to stop young people getting into crime. For three years I was in charge of the Prison Service, and nothing that I saw there changed my mind. Thereafter, I became chairman of the National Fund for Intermediate Treatment, the function of which was to provide excellent treatment in the community for offenders, which was monitored. When government funding was withdrawn, I founded a charity to do the same thing.

Non-custodial treatment must be done properly—it is not about turning up and ticking in a book or sweeping the street; what you need is an experience that the young person has not had before. In a frighteningly high percentage of cases, what these courses—or whatever you like to call them—provide is the first experience a young person has of an adult who actually cares what they are doing and what they are doing with their lives, and that has an electric effect. It cannot be produced in custody. It can be produced in outward bound programmes, in a jazz band or in whitewater rafting. It depends on the adult and young person's relationship. It works, it is far cheaper than custody and far more effective. I echo the words of the Secretary of State for Justice in support, which are powerful evidence:

"Why would we spend taxpayers' money doing what we know does not work, and indeed, that makes us less safe?"

That is what is being advocated. I do not often fall in step with noble Lords sitting on the Benches opposite, but on this occasion, my lifetime's experience means that I have to support them.

Baroness Meacher (CB): My Lords, I support these amendments. The one thing we know about short sentences is that people do not receive any education, training, therapy—anything at all, in fact, because, well, they are not there long enough to benefit. Therefore,

as the noble Lord said, why on earth do we spend all this money only to create hardened criminals? I very strongly support these amendments.

Lord Ramsbotham (CB): My Lords, I too support the amendments. I was at the speech given by the Secretary of State for Justice last Monday, in which he said that in the last five years, there have been just over 250,000 custodial sentences of six months or less, and over 300,000 of 12 months or less. He went on to say that nearly two-thirds of the offenders had gone on to commit further crime within a year of being released. He also said that the Government were now taking a more punitive approach than at any time during the Thatcher years, which I thought was a strange admission from him. I wrote to him pointing out that this Bill appears to be him against the Home Secretary, and he replied today that "work in the area will require careful collaboration with other government departments to ensure a consistent approach to sentencing reform which reflects my ambitions and, most importantly, keeps the public safe".

Everything has been said about the growing body of evidence that diverting children away from the formal justice system is more effective at reducing offending than punitive responses, and I agree very much with the noble Lord, Lord Elton, on that. I also deplore the removing of judicial discretion, which works against the Sentencing Council's guidelines. The UN Convention on the Rights of the Child resolved that the interests of the children must be placed first. Mandatory short prison sentences have been proved to be ineffective—I have seen them to be ineffective—because, as the noble Baroness, Lady Meacher, said, there is nothing happening in any young offender institution which is worth the while, and if people are there for a short time, nobody has time to establish their needs, let alone tackle them. Therefore, I strongly support the amendments.

The Earl of Listowel (CB): My Lords, I also support these amendments, particularly Amendment 32, which would remove Clause 8. I worked in an intermediate treatment centre many years ago. It was an astounding institution. May I say how grateful I am to the noble Lord, Lord Elton, for leading this extraordinary work?

I am a trustee of a mental health service for adolescents, a charity that works with a local youth offending team, and also works in schools with young men, mostly BAME boys with behavioural issues. It is called Sport and Thought, and it can transform lives; teachers are shocked at the difference that this intervention can make. It involves working with a therapist and a football coach. There are such good and effective ways of turning these young peoples' lives around, so I really do share the concerns voiced.

Crispin Blunt, the former Parliamentary Under-Secretary of State for Prisons and Youth Justice, was speaking at an open meeting three weeks ago. I raised the question of mandatory sentencing. He said that it does not work, it inflates the numbers of people going into prison and is completely counterproductive. To have mandatory sentencing for 16 and 17 year-olds is against logic.

We must remember where we came from. About 10 years ago, we had 3,000 children in custody, by far the largest number in Europe. All parties were very concerned about this, and thanks to the work of the coalition Government, we reduced it to 1,000. We do not want to go back there. I recognise the deep concerns about this terrible offence of throwing corrosive substances at people. Yes, there must be a robust response, but in trying to protect children from these offences, let us not put them in harm's way.

I visited a prison four or five years ago with the chair of the Youth Justice Board for England and Wales. She said that because we had been so effective at reducing the numbers of children in custody, those in prison now are the very toughest and most challenging children. She said that by obliging courts to put many of the children subject to this offence into custody, they are very likely to be bullied or to traumatise themselves. It makes them into more hardened criminals in the longer term if we do this.

I have to think about our responsibility in this area. It is very easy to appoint blame but let us look at the very high rate of exclusions from schools at the moment. I think that we are still waiting for Mr Timpson's report, but when children are excluded from school, they are so much more likely to get involved in this sort of activity. Look at the cuts in funding for early intervention services; as an officer of the All-party Parliamentary Group for Children, I know very well how all those important services for supporting families have been deeply cut, due to understandable financial and economic circumstances—but they have been cut to the bone. So many children's centres have been closed down.

Another issue, which perhaps does not get talked about enough, is that many of these children—many boys—are growing up without fathers. In certain ethnic groups, 60% of these boys grow up without fathers in the home. My noble friend Lord Hogan-Howe was talking about investing more in mentors for such young people, which can make a huge difference in their lives.

When dealing with challenging young people, my experience from a long time of working with troubled adolescents is always that it is so tempting to come in hard, perhaps if you are working in a children's home and a child provokes you. The extreme is known as pin down, where one might chain children to beds or whatever. It is always tempting to come in hard but the thoughtful, considerate, effective professionals stand back and try to be dispassionate. They try to do what is most effective, not what appeals most to the emotions.

I recognise the difficulty that the Government are in and that they wish to make a robust response, but perhaps they might listen to the advice of the noble Lord, Lord Elton. I strongly support Amendment 32, which would remove Clause 8 from the Bill.

Lord Kennedy of Southwark: My Lords, I am happy to support the noble Lord's amendments today. The noble Baroness wants to stop short sentences; debates are going on now in the country about those. We have heard the quote from David Gauke, the Justice Secretary, who wants to reduce these short sentences and the

[Lord Kennedy of Southwark]
prison population. I agree with him, and with the noble Lord, Lord Hogan-Howe, that we need many fewer people in prison. The problem we have is that for the court to be able to impose a community penalty, there must be an option of imprisonment for it to impose. I am a supporter of the greater use of community penalties, but they have to be of a standard that challenges the offending behaviour and helps with the rehabilitation of the offender; otherwise, they have no effect whatever. I agree very much with the noble Lord, Lord Elton, about the importance of these penalties being effective.

Many years ago, I was a magistrate and served on the Coventry bench when I lived in the Midlands. We would often get people coming back into the court who had breached or not delivered on their order. When you talked to them, all they would say is, "I was given X number of hours as a community penalty. I have now turned up for three Saturdays in a row and no one is there to actually see me, so I've booked the day off—or I might be given an hour and then sent home". They got to the point of thinking, "I'm not going to come back again", because they turned up and it was a complete waste of time. So if we are to have a community penalty, it has to be rigorous and challenge the offending behaviour. We cannot have a situation where people turn up and have nothing to do. That is very important.

I also spent a bit of time recently with the Met Police in Greenwich. There is a really good unit there that works with young people who are on the edge of falling into criminality. The unit works with these people and has made a tremendous change to them. When they work with them, you can see the change. As other noble Lords have said, it is probably the first time that an adult has taken any interest in them whatsoever. That has an effect. I met some of the older young people whose lives have been changed and were now helping the younger people. They said, "Yes, it was PC so-and-so who helped me to turn things around". Lots of good work is going on but it has to be meaningful. People are not going to turn up each day if it is a complete waste of time; we cannot have that.

For the present, however, we have to leave these matters for the courts to decide. As the noble Baroness, Lady Hamwee, said, we may need to think about decoupling community sentences from prison sentences, so that they can impose a community penalty. That would of course require us to amend the Criminal Justice Act 2003, and I hope the Government will consider that. We might bring that back at a future date because it could give us the chance to do other things. Given the amendments before us, I do not think that fines are necessarily the right thing. The courts need to have a suite of things but if we could decouple those, it would certainly be progress. I look forward to the Minister's response.

7.15 pm

Baroness Williams of Trafford: I thank noble Lords who have spoken to these amendments, which are about the use of short custodial sentences and minimum custodial sentences. I have reflected on the concerns raised in Committee by noble Lords but I remain of the view that there is—as noble Lords have reiterated today—a place for custodial sentences as part of the range of penalties available to the court for the offences in the Bill. The noble Lords, Lord Hogan-Howe and Lord Kennedy, articulated that.

In Committee, I stressed the significant harm and injuries that corrosive products can cause if they are misused as a weapon to attack someone. We are talking about a serious offence, one for which the use of custody should be available to the courts in certain circumstances. I was very grateful to the noble and learned Lord, Lord Judge, who is not in his place today, when he made the point in Committee that custodial sentences have a place when dealing with specific types of offenders. He referenced cases where a retailer has repeatedly sold a corrosive product to under-18s and may have already been subject to a community sentence. That is one set of circumstances; there may be others where the offending is so serious that only a custodial penalty should be imposed.

In the earlier debate the noble Lord, Lord Kennedy, was concerned that a range of different sentencing options is available to the courts. I want to stress that by providing custody as a maximum penalty, we are providing the courts with a range of sentencing options from custody through to a fine, or both. This means, to speak to the points made by my noble friend Lord Elton, the noble Baroness, Lady Meacher, and the noble Earl, Lord Listowel, that the courts will also have the option to impose a community sentence. As the noble Lord, Lord Kennedy, said, the application of these sentences has to be meaningful, but they can be imposed if they are the most appropriate sentence, taking into account all the circumstances of the offender and the offence. As I said in Committee, there is also a requirement under the Criminal Justice Act 2003 that the court has to be satisfied that the offence is so serious that only a custodial sentence can be justified. We can have every confidence that the courts will sentence offenders appropriately, based on the circumstances of the offender and the offence.

Lord Elton: Can my noble friend assist me? I ask forgiveness for my ignorance but as I read subsection (7), it says:

"A person guilty of an offence … on summary conviction in England and Wales",

is liable to be imprisoned,

"for a term not exceeding 51 weeks, to a fine or to both".

There is no reference to any other treatment or sentence. My noble friend said that there was access to that; I would be grateful if she could tell me how it died.

Baroness Williams of Trafford: I do not know whether my noble friend was in Committee, but when the amendment on having just a community sentence was moved, we discussed the fact that when there is the possibility of a custodial sentence, it is open to the courts to impose that or a lesser sentence such as a community sentence, which can have the conditions that the noble Lord, Lord Kennedy, and my noble friend referred to earlier. It is open to the courts to have some flexibility over what the penalty should be,

as it relates to the particular offence that has been committed. We also discussed in Committee that under the Criminal Justice Act 2003, the court has to be satisfied that the offence is so serious that only a custodial sentence can be justified. I hope and think that we can have confidence that the courts will sentence offenders appropriately, based on the circumstances of both the offence and the offender.

Lord Elton: If I may trouble my noble friend once more, as I read it, they are prohibited from applying a sentence of more than the time specified in the Act. My objection is to exactly that: the short duration. If there has to be custody, it needs to be long enough for the person to be assessed, treated and known properly. Six months does not do it.

Baroness Williams of Trafford: My noble friend is absolutely right about the maximum sentence, but alights on an important aspect of someone's rehabilitation, which is not just about the custodial sentence—it is about all the other interventions that go with it, both while that person is in custody and upon release.

The other difficulty with the amendments is the damage that they do in undermining the steps we have taken in the Bill to ensure consistency, regarding the maximum penalty available to the courts when dealing with offences relating to the sale to a person under 18 of corrosive products on one hand, and of a knife or bladed article on the other. When the Bill was considered in Committee in the Commons, there was strong support from the Opposition for a consistent approach to be taken.

I am well aware of concerns about individual retail staff or delivery drivers being prosecuted, and the impact that would have on them. However, the experience from other age-restricted products is that in many cases it would be the company selling the product or arranging its delivery that would be prosecuted. There could be occasions when it might be a shop worker who was prosecuted, but it is more likely that it will be the company operating the store, because it will be responsible for ensuring that procedures and training are in place to avoid commission of the offence. Where it is the company that is prosecuted, the sentence is likely to be a fine rather than a custodial or community sentence; but if an individual is prosecuted, the full range of penalties should be available.

Lord Kennedy of Southwark: The Minister mentions an interesting point, about the company being prosecuted, and then talked about the range of penalties. Would it be an individual, such as the chief executive, managing director or personnel director, who would be prosecuted?

Baroness Williams of Trafford: In precedence for these sorts of cases, it is quite often the company that is prosecuted, with a fine—of a range—imposed on it. Obviously, if an individual is prosecuted, the full range of penalties should be available.

Lord Kennedy of Southwark: When we had the debate before, I think it was suggested by one of the Minister's noble friends that when health and safety law changed and responsibility was brought to bear on company directors, all of a sudden health and safety improved dramatically in this country. If the company directors or chief executive were more liable, the training they gave to their staff might dramatically improve.

Baroness Williams of Trafford: The prosecution may well fall on a director, because the director is seen to have fallen short in some of the processes to comply with the law. However, yes, it is usually the corporate body rather than the director, but I see the noble Lord's point.

We have heard that there is evidence that short sentences are ineffectual regarding rehabilitation. The Justice Secretary and Prisons Minister are looking at the question of short sentences and the use of prison in the round. A number of noble Lords have raised that; the noble Baroness, Lady Hamwee, quoted the Justice Secretary in a speech on this very subject.

We have already been clear that custodial sentences should be seen as a last resort, and that offenders with complex needs—including female offenders—should be dealt with in the community wherever possible. However, we must ensure that sentencing matches the severity of a crime, and prison must always be available for the most serious offenders. I am concerned that we do not send out the wrong message that the use of corrosives as a weapon is somehow less serious than the use of knives.

Amendments 32 and 34 seek to strike out the provisions in respect of mandatory minimum sentences in Clauses 8 and 9. Again, the effect would be to treat carrying corrosive substances in a public place less seriously than carrying a knife. These clauses mirror existing knife legislation, and ensure that anyone aged 16 or over who is convicted of a second possession offence or a similar offence—such as an offence relating to a knife—will receive a custodial sentence unless the court determines that there are appropriate circumstances not to do so. The use of minimum custodial sentences will make it clear to individuals that we will not tolerate people carrying corrosives on our streets and other public places with the intention to harm or commit other crimes, such as robbery.

We are talking about serious offences here, where someone is carrying a corrosive substance which could result in someone being attacked and left with terrible injuries, as well as the fear that this can instil into communities. We should bear in mind that the requirement to impose the minimum sentence is not absolute; there is judicial discretion. The court must consider the circumstances of the case, and if there are relevant factors that would make it unjust to impose the minimum sentence, the court has the latitude not to do so.

I recognise that there is a wider debate to be had about our sentencing framework, but this Bill is not the place for it. We are dealing here with particular offences and seeking to ensure consistency between how the criminal law deals with the sale, delivery and possession of corrosive products and substances on one hand, and of knives and offensive weapons on the other. On that basis, I hope that I have been able to persuade the noble Baroness to withdraw her amendment. If not, I invite the House to agree that for these

[Baroness Williams of Trafford]
offences, short custodial sentences and minimum custodial sentences continue to have a place, and that noble Lords will accordingly reject the amendment.

Baroness Hamwee: I am grateful to all noble Lords who have contributed. The noble Lord, Lord Hogan-Howe, may not expect me to be grateful, but I am. His raising the issue of weekend sentences was very interesting, and confirms what has come from a number of noble Lords—that the legislation around sentencing generally needs a good look at and some updating to how it operates. Even if you take a firm position one way or the other regarding short sentences, the way that the provisions in legislation interact is clearly troubling a number of noble Lords.

I do not want to respond to all the points made and repeat what I have already said. I am sure that the noble Lord, Lord Hogan-Howe, and my noble friend Lord Paddick could reel off the offences that might be used in the case of the use of corrosive substances causing injury. That is not the subject of these amendments or of the clauses in question.

I also regret the absence of the noble and learned Lord, Lord Judge, who has made it very clear that he opposes mandatory sentences. I will leave it at that point and beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Amendments 6 and 7 not moved.

7.30 pm

Amendment 8

Moved by ***Baroness Barran***

8: Clause 1, page 2, line 29, at beginning insert "Subject to subsection (13A),"

Member's explanatory statement

This amendment and the Minister's amendment at page 2, line 41 would exclude batteries from the offences in Clauses 1 to 4 relating to the sale or delivery of corrosive products.

Baroness Barran: My Lords, in Committee I undertook to consider an amendment tabled by the noble Viscount, Lord Craigavon, which sought to exclude batteries from the offences in Clauses 1 to 4 relating to the sale or delivery of corrosive products. These government amendments do just that. As I indicated in Committee, we were already aware of the unintended consequences of Clauses 1 to 4 on battery retailers and manufacturers and were working on how best to frame any exemption for batteries. We have also had discussions with representatives from the battery industry on exempting batteries, to better understand the various types of batteries available and their different uses. These government amendments will exempt all batteries from the prohibitions on the sale and delivery of corrosive products under Clauses 1 to 4. I trust that this satisfactorily deals with the point raised by the noble Viscount. I beg to move.

Viscount Craigavon (CB): My Lords, as I moved the original amendment in Committee, I will intervene first. I am grateful to the Government and the Minister for coming up with these amendments, which give me and the people I am interested in more than I asked for. That is a very good start. The wording is much clearer and more elegant than that of the amendment I tabled at the previous stage, which I described as "rather obscure". The key phrase, which will be totally intelligible to anyone reading the Act is:

"References to a corrosive product … do not include a substance or product which is contained in a battery".

I am grateful to the Government for coming up with that simple phrase.

I am also grateful to noble Lords who supported me in Committee and for all the lobbying which must have been going on outside Parliament. I support this amendment.

The Duke of Montrose (Con): My Lords, I will probe whether the amendment fully does what the Government intend on one or two points, and look at the issues surrounding wet batteries. I declare an interest as a farmer with numerous occasions to use batteries, both in vehicles and outside them. When I first read the amendment I was surprised. Noble Lords will be aware that Schedule 1 says that sulphuric acid is permitted if it is under 15% concentration. Batteries are 32%, so they contain a very corrosive substance. I recognise the problem raised by the noble Viscount, Lord Craigavon, in Committee and with the Government, for those who sell batteries. The Bill mainly tries to deal with the remote ordering and delivery of weapons and corrosive substances. By their very nature, batteries are unlikely to be sold remotely—they are normally sold in a face-to-face meeting—but it is still worth looking at what the law requires to police that.

From what the Minister said a minute ago, the new phrasing means that Clause 1(1) will not be implemented for the sale of batteries. Does this mean that anybody under 18 will be able to buy a battery, or do the Government wish to prohibit those under 18 buying wet batteries? I can also see that, in everyday use, issues might arise with Clause 6(2). How would you get around someone using a car for social or, particularly, recreational purposes having to prove that they have a good reason or lawful authority for having a battery with them? With any luck, the Government's wording will cover that.

There is a danger in the phrasing of the clause excepting sulphuric acid in a battery. Somebody might contend that they were allowed to extract the acid from the battery and carry it as a weapon. Would the Minister wish to address this at a later stage? Rather than saying,

"product which is contained in a battery",

should the amendment say, "product while contained in a battery"? You could, admittedly, say that extracting the acid was a stupid thing to do, but you never know what interpretation people will put on these things.

Clause 6(1) refers to having a corrosive substance in a public place. The Bill does define what constitutes a public place: in Scotland, particularly, it is anything other than a private residence. My concern is, perhaps,

slightly wide of the immediate issue but will this clause entail that ordinary garages or agricultural engineers, which usually have a site for monitoring and recharging batteries, will be required to install that in a secure room, so that no member of the public can access the liquid while visiting the premises and find themselves in possession of a corrosive substance in a public place?

Viscount Goschen (Con): My Lords, I spoke in support of the noble Viscount, Lord Craigavon, in Committee. I thank the Government for coming forward with an eminently practical amendment to address a consequence of the Bill that was surely never intended. This is the House of Lords doing its job quickly and properly. I thank the Minister for orchestrating this and look forward to hearing her response to my noble friend's questions.

Baroness Barran: My Lords, I thank my noble friend the Duke of Montrose for his detailed questions about the use of batteries. I can reassure him that under-18s will be allowed to buy batteries. He also asked about having a good reason to have a battery in a public place and about extracting sulphuric acid from batteries. I am not a battery expert but, as I understand it, all batteries are sealed and you would have to cut one open to remove the acid. The acid has never been used—

The Duke of Montrose: I am sure that my noble friend the Minister has looked into this in more up-to-date detail than I have. Car batteries and anything of that size are sealed, but I think there are larger batteries, with a capacity of around 100 amps, which have individual cells with a screw top. You can probably get at those rather more easily.

Baroness Barran: I think this is above my battery expertise. I was advised that even open vent batteries have caps which are sealed for home delivery, but I hope we are not going to argue with my noble friend about this. The principle behind the logic of many of the clauses is that we are trying to prohibit access to acid that has been used in attacks; there is no evidence that acid has been extracted from batteries of any type and then used in attacks. Indeed, I think I am right in saying that my noble friend Lord Goschen pointed out in Committee that this was an extremely expensive way of accessing sulphuric acid. I hope that reassures my noble friend.

Amendment 8 agreed.

Amendment 9

Moved by ***Baroness Barran***

9: Clause 1, page 2, line 36, at end insert—

"(12A) Before making regulations under subsection (12) the appropriate national authority must consult such persons likely to be affected by the regulations as the authority considers appropriate."

Member's explanatory statement

This amendment would require the appropriate national authority to consult before making regulations under Clause 1(12) which amend the list of corrosive products in Schedule 1 to the Bill.

Baroness Barran: My Lords, Schedule 1 contains a list of corrosive products for the purposes of the offences in Clauses 1 to 4 that relate to the sale and delivery of corrosive products. The Bill includes a power by regulations to amend Schedule 1. In Committee, I undertook to consider an amendment moved by the noble Lord, Lord Paddick, to require prior consultation before any such regulations are made. As I indicated in the debate, we would fully expect to consult affected persons in any event, but we are content to include an express requirement to this end in the Bill. These amendments do just that. I beg to move.

Lord Paddick: My Lords, I am grateful to the Minister for these amendments. One of the main things that irked people in the police service was people taking credit for other people's work. These amendments were originally spotted and drafted by my noble friend Lady Hamwee.

Baroness Barran: I apologise to the noble Baroness for my oversight.

Baroness Hamwee: I am not irked—I rarely get irked.

Amendment 9 agreed.

Amendments 10 and 11

Moved by ***Baroness Barran***

10: Clause 1, page 2, line 37, leave out "subsection (12)" and insert "this section"

Member's explanatory statement

This amendment is consequential on the Minister's amendment at page 2, line 36.

11: Clause 1, page 2, line 41, at end insert—

"(13A) References to a corrosive product in this section and sections 2 to 4 do not include a substance or product which is contained in a battery."

Member's explanatory statement

See the explanation of the Minister's amendment at page 2, line 29.

Amendments 10 and 11 agreed.

Schedule 1: Corrosive products

Amendment 12

Moved by ***Lord Paddick***

12: Schedule 1, page 45, leave out line 12

Member's explanatory statement

This amendment, alongside the amendment to page 45, line 17, is to probe the relationship between the Bill and the Poisons Act 1972.

Lord Paddick: My Lords, in moving this amendment I will speak also to Amendment 13. The only purpose of revisiting these amendments which we tabled in Committee is to make a point—and I refer to a letter in relation to these matters from the noble Baroness, Lady Barran, dated 12 February—about the fact that

[Lord Paddick]
two substances of the concentration specified in Schedule 1, sulphuric acid and nitric acid, are specified there as substances which should not be sold to people under the age of 18. This is despite the fact that you need a Home Office licence under the Poisons Act to buy these substances. Therefore, the chances of someone under 18 getting a Home Office licence to buy what are precursors for making explosives are diminishingly small. Indeed, in her letter the noble Baroness says that it is extremely unlikely that anyone under 18 will be able lawfully to acquire or purchase these acids. This goes to the point of a lot of this Bill—that it is there simply to send a message, which is not what we should be using legislation for. I beg to move.

Baroness Barran: My Lords, as the noble Lord, Lord Paddick, pointed out, these amendments return to the debate we had in Committee about the relationship between some of the substances we have listed in Schedule 1 to the Bill and the provisions of the Poisons Act 1972. The noble Lord is concerned that we have listed both nitric acid and sulphuric acid in Schedule 1, despite the fact that these are already regulated substances within the Poisons Act.

I reiterate the point I made in Committee, that both sulphuric and nitric acid were identified by our scientific advisers at the Defence Science and Technology Laboratory and the police as appropriate for inclusion in Schedule 1. This was because we know that sulphuric acid has been used in attacks, and that nitric acid is considered to be one of the most harmful corrosive substances. While I understand the noble Lord's concerns about including these two poisons which are already regulated under the Poisons Act, our overriding concern in framing the Bill's provisions relating to the sale and delivery of corrosive products is that we do all we can to prevent anyone under 18 getting hold of these substances. We therefore think it is appropriate that they are included in Schedule 1.

7.45 pm

As I also said in Committee, we have discussed the substances and concentration limits within Schedule 1 with both manufacturer and retail trade associations. They did not raise concerns about their inclusion, even though they were already regulated substances. In fact, they felt that it made sense to include the two acids and that we had got the list right in terms of the corrosive substances of concern. I hope that I have been able to provide sufficient clarification on the relationship between this Bill and the Poisons Act, and that the noble Lord will be content to withdraw his amendment.

Lord Paddick: My Lords, the Minister has completely failed to address the point that I just raised—but in any event I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Amendment 13 not moved.

Clause 3: Delivery of corrosive products to residential premises etc

Amendment 14

Moved by ***Lord Paddick***

14: Clause 3, page 4, line 13, at end insert "unless the delivery is into the hands of a person aged 18 or over"

Member's explanatory statement

This amendment, along with other amendments to Clauses 3 and 4, would allow for companies in the UK to sell corrosive products to residential premises as long as they take appropriate measures to ensure that the item is delivered to a person over the age of 18.

Lord Paddick: My Lords, in moving Amendment 14 I will speak also to the other amendments in this group.

As drafted, the Bill creates a ludicrous, verging on farcical, situation where corrosive substances and bladed articles cannot be delivered to a residential address unless they are ordered from an overseas company. If they are ordered from an overseas company and the UK delivery company does not know what the content of the parcel is, there are no restrictions whatever on these items being delivered to a residential address. At the same time, UK companies are prohibited from delivering both corrosive substances and bladed articles to residential addresses.

If, however, there is an agreement between the UK delivery company and the overseas company that the delivery company will be alerted to any corrosive substances or bladed articles which it will be asked to deliver to a UK residential address, the Government set out in this Bill the steps that the delivery company must take to ensure that the corrosive substance or bladed article is only delivered into the hands of someone 18 years of age or older on the doorstep of the residential address.

If overseas companies are allowed openly to sell and deliver corrosive substances and bladed articles to UK residential addresses, with a system of age verification at the point of handover, why on earth cannot UK companies do exactly the same thing? It is happening right now in the UK in relation to alcohol, so why not enshrine it in legislation and apply it here?

The Bill as drafted not only disadvantages UK companies compared with overseas competitors, but prevents companies like John Lewis delivering items such as food processors, because they have a blade, to people's homes. It also creates the anomaly of self-employed plumbers and the like, who run their businesses from their home, being able to have these substances and items delivered to their residential address even though the seller and the delivery company may have no way of knowing beyond reasonable doubt that a business is carried on from that address. The Bill creates other anomalies where designer knives—ones made specifically for the purchaser, for example—can be delivered to residential premises.

The sole purpose of prohibiting the delivery of corrosive substances and bladed products to residential addresses is to keep them out of the hands of those under 18. All these anomalies and difficulties can be

avoided if an age-verification system at point of handover—a system already set out in this legislation—is available to both overseas and UK businesses. That is what these amendments seek to do. I beg to move.

Lord Kennedy of Southwark: My Lords, these amendments, in the name of the noble Lord, Lord Paddick, seek to allow the delivery of corrosive and bladed products to residential addresses where steps are taken to ensure that the recipient is over the age of 18. If we can get to a position where this is possible, I would be very happy to support these amendments. Getting the balance right between putting in place precautions to stop young people getting their hands on these products, and adequate offences, is something we should all support. If that can be done in a way that is not damaging to business, that is all the better.

I am, of course, very concerned about the situation regarding knife attacks in Sheffield, and we will come on to my amendments about that later. We had a very positive meeting earlier this week. I am happy to support these amendments if we can get that balance right. I still have an issue about putting restrictions on overseas companies as our jurisdiction ends here in the UK. If we can get a system whereby we ensure that British companies are not disadvantaged and, equally, have some restrictions, I will fully support that.

Baroness Williams of Trafford: My Lords, I am grateful to the noble Lord, Lord Paddick, for explaining the rationale of these amendments, which would change the new offence of sending a corrosive or bladed product to residential premises or a locker so that no offence is committed if a product is delivered into the hands of a person over the age of 18. This would mean that sellers could continue to dispatch products to residential premises providing that they are sure that the products will be delivered to a person over 18. The amendments for corrosive products also amend the defence of having taken all reasonable precautions, to include that they believed that the products would be delivered to a person over 18 and they had either taken reasonable steps to establish the person's age—for example, relevant age-verification documents such as a passport or driving licence had been provided—or it was clear that the person was not under the age of 18. It would also be a requirement for a delivery company acting on behalf of the seller to confirm they had checked the person was over 18 at the point of delivery. In effect, the amendments in this group say that if a seller meets the first of these requirements, they can go ahead and sell the items to residential premises.

The Government's approach to the sale of corrosive products, bladed articles and products in relation to UK remote sellers is twofold. First, we want to drive an improvement in the age-verification and dispatch processes of remote sellers. We are doing this by saying that unless they meet certain minimum conditions, they will not be able to rely on the defence that they have taken all reasonable precautions and exercised all due diligence if they are prosecuted for the offence of selling a corrosive product or a bladed article to a person under 18. These conditions include that they have suitable age-verification systems in place at the point of sale, that they clearly label the items when they are dispatched and that they have arrangements in place to ensure that when finally delivered, the items are delivered into the hands of a person over the age of 18. Many of the requirements covered by the amendments in this group are already reflected in the Bill.

Secondly, we believe that in addition to stronger checks by remote sellers, the dispatch of corrosive and bladed products to a residential premise or locker should be banned and that instead, buyers will need to pick them up from a collection point. This will ensure that the items are not delivered to a person under 18. There are two reasons why the Government believe that, in addition to age checks at the point of sale, sellers should also be prohibited from sending the products to a home address. First, it will be possible for buyers to get round any age-verification systems at the point of sale in relation to remote sales, for example by using a borrowed credit card or using another person's passport or driving licence. Until we are confident that online age-verification systems are robust, we do not want to depend on them entirely.

The Duke of Montrose: My Lords, I have a series of amendments later on to do with the delivery of bladed articles to residential premises. One of the matters that will always arise is that the Government say that if you can get your house classified as a place of business, then you come into the permitted category. However, I have two questions: first, what constitutes designating your premises as a place of business and secondly, will that affect the local authority's view as to the level of rates that it would impose on the premises?

Baroness Williams of Trafford: Turning to my noble friend's question, if your home is also your registered business address, then clearly is it both. The noble Lord actually raised that point in Committee. The residential address can be either just a residential address or both a business and a residential address.

Returning to my other point about someone being prohibited from selling a product to a home address, we want to avoid any liability regarding checking age falling on the delivery company when the item is handed over. This is because delivery companies indicated in our discussions with them that they might simply refuse to deliver items on behalf of sellers if the legal responsibility for checking age falls to them. We are willing to accept this risk in relation to overseas sales because we are less concerned about the impact on overseas sellers, should their trade be affected, but for UK sales we do not want to place a liability on deliverers because there is a risk that they will then refuse to deliver any bladed items. The Government position is therefore that any liability for ensuring that any remotely sold corrosive and bladed products in the UK are not sold and delivered to under-18s should fall solely on the seller.

I have one final point to make, about a meeting that the noble Lord, Lord Kennedy, and I had with the Sheffield knife manufacturers. As a result of that meeting, I want to satisfy myself of the position in relation to a couple of major delivery companies to ensure that that has not changed. Nothing in the

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meeting led me to doubt the position, but I just want to clarify that. In the meantime, I ask the noble Lord, Lord Paddick, to withdraw his amendment.

Lord Paddick: My Lords, I am grateful to the noble Lord, Lord Kennedy, for his qualified support for these amendments. As far as the explanation from the Minister was concerned, however, if you are a sole trader, you could be considered to be conducting your business from your home address. The Inland Revenue would be the only ones who knew that, and that information would be confidential. Therefore, there is no way that a delivery company could establish beyond reasonable doubt whether your residential address was a business address or not. As with a lot of this Bill, it clearly has not been thought through. The Minister has completely avoided the fact that this significantly disadvantages UK businesses as opposed to overseas ones. If they do not inform the UK delivery company what is in the parcel, there is absolutely no comeback on the delivery company whatsoever. Anything can be delivered to a residential address, whether it is a bladed article or a very strong acid ordered from an overseas business.

The Government say they want to avoid putting a liability on delivery companies, but this legislation puts liability on delivery companies if they are delivering corrosive substances or bladed articles from overseas. The only difference concerns whether the company is from the UK or overseas. Again, the Minister failed to answer how age verification at a collection point is more secure than on the doorstep. She completely failed to address the issues I raised. However, there are far more important things to get on to so at this stage, I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Amendments 15 to 22 not moved.

Clause 4: Delivery of corrosive products to persons under 18

Amendments 23 to 26 not moved.

8 pm

Amendment 27

Moved by ***Lord Kennedy of Southwark***

27: After Clause 5, insert the following Clause—

"Offence of obstructing a seller in the exercise of their duties

(1) A person commits an offence if they intentionally obstruct a person ("the seller") in the exercise of their duties under section 1 of this Act and under section 141A of the Criminal Justice Act 1988 (sale of bladed articles to persons under 18).

(2) In this section, "intentionally obstruct" includes, but is not limited to, a person acting in a threatening manner.

(3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale, to imprisonment for a term not exceeding 6 months, or to both."

Lord Kennedy of Southwark: My Lords, I raised this issue at Second Reading and in Grand Committee. I am grateful for the support I have received from across the House. We are placing shop workers at the forefront in the Bill. They risk a prison sentence or a lesser punishment if they get it wrong, as they will have committed a criminal offence in selling the products referred to in the Bill to a person under 18 years of age. I have no problem with that. These products cannot be sold to young people and we need a deterrent in place to make sure that this is adhered to.

My issue is that the Bill places additional responsibility on shop workers but gives them no additional protection. This issue has been raised many times in the House, not just in the context of the Bill. My noble friend Lady Kennedy of Cradley raised this matter in a recent Question to the Minister. When I was young—a long time ago—I was a shop worker. I enjoyed the work very much. As a young person, it got me talking to people, which gave me confidence. It was hard work and not without its risks, but it was enjoyable.

I know that the Government are looking at this issue; they are seeking further evidence, but the evidence is already there. Even if the Government decide to act at a later date, I worry that we will have moved on and in the weeks, months and years to come, I will be sitting here asking when the Government will introduce legislation, only to be told that they are waiting for a suitable Bill. There are always pressures on legislation—we all know that—but this time, the pressure is paramount. I am very worried that we will move no further forward.

No doubt the Minister will tell me shortly that there is no problem and there is a whole range of offences; for example, anyone who assaults a shop worker can be charged and, if found guilty, convicted. However, far too often, these offences are not prosecuted; that is a serious problem. Indeed, many offences are not even reported so they get nowhere near a police officer. In the Bill, we are placing duties for specific offences on shop workers but giving them no further protection. Let us imagine being in their position, refusing to sell knives or acids to angry young people who want these products. That is not a nice place to be. We expect shop workers to enforce the law in that situation but give them no protection to do so. We owe them a minimum additional protection, which my amendment seeks to provide. Approximately 280 shop workers are assaulted every single day. I was once a member of USDAW; it is a great trade union. It campaigns for shop workers and knows the industry its members work in. It regularly consults the Government and other agencies and puts forward its view. It has done a good job of finding evidence of the problem.

My amendment is different to the one I moved in Committee in one key respect: it goes beyond the imposition of a fine and introduces a maximum imprisonment term of six months. That is not because I want to increase the prison population—I support community sentences—but I want to give the court the power to look at the full suite of options available and impose a sentence that fits the crime. On reflection, limiting it to a fine was not the right thing to do—it is too restrictive—so I wanted to give the court the power to impose the penalty it thought was appropriate

for the case. Perhaps I should have done that in the first place, but it is the right thing to do. I hope that the Minister will respond to this debate in detail and give me some good news. I beg to move.

Lord Paddick: My Lords, as I said in Committee, we support the amendment. Until last Friday, we were prepared to vote with the noble Lord, Lord Kennedy, should he divide the House, for the reasons he clearly set out. However, at the end of last week, the noble Lord changed the amendment so that the penalty attached to the proposed new offence included a maximum term of imprisonment of six months. Noble Lords will know from the comments of my noble friend Lady Hamwee on the fourth group of amendments that we oppose short-term sentences, as does the right honourable David Gauke MP—the Lord Chancellor and the Secretary of State for Justice—and Rory Stewart, the Minister of State for the Ministry of Justice. I understand that the noble Lord, Lord Kennedy, is also opposed to short-term prison sentences but that this is the only way to secure a community sentence, as we discussed previously, which has to be an alternative to custody. If only there were some way of having the latter without the former. Of course, as I have explained to the noble Lord in correspondence, if the threat to, or the assault on, a shop worker were more serious, there are alternate offences with which someone could be charged and which carry a sentence of imprisonment.

We support the principle that shop workers expected to enforce the law on the selling of age-restricted items, in that they are being asked to prevent underage people making such purchases, should have some legal protections not afforded to other members of the public.

Viscount Goschen: My Lords, I listened with interest as the noble Lord, Lord Kennedy, introduced his amendment. I am sure that all Members of the House are broadly sympathetic to what he seeks to achieve in terms of protecting shop workers. No one should be put in harm's way through their employment if it can possibly be avoided. I understand what he is driving at with the thrust of the amendment.

I am interested in how the law copes with other circumstances where shop workers and other members of the hospitality trade, such as people in pubs and betting shops, have to make age-related decisions regarding their customers. For example, someone may want to buy a drink or glue, but such products are already age-restricted. I would have thought that similar circumstances to those described by the noble Lord of people being aggravated because they are not being sold those products could arise. It strikes me that there is nothing particularly new, per se, in the circumstances before us in the Bill. When my noble friend the Minister responds to the debate and the noble Lord has the opportunity to respond to her comments, perhaps both of them could consider how the current circumstances work; for example, what happens if a barman has to deny service to someone aged 17 because they have been asked for their identity documents and have produced a fake ID, which I understand is prevalent, and is any specific statutory protection applied to that worker? If not, why should this case be different?

The purpose of my intervention is to understand in rather more detail the current legislative circumstances surrounding people who have to make age-related decisions. My understanding is that younger people are used to being asked for ID; one has to look only in a tobacconist's or an off-licence to see lots of signs saying that those aged under 21 should be prepared to justify their identity. It seldom happens to me, but it is possible. I look forward to the Minister's response.

Baroness Neville-Rolfe (Con): My Lords, as some noble Lords know, my background is in retail, and I have experience of managing the sale of dangerous objects—such as knives—and of alcohol and glue in shops, as my noble friend mentioned. This is an important issue, and we all have a lot of sympathy with workers in this sector. It is also important that we get it right, and while the issue affects shop workers, it is important to look at it in detail and work out what sectors would be affected. There has been a call for evidence and a meeting of the National Retail Crime Steering Group to look into this matter. It is important to look carefully at these offences, and provide time for interested parties, such as those representing shops, the unions and other stakeholders, to come forward and look at the detail of the arrangements. That makes it difficult, given we have got to Report, to deal with it in this Bill.

We all recognise concerns raised by stakeholders. Indeed, the Bill is about trying to make sure that offensive weapons do not get into the wrong hands. I am sympathetic to more work being done on that, but it is important to look at both legislative and non-legislative options for this sort of proposal. I look forward to hearing my noble friend the Minister's response to this important amendment.

Baroness Williams of Trafford: My Lords, I thank noble Lords for speaking to this amendment. I am particularly grateful to the noble Lord, Lord Kennedy, for his tireless work throughout the Bill to raise awareness of the violence and abuse towards shop workers, often those in small corner shops who are on their own, late at night, with little protection and who face, as my noble friend Lord Goschen pointed out, quite abusive behaviour. I thank the noble Lord and representatives from USDAW for meeting me, and having a constructive discussion about how we can improve protections for shop workers, and whether there are any gaps in both the legislative and the non-legislative space that we can work on. I am concerned for retail staff who do not feel safe when they are carrying out their duties at work. As I have said previously, everyone has the right to feel safe at work.

We had a good debate on this matter in Committee, and I understand the strength of feeling on this issue—I am very sympathetic to it. I know that the noble Lord, Lord Kennedy, was grateful to have a meeting with the Minister in the other place on this issue as well. Before I outline the Government's work in this area, I want to be absolutely clear that we do have an extensive legislative framework in place to protect those facing abuse in the workplace. It ranges from civil tools and powers, including civil injunctions to address lower-level anti-social behaviour we often see, to criminal offences including harassment, common assault, assault occasioning actual bodily harm, and threats to kill in some rare cases. Where an

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offence is committed against a shop worker in the course of carrying out their duties, the courts can, quite rightly, take into account as an aggravating factor the fact that the offence was committed against a person serving the public. That, in part, answers my noble friend Lord Goschen's point. In addition, the Sentencing Council is due to consult on an updated guideline on assault this summer.

8.15 pm

I understand the concerns from all Benches that the existing legislative framework may not be sufficient, and that both the public, and indeed shop workers themselves, may not always recognise where behaviour is unacceptable. That is why, as I informed noble Lords in Committee, we have announced our intention to launch a call for evidence. This is intended to strengthen our understanding of how the existing legislation is being applied, including in the context of age-restricted sales, the response of the police and the wider criminal justice system, and to identify good practice. My noble friends Lord Goschen and Lady Neville-Rolfe and the noble Lord, Lord Kennedy, asked for further detail on the call for evidence, and it is a very important issue. The Government have a lot of sympathy for workers in the sector and it is important that we get this right. It is also right that we should look in more detail at how this issue affects not only shop workers but, as my noble friend Lord Goschen pointed out, how workers in other sectors can also be affected.

The call for evidence was discussed at an extraordinary meeting of the National Retail Crime Steering Group on 12 February, chaired by the Minister for Crime, Safeguarding and Vulnerability. We are taking into account that group's feedback and we aim to publish the call for evidence before the Bill completes its passage through Parliament. It is important that the call for evidence is a thorough exercise. We need to provide adequate time for interested parties to respond and then we must consider those responses. This puts the completion of the work beyond the timetable for this Bill, but should the need arise, I hope that there will be further opportunities to bring forward legislation on this issue.

Lord Kennedy of Southwark: I thank the noble Baroness for giving way. I am pleased that we are going to have a call for evidence so that we can look at these matters in detail, but I have a concern. It is not a party political point because I am sure that it has happened under Labour Governments and the coalition Government. Governments gather evidence and have reviews, but then trying to fit work into the legislative programme becomes very difficult, if not almost impossible. I know that I keep raising the issue, but I will talk again about the rogue landlords database. We could not persuade the Government to make it public, but after the law was passed they said that they did want to do that. However, now we cannot bring forward a piece of legislation to actually make it public. That is so frustrating. I worry that I will be standing here in two years' time making the same points. I hope the noble Baroness understands the point that I am trying to make.

Baroness Williams of Trafford: I totally understand the noble Lord's point. He reminds me at every opportunity and I think that I will have written on my grave the "rogue landlords database". However, I have to say that bringing forward the call for evidence will expose any gaps in the legislation. I appreciate, and I know that the noble Lord does as well, that we are going through a busy legislative time. However, we will provide opportunities to bring forward legislation should it be needed.

My noble friend Lady Neville-Rolfe asked what the evidence will cover. As I have said, this was discussed at the extraordinary meeting of the National Retail Crime Steering Group on 12 February. We want to take into account the group's feedback and to use the call for evidence to strengthen our evidence about the scale and severity of the issue. As she has said, we hear lots of anecdotal horror stories, but we want to look at the broad evidence. Any abuse of a shop worker while doing their job is absolutely unacceptable, but we want to understand in more detail how frequently people are the victims of serious crime. I turn to the point made by my noble friend Lord Goschen about what sorts of businesses we are talking about. The scope and the direction will be led by the National Retail Crime Steering Group.

We want to use the findings to consider what more we can do to ensure that shop workers have the protections they deserve. That is at the heart of the noble Lord's point. If the call for evidence shows that there is a gap in the existing criminal law, we will give that serious consideration. The group also discussed the options for strengthening the existing workplan. It includes actions to support staff who report incidents to the police and to improve police recording. We have committed to providing £50,000-worth of funding for a sector-led communications campaign to help raise awareness. We appreciate that there will be a huge spectrum of awareness across the sector.

I am grateful to noble Lords for their work in raising awareness of the challenges faced by shop workers and indeed I am grateful to the representatives of USDAW who have taken the time to articulate these issues to me. I hope that our commitment to exploring this issue further through the call for evidence and the wider work being taken forward by the Home Office will reassure the noble Lord that we are taking the concerns raised about this issue very seriously. The fact remains, though, that until we have had the call for evidence and we have studied the responses, there is not sufficient existing evidence to support the need for any new offence as provided for in the amendment.

I hope that the noble Lord will be content to withdraw his amendment. I know that in taking time to raise these concerns with me that he is not trying to be troublesome. He is addressing a real concern from the retail industry and I hope that we can work together on this.

Baroness Neville-Rolfe: I wonder whether my noble friend could comment on who sits on the National Retail Crime Steering Group if that is going to be important in carrying forward this work. I presume that the retailers' unions will be represented, along with the police and other relevant people. If she is not

able to answer the question, it would be helpful to have that information by way of follow-up because I think that there is a consensus across the House that it would be good to find a way forward in this area. However, we will want to make sure that the legislation covers the right areas and carries the right penalties.

Baroness Williams of Trafford: Representatives of USDAW are part of the steering group along with staff from large retail organisations right down to small shop owners. It is important that we have a wide range of representation from organisations so that we can see the full spectrum of exactly what issues are involved. I am aware of my noble friend's past employment with Tesco. Somehow I had assumed that a big organisation would suffer less abuse because the shops are covered by security officers, but that is not necessarily the case. I have witnessed this myself in big retail organisations, and to improve our understanding, we need representation from across the spectrum of those retail companies.

Lord Hogan-Howe: I am minded to support the amendment, because the case is a good one for shop workers. I just wonder whether, if the Government are not minded to support an explicit offence—whether for shop workers or any retail worker who is enforcing a licence—in legislation in whatever form, the Sentencing Council could consider that as an aggravating factor in the offences that already exist. This could relate to many other types of offence, so we may be able to support the people who need supporting without needing all the legislation to change to cover the different types of licensee who need that support.

Baroness Williams of Trafford: The noble Lord makes a good point about aggravated offences—and of course, that can be explored through the call for evidence. As he will know, it is already an offence to abuse or attack someone who is serving the public. USDAW wanted something specifically related to shop workers, and that is one of the suggestions that could be taken forward—in fact, it may well be taken forward—to the call for evidence.

Lord Kennedy of Southwark: My Lords, I thank everyone who has spoken in the debate. There was a lot of support around the House for the issues that I am bringing forward, and I am grateful to all noble Lords who have spoken. We can all agree that no one should be threatened or abused while doing their lawful business and earning a living. That is important. The noble Viscount, Lord Goschen, asked why we particularly want this now. It is because in the Bill we are putting burdens on shop workers, who risk going to prison if they do not enforce its provisions. That is why we have responded. We are giving them particular offences that they can commit, but we also want them to have further protection in relation to these very serious products.

I thank the noble Lord, Lord Paddick, for his support, although it was qualified. I am sorry if I caused him concern; I never intended the sentence to be custodial, but when I looked at it I realised I would have to put that option down. If nothing else, that highlights the need to review how we impose custodial sentences on people. In many cases we need interventions, but we do not want to risk someone going to prison at that point, so I hope we can come back to that at a later stage.

I also thank the Minister for her very detailed response, and for the fruitful meeting that she had with USDAW representatives and myself recently. I think she accepted that they made their case very well, that they know what they are talking about in representing their members, and that they understand the world of retail.

It is important that we get this right. I accept the point that there will be a call for evidence. That will be a second call for me, because I am going to keep pursuing the noble Lord, Lord Bourne, about the rogue landlords database, and I am also pursuing the noble Baroness about the protection of shop workers, and asking when we are going to get legislation on that subject. These are two important matters, and I shall carry on with them, because we cannot let such things be forgotten. We need to ensure that people going about their lawful business and earning a living are protected. Unfortunately, many shop workers—we heard that it is 280 a day—get assaulted in the UK. That is utterly disgraceful, and I hope the evidence that comes in will support the need for legislation. The noble Lord, Lord Hogan-Howe, made an important point about sentencing guidelines and the Sentencing Council, and there may be something we can do that would not need legislation.

I am not going to test the opinion of the House. I am tempted to, but I have listened to the debate and decided, in view of the way the Minister has engaged with us, to withdraw the amendment.

Amendment 27 withdrawn.

Amendments 28 to 32 not moved.

Amendment 33

Moved by ***Baroness Barran***

33: Clause 9, page 10, line 42, at end insert—

"(5) In this section—

(a) in subsection (1)—

(i) in paragraph (b), for "Scotland, Northern Ireland or a member State other than the United Kingdom" substitute "Scotland or Northern Ireland",

(ii) at the end of paragraph (c) insert "or", and

(iii) omit paragraph (e) and the "or" preceding that paragraph, and

(b) in subsection (3)—

(i) for the definition of "civilian offence" substitute—

""civilian offence" means an offence other than an offence under an enactment mentioned in subsection (1)(c) or (d);",

(ii) in the definition of "conviction", in paragraph (b) omit "and a member State service offence", and

(iii) omit the definition of "member State service offence"."

Member's explanatory statement

This amendment inserts a provision to Clause 9 which would not need to be commenced at the same time as the rest of that Clause but which would, on being commenced, amend it to take account of the United Kingdom's exit from the European Union.

Baroness Barran: My Lords, as we have previously debated, the Bill includes provision for mandatory minimum sentences where a person has been convicted of having a corrosive substance in a public place and has a previous relevant conviction. The definition of a relevant conviction seeks to capture certain offences committed in EU member states other than the United Kingdom. As the Bill may well be enacted after the UK's withdrawal from the EU, we cannot in those circumstances use the powers in the European Union (Withdrawal) Act to modify these provisions post Brexit. This amendment therefore includes a prospective repeal of provisions relating to member states. I beg to move.

Amendment 33 agreed.

Amendment 34 not moved.

8.30 pm

Amendment 35

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

35: After Clause 13, insert the following new Clause—

"PART 1A

KNIFE CRIME PREVENTION ORDERS

Knife crime prevention orders made otherwise than on conviction

Knife crime prevention order made otherwise than on conviction

(1) A court may make a knife crime prevention order under this section in respect of a person aged 12 or over (the "defendant") if the following conditions are met.

(2) The first condition is that a person has, by complaint to the court, applied for a knife crime prevention order under this section in accordance with section (Requirements for application for order under section (Knife crime prevention order made otherwise than on conviction)).

(3) The second condition is that the court is satisfied on the balance of probabilities that, on at least two occasions in the relevant period, the defendant had a bladed article with them without good reason or lawful authority—

(a) in a public place in England and Wales,

(b) on school premises, or

(c) on further education premises.

(4) In subsection (3) "the relevant period" means the period of two years ending with the day on which the order is made; but an event may be taken into account for the purposes of that subsection only if it occurred after the coming into force of this section.

(5) Without prejudice to the generality of subsection (3), a person has good reason for having a bladed article with them in a place mentioned in that subsection if the person has the article with them in that place—

(a) for use at work,

(b) for educational purposes,

(c) for religious reasons, or

(d) as part of any national costume.

(6) The third condition is that the court thinks that it is necessary to make the order—

(a) to protect the public in England and Wales from the risk of harm involving a bladed article,

(b) to protect any particular members of the public in England and Wales (including the defendant) from such risk, or

(c) to prevent the defendant from committing an offence involving a bladed article.

(7) A knife crime prevention order under this section is an order which, for a purpose mentioned in subsection (6)—

(a) requires the defendant to do anything described in the order;

(b) prohibits the defendant from doing anything described in the order.

(8) See also—

(a) section (Provisions of knife crime prevention order) (which makes further provision about the requirements and prohibitions which may be imposed by a knife crime prevention order under this section),

(b) section (Requirements included in knife crime prevention order etc) (which makes further provision about the inclusion of requirements in a knife crime prevention order under this section), and

(c) section (Duration of knife crime prevention order etc) (which makes provision about the duration of a knife crime prevention order under this section).

(9) Section 127 of the Magistrates' Courts Act 1980 (time limits) does not apply to a complaint under this section.

(10) In this section—

"court"—

(a) in the case of a defendant who is under the age of 18, means a magistrates' court which is a youth court, and

(b) in any other case, means a magistrates' court which is not a youth court;

"further education premises" means land used solely for the purposes of—

(a) an institution within the further education sector (within the meaning of section 91 of the Further and Higher Education Act 1992), or

(b) a 16 to 19 Academy (within the meaning of section 1B of the Academies Act 2010),

excluding any land occupied solely as a dwelling by a person employed at the institution or the 16 to 19 Academy;

"public place" includes any place to which, at the time in question, the public have or are permitted access, whether on payment or otherwise;

"school premises" means any land used for the purposes of a school, excluding any land occupied solely as a dwelling by a person employed at the school; and "school" has the meaning given by section 4 of the Education Act 1996."

Member's explanatory statement

This Clause and the other amendments of the Minister to insert new Clauses after Clause 13 would make provision for knife crime prevention orders and interim knife crime prevention orders imposing requirements and prohibitions on defendants and subjecting them to certain notification requirements.

Baroness Williams of Trafford: My Lords, the government amendments in this group introduce knife crime prevention orders. Noble Lords will recall that these amendments were debated in Grand Committee on 6 February but were withdrawn because it was clear that they did not attract universal support, as the procedural rules in Grand Committee require. The government amendments before us today are the same as those debated in Grand Committee. Given that we have already had a substantial debate on these new civil orders, I do not intend to go through every aspect of them. However, it is worth stating again why the Government have brought forward these measures and to summarise how they will work.

All noble Lords will appreciate that we face a significant increase in knife crime at present, particularly in London but also in other major cities and across the country. It is sad to say that hardly a day goes by without further horrific examples of the devastation that such crimes cause, not only to individual families but to entire communities. We must do everything we can to stop this increase in violent crime.

The latest police recorded crime figures published by the Office for National Statistics in January for the year ending September 2018 show that there have been close to 40,000 knife-related offences. This is an 8% increase compared to the previous year. The number of homicides where a knife or sharp instrument has been used has increased by 10% in the last year to 276 offences. Of all recorded homicides in the latest data, more than four in 10 involved a knife or a sharp instrument. Police-recorded offences involving the possession of an article with a blade or point rose by 18% to approaching 20,000 offences in the year ending September 2018. This rise was consistent with increases seen over the past five years and is the highest figure since the series began in March 2009.

It is vital that the police have the powers they need to prevent knife crime and protect the public from the devastating effects of violent crime on our streets. When we prosecute young people for knife crime, it is already too late for families when their sons and daughters are lying in hospital or dead on the street. This is tearing some of our communities apart and if there are measures available that might help to tackle this issue, then we must not hesitate to put them in place.

These new civil prevention orders will enable the police to more effectively manage those at risk of being drawn into trouble and help steer them away from crime, and the Government make no apologies for bringing them forward. The orders are aimed at three groups of people: young people who have been carrying a knife; habitual knife carriers of any age; and those who have been convicted of violent offences involving knives.

In the case of young people, the police may have intelligence that a young person routinely carries a knife but for a variety of reasons they have been unable to charge them with a possession offence. Before risky behaviour escalates, a KCPO, as they are called, could be in place to divert the person away from a life of prolific offending.

As I have indicated, people who the police deem to be habitual knife carriers could also be subject to a KCPO. This would include people who may have previous convictions for knife crime or where the police have intelligence that they regularly carry knives. The KCPO would enable the police to manage the risk of future offending in the community. This is the cohort that the police see as their main target for these orders. They estimate that there are about 3,000 habitual knife carriers across England and Wales, although that is not to say that all that cohort would be made subject to a KCPO.

It may be helpful if I explain briefly how the orders will work. An application for a KCPO can be made by a relevant chief officer of police to a magistrates' court or, in the case of young people, the youth court. A court may make an order only if it is satisfied that the defendant had a bladed article without good reason in a public place or education premises on at least two occasions in the preceding two years, and that the order is necessary to protect the public or prevent the defendant committing an offence involving knives. A KCPO can also be made on conviction where the defendant is convicted of a relevant offence and, again, the court thinks the order is necessary to protect the public or prevent the defendant committing an offence involving knives.

A KCPO may require a defendant to do anything described in the order and/or prohibit the defendant doing anything described in the order. The KCPO can include any reasonable prohibition or requirement which the court is satisfied is necessary, proportionate and enforceable. An order could therefore include things such as curfews or restrictions on going to a particular place.

A KCPO can also include positive requirements, and we think these are particularly important. A positive requirement could be attending some form of knife awareness training or a programme to move young people away from knife crime. Some of these programmes are already being funded under the serious violence strategy, and we are keen to build on the excellent work that is already under way to help divert young people from violent crime and is often provided by groups which have first-hand experience of dealing with knife crime in their communities. Where a KCPO imposes such a requirement it must specify a person who is responsible for supervising compliance with the requirement. For instance, if the requirement is attendance at a knife awareness intervention, the person designated to supervise compliance may be the youth worker providing the intervention.

KCPOs will have a maximum duration of two years and must be reviewed by the courts after 12 months. KCPOs issued to under-18s will be expected to be subject to more regular reviews, an issue which we will address in guidance. There are provisions for variation, renewal or discharge of KCPOs on application by the defendant or the police. There are also provisions for appeal against the order. Breach of the order, without reasonable excuse, is a criminal offence subject to a maximum penalty of two years' imprisonment.

Young people are clearly an area of great concern to a number of noble Lords. The police tell us that the age at which people carry knives is getting lower. We also know from hospital data and from the police that younger and younger children are involved in knife crime as both victims and perpetrators. If we are serious about tackling the epidemic of knife crime on our streets, the measures we take must apply to young people.

I must point out that the civil orders available for dealing with sex offending apply to children as young as 10 and last for up to five years rather than the maximum of two years available under KCPOs. Likewise, the maximum penalties are up to five years in prison rather than the two years we have with KCPOs. I know that noble Lords might argue that sex offending is different and somehow more serious. I am not sure that argument is true given the number of knife-related deaths that we are now witnessing in our cities.

[Baroness Williams of Trafford]

I know that noble Lords will also argue that it would be better to go the anti-social behaviour injunction route, which of course applies to children as young as 10. The argument here is that having contempt of court rather than a criminal offence for breach would make the orders more palatable because it would mean that children would not get a criminal record. The advice that we have had from police, some of which we heard yesterday at the round table, is I think advice that we should listen to very carefully. It is that making it a criminal offence to breach an order is important if we want the order to be taken seriously. I do, however, understand concerns about the application of these orders to young people. That is why we set the minimum age of 12, and that is why youth offender teams will need to be consulted on any orders against defendants under the age of 18. It is why we have said we will consult publicly on the guidance with community groups and youth organisations and others before these orders are brought into force.

This Government are determined to do all they can to protect the public and keep people safe. We must seize every opportunity to end the senseless cycle of violent crime that is corroding our streets. Knife crime prevention orders are not the complete answer to violent crime, but they most certainly will help. I beg to move.

Lord Paddick: My Lords, I said a lot about knife crime prevention orders in Committee. Tonight I am going to focus on pre-conviction knife crime prevention orders. Despite the Government's claims to the contrary, they will result in many young people being criminalised instead of being diverted away from the criminal justice system. How can we be so sure? Because they are almost a carbon copy of anti-social behaviour orders, which did exactly that—criminalised swathes of young people for breaching a civil order imposed on them on the balance of probabilities but where a breach of the order was a criminal offence, exactly the same as these provisions.

A court has to be satisfied only on the balance of probabilities that, on at least two occasions, the defendant had a bladed article with them without good reason or lawful authority in a public place on school or further education premises. If they were caught in possession of a knife, they could be prosecuted. This is not about young people being stopped and searched and being found with a knife. This is about hearsay evidence, information from informants, the police being tipped off that someone is a knife carrier. An interim order can even be imposed without the defendant's having the chance to put his side of the story. Imposed on the balance of probabilities, a breach of the conditions can result in a criminal record and up to two years in prison.

These are anti-social behaviour orders reinvented. They are primarily aimed at young people, as young as 12. It may have been a long time ago, but we were all young once. Young people make mistakes; they can be reckless, forgetful, mischievous. The orders would impose, on people who are more chaotic than responsible adults, conditions such as: being at a particular place between particular times on particular days; being at a particular place between particular times on any day; presenting themselves to a particular person at a place where they are required to be; participating in particular activities between particular times on particular days; prohibiting them from being in a particular place with particular people; participating in particular activities; using particular articles or having those articles with them. An order that imposes prohibitions can include exemptions to those prohibitions. They have to tell the police within three days if they use a name which has not previously been notified to the police, or they decide to live away from their home address for more than a month. What does,

"uses a name which has not previously been notified to the police",

even mean? What if their schoolmates give them a nickname that they have become known by? Do they breach the order if they use that name? The young person is going to need a PA and carry a list of conditions with them at all times which they have to constantly refer to, to make sure that they do not breach the order.

Children are children. These orders can be imposed on young people who have never been in trouble with the police and have never been convicted of a criminal offence, and they could be sentenced to custody because they did not turn up for football practice as the order required them to do or because they were told not to associate with certain people but those people kept following them around. It would be easy for me or other noble Lords, let alone a child, to breach some of these conditions if they were imposed on us, and these orders would last a minimum of six months and up to two years.

8.45 pm

The orders must specify the person who is responsible for supervising compliance. Who do the Government have in mind—a youth worker? There are hardly any left following the government cuts to local authorities. Do they have in mind a community police officer? There are hardly any left following government cuts to the police service. Youth workers are supposed to build relationships with young people and to offer help and guidance, yet they will have to report breaches to the police, breaking down the trust that they have built up with their young people, being responsible for giving evidence of the breach in court and securing a criminal record for the young person they are supposed to be building a rapport with. Or do the Government have in mind a community police officer or PCSO? Their primary role is to build trust and confidence with their local community, yet they will be asked to give evidence of breaches of orders and arrest young people, resulting in children being given criminal records and potentially being sent to custody. These impositions on people who are crucial to tackling the long-term drivers of knife crime go directly counter to the public health approach to tackling knife crime that this Government claim to be engaged in.

As far as the pilot provisions are concerned, I ask the Minister why a pilot is necessary. We know the disproportionate impact that this type of order has because of our experiences with ASBOs. Stop and search is still used disproportionately on black and

minority-ethnic young people, and there is no evidence to suggest that these orders will not be used in a similar way.

A Youth Justice Board evaluation of ASBOs in 2006 found that 22% of young people given ASBOs were BAME—two and a half times their proportion of the population. It also found that:

"Many young people did not have a clear understanding of the details of their orders … It was not uncommon for them to flout openly the prohibitions that placed the greatest restrictions on their lifestyle … All the young people interviewed were aware of the possibility of breach, but most either did not regard the threat of custody as 'real', or did not consider it to be a deterrent",

and that:

"Parents (like some professionals) commonly argued that ASBOs functioned as a 'badge of honour', rather than addressing the causes of the behaviour".

In a 2010 speech, Theresa May said of ASBOs that,

"their top-down, bureaucratic, gimmick-laden approach just got in the way of the police, other professionals and the people themselves from taking action … For 13 years, politicians told us that the government had the answer; that the ASBO was the silver bullet that would cure all society's ills. It wasn't … These sanctions were too complex and bureaucratic—there were too many of them, they were too time consuming and expensive and they too often criminalised young people unnecessarily, acting as a conveyor belt to serious crime and prison".

She also said that,

"the latest ASBO statistics have shown that breach rates have yet again increased—more than half are breached at least once, 40% are breached more than once and their use has fallen yet again, to the lowest ever level. It's time to move beyond the ASBO".

That is what Theresa May said, yet this Government are reinventing the ASBO with these orders.

The Minister has said that the police have asked for these orders. It was quite clear from the round table yesterday who was asking for them: it was the officer in charge of using enforcement to tackle knife crime. He said that he had consulted practitioners but, under questioning, admitted that it was other police forces who had been consulted, not other agencies. According to a Liberty briefing, the Association of Youth Offending Team Managers, the Magistrates' Association, the Local Government Association, a range of human rights organisations and groups working directly with children all have serious concerns about these orders. What consultation has actually taken place?

I was a police officer for over 30 years and at one time I was the police commander with responsibility for community policing and multiagency approaches to reducing crime and disorder. I completely and absolutely oppose these orders, not because I am a Liberal Democrat or because I have been told to toe the party line but because I honestly believe from my experience and knowledge that they will be counterproductive in tackling knife crime and in dealing with the underlying problems.

The solution to the epidemic of knife crime is a public health approach. The trauma suffered by young people surrounded by violence on the streets and in their homes, normalising violence and leading to a "rather be in prison for carrying a knife than stabbed to death" mentality—that needs to be treated. The mindset borne out of poverty and discrimination that society is not there for you, so you have to look out for yourself; that the police are there to arrest you, not to protect you, if they are there at all; that, because your parents are working three jobs to put food on the table, you have to look for love, acknowledgement and a sense of belonging from the gangs—that needs to be addressed. Instead, the Government propose measures that turn youth workers into law enforcers as the supervisors of KCPOs and reinforce the belief that even the community police officers are there to arrest rather than protect you.

I have two final questions. Can the Minister clarify whether the police could still apply for a KCPO if a young person were found not guilty of a criminal offence involving a knife? At the briefing yesterday, the police said no and the Home Office said yes. Does she consider imposing a knife crime prevention order on someone acquitted of a criminal offence a form of double jeopardy?

I had hoped that the days had gone when Governments gave the police all the powers they wanted so that they could blame them, not themselves, if things went wrong. They have apparently not. These orders have not been thought through and we oppose them.

Lord Hogan-Howe: My Lords, I also spoke in Committee. I cannot agree with the noble Lord, Lord Paddick, as he is aware. I come from a similar background and do not have the same experience of anti-social behaviour orders. They were introduced by a Labour Government and, at the time, I think they had an effect. We had a moral panic, and we also had a problem with anti-social behaviour. They were intended to address repeat offenders, repeat locations and, sadly, repeat victims. They did have an effect. They probably went on a bit too long and eventually outlived their usefulness, but the principle was valid and addressed the order to people's offending. People had the choice to address their offending pattern or have a criminal sanction, and some chose not to address their offending pattern.

The point that the noble Lord, Lord Paddick, made—that it seems to intervene with young people who may not be able to remember all of the conditions placed on them—is not unreasonable. However, generally, this order's aim is to replace the parental care that the noble Lord, Lord Elton, referred to earlier. When some of these kids do not have someone who cares enough to say, "That's a line—don't cross it", this is one way to give them some advice. I do not think that it means that a 12 year-old will always end up with a prison sentence or even a criminal conviction, but someone needs to intervene in that pattern. Why are they getting involved with gangs and, frankly, mixing with people who are not helping them? Someone needs to advise them where they should not go, who they should not see and about the types of behaviour that are causing them problems. This is one way of doing it. I accept that there may be others, but I do not think that it is unreasonable to give that type of advice.

I broadly support these orders, mainly because we have a serious problem. The Minister went through the number of people who have been hurt and arrested carrying knives, and we clearly have a cultural problem at the moment. We have had it in previous years—this is not the first time. People in this Chamber will remember tens of years ago, when various groups who

[Lord Hogan-Howe]
carried knives ended up competing with each other, often to sell drugs or for any other form of territory where a weapon became the means of establishing it. We have to intervene now and send a message.

I will contest one final point from the speech by the noble Lord, Lord Paddick, about whether community officers are there to arrest people. They are not, but in my view they are not there just to smile and be nice to people. They have powers. It does not help the community they serve if they ignore offences and leave someone else to make the arrest. They are there to exercise the powers that allow people to trust that it is worth telling them when an offence has been committed.

I would ask the Government still to consider two areas for the future. I agree with the point about pilots. At one time, the Ministry of Justice had so many pilots that we thought it was starting an airline. The danger is that, after a while, it becomes confusing. It also becomes quite difficult to evaluate the success of multiple pilots; so, I worry about pilots generically.

The second point, which the Minister quietly mentioned earlier, is that some people are released from prison to areas other than those where they were convicted. Also, offenders move from where they live to other areas around the country, which means that officers in areas where a pilot may not be in place would have to understand what the powers are; frankly, that could get pretty confusing. This House and the other place generate a huge amount of legislation; officers are expected to remember and act on it fairly. The more legislation there is, the harder it is to enforce when it is partial and fragmented. I worry about pilots for that reason too.

On the point made by the noble Lord, Lord Paddick, if we accept that there is a need for this legislation—as I do, and I am prepared to support it—deciding to implement it partially seems an odd conclusion, since we have agreed that nationally there is a problem. We need to implement legislation in a uniform rather than a fragmented, incremental way.

Finally, I repeat a point that I made in Committee: this Bill does not give a power of search. The Minister said in Committee that existing powers of search were sufficient. I honestly do not believe they are. Section 1 of the Bill gives a power to search—anybody at any time—on reasonable suspicion, but these orders are for people who have already gone through a court process, probably at least twice, and have been found to be at risk of carrying knives. It seems not unreasonable to support the police in the relatively few cases concerned, as mentioned by the Minister; I am sure that far fewer than 3,000 of these orders will be implemented. It would not be an incredible burden for the legislature to support the police by saying that a power of search goes with this power, without the "reasonable cause" that Section 1 requires; it would not be unreasonable to support the police in that way. The officers described by the noble Lord, Lord Paddick, who proposed this power—which is generally supported by the police—had requested that the power of search went with it. They were disappointed when they saw that this request had not been accepted in the legislation.

I support the amendments but I suggest to the Minister that the Government consider the two issues I have mentioned: piloting and the power of search.

Baroness Meacher: My Lords, I rise to respond to the government amendments in this group, as well as Amendments 55 to 60 in relation to the proposed pilots of the new KCPOs. I thank the Minister for meeting me to discuss my considerable concerns about these knife crime prevention orders. Amendment 52 could provide some reassurance, but that would depend very much on how those pilots are undertaken and reported upon.

In view of the Government's claim that these orders were wanted by the police, I asked Ron Hogg, the Police and Crime Commissioner for Durham—which is one of the top-performing constabularies in the country, according to the inspectorate—whether he and his chief constable, Mike Barton, would find KCPOs a helpful contribution to policing and dealing with knife crime. His considered response—given at some length—amounted to a resounding no.

I would be grateful if the Minister could inform the House how many police services want knife crime prevention orders and how many would prefer not to have them. Police and Crime Commissioner Hogg reiterated many of the concerns that I raised in Committee; in particular, that there is a body of evidence to show that criminalising and punitive civil deterrents have not had a significant impact on reducing youth violence. These policies, as others have mentioned, have included ASBOs, dispersal orders and criminal behaviour orders. Can the Minister confirm—this is very important—that the KCPO pilots will specifically assess, and report on, their impact on the criminalisation of children, and the impact on knife crime in the areas involved? It is no good having pilots if they do not nail down what the orders are achieving in the crucial areas.

Does the Minister accept that in the light of recent swingeing cuts to local authority youth services, and drug services in particular, it will be important to boost these services and restore those cuts in the pilot areas, with a view to rolling out that restoration of funding across the country? Only if these prevention orders really do lead to children and young people accessing the services and treatment they need will criminalisation be avoided and positive outcomes achieved.

9 pm

I strongly support Amendment 55, in the name of the noble Lord, Lord Kennedy, which proposes that the national rollout of KCPOs must be subject to the approval of both Houses of Parliament, and the amendments of the noble Lord, Lord Paddick, and the noble Baroness, Lady Hamwee. We are all familiar with meaningless pilots of government policy—that is not a party-political point, it applies to Governments of all colours—where the rollout of a policy begins before the pilot has even been completed, and certainly before the report on a pilot has been made available and debated in Parliament. Can the Minister give the House an assurance that this will not happen in this case, but that the pilots will be completed and reported on to Parliament before the rollout is undertaken?

I have just a few more questions to pop out quickly; if the Minister cannot respond this evening, perhaps she could reply in writing. What training is the department creating for police forces to spot forms of criminal exploitation in vulnerable young people? What assessments has the Home Office carried out of previous civil orders and their impact on the crime rate, and what have been the results of those studies? Will the gang matrix be used to target suitable people for a KCPO? I look forward to the Minister's response.

Baroness Hamwee: My Lords, I am speaking partly as a member of the Joint Committee on Human Rights. I am not going to read all the letters that the committee has written to the Minister, and I know that she will respond to the committee, but I thought it appropriate to let the House know that the committee has raised concerns, having identified seven rights that are engaged by these proposals. As one might expect, the concerns are about the possible criminalisation of children who have no previous criminal convictions, for breaching requirements which could be imposed in ways which prevent them conducting a normal life.

The committee also asked whether the regime for gang injunctions, which the noble Baroness has just mentioned, might be applied in a similar fashion. They can be applied only to persons aged 14 and over, and a breach is a civil contempt of court, not a criminal offence. For those under 18, breaches are dealt with by way of a separate statutory scheme, with a maximum length of detention of three months. Therefore, the committee has asked the Government to explain why a similar regime has not been proposed to tackle knife crime. The committee has also asked for early sight of the proposed guidance, so that it can be scrutinised when the Bill returns to the Commons.

The amendments on piloting—which are amendments to government Amendment 52—were tabled before yesterday's round-table meeting with the Minister for Crime, Safeguarding and Vulnerability, which has been referred to, to probe how the pilot proposed by the Government will operate. What is "purpose" in this context? The pilots are to be for a specified purpose, and one needs to understand "purpose" before one asks about specified purpose. I would have assumed that it is to prevent knife crime, but there must be more than that. In Amendment 56, we take a shot at this issue by listing various categories of order.

We are also seeking to obtain assurances that the objective of the pilot is to evaluate, learn and adjust, so in Amendment 57 we refer to the criteria to be used in evaluating and collecting the data about numbers, including age and ethnicity; data about the conditions applied by the court, since it is important to know in practice what happens; and, of course, data about consultation. We have also raised the issue of areas, although since tabling this amendment I understand that it is not proposed that the pilot—or the first pilot, maybe—will necessarily be a whole-force area; for instance, within the Met it may be two or three boroughs and if we are to have these orders, that seems to be right for the purposes of comparison.

In Amendment 107, the noble Lord, Lord Kennedy, has been far more straightforward than my rather convoluted attempt at ensuring that the regulations will be made through an affirmative SI—not just the initial pilot but the full rollout. I hope that the Minister will not analyse my drafting but confirm that that is what is intended.

Lord Ponsonby of Shulbrede (Lab): My Lords, I rise to speak against the Government's proposals. I remind the House that I sit as a magistrate in London. In fact, earlier today I was dealing with knife-related offences at Highbury magistrates' court. The noble Lord, Lord Paddick, summarised very fully the case that I was going to put forward so I will try to put forward different points, which were covered earlier in Committee.

The Government's case is that the KCPO is aimed at filling a gap which is not covered by existing preventive measures, such as gang injunctions and criminal behaviour orders. The Minister has argued forcefully that the potential benefit of preventing knife crime through KCPOs outweighs the potential disbenefit of criminalising children who breach such an order. In essence, that is the argument which we have had a number of times over the last few weeks. She will be aware that many groups have advocated against these KCPOs, for the reasons that we have heard this evening.

Yesterday, I too attended the round-table meeting with the Minister in the Commons, Victoria Atkins. When I asked her for the difference between a KCPO and a conditional caution, I got a better answer than I was expecting because she said that the KCPO would provide a wraparound approach. I was a bit surprised by her words. Earlier this evening we heard from the noble Lord, Lord Hogan-Howe, about hoping to replace inadequate parenting with a more caring—I think that was the word—approach, so that parental care may be approached somehow through these KCPOs. That is absolutely great and I would support it as a good thing, but the reality is that there is no new money available. As far as I can see, the only difference between a KCPO and a conditional caution is at the level of entry into either the order or the caution.

As we have heard, the KCPO has a lower requirement. It is a civil standard, based on the suspicion of a police officer. I remind the House what the requirements for a youth conditional caution are. First, there may be a clear admission of guilt. That is one option but there is a second which is not normally remembered and where there does not need to be any admission of guilt. If the officer believes that there is sufficient evidence against the young person, they can choose to place a conditional caution even when there is no admission of guilt. Of course, all the conditions, as far as I can see, can be exactly the same either in the KCPO or the conditional caution. I do not see how the laudable aspiration of providing wraparound care or some form of parental guidance—or however one chooses to phrase it—would be better met with a KCPO than with a conditional caution.

There is the other effect, the one that we have been talking about, of net-widening when having the lower standard of proof. The people who have advised me are confident that that will bring more young people into being criminalised, which I would regret.

The Minister gave a very strong speech earlier this evening, but the reality is that there is no more money available. That is much more important than however

[Lord Ponsonby of Shulbrede]
many pieces of legislation that this House chooses to pass. I hope that the Minister will say something encouraging about putting more money into youth services for young people, because that is the true answer to this problem.

Lord Ramsbotham: I rise to oppose the KCPO proposal, as I did in Grand Committee. I shall not repeat all the arguments that I raised then, because other noble Lords have already mentioned them. However, I ask the Minister: who dreamed up these KCPOs? Were they a Home Office invention? It appears that the Youth Justice Board, the Children's Commissioner and local government services were not consulted. The Magistrates' Association, the Association of Youth Offending Team Managers, the Local Government Association, The Children's Society and the knife crime APPG are all opposed to it. We hear from the noble Baroness, Lady Meacher, that the police and crime commissioner in Durham is also opposed to it.

I am glad that the noble Lord, Lord Ponsonby, mentioned the cost, because there is no reckoning or details of the cost available to Members of this House. I question the pilot and am also worried about Amendment 63, because that seems to click in only if the KCPOs are approved. I hope that the House will not approve them.

The Earl of Listowel: I express my deep concerns about what the Government are proposing. I also felt that the Minister made a very strong speech, making it really clear to us again, sitting in this place, that this is about young people, usually on housing estates, being stabbed, bleeding out, dying and losing all that potential in their lives. This is a very grave situation.

That does not mean we should do anything that comes to mind to respond; we need to make an effective response. I am particularly concerned, as vice-chair of the All-Party Parliamentary Group for Looked After Children and Care Leavers, about the criminalising of young people in care. My noble friend Lord Laming's report two years ago focused on work to reduce the criminalisation of these children, who are so overrepresented in our prisons. The police have recently created a protocol for working with children's homes to lower the rates of criminalisation. However, I feel certain that if this KCPO is introduced, we will see more children from children's homes ending up in the criminal justice system. I strongly oppose what is being proposed.

We were recently briefed on county lines. Your Lordships will be aware that drug dealers are grooming children to send far and wide across the country to provide new markets for their drugs. The Children's Society commented that it will often be children in poverty, from children's homes, and in difficult circumstances, who are sent away to deal drugs. They will often be supplied with knives or will get them from doing this work. These are the kinds of children who get drawn into this.

9.15 pm

Working with children over many years, my experience has been that you have to set sanctions and boundaries for them, but one does not want to set a hurdle which leads to a huge jump into severe punishment. One wants to say: "I am watching you; I see what you are up to; I have got my eye on you; I am paying close attention to you; I am not accepting this behaviour". You do not want to move from that to saying: "If you do not behave, next time I see you I am going to lock you up" for however long. I am not expressing myself very well. It is late at night and I will not detain your Lordships any longer. I very strongly oppose these proposals. They are not well thought out and I hope that the House will reject them tonight.

Lord Kennedy of Southwark (Lab Co-op): My Lords, knife crime prevention orders are an attempt by the Government to deal with the horror of knife crime. Hardly a week goes by without a report of a young life lost. We see parents on our television screens in the depths of unimaginable despair as they try to understand what has happened to their child. These are things that no one should have to experience: a child, a loved one, murdered. It is also clear that the perpetrators of these crimes destroy their own lives when they are caught and punished. We must ask ourselves: have we as a society failed these children and young people as well?

Teaching right from wrong starts in the home, of course, but other agencies also play their part as children go to school and interact with the world around them. The destruction of Sure Start by the Government was a huge mistake—it was destroyed at the altar of austerity. Services for young people have been devastated. There are no youth clubs, no youth workers in any great numbers. Where children are not in loving homes and no one is there to help them, who becomes their family? The risk is that it will be the drug dealer, the gangs, and the people who exploit and abuse them, who become their family. You are part of a gang; there are people who are in other gangs. You have your territory and they have theirs. I was horrified to learn recently that there are young people living in Camberwell, an area of Southwark where I went to school, who are too scared to cross Camberwell New Road and walk into Lambeth. I could not believe it but it is true: they have never been into the borough of Lambeth. That is another gang's territory and if they go there they risk being stabbed and killed.

When we debated this in Grand Committee, I asked why COBRA has not been convened to deal with this national emergency. If there is a flood, or other emergency, it is convened, so why not to stop this appalling loss of life and destruction of young lives and families? Why not try to deal with this as a national emergency? You could get the police, the Local Government Association, the Home Office and every other relevant agency around the table to look at solutions to these tragic, devastating incidents. I do not think it is over the top to stop young people losing their lives.

I accept that there is support for these orders. I think I am correct in saying that the Commissioner of the Metropolitan Police supports them, as does the Mayor of London. However, concerns have also been raised about the criminalising of children. That concern has been expressed tonight by the noble Lords, Lord Paddick and Lord Ramsbotham, the noble Baroness, Lady Meacher, my noble friend Lord Ponsonby and

other noble Lords. If these orders are to come into force, we need a proper pilot scheme, with proper evaluation, and then, having considered the report, a vote in both Houses of Parliament on whether to either roll them out fully or not continue with them. This is the subject of Amendment 55 in my name. Amendment 63, which I am grateful to the noble Lord, Lord Paddick, for supporting, sets out the report to be laid before Parliament before these come into effect.

There are legitimate concerns about the way this proposal has been introduced so late in the day, the lack of consultations with relevant organisations and the lack of scrutiny in the other place where there was none at all because it was introduced after the Bill had left that House. Although I believe we do scrutiny better in this House, the elected House should have had its opportunity and the fact that it has not is regrettable. Getting a series of Lords amendments to debate in the other place is not the same as a Bill Committee, with evidence being taken and the other place going through its proper parliamentary procedures. I think this proposal deserves that.

A number of key points have been raised by noble Lords around the House. The Minister needs to respond carefully before we decide whether to vote on these matters.

Baroness Williams of Trafford: I thank all noble Lords for their contributions. I particularly thank the noble Lord, Lord Kennedy, for his point about responding carefully—I certainly shall, because this is a very serious issue.

Before I respond to the amendments from the noble Lords, Lord Kennedy and Lord Paddick, and other points raised in the debate, I want to emphasise again that the purpose of these orders is not to punish those who have been carrying knives but to divert them away from that behaviour and to put in place measures that will stop them being drawn into more serious violent offending. The noble Lord, Lord Ponsonby, quoted my honourable friend Vicky Atkins, who said that they are there to provide that wraparound care. That is precisely their intention—not to draw children into criminality. The noble Lord, Lord Paddick, said that a public health approach is needed, and I absolutely agree with him. My right honourable friend the Home Secretary precisely outlined his intention to pursue a public health approach to this issue.

The other important thing to note about these orders is that they should not be seen in isolation, and they will not in and of themselves provide all the answers. They need to be seen in the context of the comprehensive programme of action set out in our *Serious Violence Strategy*, which we published last year.

We must try and stop the journey that leads young people from carrying a knife for self-protection to serious violence. We should not focus on picking up the pieces but do all we can to stop those lives being broken in the first place. I am sure noble Lords will agree that prosecution for young children is not always the most appropriate response, and we do not want them drawn into the criminal justice system if we can possibly help it. KCPOs will enable the police and others to address the underlying issues and steer young people away from knife crime through positive interventions.

The amendments contain important safeguards to ensure that KCPOs are not used inappropriately against young people under the age of 18. In particular, the amendments require the police to consult the relevant youth offending team before an order is made and, once made, an order must be reviewed by the courts after 12 months. We fully expect that the courts will provide for more regular reviews where a KCPO is issued to a person under the age of 18. But we remain of the view that the breach of an order should be a criminal offence if these orders are to be effective. This will mean that those on orders understand how important it is to comply with the restrictions or requirements imposed by the court.

I turn now to the amendments from the noble Lord, Lord Kennedy. These amendments tie into government Amendment 52 which provides for, and indeed mandates, the piloting of KCPOs. That these orders should be the subject of a pilot before they are rolled out nationally is clearly a sensible approach, although I take the point of the noble Lord, Lord Hogan-Howe, who would just like to see them rolled out. But these are new orders and it is important that we get them right. Piloting will mean that the police can try out the orders in a few areas, and that they can build experience and learn lessons from operating them for an initial period before they are made available to other police forces. I would expect the pilot areas to include one or more London boroughs, but they might also include other cities with high knife crime. By their nature, the pilot areas will be limited and I hope that assurance deals with Amendment 60 in the name of the noble Lord, Lord Paddick.

Amendment 52 further requires a report to be laid before Parliament on the outcome of the pilot. This will allow Parliament to consider whether these orders are effective and whether they are likely to deliver the intended benefits. It is important that this report is as comprehensive as possible and I am sure that it will include at least some of the information specified in Amendments 57 and 63. By its nature, the report required by Amendment 52 will be a one-off, but I fully expect that once rolled out, KCPOs will be the subject of ongoing scrutiny. There are existing mechanisms for this, such as parliamentary Questions and debates, an inquiry by the Home Affairs Select Committee and the normal process of post-legislative review. I am therefore not persuaded that the new orders should be subject to an annual reporting requirement, as set out in Amendment 63.

Amendment 55 would require the national rollout of KCPOs to be subject to the approval of both Houses of Parliament. I think it is the intention of Amendment 107 to require that regulations provided for the pilots should also be subject to prior parliamentary approval. Again, I am not persuaded of the case for this. The government amendments adopt the standard approach of providing for KCPO provisions, including the pilots, to be brought into force by regulations made by the Home Secretary. In the usual way, such regulations are not subject to parliamentary procedure

[Baroness Williams of Trafford]
and I see no reason to adopt a different approach here. Once Parliament has approved the principle of the provisions by enacting them, commencement is then properly a matter for the Executive.

Amendment 52 enables the piloting of the provisions for one or more specified purposes as well as in one or more specified areas. Our intention is to have area-based pilots rather than purpose-based pilots, but we might need some combination of the two. As I have said, our intention is to pilot these provisions principally in part of the Metropolitan Police area, but potentially also in one or two other police force areas. In doing so, it might be necessary to commence certain provisions more widely.

The noble Lord, Lord Hogan-Howe, asked about the situation where an application on conviction is made in the pilot area, but the subject of the order then moves to another part of the country. To cater for such circumstances, it might be necessary to give all courts in England and Wales jurisdiction to vary or discharge, but not to make, an order.

Turning to other issues raised in this group, the noble Lord, Lord Paddick, asked about a consultation that is going to be done as part of the pilot. He also asked about someone who is not guilty of a crime but is given a KCPO. KCPOs are available on application by the police where they have evidence that the individual has carried a knife on two occasions in the preceding two years. If an individual is acquitted but there is evidence that they have carried a knife, an application can be made. It will be for the magistrate or youth court to determine whether the test is met and whether a KCPO is necessary to prevent knife offending or to protect the public.

The noble Baroness, Lady Meacher, asked how many police forces wanted KCPOs and how many do not, which is a reasonable question. The National Police Chiefs' Council, which represents all 43 police forces in England and Wales, supports KCPOs. In addition, Assistant Commissioner Duncan Ball, of the National Police Chiefs' Council, said he welcomed the new powers announced by the Home Office, and the APCC chair likewise.

The noble Lord, Lord Hogan-Howe, asked why we have not given a search power. We did not consider the power of stop and search without reasonable grounds necessary because there are existing powers to stop and search individuals where there are reasonable grounds to suspect them of carrying a knife. We think it appropriate for the Police and Criminal Evidence Act 1984 protection to continue to apply to the subjects of these orders.

9.30 pm

A number of noble Lords, including the noble Lord, Lord Ponsonby, and the noble Baroness, Lady Meacher, asked about funding and said that there was no point in doing this if funding is not in place. My honourable friend partly answered that point yesterday. Of course, we have made an additional £970 million available to the police for next year and will provide £200 million over 10 years for the all-important early intervention youth fund. We have the National County Lines Coordination Centre. In 2018-19, £1.5 million will go to the community fund; £17.7 million has already been put into the early intervention youth fund for work with PCCs and CSPs to provide the joined-up support mentioned by noble Lords. I think I have answered all noble Lords' questions.

The Earl of Listowel: My Lords, will the Minister ensure that in any pilots, an assessment will be made of the impact of KCPOs on young people in care who are looked after by their local authority and care leavers?

Baroness Williams of Trafford: The noble Earl is right to point out that children in care are the most vulnerable people in all the areas we look at. Of course, they will be a prime consideration because they are the most likely to be vulnerable to the sorts of things we are talking about. Local authorities, as their corporate parents, are responsible for them.

Finally, the Government do not pretend for one moment that KCPOs are the magic wand to answer all the problems of knife crime. I emphasise that they are one tool, but an important one, to end the scourge affecting young people, communities and their families. With that, I beg to move.

9.32 pm

Division on Amendment 35

Contents 145; Not-Contents 84.

Amendment 35 agreed.

Division No. 3

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Amendments 36 to 51

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

36: After Clause 13, insert the following new Clause—

"Requirements for application for order under section (Knife crime prevention order made otherwise than on conviction)

(1) An application for a knife crime prevention order under section (Knife crime prevention order made otherwise than on conviction) may be made only by—

(a) a relevant chief officer of police,

(b) the chief constable of the British Transport Police Force, or

(c) the chief constable of the Ministry of Defence Police.

(2) For the purposes of subsection (1)(a) a chief officer of police is a relevant chief officer of police in relation to an application for a knife crime prevention order in respect of a defendant if—

(a) the defendant lives in the chief officer's police area, or

(b) the chief officer believes that the defendant is in, or is intending to come to, the chief officer's police area.

(3) An application for a knife crime prevention order under section (Knife crime prevention order made otherwise than on conviction) made by a chief officer of police for a police area may be made only to a court acting for a local justice area that includes any part of that police area.

(4) Subsections (5) and (6) apply if a person proposes to apply for a knife crime prevention order under section (Knife crime prevention order made otherwise than on conviction) in respect of a defendant who—

(a) is under the age of 18, and

(b) will be under that age when the application is made.

(5) Before making the application the person must consult the youth offending team established under section 39 of the Crime and Disorder Act 1998 in whose area it appears to the person that the defendant lives.

(6) If it appears to the person that the defendant lives in the area of two or more youth offending teams, the obligation in subsection (5) is to consult such of those teams as the person thinks appropriate."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

37: After Clause 13, insert the following new Clause—

"Application without notice

(1) An application for a knife crime prevention order under section (Knife crime prevention order made otherwise than on conviction) may be made without the applicant giving notice to the defendant.

(2) Section (Requirements for application for order under section (Knife crime prevention order made otherwise than on conviction))(4) to (6) (consultation requirements) does not apply to an application made without notice.

(3) If an application is made without notice the court must—

(a) adjourn the proceedings and make an interim knife crime prevention order under section (Interim knife crime prevention order: application without notice),

(b) adjourn the proceedings without making an interim knife crime prevention order under that section, or

(c) dismiss the application.

(4) If the court acts under subsection (3)(a) or (b), the applicant must comply with section (Requirements for application for order under section (Knife crime prevention order made otherwise than on conviction))(4) to (6) before the date of the first full hearing.

(5) In this section "full hearing" means a hearing of which notice has been given to the applicant and the defendant in accordance with rules of court."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

38: After Clause 13, insert the following new Clause—

"Interim knife crime prevention orders

Interim knife crime prevention order: application without notice

(1) Where an application for a knife crime prevention order in respect of a defendant is made without notice by virtue of section (Application without notice), the court may make an interim knife crime prevention order under this section in respect of the defendant if the first and second conditions are met.

(2) The first condition is that the proceedings on the knife crime prevention order are adjourned (otherwise than at a full hearing within the meaning of section (Application without notice)).

(3) The second condition is that the court thinks that it is necessary to make an interim knife crime prevention order under this section.

(4) An interim knife crime prevention order under this section is an order which imposes on the defendant such of the prohibitions that may be imposed by a knife crime prevention order under section (Knife crime prevention order made otherwise than on conviction) as the court thinks are required in relation to the defendant.

(5) An interim knife crime prevention order under this section may not impose on the defendant any of the requirements that may be imposed by a knife crime prevention order under section (Knife crime prevention order made otherwise than on conviction).

(6) See also—

(a) section (Provisions of knife crime prevention order) (which makes further provision about the prohibitions which may be imposed by an interim knife crime prevention order under this section), and

(b) section (Duration of knife crime prevention order etc) (which makes provision about the duration of an interim knife crime prevention order under this section)."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

39: After Clause 13, insert the following new Clause—

"Interim knife crime prevention order: application not determined

(1) This section applies if—

(a) an application is made to a court for a knife crime prevention order under section (Knife crime prevention order made otherwise than on conviction) in respect of a defendant,

(b) the defendant is notified of the application in accordance with rules of court, and

(c) the application is adjourned.

(2) The court may make an interim knife crime prevention order in respect of the defendant if—

(a) the first or second condition is met, and

(b) the third condition is met.

(3) The first condition is that, by the complaint by which the application mentioned in subsection (1) is made, the applicant also applies for an interim knife crime prevention order in respect of the defendant.

(4) The second condition is that, by complaint to the court, the applicant for the order mentioned in subsection (1) subsequently applies for an interim knife crime prevention order in respect of the defendant.

(5) The third condition is that the court thinks that it is just to make the order.

(6) An interim knife crime prevention order under this section is an order which—

(a) imposes on the defendant such of the requirements that may be imposed by a knife crime prevention order under section (Knife crime prevention order made otherwise than on conviction) as the court thinks appropriate;

(b) imposes on the defendant such of the prohibitions that may be imposed by a knife crime prevention order under that section as the court thinks appropriate.

(7) See also—

(a) section (Provisions of knife crime prevention order) (which makes further provision about the requirements and prohibitions that may be imposed by an interim knife crime prevention order under this section),

(b) section (Requirements included in knife crime prevention order etc) (which makes further provision about the inclusion of requirements in an interim knife crime prevention order under this section), and

(c) section (Duration of knife crime prevention order etc) (which makes provision about the duration of an interim knife crime prevention order under this section).

(8) Section 127 of the Magistrates' Courts Act 1980 (time limits) does not apply to a complaint under this section."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

40: After Clause 13, insert the following new Clause—

"Knife crime prevention orders made on conviction

Knife crime prevention order made on conviction

(1) This section applies where—

(a) a person aged 12 or over (the "defendant") is convicted of an offence which was committed after the coming into force of this section, and

(b) a court dealing with the defendant in respect of the offence is satisfied on the balance of probabilities that the offence is a relevant offence.

(2) The court may make a knife crime prevention order under this section in respect of the defendant if the following conditions are met.

(3) The first condition is that the prosecution applies for a knife crime prevention order to be made under this section.

(4) The second condition is that the court thinks that it is necessary to make the order—

(a) to protect the public in England and Wales from the risk of harm involving a bladed article,

(b) to protect any particular members of the public in England and Wales (including the defendant) from such risk, or

(c) to prevent the defendant from committing an offence involving a bladed article.

(5) A knife crime prevention order under this section is an order which, for a purpose mentioned in subsection (4)—

(a) requires the defendant to do anything described in the order;

(b) prohibits the defendant from doing anything described in the order.

(6) See also—

(a) section (Provisions of knife crime prevention order) (which makes further provision about the requirements and prohibitions that may be imposed by a knife crime prevention order under this section),

(b) section (Requirements included in knife crime prevention order etc) (which makes further provision about the inclusion of requirements in a knife crime prevention order under this section), and

(c) section (Duration of knife crime prevention order etc) (which makes provision about the duration of a knife crime prevention order under this section).

(7) The court may make a knife crime prevention order under this section in respect of the defendant only if it is made in addition to—

(a) a sentence imposed in respect of the offence, or

(b) an order discharging the offender conditionally.

(8) For the purposes of deciding whether to make a knife crime prevention order under this section the court may consider evidence led by the prosecution and evidence led by the defendant.

(9) It does not matter whether the evidence would have been admissible in the proceedings in which the defendant was convicted.

(10) For the purposes of this section an offence is a relevant offence if—

(a) the offence involved violence,

(b) a bladed article was used, by the defendant or any other person, in the commission of the offence, or

(c) the defendant or another person who committed the offence had a bladed article with them when the offence was committed.

(11) In subsection (10) "violence" includes a threat of violence."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

41: After Clause 13, insert the following new Clause—

"Requirement to consult on application for order under section (Knife crime prevention order made on conviction)

(1) This section applies if the prosecution proposes to apply for a knife crime prevention order under section (Knife crime prevention order made on conviction) in respect of a defendant who—

(a) is under the age of 18, and

(b) will be under that age when the application is made.

(2) Before making the application, the prosecution must consult the youth offending team established under section 39 of the Crime and Disorder Act 1998 in whose area it appears to the prosecution that the defendant lives.

(3) If it appears to the prosecution that the defendant lives in the area of two or more youth offending teams, the obligation in subsection (2) is to consult such of those teams as the prosecution thinks appropriate."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

42: After Clause 13, insert the following new Clause—

"Provisions of knife crime prevention order

Provisions of knife crime prevention order

(1) The only requirements and prohibitions that may be imposed on a defendant by a knife crime prevention order are those which the court making the order thinks are necessary—

(a) to protect the public in England and Wales from the risk of harm involving a bladed article,

(b) to protect any particular members of the public in England and Wales (including the defendant) from such risk, or

(c) to prevent the defendant from committing an offence involving a bladed article.

(2) The requirements imposed by a knife crime prevention order on a defendant may, in particular, have the effect of requiring the defendant to—

(a) be at a particular place between particular times on particular days;

(b) be at a particular place between particular times on any day;

(c) present themselves to a particular person at a place where they are required to be between particular times on particular days;

(d) participate in particular activities between particular times on particular days.

(3) Section (Requirements included in knife crime prevention order etc) makes further provision about the inclusion of requirements in a knife crime prevention order.

(4) The prohibitions imposed by a knife crime prevention order on a defendant may, in particular, have the effect of prohibiting the defendant from—

(a) being in a particular place;

(b) being with particular persons;

(c) participating in particular activities;

(d) using particular articles or having particular articles with them;

(e) using the internet to facilitate or encourage crime involving bladed articles.

(5) References in subsection (4) to a particular place or particular persons, activities or articles include a place, persons, activities or articles of a particular description.

(6) A knife crime prevention order which imposes prohibitions on a defendant may include exceptions from those prohibitions.

(7) Nothing in subsections (2) to (6) affects the generality of section (Knife crime prevention order made otherwise than on conviction)(7) or section (Knife crime prevention order made on conviction)(5).

(8) The requirements or prohibitions which are imposed on the defendant by a knife crime prevention order must, so far as practicable, be such as to avoid—

(a) any conflict with the defendant's religious beliefs, and

(b) any interference with the times, if any, at which the defendant normally works or attends any educational establishment."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

43: After Clause 13, insert the following new Clause—

"Requirements included in knife crime prevention order etc

(1) A knife crime prevention order or interim knife crime prevention order which imposes a requirement on a defendant must specify a person who is to be responsible for supervising compliance with the requirement.

(2) That person may be an individual or an organisation.

(3) Before including a requirement, the court must receive evidence about its suitability and enforceability from—

(a) the individual to be specified under subsection (1), if an individual is to be specified;

(b) an individual representing the organisation to be specified under subsection (1), if an organisation is to be specified.

(4) Before including two or more requirements, the court must consider their compatibility with each other.

(5) It is the duty of a person specified under subsection (1)—

(a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (the "relevant requirements");

(b) to promote the defendant's compliance with the relevant requirements;

(c) if the person considers that the defendant—

(i) has complied with all of the relevant requirements, or

(ii) has failed to comply with a relevant requirement,

to inform the appropriate chief officer of police.

(6) In subsection (5)(c) "the appropriate chief officer of police" means—

(a) the chief officer of police for the police area in which it appears to the person specified under subsection (1) that the defendant lives, or

(b) if it appears to that person that the defendant lives in more than one police area, whichever of the chief officers of police of those areas the person thinks it is most appropriate to inform.

(7) A defendant subject to a requirement in a knife crime prevention order or interim knife crime prevention order must—

(a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time, and

(b) notify that person of any change of the defendant's home address.

(8) The obligations mentioned in subsection (7) have effect as if they were requirements imposed on the defendant by the order."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

44: After Clause 13, insert the following new Clause—

"Duration of knife crime prevention order etc

(1) A knife crime prevention order or an interim knife crime prevention order under section (Interim knife crime prevention order: application not determined) takes effect on the day on which it is made, subject to subsections (6) and (7).

(2) An interim knife crime prevention order under section (Interim knife crime prevention order: application without notice) takes effect when it is served on the defendant, subject to subsections (6) and (7).

(3) A knife crime prevention order must specify the period for which it has effect, which must be a fixed period of at least 6 months, and not more than 2 years, beginning with the day on which it takes effect.

(4) An interim knife crime prevention order under section (Interim knife crime prevention order: application without notice) has effect until the determination of the application mentioned in subsection (1) of that section, subject to section (Variation, renewal or discharge of knife crime prevention order etc) (variation, renewal or discharge).

(5) An interim knife crime prevention order under section (Interim knife crime prevention order: application not determined) has effect until the determination of the application mentioned in subsection (1) of that section, subject to section (Variation, renewal or discharge of knife crime prevention order etc).

(6) Subsection (7) applies if a knife crime prevention order or an interim knife crime prevention order is made in respect of—

(a) a defendant who has been remanded in or committed to custody by an order of a court,

(b) a defendant on whom a custodial sentence has been imposed or who is serving or otherwise subject to such a sentence, or

(c) a defendant who is on licence for part of the term of a custodial sentence.

(7) The order may provide that it does not take effect until—

(a) the defendant is released from custody,

(b) the defendant ceases to be subject to a custodial sentence, or

(c) the defendant ceases to be on licence.

(8) A knife crime prevention order or an interim knife crime prevention order may specify periods for which particular prohibitions or requirements have effect.

(9) Where a court makes a knife crime prevention order or an interim knife crime prevention order in respect of a defendant who is already subject to such an order, the earlier order ceases to have effect.

(10) In this section "custodial sentence" means—

(a) a sentence of imprisonment or any other sentence or order mentioned in section 76(1) of the Powers of Criminal Courts (Sentencing) Act 2003, or

(b) a sentence or order which corresponds to a sentence or order within paragraph (a) and which was imposed or made under an earlier enactment."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

45: After Clause 13, insert the following new Clause—

"Notification requirements

Notification requirements

(1) Subsection (2) applies if—

(a) a knife crime prevention order is made in respect of a defendant (other than an order which replaces an interim knife crime prevention order), or

(b) an interim knife crime prevention order is made in respect of a defendant.

(2) The defendant must notify the information mentioned in subsection (3) to the police within the period of 3 days beginning with the day on which the order takes effect.

(3) That information is—

(a) the defendant's name on the day on which the notification is given and, where the defendant uses one or more other names on that day, each of those names, and

(b) the defendant's home address on that day.

(4) Subsection (5) applies to a defendant who is subject to—

(a) a knife crime prevention order, or

(b) an interim knife crime prevention order.

(5) The defendant must notify the information mentioned in subsection (6) to the police within the period of 3 days beginning with the day on which the defendant—

(a) uses a name which has not previously been notified to the police under subsection (2) or this paragraph,

(b) changes their home address, or

(c) decides to live for a period of one month or more at any premises the address of which has not been notified to the police under subsection (2) or this paragraph.

(6) That information is—

(a) in a case within subsection (5)(a), the name which has not previously been notified;

(b) in a case within subsection (5)(b), the new home address;

(c) in a case within subsection (5)(c), the address at which the defendant has decided to live.

(7) A defendant gives a notification under subsection (2) or (5) by—

(a) attending at a police station in a police area in which the defendant lives, and

(b) giving an oral notification to a police officer, or to any person authorised for the purpose by the officer in charge of the station."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

46: After Clause 13, insert the following new Clause—

"Offences relating to notification

(1) A person commits an offence if the person—

(a) fails, without reasonable excuse, to comply with section (Notification requirements)(2) or (5), or

(b) notifies to the police, in purported compliance with section (Notification requirements)(2) or (5), any information which the person knows to be false.

(2) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both.

(3) In relation to an offence committed before the coming into force of section 154(1) of the Criminal Justice Act 2003 (maximum sentence that may be imposed on summary conviction of offence triable either way) the reference in section (2)(a) to 12 months is to be read as a reference to 6 months.

(4) A person commits an offence under subsection (1)(a) on the day on which the person first fails, without reasonable excuse, to comply with section (Notification requirements)(2) or (5).

(5) The person continues to commit the offence throughout any period during which the failure continues.

(6) But the person may not be prosecuted more than once in respect of the same offence.

(7) Proceedings for an offence under this section may be commenced in any court having jurisdiction in any place where the person charged with the offence lives or is found."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

47: After Clause 13, insert the following new Clause—

"Supplementary provisions

Review of knife crime prevention order

(1) This section applies where a court has made a knife crime prevention order in respect of a defendant.

(2) The court may order the applicant and the defendant to attend one or more review hearings on a specified date or dates.

(3) Subsection (4) applies if any requirement or prohibition imposed by the knife crime prevention order is to have effect after the end of the period of 1 year beginning with the day on which the order takes effect.

(4) The court must order the applicant and the defendant to attend a review hearing on a specified date within the last 4 weeks of the 1 year period (whether or not the court orders them to attend any other review hearings).

(5) A review hearing under this section is a hearing held for the purpose of considering whether the knife crime prevention order should be varied or discharged.

(6) Subsections (7) to (9) of section (Variation, renewal or discharge of knife crime prevention order etc) (variation, renewal or discharge) apply to the variation of a knife crime prevention order under this section as they apply to the variation of an order under that section."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

48: After Clause 13, insert the following new Clause—

"Variation, renewal or discharge of knife crime prevention order etc

"(1) A person within subsection (2) may apply to the appropriate court for—

(a) an order varying, renewing or discharging a knife crime prevention order, or

(b) an order varying or discharging an interim knife crime prevention order.

(2) Those persons are—

(a) the defendant;

(b) the chief officer of police for a police area in which the defendant lives;

(c) a chief officer of police who believes that the defendant is in, or is intending to come to, the chief officer's police area;

(d) if the application for the order was made by a chief officer of police other than one within paragraph (b) or (c), the chief officer by whom the application was made;

(e) if the order was made on an application by the chief constable of the British Transport Police Force, that chief constable;

(f) if the order was made on an application by the chief constable of the Ministry of Defence Police, that chief constable.

(3) An application under subsection (1) may be made—

(a) where the appropriate court is the Crown Court, in accordance with rules of court;

(b) in any other case, by complaint.

(4) Before a person other than the defendant makes an application under subsection (1), the person must notify the persons consulted under section (Requirements for application for order under section (Knife crime prevention order made otherwise than on conviction))(5) or section (Requirement to consult on application for order under section (Knife crime prevention order made on conviction))(2).

(5) Before making a decision on an application under subsection (1), the court must hear—

(a) the person making the application, and

(b) any other person within subsection (2) who wishes to be heard.

(6) Subject as follows, on an application under subsection (1)—

(a) the court may make such order varying or discharging the order as it thinks appropriate;

(b) in the case of an application under paragraph (a) of that subsection, the court may make such order renewing the order as it thinks appropriate.

(7) The court may renew a knife crime prevention order, or vary such an order or an interim knife crime prevention order so as to impose an additional prohibition or requirement on a defendant, only if it is satisfied that it is necessary to do so—

(a) to protect the public in England and Wales from the risk of harm involving a bladed article,

(b) to protect any particular members of the public in England and Wales (including the defendant) from such risk, or

(c) to prevent the defendant from committing an offence involving a bladed article.

(8) The provisions mentioned in subsection (9) have effect in relation to the renewal of a knife crime prevention order, or the variation of a knife crime prevention order or interim knife prevention order so as to impose a new requirement or prohibition, as they have effect in relation to the making of such an order.

(9) Those provisions are—

(a) section (Provisions of knife crime prevention order) (provisions of knife crime prevention order),

(b) section (Requirements included in knife crime prevention order etc) (requirements included in knife crime prevention order etc), and

(c) section (Duration of knife crime prevention order etc) (duration of knife crime prevention order etc).

(10) The court may not discharge a knife crime prevention order before the end of the period of 6 months beginning with the day on which the order takes effect without the consent of the defendant and—

(a) where the application under this section is made by a chief officer of police, that chief officer,

(b) if paragraph (a) does not apply but the application for the order was made by a chief officer of police, that chief officer and (if different) each chief officer of police for an area in which the defendant lives or

(c) in any other case, each chief officer of police for an area in which the defendant lives.

(11) In this section the "appropriate court" means—

(a) where the Crown Court or the Court of Appeal made the knife crime prevention order or the interim knife crime prevention order, the Crown Court;

(b) where an adult magistrates' court made the order, that court, an adult magistrates' court for the area in which the defendant lives or, where the application is made by a chief officer of police, any adult magistrates' court acting for a local justice area that includes any part of the chief officer's police area;

(c) where a youth court made the order and the defendant is under the age of 18, that court, a youth court for the area in which the defendant lives or, where the application is made by a chief officer of police, any youth court acting for a local justice area that includes any part of the chief officer's police area;

(d) where a youth court made the order and the defendant is aged 18 or over, an adult magistrates' court for the area in which the defendant lives or, where the application is made by a chief officer of police, any adult magistrates' court acting for a local justice area that includes any part of the chief officer's police area.

(12) In subsection (11) "adult magistrates' court" means a magistrates' court that is not a youth court."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

49: After Clause 13, insert the following new Clause—

"Appeal against knife crime prevention order etc

(1) A defendant may appeal to the Crown Court against—

(a) the making of a knife crime prevention order under section (Knife crime prevention order made otherwise than on conviction) (order made otherwise than on conviction), or

(b) the making of an interim knife crime prevention order.

(2) A person who applied for a knife crime prevention order under section (Knife crime prevention order made otherwise than on conviction) or an interim knife crime prevention order may appeal to the Crown Court against a refusal to make the order.

(3) A defendant may appeal against the making of a knife crime prevention order under section (Knife crime prevention order made on conviction) (order made on conviction) as if the order were a sentence passed on the defendant for the offence.

(4) Where an application is made for an order under section (Variation, renewal or discharge of knife crime prevention order etc) (variation, renewal or discharge)—

(a) the person who made the application may appeal against a refusal to make an order under that section;

(b) the defendant may appeal against the making of an order under that section which was made on the application of a person other than the defendant;

(c) a person within subsection (2) of that section other than the defendant may appeal against the making of an order under that section which was made on the application of the defendant.

(5) An appeal under subsection (4)—

(a) is to be made to the Court of Appeal if the application for the order under section (Variation, renewal or discharge of knife crime prevention order etc) was made to the Crown Court;

(b) is to be made to the Crown Court in any other case.

(6) On an appeal under subsection (1) or (2), or an appeal under subsection (4) to which subsection (5)(b) applies, the Crown Court may make—

(a) such orders as may be necessary to give effect to its determination of the appeal, and

(b) such incidental and consequential orders as appear to it to be appropriate."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

50: After Clause 13, insert the following new Clause—

"Offence of breaching knife crime prevention order etc

(1) A person commits an offence if, without reasonable excuse, the person breaches a knife crime prevention order or an interim knife crime prevention order.

(2) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both.

(3) In relation to an offence committed before the coming into force of section 154(1) of the Criminal Justice Act 2003 (maximum sentence that may be imposed on summary conviction of offence triable either way) the reference in subsection (2)(a) to 12 months is to be read as a reference to 6 months.

(4) Where a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order for conditional discharge."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

51: After Clause 13, insert the following new Clause—

"Guidance

(1) The Secretary of State may from time to time issue guidance relating to the exercise by a relevant person of functions in relation to knife crime prevention orders and interim knife crime prevention orders.

(2) In this section "relevant person" means a person who is capable of making an application for a knife crime prevention order or an interim knife crime prevention order.

(3) A relevant person must have regard to any guidance issued under subsection (1) when exercising a function to which the guidance relates.

(4) The Secretary of State must arrange for any guidance issued under this section to be published in such manner as the Secretary of State thinks appropriate."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

Amendments 36 to 51 agreed.

Amendment 52

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

52: After Clause 13, insert the following new Clause—

"Piloting

(1) The Secretary of State may exercise the power in section 46(1) so as to bring all of the provisions of this Part into force for all purposes and in relation to the whole of England and Wales only if the following conditions are met.

(2) The first condition is that the Secretary of State has brought some or all of the provisions of this Part into force only—

(a) for one or more specified purposes, or

(b) in relation to one or more specified areas in England and Wales.

(3) The second condition is that the Secretary of State has laid before Parliament a report on the operation of some or all of the provisions of this Part—

(a) for one or more of those purposes, or

(b) in relation to one or more of those areas.

(4) Regulations under section 46(1) which bring any provision of this Part into force only for a specified purpose or in relation to a specified area may—

(a) provide for that provision to be in force for that purpose or in relation to that area for a specified period,

(b) make transitional or saving provision in relation to that provision ceasing to be in force at the end of the specified period.

(5) Regulations containing provision by virtue of subsection (4)(a) may be amended by subsequent regulations under section 46(1) so as to continue any provision of this Part in force for the specified purpose or in relation to the specified area for a further specified period.

(6) In this section "specified" means specified in regulations under section 46(1).

(7) References in this section to this Part do not include section (Guidance) or this section (which by virtue of section 46(5)(za) and (zb) come into force on the day on which this Act is passed)."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

Amendments 53 to 60 (to Amendment 52) not moved.

Amendment 52 agreed.

Amendments 61 and 62

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

61: After Clause 13, insert the following new Clause—

"Consequential amendments

(1) In section 3(2) of the Prosecution of Offences Act 1985 (functions of the Director of Public Prosecutions) after paragraph (ff) insert—

"(fg) to have the conduct of applications for orders under section (Knife crime prevention order made on conviction) of the Offensive Weapons Act 2019 (knife crime prevention orders made on conviction);".

(2) In the Criminal Legal Aid (General) Regulations 2013 (SI 2013/9), in regulation 9 (criminal proceedings) after paragraph (ub) insert—

"(uc) proceedings under Part 5 of the Offensive Weapons Act 2019 in relation to a knife crime prevention order or an interim knife crime prevention order;".

(3) The amendment made by subsection (2) is without prejudice to any power to make an order or regulations amending or revoking the regulations mentioned in that subsection."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

62: After Clause 13, insert the following new Clause—

"Interpretation of Part

(1) In this Part—

"applicant" means an applicant for a knife crime prevention order;

"bladed article" means an article to which section 139 of the Criminal Justice Act 1988 applies;

"defendant"—

(a) in relation to a knife crime prevention order under section (Knife crime prevention order made otherwise than on conviction) (order made otherwise than on conviction), has the meaning given by subsection (1) of that section;

(b) in relation to a knife crime prevention order under section (Knife crime prevention order made on conviction) (order made on conviction), has the meaning given by subsection (1) of that section;

"harm" includes physical and psychological harm;

"home address", in relation to a defendant, means—

(a) the address of the defendant's sole or main residence, or

(b) if the defendant has no such residence, the address or location of a place where the defendant can regularly be found and, if there is more than one such place, such one of those places as the defendant may select.

(2) A reference in this Part to a knife crime prevention order which is not expressed as a reference to an order under section (Knife crime prevention order made otherwise than on conviction) or (Knife crime prevention order made on conviction) is a reference to an order under either of those sections.

(3) A reference in this Part to an interim knife crime prevention order which is not expressed as a reference to an order under section (Interim knife crime prevention order: application without notice) or (Interim knife crime prevention order: application not determined) is a reference to an order under either of those sections."

Member's explanatory statement

See the explanation of the Minister's amendment to insert the first new Clause after Clause 13.

Amendments 61 and 62 agreed.

Amendment 63 not moved.

Clause 15: Defence to sale of bladed articles to persons under 18: England and Wales

Amendments 64 and 65 not moved.

Amendment 66

Moved by ***Lord Paddick***

66: Clause 15, page 14, leave out lines 36 and 37

Member's explanatory statement

This amendment is intended to probe the effect of labelling a package as containing a knife on the likelihood of the package being stolen during delivery.

Lord Paddick: My Lords, I am moving this amendment on behalf of the noble Lord, Lord Lucas, and at his request. Part of the defence to the sale and delivery of knives to under-18s is that the package containing a knife is clearly marked to indicate its contents. The amendment is intended to probe the effect of labelling a package as containing a knife on the likelihood of the package being stolen during delivery. I beg to move.

Baroness Barran: I am grateful to the noble Lord, Lord Paddick, for explaining the amendment on behalf of my noble friend Lord Lucas, because it gives us the opportunity to consider the requirements that remote sellers need to meet if they are to rely on the defence that they have taken all reasonable precautions and exercised all due diligence to avoid selling bladed articles to a person under 18.

Section 141A of the Criminal Justice Act 1988 makes it an offence to sell a bladed article to a person under 18. It is a defence that the seller took all reasonable precautions and exercised all due diligence to avoid committing the offence—for example, that they had asked to see proof of a person's age.

Clause 15 provides that, in relation to remote sales—for example, online sales—of bladed articles, the seller can rely on the defence only if they can prove they have met certain conditions. These conditions are: that they have systems in place at the point of sale for verifying the age of buyers; that they clearly mark the package containing the article when it is dispatched, and have taken steps to ensure that the package is finally delivered is delivered to someone over 18; and that they did not arrange for the article to be delivered to a locker.

The amendment concerns the second of those conditions, which is that that when the package is dispatched it must be clearly marked to indicate that it contains a bladed or sharply pointed article, and that when finally delivered it should be into the hands of someone over 18. The amendment would remove the first part of this condition, so the package would need to be labelled to say that it must be handed to a person over 18, but it would not need to say it contained a bladed or sharply pointed article.

Before I turn to the amendment itself, it might be worth saying a bit about the purpose of Clause 15, which is to drive a change in behaviour by remote sellers. It sets out the minimum requirements we would expect sellers to meet if they wanted to be confident that they were not selling to under-18s, but it is mainly aimed at individual transactions—young people trying to buy knives online—rather than large business transactions. It is not aimed, for example, at a seller of kitchenware that deals exclusively with restaurants and hotels.

The requirements under Clause 15 are therefore the minimum requirements that a seller has to meet if they want to rely on the defence that they have taken all reasonable precautions and exercised all due diligence, should they ever be prosecuted for selling to an under-18. Where a seller knows their customers, they may decide not to comply with the conditions under Clause 15 because they are sure they will never be prosecuted. Examples would be: where a seller sells only to a wholesaler; where a seller has traded with the same customer for years; or where a seller knows the individual they are selling to—for instance, where they make hand-made items for particular customers, they will know the buyer is over 18 and may decide that complying with the conditions is unnecessary.

Turning to the amendment, our discussions with delivery companies and those who provide collection point services indicate that they want any packages that they are going to handle to be clearly marked by the seller so that the risk that they inadvertently hand them over to a person aged under 18 is reduced. You cannot expect staff working for a delivery company or at a collection point to ensure that the package is handed over to an adult unless it is clear from the packaging what it contains and what the restriction is on delivery. It makes sense that those working for delivery companies and at collection points know what they are handling. This will enable them to treat the package with due caution. This is particularly the case where the package contains sharp objects or corrosive substances.

Finally, the amendment applies only to Clause 15 and not to Clauses 16 and 17, which deal with the same matter in Scotland and Northern Ireland, or to Clause 2, which sets the same conditions in relation to corrosive products where these are sold remotely.

I hope I have provided the noble Lord with sufficient explanation around the purpose of Clause 15 and the labelling requirement and that he will feel able to withdraw the amendment.

The Duke of Montrose: My Lords, perhaps my noble friend can clarify on the record to what extent an article is regarded as pointed. I am afraid I am the

one who is always raising the virtually impossible but it would be possible to extend this provision to a packet of screws or an order of nails—which are not all that sharp but they are sharply pointed articles—and anything else of that nature.

Baroness Barran: I will write to my noble friend with an accurate answer on that. I am confident that there is a tight definition of this but at this hour I cannot recall it exactly.

Lord Paddick: My Lords, I am grateful to the Minister for her explanation. The noble Lord, Lord Lucas, wanted the Government's response to the amendment on the record and that is what we have achieved. On that basis, I beg leave to withdraw the amendment.

Amendment 66 withdrawn.

Amendments 67 to 69 not moved.

Clause 16: Defence to sale etc of bladed articles to persons under 18: Scotland

Amendments 70 and 71 not moved.

Clause 17: Defence to sale of bladed articles to persons under 18: Northern Ireland

Amendments 72 and 73 not moved.

Consideration on Report adjourned.

House adjourned at 9.53 pm.

Grand Committee

Tuesday 26 February 2019

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Viscount Simon) (Lab): My Lords, if there is a Division in the House, the Committee will adjourn for 10 minutes.

Shipments of Radioactive Substances (EU Exit) Regulations 2019

Considered in Grand Committee

3.30 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Shipments of Radioactive Substances (EU Exit) Regulations 2019.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, this new instrument is being made under powers set out in Section 8(1) of the European Union (Withdrawal) Act 2018. It is being made to address specific inoperabilities arising from the UK's withdrawal from the European Atomic Energy Community —Euratom—and would come into force on exit day only in the event of no deal between the UK and the EU. The instrument corrects deficiencies in retained EU law by revoking and replacing Euratom Regulation 1493/93 on the shipments of radioactive substances between EU member states. This instrument applies to the whole of the UK.

The regulations ensure that advance declarations will continue for shipments of sealed radioactive sources from the EU into the UK in the event of no deal. They enable the UK competent authorities to check that UK importers comply with requirements for the safe storage, use and disposal of sources before shipments are made. This process of advance declarations maintains the oversight of the UK competent authorities of the destinations and recipients of the sealed sources shipped into the UK. Therefore, in relation to imports, the regulations provide continuity for regulators and operators in a no-deal scenario.

The instrument covers the shipment of sealed radioactive sources. This means a radioactive material encapsulated by another material, usually metal, to prevent exposure. Such sources are widely used in industry, agriculture and medicine. Examples include sources to inspect the quality of welds on gas and water pipelines, to kill bacteria in food, to kill cancer cells in medical patients and to sterilise medical equipment. Approximately 100 businesses import radioactive sealed sources in the UK and the vast majority are in England. The regulations do not delay or restrict the UK's ability to import such sources from the EU as they provide continuity with current practices.

Following exit, UK importers of sealed radioactive sources from the EU will be required, as previously, to make an advance declaration demonstrating that they comply with national requirements for the safe storage, use and disposal of sealed sources before shipments from the EU to the UK can take place. This declaration will be sent to the relevant competent authority in the UK, which will acknowledge receipt as per previous processes. The competent authorities are the ONR for nuclear-licensed sites and the UK environment agencies for non-nuclear licensed sites. The UK importer will then be required to forward the declaration to the EU-based exporter before the shipment can be made. These declarations can last for up to three years and cover more than one shipment. The UK will recognise all declarations made before exit day following the UK's withdrawal from the EU. Shipments can continue to be made under existing declarations until those declarations expire.

In the event of no deal, the system cannot continue to operate in exactly the same way as now as the UK will no longer be a member state. The instrument maintains current arrangements in so far as possible, with three changes. First, the instrument applies only to imports from the EU into the UK, and will not apply to exports from the UK to the EU. This reflects the UK's position outside the EU and that this legislation can cover only the arrival of shipments in the UK.

Secondly, the obligation on exporters in EU member states to submit a quarterly return of all shipments will no longer apply. This is because the UK cannot place an obligation on EU exporters to submit a return to a UK-based competent authority.

Thirdly, the instrument places the legal obligation to make an advance declaration on the UK importer, whereas the Euratom regulation placed the legal obligation to obtain the advance declaration on the EU exporter. This technical legal change is made for jurisdictional reasons but makes no difference to what is required of the importer in practice, since it would have needed to provide the information to the exporter. Therefore, requirements for making the declaration for UK importers remain the same.

The changes do not place any additional practical requirements on industry or regulators. We expect a very small, one-off familiarisation cost to all industry of between £1,400 and £9,000. Subject to Parliament's approval of the regulations, guidance for operators will be published online in March alongside targeted industry engagement. Officials have been engaging with affected operators through various fora and channels, including the Environment Agency's small users' liaison group and the Radioactive Substances Policy Group. My department drafted this instrument in collaboration with the devolved Administrations, the UK environment agencies and the ONR.

In conclusion, the regulations are essential to demonstrate the UK's continuing commitment to the highest safety standards for the control of radioactive substances and to ensure maximum continuity for UK importers. I beg to move.

Lord Jones (Lab): My Lords, I thank the Minister for his exposition. I acknowledge that this is a complex and highly technical subject, but it is important to all citizens. I note on the first page of the document that "competent authority" means,

"in Wales, the Natural Resources Body for Wales".

On page two, some lines down, it states that "shipment",

[Lord Jones]
"means the transport from the place of origin to the place of destination, including loading and unloading, of sealed sources".
Should we presume that this refers to a sea voyage, as opposed to a road or rail journey? The word "shipment", on paper, seems a trifle ambiguous.

In north Wales there are two nuclear power stations: Trawsfynydd in Meirionnydd and Wylfa in Anglesey, or Ynys Môn. I believe that the former is dormant and the latter is to be replaced, although I understand that plans for the new Wylfa are now on hold, which is a cause for concern across the island. It is not my intention to query those issues as such, but can it be presumed that shipment from plants such as these—should there be a need for shipment—would begin by road or rail? As I said, "shipment", as referred to on page 2, is a trifle ambiguous. I recollect seeing the transportation by rail southwards from north-west Wales of a flask mounted on a rail-wagon frame. The flask, which was large and possibly made of steel or iron, was engaged within the train in just one wagon and was easily identifiable to people like me in the locality as a flask connected with the plants that I have instanced.

Lord Fox (LD): My Lords, I thank the Minister very much for presenting this statutory instrument. Obviously, this is not just a consequence of the Brexit decision but of the Euratom decision, so I put it on record that we regret that it is necessary. In the debate in the other place, this was billed as the last SI connected to Euratom, although I think the next one is as well, so I am not sure how that works. I know that previous SIs have been dealt with by my noble friend Lord Teverson.

I shall raise a couple of points. First, the Minister was clear that this relates to sealed transportation, yet the Explanatory Notes are clear that it covers both sealed and unsealed transportation, so I am a little confused about that. Certainly, in the debate in the other place, the Opposition Front Bench spokesperson also expressed some concern over how these regulations extend into the unsealed transportation—"unsealed" being vials, for example—of nuclear material. I would welcome some explanation from the Minister of why he chose not to talk about unsealed transportation while the Explanatory Notes are clear on that. Perhaps he could spend some time adding detail to that.

The Minister was clear that this is one-way legislation, which it has to be in that it applies to imports from the EU into the UK. It was clear that this affects about 100 concerns in the UK. On reciprocal travel, I am not aware that there is much material of this nature travelling in the opposite direction, but what is BEIS's analysis of the traffic in the opposite direction, and what impact would that have were the European Union not to reciprocate in equal measure to the way we have gone about continuing the Euratom process?

The noble Lord behind me—I am afraid I do not know his name—

Lord Jones: Jones of Wales.

Lord Fox: I guessed it was Wales. The noble Lord mentioned competent authorities, and obviously the ONR is a competent authority to handle this kind of material. What extra competence is required of the environment and natural resource agencies highlighted in the Minister's speech to manage this process?

Finally—again, this came up in the other place—there was some confusion between the Minister and some MPs in the debate over the ability of this process to continue to track radioactive material as it moves around the United Kingdom. The Minister seemed clear that it was competent to do this, and that was brought into question. The Minister promised to write to the Opposition Front Bench spokesperson on this subject. I am not aware that that letter has gone out but, given that the Minister in the other place saw fit to write on this subject, it would be helpful if the Minister could let us know the content of that letter to underline the competence or otherwise of this process to continue to track these materials as they travel throughout the United Kingdom.

3.45 pm

Lord Grantchester (Lab): I also thank the Minister for his introduction to the regulations. I confirm my understanding that they just cover the situation under a no-deal outcome and that if there is a deal, these would fall into the future relationship category, subject to negotiation. One might think that even a no-deal situation would lead to a deal of some sort downstream.

Labour agrees that we must have an effective, operable statute book under all circumstances at the time of EU exit and therefore does not oppose the regulations. That is not to say that we are at all happy in the round with having to face a no-deal scenario, which is not supported.

The regulations provide continuity and certainty regarding Euratom and the compliance with nuclear safeguards that the House agreed to last year. The Minister mentioned that the regulations will be implemented through the relevant competent authorities in the UK: necessarily, the Office for Nuclear Regulation for nuclear site licences, but also the Environment Agency in England, the Scottish Environment Protection Agency, Natural Resources Wales and the Northern Ireland Environment Agency, regarding their different agencies for non-nuclear licences.

As the noble Lord, Lord Fox, said a few questions about the regulations were necessarily explored in some depth in the other place. First, on whether the regulations apply only to imports from the EU to the UK, I wondered whether existing agreements on exports to the EU, currently operable through Euratom, would continue to apply. The second point regards the obvious obligations for exporters in EU member states that would fall away. Would a new system be under discussion with Euratom in a no-deal scenario, or would that happen only under negotiations on the future relationship? That is an important point to distinguish under a no-deal scenario.

Once again, I have noted and am grateful that the regulations were drafted in collaboration with the devolved Administrations, all the relevant agencies and the ONR. However, what about Euratom, which will need to continue to be the regulating authority of the Euratom membership? Has it been included in these discussions such that it is happy that we will be

fully compliant with IAEA regulations—something that the Minister will have ensured in any case?

As the noble Lord, Lord Fox, said, in the other place, there was a query about the extent of the application to both sealed and unsealed sources. The Minister in the Commons stated that unsealed sources are not covered by the regulations, so it is a completely different matter with a completely different system. Against that, the Explanatory Memorandum states at paragraph 2.2:

"The Regulation covers both 'sealed' and 'unsealed' radioactive sources".

There is confusion because that apparently was not made clear by the Minister in the other place, so it would be excellent if the Minister could reconcile that to us and follow up the queries to which I, my noble friend Lord Jones and the noble Lord, Lord Fox, drew attention.

Otherwise, I am content with the regulations.

Lord Henley: My Lords, I thank the noble Lords, Lord Grantchester, Lord Fox and the noble Lord, Lord Jones, of Wales, as we shall now refer to him, if he is happy—I am sure he will be—with such a grand title.

Lord Jones: And we won last Saturday.

Lord Henley: I think the less said about last Saturday the better, but that is another matter. I shall start, because of last Saturday, by dealing with the noble Lord's question, which is pretty straightforward. I can assure him that "shipment" refers to any form of transport. It might have the word "ship" in it, but it also covers trains, which, as he knows, have been used a great deal over the years to move nuclear waste and nuclear materials around all parts of England, Wales and Scotland. Whether by road or whatever, "shipment" covers everything.

I note also what the noble Lord said about Wylfa. Now is neither the time nor the place to go over that again. We hope that something will emerge in due course, but he knows the reasons why that could not go ahead.

I turn to the questions asked by the noble Lords, Lord Fox and Lord Grantchester. On whether the measure covers both sealed and unsealed transportation, I know that my honourable friend Mr Harrington is meeting his opposite number, Dr Whitehead, about that tomorrow. I hope they will be able to resolve whatever uncertainties there were between the two of them on that matter. I hope also that they will be able to follow up the confusion relating to tracking and deal with the letter to which the noble Lord, Lord Fox, referred.

Lord Fox: I thank the Minister for that. I realise that his colleague is always right, but do we have any inkling as to how this question will be resolved? In other words, is the Explanatory Note that states the measure deals with "unsealed" as well as "sealed" incorrect, or was the impression given in the other place perhaps misunderstood and the Explanatory Note correct?

Lord Henley: My honourable friend is always correct, but, as the noble Lord knows, even Homer nods, and he might not have been quite as correct as he normally is on every occasion. As I said, I would prefer to have that dealt with tomorrow, between my honourable friend and Mr Whitehead.

The noble Lord asked also about the impact on exports and the reciprocal nature of this. I am afraid I cannot give him any figures about how much is going the other way. If there are some figures on that, I shall certainly write to him. The position in relation to UK exports into the EU obviously sits entirely within the EU's competence after exit. Operators have been advised that they should seek guidance from the EU and member states on any future requirements on exports to the EU. In that respect, I assure the noble Lord, Lord Grantchester, that we will continue to maintain close relations with Euratom, just as relations with the International Atomic Energy Agency remain important. It is keen that we bear in mind the standards that it will wish to maintain in this area, just as we have always done. I made it clear throughout the passage of that first bit of Brexit legislation, the Nuclear Safeguards Act—which I am sure noble Lords will agree seems quite a long time ago—that we would continue to maintain close relations with those bodies, and I make it clear it now. I think it was the noble Lord, Lord Fox, who asked whether this was the last bit of EU exit legislation relating to nuclear matters but then thought that the next instrument also dealt with such matters. The next statutory instrument is not technically an EU exit regulation, so I think my honourable friend was correct in saying that this was the last of our EU exit statutory instruments on nuclear matters. As he is aware, we still have to deal with quite a number of other EU exit SIs and legislation.

I think that deals with almost all the questions noble Lords asked. The final one was on the competence of the various environmental agencies and whether they have the appropriate skills. All the environment agencies have been dealing with these matters already, so there will be no extra burden on them and no extra skills to acquire. They will continue to work in this field.

Lord Grantchester: Can the Minister confirm that it is about not just their skill set but their resource levels, which must be adequate to take on these tasks? It would be useful to have his confirmation on the financial implications of that.

Lord Henley: I cannot give the noble Lord any precise figures at this stage, but I can make it clear that they will continue to be adequately resourced for whatever they need to do. I commend the regulations to the Committee.

Motion agreed.

Carriage of Dangerous Goods (Amendment) Regulations 2019

Considered in Grand Committee

3.56 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Carriage of Dangerous Goods (Amendment) Regulations 2019.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, this statutory instrument will change the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009. These regulate the transport of most dangerous goods in Great Britain, and this instrument will update the sections that deal specifically with radioactive materials.

The amendments in the instrument will strengthen Great Britain's emergency preparedness and response arrangements for the transport of radioactive materials. They will apply to transport by rail, road and inland waterway. The changes in the instrument will bring Great Britain into step with the highest international safety standards, as they implement the emergency preparedness and response requirements of the Euratom basic safety standards directive 2013.

One of the amendments introduces provisions on the control of so-called volatile organic compounds resulting from the storage of petrol and its distribution from terminals to service stations. It corrects an unintended revocation of guidance for the design and construction of petrol tanks in respect of the control of such compounds. The other simply updates a cross-reference in the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008.

On that matter, I should like to point out that, in the debate in another place, concerns were raised about the drafting of this amendment. It was suggested that the 2008 regulations had been revoked and replaced by the Transfrontier Shipment of Radioactive Waste and Spent Fuel (EU Exit) Regulations 2019, and that this amendment therefore constituted defective drafting, which would be fatal to the SI. I am happy to confirm that the amendment in question is legally sound, as the revocation and replacement of the 2008 regulations will take effect only if the UK leaves the EU on 29 March without a deal. In this unlikely event, the amendment would simply be null and void; its nullity would have no impact on the remaining provisions of these regulations.

The department held a joint consultation with the Ministry of Defence and the Health and Safety Executive on the changes made by this instrument. We published our response to the consultation in October last year. Of 71 respondents, 31 commented on the transport-specific elements of the consultation. I am happy to report that the proposals received broad support.

I shall now briefly outline the amendments made by this instrument. We have broadened the definition of "emergency" to include risks to quality of life, property and the environment. We have also updated the principles and purposes that duty holders are to have regard to when drafting emergency plans, to ensure that plans are flexible and proportionate. We are including in the regulations a definition of "emergency worker", with comprehensive requirements for training. We are also expanding the requirement to regularly review and test emergency plans. For civil nuclear transport, the competent authority in Great Britain, currently the ONR, will have a duty to provide information to the public about the nature and effect of a potential radiation emergency.

4 pm

These regulations will introduce a national reference level and will require the carrier and consigner of radioactive materials to ensure that the emergency plan prioritises keeping radiation exposure below that level. It was alleged in another place that these regulations do not take account of the circumstances under which an emergency worker may be exposed to a maximum dose of 500 milliSieverts; I can confirm that the regulations expressly state that such exposure is possible if this worker is engaged in activities for the purpose of saving human life and with their informed consent. The new regulations also include a duty to provide a handover report to assist the transition from an emergency exposure situation to the recovery phase.

As I have mentioned, Part 2 of the regulations makes a technical update to a cross-reference in the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations. Part 3 reinstates a previously revoked provision that implements an EU directive on volatile organic compound emissions resulting from the storage of petrol and its distribution. The impact of these changes will be minimal: the main burden will be any costs associated with familiarisation with the amendments and making any revisions to emergency plans. This will be a relatively minor, one-off cost. The other two changes included in this instrument, those on volatile organic compounds and transfrontier shipment of radioactive waste, are purely technical and will have no impact on industry. I beg to move.

Lord Jones (Lab): My Lords, I thank the Minister again for his exemplary exposition. This is a most important instrument. I look at page 5, under "Interpretation of Part 1", and I see the words "ionising radiations", "dose consequences", "endangered persons", "exposure" and,

"'emergency services' means those police, fire and ambulance services that are likely to be required to respond to the radiation emergency".

I support what the Minister proposes and I will not detain the Committee but I will give an insight.

Some of your Lordships may have heard of CP Snow, a novelist who ended up in your Lordships' House and was at one time a Minister under a trade union leader who was a Cabinet Minister, Mr Cousins. As a novelist, CP Snow wrote a series of 11 novels, *Strangers and Brothers*. One—which I have read, as I have the others—is relevant to these regulations, in a historical sense if no other, and might be of interest to the Minister and his able colleagues in the department who brief him.

The novel in question is *The New Men*, which describes, clearly based on what had happened, the consequences of an individual receiving an unwanted dosage—that is, a radiation emergency, the words in the regulation. The novel is set in north-east Wales in the small village of Rhydymwyn, where the first steps of Britain's attempt to make an atom bomb were taken under the cover of chemical substances that were possibly to be used in war. That small village is outside Mold, the county town of Flintshire, and I have always lived within eight or nine miles of it.

Snow describes the scientists who were transplanted from their dreaming spires and assisted by university men from Liverpool and Birmingham, to name but two centres inhabited by the scientists who were making,

or attempting to make, our first bomb. Noble Lords may know that the attempts were ended and went lock, stock and barrel to Los Alamos in New Mexico. A former Member of the other place wrote a tract entitled *How the Americans Stole Britain's Bomb*. That is not for me to describe further.

The novel that I have been referencing is an attempt by the insightful novelist, who was engaged in science and the upper echelons of the Civil Service, to describe the making of our bombs. These regulations relate to that, and it may occasionally be the duty of any Parliament to consider how a regulation first came about. Once again, the novel is *The New Men* by CP Snow, part of the 11-novel *Strangers and Brothers* sequence.

My question, if I may pose it, is: how many shipments, if any, are by road annually? Is there any information that the Minister can give responsibly?

4.07 pm

Sitting suspended for a Division in the House.

4.17 pm

Lord Jones: My Lords, I restate my question: how many shipments, if any, are by road annually? I presume that transportation is inevitably through urban centres. Is the Minister able to give us any detail or information of any responsible kind? The proposals on page 7, looking at emergency plans, are clearly well-considered and very sound, but who oversees them? What arm of the British state is responsible in the end for these emergency plans, when one takes into account the chain of command?

I referred very briefly to the village of Rhydymwyn in the county of Flintshire, where the dosages were first suffered. I conclude by telling the Committee that there was an upshot in 1979. It was a general election, and as a Minister I found myself in the wilds of Meirionnydd, not a million miles from Blaenau Ffestiniog. I was hunted in that locality by the constabulary, on the basis of urgent representations made by officials from my department at that time. They had established that in the proximity of Rhydymwyn, which was making something like mustard gas but deep in the bowels of the buildings, there was the beginnings of a trace of atomic energy. The point was: my officials told me that the road outside that factory had shown evidence of collapse, and very dangerous substance material was feared to be leaking. It did not happen, but that is the context of these words.

Lord Fox (LD): My Lords, I thank the Minister for introducing this statutory instrument. I am enjoying the novelty of dealing with one that is not related to Brexit, so it is almost like a holiday among all the others.

I have three points to make. First, I welcome the extension of the definitions of an emergency. Some of those are quite subjective in their description—for example, "quality of life". I wonder what work has gone on to make sure that an emergency is indeed an emergency, and that transporters are not exposed to unwarranted legal action through what would be described as a loose definition in the Act. What impact analysis has been done on the litigation risk around the looseness of the term?

It was very helpful that the Minister brought up the issue of whether this was in order around the Transfrontier Shipment of Radioactive Waste and Spent Fuel (EU Exit) Regulations 2018. He mentioned that these regulations would in the event automatically be nullified—"nullity", I think, was the word he used. How is that nullifying process triggered? Is it part of an overall Bill where a group of SIs or parts of SIs are triggered? My sense is that only a part of this SI gets nullified; or is all of it nullified? What is the mechanism for the triggering of its nullification?

The noble Lord, Lord Jones, paints an interesting picture of his home village. I cannot help thinking that it must be very beautiful and he is hell-bent on keeping people out with tales of mustard gas and atomic leaks.

Lord Jones: I am not a nationalist. Borders mean nothing to me.

Lord Fox: There is another point to consider. Essential to this is the definition of an emergency worker. Is it someone who is predetermined as an emergency worker? We have heard of the heroic efforts of ordinary engineers and ordinary people during the massive meltdown of the Japanese reactor, and we know that in Chernobyl heroic individuals took it upon themselves to be part of an emergency exercise. Although there is a definition of emergency workers in the SI, it is clear that, if there is an emergency—let us hope it never comes to pass—individuals will become de facto emergency workers by their proximity to what is happening. They perhaps are not covered by these regulations. In any case, how do you limit these people to 500 millisieverts when they are in the middle of an emergency? They do not necessarily have monitoring equipment to hand; they are dealing with an emergency. While this is a useful limit, no emergency is planned, so unless these people are already wearing the necessary monitoring equipment, they will not be monitoring the dose; and if they are accidental emergency workers—if you follow my drift—they will not have that monitoring equipment either. I would welcome the Minister's response to those three points.

Lord Grantchester (Lab): My Lords, I am grateful to the Minister for his explanation of the order before the Committee today, and for providing us with updated information on its passage in the other place. The noble Lord, Lord Fox, said that it is not entirely to do with a no-deal scenario; hence I am a little perplexed as to how this order is split—if that is the right word—into parts that will be nullified and those that will not at the relevant outcome.

I also reiterate that we found it unfortunate that Euratom was swept up into the withdrawal letter, and hence into the withdrawal agreement, and that we need to leave Euratom at the same time as we leave the EU. That is deeply regretted, but I am grateful to the Minister for his updating remarks on the order in the Commons regarding the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008.

[Lord Grantchester]

We see no issue with the order in general; however, I have noted the circumstances on which the Minister reported, and which have been taken up in other contributions around the Committee, around radioactive emergencies, notably in relation to exposure to risks for emergency workers. I welcome the consultation and the Government's response: this does indeed strengthen the UK's emergencies preparedness and aligns with IAEA best practice and the highest safety standards. I also welcome the fact that under the regulations the ONR has a duty to provide information to the public about the nature and effect of a potential radioactive emergency and that they introduce a national reference level below which exposure must be kept.

I put on record that it is of great benefit that there is now a duty to have a handover report to a recovery phase in any emergency and that training will be provided to give clarity to workers, including those that the noble Lord, Lord Fox, asked about, who might suddenly come within the bracket of the emergency regulations, though they may not necessarily have been designated as emergency workers.

The Minister paid regard to the setting of the definitive reference level that was part of the debate in the other place. Emergency workers will be exposed to levels potentially above the general level of 100 millisieverts, to a higher level of 500 millisieverts: this is well above the level that workers were exposed to at the Chernobyl disaster, which reached 350 millisieverts. I recognise that this level is in compliance with the EU directive, but will the Minister say whether it is future policy to look at this more closely and perhaps see what can be done to reduce this in order to be less above the level that would pertain in an ordinary situation? I know that an emergency could entail a wide divergence to very high levels; nevertheless, if he can say something about that, it would be helpful.

I also notice that the ONR will publish guidance. Will that have a statutory reference in relation to health and safety at work? Will it include action to be taken should there be a series of spikes that could cumulatively expose a worker to a level well above that which is generally provided for? Is there any responsibility to an emergency worker should he be put into such a position? With those questions, I am happy to pass the order today.

Lord Henley: My Lords, again I thank all three noble Lords for their contributions; in particular I thank the noble Lord, Lord Jones, for his insights on CP Snow, particularly *The New Men*. It is a long time since I read any CP Snow, but I feel that I must go back and read some.

Lord Jones: May I recommend to the noble Lord *Corridors of Power*, which delineates activities here in this House?

4.30 pm

Lord Henley: I will try *Corridors of Power* as well as *The New Men.* The one thing I will not do, because it is beyond what I should ask of my officials, who are absolutely wonderful and have looked after me very well through all these debates and others, is ask them to read CP Snow. However, they might also take guidance from the noble Lord, Lord Jones.

The noble Lord also asked about the number of shipments by road. I can give him quite a number of figures. The total number of packages containing radioactive material transported by rail was about 1,500, and that was a total number of about 750 consignments. On road transport, we think that there were around a total of 110,000 packages, but again, you have to halve that because of going to and fro. The total figure we seem to have for road, rail and other means is around 40,000 packages. The majority are transported to nuclear power stations, but the transport of radioactive material by rail arises from the civil nuclear industry and consists of transport between Sellafield and the nuclear power stations, and from Sellafield to the low-level waste depository at Drigg. The road transport includes medical and industrial sources, some of which are moved more than once, hence bringing that figure down to 40,000. PHE estimates that 76% of packages transported by road in the UK are medical, 4% are industrial, and the remaining 20% are in the nuclear industry.

I will quickly deal with the point made by the noble Lord, Lord Fox, about the nullifying part of the regulations. I explained that the provision would be nullified, but the noble Lord asked about how nullification happened. There is no formal process—it just happens because a provision has been nullified, and there is case law which indicates how the courts are to treat such a nullified provision. I presume that if it is nullified, it is treated as if it is not there. If the noble Lord wants the case law, it is Inco Europe Ltd v First Choice Distribution in 2000.

On the question of emergency and who oversees that, the emergency plans, which the noble Lord, Lord Jones, asked for, are a matter for the Office for Nuclear Regulation, which is laid down by the Energy Act 2013. Obviously, any definition of "emergency", as the noble Lord, Lord Fox, points out, to some extent has to be subjective, but further details will be set out in guidance from the ONR. The reference here is based on the IAEA best practice.

The noble Lord also wanted to know just how we would then manage excessive doses. As I think I set out at the beginning, the regulations make lawful a deliberate exposure at high levels in an emergency. Obviously, in extremis workers might be subject to that higher level of exposure. They could not be ordered into such a situation, but—again, as I set out at the beginning—obviously, if it is a question of life and death, that is a different matter.

On the question asked by the noble Lord, Lord Jones, about the 500 milliSieverts level, the regulations provide that in exceptional situations—in order to save life, prevent severe radiation-induced health effects or prevent the development of catastrophic conditions—the reference level for an effective dose from external radiation for emergency workers may be set above 100 milliSieverts, but not exceeding 500 milliSieverts. In line with this provision, the CDG regulations disapply the IRR 2017 dose limits, subject to a maximum of 500 milliSieverts, providing that the emergency worker,

"is engaged in preventing the occurrence of a radiation emergency; or … is acting to mitigate the consequences of a radiation emergency".

As I said, further guidance will be available from the ONR. These regulations tightly restrict the circumstances under which an emergency worker may be exposed to that maximum dose. They state that such exposure is possible only if this worker is engaged in activities for the purpose of saving life and with their informed consent.

Lord Fox: That is slightly helpful, so I thank the Minister, but I am still troubled by what I call the first first responder, who may well be on the scene without the necessary equipment and monitoring of dosage available. We know that people of that nature run towards danger rather than away from it. These people could be knowingly or unknowingly exposing themselves to high dosages, whether at 500 milliSieverts or not. We will not know, because they are not being monitored. What is the policy on individuals who are exposed to radiation but are not in a position to measure that dosage? Is there a modelling process? How would we know what these people are exposing themselves to? Or does this legislation simply not deal with that situation and take the approach that, frankly, it happens but you cannot regulate for it?

Lord Henley: I would prefer to write in greater detail to the noble Lord on that. We are bringing in this limit of 500—for the first time, I think I am right in saying—but obviously, in emergencies of the sort he is talking about, things often go beyond what can be regulated for. Would the noble Lord be happy if I wrote to him in greater detail on this? It would be a pity if I started getting things wrong. Obviously, I will copy that to the noble Lords, Lord Jones and Lord Grantchester.

Lord Fox: I would appreciate that.

Lord Henley: The final point that needed to be dealt with was that from the noble Lord, Lord Grantchester, about emergency workers suffering from cumulative spikes. Any facility suffering multiple strikes—multiple urgencies—could be shut down by the ONR. That is what the ONR is there for. I do not expect that scenario to occur in practice, but obviously there could be occasions. If I need to add more to that, I will write to the noble Lord. I beg to move.

Motion agreed.

Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019

Considered in Grand Committee

4.38 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019.

Relevant document: 16th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, I will also speak to the other four statutory instruments listed on the Order Paper.

As we approach EU exit, the department is working to ensure that our energy legislation continues to function effectively after exit day, ensuring that consumers continue to benefit from reliable, affordable and clean electricity and gas. A significant part of the legislation that governs our energy markets takes the form of direct EU legislation. This will be incorporated into domestic law as retained EU law upon our departure from the EU by the European Union (Withdrawal) Act. These instruments amend EU regulations that will become retained EU law and address a range of highly technical issues, from cross-border trade to the energy market objectives of regulators.

The instruments simply remove inoperabilities in retained EU law in the event that we leave the EU without a deal. In the main, they remove references to the EU and EU institutions that would make no sense following EU exit. This ensures that, in the event of a no-deal exit, we would retain the regulatory functions and frameworks needed to keep Great Britain and Northern Ireland's electricity and gas markets working effectively, facilitating continuity for UK industry and consumers. This is a sensible contingency to minimise uncertainty and disruption to our energy markets.

The instruments make similar amendments to legislation applying to Northern Ireland and Great Britain, although they are not always identical. This will ensure a consistent approach to retained EU legislation that previously applied across the UK while still recognising the unique nature of the single electricity market on the island of Ireland. On the single electricity market, let me be clear that the Government will take all necessary steps to seek to ensure that it can continue in a no-deal scenario. These instruments help to facilitate that. In preparing this legislation, the department has worked closely with Ofgem in Great Britain, and the Department for the Economy and the Utility Regulator in Northern Ireland.

In sifting this and related instruments, the Secondary Legislation Scrutiny Committee Sub-Committee A reported that the draft regulations,

"are necessary to enable UK energy markets to operate effectively if there is no agreement with the EU",

and that,

"the proposed changes … do not appear to present significant policy or regulatory changes".

The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations amend and make "workable" the retained EU electricity and gas legislation that was created to harmonise energy markets and regulation across the EU. They also revoke guidelines for trans-European energy infrastructure which set out processes for development of EU infrastructure, as these will be redundant in a domestic setting.

The Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations amend retained EU gas legislation. They ensure that the regulatory framework relating to gas is maintained, including the technical EU network codes that cover the cross-border gas trade. This will maintain maximum business continuity and efficiency for UK gas operators and UK gas

[Lord Henley]
consumers. It also maintains the framework for dealing with security of supply, such as responding to gas supply emergencies by updating the security of supply regulation to remove references to EU institutions.

The Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations address EU electricity legislation relating to markets and trading, ensuring that they operate as part of domestic law. In particular, this instrument amends a wider package of rules, known as EU network codes for electricity. It revokes the guideline on forward capacity allocation and the guideline on capacity allocation and congestion management. These codes govern how cross-border trade operates within the EU's internal energy market. The EU has been clear that, were the UK to leave the EU without an agreement, we would no longer be part of the internal energy market. These codes would therefore have little to no practical application in UK law and are being revoked. Alternative arrangements for cross-border trade are being put in place by GB interconnectors similar to those that were in place prior to European market coupling. Fallback arrangements will be in place for the interconnectors between the single electricity market and GB to ensure that trading can continue to take place in a no-deal scenario.

This instrument also amends the inter-transmission system operator compensation mechanism regulation, which established a mechanism to compensate national transmission system operators for hosting cross-border flows of electricity. The cross-border elements are removed as they cannot be provided for by domestic UK legislation. Provisions relating to the setting of domestic network charges are retained.

4.45 pm

The guideline on electricity balancing will be largely retained in Great Britain, with amendments made to remove provisions relating to a European platform for the exchange of balancing energy. In Northern Ireland, the guideline on electricity balancing will be revoked as it does not apply to islands not interconnected with the rest of the EU.

The Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations deal with EU legislation relating to the operation of the electricity system. Two of the EU regulations amended by this instrument—system operation guideline and emergency and restoration network code—concern the activities of electricity system operators, which balance supply and demand on the system in real time and ensure that electricity flows securely to customers across the UK.

The instrument amends the obligation on National Grid to co-operate with other system operators. It requires National Grid to assist SONI, the Northern Ireland system operator, with a similar reciprocal requirement on SONI. It removes the obligation to co-operate with other system operators. This does not preclude such co-operation happening, which we would encourage. However, we do not think it would be right that the GB system operator would be under a legal duty to co-operate that would not be legally required by our EU neighbours.

The unique shared arrangements underpinning the single electricity market on the island of Ireland mean that a different approach is required. In a no-deal scenario, the EU regulations oblige EirGrid, Ireland's system operator, to endeavour to conclude a co-operation agreement with SONI because of the shared nature of the single electricity market. Therefore for Northern Ireland we are retaining a similar requirement for SONI to endeavour to conclude an agreement with EirGrid.

In addition, the instrument revokes the "connection codes"—a set of three EU instruments for electricity. These codes apply only under EU law and from a date after exit, so will not be incorporated via the withdrawal Act. A similar issue arises for some provisions of the gas transmission tariffs.

Finally, the Electricity and Gas (Market Integrity and Transparency) (Amendment) (EU Exit) Regulations deal with measures to ensure market integrity and transparency. They amend retained EU law to ensure that UK regulators can maintain effective market surveillance and enforcement, and that market participants will continue to publish relevant inside information.

In conclusion, while leaving the EU without a withdrawal agreement is not what the Government want or are aiming for, these regulations make the necessary changes to ensure that the electricity and gas markets continue to function as normal, including the continuation of the single electricity market on the island of Ireland. This will maximise business continuity for UK market operators, facilitate the continued efficient international trade in energy and ensure that consumers continue to benefit from reliable, affordable and clean electricity and gas. I beg to move.

Lord Fox (LD): I think we are down to the hard core now.

If I were a member of the EU 27 and I were sitting over there listening to this, I would detect a pulling up of the drawbridge, because that is what it feels like. Of course we are doing no such thing, because for UK consumers to continue to have the electricity and gas they need, they will rely very much on the interconnector and on gas pipelines, and on the island of Ireland there is an integrated supply. So it is with great regret that we are having this debate.

Even though we are debating what would happen in the event of a crash-out, for us to participate in the single European energy market seems very unlikely, no matter what deal Mrs May and others manage to hatch. This points the way not just to the future of this country's energy market in the event of a crash-out but to what sort of market we will have and how we intend to regulate it even in the event of a deal. Again, that is regrettable.

Even if we are not within the energy market, our electricity system will remain contiguous with that on the continent of Europe thanks to interconnection, and our gas system will remain plugged into European gas networks. It seems to me that completely absenting ourselves from balancing and suchlike is not where we want to be—although I understand that that is what we would do in the wake of an emergency. I would like some assurance from the Minister that this is not where we want to be in the event of a negotiated exit or no-deal exit.

We are placing consumers at some risk, not least around the point of no longer participating in balancing. If there are outages or if supplies go down in one place, we have been able to use the European energy market to fill in and take more power quickly through interconnection. On security of supply for British consumers, we will be absenting ourselves from having that option. In the event of a crash-out or of not having made an appropriate deal to remain part of the energy market, consumers will be at more risk of blackouts and interruption of supply. Perhaps the Minister would like to comment on that point.

Ofgem clearly has an important role, and I have the same questions that I have asked Ministers lots of times. Does Ofgem have the capacity and capability to do that? If not, is it likely to have it at the end of next month, or when will it have? What extra requirement is needed for Ofgem?

I note that we have in the SI a requirement to commence registration four weeks after exit day. It is not clear to me what happens in the four weeks between exit day and the registration of suppliers. Where are they legally? Are they in limbo? I await the Minister's answers.

Lord Grantchester (Lab): I am grateful to the Minister for his full and thorough explanation of the regulations before the Committee. Once again, I note that this instrument is brought forward under a no-deal scenario, such that it merely transposes existing regulations into UK jurisdiction with no appreciable policy differences. I am therefore happy to approve the instrument: it does exactly what it says on the tin.

However, I would add that, as they would normally be negative instruments, I am grateful to your Lordships' Secondary Legislative Scrutiny Committee for recommending that they be upgraded to the affirmative procedure. I agree that they are important for the internal energy market and, more importantly, for the all-Ireland energy market.

We are nevertheless concerned that, in future scenarios, interconnectors will become a key feature in the supply of electricity to the UK and to the EU. How it will operate effectively into the future is a matter of anxiety.

At present, it is an integrated seamless supply, and the single energy market should be able to operate unimpeded in any situation after withdrawal. Last week, Munir Hassan, head of clean energy at CMS, told *Utility Week* that even in the event of no deal the internal energy market "just has to continue". In view of this, and of the fact that the internal energy market is seamless, will it be a bit less easy to understand the nature of the electricity market should frictions be put in place with changes between the all-Ireland energy market and the UK, and across the interconnectors into the EU? Is the Minister confident that these regulations and others will enable all that to happen with seamless continuity?

As a result of these regulations, powers will be transferred to UK organisations such as the Gas and Electricity Markets Authority, represented by Ofgem. I Fourth Delegated Legislation

Committee ask again: what organisational and budgetary support will be offered to these groups by the Government to allow them to cope with every necessary increase in workload?

There is also concern over how the all-Ireland energy market will operate in relation to the EU internal market through southern Ireland and into the internal energy market of the UK. I agree that the regulations are largely technical in nature but they assume agreement. We can agree to a grid agreement update, but this nevertheless brings philosophical anxiety.

Lastly, there is concern that the Explanatory Memorandum has not been amended in relation to the upgrade to an affirmative instrument. Under a negative instrument, there are often sections dealing with compliance with the European Convention on Human Rights, but that has not been included. These points may not be strictly material to the upgrade, but nevertheless it would be informative to understand from the Minister why there has not been a redrafting in relation to the affirmative procedure.

Lord Henley: My Lords, as I made clear, these are pretty technical regulations that are designed purely for no deal. We laid a package of five instruments to resolve those inoperabilities across the body of retained EU law. As I think the noble Lord, Lord Grantchester, implied, although the committee that looked at them—I am trying to remember which committee it was; I think it was the Secondary Legislation Scrutiny Committee—recognised that they were absolutely necessary, it felt that the cumulative effect of all five warranted the affirmative rather than the negative procedure. That is why we are here today. Whether that means that the Explanatory Memorandum needs an upgrade, I really cannot tell him. I will write to him and deal with that point if it needs dealing with.

The broader question from both noble Lords, but particularly from the noble Lord, Lord Fox, is whether we would continue to participate in the internal energy market in the event of a deal. In the political declaration we agreed that we should put in place mechanisms as part of the future relationship to ensure as far as possible continued efficient electricity and gas trade over the infrastructure linking the UK and the EU, supported by technical co-operation. Further details are obviously a matter for negotiation. It is our position to seek a deal, and I reiterate that the regulations are for a no-deal scenario only.

It is worth reminding the noble Lord, Lord Fox, if he was being overly negative, that interconnectors are already in place between the UK and France and other countries. There is advantage for both parties in continuing to make use of them.

5 pm

Lord Fox: That was the point I was trying to make.

Lord Henley: We use electricity at different times and, therefore, when we have a surplus, we can export it to them and vice versa. I cannot see that that will not continue to happen and bring benefit to consumers.

I move to the question of registration and the remit of Ofgem. Ofgem and its counterpart in Northern Ireland, the Utility Regulator, intend to continue to recognise registrations made by each other and by

[Lord Henley]
EU regulators, so we believe this will have no impact on the regulators' ability to regulate. I hope that they will continue to be able to do the job that they do very well at the moment. We have engaged extensively with them and are confident that they will be able to meet their obligations within existing budgets. Where new systems are required, such as reporting mechanisms under the remit, the cost can be recouped through fees.

Finally, the noble Lord, Lord Grantchester, asked about Ireland and the single electricity market. We are confident that new arrangements can be put in place for trading in a no-deal scenario that will minimise disruption to the single electricity market. We have been working very closely with colleagues in the Northern Ireland Civil Service, the Northern Ireland Utility Regulator, Ofgem, systems operators and interconnectors to understand what day one arrangements for trading between the SEM would be in a no-deal scenario—not only the SEM within Ireland but interconnectors going to and fro between the two countries.

I think that deals with the points made by both noble Lords, and I therefore commend the first of the five regulations.

Motion agreed.

Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

5.03 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019.

Relevant document: 16th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

Motion agreed.

Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

5.04 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019.

Relevant document: 16th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

Motion agreed.

Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019

Considered in Grand Committee

5.04 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019.

Relevant document: 16th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

Motion agreed.

Electricity and Gas (Market Integrity and Transparency) (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

5.05 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Electricity and Gas (Market Integrity and Transparency) (Amendment) (EU Exit) Regulations 2019.

Relevant document: 16th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

Motion agreed.

Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2018

Considered in Grand Committee

5.05 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2018.

Relevant document: 10th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, these regulations, laid before the House on 23 November last year, will amend the domestic minimum standard provisions within the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015. In our clean growth strategy, we set out our ambitions to upgrade the energy efficiency of all buildings by the 2030s. The 2015 energy efficiency regulations, which set minimum energy performance targets for properties in the private rented sector, are an important precursor to that work, helping the Government to deliver our fuel poverty and decarbonisation commitments.

Although I appreciate that noble Lords may already be familiar with the minimum standards, some background on the sector and the 2015 regulations may still prove useful before we discuss the specific effect of these amendments. There are about 4.5 million privately rented homes across England and Wales, making it the second largest tenure after owner-occupation. Most of these properties already have an Energy Performance Certificate, or EPC, rating of E or above. However, about 290,000—that is 6% of the market—have a rating of F or G and, as such, are particularly energy inefficient and costly to heat. In fact, it costs about £1,000 more per year on average to heat an F or G-rated home than one rated at band D. Moreover, many tenants of these properties are among the most vulnerable and approximately 45% are in fuel poverty.

The 2015 regulations were designed to drive energy efficiency improvements to these inefficient privately rented homes and established a minimum energy efficiency standard of EPC E for these properties. Since 2018, the regulations have required landlords who let properties below the standard to improve them to EPC E before granting a new tenancy or renewing an existing one. However, the regulations also state that improvements are required only where they can be made at no cost to the landlord, using third-party funding: notably Green Deal finance. Where a home cannot be improved to EPC E, either because funding is unavailable or because of legitimate technical concerns, the regulations permit the landlord to continue to let it, provided they have registered an exemption on the new minimum standard exemptions register. However, access to no-cost funding, particularly Green Deal finance, is more constrained than was originally anticipated when the regulations were made. This means that most F and G-rated properties now qualify for an exemption.

The key amendment under discussion today addresses this by requiring landlords of domestic properties to invest their own funds in energy efficiency measures where third-party funding is insufficient or cannot be secured. To ensure that landlords are not overburdened, this investment requirement will be capped at £3,500 per property, inclusive of VAT and any third-party funding obtained. Ancillary amendments will also be made to the exemptions framework to ensure that the investment requirement delivers improvements where they are most needed.

I shall now briefly discuss the choice of £3,500 for the cap. At consultation, £2,500 was proposed, with a range of other caps presented for comparison. Following overwhelming calls, from 67% of respondents, for a higher cap, and from the results of further modelling, £3,500 was ultimately selected. Our updated modelling shows that of the caps considered in the consultation, £3,500 was the most effective at balancing the costs to landlords against the benefits to tenants and society. Specifically, that analysis shows that under a £3,500 cap: 48% of F and G properties will reach band E, with an average cost of £1,200; the remaining 52% of properties will be able to receive at least one improvement, at an average cost of £2,000; and tenants in improved properties will save an average of £180 a year on their energy bills. The £3,500 cap strikes the right balance between ensuring that a meaningful number of properties are improved to EPC E while ensuring that those improvements are affordable, particularly for smaller landlords who make up the majority of the sector.

However, I should also highlight that, alongside the clear benefits of thermal comfort for tenants, landlords themselves will benefit from the improved energy efficiency of their properties: specifically, in the form of reduced maintenance costs and increases in property capital value, as well as increased tenant satisfaction and following that, one would hope, shorter void periods.

In conclusion, these amendments will help ensure that the domestic minimum standard regulations can operate effectively in line with Parliament's original intentions and deliver meaningful energy efficiency improvements to the least efficient homes in the private rented sector. I beg to move.

Lord Fox (LD): My Lords, I thank the Minister for presenting this statutory instrument. The noble Lord, Lord Grantchester, is a world expert in the new Green Deal, so I look forward to his contribution and will defer to him in all ways in this area.

First, in many cases we have had to take the Government to task for not consulting but it seems that there has been an extensive consultation in this process, which should be acknowledged.

I became a little confused when I looked back at when this was debated in the other place. I found a debate that goes back to June 2016; if noble Lords can cast their minds back that far, Andrea Leadsom was then the Secretary of State. It appears that this was debated at that time. What happened to it in between—what has been going on? The then Secretary of State refers to all sorts of dates with regard to launching the register, which have passed. Perhaps I have got terribly confused, but it seems that this is the SI that was being debated and that there has been a very long gap in between. In due course I will refer to something the Secretary of State mentioned in that debate.

As the Minister set out, this deals with some of the least satisfactory housing in the country: nearly 300,000 substandard private rented sector homes. As the Secondary Legislation Scrutiny Committee pointed out:

> "The Committee is of the view that, as a significant proportion of tenants in 'substandard' properties are in fuel poverty".

The committee recommends that the,

> "Department may wish to monitor whether the proposals lead to any adverse impact on vulnerable tenants",

and recommends that the department might wish to monitor how the proposals lead to the impact on vulnerable tenants and whether they become less or more fuel poor. I would welcome a response from the Minister to that recommendation.

Moving forward, the fact that we have moved from public investment into the new Green Deal to private finance providers flags up concerns—I do not know whether the noble Lord, Lord Grantchester, will go into more detail. We talk about private finance providers. Private finance initiatives in other sectors are clearly not covered in glory at the moment, so I am interested in and concerned about how those finances are regulated and registered and what level of their returns on their finance we are expecting back. What kind of cap do they have on their returns?

[Lord Fox]

As the Minister set out, the key proposal here is the removal of the no-cost-to-landlord aspects of the legislation. I think that that is right, because it is quite clear that work needs to be done and it will come at a cost. The Minister highlights this as being an important element of the green agenda, and it is very clear that there are big wins to be had for relatively small investment.

5.15 pm

Sitting suspended for a Division in the House.

5.25 pm

Lord Fox: As I was saying, I romped through some questions around private finance providers and details of registration control and the management of that process. I welcome the removal of the "no cost to landlords" clause and the insertion of the £3,500 cap, but there are some issues with that. I note that VAT is included within it, and so obviously it is 20% less than you think. It includes also any other funding that the landlord is able to pull in, including local authority or Green Deal funding. Already, it starts to look like less, as it will not always be the landlord putting the £3,500 in.

I would not call them loopholes, but we then have some other ways for the landlord to invest less. One is the recognition of previous investment, which clearly is often possible. How do the Government expect to avoid that in many cases? The second point I have concerns about is the high-cost exemption. It is not hard to get estimates for jobs. Frankly, if you ask a builder to give you high estimates for jobs, they are usually better at that than they are at low estimates. I suggest that that is a gaping loophole for unscrupulous landlords, sadly many of whom operate in this sector. I would welcome the Minister's view on that.

Another potential issue was brought up in the debate of 2016 to which I referred earlier. The Secretary of State, Andrea Leadsom, said that,

"landlords will be required to install only measures that cost the same as or less than their expected energy savings over a seven-year period, and they will be eligible for an exemption if the improvements do not meet that payback test".—[*Official Report*, Commons, Fourth Delegated Legislation Committee, 8/6/16; col. 4.]

There is no mention of that payback test in the accompanying material to this SI. Could the Minister please explain that status?

My final point is this. The Minister mentioned that those obtaining an exemption will be put on a register. Will he undertake that this will be a public register so that those landlords would be fully knowable to the wider community? I await the answers to those questions.

Lord Grantchester (Lab): My Lords, I thank the Minister once again for his exemplary introduction to the regulations before the Committee today. I note that, at last, we have come out of the jurisdiction of no-deal outcomes to look at matters of great importance that are, nevertheless, outwith our previous debates on the tranches of SIs that deal with a no-deal scenario.

We come now to the important aspect of energy efficiency, a necessary and effective part of our infrastructure improvement to reduce and remove carbon emissions in the longer term. I always thought that it was a very key part of the Green Deal, introduced—I hasten to advise the noble Lord, Lord Fox—during the coalition years under a Liberal Democrat Minister of State in DECC, and it was to his great regret that it eventually collapsed, as we showed at the time, through very great difficulties in its construction.

5.30 pm

This SI provides amendments to the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, which introduced mechanisms to require landlords to improve their properties so that they could reach the minimum long-term lettable level of EPC band E by 2020 following that primary legislation. If they have not improved to this standard or do not have an exemption certificate after this date, such properties will be deemed substandard, and in principle not legal to let.

The Green Deal came in in 2011 and was of such complexity and difficulty that it took four years to produce the 2015 regulations. However, they were cancelled almost immediately afterwards following their difficulties. The regulations relied extensively on the assumption that bill payers could avail themselves of the Green Deal to improve their properties, and the cost to the landlord was appraised on that basis—that is, if a landlord had an assessment and the improvements were economic up to band E with a Green Deal loan programme, that would discharge his or her improvement responsibility.

However, with the cancellation of the Green Deal, the SI became inoperable; hence it has taken another four years for the 2018 amendment regulations to retain the requirement to improve and the level of improvements to aspire to, but they substitute for the "no cost to landlord" provisions related to the Green Deal a maximum spend for an F-rated or G-rated property of £3,500 by the landlord in order to reach the minimum. If the property cannot be improved to band E for that sum and the landlord can show that he or she has spent the maximum on it, a certificate of high-cost exemption can be applied for, which exempts the landlord from doing further work to bring the property up to band E.

As I said, the original 2015 regulations took four years to arrive following the passage of the Energy Act 2011, and they collapsed almost immediately. As simple arithmetic shows, there has been an eight-year period to bring various features to improve the energy efficiency of homes. They have eventually been laid following tortuous argument about the level of financial liability which landlords should be responsible for when they rent out very poorly insulated properties in bands F and G, and the point at which they should then be able to rent out such low-standard properties after 2020 if exempted from the full cost of raising the standard of the property.

The Government's consultation proposal was that landlords should be exempted after a maximum of £2,500 of expenditure. This received a frosty reception from consultees, 79% of whom argued that the limit was too low. Among other arguments put forward, it was pointed out that, according to the Government's own impact assessment figures, only 30% of F and G properties would be uprated at that level; the rest were to be exempted. The favoured level of landlord

contribution of £5,000 was endorsed by half of the total number of consultees, and 60% of those said that the £2,500 level was too low. Impact assessment projections suggested that, with a £5,000 level in place, some 73% of F and G properties would successfully be rated up to band E.

The first thing to be said is that on this side of the House we somewhat regret the lower level that the Government put into the regulations. Indeed, the Government's response to the consultation was to concede the uprated figure of £3,500, which has been incorporated into this SI, as their operational alternative to the 2015 SI. This would mean that 48% of properties would reach the required level. In other words, turning it upside down, it means that 52%, the majority of properties, would end up exempt, with the landlord not required to do any more to an F or G-rated property let out after 2020.

So while we support the fact that a cap is now in place that creates an environment for the improvement of properties, removes uncertainty and will necessarily increase minimum standards, nevertheless the assumption that properties in another category of multiple occupancy are still largely excused from the regulations for a further five years is particularly regrettable. We regret that this lower level has been introduced. I ask the Minister whether the Green Deal could be repurposed to provide finance for landlords, above the £3,500 level, to £5,000, such that the future affordability of this very necessary amendment to implement the Green Deal could be brought forward.

Lord Henley: The noble Lord would like a higher figure than the one we came to after considerable consultation—the increase from the £2,500 we originally proposed to £3,500, which is what these regulations are about. He has suggested, and I presume this is official Labour Party policy, a figure of £5,000. I suspect that if we had suggested £4,500 or £5,000, he would have suggested £6,000, so I do not think we can win on this. The simple fact is that we thought it right that those landlords who are not making any contribution should be encouraged or made to make some contribution. We are talking only about those 6% of properties that fall below the standard I set out in my opening remarks. The implication behind that is that the landlords of the other 96%—it is actually 94%, I am grateful to the noble Lord, Lord Fox—are doing the right thing, as any sensible landlord would do. It is not just about being good to their tenants—although that has an obvious benefit in encouraging tenants to stay and reducing the amount of void time—but much of the expenditure on improving the property will improve its capital value and be of benefit to the landlord. So although I believe, as a good Conservative, in the rights of property, I think it is right that we offer some encouragement to landlords—and this is more than encouragement—to spend money on maintaining their properties and ensuring that their tenants and the wider public benefit from improving the energy efficiency of those properties to at least band D and to higher bands in due course.

Lord Grantchester: I thank the Minister for stating that the added benefit of the rise from £3,500 to £5,000 produces a very considerable increase in the number of properties that would then comply. This would provide a win-win scenario whereby the tenant had reduced future bills for maintaining the property and the landlord saw an increase in the value of his property of more than £8,000: the impact assessment puts the increase at £8,500. Both these figures are considerably higher, so we would have preferred to have seen a £5,000 limit in the regulations.

Lord Henley: Again, I note what the noble Lord says; I imagine landlords up and down the country will be listening to his words. We had to make a decision based on a number of factors, but also on the viability of the whole sector. We did not want to see the whole sector being adversely affected on the basis of further modelling of the costs and benefits of the £3,500 cap. The noble Lord, Lord Grantchester, also asked why it had taken so long—four years, as he said—to lay this SI. It took time to build consensus among the wider stakeholder base and to consult properly, which on this occasion was welcomed by the noble Lord, Lord Fox.

The noble Lord, Lord Fox, then confused me by referring to the 2016 debate, implying—I am sure he did not intend to—that that was the debate on these regulations. That debate was to postpone the launch of the exemptions register by six months. It did not relate to this amendment to include a landlord contribution. All this does is to seek that the landlord should make a contribution. These regulations were debated in another place on 14 January this year. They were introduced by my right honourable friend Claire Perry, and it is open to the noble Lord to look at the First Delegated Legislation Committee from that date in *Hansard*. What happened in between? The 2015 regulations were made on 26 March 2015 and the provisions we propose to amend came into effect in April 2018.

The noble Lord then asked if the register will be made public. Yes, the register opened in 2017, and information registered on it is publicly available and searchable. The noble Lord, Lord Fox, regretted the inclusion of that in the £3,500 cap. We acknowledge that that has an impact on the scale of the improvements that can be delivered, but we nevertheless believe that that is offset by the increase from £2,500 to £3,500. The noble Lord, Lord Grantchester—being more severe than me—would like to take that yet further. Again, these are questions of balance and I believe we got it right with £3,500, even though the £3,500 includes that.

The noble Lord, Lord Fox, asked if the amending regulations are asking landlords to provide three installer quotes and whether that was making it too onerous and complicated. The requirement to provide three quotes applies only where the landlord is looking to avoid making any improvements and to register an exemption on the basis that even the cheapest improvement would exceed the value of the cap. Our analysis showed that virtually all properties can receive at least one measure costing less that £3,500, so we expect this exception to be invoked very rarely. The noble Lord will know that it is plain common sense to get more than one quote. If they are using it to seek an exemption, it is quite right that there should be three.

Lord Fox: I appreciate that answer. Clearly, if anyone is considering work, it is helpful to get more than one quote. I was implying that this would be a construct to not do the work rather than to do the work cost-effectively. It is not beyond the bounds of human ingenuity to use the high-cost exemption to get out of doing work. On that basis, I ask that the Minister's department monitor the use of the exemption and come back to Parliament after some time to tell us whether his thought is correct and it is not being used very often, or whether it is in fact becoming a useful loophole for unscrupulous landlords.

Lord Henley: I fully accept the noble Lord's point that the unscrupulous—we are talking about a relatively small number of very small landlords—could seek exemption by getting quotes from friends and all that sort of thing. We all have our views about certain aspects of the building trade and so on, but I do not think it is worth me going any further at this stage. I give him an assurance that we will do what we can to keep an eye on this issue—to monitor it, as he puts it—and if it turns out that too many exemptions are being sought for the sort of reasons that he mentions, I think my right honourable friend would be the first to say, "This is not working as we intended so we've got to try something else".

The noble Lord, Lord Grantchester, made two other points. The first was about houses in multiple occupation. They will be covered if they are legally required to have an EPC and if they are let on a qualifying tenancy. Some HMOs are not required to have an EPC at this time, but that is something that the department is keeping under review. If we think it is necessary that we act, we will do so.

Lord Grantchester: Will the Minister write to me on how many would be exempt and how many would fall into the regulations with which he says they would then have to comply? My understanding was that more would be exempt, and there were a very limited number of occasions on which property in multiple occupancy would have to abide by the regulations.

Lord Henley: I offer to write to the noble Lord. I will see if we have the sort of figures that he wants on HMOs and whether I can bring a bit more detail on that.

Finally, I make it clear that the Green Deal has not been cancelled. It still exists. The Government ceased funding it in 2015 but the mechanism remains active and private finance continues to operate in the sector.

Lord Fox: I asked one question about the limits on profitability in the private finance investment in the Green Deal. If the Minister wants to write to me on that rather than answering at the Dispatch Box, that is fine.

Lord Henley: I apologise to the noble Lord; I am afraid I had not jotted that down. I will write to him in due course and give him an answer on that point. Other than that, I think I have dealt with all the questions.

Motion agreed.

Committee adjourned at 5.49 pm.