Vol. 797
No. 303

Monday
20 May 2019

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
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

Monday 20 May 2019

2.30 pm

Prayers—read by the Lord Bishop of Winchester.

EU Referendum: Lessons Learned

Question

2.36 pm

Asked by ***Lord Dobbs***

To ask Her Majesty's Government what plans they have to establish a Royal Commission or equivalent inquiry to examine the lessons to be learned from the 2016 European Union referendum and subsequent events.

Lord Young of Cookham (Con): My Lords, the Government have no plans to establish a public inquiry on the conduct of the EU referendum. We continue to actively consider the recommendations made by Parliament, the Electoral Commission and others on the referendum and subsequent election, and recently responded to some of the consultations in our response to *Protecting the Debate*. We are determined to have an electoral system that is fit for purpose and enhances confidence in our democratic institutions.

Lord Dobbs (Con): I thank my noble friend for that encouraging reply, but it seems that our constitution is becoming a bit of a parliamentary pantomime—Downing Street, the House of Commons, the Cabinet and even the Speaker are making it up as they go along. No one knows what to expect any longer. As for that solemn and binding promise to the voters before the last referendum—that they would decide—it is quite clear that our constitution is not only unwritten but unravelling. There is a growing suspicion that Theresa May is not a direct descendant of Erskine May. Will the Government accept as a priority the need to rebuild that trust which binds our constitution and which we politicians have thrown away? If not a royal commission, will my noble friends on the Front Bench at least consider allowing a full-scale debate in this House to get the ball rolling?

Lord Young of Cookham: My Lords, as I listened to my noble friend warm to his theme of trust, I asked myself whether his infamous depiction in *House of Cards* of the Government Chief Whip—a position I was privileged to hold—as a duplicitous, homicidal adulterer had enhanced trust in our profession. As for my noble friend's question and request for a debate, he will have noticed that the Government's legislative programme currently has a bit of headroom. I hope there will be time for a debate, and the usual channels will have noted his request. To answer his question more seriously, since the referendum there has been a serious issue of trust between the people and Parliament. It is well known that most of Parliament voted to remain and the people voted to leave, and the resultant deadlock has helped undermine confidence in our democratic institutions. My view is that we will not begin to restore trust until that deadlock is resolved one way or another.

Lord Tyler (LD): My Lords, does the Minister recognise that members of all parties represented in Parliament share the concerns of the noble Lord, Lord Dobbs? We need to take them seriously, despite what the Minister just said. Surely, however, a royal commission is far too slow. Given that the 2016 leave campaign has been found guilty of breaking electoral law, and accepting that a further referendum may be required later this year, surely the Government will have to act much faster. As the Minister knows and has indicated, there is space for legislation at the moment. The legislation drafted by our cross-party group could be approved and receive Royal Assent before the Summer Recess, and then the poll could take place in September. However, does he not agree that effective regulation of campaign expenses should be agreed as a matter of urgency?

Lord Young of Cookham: Were there to be another referendum, as the noble Lord knows, there would have to be primary legislation first, so noble Lords would have an opportunity to amend it. Last time, the House of Lords changed the legislation for the referendum to make it more difficult for parties to act in concert. However, if the noble Lord wants a referendum, my advice to his party is that it needs to vote for the deal. Unless you have a deal, you cannot have a referendum, and the referendum does not just happen—you need a Bill. The right thing for the noble Lord and his colleagues to do is to vote for the deal and then seek to amend the Bill to see whether there is public support in the other place for a referendum.

Baroness O'Neill of Bengarve (CB): Will the Minister recognise that we may have a referendum or an election before many would wish either to happen? Is it not prudent, therefore, to take some steps to regulate political advertising, both online and digitally, to try to get an imprint on every political advertisement and to bring political advertising back under the requirement to say who paid for it?

Lord Young of Cookham: I entirely agree with the noble Baroness. I welcome what Facebook has already done in identifying political advertisements on its system. A review of online advertising was announced on 12 February to look into what is called the advertising ecosystem. As regards digital imprints, I agree with the noble Baroness; we announced two weeks ago that we agreed in principle that there should be an imprint on digital advertising, as there is on printed material, and we are about to consult on exactly what that should cover and when it should be introduced. But again, were there to be a referendum in the near future, there would need to be specific legislation to deal with it.

Lord Tomlinson (Lab): My Lords, I am not wildly enthusiastic about referenda—I was not enthusiastic the first time round and I am not for a second one.

[Lord Tomlinson]
Would it not be better to take action now to create the circumstances in which we can have a proper national debate about what we want rather than what we do not want, which would best be facilitated by revoking Article 50?

Lord Young of Cookham: As the noble Lord will know, that is not the Government's policy, nor would it be consistent with the decision of the electorate two years ago. To return to the first part of his question, I agree that we should have a debate. A good report on referendums was produced by the Constitution Unit at UCL, on which the noble and right reverend Lord, Lord Eames, sat, together with Jenny Watson, the chair of the Electoral Commission. There have been other reports on referendums, which I mentioned in my original reply. I agree wholeheartedly that we could have a useful debate. I am not in favour of a royal commission—we do not have time for that.

Viscount Hailsham (Con): My Lords—

Lord Tebbit (Con): My Lords—

Viscount Hailsham: My noble friend has referred to deadlock. Does he agree that the answer to that is to hold a further referendum?

Lord Young of Cookham: I think I heard the question of my noble friend Lord Hailsham more clearly than the one behind me. I think my noble friend said that we should have another referendum. If he wants another referendum, and if there is enough support for it in the other place—which at the moment looks doubtful—everyone in the other place who wants another referendum should vote for the deal. They can then seek to amend the legislation to facilitate a referendum, but without a deal and without a Bill, you cannot have a referendum.

Lord Tebbit: Does my noble friend not agree that the most important thing to decide is that we should never again allow a Government to spend vast amounts of taxpayers' money on the subject of the referendum immediately before they then declare the campaign open? We had Project Fear last time: a whole load of tax-financed rubbish designed to influence the outcome. That should be prohibited.

Lord Young of Cookham: I am not sure whether my noble friend is against referendums.

Lord Tebbit: No, I said government spending on one side.

Lord Young of Cookham: Ah. The legislation in the PPERA guaranteed that were there to be a referendum, there would be a certain amount of public support for both sides. I think my noble friend is referring to the leaflet issued by the Government. Again, that is in accordance with the legislation, which is exactly what happened in the 1975 referendum: leaflets were issued on the Government's behalf setting out their view.

Banks: Fraud Prevention

Question

2.45 pm

Asked by ***Baroness Ludford***

To ask Her Majesty's Government what further action they propose to take, and for banks to take, to prevent fraud perpetrated on bank customers.

Lord Young of Cookham (Con): My Lords, in 2016, we set up the Joint Fraud Taskforce, including law enforcement, banks and government, to tackle fraud. It has already delivered on initiatives such as the banking protocol, which prevented £38 million falling into fraudsters' hands and led to 231 arrests in 2018. The Joint Fraud Taskforce must build on its successes and not just make it more difficult for fraudsters to operate but bring them to justice.

Baroness Ludford (LD): My Lords, I thank the Minister for that reply, but I am thinking more of action that banks could take. Let us hope that the, frankly, poor, often dismissive and hit-and-miss response by banks to defrauded customers truly is on the brink of change—and not before time. Since I tabled my Question, my bank, TSB, has issued its fraud refund guarantee, promising not to claim that customers authorised a payment when they fell for a scam. Will the regulator oblige all banks to follow suit?

A new voluntary code comes into force next week, offering the so-called confirmation of payee next year. Will legislation be brought forward if the voluntary code proves ineffective?

Lord Young of Cookham: The voluntary code that comes into effect next week will in fact extend to all banks the facility to which the noble Baroness just referred, which has been undertaken by the TSB. As from next week, as long as you have done everything that you should and it was not your fault, you will get your money back. Vulnerable victims will get their money back even if they have not exercised due care. I welcome this not just because it gives added protection to customers, but because it means that the banks will have to pick up the bill, which will add to their incentive to reduce, so far as possible, incidents of fraud.

The noble Baroness then referred to confirmation of payee. She is quite right: at the moment, an electronic payment is processed on the basis of the sort code and the account number. As from later this year, banks will have confirmation of payee—in other words, they will check the name. That means that it will be difficult for fraudsters to intercept funds designed, for example, for solicitors on conveyancing, and misdirect them.

Lord Davies of Oldham (Lab): My Lords, the country is well aware of the extent to which scams and frauds have been successful in recent years, and it is an acute problem. I accept that the Government and the banks have made some progress with the voluntary code, but will the Minister undertake that, if that does not

provide satisfactory protection for our people, the Government will legislate to ensure that victims get repaid?

Lord Young of Cookham: It is exactly because the Government were not satisfied with the progress being made that the former Home Secretary asked HMRC to inspect the police response to fraud. It responded on 2 April with 16 recommendations that the Government, together with banks and the police, are in the process of implementing. There is a range of recommendations, including a more co-ordinated national response and more support for the customer. Action Fraud is also introducing a more responsive service so that, if you report a fraud, you will get feedback from the banks; that was not necessarily the case before. I am not sure whether we need more legislation; we need to see how the initiatives I referred to work through.

Lord Hayward (Con): My Lords, my noble friend referred to the policies adopted by banks. This morning, I received a completely unannounced phone call from Barclays, asking me questions relating to my account details. Is it not possible for banks, where they know that they will contact customers in relation to the contents of their accounts, to send them an email or a letter beforehand rather than calling on an ad hoc basis?

Lord Young of Cookham: If I got a telephone call from the bank, I would hang up and then ring back. An additional measure will be introduced later this year for larger payments and payments where the banks think that there is a risk, in that they will have what they call multifactor authentication. In that case, they would text my noble friend saying that a payment was going through and asking him to confirm it. In the case my noble friend referred to, as I said, my instinct would be to hang up and ring the number on the back of my card.

Baroness Kramer (LD): My Lords, it is beyond me why this code remains voluntary, creating an opportunity for banks to opt out of the system if they so wish when it offers only the most basic and minimal protection against fraudsters. Anyone going into a bank to move money by wire transfer, which I do for safety's sake, is asked a series of questions about the payee; the bank also takes other steps because it knows that the responsibility will fall on it and that it is required by law. Should not the same strength be put behind online banking?

Lord Young of Cookham: We should welcome the steps forward I announced. Three initiatives are being taken by banks: confirmation of payee; the interception or interrogation of large sums; and the voluntary code. I will reflect on what the noble Baroness said and see whether there is a case for legislation, but we are making good progress with the steps I announced.

Lord Vaux of Harrowden (CB): My Lords, are we not getting this the wrong way round? All, or most, frauds have one thing in common: the money is received and processed by another bank account, usually in the UK. Should we not make the receiving bank—the bank that has handled and processed the stolen money—automatically liable for the loss? If we did, banks would have a real incentive to stop accounts being used by fraudsters. We do it for credit cards.

Lord Young of Cookham: Again, that is a very helpful suggestion. This is not my specialist subject but it seems that it is too easy, in some cases, to open a bank account. That account is then emptied instantly by whoever has committed fraud and no one is left to seek compensation against. I like the noble Lord's suggestion that, where they have not undertaken due diligence to establish the real identity of the person opening an account, the banks should be held liable.

Spending Review: Intergenerational Fairness and Well-being

Question

2.52 pm

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

To ask Her Majesty's Government what steps they are taking to ensure that issues of (1) intergenerational fairness, and (2) well-being, are properly considered as part of the forthcoming spending review.

Lord Young of Cookham (Con): My Lords, intergenerational fairness and improving living standards are core considerations for the Government's tax and spending policy. The Government routinely assess the impact of all their policies, in line with the obligations of the Equality Act and their strong commitment to promoting fairness. To fulfil these commitments, the Government will consider carefully the distributional impact of spending decisions made in the forthcoming spending review.

Baroness Tyler of Enfield (LD): I thank the Minister for his Answer. Given that the idea of intergenerational fairness is coming ever more under the spotlight, with real concerns that our current younger generation will be the first to experience worse pay, job security and housing prospects than their parents, what specific steps are the Government taking to collect regular data on the intergenerational impact of tax and benefit policies and spending decisions, and to publish a distributional breakdown of the effects of government budgets and spending reviews by age group to allow for independent scrutiny of their long-term sustainability?

Lord Young of Cookham: I commend the noble Baroness and her colleagues on the Select Committee on Intergenerational Fairness and Provision for its report. It has just come out and I read it over the weekend. I like the sentence in paragraph 3:

"Policy based on the expectation that future generations will disproportionately pay for present or past consumption cannot be considered just or sustainable".

[Lord Young of Cookham]
I agree with that. One of the ways of reducing intergenerational unfairness is to take further steps to reduce the deficit, and the report explains exactly why it is unfair for any Government to go on borrowing and borrowing and load on to subsequent generations ever higher debt. I hope that that part of the report will encourage support for the difficult decisions that the Government may have to take on public spending.

On the specific question about publishing a distributional analysis of the impact, I understand that that is quite difficult to do. If, for example, the Government decide to spend more money on high-quality childcare, would that score as an advantage for the child, who is getting the benefit of the childcare, or as a benefit for the parent, who would then be able to go out to work or who would not have to pay for that childcare? There are some real issues about definition before we can go too far down the road of identifying a solution along the lines suggested by the noble Baroness.

Baroness Symons of Vernham Dean (Lab): My Lords, does the noble Lord agree that one of the most important problems here is the enormous debts that young people are building up through university charges? Our generation did not face such huge debts but the next generation does. As far as I can see that is one of the most important issues. I wonder what the noble Lord thinks about that point.

Lord Young of Cookham: Steps were taken last year to raise the threshold at which debt starts to be repaid. However, as I said in my original reply, one of the report's recommendations is to take this issue into account in the spending review. However, we have seen a huge reduction in unemployment among young people, with the rate among 16 to 24 year-olds having halved since 2010, which is a good record.

Lord Davies of Oldham (Lab): My Lords, the Minister is being somewhat complacent in his answers to the third Question of the day. He must be aware that a large number of young people feel outrage because the scales are tilted against them not just on university fees but on the kind of jobs that he has just identified, which are often in the gig economy, where young people are exploited rather than rewarded. Does he appreciate that a great deal of the anger in our communities is being generated by this Government having presided over an economy in which, in the past decade, ordinary wage earners have had absolutely minuscule increases while the bosses of the FTSE industries have been coining fortunes?

Lord Young of Cookham: I am not sure that that is an intergenerational issue; rather, it is about income levels between different groups in the population. Perhaps I may put this into context. This Government have legislated to raise the retirement age, which has begun to tilt the terms of trade between the older and younger generations. Over the past 10 years, interest rates have been at a record low, which has tended to disadvantage those who have retired and may have savings, while tending to help younger people with mortgages. That is not wholly reflected in the report before us. As regards exploiting young people, in December we introduced the Good Work Plan to protect agency workers and give more rights to people on short-term contracts. Moreover, I have just received some in-flight refuelling: university fees—30 years to pay off and a new threshold of £25,000.

The Lord Bishop of Winchester: My Lords, the Social Mobility Commission's report has highlighted that twice the number of disadvantaged 16 to 18 year-olds are in further education than are in sixth forms. Does the Minister agree that this, combined with the 20% decrease in FE funding in real terms, is limiting opportunity and social mobility, and that the forthcoming spending review should therefore propose an increase in FE funding?

Lord Young of Cookham: This was another recommendation made in the report and can again be taken into account when we come to the spending review. On educating 16 to 19 year-olds, I am advised that there is a £7 billion spend on that particular age group. The right reverend Prelate has pointed to the discrepancy in funding between FE colleges and sixth forms, which I know has been an ongoing issue. I will ensure that that is taken on board in the spending review.

The Earl of Listowel (CB): My Lords, I recognise the Government's investment in children with a disability, but does the Minister recognise that we now have 1 million disabled children in this country, that this is 33% more than a decade ago and that local authorities are so short of funds that they are finding it difficult to provide the specialist services these children need? Will he keep this in mind in the spending review?

Lord Young of Cookham: The noble Earl is a tireless advocate on behalf of the disadvantaged, and he has reinforced the case. I will ensure that Ministers at the DWP and the MHCLG, which funds local government, are aware of the point and that this is taken on board in the next spending review.

HS2

Question

3 pm

Asked by ***Lord Berkeley***

To ask Her Majesty's Government what assumptions were used in the business case for HS2 for (1) the number of passengers, and (2) the average fare, between London and Birmingham.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the Answer to this Question is in two parts. First, on the number of passengers, the Government estimate that there will be more than 300,000 passengers per day on HS2 services once the full network opens.

Secondly, on average fares, the business case assumes fares on HS2 to be the same as the average for comparable services on the existing network. HS2 can bring benefits without charging a premium.

Lord Berkeley (Lab): I am grateful to the Minister for that Answer, because this is the first time we have had an answer on this for about eight years. According to the Midlands Economic Forum, the average yearly household income will be £60,000 for business travellers and £45,000 for leisure travellers at 2010 prices,

"meaning the average commuter using HS2 will be in the top 10% of household incomes".

That is quite heroic for the West Midlands. It adds:

"At 60% capacity, HS2 are proposing that daily passenger transport movements will be approximately equivalent to 10% of the entire West Midlands regional labour market".

Can the Minister perhaps give us some more updates on this when we come to debate it more fully? The Government have promised a cost-benefit estimate and a new cost estimate for HS2 phase 1, but only on the day on which the construction contract is allowed to go ahead. We have had lots of critical reports, including an excellent one last week from the House of Lords Economic Affairs Committee chaired by the noble Lord, Lord Forsyth. Is it really acceptable for a Government preaching austerity to go ahead with a project costing £150 billion without parliamentary scrutiny?

Baroness Vere of Norbiton: My Lords, there were many questions there; I will perhaps answer a couple of them. On 10% of the West Midlands labour force being on the trains, I do not recognise those figures at all. In any event, when the entire network is built, it will take passengers from all over the country—that is the point of it. On the second point about the business case, works are currently under way and HS2 is reaching agreement with its suppliers in order that a full business case can be published later this year. It is important to understand that a full business case includes costs and benefits, but also—just as importantly—the disruption, or lack thereof, that the construction would have.

Lord Howell of Guildford (Con): My Lords, I declare an interest as an adviser to Japanese high-speed rail. Is the Minister aware that the Japanese have long argued that these figures are interesting for the southern section of HS2 but that it would have been much wiser to have started with the big expenditure in the north and worked downwards? This is exactly the pattern they followed in Japan. Does she accept that this point is wisely made in the very good Lords report published last week, and that any funds that now are meant to be used on the north should not be drained away by the very large expenditure that looks to be developing on the southern section?

Baroness Vere of Norbiton: My Lords, I join my noble friend in welcoming the report of the House of Lords Economic Affairs Committee. We will respond to that in detail, before the Summer Recess, once we have had a chance to consider all the issues therein. As for whether we should have started in the north, obviously we recognise that the infrastructure in the north needs investment; that is why we are investing a total of £48 billion across the network, which is a record amount. The northern powerhouse rail project in particular will be very much welcomed. However, it is in a much earlier stage of development. Our intention is to crack on with HS2 phase 1 and phase 2a, and then phase 2b will link into the northern powerhouse rail, thereby connecting the entire country.

Baroness Randerson (LD): My Lords, demanding the cancellation of HS2 has become the new virility test for would-be Tory leadership candidates, and I fear that it might be the next economically damaging decision made by the Government solely to please Conservative Party members. I believe that HS2 is needed, but obviously costs need to be brought under control. The easiest way to do that is to make Old Oak Common the terminus in London, rather than Euston. I ask the Minister: will the Government take seriously that aspect of the committee's report and act upon it, please?

Baroness Vere of Norbiton: My Lords, we have heard the request that HS2 terminate at Old Oak Common. We are not minded to agree to that, but we will of course read the report and respond in due course.

Lord Alton of Liverpool (CB): My Lords, will the Minister return to the question asked by the noble Lord, Lord Howell of Guildford, and accept that most northerners would prefer to see prioritised east-west travel and the upgrading of infrastructure, which is dismal in the north of England? Will she respond specifically to the statement in the excellent report of the Economic Affairs Select Committee that the evidence suggests that northern powerhouse rail is required more urgently than High Speed 2, and that London, already the city expected to gain most from the project, will receive the benefits of the new railway long before the northern cities?

Baroness Vere of Norbiton: As I have already explained, we will respond to all the issues raised in the report in detail before the Summer Recess, and so I am not willing to go further on them right now. However, I will respond to the noble Lord's question about investment in the north. It is absolutely critical. That is why we are investing £2.9 billion in the upgrade of trans-Pennine rail. The noble Lord also mentioned infrastructure. We intend to replace every single train operating in the north. We agree that the infrastructure needs an upgrade, and therefore we are replacing the trains.

Lord Hunt of Kings Heath (Lab): My Lords, will the Minister give me an assessment of the impact on the West Midlands and Birmingham economies—on investment, jobs and the well-being of the region—should HS2 be cancelled?

Baroness Vere of Norbiton: I completely agree with the noble Lord that there would be a significant impact on the future economic growth of Birmingham if HS2

[Baroness Vere of Norbiton]
were to be cancelled—and I certainly do not support the cancellation of HS2. I have lost track of the number of letters that have been published and that we have received from organisations in the east and west Midlands, and from the north, stating that HS2 is hugely beneficial to their economies—there was one in the past 24 hours from representatives of Birmingham, Leeds, Manchester, Liverpool, Newcastle, Durham and more. It is very important for Westminster politicians and think tanks to listen to what those in the north and the Midlands are saying.

Criminal Injuries Compensation Scheme 2012 (Amendment) Instrument 2019

Motion to Approve

3.08 pm

Moved by ***Baroness Barran***

That the Instrument laid before the House on 28 March be approved.

Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

Baroness Barran (Con): My Lords, the purpose of the amended scheme before us today is to remove a discriminatory eligibility rule and to provide a potential remedy to victims of violent crime who have been affected by its application. It is right that we are seeking to make these changes, and to make them expeditiously. Our knowledge and understanding of domestic violence and abuse and the sexual abuse of children is far greater today than when this rule was introduced. It is not acceptable that a rule intended to stop perpetrators benefiting from causing harm to people they lived with has unfairly denied victims acknowledgement of that harm and access to compensation for their injuries.

All cases of sexual and physical abuse by family members in the family home involve a grave abuse of trust. But this rule has operated in a way that has denied eligibility to compensation on the basis of victims being in a situation over which they had no or limited control, and could not necessarily change. The circumstances giving rise to the need for this instrument are exceptional, and it is fitting that Parliament is breaking new ground in meeting that need. For the first time, Parliament is being invited to approve amendments to part of the statutory scheme.

A commitment to abolish the pre-1979 same-roof rule was announced in the *Victims Strategy* published on 10 September 2018. Under the rule, applicants were not entitled to compensation if they were living with their assailant as members of the same family at the time of the incident. The rule applied to cases between 1964 and 1979, and affected victims who were adults or children at the time of the incident, and claims for injuries from physical as well as sexual assault.

The amended scheme strikes out paragraph 19 in the 2012 scheme. This will enable victims of violent crime who may not have applied due to the existence of the rule, and those who may not have been aware of the scheme, to consider applying. However, we have gone further, in recognition of the unfairness that has attached to application of the rule for more than 50 years. We have made provision, in new paragraph 18A, for past claimants refused under the rule to make new applications. We have also taken steps to avoid creating a new, potentially discriminatory position whereby claimants who were adults at the time of an incident are treated more favourably if the incident happened before 1 October 1979. We have extended the post-1979 same-roof rule, at paragraph 20 of the 2012 scheme, to a start date of 1964 to provide consistency in how the rule applies to all applicants who were adults at the time of an incident. This rule will be considered in the comprehensive review of the scheme that we announced in the *Victims Strategy*. A public consultation on potential reforms to the scheme will take place later this year.

Requirements, eligibility rules and criteria and values of awards have changed over time. Noble Lords will recognise the importance of having a fair and proportionate approach for all applicants, whether they are making a new, first application or are reapplying following a past refusal. We have sought to enable as many of those victims affected by the rule as possible to consider and take up the opportunity to apply.

As I said earlier, this is the first time that we are making changes to parts of the scheme, and uniquely we are applying changes to past applicants. The complexity of assessing applications made so long ago is significant. Administratively, it would be very difficult for the Criminal Injuries Compensation Authority to assess and determine claims to the non-statutory or statutory scheme that was applied to previously, or to which a victim could have applied had the rule not existed. We have therefore provided that new, first applications, or reapplications following a past refusal, should be made to the 2012 scheme, and have made amendments to that effect. We believe that this ensures equality of opportunity.

We have set a time limit for new applicants and past applicants who are reapplying that is fair and consistent, in that they must submit their claim within two years beginning from the date that the amended scheme takes effect. We have retained the discretion in the 2012 scheme to extend the time limit where, in exceptional circumstances, an application could not be made in this timeframe. Placing a time limit on applications will help us manage the significant financial liability attached to the changes and to forecast the financial repercussions more effectively.

3.15 pm

I recognise that there will be challenges in meeting the evidential thresholds required for a compensation award to be made, and a successful outcome to a claim cannot be guaranteed. The changes to the scheme are designed to level the playing field for applicants to the amended scheme. All eligibility criteria in the 2012 scheme must be met. Cases will be assessed on their merits, and an assessment will be made by the authority, on the balance of probabilities, of whether an application can be taken forward and whether an award can

be made. The safeguards in the 2012 scheme will apply to decisions of the authority on an application. These include review by another officer in the authority and, if the applicant remains dissatisfied, appeal to the First-tier Tribunal.

We intend to monitor carefully the operation of the amendments we are making once they are implemented. It is important that we assess the impact of those changes in meeting our intention to offer an opportunity for redress for the unfairness of the same-roof rule. We recognise that there is a challenge in raising awareness of the scheme, and we are looking at this more generally in our wider review of the scheme.

I am grateful to my noble friend Lady Newlove for highlighting this issue in her review, as Victims' Commissioner, into criminal injuries compensation. I take this opportunity to thank her and pay tribute to her tireless work throughout her tenure to make sure that victims of crime are supported and, crucially, that their voices are heard.

In relation to the changes we are bringing about, work has already begun to engage with external stakeholders on how to ensure that potential applicants are signposted to guidance and support in making a claim. We also recognise that making claims to the amended scheme can be difficult for applicants. The authority has made specific preparations to implement it. A small, dedicated and experienced team has been set up to support people making applications whether by phone or online, and applicants will be given a named contact to assist them through the application process.

In concluding, I maintain that the amended scheme and Government's intent are clear. The changes we are making are necessary, fair and reasonable. I beg to move.

Lord Thomas of Gresford (LD): My Lords, I welcome this statutory instrument which makes an improvement to the current scheme, but it should be seen in context. I was a member of the Criminal Injuries Compensation Board from 1985 to 1994. In those days, there were 44 members who assessed eligibility for an award and the quantum on common law damages principles, and it was thought that a person injured by crime should receive no less than a person injured, for example, in an industrial or road accident. It was a non-statutory scheme under the prerogative of the Crown. In 1988, Mrs Thatcher's Government introduced legislation to put that scheme on a statutory footing—in other words, to make common law damages the basis for compensation—but the statutory instrument to introduce that was never brought into force. In 1994, although legislation for the common law damages basis for compensation existed, it was decided that there should be a tariff scheme under the prerogative powers. That was challenged and, in the end, taken to the Judicial Committee of this House, which held it to be unconstitutional. At that point, I resigned from the board because I thought that this was merely a scheme to keep down compensation.

In 1994-95—the year that I resigned—compensation was awarded to the tune of £152.5 million. I was not alone. Mr Tony Blair, then the shadow Home Secretary, said that nothing so exposed the Government's claims about law and order as the scrapping of the current system of compensation. He added that thousands of people would be worse off under the new arrangements and many would be substantially worse off. In 1995, Mr David Maclean, the Home Office Minister, said that the amount of compensation was expected to increase to £250 million. The Government changed in 1997 and ultimately the Labour Government introduced the Victims Charter. On 27 March 2001, I moved a regret Motion against a statutory instrument introducing modifications to the scheme. I said:

"What is to happen for victims? There will be better services; £4.6 million will be spent on introducing victim personal statements so that victims can tell the court what happened; £4.2 million will extend witness support services to magistrates' courts and the Crown Prosecution Service will spend an extra £3 million on making direct contact with victims, either by letter or in face-to-face meetings to explain decisions to drop or alter charges. That is the Victims Charter. By their alterations to this scheme the Government have gone along with the tariff system which, instead of providing £460 million by 2001, as was thought five years ago, now produces £220 million. So they have saved more than half the possible cost of that and are spending £11 million on services that victims generally do not want and which are completely valueless for victims of crimes that are never solved".—[*Official Report*, 27/3/01; cols. 230-31.]

The modification introduced today is to get rid of the same-roof principle, which prevented compensation being awarded to people living under the same roof. Back in the 1990s, and even when the scheme was introduced, there was not the same focus on historic sexual abuse cases that there is now. Consequently, the concern of the board was that women living with violent partners should be compensated but that the violent partners should not get anything as a result, so it was a requirement that they live apart. That was the reasoning behind the rule when it was introduced.

We have moved a long way and now live in different times, but I should like to point out that awards by the compensation board in 2017-18 totalled £154 million—in other words, £2 million more than when I resigned in 1994. Therefore, although the amendment is welcome as an improvement to the scheme, let it not be thought that victims are being properly compensated by the scheme for the injuries that they sustain. I retain the reservations that caused me to resign in 1994, including the concern that the scheme does not pay out what it should.

Baroness Chakrabarti (Lab): My Lords, it is always a pleasure to meet the noble Baroness, Lady Barran, at the Dispatch Box but her bringing this instrument today is particularly welcome, as was her careful and clear speech explaining the historic reason for the same-roof rule, which to modern eyes is very difficult to understand, as well as why it is unsustainable now. Thanks are also due to the unsung officials who will have prepared the instrument. I take this opportunity to join the well-deserved tribute to the outgoing Victims' Commissioner, the noble Baroness, Lady Newlove, who has brought such credibility to that role. She will be a tough act to follow. I am sorry that she is not here to hear these tributes, but I am sure that she will be told of them in due course.

I will not take up your Lordships' time as there is other important business, but this is incredibly welcome and we wholeheartedly support it on this side of the House.

Lord Campbell-Savours (Lab): My Lords, this is incredibly important business. I add my tribute to the noble Baroness, Lady Newlove, for the series of reports that she has produced in this area. Indeed, I am about to read her most recent report on anti-social behaviour.

I enter this—and any—debate on CICA's operations with reservations. On the one hand, it is an opportunity to congratulate CICA on the work that it does on crimes of violence and the compensation that is generally payable. On the other hand, I harbour profound concerns about its treatment of sexual offences, and in particular rape. The scheme is open to abuse, both "under roof", as dealt with in this debate, and outside in the community. I am not accusing all those who make applications of being dishonest; a great majority of people act honourably when they are a victim and make an application quite rightfully. However, there are those who abuse the system and I will concentrate my remarks today on such people.

The basis of my case was made in 2007 by the noble and learned Baroness, Lady Scotland of Asthal, who was then Minister of State in the Home Office. She challenged me on an inconsistency in the Government's statistics to which I had drawn attention. In her letter to me of 7 March that year, she wrote:

"The difference basically arises from the fact that the word 'rape' is not used as an injury description in the tariff to the Criminal Injuries Compensation Scheme. Unlike most of the 440 injuries listed in the tariff, such as a broken bone or scarring, rape is not an injury as such".

These are the noble and learned Baroness's words. She continued:

"Rather, it is an offence and one which frequently causes little physical injury (the award being essentially for the trauma of the assault)".

Therein—the "trauma of the assault"—lies the problem. A system based on that invites fraudulent claims. The noble Baroness, Lady Williams, a former Minister in the department, made a comment on this to the House on 22 January 2018. I had asked:

"My Lords, does the Minister accept that there may be circumstances in which an accuser may have compensation in mind in making the accusation?".

The Minister, the noble Baroness, Lady Williams of Trafford, replied:

"My Lords, obviously I cannot comment on any individual case but it may well be that that is the motive".—[*Official Report*, 22/1/18; col. 834.]

So what is the evidence? We have the case of Sarah-Jane Hilliard, in an article for the *Daily Mail*—I am sorry to have to quote that newspaper—on Friday 14 August 2009, with the headline:

"Girl faces jail after crying rape to claim £7,500 payout".

The story begins:

"A woman faces jail after luring a man into having sex with her and then crying rape in a plot to claim thousands of pounds in compensation. Sarah-Jane Hilliard, 20, applied for £7,500 from the Criminal Injuries Compensation Authority days after falsely accusing Grant Bowers, 19, of raping her".

Then we have more recent cases such as the Danny Day case and the Jemma Beale case. In those cases, compensation was paid and was followed by imprisonment. Then we have the Joshua Lines, George Owen and Bartolomeo de Lotbiniere cases—all of them were accused and charged and then, following police investigations, the CPS decided that the evidence was not there and dropped the cases. In all these cases the lives of the accused were placed on hold and, in some cases, destroyed. What we do not know in those cases is whether CICA compensation was sought or indeed paid.

3.30 pm

CICA is totally unaccountable. It pays on the balance of probabilities and it is not required to judge "beyond reasonable doubt", which means that there are cases that have not succeeded in the courts but where I understand compensation has been paid. The CICA organisation is hermetically sealed from public scrutiny—on which matter I draw attention to a series of freedom of information requests that I have been putting down over a number of years. In reply to my most recent one, of 30 January last year, after I had asked a series of questions on payments and what was going on in the organisation, it said:

"We hold the information requested, however, in respect of your questions A, B, C and E it is exempt from disclosure (under section 21 of the FOIA) because it is already reasonably accessible to you. The information requested for questions A, B and E can be accessed at the guide to the Criminal Injuries Compensation Scheme 2012".

When you go to the website to look up that reference, it does not answer the questions at all. CICA is deliberately avoiding answering very sensitive questions that in my view are essential if this organisation is to be held to account.

The noble Lord, Lord Thomas of Gresford, referred to total current expenditure; he said in his contribution that it was £152 million, if I recall correctly. I understand that one-third of that goes on sexual offences alone. My understanding of the scheme is that for sexual offences it can pay out on the basis of pain and suffering, measured in terms of trauma by a psychiatrist. I believe that that is an inadequate evidential test. There is even a tariff system, which the noble Lord also referred to. It attracts fraudulent claims. We cannot comment on the "Nick" case because it is sub judice, but what we know is that he took CICA for £22,000 and bought a Ford Mustang with it. That is not exactly what the scheme was intended for.

We have other cases, the classics being those of Harvey Proctor and Greville Janner. In those cases we have criminals with lengthy criminal records making claims to CICA, and CICA not even able to admit that the claim has been received, never mind whether it has been paid. If ever there were a case for a value-for-money examination by the National Audit Office or even an appropriation accounts examination, we have it here. It would make for a very interesting Public Accounts Committee session, with CICA officials wriggling as they refused to answer questions.

So what can we do about this? We should look at the system that operates in the Republic of Germany. There is no tariff. Under a victims' compensation Act, there is greater emphasis on, for example, curative medical treatment and job rehabilitation. If victims want compensation damages for pain and suffering, they claim in the civil courts directly from the offender. The Germans promote mediation. They have what they call an "adhesive procedure" to aid the process of compensation from the perpetrator, avoiding civil action.

The German system provides, particularly for the victim, curative and medical treatment for long-term care; prosthesis, dental prosthesis, wheelchairs and other aids; funeral allowances; other welfare benefits in the event of economic need, which are all means tested against other state support; and limited compensation for victims and surviving dependants. I understand that no compensation for pain and suffering is paid in lump-sum cash. Compensation costs to the public authorities are reclaimable from the perpetrators and offenders. The Government run a 24-hour national counselling hotline 365 days a year, anonymously advising on support and directing people to the appropriate agency or service provider. In other words, there is less emphasis on cash payouts—what I would call "Mustang money"—and more emphasis on medical treatment, mediation and rehabilitation.

Finally, I refer to the work of the Victims' Commissioner. There is one silver lining in all this: the noble Baroness, Lady Newlove, will be succeeded by Dame Vera Baird, who is a lioness in the legal world, a hugely talented woman and an exceptionally talented lawyer. She will follow the Victims' Commissioner's agenda, set by the noble Baroness in a series of excellent reports and, in my view, may introduce a few amendments. She has never previously indicated any support for any of my positions on these matters, but I live in hope. Sitting next to her in a Joint Committee in this House many years ago, I felt hugely inadequate as she forensically squeezed witnesses in her ever-so-precise line of questioning. I hope CICA knows what it has inherited. She is tough and she does not suffer fools gladly. I shall observe her progress with great interest.

Baroness Barran: My Lords, I thank noble Lords for this interesting debate and the points raised. I thank in particular the noble Baroness, Lady Chakrabarti, for her kind, warm words; the feeling is mutual. I understand the concerns raised by the noble Lord, Lord Thomas. Obviously, this statutory instrument seeks fairness, albeit in a framework about which he has continuing reservations. That fairness is perhaps best exemplified by the fact that those who have previously applied under the scheme and were not successful will be eligible to apply again; I think it is the first time that that has happened.

I find it hard to imagine the noble Lord, Lord Campbell-Savours, feeling hugely inadequate—I thought that was the position of the Minister at the Dispatch Box—but I find it strangely comforting to know that it is possible. I know that he in no way questions the trauma that genuine rape victims suffer and that he will have noted the focus in my noble friend's recent report on trauma and trying to avoid retraumatisation.

CICA relies on information from the police to help it identify fraudulent claims. If a fraudulent claim is made, it will report the offender to the police. Where an award has been made as the result of a fraudulent claim, the scheme allows CICA to ask that it is repaid and to pursue civil action if necessary. The review announced in September 2018 will examine the scheme much more widely, and will look at a number of the issues raised by the noble Lord.

I hope noble Lords will agree that the changes we are making are welcome and necessary to remedy an unfairness that has persisted for too long. I commend the instrument to the House.

Motion agreed.

Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2019

Motion to Approve

3.39 pm

Moved by ***Baroness Barran***

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

Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

Baroness Barran (Con): My Lords, the purpose of this draft instrument is to include inquiries established under the Inquiries Act 2005 as "excepted proceedings" in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, enabling them to consider the spent convictions of individuals. This legislative change was requested initially by Sir John Mitting, chair of the undercover policing inquiry, as information on individuals' spent convictions is important for the purposes of the terms of reference of that inquiry.

The inquiry is examining undercover police operations conducted by English and Welsh police forces from 1968 onwards, including whether the police were justified in launching undercover operations against a group. To give full consideration to this, the inquiry needs to be able to consider the convictions of members of the groups. However, given the historical nature of the inquiry, many of these convictions will be spent, and therefore not disclosable under the ROA. This statutory instrument will give the undercover policing inquiry the ability to consider spent convictions. This change is vital for the inquiry to fulfil its remit successfully, and your Lordships will be aware that there is a high level of public interest in the inquiry's success.

The Rehabilitation of Offenders Act 1974 affords offenders protection from having to disclose their convictions and cautions once those convictions and cautions have become spent under the Act—the point at which the offender has become rehabilitated. The exceptions order lists activities or categories of jobs where those protections are lifted, so offenders, if asked, need to disclose spent convictions. The primary rationale behind the exceptions order is that there are certain jobs—positions of public trust and those involving, for example, unsupervised work with children—where more complete and, crucially, relevant disclosure of an individual's criminal record may be appropriate, to mitigate risks to public safety.

The exceptions order is not limited to employment purposes, although that is its primary use. The amendment proposed here is not employment-related, but related rather to the consideration of evidence of spent convictions

[Baroness Barran]
and cautions in inquiries caused to be held under the Inquiries Act 2005. While a number of judicial proceedings are exempt from the protections of disclosure—meaning that the individual must disclose them—inquires made under the Inquiries Act 2005 are not currently exempt. To oblige an individual to divulge previous spent offending history, if asked in the course of such an inquiry, we must amend the exceptions order.

Although the inquiries are made in public, we would expect all inquiries to preserve the anonymity of individuals as far as is necessary to respect their rights to privacy. In particular, the chairman has the power under Section 19 of the Inquiries Act 2005, in the form of a restriction notice, and individuals can seek to retain their anonymity through a restriction order. Inquiries will take decisions on a case-by-case basis, taking into account particularly the need to balance openness with any competing public interest in restriction or private interest in privacy. Noble Lords may be aware that the protocols and guidelines for such applications in relation to a number of recent inquiries, including the Grenfell Tower inquiry, the Leveson inquiry and the infected blood inquiry, are all clearly available on the internet.

This draft instrument is necessary to amend the exceptions order to enable inquiries caused to be held under the Inquiries Act 2005 to admit and consider evidence of convictions and cautions that have become spent under the Rehabilitation of Offenders Act, where it is necessary to fulfil the terms of reference of that inquiry. Although UCPI is a particularly clear case of an inquiry where spent convictions are relevant, this amendment will allow any inquiry under the Inquiries Act 2005 to admit evidence of spent convictions and cautions, but limited only to where it is necessary to fulfil the inquiry's terms of reference. It is likely that other inquiries may in future need to consider spent criminal records, as these can be key to determining whether authorities have acted reasonably in assessing and responding to risk.

3.45 pm

I have noted the concerns raised by the noble Baroness, Lady Chakrabarti, in her amendment to the Motion about all inquiries being added to the exceptions order. Our view is that the duties of all inquiries are of sufficient seriousness to justify their taking spent criminal record evidence into consideration where, and only where, they believe it is necessary to fulfil their terms of reference. Any limited interference with an offender's Article 8 right to private life under the ECHR would be a necessary and proportionate interference with that right for the purposes of the UK fulfilling its obligations to inquire into the acts of public authorities.

Under Section 1 of the Inquiries Act 2005, inquiries are caused to be held by a Minister where particular events have caused, or are capable of causing, public concern or where there is public concern that particular events have occurred. Public interest is at the centre of the purpose of all inquiries. However, it is possible that evidence central to an inquiry's terms of reference may be excluded because of the provisions of the 1974 Act. The Rehabilitation of Offenders Act provides vital protections to rehabilitated offenders; this is why we reformed it in 2014 to reduce the amount of time that most people with convictions would have to wait before their convictions became spent. The amendment we propose here relates to the consideration of evidence of spent convictions and cautions in judicial proceedings —namely, before inquiries caused to be held under the Inquiries Act 2005. We are introducing it because it is necessary to ensure that inquiries of high public interest and concern are able to consider the evidence relevant and necessary to fulfil their purpose.

While this is the first request that has been received, the development of data protection laws in recent years has prompted much greater awareness among public bodies of their potential responsibilities around personal data, including criminal records. As some inquiries will be obligated to have regard to the rights of those who hold criminal records and to the legitimacy of using such evidence in the course of their duties, our view is that the duties of all inquiries are of sufficient seriousness to justify clarifying that they may take spent criminal record evidence into consideration where they believe it is necessary.

While we do not think that considering spent convictions is likely to be necessary in the majority of inquiries, adding only the undercover policing inquiry to the exceptions order would set a precedent that may well to lead to further requests. Adding these inquiries to the exceptions order now will ensure that more efficient use is made of the parliamentary process, as further amendments will not be required for each specific inquiry as and when it arises.

Not proceeding with legislation would materially impact the timing for the undercover policing inquiry to begin hearing evidence in June 2019. The chairman of the inquiry cannot currently admit spent convictions in evidence. Delay to this legislation would cause expensive delay to the inquiry, while not legislating would prevent the inquiry admitting this evidence at all. For this and other inquiries, this would mean treating people with spent convictions as though they had never occurred. Inquiries would then have to accept distorted versions of the truth, which could lead to conclusions based on false premises, which would not be in the public interest. I beg to move.

Amendment to the Motion

Moved by ***Baroness Chakrabarti***

At the end insert "but that this House regrets that the Order introduces the provision for spent convictions and cautions to be disclosed to all future public inquiries, which risks undermining rehabilitation and a person's private life, and calls on Her Majesty's Government to respect protections afforded to offenders under the Rehabilitation of Offenders Act 1974."

Baroness Chakrabarti (Lab): My Lords, the razor-sharp Minister predicted my specific concern in her opening remarks. This instrument is overbroad—it is a sledge-hammer to crack a walnut. It quite rightly responds to a request from a chair of an inquiry, where the disclosure of spent convictions may be highly pertinent to the subject matter—the undercover policing inquiry. Based on

that specific problem, we would legislate at one fell swoop so all future public inquiries are treated in the same way, so that the presumption is that spent convictions are no longer spent. These other inquiries could be into all sorts of matters and may not even be related to the criminal justice system, let alone relevant. This seems to lack the rigour that your Lordships' House in particular tends to prefer for secondary legislation.

My concerns are echoed by the all-important Secondary Legislation Scrutiny Committee. It expressed concerns over the breadth of the power and the impact it might have on the lives that have been rehabilitated. The committee believes that the Government's strong argument for the protection to be waived for the current undercover policing inquiry is persuasive, in contrast to that overbreadth that I am concerned about. In all other inquiries, present and future, spent convictions may be completely irrelevant. The Minister's remedy is that an inquiry chair may rule them inadmissible. That may be after the horse has bolted if, for example, counsel representing different interests in a public inquiry decides to raise a spent conviction for any witness. Perhaps it is a firefighter in one inquiry, or a complainant or victim in another. It undermines credibility and is not pertinent to the subject matter in hand, in that public inquiry. This is an overbroad power. In my experience of your Lordships' House—unfortunately, not of all parliamentarians—that kind of overbroad power, which undermines the principle of rehabilitation, must be of concern.

I completely take the Minister's point about increasing concern over data protection and increasing understanding of the importance of respect for personal privacy and the guarantees we have in this country, for the first time, because of Article 8 of the European Convention on Human Rights; that of course is only enforceable in our law thanks to the much-maligned Human Rights Act 1998. I take all those points on board and am very glad that the Minister has put them on the record, but an additional challenge has arisen over the same period as that progress regarding the Human Rights Act, concern about data protection, with people perhaps caring more about data privacy than they did in the past. This is a counterchallenge in terms of a hardening, certainly during my adult lifetime, in attitudes towards those who have committed crimes in the past and an undermining of the culture of rehabilitation. In part, this is because the list of exemptions has grown under Governments of all stripes. Crucially, the rise of the internet has made it ever harder for past wrongdoing—even minor offences, spent convictions even in one's childhood and youth—to be forgotten. That presents a very important practical challenge to the spirit as well as to the letter of the Rehabilitation of Offenders Act 1974.

To return to the central point, this is an understandable instrument: it came as the result of a specific request by one inquiry and one committee chair, but 23 inquiries have been established since the Inquiries Act 2005 and this is the first request of this kind. Does such a request—one versus 23—really justify passing this instrument? It would mean that spent convictions per se were up for grabs unless somebody thought to tell their representatives about a thing in their past, a minor conviction from their youth long ago, that they had not thought about but might be produced to challenge their credibility in the context not even of a civil or criminal adversarial proceedings but of a broader public inquiry. It is an overbroad power, not the sort of thing that your Lordships' House is normally comfortable with. That is why I have reluctantly sought to express regret.

Lord Dholakia (LD): My Lords, I declare an interest in this matter. In 2011, I promoted a Private Member's Bill, the Rehabilitation of Offenders (Amendment) Bill. It had taken the Government nearly 40 years, despite many reviews, to finally consider what was right and proper in dealing with offenders and their rehabilitation process. The purpose of the Bill was that, after a specified rehabilitation period, ex-offenders should not have to declare spent convictions when applying for jobs, except in sensitive areas of work, such as criminal justice agencies, financial institutions and work with young people or vulnerable adults. Some parts of this Bill were accepted in the LASPO Act that was supported by my noble friend Lord McNally and supported by the then Secretary of State, the right honourable Kenneth Clarke. Since then, it has helped many offenders to leave the past behind.

We support the amendment of the noble Baroness, Lady Chakrabarti, which backs up observations about this order made by the Secondary Legislation Scrutiny Committee. The committee is right to draw our attention to this on the grounds that this order gives rise to issues of public policy. We accept that there is a strong argument for the protection to be waived in relation to the current undercover policing inquiry, and I do not oppose or object to that part of it—that can go ahead, as the Minister has said, in June this year. However, we object to the order taking the broader step of making this same provision for any future inquiry. We do not accept that the Secretary of State should be given blanket authority, which would in effect mean that spent convictions and cautions could be admitted into evidence for these inquiries. Each future inquiry will have its own terms of reference and will vary in contents on the matters under investigation. We need to examine in detail the implications of such decisions on the lives of the many people whose convictions are spent.

The inquiry's terms of reference are set out by the Minister in consultation with the chairman of the inquiry. It is vital to preserve the anonymity of individuals and respect their privacy. Each inquiry will probe new grounds and each ground has to be examined carefully. We must never ignore the impact of disclosures on the lives of those who have been rehabilitated.

4 pm

Lord Mackay of Clashfern (Con): My Lords, I well understand the need for this order in respect of the application that has been made, but innovating the Rehabilitation of Offenders Act to any extent can be done only as a matter of principle. It cannot be done ad hoc for a particular inquiry. Therefore, what is the principle under which it would be allowable in respect of this inquiry? The answer is that it is required to fulfil the inquiry's remit. Only that would justify it.

[LORD MACKAY OF CLASHFERN]
The application says, "We cannot fulfil the remit we have been given unless we are allowed to examine this matter".

In my submission, it is extremely difficult to have an ad hoc system. The system ought to be governed, as the Rehabilitation of Offenders Act is, by principle. It is very difficult not to agree with the principle where an inquiry has been set up by a responsible Minister under the Inquiries Act with terms of reference which require that a particular matter should be looked into for the inquiry's remit to be fulfilled. That is the principle which enables the noble Baroness to agree that it should be granted in respect of the police inquiry but not in others. It seems to me that if it is justified in the police inquiry, the reason for that must be examined. The reason is that it is required to fulfil the remit of the inquiry.

I feel sad in a way that this instrument is necessary, because I thoroughly agree with the principles of the rehabilitation Act, which are extremely necessary and desirable. After all, people should have the benefit of forgiveness by society if they possibly can, and that is what this is about. On the other hand, once you have to justify an exception, the principle by which you justify it must be what you state as the basis of it. Therefore, while I understand the point that has been made, the way in which the instrument has been drafted makes it clear that this happens only in a case in which this exception to the Defamation Act is necessary to fulfil the inquiry's remit.

Lord Hodgson of Astley Abbotts (Con): My Lords, I am a member of the Secondary Legislation Scrutiny Committee, which considered this order, under the chairmanship of the noble Lord, Lord Cunningham, who I am happy to see in his place. I understand clearly the reasons why the undercover policing inquiry—which, as it stretched back into history, had to look a long way back—needed to be able to consider early offences. However, as the committee inquired, and we were concerned about how this might be applied and how it might affect individuals, we began to see the extent to which this narrow point might affect individuals in the future in an unattractive way. Therefore, although it is dangerous to take on an ex-Lord Chancellor, I say to my noble and learned friend Lord Mackay that I do not reach his conclusion, which is that one change should justify a change across the piece.

A lot of the points that I wanted to make have already been made, so I shall be brief. However, first, these are public inquiries, so a person's conviction, no matter how trivial or long ago, may well be revealed. We drew the attention of the MoJ to this, and its response to us, quoted in the third bullet point of our report, was quoted pretty extensively by my noble friend in her opening remarks. It is, perforce, fairly general, as it is bound to be, and somebody looking to it for protection might wonder how it will be interpreted in the event, given the wide powers the chairman has to interpret where the public interest and private interest overlap. The MoJ went on, in the fourth bullet point of our report, to say that of course a person had some redress in the sense that they could always apply for a judicial review of the decision. That appeared to be largely fanciful. The idea that an individual, swept up into an inquiry like this, would have the time, resource, energy and confidence to seek a judicial review is not realistic, particularly since it would have to happen quickly. Once the name is out, the point of the judicial review is completely lost.

This is not the only place in the regulations which shows a lack of realism. Paragraph 7.5 of the Explanatory Memorandum says:

> "The disclosure and consideration of the spent convictions and cautions will not affect any ex-offender's protection against disclosure when applying for work".

However, once a person's identity is revealed, inevitably their positioning in a job interview is worse, or at least affected. In real life, if a recruitment committee is looking at two people of equal skills, and one has a bit of a black mark—it may be a small one which happened a long time ago, but nevertheless it is a black mark—there will be an inevitable tendency for the recruitment committee to decide not to take a risk and choose the other candidate, to the detriment of the person who has been swept up by these regulations we are talking about today.

The Minister justified this by saying that there was a lack of parliamentary time and that there would be bureaucracy and inflexibility if we required individual SIs to allow for exceptions to the Inquiries Act. However, as has been pointed out, so far there have been 23 in 12 years, so one application is not a huge use of parliamentary time to allow for something which offers better protection to individual citizens, who may have done something quite stupid or silly when they were young—which of your Lordships could look in the mirror tomorrow morning and say, "I've never done anything silly"? In many cases, we just have not been caught doing it. We therefore need to think more clearly about this. The case for widening the remit, especially without offering better protection and anonymity to individuals whose offences may have been trivial and long ago, has not been effectively made.

Baroness Butler-Sloss (CB): My Lords, I am happy about the breadth of the instrument. I see very well the points that the noble and learned Lord, Lord Mackay of Clashfern, made, but I am also unhappy at the suggestion that if someone is told that their past is about to be disclosed, they can go to judicial review. That is a very unsatisfactory system. As I understood it, the Government were doing their best to reduce judicial review rather than increasing the opportunities for it. As the noble Lord, Lord Hodgson, said, that is indeed not a very satisfactory way to proceed.

Could there be some sort of filter, by which I mean: is it possible to keep the instrument as it is but require a chairman? I was chairman of various inquiries over the years, one of which was under a previous Act, the Cleveland child abuse inquiry, so I have some experience of the requirements of a chairman balancing public and private interests. I can see that it is highly desirable not to bring this back to the House again and again, but I wonder whether the Minister could go back to the Ministry of Justice to find out whether any chairman who wanted to invoke that would have to go through some procedure for it to be checked as to whether it was appropriate.

Lord Morris of Aberavon (Lab): I heard what the noble and learned Baroness said, but it seems to me that my noble friend's concern is the sheer breadth of what is now proposed, and a filter of some kind. Chairmen of public inquiries are appointed after a great deal of consideration. I sat on the ad hoc committee of this House examining how the Inquiries Act worked. Perhaps the Minister should seriously consider a filter on whether a request should be allowed, as opposed to a general proposition.

Lord Hogan-Howe (CB): My Lords, I do not at the moment support the amendment but, from what I have just heard, I could be persuaded. It seems to me that the Rehabilitation of Offenders Act has two purposes: the first is that already discussed, which is about people's occupation; the second is about the application for licences. For example, with a firearms licence, the person issuing the licence needs to be sure about the antecedents of the person involved.

For the reason that the noble Baroness, Lady Chakrabarti, said, you would expect that the inquiry chairman in any inquiry should know as much as possible about the subject matter. As she explained, because of the internet and many other reasons, the public may know more than the inquiry chairman. It would seem to me to be an odd conclusion if the inquiry chairman or woman were not in a position to have all the information available. Generally, we would expect that this person would be either a retired judge or someone very senior, who should be able to manage information in the most responsible way.

I could have supported the noble Baroness's proposal if she had been able to say how she would have managed it instead. There needs to be a filter, which concerns the quality of the test which has to be applied: whether it is about necessity, which is what is proposed, or about who applies that test—a Minister or another mechanism. If not, people might think that it is an extension too far which may in future lead, if not to abuse, then certainly to people not being prepared to support public inquiries, which is the complete opposite of the intent that I think we all have.

Lord Ramsbotham (CB): My Lords, it is as long ago as 1999 when the Better Regulation Taskforce examined the Rehabilitation of Offenders Act 1974 and questioned its relevance. That was followed by an inquiry by the then Labour Government, resulting in the promise of a Bill to amend the Act, which never happened. Then LASPO, mentioned by the noble Lord, Lord Dholakia, included some amendments, since when the Law Commission, the Standing Committee on Youth Justice and Unlock, the charity of which I have the honour to be president, have all raised objections to the application of the Act and the fact that it is hindering the rehabilitation of offenders.

At present, attempts at Private Members' Bills, on which I took over from the noble Lord, Lord Dholakia, have twice had two readings in recent Parliaments. However, they have stalled while an order is awaited from the Supreme Court in judging on its hearing last July for an appeal by the Home Office and the Ministry of Justice against the rulings of the High Court and the Appeal Court, which were affecting the Rehabilitation of Offenders Act in general. I suggest that, rather than propose a statutory instrument like this one, everything should be postponed until the review of the Act that the Government presumably have in mind.

4.15 pm

Baroness Barran: My Lords, I thank noble Lords for their contributions and for their unanimous—I think—support for the request in the instrument relating to the undercover policing inquiry. I will attempt to deal with the wider issues raised.

I am grateful to my noble and learned friend Lord Mackay of Clashfern for the simple and elegant way in which he explained a "matter of principle". In this instrument, obviously that relates to the necessity of having information about spent convictions to fulfil the terms of reference—or remit, as my noble and learned friend described it—of the inquiry. That is one important part of our debate, but there is a second, which the noble Baroness, Lady Chakrabarti, and other noble Lords have mentioned: are the checks and balances—or filter, as the noble and learned Baroness, Lady Butler-Sloss, described it—sufficient to make sure that the principle is applied in a proportionate way? That is at the heart of the discussion.

Within that, there is the need to balance an individual's Article 8 rights to privacy with the public interest and the necessity for the inquiry to be appraised of the accurate facts, where relevant. The noble Baroness, Lady Chakrabarti, talked about the risk of information coming into the public domain by accident or information that is not strictly relevant being used by the inquiry. That is hard to imagine in reality, with genuinely the greatest respect to the noble Baroness. If we think through the practicalities of somebody being asked to supply this information, we can imagine that, in all likelihood, it would result in an application for anonymity.

I hope that noble Lords will bear with me. This morning, together with officials, I tried to work out a flowchart of how this decision would be taken. The first question is: does the individual have spent convictions, yes or no? If the answer is yes, are they relevant? Will they be treated anonymously? If they apply for anonymity, will that be agreed to? Further, even if it is not anonymous, is the hearing held in private or in public? If it is held in private, could the information then be published?

I am trying to illustrate how there are a number of points in the process which make it highly unlikely that a disproportionate decision could be taken, but there are other points to cover here as well. My noble friend Lord Hodgson pointed out that although the intent of the instrument is not in relation to work, if the information was made public it could disadvantage someone in an employment application. I think that my noble friend makes a very fair point. I will undertake to take up with the department the question of the filter, a point raised by the noble and learned Lord, Lord Morris of Aberavon, the noble Lord, Lord Hogan-Howe, and the noble and learned Baroness, Lady Butler-Sloss, but the terms of reference, relevance and necessity are the key filters which exist already.

We feel that there are sufficient safeguards in place to ensure that individuals have their right to privacy respected as far as is necessary and proportionate. Although inquiries are made in public, inquiry chairs must preserve the anonymity of individuals as far as is

[Baroness Barran]
necessary to respect their legal rights to privacy. As I stated earlier, the chairman has the power under Section 19 of the Inquiries Act to restrict the publication of information in the form of a restriction notice; for example, the undercover policing inquiry has invited applications for restriction orders, as have a number of other public inquiries. Individuals can use restriction orders to seek to maintain their anonymity, and where they are not satisfied that that has been done, they can make representations to the inquiry and, ultimately, for the decision to be judicially reviewed, although I hear the reservations of noble Lords about that.

I hope I have been able to reassure noble Lords not only that the point made by my noble and learned friend Lord Mackay about principle is a sound one but that the checks and balances that are required to ensure that the principle is applied in a way that upholds people's rights are in place. I hope noble Lords will agree that this instrument ensures that inquiries that are of great public interest and concern are able to consider the evidence that is relevant and necessary to fulfil their purpose. I beg to move.

Baroness Chakrabarti: My Lords, I am grateful to the Minister and to all noble Lords who spoke in this debate. To be clear, I do not see how these so-called checks and balances work here; one could be attempting to shut the stable door after the horse has bolted. A restriction might not even have been considered before counsel to one or other interested party in an inquiry brought into the course of proceedings someone's long-spent conviction.

It is never nice to be on the opposite side to the noble and learned Lord, Lord Mackay, but there are two principles in this context: the public interest in favour of the rehabilitation of offenders, and the public interest in the openness and fairness of any public inquiry. It seems that it would not be disproportionate to have a debate of this kind every time a committee chair said, "We really need to get at spent convictions in the context of this material". This amount of parliamentary time in your Lordships' House is not disproportionate to that public interest. If that is thought too cumbersome, surely either the Inquiries Act or relevant rules of procedure might instead have been amended to require a committee chair in any inquiry to state at the outset that this is the type of inquiry that will in principle require the use and admissibility of spent convictions. That has not been done; the filtered approach that the noble Lord, Lord Hogan-Howe, suggested has not been adopted in this case. Instead, we have this overbroad, unfiltered system.

In the light of this overbroad secondary legislation that might well undermine the principle of rehabilitation and personal privacy, I beg to test the mood of your Lordships' House.

4.24 pm

Division on Baroness Chakrabarti's amendment to the Motion

Contents 172; Not-Contents 125.

Baroness Chakrabarti's amendment to the Motion agreed.

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Motion, as amended, agreed.

Higher Education (Monetary Penalties and Refusal to Renew an Access and Participation Plan) (England) Regulations 2019

Motion to Approve

4.36 pm

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

That the draft Regulations laid before the House on 1 April be approved.

Relevant document: 25th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

Viscount Younger of Leckie (Con): My Lords, we have come a long way since the passage of the Higher Education and Research Act 2017 and I thank noble Lords for the scrutiny they provided, both to HERA itself and to the HERA regulations laid before this House since HERA gained Royal Assent in April 2017.

Let us step back and take a look at the progress of the Office for Students. Since its formation, the OfS has registered over 350 higher education providers, while ensuring that academic freedom and autonomy are core principles of the governance of all registered providers. In registering these providers, the OfS has satisfied itself that each provider has met a range of registration conditions including, but not limited to, quality and standards, access and participation, management and governance, financial sustainability and student protection. It has also helped to introduce the *Teaching Excellence and Student Outcomes Framework*, to highlight where to find high-quality teaching and the best graduate outcomes, as well as providing an incentive to improve standards. We know that the TEF has encouraged providers to focus more attention on their teaching and learning strategies. Dame Shirley Pearce is conducting an independent review of how the TEF currently operates and we expect her to submit her report in the summer. The OfS has also ensured that all registered providers with fee caps at the higher level have comprehensive access and participation plans to improve access and support for students from disadvantaged backgrounds and underrepresented groups.

Widening access and participation in higher education is a priority for this Government. This means that everyone with the capability to succeed in higher education should have the opportunity, regardless of their background or where they grew up, and we are making progress. In 2018, 18 year-olds from disadvantaged backgrounds were proportionally 52% more likely to enter full-time higher education than in 2009. But we know that there is more to be done. Through the Government's guidance to the Office for Students we have asked for greater and faster progress on access and participation. On the provision of information to

[Viscount Younger of Leckie]
students, the OfS is working in partnership with the Department for Education on the best way to enhance and improve the information given to students on the quality and standard of teaching that they can justifiably expect. I am sure your Lordships will agree that this is a considerable achievement, on which the OfS should be congratulated.

I now turn to the regulations and first to Section 15 of HERA, which gives the OfS the power to impose monetary penalties on providers that fail to comply with their ongoing conditions of registration. The OfS register is the route for providers to charge fees that attract student loans, become eligible for grant funding, offer degrees or call themselves a university. In return for these considerable benefits, providers have to comply with registration conditions relating to, for example, their financial sustainability, quality of provision and student protection. The register—noble Lords may know this, but I wish to go over the details again—is divided into two categories: "approved" and "approved fee cap". A provider's registration category determines its exact benefits and obligations. Providers on the register with an agreed access and participation plan are in the approved fee cap part of the OfS register.

HERA also gives the OfS the power to apply specific conditions on a particular provider if there is cause for regulatory concern. These are not specified in the Act but, by way of example, the OfS has placed specific ongoing conditions of registration in relation to their access and participation plans on certain universities. They have been required to report on their evaluation of financial support made available to students.

Adherence to the registration conditions is a vital component of our reforms to the regulatory landscape. It is critical to safeguarding the interests of students and the quality and reputation of our higher education sector. The power to impose a monetary penalty on providers is a crucial tool for the OfS to have at its disposal to enforce registration conditions and to encourage compliance. Regulations are required to make provision for the amount of the penalty that can be imposed and may set out the matters to which the OfS must, or must not, have regard when exercising the power to impose a monetary penalty. Failure to put these regulations in place will mean that the OfS will not have this essential regulatory tool at its disposal at the very point at which it most needs it.

I move on to the consultation on monetary penalties. Monetary penalties provide an effective incentive to comply with regulation and an enforcement tool, but they must also be proportionate and fair. There was no statutory obligation to consult on these regulations. However, a commitment was made during the passage of HERA through this House to consult on the matters that the OfS must have regard to when imposing a monetary penalty. As a result, the department conducted its consultation between December 2017 and March 2018. To reassure your Lordships, as these are new regulatory powers, we also took the opportunity to seek views on the maximum monetary penalty amount. It is through this extensive consultation that we have established the fair and balanced approach set out in these regulations.

The consultation process identified some concerns that monetary penalties could take away provider income that might otherwise be used for the benefit of students. The majority of respondents did not support the department's proposals for the maximum penalty, but respondents were broadly supportive of the proposed factors, especially that relating to impact on students. The Government have listened. In response, the Government adopted the lower of their options for a maximum penalty amount—2%, rather than 5%, of qualifying income—but remain of the view that monetary penalties need to be set at a level that ensures there are visible and meaningful consequences, without being unduly punitive. By this I mean that the penalties should have the potential to be of sufficient magnitude to have a real impact on providers, which will encourage them to comply with their registration conditions. However, the legal restraints these regulations place on the OfS, including the mandatory factors to which it must have regard when setting a penalty, are designed to ensure that the OfS is required to take appropriate, reasonable and proportionate action. In doing that, the regulations ensure that the interests of students—both at the provider in question and those of students more generally—are taken into account. Your Lordships will be reassured to know that the regulatory framework published by the OfS last year sets out its approach to imposing sanctions, including monetary penalties. In addition, the OfS will produce more detailed guidance on how it will take decisions to impose monetary penalties and on the amount of penalty to be imposed.

I now turn to the second part of the regulations. These allow the Office for Students to refuse to renew a provider's access and participation plan. Given the importance of access and participation, we have asked the Office for Students to secure greater and faster progress in this very important area.

4.45 pm

From our debates during the passage of HERA 2017, I know that your Lordships share a desire to see more young people from disadvantaged and under represented groups accessing and then successfully participating in higher education. Currently, the key way of achieving this is through access and participation plans. Each higher education provider which intends to charge higher-level fees must set out in its plans the measures it will take to support students from disadvantaged backgrounds. This can include helping students to access higher education and supporting them to participate successfully in its courses, as well as helping to tackle, for example, drop-out rates, attain qualifications and progress from higher education.

Given the importance that we place on access and participation, the OfS should have strong powers where it has concerns that a provider has failed to deliver on its commitments or has exceeded the specified limits for course fees. Where this happens, the OfS could, as one of a number of actions available to it, refuse to renew a provider's next access and participation plan. Refusing to agree a provider's plan would represent substantive regulatory action. It would mean that the provider would not be able to charge higher-level fees, and this would have real financial implications for most providers.

Given the major implications of refusing to agree a plan, the regulations include a review mechanism. Providers can ask, within 28 days, for a decision made by the OfS to be considered by an independent reviewer. This should provide additional reassurance about the fairness of the process.

Other sanctions and interventions that the OfS could use where a provider falls short in relation to its access and participation plan include enhanced monitoring, monetary penalties or suspending a provider from the register. All are aimed at addressing underperformance and encouraging progress. As a last resort, the OfS has the ability to deregister a provider.

These regulations make sure that the OfS is consistent in using its regulatory powers to impose a monetary penalty or refuse to renew an access and participation plan. The OfS must consider broadly the same factors when deciding to impose either of those sanctions.

It is planned that the regulations will come into force on 1 August 2019. This will permit the OfS to start imposing monetary penalties where it appears to it that there is, or has been, a breach of a registration condition. The Government firmly believe that the higher education regulatory system must be one that can effectively protect the interests of students, especially the most disadvantaged, in the short, medium and long term. The regulations support that as they enable the use of two important tools that will enable the OfS to carry out its core task of the effective stewardship of the higher education landscape. Therefore, I hope your Lordships agree that the regulations are ultimately of benefit to students and the sector alike. I beg to move.

Lord Bassam of Brighton (Lab): My Lords, the regulations before your Lordships' House relate to the power of the Office for Students to impose penalties for a breach of regulations, and I am grateful to the Minister for setting out the Government's explanation of them. Of course, ultimately they are a reflection of the marketised system that we now have and the necessary bureaucracy that comes with that form of regulation, which intervenes and seeks to make the market perform better.

On this side of the House we have no qualms about the basic principles in the system. There must be a system that ensures that higher education providers comply with the regulations, and for that reason we have no intention of opposing their passage. I will, however, register a number of our concerns in the hope that the Minister can assure the House that these regulations will be efficient in their aim of promoting greater regulatory compliance in HE access and participation.

Before moving on to the specifics of these regulations, I draw attention to the fact that, despite the enormous potential consequences for any HE institution at risk of non-compliance, the Government have chosen not to publish any form of impact assessment for them. This is not the first time that the Government have laid such significant secondary legislation without the publication of that information.

In the Explanatory Memorandum produced by the Department for Education, the department's failure to produce an assessment is excused by the idea that there will be no financial impact on those providers that are compliant. Well, there will be implications for those that are not. Surely an assessment should have been produced, at least internally, of the financial impact on providers that, for whatever reasons, fall short. If it has been produced, why is the House not privy to that information? In the absence of such an assessment being provided to the House, can the Minister at least offer Peers a brief estimate of the effect of this instrument on providers who are not compliant? Does the Minister anticipate that they will be put into financial difficulties as a consequence, and does he believe there will be any knock-on impact for students at such providers' institutions?

Turning to the specifics of these regulations, I will use the bulk of my time to focus on the nature of the monetary penalties. Of course, it has to be right that those who fail to comply with the necessary regulations face some variation of a punishment. But such penalties must find the right balance between being stern enough to ensure compliance and not so harsh as to create extraordinary financial difficulties for providers that receive a penalty.

In previous consultations, the maximum fine suggested was 5%, as the Minister said, rather than 2%. Although I think the House will agree that the latter is the better choice, I would welcome the Minister's saying how the Government reached that conclusion and chose to pitch at the lower level. Did any stakeholders suggest that a higher limit would be better or preferable? What factors did the Government assess when deciding on the nature of the penalties?

I am particularly concerned that, if the penalties are too overbearing, they will create insurmountable financial trouble for providers that are already struggling, as the Minister will be aware. Indeed, reports emerged in late 2018 that up to three higher education institutions may be on the brink of bankruptcy, and last month, the *Guardian* reported that 25% of English universities were in deficit. Post Augar, this picture could worsen. Can the Minister hint when the Augar review will be published and explain the relationship between that and this system of penalties?

The regulations make it clear that the OfS has the discretion to impose a monetary penalty but are not entirely clear about what factors will be considered. For example, will the financial position of the provider be taken into consideration? Universities UK has made it clear that penalties must be awarded proportionately and effectively, and that what this looks like will vary according to individual circumstances and the position of the institution involved. I urge the Minister to ensure a degree of flexibility in the application of penalties.

On communicating these changes, it is right that the Government make sure that those who will be impacted upon fully understand how the new regime will work, as with any regulatory change. Although higher education providers should be aware of their access and participation responsibilities, they should be reminded of monetary penalties that could be awarded if they fail to comply. How has the Minister's department communicated the monetary penalties to the 350 education providers now registered with the Office for Students?

[Lord Bassam of Brighton]

Before concluding, I will touch briefly on Regulation 9, which allows the Secretary of State to appoint either an individual or panel and pay remuneration and allowances. Aside from the fact that this must comply with the code on public appointments, the regulations give no further indication or clue as to what factors will be considered when making appointments of this nature. Could the Minister explain why not? How will the Secretary of State make such appointments? Will there be a need for a further statutory instrument?

In conclusion, the concerns that I have raised are not enough for us to oppose the regulations in their entirety; indeed, we welcome the Government's limited attempt to promote greater regulatory compliance regarding HE access and participation. However, I ask the Minister to take far more ambitious steps to ensure that we make higher education more welcoming for students from all backgrounds. Given that over 12,000 fewer English undergraduate students from low-participating areas now start courses each year than did so in 2011-12, we cannot underestimate the scale of the challenge. I would welcome any details from the Minister on how his Government intend to rectify this and ensure the access that I think all sides of your Lordships' House would very much welcome for HE students.

Baroness Garden of Frognal (LD): My Lords, we too understand the need for these regulations and thank the Minister for setting them out. Universities certainly need to be held to account for widening participation and supporting students from under-represented backgrounds throughout their studies, and monetary fines need to be part of the mix of sanctions available. However, I note that the Minister himself mentioned the concern that this might take away from provider income, and that in the notes the consultation process identified some concerns that monetary penalties could take away provider income that would otherwise be used for the benefit of students. Are there any safeguards to ensure that that will not actually be the case?

We certainly wish to ensure that all universities work to widen participation across the sector and prioritise their work with schools and colleges that have not traditionally been ones where young people went to universities, and we need every university to be transparent about selection criteria. However, we would also like to see the Government doing their fair share to widen participation by reinstating maintenance grants for the poorest students to ensure that disadvantaged young people do not have the highest loans to repay.

We note that the trend is narrowing but we see also that UCAS warns that for the fourth consecutive year limited progress has been made in reducing the size of the multiple equality measure gap, which remains at a similar value to that seen in 2014. Surely that should be a concern too. It also concluded that among the universities with the highest entry requirements the entry gap is widest, and in 2018 the most advantaged students were 15 times more likely to enter than the most disadvantaged. We have quite a long way to go with this.

The Minister and the noble Lord, Lord Bassam, have touched on most of the issues that I would have mentioned on this, but I have a question for the Minister. Where will the money from these funds go? Will it just go straight back to the Treasury and get lost in the general pot, or is there any suggestion that these fines will be put into a separate fund that will help to benefit disadvantaged students? Money that just disappears into the Treasury is not going to do anything to help the students that we most want to help but, if there were some suggestion that it could be used beneficially for those students, that would be a very reassuring move.

As I say, there are some concerns about the effect of the fines, which I hope will be monitored as we go along to see whether they have an adverse effect on universities being able to provide for disadvantaged students. If not, of course, we have no intention of imposing this measure.

Baroness Warwick of Undercliffe (Lab): My Lords, any regulatory system requires sanctions to be effective, and clearly there is general support for the OfS having proportional powers to act against any providers that breach their conditions of regulation. However, it is important from the start that the OfS convinces the sector that it will indeed exercise its powers in an appropriate, proportionate and risk-based way.

5 pm

Others have mentioned Universities UK. I think it has been working with the Office for Students on the interpretation of these regulations. One of the issues it has raised is that while it agrees that the OfS's approach to access and participation would theoretically reduce the burdens for providers with a low risk of future breach, it currently finds it difficult to understand the levels of burden in practice without more detail on the risk assessment methodology. Could the Minister provide any more clarification on risk classification and associated timeframes?

In its very helpful briefing on these regulations, Universities UK also expressed concerns about recent media reports about possible recommendations of the post-18 review panel which may, in its view, lead to progress on social mobility being threatened. In particular, it had concerns about leaked recommendations introducing a minimum entry tariff for students in England to be eligible for student loans. All the evidence suggests that a minimum entry requirement based on prior attainment would disproportionately affect young people from the most disadvantaged areas and under-represented groups. In any case, it is certainly my view that prior attainment on its own is a crude measure to judge whether a person has the potential to benefit from a university education.

As the Minister said, in recent years, significant progress has been made on widening access to higher education. It would be a real retrograde step if the Government accepted a recommendation from the review that would undermine that progress in any way.

Lord Storey (LD): My Lords, we obviously welcome this statutory instrument. I have three very brief questions. First, we have of course talked about disadvantaged and underrepresented groups, but what about dis-

advantaged schools? How do we ensure that we break the cycle of the top independent schools sending far more pupils to some of our top universities than your average maintained school? Are we ensuring that the gap between independent schools, maintained schools and academies is included?

Secondly, do the access and participation plans include numerical targets for each university? Thirdly, I am quite taken with my noble friend Lady Garden's point about the fines not going into some black hole in the Treasury. You could do quite a lot in disadvantaged areas with schools doing outreach work to encourage young people to go to university. If there was money available, it would be a much easier proposal to operate.

Viscount Younger of Leckie: I thank all noble Lords for their participation in this fairly short but interesting debate. I will do my best to answer in short order the questions that were raised on these Higher Education (Monetary Penalties and Refusal to Renew an Access and Participation Plan) Regulations.

I thank the noble Lord, Lord Bassam, and all other noble Lords for being broadly supportive of these regulations. I welcome the remarks that the noble Lord made towards the end of his speech, saying that it is welcome that more efforts are being made towards access and participation to ensure that more disadvantaged pupils go to university. He is right that there is more to do; I think I said that in my speech.

The noble Lord, Lord Bassam, and the noble Baroness, Lady Garden, raised a point about impact assessments on the fees and penalties. I will spend a little time on that. There was a full consultation on the penalties. The maximum level of penalty is set at 2% of the income that the provider receives through grant funding from the OfS and from tuition fees in a 12-month period, or £500,000. To clarify, by this I mean that the maximum level of penalty is 2% of income, unless that calculation produces a figure that is less than £500,000. If that is the case, the maximum is £500,000. The maximum penalty is set at a level to allow the OfS to ensure that there are visible and meaningful consequences for a provider that is in breach of an ongoing registration condition, without being unduly punitive. The OfS has discretion as to whether to impose a monetary penalty and to set the level of that penalty up to the maximum mentioned.

It is envisaged that the OfS would impose the maximum level of penalty only in the most exceptional circumstances. These regulations set out the factors that the OfS must consider. These factors are intended to help ensure that the imposition of a monetary penalty and the amount of any penalty is appropriate, reasonable and proportionate, given the circumstance of a particular breach of a registration condition. There was broad agreement on these factors in the consultation response. On the question of whether a higher maximum was suggested in the consultation, I can say that no provider suggested a higher maximum penalty in the consultation.

The noble Lord, Lord Bassam, asked about the appointment of a statutory reviewer. I can reassure him that a statutory reviewer has already been appointed to focus particularly on access and participation. This appointment is in line with the principles of public appointments and will be under review. She is getting up and running; we will see what other resources she might need—at the moment, we are perfectly happy that she has a role, but of course it will depend slightly on what the demands of her role are. I hope that is understood.

The noble Baroness, Lady Garden, asked where the money from the penalties will go. Money from monetary and financial penalties, as well as income derived from interest, is required under the Act—under HERA—to go to HM Treasury's Consolidated Fund, from which government expenditure is funded. This prevents the OfS from imposing penalties or charging interest to raise income. That is a long-winded way of saying that the money goes to the Treasury, which I suspect is an answer that she—

Baroness Garden of Frognal: My Lords, is there any way that could be addressed? Surely it would be to the immense benefit of universities if any fine imposed went into a fund to help the very things for which it was imposed—that is, to increase the participation.

Viscount Younger of Leckie: I understand exactly the point that the noble Baroness is making. I can certainly take that back to the department, and possibly to the Treasury, but I am pretty sure it is a matter which is tied down; as I have made clear, it is tied down in legislation, and was set out in the Higher Education and Research Act. However, the point is well made.

The noble Lord, Lord Bassam, asked about an impact assessment. No impact assessment was prepared for this instrument because these regulations do not introduce further burdens that would have an impact on businesses, charities or voluntary bodies. A provider's compliance with its registration conditions—and so avoiding OfS sanction—is within the provider's own control.

It is worth noting that the mandatory factors in Regulation 4 require that the OfS must have regard to the impact of imposing a penalty on higher education students at the provider in question and on higher education students more generally. The OfS will also take into account other matters that it considers to be relevant, including financial stability. However, with the greater emphasis that the OfS has given the regulator in terms of looking at the providers and their progress or otherwise, there is a process which the noble Lord will be aware of, to the extent that the financial sustainability of the providers is monitored very closely indeed. If there is any hint of difficulties, much closer monitoring will take place. I hope that is helpful.

The noble Lord, Lord Storey, asked about disadvantaged schools and the targets. The OfS is encouraging all the providers to work with schools through outreach access and participation plans, which should include targets set by providers and agreed by the OfS.

In terms of the help that independent schools can give to maintained and secondary schools, the noble Lord will be aware that—I am pleased to say—much work is going on between and by independent schools to ensure that resources, including teaching resources,

[Viscount Younger of Leckie]
are given where appropriate to secondary or maintained schools in a particular area. That is deliberately to help to raise standards within the community and give those who are less advantaged a greater chance to go on to either vocational training or a university.

Lord Storey: Are those numerical targets?

Viscount Younger of Leckie: Yes, they are numerical. I will certainly write to the noble Lord with more information about the targets that we have in mind.

I believe I have covered all the questions that were raised—

Lord Bassam of Brighton: I do not believe the Minister has covered my point about the Augar review and when it will be reported, and the relationship between these two things.

Viscount Younger of Leckie: The noble Lord is right. He is as sharp as anything; in fact, I wrote that very question down. I reassure him that the Augar review is going to be published shortly—very soon. I have said that for a while, but I promise that it is due out shortly. I am afraid that I am not in a position to say anything further about the timing of the Augar review.

Baroness Warwick of Undercliffe: Will the Minister respond to the point about the burden on institutions and the additional clarity, which I know there is some anxiety about?

Viscount Younger of Leckie: Yes, indeed. I do not have an answer to that question, but let me write to the noble Baroness about that in the same letter that I will be writing to the noble Lord, Lord Storey.

Motion agreed.

International Road Passenger Transport (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Motion to Approve

5.11 pm

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

That the draft Regulations laid before the House on 3 April be approved.

Relevant document: 47th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, I will start with some background to these regulations. EU legislation governs access to the international passenger transport market. The EU regulation establishes the conditions for the international carriage of passengers by coach and bus within the EU, and cabotage within member states by non-resident EU operators. It covers regular timetabled services and occasional services such as holidays and tours. It establishes for this purpose a system of community licences, which act as the international bus and coach licences used within the EU, and for these licences to be issued by the competent authorities of member states.

To ensure the continuation of bus and coach services in the event of no deal, the Government have already made the regulations on common rules for access to the international market for coach and bus services. These were approved by this House on 25 March. That SI amends the retained UK version of the EU regulation on a UK-wide basis. It allows EU-based operators to continue to access the UK market through the continued recognition of community licences and control documents issued by EU member states.

Turning to the content of this SI, Section 2 of the withdrawal Act will retain EU- derived domestic legislation which gives effect to the EU regulation in Northern Ireland. This SI, which applies to Northern Ireland only, adjusts the language and references in those pieces of retained legislation. The draft regulations make minor and technical changes to reflect the fact that the UK will cease to be an EU member state. For example, they remove references to "community licence" and "community rules" from relevant Northern Irish domestic legislation. The regulations also ensure that domestic enforcement provisions may continue to be applied to EU operators so that the Driver and Vehicle Agency, the relevant enforcement body in Northern Ireland, can continue to take action.

I turn to our approach to maintaining UK access to the EU. In the event of no deal, UK operators will be able to continue to access the EU market through the Interbus agreement in respect of occasional services. That agreement is an EU multilateral agreement which allows bus and coach operators to carry out occasional services between the participating countries: currently, the EU and seven other contracting parties in eastern Europe. The UK has completed the accession process and will become a member of the Interbus agreement in its own right in the event of no deal.

The agreement will be extended to regular services in due course but, until the end of 2019, access for existing regular services would be through the EU contingency measure on basic road freight and road passenger transport connectivity. This contingency measure, which was approved in March, will enable UK operators to continue operating existing regular timetabled services to EU member states until 31 December 2019. Since it was agreed, an extension to the exit date has been granted until 31 October, so we will work with the EU to determine the impact of this on the timing of the measure. This is particularly important to the ability to carry out bus and coach cabotage in the border counties of the Republic of Ireland, which is currently allowed only until the end of September.

The EU contingency measure is dependent on the UK reciprocating. If it does not, the EU could suspend rights for UK operators to continue running regular services under the EU regulation, ensuring basic road

connectivity in the event of no deal. In this case, no UK regular services would be able to operate in the EU.

5.15 pm

UK regulations providing reciprocity, such as these, are a temporary, stop-gap measure. In the event of no deal, once the Interbus agreement has been extended to regular services, it is intended that reciprocal access will be provided through that agreement instead. However, we will work and are working with the European Commission and the Republic of Ireland to ensure that any future UK-EU transport arrangements take into account the unique transport demands on the island of Ireland, particularly in the border counties where cabotage is important.

The Government have made a commitment to reduce the adverse impact of EU exit on businesses and citizens. This applies to the ability of people to make international journeys by coach or bus. In Northern Ireland, travel across the border is a commonplace daily activity, with 900,000 such journeys per annum. While the Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations ensure that EU operators can continue to access the UK market, these draft regulations will ensure that the relevant domestic legislation in Northern Ireland is adjusted to reflect the UK ceasing to be an EU member state.

Lord Rosser (Lab): I thank the Minister for her explanation of the content and purpose of these regulations, which seek to ensure that current access rights for EU bus and coach operators, into and within Northern Ireland, remain in place after our withdrawal from the EU. The Secondary Legislation Scrutiny Committee recommended an upgrade of these regulations to the affirmative procedure.

This SI applies to the access rights of bus and coach operators, which is a transferred matter for Northern Ireland. The EU regulations currently provide reciprocal liberalised market access for regular and occasional coach services between the UK and the European Union. Apparently, reciprocal rights for UK operators in the EU market cannot be guaranteed after a withdrawal from the EU so, as the Minister has said, we will join the Interbus agreement as a contracting party in our own right if we leave the EU without an agreement.

The Interbus agreement is a multilateral agreement between the EU and seven other contracting parties in eastern Europe, which currently allows occasional international coach travel for tours and trips between those parties. As the Minister has said, since the Interbus agreement does not cover scheduled coach services, including those that take passengers to school or work, the European Union has agreed temporary contingency measures to enable operators licensed by the UK to carry passengers between the UK and an EU member state, if the withdrawal agreement is not adopted before we leave the EU. These temporary measures would enable scheduled services delivered by UK operators in the EU to continue until the end of this year. The Interbus agreement does not cover cabotage services, but the temporary agreement with the EU will allow UK operators some cabotage operations in the border regions of Ireland until 30 September of this year, as the Minister has said.

In its report, the Secondary Legislation Scrutiny Committee said that the scope of Interbus is being extended to cover scheduled services, which the Minister confirmed. However, if this extension is not agreed, the Northern Ireland Administration will look to negotiate an extension with the EU or seek to put in place bilateral arrangements with specific countries to secure the access needed to keep UK passenger transport operators moving. That is potentially a little vague about what might happen in the future. The report says that, in respect of cabotage, the Northern Ireland Administration,

"will continue to work … with the European Commission and the Republic of Ireland to ensure that any future UK-EU transport arrangements take into account the unique transport demands on the island of Ireland".

That could, once again, be regarded as a statement of hope or as something that will definitely be delivered, so I have one or two questions.

What exactly are the extent and scope of the limited cabotage arrangements that will continue until the end of September in the border regions of Ireland? What will the practical impact and consequences be if those arrangements cease to have effect from the end of September? What are the prospects of the Interbus agreement being extended to cover scheduled services before the end of this year? Again, what will the practical impact and consequences be if the agreement is not so extended by the end of this year? Presumably the date of 31 December 2019 does not have the same urgency for the other signatories as it could have for us.

Lord Berkeley (Lab): My Lords I have one question for the Minister, following on from my noble friend's more detailed questions about what will happen after 31 December 2019. It is all set out in paragraph 7.3 of the Explanatory Memorandum. Apart from asking what happens after 31 December, as my noble friend did, I note that:

"The EU have agreed a legislative measure that will allow UK operators currently running regular and special regular services to the EU to continue doing so until 31 December 2019".

My question concerns the word "currently". If an operator wishes to start a new service this year, they will presumably not be allowed to, because they are not doing so currently. If this legislation continues with the same wording, they will not be able to do so in future. That looks to me to be starting to create a kind of monopoly of existing operators, because new ones will not be able to do it unless they are operating currently. I hope that the Minister can put my mind at rest and say that this does not actually mean that no new ones could start and that it is just a quick and easy way of expressing what might happen—but it is a worry, because at the moment any operator should be able to operate across the frontier, and let us hope that that can continue in the future.

Lord Whitty (Lab): My Lords, I draw the Minister's attention to the report published this very day by the Select Committee sub-committee that I chair on road, rail and maritime transport post Brexit. I will of

[Lord Whitty]
course allow the noble Baroness a day or two before we get the official government response, but it has a chapter on the Irish dimension, covering not only bus and coach travel but also road haulage and rail.

I will focus on these regulations. Since the Good Friday agreement, and in some cases before the Good Friday agreement, bus operators have operated across the border and have improved the relationship between Northern Ireland and the Republic in a positive way, with people moving for work and for other reasons. The fact that that whole arrangement is now subject to some doubt is a serious problem, which goes well beyond the details of any transport regulations, frankly.

While our report focuses primarily on the possibility of moving to an agreement with the EU, it nevertheless has regard to the possibility of no deal. With no deal, as my noble friend has just underlined, as of Halloween we will be faced with a situation where the present propositions from the European Union will last only between then and New Year's Eve. That is not a satisfactory position for any mode of transport. In particular, it is not a satisfactory understanding for a mode of transport by which individuals move to their work or families and which they have relied on for a decade or two to operate in a regular way.

I appreciate that my report—our committee's report; I must not be so egotistical as two members of the committee are sitting here today—raises a number of issues related to Ireland. I hope that the Department for Transport in London is apprised of the situation in Northern Ireland, because there are some serious difficulties there. My noble friend raised the question of the decision to extend the Interbus arrangements to cover scheduled transport. That is unlikely to take place before the end of October—or, indeed, between the end of October and the end of the year. That will place a number of those routes in Ireland in doubt. I hope that the Minister and her department—in conjunction with the appropriate officials in Northern Ireland, since at the moment it does not have a devolved Assembly—will be able to resolve this issue in a way which, at least temporarily and in default of any longer-term agreement, will ensure that such services continue to operate. In the meantime, I commend the totality of my report to the Minister—no doubt her officials are studying it already.

Baroness Randerson (LD): My Lords, I will start by underlining the gratitude we must feel to the Secondary Legislation Scrutiny Committee, which has yet again done an excellent job in recommending that this SI be upgraded to an affirmative instrument and in referring these regulations to us. Although they seek to ensure that current access rights for EU bus and coach operators in Northern Ireland remain as they are at this time, in practice the picture is complicated, as other speakers have already made clear. The situation of Translink is much more important and fundamental to the daily way of life of people in Northern Ireland than that of coach and bus operators going abroad from the rest of Britain.

The Minister mentioned 900,000 journeys a year. I am grateful to her for the statistic; she will find more in the report that the noble Lord, Lord Whitty, has just referred to. The evidence to the committee, of which I am a member, underlined the significance of the Translink service—and of the similar service coming from the Republic of Ireland to the north—to everyday life in Northern Ireland.

The Government's attempts to overcome the problem by joining the Interbus agreement are obviously sensible, but I recall that when we discussed this in relation to the original SI for the rest of Britain there was some issue about the speed with which signatories were signing the extension of the Interbus agreement so that it would cover regular and special regular services. So can the Minister update us on how many countries have now signed up to that in the couple of months since we had that debate, which I believe was in March? Is the way clear so that in future we can rely on the Interbus agreement?

5.30 pm

The EU tried to play its part by extending the current situation, and we were given two dates for that extension: 31 December and 30 September. Those are of course inadequate now, because by 30 September we might not have made any progress from where we are now. So can the Minister say a little more about the discussions the Government are having with the EU about how we will extend those dates? That is based on legislation, which requires the European Parliament to meet and pass it, and it is self-evident that the Parliament is not meeting at the moment and will not be up and running for some time. So an update on that would be very welcome.

The importance of cabotage in these services in Northern Ireland is very much greater than in the rest of the country, so it is important that the issue is solved as part of the Interbus agreement.

Finally, I will comment on the fact that there is no impact assessment, despite the fact that we are talking about services—at least I believe that there is no impact assessment. I read through the final part of this SI, which said that there was no impact assessment—but I apologise if I have made a mistake. If that is true, I am concerned, because there would be a considerable impact on the industry and the daily life of people in Northern Ireland. However, if I misread that, I stand to be corrected by the Minister.

Baroness Vere of Norbiton: I thank all noble Lords who have taken part in our short debate today. It is an important debate, however, and is vital for the 900,000 journeys made across the Northern Irish border. A number of issues were raised. I will start by discussing how we ended up with this slightly odd mismatched date situation, with the September and December dates, and then I will cover the Interbus agreement, cabotage and what this means for new services in Northern Ireland.

The arrangements for both regular services and cabotage by Northern Irish operators were set by the EU in its contingency regulation on basic road transport connectivity—I think we are clear on that. However, much of the content of the regulation was put in place in Article 50 format, which means that the UK was not in the room at the time this was agreed. We worked

hard with our Irish colleagues to raise the importance of access, including cabotage, on the island of Ireland. The date for regular services—the one at the end of September—was set to allow sufficient time for the protocol to the Interbus agreement on regular services to enter into force. The date for the cabotage services was set at the end of September—noble Lords will recall that, at that point, exit day was going to be in March—to enable alternatives to be put in place for cabotage. Now that the date of exit has been pushed back to October, obviously we will work hard with the Commission and member states to make sure that the dates are extended if they need to be.

We need to extend the Interbus agreement to regular services. The EU is one of the four parties that needs to sign the agreement to extend the coverage, and the Commission is the secretariat to the Interbus agreement. In our conversations with the Commission, and specifically with DG MOVE, it has indicated to us that it will be extended. We will continue to work carefully with the Commission and member states to encourage them to sign; I feel that the process that is likely to happen is that the EU will sign and then others will follow. We therefore have confidence that the Interbus agreement will be signed and, if it is not, we will seek to negotiate an extension with the EU or to put in place bilateral agreements with specific countries as needed.

On cabotage, which is the transport of passengers between two places in the same country by a transport operator from another country, the noble Lord, Lord Rosser, asked a question about what limited cabotage was. In this case it is limited because it is only an operation for the six counties in the Republic of Ireland which border Northern Ireland. That is the limitation of this cabotage. The no-deal legislation that we already have in place would allow EU operators to continue such cabotage operations. Under the EU regulation, cabotage is allowed for regular and special regular services within the Irish border counties, as I have noted. I can therefore assure noble Lords that the Government recognise the importance of cabotage, particularly on the island of Ireland, and that we will work closely and fairly rapidly with the Republic of Ireland and the EU to make sure that cabotage can continue.

There was a question about what would happen if neither of those agreements was in place. That is hypothetical—I do not expect that they would not be—but it leads to something slightly more interesting. If we did not accede to the Interbus agreement under the protocol in our own right for regular services, the EU could offer regular services to the UK, but the UK could not, so there would be a mismatch.

Similarly, the EU could offer cabotage, but the Northern Irish or the UK could not. The question is: what would happen if we could not accede to the Interbus agreement or did not achieve cabotage? At this moment, we have something that might be seen as a carrot or as a stick. In the interests of our tourism industry and for other good economic and social reasons, EU operators can access the UK. However, UK Ministers have the power to amend EU operators' access in future. I am sure we have no intention to do that, but I point out that we have reached agreement on operating in each other's markets—and I am sure we will in future—because it is not in the interests of anybody for that not to continue.

The noble Lord, Lord Berkeley, asked whether a new operator could start a service. He is correct: a EU operator could but a UK operator could not. However, there is only one operator anyway: Translink. I am not aware that a second operator would want to come into the market, particularly in the timescale that we are talking about. If there is concern, we should be very interested to hear it; we have not heard it yet, so I leave it at that.

I thank the noble Lord, Lord Whitty. I apologise to him for not having read his report. However, it will be on my weekend reading list. It is a very important topic, and I thank him for bringing the report to my attention and for his contribution today about the broader issues that we face.

It is not in our interests that transportation services between Northern Ireland and the Republic of Ireland fail, and we as a Government will strive extremely hard to ensure that they continue. I hope that I have managed to address the points raised. If there are any remaining, I shall certainly write; otherwise, I beg to move.

Baroness Randerson: Before the Minister sits down, I wish to clarify the situation. The papers from the Printed Paper Office made clear that no impact assessment has been prepared. I express my concern about that and should be grateful if she would explain why that is the case.

Baroness Vere of Norbiton: With apologies to the noble Baroness, I forgot that question. She is indeed right: no impact assessment was published in this case because any impact was deemed to be de minimis, as is normally the custom.

Motion agreed.

5.40 pm

Sitting suspended.

Ebola Outbreak: Democratic Republic of the Congo

Statement

5.44 pm

Baroness Goldie (Con): My Lords, I apologise to the House for the slight delay. With the leave of the House, I shall now repeat a Statement made today by my right honourable friend the Secretary of State for International Development. The Statement is as follows:

"Ebola is back, this time in the eastern Democratic Republic of the Congo. This is the largest outbreak in the country's history, the second largest outbreak in the world and the first in a conflict zone. So far, 1,209 people have died. We must do much more to get a grip on this situation.

[Baroness Goldie]

This is not a simple question of virus control. If it were, we could simply repeat what we were able to do—at huge risk and cost—in Sierra Leone and Liberia and even what, to some extent, the DRC Government and the World Health Organization were able to do in Équateur and western DRC over the first six months of last year: go out into village after village, identify all the cases, trace all their contacts and their contacts' contacts and, through preventing further chains of transmission, contain the outbreak.

However, this is not a situation like that. This is North Kivu, the centre of a conflict dominated by dozens of separate armed groups largely outside government control. Such groups have begun to attack and kill health workers, meaning that key international experts have had to be withdrawn from the epicentre of the virus. The decision not to allow this province to participate in the recent elections, partly on the grounds that it was an Ebola area, has fuelled suspicion that Ebola is a fabrication developed by hostile political forces. As a result, communities are reluctant to come forward when they have symptoms; they are also reluctant to change burial practices or accept the highly effective trial vaccine. The Congolese army and Government, which have successfully contained nine previous Ebola outbreaks over the past 45 years, are struggling to operate in the epicentre of this outbreak; so too are UN peacekeepers and the WHO. Although this area is very dangerous and difficult to access, it is not sparsely populated. The epicentre of the outbreak is Butembo, which has a population of a million people. The surrounding areas contain almost 18 million people.

To be clear, according to all our expert analysis here at the moment, the current disease profile poses only a low to negligible risk to the United Kingdom, so this Statement should not be a cause for panic at home. However, this outbreak is potentially devastating for the region. It could spread easily to neighbouring provinces and even to neighbouring countries.

I want to take a moment to commend all those in both the Congolese Government and the international community who are working in these very difficult situations to bring this disease under control. My predecessor, the right honourable Member for Portsmouth North—she just made her Statement to the House—paid tribute to Dr Richard Valery Mouzoko Kiboung, who was killed in an attack by an armed group on 19 April while working for the WHO in the Ebola response on the front line. I imagine the whole House will join me in expressing our deepest condolences to the family, friends and colleagues of Dr Richard, and to all those who have lost loved ones as a result of this outbreak.

We now need to grip this situation and ensure that this disease is contained. As you can imagine, this has been my key priority in the emergency field since I was appointed to this role just over two weeks ago. I spent the weekend in discussions with Sir Mark Lowcock, the United Nations humanitarian co-ordinator, and the director-general of the WHO, Dr Tedros, who has so far paid eight visits to the affected area. I have also spoken about the response with the Deputy Secretary-General of the United Nations, Amina Mohammed, and was pleased to see that there has been a real step up in the seniority of UN staff on the ground, particularly in places such as Butembo. Both the Health Secretary and the Foreign Secretary have been supporting this agenda in recent meetings over the past four days: the G7 health meeting and the WHO meetings in Geneva. I have also convened a meeting with a number of international experts in the field, including Brigadier Kevin Beaton, who helped lead the UK military response in Sierra Leone and Liberia, and the Chief Medical Officer to the UK Government.

On the basis of their advice, I concluded that we need to not only provide more money immediately to support the front-line response—health workers—but support the vaccination strategy and put more of our expert staff on the ground into the response. This is not just about recruiting doctors; we need people who understand and can work with the DRC Government and the military, even the opposition forces, to create the space for us to work. We need people who know the UN system well so that they can drive and shape the UN response. These people need to be not in London but on the ground because they need to be able to learn and adapt very quickly as the disease spreads. We are already deploying epidemiologists through our public health rapid support teams, in partnership with the Department of Health and Social Care. I am also now considering deploying additional officials with specialities in information management, adaptive management, anthropology and strategic communications.

However, it is important for us all to understand that this is not a problem the international community can solve from a distance. This is a political and security crisis as much as a health crisis; in the end, the response must be driven by local health workers and local leaders. There are some positive signs. DfID has been a key player in developing a new experimental vaccine for Ebola, which is proving highly effective. More than 119,000 doses have been administered so far in eastern DRC—an achievement that has probably saved thousands of lives. Modelling from Yale suggests that the use of the vaccine has reduced the geographic spread of Ebola by nearly 70%. This is not just about statistics; this is about, for example, Danielle, a 42 day-old baby in eastern Congo who survived Ebola last week thanks to the inspiring work of community volunteers, themselves Ebola survivors, and front-line health workers supported by UK aid.

Of course, we cannot do it alone. This needs grip and urgency, but it also needs humility. One reason why I have been talking in detail about this issue to Mark Green—my US opposite number—is not only do we share the US analysis but the Americans will inevitably be major players in this response in terms of finance and expertise, as indeed they were in the Liberia Ebola outbreak. We need many more international donors to match our financial contributions and to sustain the international and local health operations in the field. That is why the UK has just hosted an event specifically on Ebola to build support for the response in the World Health Assembly in Geneva. This is also why I have agreed that my colleague the Minister for Africa should visit eastern DRC immediately.

To conclude, this is a very dangerous situation where the Ebola virus is only one ingredient in a crisis which is fuelled by politics, community suspicion and

armed violence. We need to act fast and we need to act generously, but above all we need the right people on the ground who are completely on top of the situation, who are able to come up with quick solutions and can guide us in keeping up support for—and, yes, sometimes the pressure on—the UN system, NGOs, opposition politicians and the Government of DRC to get this done. The stakes are very high and I will keep the House updated on our response".

My Lords, that concludes the Statement.

5.53 pm

Lord Collins of Highbury (Lab): My Lords, I thank the Minister for repeating the Statement and I join her in expressing sympathy for all those who have lost loved ones in this latest Ebola outbreak. It is true—the WHO has said as much—that it is likely to spread into neighbouring countries, which is why this response is so urgent. I welcome the Government's response and the fact that we are drawing on the expertise and knowledge built up as a result of our intervention in Sierra Leone. I too pay tribute to the DfID staff for their work on this.

However, as David Miliband from the IRC has said, this outbreak is getting worse,

"despite a proven vaccine and treatment".

Of course, as the Statement acknowledges, one of the major barriers to delivering the response is the breakdown of trust in the affected community. We have heard from agencies on the ground that one of the major difficulties is that the actors involved in the Ebola response are the very same people who have played a long-standing role in the ongoing conflict in the region. In terms of our response, the priority must be to address this issue.

Given that, can the Minister tell us more about how we are building trust with the Congolese community in terms of their accepting the response that is needed? One clear lesson from the west Africa outbreak, particularly in Sierra Leone, was the role of community engagement. All too often it is regarded as being a soft and relatively non-technical add-on to medical interventions. However, I was pleased to hear the Secretary of State in the other place talk about engaging with political leaders to dispel the myth that Ebola is somehow fabricated.

However, we are addressing other barriers as well. Certainly, the mobilisation of the community should be centre stage in our response in ensuring that we are able to help members of the community protect themselves, particularly in terms of safe burial practices and so on. Can the Minister say whether we are able to work with NGOs on building that community response? What plans do we have to directly fund the NGOs currently operating in the affected areas so that they can continue their work?

The point about this response, along with the one in west Africa, is that it is set against a backdrop of chronically poor health and nutrition indicators that further impact negatively on the affected communities. Can the Minister tell us what steps DfID is taking to support the Congolese Government beyond the emergency response? How are we scaling up the nutrition programmes and how will we be able to strengthen the healthcare systems in such a difficult environment?

I hope that the Minister can update us on all of the programmes because while we may be able to halt the spread of Ebola, there is no doubt that if we do not address the fundamental issues of healthcare systems, this issue will keep coming back to haunt us.

Baroness Northover (LD): My Lords, I too thank the Minister for repeating the Statement—a slightly different one from that which is available in the Printed Paper Office. I also thank those who have already responded in person to this incredibly dangerous situation. I cite in particular the ground-breaking work carried out by teams led by the former DfID chief scientific adviser, Chris Whitty, who is also at the London School of Hygiene & Tropical Medicine. Those teams have played an extraordinary part in turning around the epidemic in west Africa.

This situation is indeed extremely worrying. It was difficult and dangerous enough when we were engaged in Sierra Leone during that Ebola outbreak, but this is even more difficult because Ebola has struck in an area of conflict where suspicions are aroused by those who are seeking to help, thus undermining what they are able to do. The WHO has identified the main drivers in the continued rise in the number of cases as stemming from insecurity, poor community acceptance, delayed detection and late presentation. Does the noble Baroness agree that this means that cases staying in the community pose huge risks to members of the community as well as to those who seek to treat them?

The noble Lord, Lord Collins, is right about engaging the community. I note the use of the word "anthropology" in the second, rewritten Statement. That understanding in the west Africa cases led to a very different approach to how you engaged with the community.

Then there is the lack of funding. With inadequate funds coming to tackle the crises in Yemen, Syria and elsewhere, how will we make sure that adequate funds come through to tackle this crisis? Does the Minister note that the International Federation of Red Cross and Red Crescent Societies warns that it has enough funding to continue the safe burials required for only another two weeks, amid a $16 million shortfall and increasing infections? Is it receiving UK funding, and will this increase?

The Statement speaks of needing people "on the ground". Many extraordinarily brave doctors and nurses from the UK volunteered to assist in Sierra Leone, making a decisive difference. Some, like nurse Pauline Cafferkey, almost paid with their lives. Those who went out were screened and trained, largely by UK-Med at the University of Manchester. Is that happening this time? Valiant efforts were made—for example, at the Royal Free—to support any staff, like Pauline, who succumbed to the disease. What support is being given to Sir Michael Jacobs and his team at the Royal Free if more cases present among British staff or the public?

The Ebola outbreak in west Africa gave a huge and welcome impetus to vaccine development. Could the Minister update us on where we are with this? Is the vaccine to which she referred the one developed at the Jenner Institute at Oxford University and supported by DfID?

[Baroness Northover]

UNICEF rightly flags the situation of children affected by the disease, either directly or indirectly when they lose a parent. We are much more aware now about the risks to children who lose their parents. How is this being tackled?

I note the changes between the first and second versions of this Statement, especially on what the UN, WHO and US are doing, with possible input also from the London School of Hygiene. It is exceptionally important that we work with all international and national bodies, as we did in a quite remarkable way in west Africa. In even more difficult circumstances, we need that again. I look forward to hearing the Minister's response.

Baroness Goldie: My Lords, I first thank the noble Lord and the noble Baroness for their sensitive remarks and their clear understanding of the complexities of this very difficult situation with the outbreak in this area of the Democratic Republic of the Congo. I will try to deal with the points raised.

The noble Lord, Lord Collins, rightly said that community engagement is important, and I absolutely agree. He also asked about healthcare programmes and what progress we are making in that respect. On the whole issue of community engagement and trying to understand better what the challenges are, I understand that my right honourable friend the Secretary of State plans to visit North Kivu shortly to understand the situation on the ground and to consider how the UK can continue to support the response.

I assure both the noble Lord and the noble Baroness that the current Ebola outbreak in the DRC is an immediate priority for the Department for International Development. We have dedicated teams leading a co-ordinated UK HM Government response effort. As I indicated in the repeat of the Statement, the UK is one of the leading donors to the response in the DRC and the leading donor in preparedness efforts in the region.

The noble Baroness, Lady Northover, pointed out the huge risk not just to communities but to those endeavouring to help deal with the outbreak. She rightly said that how one engages with communities is very important, and I totally agree. As I have indicated to the noble Lord, Lord Collins, the Secretary of State proposes a visit, and I think that will be extremely helpful.

I may have misled noble Lords in referring to my right honourable friend the Secretary of State; it might be the Minister for Africa who is making the visit. I am reading from a variety of papers here. As the noble Baroness, Lady Northover, indicated, even trying to update the Statement to the version actually delivered in the other place was challenging. It is in fact the Minister for Africa who proposes to visit.

The noble Baroness, Lady Northover, raised the vaccine. The Merck vaccine is being deployed under experimental protocol using ring vaccination. This vaccine has been shown to be highly effective in a trial in Guinea. The Statement indicated that modelling by Yale suggests that the vaccine has reduced the scale of the outbreak by 70%. The noble Baroness asked me something specific about the background to the vaccination; I do not have an answer, but I will undertake to try to obtain more information about that. I understand that there are plans to trial another experimental vaccine outside the current outbreak area, including in key locations such as Goma.

I was also asked about what exactly the UK is doing in terms of experts. We have a UK public health rapid support team, and technical experts including senior epidemiologists, data scientists and a clinical trial specialist have been deployed to eastern DRC. The PHRS team—the rapid support team—has played a major role in supporting preparations for clinical trials of new therapeutic drugs currently being administered to patients.

I think I have managed to answer the main points raised. If I have missed anything out, I shall certainly write to the noble Baroness and the noble Lord.

6.05 pm

Lord Berkeley of Knighton (CB): My Lords, Sir Peter Piot, the Belgian microbiologist who with others more or less discovered Ebola in 1976 and went on to help discover the AIDS virus, told me the other day—I think it is worth passing this on, because he agrees very much with the Statement but went slightly further—that he agreed completely that the problem in this case was the inability to isolate, because of the conflict that the Minister quite rightly mentioned. On this spreading further afield, if not necessarily here, he said he felt that this could be a potential catastrophe. He said we have to remember with microbiology and viruses that, with the speed of air travel, we might well be far more at risk than we realise. That was one of the problems with the AIDS epidemic. I simply pass that on, for he is the expert, not me.

Baroness Goldie: I thank the noble Lord for raising that very important point. There is of course concern about not just the virulence of this disease but the facility with which it can spread. There is always a question to be raised over both spread within the country itself and international spread. I should make it clear that, as I understand it, although no cases have spread beyond the North Kivu and Ituri provinces, the WHO assesses the risk for the regional spread of Ebola as very high, especially given the instability and violence. The UK is the largest donor to preparedness activities, through the WHO regional plan and bilaterally, but it is critical that other international partners step up. DfID staff are working with the WHO, the OCHA, host Governments and other partners to implement measures to robustly prepare for potential spread. The noble Lord makes an important point, and it is an issue that will, I think, be assessed very carefully on a regular basis.

Lord Patel (CB): My Lords, as mentioned, this is a serious and dangerous situation. It is dangerous because the number of cases has risen over the past six months, which shows our inability to control or contain the spread of this disease. Of the 1,600 cases reported, 1,100 people have died. Currently, 15 to 20 new cases are occurring every day. We know how to control the

spread of this virus and we have learned from the previous outbreak. What we cannot do this time is get health workers in to provide the necessary strategy required to contain the spread of the virus and provide vaccinations. That cannot happen until the warring factions—and there are several of them—stop fighting. We should be working on international arrangements to control the fighting and create a ceasefire: unless we have a ceasefire, we will not be able to contain the spread of this disease. Does the Minister agree?

My second question is this: what is the stock of the vaccinations available? Are we going to run out of vaccines?

Baroness Goldie: If I may, I will respond to the latter point first. I understand that there is availability of vaccines; as to what the stock is, I do not have an answer, but I will endeavour to find out and will respond to the noble Lord.

The noble Lord makes a very important point in relation to the particular elements of this disaster—and it is a disaster—which make addressing it so challenging and difficult. It is correct that there is a need to address community conflict and issues of suspicion, distrust and violence, and activity by hostile and disparate groups, which is, as he rightly identifies, prejudicing the ability to deal with the disease itself.

We also have to recognise that there are delicate cultural and national issues within the Democratic Republic of the Congo. That is why, echoing the points made by the noble Lord, Lord Collins, and the noble Baroness, Lady Northover, I think it is very important that, in conjunction with the Government of the Democratic Republic of the Congo, we consider how best we can help them deal with these issues. We want to be very careful that there is no question of trying to impose solutions or be seen to be interfering when such is not our intention.

The noble Lord makes an important point, and it is something of which the UK Government are acutely aware. That is one reason there is a desire for the forthcoming ministerial visit to North Kivu. Following that visit, it will be possible to make a further assessment as to what we can do—either ourselves, bilaterally with the DRC, or in conjunction with our global partners in the World Health Organization and the United Nations—to more constructively address the important issue he has identified.

The Lord Bishop of Winchester: My Lords, I thank the noble Baroness for repeating the Statement from the other place. My diocese is linked directly with the Congo and I have had a relationship with the current bishop of North Kivu, Bishop Isesomo, for nearly 20 years.

I see the outbreak of Ebola as the presenting issue for what is a community breakdown. Over the past 25 years, particularly since the 1990s, we have seen a form of alternative governance which makes it very hard for any kind of intervention to work that does not tackle the question of security. One of the major differences between what is currently seen in the eastern side of the Congo and Sierra Leone is that we could guarantee security more clearly in Sierra Leone than we can in the Congo. I welcome the noble Baroness's comments on the need for sensitivity as we work with the Government of the Congo, but I urge that we take security as a top priority. Dr Richard Mouzoko was killed by people practising the alternative governance that we currently see. Any form of intervention that does not provide security for health workers, and for other aid workers who are prepared to risk their lives to be part of any intervention, would simply leave us very vulnerable and unable to tackle the root causes of the problem, which are fundamentally to do with how the communities relate to each other.

Baroness Goldie: I thank the right reverend Prelate for his remarks. The whole Chamber will recognise that he speaks with deep personal knowledge, and I am sure a degree of personal pain, in understanding what is happening in that country. Sadly, it is the case that community trust is one of the most challenging aspects. When we consider that there have been ongoing attacks on both Ebola treatment centres and front-line health staff, it paints a very depressing picture indeed.

As I said, working in conjunction with the Government of the Democratic Republic of the Congo and other global and NGO partners, we are endeavouring to address the very issues the right reverend Prelate talks about. My right honourable friend the Secretary of State for DfID made it clear in the other place that he is actively engaged in such dialogue to determine how pressure can best be brought to bear. He was very clear that pressure might have to be brought to bear on the Government and opposition parties, United Nations agencies, NGOs—whoever. Certainly, the UK Government are prepared to pursue that energetic role if that would make the attainment of treatment more realistic for the very people now needing it and surmount the challenges that the noble Lord, Lord Patel, rightly identified as being the impediment to getting treatment to those people.

Lord Browne of Ladyton (Lab): My Lords, as the noble Lord, Lord Patel, said, we have the technical ability to tackle Ebola. We know that. This outbreak in the DRC faces an incredibly complex challenge of insecurity, which I do not intend to go into in much detail, but it also faces an underfunding challenge. I thank the Minister for repeating the Statement, which was comprehensive and very informative, and speaks well for the Government. The insecurity challenge is enormously difficult—war has been raging in the DRC for a long period—but the underfunding challenge is simple. The Red Cross says that it needs $30 million to carry out all of its activities in the DRC and to prepare the surrounding countries for the likelihood of spread. It has half of that. The international community has behaved disgracefully. It promised much more than it has delivered. The Government should concentrate on putting pressure on our international allies, friends and others to come up with the money that they said they would donate for this crisis.

Baroness Goldie: I thank the noble Lord. I am sure that the point he makes will resonate not just in this Chamber but beyond. He is right: funding remains a

[Baroness Goldie]
concern. The World Health Organization continues to report gaps in funding of critical activities. The UK has been one of the major donors alongside the USA, the World Bank, ECHO and Gavi, and continues to lobby other donors to contribute, but the noble Lord is right to identify an area of profound concern. Certainly, this Government will be untiring in our efforts to persuade other parties that they need to step up to the plate.

Baroness Finlay of Llandaff (CB): My Lords, the noble Baroness, Lady Northover, asked about training being provided to anyone who might be going out there to work in any facility. I would be grateful if the Minister could answer that question. This is clearly an incredibly difficult situation. As part of that training, what consideration is being given to the security of anyone at all who is going out there? Also, what is being done internationally about the movement of people in and out of these areas, particularly on air travel, whereby people may travel great distances? Have we reinstated screening at our own borders and points of entry for air travel from affected parts of Africa? Are staff travelling to work in those areas being offered entry on to the Merck vaccine trial to avail themselves of the vaccine if they so wish?

Baroness Goldie: The noble Baroness raises a number of points. I do not have detailed information about the training, so I shall look into that and undertake to write to her. On risk, at present, Public Health England's assessment is that the threat of Ebola to the UK remains negligible—very low. It monitors the situation daily and updates the risk assessment every two weeks. That will be kept under review depending on what happens. The noble Baroness may be aware that there are no direct flights between the area and the UK. The Government will anticipate and review any intensification of the level of risk very carefully with Public Health England. It will be a combination of making a judgment depending on what is happening and what evidence there is for passenger transport coming from affected areas to this country.

The wider issue of risk to surrounding areas is all about the preparedness strategy. There is concern about that. Clearly, surrounding countries are at risk. That is being taken very seriously and is being regularly reviewed.

Baroness Chalker of Wallasey (Con): I want to ask my noble friend about the relationships with the surrounding countries, which she nearly touched on just now. The Central African Republic is to the north of this area and Uganda is to the east. Uganda has considerable experience of having dealt successfully with Ebola outbreaks, but our missions, working with those countries, must also make people aware of the transmission dangers from Kivu. Many combatants there have come from outside North Kivu. Therefore, it is necessary to deal not just with what is happening in North Kivu and with the Government in Kinshasa, which is a very long way away, but with the Central African Republic and to take the help of the Ugandans, who have experience of dealing successfully with outbreaks of Ebola .

Baroness Goldie: I thank my noble friend, who raised a number of important issues. As she rightly identified, in Uganda the Government have already vaccinated more than 4,400 health workers in high-priority districts and are rapidly responding in testing alerts of potential cases. I have a little information about Rwanda. Through funding to UNICEF and the WHO, the UK is backing the Government's preparedness plans, including the training of healthcare workers—that will be of interest to the noble Baroness—vaccination planning and the screening of people passing through Rwanda's borders. In South Sudan, another neighbouring country, 1,150 health workers have been vaccinated and UK support has led to the installation of an Ebola screening facility at Juba International Airport. In Burundi, we have deployed a humanitarian expert to support preparedness and co-ordinate UK effort and support. We are also strengthening the WHO's capacity for effective co-ordination, supervision, monitoring and evaluation of Burundi's preparedness efforts to prevent, detect, investigate and respond to EVD.

Baroness Masham of Ilton (CB): My Lords, is it known how the epidemic started? Is bushmeat still being eaten by the locals? Prevention is vital. Are the schools closed in the infected area? That would help.

Baroness Goldie: I raised the noble Baroness's first question with my officials before I entered the Chamber. I was interested to know the genesis of the spread of the disease. I understand that the likely source is indeed eating contaminated meat. The Chamber will understand that that is very difficult to control in such an area. I have no specific information on schools in the area, but I shall find out.

The Earl of Sandwich (CB): Going back to funding, I wonder whether the example of Sierra Leone will help. At the time of the previous epidemic, which killed 4,000 people in Sierra Leone, the Sierra Leone Government appealed for funding from a wide range of sources. One of them was the IMF, which lent huge sums of money that had to be repaid. I see the noble Lord, Lord Bates, is in his place. He straddled the Treasury and the Department for International Development. Will the Minister pass on the question of whether the same thing will occur in the DRC? Although those departments are not close to the problem, they will certainly get involved and will be appealing for assistance. Loans that cannot be repaid are not a help.

Baroness Goldie: I thank the noble Earl for raising a very important and interesting point on which I do not have information, but I will speak to my noble friend Lord Bates and make further inquiries of the department about the situation.

Torture Overseas: Ministry of Defence Policy

Statement

6.24 pm

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I shall now repeat in the form of a Statement the Answer given earlier today in another place to an Urgent Question which asked my right

honourable friend the Secretary of State for Defence whether she would make a Statement on the Ministry of Defence's policy on co-operating with the use of torture overseas. The Answer is as follows:

"The UK Government stand firmly against torture and do not participate in, solicit, encourage or condone the use of torture or cruel, inhuman or degrading treatment or punishment for any purpose. Our policy and activities in this area are in accordance with both domestic and international law.

The MoD's policy is fully aligned with the Government's policy on sharing and receiving intelligence, and the Investigatory Powers Commissioner has been entirely satisfied with our activities and has not identified any issues of concern.

However, the Prime Minister has asked the commissioner to review the Government's consolidated guidance and submit proposals for how it could be improved. Once he has done so, and the Government have had a chance to consider them—I anticipate this will be a matter of weeks—the MoD will issue new internal guidance, as necessary, in light of any updated guidance that is published".

That concludes the Statement.

6.25 pm

Baroness Chakrabarti (Lab): My Lords, I am incredibly grateful to the Minister for repeating that Statement. He does not need me to suggest that, in the febrile times in which we are living, it is important that all of us in this House and elsewhere respect fundamental human rights and the rule of law, which may bind us together in the times ahead.

This Urgent Question arose because of media reports that a 2018 document suggests that the MoD was giving guidance that torture might be acceptable if Ministers agreed that the potential benefits justified accepting the risk and the legal consequences that might follow. Is that reported 2018 guidance real? Have any Ministers ever agreed to sanction torture over the past year?

Earl Howe: My Lords, I am grateful to the noble Baroness and I align myself completely with the sentiment that she expressed at the beginning of her question. Central government consolidated guidance sets out the principles which govern the interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees. That guidance must be adhered to by officers of the UK's security and intelligence agencies, members of the UK Armed Forces and employees of the Ministry of Defence. An internal policy document within the Ministry of Defence was prepared to, as it were, make the consolidated guidance more accessible and practical for those implementing it in the field. The MoD concedes that, as currently worded, there is an ambiguity in the internal document. I should stress that this ambiguity has not led to any problem or difficulty in the actions taken by the department, Ministers or members of the Armed Forces. It has been identified that the internal policy document could give the incorrect impression that Ministers could in all circumstances simply choose to accept legal consequences and act illegally. That is absolutely not the case. Ministers may not proceed when it would be unlawful, as opposed to when they would simply be assuming legal risk, which applies to any ministerial decision. I reassure the noble Baroness that, to my knowledge and that of my officials, Ministers have in no circumstances taken a decision which was unlawful in this context.

Baroness Smith of Newnham (LD): My Lords, I too am grateful to the Minister for repeating the Answer to the Urgent Question and for his answer to the noble Baroness, Lady Chakrabarti. Today, the *Times* suggested that the freedom of information request said that the MoD effectively created,

"a provision for ministers to approve passing information to allies even if there is a risk of torture, if they judge that the potential benefits justify it".

I accept that no torture has been undertaken and that nothing so far has been illegal, but does the Minister not agree that, in line with Kantian imperatives, we should not treat people as means; we should treat them as ends in themselves? Surely a potential benefit cannot outweigh the human rights of individuals.

Earl Howe: I entirely take the noble Baroness's point. The consolidated guidance is clear that, where Ministers or officials know or believe that a particular action will lead to torture being administered, that action may not be proceeded with. The difficulty comes where the state of knowledge may not be sufficiently high to act as a legal prohibition. In that event, were a Minister to be called upon to take a decision whether to release intelligence, that decision would be informed by detailed legal and policy advice. It is not possible to make generalisations in this context on what that advice might comprise because it would be highly fact-specific to the individual case. However, I emphasise that Ministers may never act unlawfully and officials must never advise Ministers to act unlawfully, and I am confident in saying that Ministers have not acted unlawfully.

Baroness D'Souza (CB): My Lords, I think that the MoD policy adds to the evidence of complicity in torture and rendition programmes. After all, the Government accepted responsibility in the Belhaj case. Last year's Intelligence and Security Committee report revealed deep and systematic involvement by the UK in extraordinary rendition but, due to government imposed-restrictions, the ISC was unable to produce "a credible Report". In view of these revelations, does the Minister not agree that the time has come for an independent, perhaps judge-led, inquiry into the UK's adherence to the convention against torture?

Earl Howe: My Lords, I am not aware that there is solid evidence that this Government, the previous Government or the previous Labour Government engaged in the kinds of activity that the noble Baroness refers to. There was a single instance in 2004 that was admitted to, where compensation was paid. Upon investigation it was found that the security services and the department had released information that led

[Earl Howe]
to the detention and torture of an individual. That is the single instance that I am aware of, but I think that the noble Baroness conflates two issues in this context. The issue that she refers to relates to the Government being complicit and directly involved in the administration of torture, whereas here we are talking about the release of intelligence to third parties and agencies that might or might not engage in torture in certain circumstances. We need to make that distinction.

Lord King of Bridgwater (Con): I strongly welcome the Statement that my noble friend has made on this matter. When I saw that the Question had been tabled, I thought that there was some evidence of a serious incident involving torture but, as I understand it, the Minister says that there is a possible misunderstanding about the rules that apply and he has indicated that this has been looked at very carefully. There can be no place for torture—it is counterproductive. In a very dangerous and difficult world, there are all sorts of temptations to go down that route but we must never do it.

Earl Howe: My noble friend is absolutely right: torture is never justified, and the Government will not countenance a situation where they are complicit in it. The internal MoD guidance was intended to have exactly the same meaning as the consolidated guidance. We now realise that there is scope for ambiguity. That ambiguity will be removed when the guidance is revised, and we will do that upon receipt of the Information Commissioner's comprehensive advice on how the government-wide guidance should be amended.

Lord Browne of Ladyton (Lab): My Lords, in June 2018 the Intelligence and Security Committee published a report, as has already been referred to. Recommendation JJ, which can be found on page 103 of annexe A, specifically says that the consolidated guidance,

"is insufficiently clear as to the role of Ministers, and what—in broad terms—can and cannot be authorised. For example, the Guidance should specifically refer to the prohibition on torture enshrined in domestic and international law to make it clear that Ministers cannot lawfully authorise action which they know or believe would result in torture".

The Government gave a very long response to that, with which I will not take up the House's time—others can read it for themselves—but in the last sentence the Government promised to,

"consider this recommendation further in light of any proposals from the Investigatory Powers Commissioner".

How on earth has it come about that someone in the Ministry of Defence can draft a policy document in the light of that specific recommendation in the terms that have been revealed today and not even seek the IPCO's views on it? There is something fundamentally wrong with the way in which that part of the MoD operates and it has to be fixed.

Earl Howe: The noble Lord should bear in mind that this has never been a live issue in the Ministry of Defence. The point that he makes is also weakened by the fact that the Investigatory Powers Commissioner does not judge every piece of paper that happens to circulate across government; he or she will judge a department by its actions. To date, the commissioner has judged the Ministry of Defence to have acted entirely in accordance with the consolidated guidance.

If I mis-spoke in responding to my noble friend Lord King and referred to the Investigatory Powers Commissioner as the Information Commissioner, I apologise. I did not mean to do that.

Transport Act 1985 (Amendment) Regulations 2019

Motion to Regret

6.38 pm

Moved by ***Baroness Randerson***

That this House regrets that the Transport Act 1985 (Amendment) Regulations 2019 were laid before the conclusion of the judicial review of the Department for Transport's current position in respect of community transport, and, given the potential impact of the changes in these Regulations on community transport operators, that they do not contain sufficient detail (SI 2019/572).

Relevant document: 23rd Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

Baroness Randerson (LD): My Lords, these regulations are designed to amend the Transport Act 1985 to bring it into line with EU regulations on community transport. They are the culmination of two years of consultation by the Department for Transport and a lot of toing and froing between the community transport industry, the commercial bus operators and the Government.

The reason for my regret Motion is, I hope, clear in the wording I have used. The Government have been carrying out a consultation which many in the industry feel has been mishandled. They are going ahead with these changes while there is still a judicial review under way, which may or may not clarify at least some of the issues concerned. It is ironic that the Government, who are set on leaving the EU, are rushing ahead to try to align us with EU regulations long before receiving the clarity which the court case will hopefully provide. Once again, we must pay tribute to the Secondary Legislation Scrutiny Committee, which drew attention to the problems with these regulations and has led me to put this regret Motion forward today.

I will start with a bit of background. Most operators of public service vehicles operating for hire or reward require a PSV operators' licence. Sections 19 and 22 of the Transport Act 1985 provide for exemptions to this. Section 19 permits allow an organisation to provide transport for its own members or people it exists to help. It can charge for this service, but the vehicle cannot be used for profit or to carry the general public. The sort of organisations covered by Section 19 permits within the community transport area include schools, churches, scout groups and so on, which own or use a minibus as part of their overall task, which is certainly not to run a transport system.

Section 22 permits allow a body to run a community transport bus service which can carry members of the public. That bus can be used for other purposes in order to financially support the community bus service. Community transport operators have traditionally used these permits to allow them to provide services in a sector that operates generally on very stretched finances. Historically, the Department for Transport accepted that, if you hold a permit, you automatically meet the EU's non-commercial criterion. If you operate on a not-for-profit basis, you are non-commercial—that has been the accepted wisdom.

The EU regulation allows operators to be exempt from PSV licences if they have only a minor impact on the market. However, existing legislation in the UK needs updating to bring it in line with EU regulations. Hence, the Department for Transport embarked on a consultation. There is another complication because, since then, a commercial operator has launched a judicial review. The operator concerned is a small company that used to provide minibus services although, I believe, no longer does so. It is part of—or has formed—an organisation called the Bus and Coach Association, which is not to be confused with the bus and coach council. It is challenging the DfT's approach to the non-commercial exemption.

While this judicial review is ongoing, the Department for Transport cannot update the meaning of the term "non-commercial". Yet the result of the judicial review is not expected until 2020. Even then, the judicial review may not answer the questions that we are asking. Despite this, the Government are going ahead with these amendments to existing legislation. This means that they will be tightening up on some definitions while leaving a gap in others.

While the Department for Transport has made it clear that no local authority should cancel contracts until the outcome of the judicial review, many organisations in this socially valuable sector have, in effect, been left in limbo. The Government, however, have not issued the guidance necessary to go along with these regulations. They require an organisation that utilises permits to identify as an exempt body and to produce evidence of that.

I shall go through the various exemptions. The first is the main occupation exemption—that is, the school minibus type of exemption—which is mainly unchanged. The difference is that now you will have to provide evidence of that by 1 October. The second is the non-commercial exemption, the one that is subject to judicial review.

6.45 pm

The third, the short-distance exemption, is a new one. It has been put in place to try to provide evidence that an organisation providing a community transport service is having a minor impact on the market. The way that it works is that if you provide services only within a radius of 10 miles of a specified place, you are entitled to a permit. I am sure that many noble Lords can immediately see the problem with that in rural areas. I come from Wales. If you are living in the middle of Wales and need to go to hospital, you will have to go a lot further than 10 miles. Already, in order to hold a permit, you have to be recognised as a non-commercial operator so that the short-distance permit comes in after the fact that you have been recognised as a non-commercial operator.

The Government have obviously recognised that the 10-mile radius has a problem associated with it, and there is now scope for exemptions to the exemption. There is a need for urgent guidance so that we can see how such complex rules can be applied, not least because in the absence of the government guidance so far some permit-issuing organisations have made up their own rules. The offices of the traffic commissioners are applying a rule that means they have been refusing permits to any organisations that have competitively tendered for contracts in the past even if that is a historical factor. So you might no longer hold such a contract or have won that contract, but if you have competitively tendered for it then you are not able to get one of these permits. The OTC interpretation seems to be in direct contradiction to the DfT's own statements on this issue, so we urgently need government guidance in order for this to be clarified. We also need government guidance on how to operate the short-distance exemption, especially in rural areas—I have hardly scratched the surface of the complexities of applying that—and on what evidence is acceptable in order to prove that you are non-commercial.

Lastly, I want to look at the impact assessment, which I believe is woefully inadequate. Obviously it costs a lot more to get a PSV licence so the impact on operators is considerable anyway. The annual cost for a small operator is estimated to be just under £4,000 but for a large operator it could be £500,000. There is a wide variance between the figures in the impact assessment and the estimated numbers from the Community Transport Association. For example, the DfT estimates that 50% of drivers already hold a PCV D1, but the CTA says that only 6% of drivers currently hold a qualification so 50,000 drivers will need to gain a new qualification.

DfT costings do not include costs for training. The average costs of training are said to be about £1,000 per driver. Its costings are done on the basis of one transport manager shared between 10 operators, but the traffic commissioners' regulations stipulate that a transport manager cannot be shared among more than four operators. And so on—the costings do not cover, for example, the cost of tachographs—but I have illustrated my point so I will not go on further.

The biggest problem with the impact assessment is that it totally ignores some key areas. There is nothing on the environmental impact; if the community transport service is disrupted, people will be forced to use cars rather than buses and minibuses, with an impact on the environment involving emissions and so on. There is nothing on the impact on family life if there is no longer a school minibus, or if there is no way of getting grandma to the hospital and you have to go with her instead. There is nothing on the wider social costs. Yet we are looking at legislation that could destroy parts of the community transport sector and lead to people with serious health problems being stranded in their homes.

[Baroness Randerson]

Community transport is used across Britain by vulnerable, elderly, young, sick, poor and disabled people. For them, the trips to the lunch clubs, the youth club outings, the trips to hospital and the school outings are a vital part of their links with the community as a whole. There is nothing in the impact assessment about the danger of raising the costs of community transport, so that some organisations will fold because they cannot raise the charitable donations necessary to continue working; there is also a danger that many part-time volunteer drivers will simply turn around and say, "I don't want to go for this additional qualification. I don't want to spend my time training again for something new. I'm going to give my time elsewhere and not work for this community transport organisation".

I reiterate my regret that these regulations have been brought forward while the judicial review is still under way. It means that there is a yawning gap on the key issue of the definition of "non-commercial organisations". However, we are where we are. I will not be pushing this to a vote this evening. My purpose is to seek greater clarity for the sector. I ask the Minister to provide us with assurances: first, that the Government will provide full guidance in the very near future, for example on the application of the 10-mile rule; and secondly, that they will ensure that urgent discussions are held with the transport commissioners to ensure that they cease to apply rules that are directly at variance with the specific interpretation issued by the Minister's colleague at the Department for Transport. I beg to move.

Lord Berkeley (Lab): My Lords, the noble Baroness outlined the problem with this piece of legislation extremely well. My first question for the Minister is: why are we doing this at all? As the noble Baroness suggested, we might have left the EU on 29 March without any agreement, so it is a bit odd that the Government should be bringing this regulation through your Lordships' House two months later, still trying to comply with European Union legislation. Since we still do not know whether we will leave, and if so when, presumably another regulation will be coming shortly that will explain how this particular regulation will be amended or removed if we leave—perhaps the Minister can clarify this. Or do the Government think that this regulation is so wonderful that they will want to keep it?

I see nothing wonderful about this at all. As the noble Baroness said, it is just more bureaucracy in a sector which, by definition, cannot afford it—and sometimes cannot even afford to run the bus. I live in a little village in Cornwall which has a community bus once or twice a week. It takes people to the shops, other villages or the hospital and is run by a dedicated team of two drivers. Occasionally they have to put their hands into other people's pockets for more money to upgrade the bus and so on. It is run on a shoestring. The people whom it carries on the whole cannot afford very much anyway, and here we are adding more bureaucracy—for no point at all that I can see.

If this is being pushed forward by the Government after pressure from the commercial bus operators, I would ask how many of the routes currently run by community services would ever be run commercially. The answer in most cases is that you either have a community bus service—if you are lucky—or no buses at all. Given the reduction in bus services that this Government and the previous one have "achieved", it is a pretty depressing story. I cannot understand why the Government want to do this at all. I hope the Minister will be able to explain that to the House, as well as what will happen if we leave without an agreement at the end of October or whenever. Will the Government seek to bring in another regulation to remove this SI and go back to where we were?

It may be that the European Commission has been doing good things and requires this to be done, but, frankly, if it was so important, why has it taken until May 2019 to bring this forward? It will be a disaster for the community transport sector. As the noble Baroness suggested, the sooner we get some guidance to interpret what is in here, and a sensible, achievable objective so that the services can continue and maybe even grow, the better. It would be really good if that could happen, so I look forward to the Minister's response.

Lord Rosser (Lab): My Lords, we support the terms of the regret Motion moved by the noble Baroness, Lady Randerson. These regulations were the subject of a fairly lengthy report from the Secondary Legislation Scrutiny Committee at the beginning of April. The committee drew them to the special attention of the House on the grounds that, given their potential impact on community transport operators, they give rise to issues of public policy likely to be of interest to the House.

As the noble Baroness said, the regulations are being made to align fully, and clarify, the relationship between an EU regulation and the Transport Act 1985. That Act provides for exemptions which allow certain types of organisation to operate passenger transport services on a not-for-profit basis without holding a public service vehicle operator's licence, following the issue of a permit.

There is also an EU regulation, which I think was implemented in 2011, setting the standards to be applied to public service vehicle licence holders. However, operators are exempt from the EU regulation requirements if they operate exclusively for non-commercial purposes or have a main occupation that is not as a road passenger transport operator, and if they only operate domestically and have a minor impact on the transport market because of short driving distances. The view of the Department for Transport has been that its permit holders automatically meet the "non-commercial" exemption from the EU regulation on the basis that "not-for-profit" equates to "non-commercial". This has now been challenged on the basis that some organisations operating under the permit system are in fact operating for commercial purposes. At the end of last year, the Bus and Coach Association applied to the High Court for permission to judicially review the Department for Transport's current position in respect of community transport, and in particular the approach to the non-commercial exemption.

7 pm

The EU regulation also allows member states to exempt national operations having only a "minor impact" on the transport market, but this exemption has to be given effect in a member state's domestic legislation, which is something we have not done. In addition, as has already been said, there is currently no guidance on the scope of the exemptions from the EU regulations. The Department for Transport has now said that while the judicial review process is ongoing, it will not make any further statements about what "exclusively for non-commercial purposes" means. Consequently, guidance on this point, following a lengthy consultation on community transport, will not be finalised until the outcome of the judicial review is known, after which it will be issued in line with the court's decision.

These regulations amend the Transport Act 1985 to make it clear that a permit can be applied for and held only by an organisation that is exempt from the directly applicable EU regulation setting out the PSV operator licensing requirements. The regulations also give effect to the "minor impact" on the transport market exemption from the EU regulation available to member states.

If an existing "not for profit" permit holder determines that they do not meet one of the three exemptions from the EU regulations, they will have to obtain a PSV operator's licence in order to continue operating as they currently do. The cost of doing that varies considerably, depending on the number of vehicles operated. As was said by the noble Baroness, Lady Randerson, there is a disagreement over the figures. As I understand it, according to the Department for Transport there are approximately 6,300 Section 19 and 22 permit operators, and it has identified that at least 3,150 educational and religious institutions would be exempt from the requirements of the EU regulations by virtue of operating passenger transport services as ancillary to their main business. Thus the number of Section 19 and 22 permit operators potentially affected by the requirements of the EU regulation and the transition to PSV operator-licensing-related requirements is approximately 3,150 operators, or 50% of the sector.

I will ask a few questions in addition to the question raised in the regret Motion—with which we agree—about not waiting for the conclusion of the judicial review before laying these regulations. First, why has the "minor impact" on the transport market exemption from the EU regulation not already been brought into effect through domestic legislation—bearing in mind that the EU regulation came into force at the end of December 2011? Was it an oversight, or a conscious and deliberate decision? If the latter, why?

Secondly, when did the Bus and Coach Association first raise with the department the issue that is now the subject of judicial review proceedings? Was it some time ago, and, if so, what action was then taken by the Government to address the issue raised? Have the concerns only just been raised? If they have, we seem to have got to judicial review proceedings very quickly.

Thirdly, when is it anticipated that the legal case will be heard and a decision made? What will be the likely impact on community transport operators, and the future of the services they currently provide, if the decision goes in favour of the Bus and Coach Association? As I said, according to Department for Transport figures, it appears that some 3,150 Section 19 and 22 permit holders are potentially affected by the requirements of the EU regulation and the transition to PSV operator-licensing-related requirements. Therefore, once again and finally, I ask: in regard to the 3,150, what is the potential likely impact on those permit operators—some 50% of the sector—and the future of the services they currently provide, if the legal action being pursued is successful?

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, I thank the noble Baroness, Lady Randerson, for tabling her regret Motion today. It has given the House the opportunity to scrutinise these regulations in more detail, and also to raise some very important issues. Some issues raised, particularly by the noble Baroness, went into some detail and raised evidence I am not entirely sure my department has seen. I would be very grateful if she could share the evidence with us. Certainly, I will go through *Hansard* and make sure that if I am unable to cover issues today, I will write to her, and to all noble Lords who have taken part.

The Government always recognise the vital role of community transport in connecting people to their communities, employment, local services and each other. Most community transport operators provide a vital social care service to those who are elderly, isolated or disabled, and we know that particularly in rural areas, community transport services encourage growth and reduce isolation. However, in recent years, concerns have been raised about how the use of community transport permits fits with EU law on operator licensing. It became clear that the current interpretation of "not for profit" equating to "non-commercial" would be challenged, as noted by the noble Lord, Lord Rosser.

The noble Lord, Lord Rosser, also asked, "Why now?". While the UK remains a full member of the European Union, all the rights and obligations of EU membership remain in force, and for the duration of the withdrawal agreement, we are also bound to implement these rules. The EU has an outstanding case against the UK in respect of them. This SI implements the short distance exemption, which we could not implement after leaving the EU or during the period of the withdrawal agreement without primary legislation. If this SI had not happened, we would not have had this exemption. In the broader context, this issue is coming before your Lordships now because there has been quite a significant amount of consultation around this issue—necessarily, because it is very important indeed. The Government have taken as many steps as they can to provide as much certainty as possible to community transport operators, given the current constraints.

As I have said, the Government recognise the importance of the sector. However, we also need to ensure that where community transport operators compete for contracts with small, family-run commercial operators, competition is fair. That includes considering how operator licensing rules affect both these groups. That is why it is important that we do this: we need a level playing field. At the same time, we must ensure that we

[Baroness Vere of Norbiton]
exempt those that can be exempted. It is clear that the previous position of a blanket exemption for the sector from EU law is not legally sustainable.

In this context, the Government consulted in 2018 on how to revise the guidance. We wanted community transport operators to understand whether they were exempt from the EU regulation on operator licensing and could carry on using community transport permits or whether they needed to apply for commercial operators' licences, so they have been aware of this issue for a while. We received almost 500 responses to the consultation and were in contact with 550 stakeholders at stakeholder events. These were people and organisations from across Great Britain. The responses to the consultation highlighted that we have to strike a delicate balance, and we have worked very hard to try to deliver that balance on the feedback that we received. But it must be pointed out that there was no consensus on this issue, which I suppose is where we are today.

My ministerial colleague Jesse Norman MP and officials from the department met members of the Bus and Coach Association during May 2018. Despite this, the association decided to launch a judicial review a few months later. The legal proceedings should eventually result in a definitive judicial interpretation of "exclusively non-commercial", which will resolve the long-running debate about what it means and provide a way forward on this issue.

Lord Berkeley: Would the Minister be able to provide us with some numbers for the consultation? How many community transport operators were there, and how many small commercial ones? How many operators were trying to compete with a community one, and so on? It is easy to run a campaign by the small commercial operators who might run one minibus or coach and say, "We got 300 responses", while the community people might not have had time to respond. It would be good to have those numbers and if she does not have them tonight, perhaps she could write to me.

Baroness Vere of Norbiton: I thank the noble Lord, Lord Berkeley, for asking that question. I will certainly have to write, as I do not have those numbers in front of me, but he makes an important and valid point and I will write to him.

There are three exemptions in EU law which can be used. The Section 19 and Section 22 permits guidance explain how two of them can be applied to the community transport sector. The first is the "main occupation exemption". The guidance that we published explains how this exemption can be used by organisations whose primary activity is not transport; for example, schools, community groups or local authorities. We believe that this represents around half of the community transport organisations, which will fall into this group.

The second exemption is the short-distance exemption. This allows organisations which have a minor impact on the transport market, due to the short distances they travel, to be exempt. In defining 10 miles as a short distance, as noted by the noble Baroness, Lady Randerson, the Government believed that it was important to consider how these bus services work across the country. What is a short distance in a rural area may be a very long way in a big city, and rural areas are of specific concern when it comes to community transport. Where community transport operators provide bus services in rural areas, they have the flexibility to make the case that a short distance is longer than the automatic 10-mile distance. The noble Baroness noted some discrepancies in the application of the guidance. I would be grateful if she could share the specific pieces of evidence with me, then we will be able to review them and perhaps get to the bottom of what is going on.

Finally, the third exemption relates to the services which are non-commercial. The Government are not able to provide guidance on this exemption, as there is an ongoing judicial review in respect of it. However, as noted by the noble Baroness, Lady Randerson, the Government are clear that it would be premature for any local authority to end or withhold community transport contracts while this legal action is ongoing. The High Court has not yet given us a date for the hearing but we hope that it will be soon. Once the High Court has reached a decision, the Government will revise their guidance to give effect to it.

Baroness Randerson: Will the Minister extend that very welcome assurance and say that the Government will promptly contact the offices of the traffic commissioners to ensure they understand that that is the Government's intention, and that they are not applying different rules?

Baroness Vere of Norbiton: Without having seen the evidence, I obviously cannot make that commitment right now but I should imagine that if we can give any further guidance, we will certainly do so.

The Transport Select Committee acknowledged that this uncertainty has already impacted some community transport operators—there has been lots of concern about it in Parliament. There are real costs from uncertainty and implications from doing nothing at all, so the Government are able to provide clarity on two of the three exemptions. Where community transport operators can use either the main or the short-distance exemption, they do not need to wait for a High Court judgment. They can plan for the future and deliver important transport services with confidence.

We recognise that in certain circumstances, according to the impact assessment, there will be an impact on some operators. We believe that 50% of the operators will fall under the main occupation exemption, but there is the extent to which the remaining 50% will be able to take advantage of the new short-distance exemption. We hope that many of them will really consider that option, and that we will therefore be able to reduce the number of operators impacted.

Lord Berkeley: Following this exemption and the guidance to the traffic commissioners, surely the Minister is able to commit to advising the traffic commissioners on the two issues that are not subject to a JR to ensure that they understand what is going on. They can always have more guidance later, but they should have the present one now.

Baroness Vere of Norbiton: I commit to reviewing the advice that the traffic commissioners have already received and will compare it with the evidence that I hope to receive from the noble Baroness, Lady Randerson. If there is a disparity and they are not following the guidance, of course we will make sure that they do so.

7.15 pm

Continued confusion about the scope of the exemptions to the EU regulations is of benefit to nobody, least of all vulnerable people, particularly in rural areas. The noble Baroness noted that the statutory instrument does not contain sufficient detail, but I am sure she agrees and appreciates that detailed guidance is not always appropriate in a statutory instrument. That is why we have developed guidance for these two exemptions. It is extensive and provides examples of how the main occupation exemption works.

It is clear from the Government's consultation and today's debate that community transport evokes strong feelings for many people. I sense that this may not be the end of this conversation. On our side, we are working closely with local authorities, the Community Transport Association, Mobility Matters and the Association of Transport Coordinating Officers, and will continue to do so over the coming months. I reiterate that we will continue to support the community transport sector, because it is terrifically important. However, it is also important to achieve the right balance for this sector, so that we build a bright future for community transport operators and the communities that they serve.

Baroness Randerson: I listened with great interest and thank the Minister for her response. I will review *Hansard* tomorrow and I promise to write to provide her with more information. I hope she will write to me to provide more information as a result, because this is such a valuable sector. It is so important to the survival of many of our rural communities and social links for many who are most at risk within our society. As I promised, I will withdraw the Motion, because my interest in doing this was to get the commitments from the Government that I hope the Minister will see through, following this debate.

Motion withdrawn.

Connecting Europe Facility (Revocation) (EU Exit) Regulations 2019

Motion to Take Note

7.18 pm

Moved by ***Lord Berkeley***

To move that this House takes note of the Connecting Europe Facility (Revocation) (EU Exit) Regulations 2019 (SI 2019/477).

Relevant document: 21st Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

Lord Berkeley (Lab): I will not take long talking about this Motion, but it is important that we understand the potential changes to the railway sector if we leave the European Union without an agreement. I declare an interest, because I am still a board member of the European Rail Freight Association.

I very much welcome the commitment in the draft SI for the Government to continue funding the Connecting Europe Facility, which is given in the first page of the Explanatory Memorandum. I am also grateful to the Minister for the short meeting we had this morning to discuss some of these issues. I would be grateful if she could write to me with a list of the projects that are still receiving or are due to receive funding from the Connecting Europe Facility, so we can see how many there are and how long they will go on for. I do not think they will go on for long, but it would be good if they did.

The whole concept of a trans-Europe network, TEN-T and freight corridors has been debated and developed by the Commission over many years to try to get some continuity of funding or specification for operating procedures on the railways—and roads for TEN-T. Railways in the European Union generally are in complete chaos. They have got better, but are still pretty bad. The concept of continuity across frontiers will help customers have certainty of what they can operate on the trains. There has been little take-up on some routes, including a particular one that comes to the UK, but that is as much a problem of attitudes in France to operating anything in France that has not been developed in France.

We have a problem in this country, because these corridors go back long before Brexit was even thought about. I have always detected a reticence in successive Ministers of the Department for Transport to encourage the principle of through-running trains, because they thought they could do things better here. To me, this latest Explanatory Memorandum tries to confirm that policy, whether we stay in—when it will not apply—or leave.

I have a few questions to ask the Minister, if she does not mind, particularly about the content of the Explanatory Memorandum. I note from paragraph 2.3 that some further separate draft instruments will "deal with deficiencies arising". When will that occur? On paragraph 2.8, we are members of the North Sea-Mediterranean Corridor, and I have been to many of the meetings of this body. It extends beyond London to Glasgow, Edinburgh, Southampton—and we can probably forget about Felixstowe. There is pressure from the European Union and quite rightly so, and remember we are still a member. Getting through services to Glasgow and Edinburgh in particular is important. I see no reason why this should not continue if we leave the EU. My understanding is that Switzerland, which has at least one and maybe one and a half corridors going through it, fully participates in all the discussions about improvements that are needed. I see absolutely no reason why we cannot have the same status as the Swiss. I would be grateful if the Minister would explain whether the Government intend to seek whatever arrangement is needed with the Swiss to achieve that. It is very important, from the customer's point of view, to see that the Government are enthusiastic about this, even if it does not involve any money, so I hope that they will look at it again.

Paragraph 2.13 contains a very odd statement:

"The extension of the parts of the North Sea Mediterranean RFC in Great Britain made by the CEF are saved by the instrument".

[Lord Berkeley]
I do not know what "saved" means in this context. Perhaps the Minister can explain whether it is some old-fashioned meaning of the word or whether it means that it will be "retained". I hope that it will be retained because it is very important that the Government give the message that these corridors can continue even if we have left the EU, under any circumstances. It is the same problem as the one we debated a couple of months ago about the European Railway Agency. If we leave, we are trying to stay as close as we can to Europe on the air side; and, as we debated earlier today, on the coach side we seem to be trying quite hard to stay with it; but on the railways, as far as I can see, Ministers want to separate us as much as they can from the rest of Europe, particularly in connection with the European Railway Agency. Is it because the "Europe" is in the title of the European Railway Agency? I hope that it is more sensible than that, but you never can tell.

I hope, first, that we never have to use this SI, but also that the Minister can give me some comfort that the UK Government's policy on these corridors, for freight and the TEN-T, is better than lukewarm, because it has been lukewarm. It would be very good to encourage customers, Network Rail, the Government and the train operators to act positively and support them. They are very important to enable the best possible, environmentally friendly form of transport to continue—I think it covers something like 40% of our exports now. I beg to move.

Lord Teverson (LD): My Lords, I thank the noble Lord, Lord Berkeley, for bringing this statutory instrument to my attention. It is not just about hard rail infrastructure but concerns telecommunications. The programmes of this facility particularly concern the digital economy and connectivity, and the whole area of energy, which is crucial for our development, given the problems we have with the nuclear programme at the moment.

I do not want to depress the noble Lord, Lord Berkeley, by saying that the one glimmer of hope in this SI is not what it seems, but I want to explore the Government's funding guarantee. As I read it, this goes up only to 2020; I presume it is the end of 2020. We know that the current multiannual financial framework ends in 2020, but we also know that in the European cohesion funding and all other funding programmes, expenditure does not stop at the end of 2020: it is the bids for programmes that stop at the end of 2020. In fact, there are already enough forthcoming calls in 2019 for new projects, and I suspect there will be in 2020; I am sure the Minister has looked at this already. I presume that all those, particularly in hard infrastructure—not just digital, but even in digital development—will go well beyond the 2020 MFF end of programme and the government guarantee.

Has the Minister had any feedback from British organisations that are involved in this programme? Are they concerned that, if they bid for this programme now—and I presume they are stopping doing so now—they have no guarantee that there will be any funding after 2020? The EU would continue to fund these usually for two years after the MFF ends, and these programmes can no longer be bid for. I would be very interested to understand how that will work. Indeed, if it is a 2020 guarantee, we are already handicapping UK industry and UK business in terms of our connectivity under the threat of Brexit.

Baroness Randerson (LD): My Lords, to take up the point just made by my noble friend, this SI is intended to plug any gaps that would occur if we left the EU without a deal. In that situation, it is highly likely that the EU might cease to fund projects that it has already committed to. Crucially, this 2020 date is now remarkably soon, although it might have sounded okay when the Government first dreamed it up at some point last year. Can the Government assure us that the 2020 date will be extended, for the reasons that my noble friend has outlined? That lack of certainty is behind the concerns that have been expressed by the devolved Administrations. If you think about the geography, it is the areas on the edge of the UK that are most concerned in many circumstances. In Wales, Scotland, Northern Ireland, Devon, Cornwall and the north of England, there is, not surprisingly, a lack of confidence that the Government have sufficient commitment to the prosperity of those nations and regions. Their prosperity will be undermined if infrastructure projects of this nature are not taken forward and completed. After all, infrastructure is the key to unlocking prosperity.

7.30 pm

Once again, the Government recommended that this SI be slipped through under the negative procedure, so I am very grateful to the noble Lord, Lord Berkeley, for bringing it to our attention. Although the SI is unexceptional in itself, it is connected to an issue of serious concern. We are on the brink of Brexit, yet not only do we not know what will happen with the continued payments of what is currently EU funding for infrastructure projects but, crucially, there is absolutely no guarantee for the future. There is no certainty on the Government's commitment to further infrastructure development. Will the Government replace this EU concept, which has improved connectivity across our nation, or will they let it just wither away and not replace it? It is the areas on the outskirts of our islands which are most at risk of suffering from lack of government commitment. To take up a point made by the noble Lord, Lord Berkeley, can the Minister give us some information on whether the Government are planning in the long term to seek a status similar to that of the Swiss, who benefit from being part of these networks, or are they intending to cut us off from those networks in the future?

The Government do not have a grand record on infrastructure projects of any sort. They certainly suffer from dither and delay, and it is therefore not surprising that the devolved Administrations have raised concerns—they do not believe that these projects will be safe in the Government's hands.

Lord Rosser (Lab): The Connecting Europe Facility for transport, or CEF, aims to support investments in building new transport infrastructure projects in Europe or in refurbishing and upgrading existing ones. On departure from the EU, CEF funding that has previously

been agreed by or on behalf of the EU Commission for us may not be paid out if a withdrawal agreement is not in place. This statutory instrument gives the Secretary of State the power to make good any shortfall in funding encountered by UK participants.

I too have a few questions. When will we know whether CEF funding previously agreed will or will not be withdrawn, and will we have any influence over that decision or is it one purely for the EU Commission? Will the decision be a blanket one, or on a project-by-project basis? As of today, how many CEF-funded projects, and what are those projects, are potentially at risk of having their previously agreed funding not paid as a result of our withdrawal from the EU? What is the total amount of funding to UK participants that is potentially at risk in this way, and in respect of which the Government would have to make up that shortfall? Will the Government provide sufficient money to complete a CEF-funded project, and from which budget would that government money come? Can the Government give an assurance that it would not come out of the Department for Transport budget?

Paragraph 2.3 of the Explanatory Memorandum states:

"In response to concerns raised, the Government has removed from the instrument the provisions that would revoke the TEN-T Regulation and the European Rail Network for Competitive Freight Regulation while it responds to the concerns raised".

What were those concerns raised, and by whom? Paragraph 6.3 of the Explanatory Memorandum states:

"Grants are applied for in semi-annual calls for funding and applications are made direct to the Commission. The UK Government has a limited role in the application process, but no role in the decisions on whether or not to grant funding to specific projects".

Can the Government confirm that this situation applies to the present circumstances rather than following departure from the EU with or without a deal? If that is correct, why do the UK Government have only a limited role in the application process and no role in the decisions? Finally, paragraph 7.2 of the EM states at the end of the paragraph:

"Correcting these deficiencies would require the UK to set up an enforcement mechanism (including a process for agreeing exemptions) for EU imposed standards over which the UK would have no control".

Can the Government say how extensive or elaborate this enforcement mechanism would have to be, who would be responsible for it, and how much it would cost per annum?

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): I thank all noble Lords who took part in the debate, which has been short but good. I was doing very well, but, unfortunately, I missed that last question, so I will definitely have to write on it, and that will be supplemented by anything else that I am not able to cover this evening.

The SI that we are discussing today, as many noble Lords noted, was prepared to enable the continuation of funding to UK organisations involved in trans-European network projects in the event the UK leaves the EU without a withdrawal agreement in place.

I will give a tiny bit of further background to the statutory instrument. It revokes regulation 1316/2013 on the Connecting Europe Facility—the CEF regulation. The Connecting Europe Facility is an EU funding programme to support the development of trans-European infrastructure networks for transport, energy and telecommunications. The CEF regulation sets out the conditions, methods and procedures for providing for EU funding for projects relating to the three trans-European networks. It also establishes the amounts of funding available for the period of the 2014-2020 multiannual financial framework.

The first question for the Government in considering how to handle this regulation was whether we needed to retain it in UK law. As the CEF regulation deals with internal EU mechanisms, it will be redundant and will serve no purpose as retained EU law under Section 3 of the European Union (Withdrawal) Act 2018. This instrument therefore revokes the CEF regulation, as well as the Commission delegated regulation 2016/1649 which supplements it.

The second question for the Government was how to address the implications for the funding of TENs projects in the UK. It is possible that projects that have been awarded funding from the EU budget will still be due money, which may not be paid, or may not be paid immediately, by the EU in the event of a no-deal exit. In 2016, the Government announced a guarantee that projects in the UK granted EU funding before exit would continue to receive funding from the Exchequer if the EU payments they would have received were not made. This guarantee was extended in July 2018 to cover successful applications for EU funding until the end of 2020. The guarantee ensures that UK organisations such as charities, businesses and universities continue to receive funding over a project's lifetime if they successfully bid into EU programmes before the end of 2020.

A number of noble Lords asked how much funding we are talking about. The amount for the 2014-20 period is €345 million. I believe that there are 44 live projects—I will happily provide a list of them—23 of which are completed but may not have received their final amounts, 20 of which are in process and one of which will continue after 2020.

That brings me to another important point. As the noble Lord, Lord Teverson, brought up, the guarantee extends to projects that have been successfully bid for before 2020. The funding will then continue; providing that the project has been bid for, it will get the money.

Lord Teverson: That is fantastic but not what the Explanatory Memorandum says. It states:

"The powers would also enable the Secretary of State to make similar payments"—

—payments, not successful bids—

"up to 2020".

I am therefore delighted by the Minister making that statement.

Baroness Vere of Norbiton: Let me keep going and see how we do.

The noble Lord, Lord Rosser, raised the issues of whether the projects will receive the funding, depending on whether the EU decides to give it, and the timing. I am afraid that we do not know because it will depend

[Baroness Vere of Norbiton]
on future negotiations. I assure the noble Lord that the Government stand behind these payments, which will be made in the circumstances that they are not received from the EU.

The noble Lord, Lord Rosser, also mentioned the present circumstances and the Government's limited role. The Government have a limited role because it is often private companies making the bid. The Government are not part of the decision process because, as I hope I have already explained clearly, it is clearly set out in the regulations such that the regulations govern the decision process.

The funds that will be paid out, or are guaranteed to stand behind these payments from the EU, are "new money", to use the terminology. They are not from existing DfT budgets.

The instrument provides the necessary powers for DfT, the Department for Business, Energy and Industrial Strategy and the Department for Culture, Media and Sport to "operationalise" the Government guarantee and make payments in respect of CEF grants if these are not met by the EU in the event of the UK leaving the EU without a withdrawal agreement in place.

Lord Berkeley: Following on from the Minister's commitment to the noble Lord, Lord Teverson, that bids will still be accepted a few years later, will the criteria for awarding funding be retained? I understand that one of the reasons why the government and other member states do not have much involvement in the decision-making is due entirely to the Commission's view that investment in infrastructure near frontiers tended to be much less than in the middle of a member state. I hope that those criteria will be continued.

Baroness Vere of Norbiton: I believe that that is the case. I was just going to come on to bidding, where I believe I will reiterate what I have already confirmed to the noble Lord.

As the noble Lord pointed out, all bids for CEF funding are reviewed against set criteria. If UK organisations submit applications that meet those criteria, the application could be successful. The EU has maintained that, until such time as the UK leaves the EU, it continues to be a member state and therefore enjoys all the rights of a member state, so the EU could very well award funds to UK firms between now and 31 October. One UK organisation was part of a multi-member state project application which was successful in the October 2018 call. The Government have advised UK organisations to continue to bid for EU funding and have committed to providing funding through the government guarantee over the lifetime of the project to those organisations which successfully bid into EU-funded programmes before the end of 2020. I have said that twice and if I am not right, I shall make a correction.

7.45 pm

I turn to the broader issues, including the TEN-T regulations which are obviously at a slight tangent to the issue before us, but they are important because an SI will be coming down the track, it is hoped later this year, that will revoke the TEN-T regulation and the regulation on a competitive rail freight network. As we explained in the Explanatory Memorandum, it was decided to address only the CEF regulations at this stage given the concerns raised in the consultation. Those concerns were raised specifically by Wales. Obviously, we are working closely with the Welsh Government to allay their concerns. When those discussions have been completed, we will bring forward that SI.

The noble Lord, Lord Berkeley, asked about paragraph 2.13 of the memorandum which talks about "saved". This is a technical point, but I shall address it anyway. The use of the word "saved" in this paragraph is legal shorthand for a savings provision, a type of clause used to preserve an existing legal rule that would otherwise be repealed or cease to have effect because of the repeal of an existing piece of legislation. The 2013 CEF regulation was used to make amendments to the rail freight corridor regulation. It is these amending provisions that are being saved for the time being, until we come back to the issue in due course when the other SI comes before your Lordships' House.

I turn now to the comments made by the noble Lord, Lord Berkeley, about rail freight. It is an important issue and I feel that we do not talk about it enough, and indeed I do not think that we talk about aviation freight enough either. In September 2016, the Government published a rail freight strategy which was developed in collaboration with key industry stakeholders. It sets out a shared vision for the rail freight sector, but looking to the future we are open to any practical action that helps more freight move on to rail. For example, it may be possible to reach an agreement with Switzerland, but that would be delivered in the context of our future relationship with the EU.

The noble Baroness, Lady Randerson, also talked about future co-operation and the TEN-T regulation. She asked whether we would hang on to it. There is no barrier to the UK participating in any TEN-T projects of common interest following exit, but of course that will be subject to negotiation. We are also reviewing the benefits of continued participation in the North Sea-Mediterranean Corridor. We recognise that rail freight corridors have facilitated a degree of co-operation and co-ordination between member states, particularly on the continent. However, use of the corridor has been negligible, with only a handful of paths requested to date. Freight operating companies prefer to use access rights granted under national laws which offer greater certainty.

I have appreciated the opportunity to listen to the views of noble Lords in this debate as well as on the broader issues which I am sure we will return to. I look forward to discussing them in the context of the SI that will come before the House later in the year.

Lord Berkeley: I am grateful to the Minister for her response and to all noble Lords who have participated in the debate. We have learned quite a lot and we look forward to discussing these issues again in the future.

Motion agreed.

Buckinghamshire (Structural Changes) Order 2019

Motion to Approve

7.48 pm

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

That the draft Order laid before the House on 2 April be approved.

Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, on 2 April a draft of this order was laid before this House and the other place, which approved it on 13 May. If now approved by Parliament and made, it gives effect to the decision of my right honourable friend the Secretary of State that the locally led proposal to replace the five existing Buckinghamshire councils with a new single unitary council should be implemented.

This order is a key element in the legislative process for establishing unitary local government in Buckinghamshire. It provides that on 1 April 2020 the existing five councils will be wound up and dissolved—that is, for the abolition of the county council and the district councils of Aylesbury Vale, Chiltern, South Bucks and Wycombe. It provides that in their place the new unitary Buckinghamshire Council will be established. The order also provides for appropriate transitional arrangements. These are centred on the new Buckinghamshire Council being established in shadow form once the order is in force, with that council becoming fully operational on 1 April 2020.

We have already debated and approved regulations on the Buckinghamshire proposal, which were made on 21 February 2019. As I said during the Grand Committee consideration of those regulations, they enable orders implementing unitary proposals in Buckinghamshire, such as the order we are considering today and any further order that may be necessary, to be made if Parliament approves.

There is a powerful case for implementing the locally led proposal for change submitted by the county council. Indeed, there has consistently been consensus among all five Buckinghamshire councils that local government across the county should be reorganised and that retaining the status quo is not an option.

This unitary proposal, submitted to my right honourable friend the Secretary of State and which will be implemented if Parliament approves, is that there should be a single council for Buckinghamshire, with community boards enabling local councillors to take decisions on issues such as funding for community groups and local roads maintenance, and community hubs to provide access to services. The proposal envisages devolving responsibilities to those town and parish councils that have ambitions to take greater ownership for local decisions regarding the management of assets and delivery of services, so that they can tailor these to community needs.

My right honourable friend the Secretary of State has assessed that the proposal meets our three criteria for unitarisation. These were set out by my honourable friend the Member for Nuneaton in the other place in February 2017. These criteria are: first, whether a unitary proposal, when assessed in the round, would if implemented be likely to improve the area's local government; secondly, whether it commands a good deal of local support in the area; and thirdly, whether the area itself has a credible geography for the proposed new structures.

On 12 March 2018 my right honourable friend the Secretary of State announced that he was "minded to" implement the proposal for a single unitary council in Buckinghamshire and invited representations to be made to him. Having carefully considered the more than 3,000 representations he received, on 1 November 2018 my right honourable friend announced his intention to implement the proposal, if approved by Parliament.

In reaching this conclusion he was clear that the proposal met our three criteria. On the first criterion, it will improve local government by: enhancing social care and safeguarding services through closer connection with related services such as housing, leisure and benefits; offering opportunities for improved strategic decision-making in areas such as housing, planning and transport; providing improvements to local partnerships with other public sector bodies; generating savings estimated by the county council to be £18.2 million per annum; enabling 19 community boards, each with a community hub, to be established to serve Buckinghamshire towns and villages; and providing a single point of contact so that residents, businesses and local communities will be able to access all council services from one place.

On the second criterion, it commands a good deal of support. The more than 3,000 representations we received following my right honourable friend's "minded to" decision in March 2018 showed overwhelming support for change, with 87% of all representations supporting unitarisation in principle and 35% of all representations supporting a single unitary council, with 47% supporting two unitary councils.

The public sector service providers—the police and crime commissioner, the South Central Ambulance Service, Buckinghamshire Healthcare NHS Trust and Buckinghamshire Clinical Commissioning Group—all support a single unitary council and highlight that the majority of partner organisations operate on a countywide geography; they support a shared geography with the council to improve the overall provision of services in Buckinghamshire.

The Department for Education-appointed Children's Commissioner, in his report on Buckinghamshire children's services, strongly supported the single unitary proposal as the option that would best safeguard children's services if local government restructuring were to take place.

Business organisations are strongly supportive of a single unitary council. Buckinghamshire Business First, with more than 10,000 members, considers that a single unitary council is the most effective and affordable proposal. The Buckinghamshire business group supports a single unitary council on the basis that it will deliver

[Lord Bourne of Aberystwyth]
significant savings, simplification for businesses and strategic alignment with other bodies. Of the 18 individual representations, the split is about 50:50.

On the third criterion, the proposal represents a credible geography. The current county council geography has a widely accepted credibility that has been in existence for many years, as highlighted by the support for a single unitary council from public sector service providers that already operate on these shared boundaries. The Buckinghamshire Thames Valley Local Enterprise Partnership is very clear that Buckinghamshire is a functional economic area.

Since the announcement on 1 November, we have, in discussion with the councils concerned, been preparing the necessary secondary legislation to implement this proposal: the regulations which streamline the process, and which have already been approved by Parliament, and this order. Our discussions with the councils have been largely about the transitional arrangements for which provision is made in this order. This includes how the shadow authority and its executive will drive forward the implementation. Where there has been agreement between all five councils, we have adopted their preferred approach. Where there are different views on detailed provisions, my right honourable friend the Secretary of State balanced the differing views in the context of his decision to implement the proposal for a single unitary council and the need to ensure stability of key social care services, taking particular note of the recommendations of the Children's Commissioner.

The most significant details of the transition arrangements are as follows. The shadow authority will be made up of all the members of the five existing councils, giving a total of 236 seats; although in practice the number of twin-hatters—members sitting on both the county council and one of the district councils—reduces the number of councillors to just over 200. The shadow executive, to which the transition functions are delegated from the shadow authority, will be made up of 17 members nominated by the existing councils. The leader of the shadow executive will be the leader of the county council; eight further members will be nominated by the county council and two by each of the four district councils. The executive can decide to change their leader if they wish. There will be new electoral arrangements, including the date of the first election on 7 May 2020, when 147 councillors will be elected for the first five-year term; subsequent elections, which will be held in May 2025 and every fourth year thereafter; and new warding arrangements for the May 2025 elections.

These arrangements are consistent with those in previous unitarisations, providing the leading role for the council that submitted the proposal and ensuring a good mix of experience among shadow executive members. For example, in Central Bedfordshire, the proposal was submitted by district councils, and in this instance the leader of the shadow executive was specified as the leader of one of the district councils. The shadow executive had a majority of district councillors, but representation from the county council ensured a mix of experience. Following the practice of previous unitarisations, the structural change order specifies that the functions of the shadow authority are to be exercised largely by the shadow executive.

In conclusion, we are seeking to replace the existing unsustainable local government structures in Buckinghamshire with a new council that will be able to deliver high-quality sustainable local services to the people of Buckinghamshire and provide effective leadership at both the strategic and the most local level. The inclusion in the proposal of community boards and delegation to parish and town councils, where this is wanted, will mean that the arrangements not only open the door to improved local services but shift power to communities, helping them get involved in decision-making in their local area. All the existing councils have made it clear that they share these aims and are committed to the best services for Buckinghamshire communities—for which we are most grateful. This order delivers this, and on that basis I commend it to the House. I beg to move.

8 pm

Lord Stevenson of Balmacara (Lab): My Lords, I declare an interest: I have lived in Buckinghamshire for 25 years, which is a long period of time which I am afraid is about to come to an end because I move out in about six weeks' time. But I could not let this moment pass without drawing on that experience and sharing a little of it with your Lordships' House. I thank the Minister for the meeting that was arranged last week at which we were able to go through some of the bigger issues that underlie this change, and I was grateful to know that he had made some adjustments to the way in which he presented the case this evening.

My remarks this evening will be brief. I draw heavily on comments made by Dame Cheryl Gillan MP in the other place when she spoke on both the orders that are now going through this House as well. I have also been given the notes that would have been read by the noble Baroness, Lady Pidding, who has an unbreakable appointment and cannot be with us. She wanted to make sure that some of her points were brought to the attention of the House.

I make it clear that I am not against unitarisation of local authority services. In some senses, the proposal put forward today has many justifying points, which the Minister drew attention to when he spoke. But the arguments that have been made and the process behind it are not sufficient for what is a very major change in the way in which our county is being organised. The criteria that the Minister mentioned and were used by the Secretary of State were to improve the area's local government, to make sure that there is strong local support and to ensure that at the end there is credible geography. My judgment is that on all three counts the proposal does not satisfy those aspirations.

As the Minister explained, the proposal that has been accepted was made by the county council and not by any of the district councils—four district councils, which are doing an excellent job, were against the proposal for a single unitary authority—and 70% of parish councils were similarly against, so it is very hard to see exactly where the local support is coming from. The figures mentioned during the consultation

on the actual proposal were also significant numbers—47% of those who submitted a response were in favour of retaining a unitary but bicameral or two-county solution to the issues.

One main concern that has not been touched on by the Minister but which is behind the proposal is that the county council has suffered from a considerable reduction in finances recently. There have been pressures on social services, education, road maintenance and many other issues. That needs to be addressed if this proposal is to be successful. Irrespective of the form it finally takes, if the money is not there, there will not be a satisfactory solution for local people in terms of local services.

At the end of the day, what we are being asked to accept is not credible in terms of geography. It is a very large, long and thin county and it has very poor north-south communications. Also, it is an area that will be affected by a major development—the Oxford-Cambridge arc of prosperity—which will go right through the top end of the county. In the process of doing this, we are ignoring the significant impact of all the activity that goes along with Milton Keynes. So this is an odd and unbalanced approach to what could have been a reformation of the sorts of services that are required. In many senses, Bucks looks closer to Oxford and they share many services, particularly in education. It looks to the north through Milton Keynes to Northampton and to the east to Luton and the surrounding areas. In the process of trying to reorganise within Buckinghamshire, the ultimate solution may be suboptimal whether it is a single unitary or double unitary authority.

I have three minor points that the Minister mentioned but it would be helpful if he could pick them up when he comes to respond. There is a feeling in Buckinghamshire that the winner of this reorganisation is the county council. It dominates the shadow authority. It is chaired by the current leader of Buckinghamshire County Council, as we have been told. It is also composed of nine members from the county council, with only two from each of the district councils, which comes to eight, so there is an inbuilt majority. It is fair to point out that, once established, there will be a chance for change, but getting it set up, with all that is involved with processing and preparing the arrangements, there will be domination by the county council.

The Minister mentioned community boards and a possible role for town councils and other groups in making sure that local interests are brought forward. As he was saying that, it felt a little like the effective retention of a two or even three-tier system. One hopes that that will operate in a way that will not clog up the credibility of the new structures. I will be grateful if he will comment on the role of the community board in practice and on whether there will be any dialogue with parish councils. The rural nature of Buckinghamshire is such that parish councils play a very large and important role, and it would be entirely wrong if that work were to be in any way disturbed.

Finally, it seems odd to read in the statutory instrument that there is no intention to review the new arrangements that are being put forward. Given what I have just said about the difficulties in setting this structure up and the very large changes that are going to come from HS2 driving straight through the county, the new roads that are going to join Oxford and Cambridge and the development of large areas of new housing around Aylesbury and further north, how is it possible to think of this not just in terms of Bucks itself but in relationship to the emerging plans from Oxfordshire, Berkshire, Hertfordshire and other areas, which will have an impact? Increasingly the south end of the county is a commuter belt for London and the changes in Slough and other areas are not taken into account here. I think an attempt is being made to try to re-establish an old vision of what Bucks should be that is not credible in terms of what Bucks will be in future.

I end by drawing attention to the fact that Dame Cheryl Gillan in the other place made many similar points but said at the end, and I agree with her, that this is the time not to break up the proposal but to get behind it and support it. If the noble Baroness, Lady Pidding, were in her place she would say that although there have been some difficulties and considerable arguments within the authorities, she too supports it and hopes that it will do well once it has been established.

Lord Stunell (LD): My Lords, it is a pleasure to contribute to this short debate on this statutory instrument. I thank the Minister for his introduction, which sketched out the framework very clearly. I think he perhaps oversold the consensus nature of the situation, which the noble Lord, Lord Stevenson, highlighted in his contribution. There were court cases, a very anxious local MP and a good deal of controversy in many quarters about the alternative ways of changing the structure in the Buckinghamshire county area. Nevertheless, I think the Secretary of State has produced a sensible compromise between the views put forward by the district councils about how things should be organised in a unitary Buckinghamshire and the proposals that the county council put on the table.

I particularly welcome the choice of three members per ward and a body of 147 members, rather than two per ward as the county council preferred. That is a good decision and I welcome it. What does the Minister envisage will be the total number of councillors for the authority after 2025? He talked about re-warding the county structure as the 2025 elections approach. I have a general concern that every time we do local government reorganisation, one of the underlying consequences is that there are fewer elected representatives serving their community. Even accepting the number provided by the Minister—because of double-hatting, there are perhaps 200 individuals who currently serve on district and county councils at the moment—that will be reduced to 147, which is a 25% reduction in the number of elected representatives. I hope that he will be able to give your Lordships a steer that he is looking for that large council of 147 not to be dramatically shrunk in 2025 to make yet another step backwards in representation. By the way, it is a county whose population is already growing rapidly and, as the noble Lord, Lord Stevenson, made very clear, is set to grow even more rapidly with infrastructure developments over the next decade or so.

[Lord Stunell]

That brings me to my second point, which is the role of parish councils in all this. Parish councils in Buckinghamshire feel quite bruised by how things have gone. Seventy-one per cent of parish councillors are reported in the Government's Explanatory Memorandum as opposing the single authority solution. Therefore, it is important that we have reassurance from the Minister that nothing in this statutory instrument will disadvantage town and parish councils when fulfilling their role as local community champions.

In respect of that, can he say something more about the 19 community boards that are to be set up? Paragraph 7.4 of the Explanatory Memorandum refers to,

"the establishment of nineteen community boards, each with a community hub, enabling local councillors to take decisions on issues such as funding for community groups and local roads maintenance; and providing a single point of contact".

That is an excellent concept. It is one that Liberal Democrats, when running local authorities, have always felt to be very important. However, it is internal devolution of the budgets and power of the local authority, and much will depend on how those community boards work with or relate to the parishes within their areas and how they develop their external relations with them. What reassurance can the Minister give to those who worry that community boards might be more of a barrier to communities exercising real power and that they will stand between the communities and the decision-makers, rather than turning out to be a conduit for making sure that powers and decisions go down to the local community level?

Notwithstanding the concerns about some of the detail, we will not oppose this statutory instrument this evening. However, we certainly believe that it is important to see that democratic accountability and links with the local community are not worsened by this proposal and that, in fact, the opportunity is taken to improve those links and communications in the future.

Lord Kennedy of Southwark (Lab Co-op): My Lords, first, I draw the attention of the House to my registered interest as a vice-president of the Local Government Association. Like other noble Lords, I shall not oppose the order. I very much endorse the comments of my noble friend Lord Stevenson of Balmacara—who, as a local resident, knows the area very well—and those of the noble Lord, Lord Stunell.

I shall come at this from a slightly different angle. The Minister will not be surprised to hear my views as I have expressed them a number of times before. I just feel that the Government have no real strategy for dealing with local government in terms of its framework and how it is delivered in England. The Government's general policy can be described as incoherent, confused and muddled. We are creating a bizarre patchwork in England outside London. In one place you could have a unitary authority and next door there might be parish councils, district councils, a county council, a combined authority and a metro mayor. There is no clear explanation of why any one area has one form of local government, yet it can be completely different in the neighbouring county.

This proposal and the neighbouring areas illustrate that point precisely. The proposal is to create a unitary authority for the area covered by Buckinghamshire County Council, but north of Buckinghamshire is Northamptonshire, which appears to be going down the route of two unitary councils. But then we have Bedfordshire, to the east of Buckinghamshire, where there are three unitary authorities: Bedford, Central Bedfordshire and Luton.

Cambridgeshire, the next county along, has the full suite: parish councils, district councils, a county council, a combined authority and a metro mayor. It has the whole lot. Below that we have Hertfordshire, which has the more traditional two-tier local government structures. Many noble Lords, I am sure, will know these areas quite well. They are all very close together and not one has the same local government structures as another. That is not a good way to run things. It is confusing for residents and does not help anybody. It leaves lots of challenges. It is pick-and-mix local government, and that belongs on the sweet counter at Woolworths. It is a really bad way to do things.

There is a vacuum here that is not filled by Ministers. We have policy drift, and that is how we end up where we are today. I have never yet heard the Government set out their vision for local government in England outside London. It is bad value for the taxpayer. The order suggests there will be a saving. Before the Minister was in his job, the previous incumbents would tell me, "We are not going down the reorganisation route because it costs money". But here we are told it will save us money. Part of me wants to say that he cannot have his cake and eat it.

8.15 pm

Regarding the consultation, it would be generous to say that, at best, opinion is mixed locally, with the non-responders winning by a mile. There were a total of 3,044 responders out of a population of well over half a million, and 35% of those responders backed the proposal we have before us; that is 1,065 people out of a population of over half a million. It is hardly a ringing endorsement of what is being put forward today.

I am not opposing the order, but I feel there is something not quite right about how local government is evolving in England. It is not clear; it does not give certainty or value for money, either for the taxpayer or for the council tax payer; and it is no way to deliver services. Reorganisations will not get the Government off the hook with the crisis we have in local government, which is a result of the nearly £8 billion funding gap that local authorities face no matter what structures we have. I look forward to the Minister's response.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in this debate. I will do my best to answer the valid points that have been raised.

Like the noble Lord, Lord Stevenson, I appreciated the meeting we had which, as he said, was also attended by the noble Baroness, Lady Pidding, who is not in her place at present. I found it a useful discussion. In that meeting and again today, the noble Lord made some

very valid points. He indicated that the message on support is ambiguous. I accept that overall, in terms of personal interventions, there was more support for two unitary authorities than one. But the point I was making, which I think unanswerable, is that there was an overwhelming response in favour of change—in favour of unitarisation. I see that the noble Lord accepts that.

I turn to a point made by the noble Lord, Lord Kennedy, about democracy in general. He and I have had this discussion previously. As a councillor of great and long standing, he knows very well that in a democracy one has to respond to the people who respond, whether through surveys or votes. He and I would both like more people to participate, as I am sure would all noble Lords in the Chamber.

The noble Lord, Lord Stevenson, also raised an issue about the changes that are undoubtedly happening in the country at large, such as with HS2 and housing. Those are certainly important developments but they affect many councils, not only Buckinghamshire. I was not quite sure at one stage whether the noble Lord wanted us to look at this in terms of a larger unit or a smaller one. The support that he seemed to be getting behind was in favour of having two unitary authorities but, looking at it more broadly, some of the housing issues on the Oxford-Cambridge arc would indicate the need for a larger authority.

Lord Stevenson of Balmacara: I am sorry if I did not make myself clear. What I was trying to argue for was a review in the not too distant future. The statutory instrument says that there will be no review, because once this unitary council is established local democracy will take care of any changes, but I think that that misses the point that he has just made: there are substantial changes on the horizon, some of which are happening even today, and it would be sensible to have in mind the thought of thinking again about the overall structure.

Lord Bourne of Aberystwyth: I am grateful for that. The noble Lord did indeed make that point. I was going to come on to look at the issue of the review. I think he has indicated now, although perhaps not as strongly as earlier, that we are looking at the electoral response in terms of a review of arrangements. As he has indicated previously, most of these changes affect other council areas as well as Buckinghamshire, which is the subject of the debate at the moment.

During the course of his very useful contribution, he referred to winners and losers. That is not how we are looking at this. I accept that the breakdown will see nine representatives on the executive from the county council area and eight from elsewhere, but I do not think that that is domination; it is a narrow majority. As I have indicated, there will be an opportunity to replace the leader if there is a desire to do so—so that is there as well.

All the council leaders have indicated—and I am very grateful for this—their strong support for the new arrangements and their desire to get behind them, which, in all fairness, the noble Lord, Lord Stevenson, also indicated. That is the way we have to look at this. It is not with unanimous support, but with local government reorganisations it would be strange if it were. It seeks to represent the fact that we need a compromise. I am very grateful to the noble Lord, Lord Stunell, for indicating his support for the Secretary of State and the sensible compromise. We are trying to work towards a consensus with the three-member wards and the 147 members.

The re-warding that will happen after 2025 will be led by the Boundary Commission. It would be unwise for me to opine on that at this stage, but obviously it will be guided by experience. I share with the noble Lord the general desire that we do not want too few members. We perhaps have to recognise that there is a real job of work to be done here. I have to say that 147 sounds reasonable to me—but, as I say, this will be guided by experience and by the Boundary Commission. Obviously there will be a chance to look at this as things develop.

The noble Lord, Lord Stunell, made some very useful comments. I thank him for them and for his broad support for the measure. I agree with him on the need, as I say, to have a generous number of members—not too few—to represent democracy. I also agree about the important role of the parish councils. I have sought to find out, during the course of the discussions we have had, what is proposed. This will be led by the new authority, of course, but they have indicated that they want community hubs for the 19 areas, and the intention is that they should be represented by community boards for those areas to serve Buckinghamshire towns and villages and enable local councillors to take decisions on very local issues such as funding for community groups, local road maintenance and things that would apply to those particular communities. That is the intention. For example, residents in communities such as Buckingham and Beaconsfield at different ends of the county and in the surrounding areas would be able to look to decisions on local matters being made closer to those communities. The intention is to work closely with public sector providers in those areas as well to try to ensure that there is a genuinely local feel to the way that decisions are reached there.

I turn to the contribution by the noble Lord, Lord Kennedy. Again, I thank him for his general support for what we are doing—or at least for the fact that he will not oppose it, as I think he phrased it. He made some very fair points about the strategy. He was concerned that we had something more like a detailed blueprint. That is not the way in which we have been seeking to do this. Things are different in different areas, and the consistent theme running through this is democracy. It would be hard to see some sort of metro mayor operation in Buckinghamshire, for example, although I think it is appropriate for Cambridge and Peterborough. I think the noble Lord would accept that different rules apply to different parts of the country.

He talked—perhaps this is an indication of Labour being somewhat rooted in the past—about the sweet counter at Woolworths. I have news for the noble Lord: that has long since gone. But I accept his general point that there is perhaps a need for a more consistent theme. He will know that we will be making a Statement

[Lord Bourne of Aberystwyth]
on devolution in England; we are committed to doing that. That will perhaps be in relation to the metro mayor position. I hope that the noble Lord will take comfort from that.

To come back to democracy, it is worth noting that this proposal came from the area; it did not come from the Government. Obviously we have had a hand in shaping it, but the initial proposal came from the councils of the area itself.

Lord Stevenson of Balmacara: I listened to the Minister explain the position and I am picking up on what my noble friend Lord Kennedy said. Does the Minister accept that we have an area that has perhaps grown up with a particular style of government, and where there has not been much change over the last 30 years or so? There is a danger that by listening to only that voice and considering the representation from only one of the five councils, one is playing to a particular style and approach, and not thinking about the wider context of metropolitan-type counties near London, many of which will have similar problems. The point my noble friend was making was that there is probably a level of perspective above that, which suggests that we need a better template for all that, to make sure those particularities do not dominate a more general case.

Lord Bourne of Aberystwyth: I certainly accept that there is a need to listen to a broad range of opinions. In fairness to local representatives, MPs and councils, I think we have done that in Buckinghamshire. There is not unanimity of opinion; that is a perfectly valid point. I also accept, and this will be reflected when we look at devolution arrangements for England, that there is a need to look at a broad feel for the country and how matters are governed. That is fair, but we also have to recognise that a uniform, monochrome blueprint—I have mixed my metaphors—for councils is undesirable. There is perhaps a way around this that accommodates both.

I am really grateful for the contributions made. I am sure we will take account of these comments. I will seek to update noble Lords on any points I have missed in this very useful debate. I thank them for their contributions and their general support.

Motion agreed.

House adjourned at 8.27 pm.

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