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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

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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 9 March 2020

2.30 pm

Prayers—read by the Lord Bishop of Portsmouth.

Death of a Former Member: Lord Wright of Richmond

Announcement

2.37 pm

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, I regret to inform the House of the death of the noble Lord, Lord Wright of Richmond, on 6 March. On behalf of the House, I extend our condolences to the noble Lord's family and friends.

Gender Pay Gap

Question

2.38 pm

Asked by ***Baroness Jenkin of Kennington***

To ask Her Majesty's Government what progress they have made in addressing the gender pay gap.

Baroness Scott of Bybrook (Con): My Lords, the gender pay gap is at a record low of 17.3%. However, the gap for full-time employees has increased slightly to 8.9%. The pay gap is caused by a range of factors. To address it, we must ensure that men and women not only have equal pay but equal access to opportunities. Reporting regulations require that around 10,000 employers report their data annually. However, we want employers to go beyond reporting to create genuinely inclusive workplaces for everyone.

Baroness Jenkin of Kennington (Con): My Lords, International Women's Day is always an opportunity to reflect on successes, and there is no doubt that gender pay gap reporting has made a significant difference to many women's lives. As my noble friend said, in the past two years, over 10,000 employers with more than 250 employees have reported that data. However, that is only 34% of the workforce. The Government have acknowledged that the 250-employee threshold is just the starting point. What plans do the Government have to lower the threshold?

Baroness Scott of Bybrook: My Lords, we have had two successful years of gender pay gap reporting so far, with over 10,000 employers publishing their data in both years. It is important to give the regulations time, to see how employers respond. We are required to review the gender pay gap information regulations by 2022, and we intend to consult on any changes to the information that employers must provide by the end of 2021. If you have under 250 employees, it is difficult statistically to value that data, so we are still looking to consult on any changes.

Baroness Goudie (Lab): My Lords, the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 contain no enforcement mechanism. The only role of the Secretary of State, under Regulation 16, is to carry out a review "from time to time", and to produce and publish a report and conclusions. This is not good enough. The first report is not due until 2022, and then at intervals not exceeding five years. The Equality and Human Rights Commission, however, has duties and powers pursuant to the general role under the Equality Act 2006. Although we have all this reporting and there is the power to do some enforcement, nothing has happened to date. Having spoken to both departments, neither seems to know which has the power or which is to use it.

Baroness Scott of Bybrook: I thank the noble Baroness for her question, but we are 100% compliant with what we are asking employers to do. If we go further and make it a mandatory return, this can become a tick-box exercise, which we do not want. We want employers to actively use their data to tackle the barriers that women face in their businesses.

Baroness Hussein-Ece (LD): My Lords, in October 2018 the then Prime Minister launched a series of measures to tackle the barriers facing ethnic minorities, including ethnic-minority women, in the workplace: in effect, the ethnicity pay gap. The Race at Work Charter, which built on the work of the 2017 review, *Race in the Workplace*, found that people from black, Asian and minority-ethnic backgrounds were underemployed, underpromoted and under-represented at senior levels. That review concluded that the time for talking is over and the time to act is now. What has happened to the ethnicity pay gap recommendations in the review, and when we can expect to see them?

Baroness Scott of Bybrook: The Government ran a consultation from October 2018 to January 2019 on ethnicity pay reporting and received more than 300 detailed responses. They have since met with businesses and organisation representatives to understand the barriers to reporting and what information they could still publish to allow for meaningful action to be taken on the findings of that consultation. The Government have also run voluntary methodology testing with a broad range of businesses, using real payroll data better to understand the complexities outlined in the consultation. We will share the next steps on this in due course.

Baroness Bull (CB): My Lords, the right to equal pay for equal work is enshrined in the Equality Act 2010, but there is currently no formal route by which women can obtain information about a male comparator's pay. To obtain this information, they need to embark on a complex and often expensive legal battle; many women, of course, do not want to do this. Does the Minister agree that, in addition to the right to equal pay for equal work, women should also have the right to know?

Baroness Scott of Bybrook: Yes, women need to have the right to know, but this is a very difficult thing for the Government to deal with because people also

[Baroness Scott of Bybrook]
have the right not to have their pay in the public domain. The Government are looking at this and further proposals will come forward, including in the employment Bill, which will be introduced in due course.

Baroness Prosser (Lab): My Lords, if we can stick for a moment with the gender pay gap, the Minister has said that she is concerned about the gap—concerned that things are not moving on—but does anybody in this House think that it is going to close by osmosis? We need action: we need the Government to determine what they are going to do. There are a whole range of things that they could do, and I will give just two examples. First, they should encourage employers to provide women-only training programmes so that women can be lifted up on pay scales et cetera. Secondly, they should work with employers to identify ways of producing much better-quality part-time employment. Are any of those ideas ones that the Minister would want to push forward and encourage the Government to support?

Baroness Scott of Bybrook: The noble Baroness is absolutely right: we need to move forward on this, but it is about cultural changes within large organisations. We saw today the issues in the finance sector in particular. However, the Government are already doing things: they publish advice to all employers, and they have webinars, face-to-face events, trade shows and so on. They are working closely with the Women's Business Council on particular sectors that are slow in moving forward, including the retail and finance sectors. The Department of Health and Social Care is undertaking a complete review of the gender pay gap in medicine, led by Dame Jane Dacre. We are doing a lot to help but this a slow process. It is still moving in the right direction, and we want to ensure that it continues to do so.

Domestic Abuse Bill

Question

2.46 pm

Asked by ***Baroness Sanderson of Welton***

To ask Her Majesty's Government what funding has been allocated for a public information campaign to accompany the Domestic Abuse Bill.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Domestic Abuse Bill includes an all-purpose definition of domestic abuse to ensure that the nature of abuse is fully understood. It emphasises that it is not only physical or sexual violence, but includes controlling or coercive behaviour and economic abuse. As part of our plans for implementing the Bill, we are considering options for public awareness campaigns.

Baroness Sanderson of Welton (Con): My Lords, I am grateful to my noble friend. While I welcome the reintroduction of the Domestic Abuse Bill, which will create a more effective approach to tackling domestic abuse, the problem will not go away simply because of legislation. One in four women in this country will suffer domestic abuse—one in four. Given that statistic, we may all know someone who is suffering behind closed doors, someone who is too ashamed, humiliated or frightened to come forward, even to their family or friends. I hope the Minister will agree that in order to break the silence, we really need to start a national conversation. The Government must play their role by raising awareness of this horrific crime and encouraging all of us to confront and challenge an issue that is still taboo in our society.

Baroness Williams of Trafford: My Lords, I agree wholeheartedly with everything that my noble friend says. Her Royal Highness the Duchess of Cornwall made the same point in her speech to the Women of the World Festival just last Friday, when she said that

"laws alone cannot change behaviour … Domestic abuse is everyone's problem and the solution must be too."

In terms of the role that the Government can play, we certainly see the merits of a public information campaign and we are exploring options for it. However, my noble friend is absolutely right: we all have a part to play in confronting this if it is not to continue to be hidden away as it has been for so long.

Baroness Armstrong of Hill Top (Lab): Do the Government appreciate that there is still much work to be done on this? It has been recommended by a wide range of groups, particularly for those most at risk, the most vulnerable, those women with complex needs, that every public sector worker who has interface with the public understands, through trauma-informed training, the reactions of women who have been abused and who suffer trauma because of it. Will the Minister, as part of this drive to reduce domestic abuse and abuse against women, take it upon herself to investigate how trauma-informed work is spread, so that whenever a woman goes for help, the person she encounters understands the basis of her need and reacts appropriately?

Baroness Williams of Trafford: I wholeheartedly agree. The point about a trauma-informed response goes not only to those women—and it is mostly women—who suffer domestic abuse but also to their children. It informs literally everything around that trauma, whether it is the policeman who is called to the house, the healthcare professional assisting a woman in hospital or the person taking a statement, if she has to give one. I know the police are well on in bringing forward training for first responders, but everyone has a role to play in this.

Baroness Greengross (CB): My Lords, does the Minister accept that quite a lot of domestic abuse is intergenerational and is unreported, because a mother is very unlikely to report abuse committed by her son? She would feel ashamed. I think we overlook the amount of abuse that is committed in this way.

Baroness Williams of Trafford: I do not think that that point has ever been made in this House; the noble Baroness raises a disturbing issue. It is true: people

perhaps think they see it but cannot pinpoint it. It goes back to the point made earlier about people being trained to see these things, because some older people are in that horrendous situation.

The Lord Bishop of Gloucester: I thank the Minister for mentioning children. Given that the Bill will inform the way that people engage with domestic abuse, what provision will be made to ensure that the needs of children are properly highlighted to enable a child-focused response?

Baroness Williams of Trafford: I think the one way the new Bill differs from the original Bill is that it introduces a statutory duty on tier 1 local authorities in England to provide support for victims of domestic abuse and their children in safe accommodation. The other thing that might help the right reverend Prelate is that statutory guidance will also reflect the effect on children.

Baroness Hamwee (LD): My Lords, while I welcome the Bill, which was well overdue even before it was delayed by events, can the Minister tell the House when she anticipates that, assuming its smooth passage through Parliament, it will actually come into force?

Baroness Williams of Trafford: All things being equal, it should be in force this time next year.

Baroness Gale (Lab): My Lords, at least 59 women have been killed in the UK by men who claimed that their death was as the result of sex games gone wrong. According to the campaigning organisation We Can't Consent To This, in the last five years this defence has been used successfully in six out of 14 cases that went to trial, resulting in a conviction for manslaughter or even an acquittal. Can the Minister confirm that the Government will use the Domestic Abuse Bill to ban the "rough sex" defence?

Baroness Williams of Trafford: My Lords, there are some complexities in this, but it is absolutely right that we reinforce current case law so that a person cannot consent to something that leads to serious injury or even death. We are looking at the best way to achieve this.

Sport England: Female Activity

Question

2.54 pm

Tabled by ***Baroness Sater***

To ask Her Majesty's Government what assessment they have made of the impact of Sport England's "This Girl Can" campaign since 2015 on activity levels of females of all ages.

Baroness Penn (Con): My Lords, on behalf of my noble friend Lady Sater, and with her permission, I beg leave to ask the Question standing in her name on the Order Paper.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, we are determined to encourage more women and girls to get active and break down the barriers that prevent them from doing so, something that we set out in our sports strategy, *Sporting Future*. This Girl Can is a ground-breaking campaign, encouraging women to get active regardless of shape, size and ability. It has already inspired 3.9 million women to take part since its launch in 2015.

Baroness Penn: I thank my noble friend for her Answer. This weekend, to celebrate International Women's Day, This Girl Can teamed up with parkrun to encourage more women and girls across the country to take part in physical activity. Initiatives such as this have increased women's activity levels, but the same statistics show that participation in sport remains static. What are the Government doing to address this?

Baroness Barran: As my noble friend said, This Girl Can plays an important part in inspiring women aged 16 to 60 to be active, and almost 122,000 more women are active today compared with 2015-16. However, we do not want to dictate to women how they should be active. Rather, we want them to have access to the right opportunities locally and the right environment. Sport England is investing over £240 million in the national governing bodies of sport to ensure that everyone has the opportunity to participate in the sport that is right for them. We also know that it is very important for girls to be active from an early age, so there is £320 million from the sports premium to encourage this in primary schools.

Lord Griffiths of Burry Port (Lab): My Lords, the Question before us is not only ground-breaking but—let me confess it—in my case, mind-breaking, for I knew little about this campaign, and wish that I had. I congratulate all those who are making these things work, as well as the recent advertising campaign that is prepared to honestly and openly show women and girls who are not, shall we say, built like gold medal winners at the Olympic Games. People of all shapes and sizes are in the publicity doing the exercise that they need to, and that is brilliant. Also, those tender and difficult aspects of a woman's life—

A noble Baroness: Oh no!

Lord Griffiths of Burry Port: It is in the publicity, I am only quoting—it is the menopause and the menstrual cycle, but they are honestly portrayed in the advertising too. I wonder, therefore, in view of the fact that I have known so little about it, whether the Government could put some effort into persuading those who run this campaign to take more of us into the secret of what is happening, and make the publicity a bit more widespread.

Baroness Barran: I am delighted that the noble Lord finds the campaign compelling and has learned from it; I think that will be true for many of us. The Government have supported the campaign

[Baroness Barran]
substantially through Sport England, and in addition to the increase in the number of women engaged in sport, 16,000 organisations have registered as supporters and over three-quarters of a million women are active members of the online community.

Baroness Grey-Thompson (CB): My Lords, I commend each iteration of this campaign, because it has challenged stereotypes, especially around women being affected by their period. But can the Minister explain what Her Majesty's Government are doing to measure participation rates among disabled women? Often, disabled people experience multiple barriers to participation and inclusion, not least according to research by the Activity Alliance, which shows that many disabled people are worried about being seen as being too active, and therefore having their impairment and their benefits questioned.

Baroness Barran: The noble Baroness is quite right that disability can be a barrier to an active life and participation in sport in particular. Sport England is working with health and social care charities on the We Are Undefeatable campaign for those with long-term health conditions, 44% of whom have taken action. In the latest *Active Lives* survey, the group with the biggest increase in participation were those over 61. I know that there can be many barriers; I met a young woman in Yorkshire on Friday who plays blind cricket for England, and the barrier for her was transport to the station to be able to go and train. Barriers exist in many different shapes and sizes.

Lord Addington (LD): My Lords, the This Girl Can campaign has shattered stereotypes and changed the way we look at all of this. For that it must be commended and I hope it will continue to get support. Are the Government using this campaign to get out their whole message on public health and information, because they have something here that has worked and is surely applicable to everybody, not just among females and not just in terms of sport?

Baroness Barran: The Government have certainly tried to take the learning from this campaign and apply it as widely as possible.

Baroness Blackstone (Ind Lab): My Lords, why should girls not continue to be active at a later age? Why is there a cut-off point of 60?

Baroness Barran: That is a very good question which might apply to a number of us in this House. Sport England is working with women over 61 and, as I mentioned earlier, the biggest increase in participation has been in that older age group.

Baroness O'Cathain (Con): My Lords, do the Government agree that promotion of walking and other solo sports is needed now? With over a quarter of a million women taking over two and a half hours of exercise a week, there is a risk that increased inactivity with Covid-19—this is all I can say about the new problem—will reverse the current benefits.

Baroness Barran: My noble friend makes a very important point. Walking is now included in the *Active Lives* survey as one of the measures of activity we look at. Obviously, there are risks, to which I fear I do not have the answer at the moment, if people have to self-isolate due to Covid-19.

Environmental Programme: COP 26

Question

3.02 pm

Asked by ***Baroness Jones of Moulsecoomb***

To ask Her Majesty's Government how they will ensure that they will have "the most ambitious environmental programme of any country on Earth", as stated in the 2019 Conservative Party Manifesto, in time for COP 26.

The Minister of State, Department for the Environment, Food and Rural Affairs, Foreign and Commonwealth Office and Department for International Development (Lord Goldsmith of Richmond Park) (Con): My Lords, we are determined to cement our position as global leaders on the environment. That is why we have brought forward our Environment Bill, Fisheries Bill and Agriculture Bill. They will transform how we manage our natural resources and set a gold standard on environmental protection. Our policy and legislative programme for this environmental super-year will culminate in the UK hosting the COP 26 climate change conference in November.

Baroness Jones of Moulsecoomb (GP): I thank the noble Lord for his Answer. I am sure he is aware that this Government, if they are to achieve this grandiose promise to the British people, need to think more about stopping things such as airport expansion, new road building, building houses that are not zero-carbon, and building new waste incinerators. Can he reassure me that the Government are thinking along those lines?

Lord Goldsmith of Richmond Park: This Government are introducing genuinely ground-breaking legislation this year. The Environment Bill introduces world-leading environmental commitments based on environmental principles and with a new organisation for environmental protection to hold the Government to account. The Fisheries Bill puts sustainable fishing at the heart of government policy and the Agriculture Bill scraps the old land-use subsidy system, which many people believe was entirely destructive—I am sure the noble Baroness agrees—and replaces it with a system conditional on land managers delivering some kind of public good, not least environmental protection. That is just the start of what this Government are doing this year. In hosting COP, they have enabled the Prime Minister, whose commitment to tackling climate change is in my view unquestionable, to convene the Government to ensure that we have a whole-government approach to honouring the commitment that this country made to achieve net zero by 2050.

Baroness Jones of Whitchurch (Lab): My Lords, does the Minister agree that action on the environment is not just an issue internal to the UK? We also have to

tackle our global environmental footprint. For example, we continue to import food and other goods that are causing the loss of the Amazon and other forests. Will our COP 26 commitment include legislation to control UK commodity supply chains, which often go across the globe, causing environmental damage?

Lord Goldsmith of Richmond Park: The noble Baroness is right that it is not just about what we do domestically. There is a big question about what the UK brings to the world in this super-year for nature. We have already brought a great deal. We are world leaders in marine protection; our blue-belt scheme is on track to protect an area of ocean the size of India. We have doubled our climate funding to £11.6 billion, and much of that uplift will be invested in protecting and restoring nature on an unprecedented scale. She is right also to talk about supply chains. In a few weeks' time we will hear back from the GRI—the Global Resource Initiative—which was established by a former Secretary of State. It will report back at the end of this month, and I imagine one of its headline commitments will be to clean deforestation out of our supply chain. We will respond as soon as we hear that report.

Viscount Ridley (Con): My Lords, while I congratulate my noble friend on the environmental land management scheme, the nature recovery networks and the policy of net gain that he mentioned, could he ensure that environmental policies do not end up harming the environment? Examples of this include the burning of wood to produce electricity, which is causing forest destruction, and the siting of wind farms where trees have to be cut down and where they damage bird and bat populations.

Lord Goldsmith of Richmond Park: The noble Viscount raises an important point: there is such a thing as good environmental policy and such a thing as bad environmental policy. Unfortunately, the last few decades are littered with examples of the latter. We disagree in relation to the value and contribution that can be made by onshore wind. It is telling that this year we expect a new wind farm to come online that will be the first to require no public subsidies of any sort at all, which is testament to that technology. It has proven itself, just as we have seen with solar power. However, I absolutely take his point about the burning of wood on a very large scale to produce electricity. This has all kinds of consequences—I would say unforeseen, but they were not entirely unforeseen.

Lord Oates (LD): My Lords, if the Government's environmental ambitions are to mean anything, they have to be matched by action. In that context, does the Minister agree that a good start would be for the Government to back the Domestic Premises (Energy Performance) Bill introduced by my noble friend Lord Foster of Bath with cross-party support? Does the Minister understand that if the Government are unwilling even to support such a modest but very important measure such as this, their talk of environmental ambitions will ring very hollow indeed?

Lord Goldsmith of Richmond Park: To be able to meet our commitment of net-zero emissions by 2050, every single department of government has to deliver a plan showing how they intend to do their part. One of the most difficult areas—perhaps the least avoidable—that we will have to tackle is ensuring that existing homes are made more efficient. Money invested in that is not just money spent; it is an investment because you can expect, through normal means, to receive payback and make savings within four to seven years, depending on the work conducted. I am not familiar with the Bill that the noble Lord cites, but energy efficiency is certainly a major priority for the Government.

Lord Watts (Lab): My Lords, does the refusal to expand Heathrow not just mean that expansion will take place in another part of the world? It will not reduce pollution at all.

Lord Goldsmith of Richmond Park: The noble Lord is right that it does not matter where an airport or a new runway is built, in terms of carbon emissions. The Government are probably enormously relieved to know that I am not the Minister in charge of airport policy. I afforded myself a quiet cheer when the court made its ruling a few weeks ago.

Baroness Altmann (Con): My Lords, I congratulate the Government on introducing environmental measures in the Pension Schemes Bill. I wonder if my noble friend agrees that the potential for using pension assets to improve mitigation against climate change and measures to adapt to climate change is really important? In the context of International Women's Day, does he agree that closing the gender pensions gap, which is more than twice as big as the gender pay gap, would be of assistance in that regard?

Lord Goldsmith of Richmond Park: As I rose to answer my noble friend's question, I was told that her second point is being considered by the Government as we speak. On her first point, she is right that investment in energy efficiency and so on lends itself absolutely to pension funds, not least because it offers the kind of long-term, low-risk, medium-return investment that is exactly what they tend to favour. I do not believe that the mechanism for deploying huge amounts of private finance of the sort that we will need if we are to solve these problems exists to channel enough money into environmental solutions, but there are enough examples of what that mechanism might look like so that, by the end of this year, we as a country will be able to demonstrate real leadership in deploying the levels of private finance that we will need.

Fisheries Bill [HL]

Committee (3rd Day)

3.10 pm

Relevant document: 6th Report from the Delegated Powers Committee

Clause 14: British fishing boats required to be licensed

Amendment 76ZA

Moved by ***Baroness McIntosh of Pickering***

76ZA: Clause 14, page 11, line 12, leave out paragraphs (a) and (b)

Baroness McIntosh of Pickering (Con): My Lords, in moving Amendment 76ZA, I shall speak also to Amendment 86 tabled by my noble friend the Duke of Montrose, who is unable to be with us today. I have added my name to his amendment as well.

I turn first to Amendment 76ZA and I shall refer in particular to Clause 14(1) and (2). My concern is that it appears that subsection (2) actually countermands and completely detracts from subsection (1). I am raising this specifically in the context of fishing,

"for salmon or migratory trout … for common eels (Anguilla Anguilla) by a boat whose length is 10 metres or less"

I am sure that my noble friend the Minister will clarify that, in both those paragraphs, such fishing is usually for recreational purposes. I am sure that it is not the Government's intention to stop subsection (1) applying to subsection (2), but I have information on good authority that ICES is very concerned about European eel, as stocks throughout the UK and the rest of Europe are in serious difficulties. Because eel spawns at sea, it is considered to be a single stock, so it needs to be addressed in an international context.

My noble friend will be aware that I have raised the issue of salmon stocks in the context of allowing more of the quota to go to the under-10 metre fishing fleet. Salmon is considered on a river by river basis because it spawns in rivers. Both species undergo major migrations, but effectively in opposite directions.

I hope that my noble friend will be able to clarify why subsection (2) has been drafted in this way because, if the two derogations were to be used in the way provided for here, we will end up with unregulated marine fisheries in which these already depleted stocks will create additional problems, so I hope that my noble friend can put my mind at rest on this. I understand that the Government are committed to taking the figures from ICES, so by definition they will be fairly gospel. They will be accurate because our own national authorities are feeding into the research in this regard.

I know that the Minister has been given advance notice of the reason that my noble friend the Duke of Montrose has tabled Amendment 86. It is in order to insist that the authority may require information only where such information is reasonably needed for the exercise of its function. The reason is that we do not wish for information to be received which the Government have no right to receive. I understand that, in the Government's view, this amendment is not necessary. In the department's view, the power to request information is related to the exercise of licensing functions, and data protection legislation provides that information may be collected only for legitimate purposes. We seek to insist that this is information relevant to the very needs of the licence. No reference is made within the schedule to the reinstatement of the licence, but we would like that information included. With that clarification, I hope my noble friend will look kindly on Amendment 86 to Schedule 3 as allowing such powers to obtain information relating only to information relevant to the purposes of the licence to be issued.

With those few remarks, I hope my noble friend will look kindly on those two amendments.

3.15 pm

Lord Teverson (LD): My Lords, I shall speak to my own amendments in this group–Amendments 76A and 79. One of the characteristics of this Bill is that we start to talk about recreational fishing, which is an important leisure activity—not one I indulge in myself, but one I would certainly encourage.

However, there is a big difference between someone going out in their own unpowered vessel and the charter recreational sector, which could have a significant impact on local fisheries. In a way, this is a probing amendment to better understand the Government's view on the recreational side, but there is a strong argument that charter vessels should be licensed. They are quite substantial, have a number of people on board who are fishing recreationally, and they may be targeting certain fisheries which are significant in terms of environment and biodiversity. Although this amendment does not cover it, there might be an argument that, now that Defra has invented the very simple catch app—controversial in certain areas, but I think it is a pretty good idea—we could easily use that for this type of fishing, as that would give extra information about the types of fish that are being caught and landed in the recreational sector.

My second amendment looks at the area of capacity. It has been mentioned by many noble Lords during Second Reading that the British fleet has gone down and down in size. Of course, the prime reason for that is that the efficiency of fishing vessels has increased hugely over recent decades, so you need much fewer vessels due to their power, fishing techniques, electronics, sonar and engine power. All of those features have led to a reduction in the fleet. In the past, we have had to have decommissioning schemes to equate fishing fleet levels with available stocks. They are never the best things to do, but sometimes they are necessary.

I am trying to find out how the Government expect the capacity of the fleet to be managed. I would be interested in the Minister's comments and he may well be able to reassure me in this area. My amendment says that there should be no additional licences granted if there is already a sufficient capacity for the fishing stocks available for the total allowable catch. We know from history that a mismatch in that area, whatever the rest of the regulations are, is highly negative to sustainability.

Lord Grantchester (Lab): I will speak to Amendments 85 and 87 in my name, tabled for probing purposes. Amendment 85 concerns conditions being imposed on sea fishing licences regarding matters that are not themselves directly related to the regulation of sea fishing. I am sure there will be a number of examples of conditions that it would be both logical and reasonable to impose, and I would be grateful if the Minister could clarify for the record what these include.

Amendment 87 deals with the duty of a sea fish licensing authority to comply or not with a request submitted by another licensing authority. In paragraph 4(3) of Schedule 3, there is an exemption to the statutory duty to comply:

"unless … it is unreasonable to do so."

This amendment merely seeks clarity from the Minister to highlight the designation between reasonable and

unreasonable, as presumably the requesting authority may consider the request entirely reasonable. What steps must a fish licensing authority take when a request is denied, and is that the end of the matter? Would the licensing authority need to justify that denial and, if so, is there a timetable for this, should the requesting authority wish to follow up?

I turn now to other amendments in this group. Amendment 76ZA in the name of the noble Baroness, Lady McIntosh of Pickering, brings into focus in my mind the interplay between farmed salmon, which is not regulated in this legislation, and the Fisheries Bill. The Norwegian Government believe that farmed salmon escapes are the biggest threat to Norway's wild salmon population. The Scottish Government are certainly aware of the significant risk to the vital recovery of remaining west coast salmon stocks. Experts estimate that the number of escapes—often laden with disease, especially lice burdens—is around double the number of wild Atlantic salmon that return to their spawning rivers on the west coast of Scotland. During Storm Brendan in January, around 73,000 farmed salmon escaped from the open-net cage near Colonsay. I draw attention to the considerable effect this may have on west coast fisheries.

I also thank the noble Lord, Lord Teverson, for his amendments in this group. In Amendment 76A, he poses the question of whether the recreational use of a charter fishing vessel requires a full licence and in what circumstances. Would the planned exemption for recreational activities still stand? The Committee has welcomed the previous positive comments from the Minister about recreational fishing. Indeed, my comments on salmon are apposite. It is an often overlooked yet important part of our fisheries industry, reported to be valued at over £2 billion annually and supporting more than 18,000 jobs. I am grateful to David Mitchell at the Angling Trust for making contact regarding the size of recreational fishing and the economic impact it has. This merits some attention.

Finally, I thank the noble Duke, the Duke of Montrose, for his careful scrutiny of the provisions under Schedule 3, seeking clarity on the balance and pertinence of information required by a licensing authority.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I am most grateful to my noble friend Lady McIntosh for her Amendment 76ZA. I understand her interest in querying eels, salmon and migratory trout's apparent exemption from the licensing regime, as they are all valuable and vulnerable species. However, I think I can provide the reassurances that my noble friend and other noble Lords would expect—that they are licensed and controlled.

Legislation is already in place at the devolved level to manage the licensing or authorisation of fishing for these species. In England and Wales, it is the Salmon and Freshwater Fisheries Act 1975, as amended by the Marine and Coastal Access Act 2009, that already makes provision for the licensing or authorisation of fishing for salmon and eels in England and Wales. Marine Scotland does not "license" fishing in inland waters as is done in England and Wales. Salmon fishing in rivers, estuaries and coastal waters is managed by way of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 and, more specifically, the Conservation of Salmon (Scotland) Regulations 2016, as amended annually.

For eels, the Freshwater Fish Conservation (Prohibition on Fishing for Eels) (Scotland) Regulations 2008 prohibit the taking of eel without a licence from Scottish Ministers. In Northern Ireland, the Salmon Drift Net Regulations (Northern Ireland) 2014 and the Salmon Netting Regulations (Northern Ireland) 2014 prohibited the use of any nets to catch and kill salmon and sea trout in tidal waters and inland fisheries. The Eel Fishing Regulations 2010 license only eel fishing activity using long lines and draft nets on Lough Neagh and eel weirs at Toome and Portna. Because of the state of both species, these fisheries are closely managed and heavily restricted in all four Administrations.

Should we need to vary the existing regimes in the future, the Fisheries Bill provides a mechanism for this. Clause 14(3) allows the Secretary of State to "add, remove or vary" the current exceptions by regulation. These regulations would be made based on evidence and following consultation.

I turn to Amendment 76A. According to research published in Defra's report *Sea Angling 2012*, recreational fishers fishing from charter boats account for the minority of fishing days and a limited proportion of fish caught recreationally, compared with those fishing from the shore or from private boats. Research from 2015 to 2017, due to be released later this year, shows that the percentage contribution of charter boats to fish caught has remained relatively low over this period.

Measures are already in place across the United Kingdom to protect bass from recreational fishers, including those fishing from charter boats, through daily bag limit restrictions as well as via minimum landing sizes. In England, controls are also imposed through by-laws made by the inshore fisheries conservation authorities.

Taking into account the best available evidence, the Government are of the view that licensing charter boats at this stage, would be disproportionate and not driven by evidence. Instead, officials will focus on working with the recreational sector to drive improved voluntary data collection to support conservation and sustainability and, where necessary, to implement intervention at a species level.

The Fisheries Bill provides the mechanism to implement licensing in the future, should this be deemed necessary. Clause 14(3) allows the Secretary of State to "add, remove or vary" the current exceptions by regulation. This would be done based on evidence and following consultation. I am grateful to the noble Lord for raising this issue, which we wish to keep under review, but I hope my explanation of where we are provides some reassurance, and I emphasise that we take all these matters into account and take them seriously.

The noble Lord's Amendment 79 seeks to ensure that fleet overcapacity does not threaten the sustainability of fish stocks when granting licences. The common fisheries policy requires member states to take steps to ensure that their fishing fleet capacity does not exceed

[Lord Gardiner of Kimble]
the fishing opportunities available to them. Each member state is obliged to provide annual reports on the status of its fleets. These reports make clear that the United Kingdom has consistently operated within the capacity ceiling.

The licence system in place in the United Kingdom is designed to ring-fence the UK fleet capacity to the level seen at the creation of the UK licensing regime in the mid-1990s. No new capacity has been created in that time. No new licences have been issued and a new entry to the fleet can take place only when another vessel is removed from it. Any new entrant to the fleet must not be larger than the vessel that was withdrawn. Any vessel owner wishing to fish in UK waters in this scenario must purchase a licence entitlement from an existing registered vessel. The requirement on the UK to limit its fleet will become part of retained EU law. In addition, as we considered last week, the sustainability objective in Clause 1 requires that the fishing capacity of fleets is economically viable but does not overexploit marine stocks.

3.30 pm

I am grateful for the clarification from the noble Lord, Lord Grantchester, that his Amendment 85 is a probing amendment that seeks clarification on what conditions could be attached to licences not directly related to fishing. The wording the amendment seeks to remove was added to Section 4(6) of the Sea Fish (Conservation) Act 1967 by Section 1(2) of the Sea Fish (Conservation) Act 1992. The condition-making power in paragraph 1(1) of Schedule 3 therefore simply restates the existing position. For example, we have previously discussed the "economic link" condition, which requires all UK-licensed vessels to demonstrate a genuine economic link to the United Kingdom. The economic link is an important area that does not relate directly to fishing, as it pertains to what happens to the fish after they are caught; for example, where they can be landed, or the percentage of the crew who must be normally resident in the UK.

I also highlight that because conditions on licences is a devolved matter, this amendment would cut across the competence of the devolved Administrations, all of which I imagine would not want to lose this important fisheries management flexibility.

Amendment 86 would limit a sea fish licensing authority's ability to request information. The purpose of the underlying provision in the Bill is to give sea fish licensing authorities the power to obtain information from a vessel master, owner or charterer. This is to ensure that they have fulfilled the requirements necessary for them to obtain and use a UK fishing licence. There may be information ancillary to the direct function of licensing the vessel that is nevertheless necessary for the authorities to request for a number of reasons. The amendment would make licensing of vessels more difficult because of the danger of not being able to identify precisely what is, and what is not, related to a licensing function. Were a restrictive approach taken, and such terms interpreted narrowly, the amendment might impair cases where an authority may genuinely need to obtain information about issues such as quota holdings and fishing patterns; for example, to help fishers establish an historical track record of fishing for particular species, which does not always relate directly to licensing.

It is important to remember that, again, the provision replicates and replaces the existing licensing framework in Section 4 of the Sea Fish (Conservation) Act 1967. This is a tried and tested framework and has worked well up until now. As I said, the licensing of fishing boats is a devolved function. This amendment would go against that principle.

In addressing Amendment 87, the purpose of this clause is to prevent one fisheries administration putting in place rules that would have little or no effect on its own vessels but could be to the detriment of vessels from another fisheries administration. One example of this could be the closure of an area not fished by fishers from the administration imposing the condition but by those from another part of the United Kingdom. Another example could be prohibiting the use of a gear type used only by fishers from another part of the United Kingdom. This would clearly be to the disadvantage of one group of fishers and would not be in the spirit of the mutual access clause.

The Bill seeks to ensure that vessels from all parts of the United Kingdom can fish in each other's waters and follow the same rules as other fishers within those waters. However, it is possible that one Administration could seek to impose unfair restrictions on another. This amendment would remove what we believe is an important safety valve to prevent a fisheries administration having to comply with an unreasonable request. I also say to the noble Lord, Lord Grantchester, that the memorandum of understanding being developed with the devolved Administrations would be a vehicle through which Administrations can set out what is considered reasonable.

We take all amendments very seriously but I hope, particularly in this group, that noble Lords and my noble friend will feel able to reflect that all these matters are either found in other pieces of legislation or are acknowledged to be important. For the moment, I ask my noble friend to withdraw her amendment.

Lord Teverson: My Lords, I am very grateful to the Minister, particularly for his very helpful answer on recreational fisheries matters. I felt his answer on capacity was useful, but I just want to be clear. Is he saying that after this year, even when the Bill becomes an Act, through retained common fisheries policy law, the capacity rules from the common fisheries policy will remain for the United Kingdom? That is what I understood, and I am fully reassured.

Lord Gardiner of Kimble: I repeat that the requirement on the UK to limit its fleet will become part of retained EU law.

Baroness McIntosh of Pickering: My Lords, I am very grateful to all noble Lords who have contributed to this little group of amendments and explained their concerns. I am grateful to my noble friend the Minister, who I hope has put my mind at rest. Obviously, this is

something I will keep an eye on, and I will share his reply with the noble Duke, the Duke of Montrose. With the permission of the Committee, I wish to withdraw the amendment.

Amendment 76ZA withdrawn.

Amendment 76A not moved.

Clause 14 agreed.

Clause 15: Power to grant licences in respect of British fishing boats

Amendment 77 not moved.

Amendment 77A

Moved by ***Baroness McIntosh of Pickering***

77A: Clause 15, page 12, line 18, at end insert—

"( ) is subject to the requirement that on-board monitoring equipment and cameras be fitted in accordance with a reduction in by-catch and discards."

Baroness McIntosh of Pickering: My Lords, in moving Amendment 77A, I will speak also to Amendment 80A. I also have a few comments on Amendment 124 from the noble Lord, Lord Krebs, which seems very sensible.

The Minister will recall my concerns on earlier clauses as to how policies such as discard charging schemes and other items will be policed. I have tabled these two amendments as a way of allowing me to debate these issues. In particular, I understand that it is quite possible—this was not news to my noble friend and other noble Lords—that a Scottish fisheries Bill may be introduced. While I understand that Clauses 15 and 17 will apply to the whole of the United Kingdom, is the discard charging scheme intended to apply only to English boats or also to foreign boats operating in UK waters? In that case, Scottish boats would be included as well. How will REM—the remote electronic monitoring—work? Is it envisaged that cameras will be included in all cases? Will it be a mandatory scheme? Will it be a statutory provision of the licence that British fishing boats under Clause 15 or foreign boats under Clause 17 require as to how it will apply? I do not see how the scheme will work if it is not mandatory and does not include cameras.

As my noble friend is aware, I am particularly exercised about the discard charging scheme. I would have preferred the original government policy, which clearly pointed to complete elimination. The purpose of these amendments is to allow my noble friend to explain how it will operate in practice. Will it apply to all British boats or only to English boats? What will the relationship be if the Scottish Parliament passes a separate fisheries Bill, and what will our relationship be with foreign fishing vessels? Will they be put on exactly the same footing and will it be a mandatory scheme? Which clauses will it apply to?

In Amendment 124, the noble Lord, Lord Krebs, is doing something not dissimilar to what I am doing. He too refers to remote electronic monitoring with cameras, which, unless my noble friend can put my mind at rest about how any remote electronic scheme could work without cameras, I am keen on. Can the noble Lord tell me why he seeks to phase this in? I am much more at one with the Government, unless I have misunderstood the drafting of his amendment, which talks about this being phased in. I hope my noble friend insists that this is brought in immediately as a provision of the licencing regulatory regime.

Lord Teverson: My Lords, we come now to one of the most important groups of amendments. I was interested in the reply given by the noble Lord, Lord Goldsmith, to the fourth Oral Question earlier, which was about what the Government are doing to make this country an environmental leader. He went through a number of Bills which are going through at the moment, including the Agriculture Bill and the Environment Bill, before mentioning the Fisheries Bill. He is right on the first two. Under the Agriculture Bill, there is ELMS, a very radical policy to ensure that farmers who are paid a subsidy produce public goods. A lot of those are going to be focused on the environment. As the noble Viscount, Lord Ridley, said, as part of the Environment Bill we have net gain and nature recovery networks, both of which I applaud. They will add greatly to the environmental growth of the United Kingdom.

What does the Fisheries Bill do to enhance the UK's environment? The withdrawal Act gave us control over the EEZ, but all the Fisheries Bill does is change one set of administrators to another, replacing a lot of objectives in the common fisheries policy with similar ones. There is nothing in this Bill that enhances the marine environment. I cannot think of anything in it, as it stands, that does that.

Baroness Young of Old Scone (Lab): It is a rare event when I chide the noble Lord on his own Front Bench, but the fisheries management plans, if properly carried out, are quite a major step forward.

Lord Teverson: I think quite the contrary, because they do not co-ordinate with other adjacent EEZs. They account only for fisheries in our EEZs, not the rest of the circulation of those stocks. As they stand, they are substantially inferior—they are unable to carry out their mission. The one area where we can change this is remote electronic monitoring. That is one of the most important challenges. The Government believe in remote electronic monitoring in terms of making the discard ban effective and in terms of much better data, as the noble Lord, Lord Krebs, stresses far better in his amendment than I do in mine. I fully endorse what he is trying to do.

3.45 pm

I have the privilege of chairing the House's EU Energy and Environment Sub-Committee. We did two reports on the discard ban, and it was absolutely clear that the only way to ensure best data and the implementing of the discard ban was to use remote electronic monitoring.

Just over a year ago, when the ban was fulfilled after four years of inaction within the European Union and the common fisheries policy, I went to a conference in Copenhagen attended primarily by marine scientists and people very knowledgeable about fisheries management,

[LORD TEVERSON]
rather than politicians or members of the Commission. It became clear that no other nation was really enforcing the discard ban, and that no one wanted to go first on the technology that worked—remote electronic monitoring. Now that, as the Government remind us so often, we are an independent coastal state, we have the ability to take control—we will have even more control from 1 January next year—and we can implement this major form of marine conservation.

My amendment—amendments tabled by others are certainly as good—says that within a limited period, we should apply this provision to the over 10-metre fleets and then consult on applying it to the 2% to 5% of quota and the under 10-metre fleets. Obviously, remote electronic monitoring might not be appropriate for local potting vessels, so consultation is needed. The technology already exists; it is cheap, it works and it will get even better thanks to machine learning. Within probably five years, it will not be necessary to complete log books because fish species can already be identified by quantity as they come on board.

These amendments would enable the Bill to make a real change to the marine environment, so that we as a nation and an independent coastal state can take a lead and make a difference to biodiversity and the sustainability of fish stocks. That is why I believe that this amendment, together with other amendments tabled by Members, are so important and should be pursued.

Lord Krebs (CB): My Lords, it is a great pleasure to follow the noble Lord, Lord Teverson, who has expressed so eloquently many of the points I want to make. I shall try to avoid repeating them; nevertheless, I want to extend the argument. I agree with the noble Lord that if the Government are to make only one change to the Fisheries Bill, this should be it.

The purpose Amendment 124, in my name and those of my noble friend Lady Worthington and the noble Lord, Lord Randall of Uxbridge, is to ensure that all boats fishing in UK waters are fitted with remote electronic monitoring. My amendment focuses on data collection as opposed to the discard ban, but the two are not incompatible and REM would support both. If we introduce it on a phased basis and with consultation, as the noble Lord, Lord Teverson, suggested, it could be achieved in a way that does not disrupt the industry. It will be accepted internationally as the way to collect accurate data on what is being taken from the sea, to inform the scientific analysis of sustainability.

As the Minister said last Wednesday,

> "One of the things that we must all wrestle with is that currently, we do not have adequate scientific information on all stocks and we need a better assessment".

This will help to achieve that. The Minister also said:

> "Where we cannot make such an assessment, we will gather scientific data so that such an assessment is possible".—[*Official Report*, 4/3/20; cols. 652-53.]

Well, here is a method of contributing to that. Without direct on-board monitoring of fish catch, there would be a crucial gap in the scientific data on which to assess sustainable harvests. As the noble Lord, Lord Teverson, has already said, while we were in the CFP it was argued that compelling our boats to deploy REM would put them at a disadvantage compared with fishers from other countries. That in itself tells you something about fishers' behaviour. But now we have taken back control, we can set our own rules to require all boats in UK waters, whether or not they are UK-registered boats, to operate on a level playing field with REM fitted to their boats.

It was also argued that it was unaffordable and not suitable for smaller boats—the under 10-metre fleet. However, a recent report on the San José gillnet fishery in Peru, concluded that

> "small-scale fishing vessel remote electronic monitoring offers potential for affordable at sea monitoring costs in coastal fisheries."

I am told that there are also new technologies—the noble Lord, Lord Teverson, referred to this—such as Shellcatch, which is cheap and easy to use. Is the Minister aware of Shellcatch and similar technologies, the use of which would be a very appropriate step for the Government to take?

The proposed new Clause in Amendment 124 would also require all boats to have GPS, so that their location is known, and it would require the establishment of a framework for monitoring and enforcement to prevent illegal fishing. The accurate collection of data is always important in fisheries management, but even more so as the Government are intent on pursuing the mistaken notion that maximum sustainable yield is the right way to manage sustainable fisheries. At Second Reading, I pointed out the folly of this proposition, but my warning did not seem to elicit a warm response, so I am going to repeat it at greater length now, for the record.

I am delighted that the notion of experts seems to be coming back into fashion, because I will refer to a number of experts in fisheries science. I first quote from two of the leading fisheries scientists of the 20th century. Canada's P.A. Larkin, one of the leading fisheries scientists of his generation, wrote in his 1977 paper *An Epitaph for the Concept of Maximum Sustained Yield*:

> "In many ways, it is a pity that now, just as the concept of MSY has reached a world-wide distribution and is on the verge of world-wide application, it must be abandoned."

J.A. Gulland, who wrote the world-standard FAO manual on fisheries science, said:

> "It is very doubtful if the attainment of MSY from any one stock of fish should be the objective of management except in exceptional circumstances".

I also consulted two colleagues who are fisheries experts: Professor Marc Mangel from the University of California, arguably the top fisheries scientist in the United States, and Professor Sir John Beddington, former Government Chief Scientific Adviser and adviser to the UK Government in international fisheries negotiations. Both confirmed that MSY is not a desirable tool for fisheries management. Professor Mangel said:

> "MSY as a management tool simply won't go away, regardless of evidence that 'managing for MSY' has not been effective",

and

> "MSY is a very dangerous fishery management target unless one knows lots about the stock, about fishing mortality, and has the ability to really control fishing effort (particularly shut it down if needed). MSY is generally not used as a target in North America."

Sir John Beddington is even blunter in his assessment that there is complete consensus among fisheries scientists that to set harvest levels at MSY is not appropriate. I apologise for going on at some length about MSY, but also note that I could have gone on a lot longer. Instead, I commend to those who would like to follow up my points a book entitled *Quantitative Fisheries Stock Assessment*, by Hilborn and Walters.

Sadly, the Government are committed to a misguided fisheries policy. I am not an expert fisheries scientist, but I have looked carefully at the issue and consulted experts, and the consequences of this misguided policy will be felt by UK fishers in the years ahead. I urge the Minister to listen to world fisheries experts and consider whether the Bill needs to be changed accordingly. However, I am not optimistic that the Government are prepared to do that, so, at the very least, they should agree to record properly what is being caught and where, so that when things go wrong—as they certainly will—they can change the policy. This amendment would enable the Government to do just that.

The noble Baroness, Lady McIntosh, asked why the amendment refers to phasing in REM rather than introducing it straight away. I have talked to people involved in this in the Chilean fishery, where REM is required on boats over 15 metres long. I was told—as was the Select Committee chaired by the noble Lord, Lord Teverson—that a culture change has to go with the introduction of REM. Consultation and phasing in would therefore enable the Government to achieve buy-in from the fishing industry, particularly the important, smaller boats under 10 metres long.

That does not undermine the fundamental objective: to gain accurate data to enable us to manage our fisheries, in spite of our aiming for the undesirable target of MSY. We can manage the fisheries with good data, and change the plan when the data demands it.

Baroness Young of Old Scone (Lab): My Lords—

Viscount Hanworth (Lab): My Lords, I apologise to my noble friend for jumping in here, but I would like to go on for a bit to address exactly what the noble Lord, Lord Krebs, has said. I could not concur more strongly with the aspersion that he made against the mantra of fishing at the level described as the maximum sustainable yield. I reiterate that it is absolutely perilous to do so.

The MSY represents an unstable equilibrium. It is akin to the equilibrium of an egg balanced on one of its ends; it is almost impossible to achieve even for an instant. One small disturbance will topple the egg, which is liable to fall on the table and break itself on a hard surface. In the case of fish stocks, that hard surface is total species extinction.

It is by an unfortunate misuse of terminology that the maximum possible harvest has acquired the misleading description of "maximum sustainable yield". The words "maximum" and "sustainable" have specious connotations, which are spurious in this case. For a start, as I have emphasised, this level of harvesting is not sustainable. Moreover, if it could be sustained, it would not correspond to an economic optimum. To achieve this level of harvest requires an uneconomic expenditure of effort.

A vision of fish-stock ecologists is that we could harvest an ample supply of fish from an abundant stock with the least expenditure of effort. This would require the fish stocks to have an opportunity to regenerate themselves by the suspension of excessive harvesting. Such circumstances prevailed in the years immediately following the two world wars, during which fishing in European waters had been largely suspended. This did not last for long. Soon, fishing fleets armed with technological innovations were chasing an ever-diminishing supply of fish through marine deserts of the fleets' own making.

In the face of the depletion of fish stocks, British fishermen have adhered to the myth that they have been robbed of fish by the depredations of foreign fishing fleets. They now urge the Government to give them exclusive access to our supposed national waters and to allow them to substantially increase the size of their harvests. This is a recipe for disaster. I thank my noble friend for allowing me to jump in.

Baroness Young of Old Scone: My Lords, I thank my noble friend and speak to Amendment 112 in the name of the noble Lord, Lord Teverson, to which I put my name—although I may now regret it, since he poked me in the eye. I will also speak to Amendment 124 in the name of the noble Lord, Lord Krebs. I will not repeat the arguments, which both noble Lords made so eloquently and passionately.

What is the Government's stance on remote electronic monitoring with cameras being brought on to all vessels fishing in UK waters? Noble Lords have heard the reasons: we need to capture data on non-target and protected species and on the bycatch and discards regime, as well as better data on fish stocks to inform scientific assessments; there needs to be effective monitoring and enforcement of fisheries measures and legislative requirements; and it would provide very useful information on vessel location. The current fisheries management system is lacking in effective measures for accurately collecting data on what is caught, and lacks robust monitoring and enforcement mechanisms. That seems really strange in the context of the UK priding itself as a global leader in technological progress.

We can hardly stand as a world leader in the white heat of technology if we cannot see a better way of producing that data, that monitoring and that enforcement without the current stone-age solution of human observers going on to vessels and monitoring only 1% of what vessels catch—and of log books, and of surface and aerial patrols. It is really not a 21st-century solution. What improved system do the Government intend to introduce for all these purposes, which are absolutely vital in the context of our running an effective fisheries management policy, if not remote electronic monitoring with cameras on board all vessels fishing in our waters?

4 pm

Baroness Worthington (CB): My Lords, I do not wish to detain the House longer than necessary. People have made the points in relation to these provisions far better than I can. I simply take this opportunity to lend my support to Amendment 124, to which I have

[BARONESS WORTHINGTON]
added my name, and to repeat a quote from the conservationist EO Wilson, which I shared in my contribution at Second Reading. He said that we live in a world where

"we have Palaeolithic brains, medieval institutions and godlike technology."

This is no more true in fisheries than in any other sector. The fisheries industry is in a complete drought as far as data and good evidence are concerned. We have godlike technology but it is currently deployed in finding the very last fish, to have it caught and brought back for consumption. We must level up the playing field. I believe that this proposed new clause, which would require the phasing in of the best and most up-to-date technology, enabling us to manage this collective action problem, should be supported. I agree with noble Lords who have said that this is one thing we could do that would be a game changer, not only in the way we manage our own fisheries but as an exemplar for other fisheries management regimes around the world. I fully support this group of amendments.

Lord Randall of Uxbridge (Con): My Lords, I wish to add briefly to what has been said. This is probably the most important thing that we could do to improve the Bill. I am always happy to listen to the experts. I regard myself not even as a particularly knowledgeable amateur in the field of fisheries, but even I can see the merits of this not just for the data collection and what we are doing on bycatch but, as has been said, to put us in this country at the leading edge of what is being done. As I get a feeling that something else is about to happen, I will sit down, but the feeling from this side of the House, and my point of view, is that Amendment 124 in particular, in the name of the noble Lord, Lord Krebs, is a very worthwhile amendment.

Baroness Jones of Whitchurch (Lab): My Lords, we very much welcome the tabling of these amendments, all of which deal with the introduction of remote electronic monitoring cameras on vessels.

I say first that I listened very carefully to the noble Lord, Lord Krebs. I am sorry that he felt that we did not take his comments seriously when he last made them. I certainly listened carefully to what he had to say when this was last debated. I am quite prepared to admit that maximum sustainable yield is not the best measure, but I have not read the book or the scientific treatise to which he referred. I would say back to him: if not that, then we need to find the right form of words that we can put in the Bill. We all know that we want to deliver sustainability. It does not have to be through maximum sustainable yield or, indeed, through some of the other amendments that we have elsewhere in the Bill, which talk about setting the standard above maximum sustainable yield so that there is some leeway. But if that is not the right measure, we need to find something that can practically be put in a Bill. I am very happy to talk to him and learn a bit more about how we might do that.

We agree with the noble Lord and others who have spoken that full and verifiable documentation of catch is absolutely important and can provide help with enforcement and be an added safety feature on boats. Again, I agree with particularly the noble Lords, Lord Teverson and Lord Krebs, that these amendments could be the vehicle for bringing about a major change in a Bill that in many other respects seems to maintain the status quo. They are, therefore, important amendments and we hope that we can follow them up on Report.

If the UK is to achieve its sustainable fishing goals, it needs advance data collection to allow authorities to be better informed about the true state of our fishing stocks, to ensure that quotas are set in line with the most up-to-date and accurate scientific advice. REM has the great advantage of providing data in real time, and could provide a complete snapshot of fish stocks and their movement around our waters. This could also add to our intelligence about the impact of climate change and warming waters. It could also create new economic opportunities. Historically, two-thirds of UK fishing stock has been fished beyond its sustainable limits, but better scientific advice does not necessarily mean fewer fishing opportunities. The New Economics Foundation has estimated that if catches were properly aligned with the best scientific data, the yield could actually increase to something like 45% higher landings, and an additional gross value of around £150 million across the UK coast. Better data would also allow more opportunities to classify UK-caught fish as sustainable and to qualify for the Marine Conservation Society's approval, which could boost their sales in supermarkets and lead to more sustainability.

We therefore see the introduction of REM as a win-win for the sector. Many larger vessels already have this technology; the challenge for us is to roll this out so that it is a universal requirement for all licensed vessels fishing in our waters. Obviously, we do not want the cost to be a barrier for smaller vessels, but the cost of this equipment is coming down and the Government could help by issuing some standard specifications that would make production more efficient. We also have Amendments 113 and 120 to be debated later, which would allow financial assistance to be given to aid the gathering of scientific data that might help in this regard and could be used to subsidise REM for those on the smaller fleet.

We draw a big distinction between REM and the catch-tracking app that has been introduced by the MMO for boats under 10 metres. The noble Lord, Lord Cameron, raised concerns about this in a previous debate, but I hear the noble Lord, Lord Teverson, say that he thinks it is a good idea. We will have to agree to disagree on this, because for us it seems that this has been gone about in completely the wrong way. It comes with the power to prosecute and demand heavy fines—up to £100,000—for those found to have imputed catch weights into their smartphone that are wrong by a margin of 10% or more. Many of these boats do not have accurate weighing scales on board, however, and many fishers are forced to rely on estimates, which can clearly lead to incorrect data being submitted. It feels as if a whole new layer of bureaucracy and red tape is being introduced by these measures, whereas REM would provide an independent measure of the catch.

I turn to the specifics of the amendments. Those in the name of the noble Baroness, Lady McIntosh, are rather absolutist in their approach, making the installation

of video equipment a condition of licences being granted to both UK and foreign vessels. Amendment 112, in the name of the noble Lord, Lord Teverson, offers an alternative way forward, requiring REM on vessels of more than 10 metres and commissioning a feasibility study for under-10s. Amendment 124, in the name of the noble Lord, Lord Krebs, would allow a phased introduction of REM and might be the best solution if we are to find a consensus about a way forward.

Regardless of the approach, there appears to be a consensus that we should move forward towards mandatory video monitoring as part of the fight against irresponsible behaviour and for better data collection on fish stocks. I hope noble Lords will support these amendments.

Lord Gardiner of Kimble: My Lords, I am most grateful to my noble friend for her Amendments 77A and 80A, and to other noble Lords for their amendments, which, in various ways, seek to place requirements on fisheries licensing authorities to introduce onboard monitoring equipment and cameras on British boats and foreign vessels fishing in UK waters. I reiterate that this Government remain fully committed to reducing bycatch and ending the wasteful discarding of fish. While we recognise the potential of onboard monitoring and cameras as an effective technology to monitor, control and enforce the end of wasteful discarding, Amendment 77A could divert us from taking a more appropriate, risk-based, intelligence-led enforcement approach through vessel monitoring systems and aerial surveillance, for example, as well as ones that may develop in the future, such as onboard observers or drones.

Control and enforcement, and fishing vessel licensing, are both devolved matters. The amendment cuts across devolved competence by trying to prescribe this at a UK level. It is for each devolved Administration to decide how best to control their waters, tailoring their management measures to their specific industry.

Lord Teverson: I just remind the Minister—this comes back to something the noble Baroness, Lady Worthington, said—that last Wednesday, when we last discussed the Bill, the Minister made it clear that the whole area of objectives is a devolved area, yet the Government have put all those objectives in. It seems to me that the Minister is saying, "Do what I say, not what I do." The Government have put in devolved measures, but they are saying to Parliament that we should not. I find that very difficult.

Lord Gardiner of Kimble: I am sorry that the noble Lord finds it difficult. The objectives have been agreed with the devolved Administrations; they have asked us to legislate with the agreement of those objectives which are in Clause 1. However, as the noble Lord knows better than I, all the things I have outlined ad nauseam about the seeking of amendments mean that they cut across the settlement we have with the devolved Administrations. I am very pleased to say that the devolved Administrations have come together, have agreed and have asked us to legislate on these matters in Clause 1 and, indeed, in the schedules that relate to those issues that the devolved Administrations would like us to deal with in the Bill.

I sense that the noble Lord and others may want it all best ways, which would mean that somehow we do not respect the fact that the devolved Administrations have it entirely in their gift to make the arrangements they so wish. For instance, my noble friend Lady McIntosh asked about the discard prevention charging scheme in Clause 29(1). This provides that

"'chargeable person' means—(a) the holder of an English sea fishing licence, or (b) a producer organisation that has at least one member who is the holder of an English sea fishing licence."

We are taking measures where we can, which is where we can make those provisions, but it is entirely up to the devolved Administrations.

If the noble Lord will let me, I shall outline some of the areas where I hope he will be pleased, also, that the devolved Administrations are working on this, but it is their right to do it through their own legislation as well. I hope we will not go around in circles.

Lord Teverson: Have the Scottish Parliament, the Northern Ireland Assembly and the Welsh Assembly approved these measures? The Government are saying, "These are devolved areas" and have put it in a UK-wide Bill. Parliament here is doing exactly the same. We are a UK Chamber, just as the Minister's Government are a UK Government. They have not got permission from those legislatures, so we have to take on that role ourselves. I do not take the Government's point on this at all.

Lord Gardiner of Kimble: I think I will take this offline with the noble Lord, because why are those schedules in the Bill, specifically requested by the devolved Administrations, giving them the powers that we are also seeking through the Bill? The Bill comes with the working, active collaboration—as I have said almost every day in Committee and at Second Reading—of all the devolved Administrations.

Baroness Worthington: My Lords—

Lord Gardiner of Kimble: No, I think I must make progress. My noble friend Lady McIntosh raised this issue but we understand there are no current proposals for a Scottish fisheries Bill. This Bill is designed to give all four Administrations the powers they need in the future, out of the common fisheries policy. This includes the powers to bring forward REM, if appropriate and after trials and consultation.

In England, trials into the use of REM for enforcement, as well as for other purposes, such as stock assessment, are ongoing. This point was referred to by the noble Baronesses, Lady Young of Old Scone and Lady Worthington. An example of this is the North Sea Fully Documented Fishery—FDF—scheme. The Fully Documented Fishery scheme employs REM systems on English-registered fishing vessels operating in the North Sea and is administered by the Marine Management Organisation. During 2019, 11 vessels participated in the scheme, receiving reserve quota as an incentive.

4.15 pm

These trials provide valuable information not only about stocks and fishing methods, but about how to use and manage the large volumes of data gathered. As I have noted on a number of occasions, this method of piloting and evaluating is helpful in ensuring that we understand the impact of management methods. We need to understand exactly what fisheries information we could and should be collecting from REM, and, as highlighted, whether there are other technologies—I think the noble Lord, Lord Teverson, referred to this—that could achieve better results, in our view, before mandating a system that may not be fit for purpose in the future. Therefore, the Government feel it would be prudent to wait until we have the results from these trials before confirming our approach. There are also considerable costs in dealing with and processing the vast amount of information generated through REM. The balance the UK Government are trying to achieve is a proportionate and practical approach to monitoring and enforcement.

Technologies and their utility develop at pace and we do not think it appropriate to use primary legislation to prescribe the use of particular technologies. The Bill already contains powers which will enable the UK Government and future Governments, as well as the devolved Administrations, to make full use of technology in the future.

Clause 36(4)(h) and equivalent provisions—

Lord Krebs: I am sorry to interrupt the Minister, and I thank him for sitting down. The notion of an amendment proposing REM is not specifying a particular technology. As I mentioned in my introduction to Amendment 124, there are rapidly emerging technologies; I gave the example of Shellcatch, which works on your smartphone. I did not see this as prescribing a particular method, but rather saying that what we need is a system to get accurate data on what is being caught—whether it is from the point of view of the discard ban or of getting accurate harvest data to inform fisheries scientists' modelling—without prescribing particular technologies. I just want to make it clear that I did not have a particular gadget in mind, I had the notion of using whatever was the latest technology—which will, as the Minister has said, evolve over time.

Lord Gardiner of Kimble: All I will say to the noble Lord is that some amendments referred to, for instance, cameras or whatever. If he will allow me, I will move into areas that might be more in tune with some of the other points. I agree with noble Lords that this is an area where the range of technologies and abilities are going to be immensely helpful in what we all want to achieve: a vibrant ecosystem, marine conservation, and sustainability.

The UK Government also recognise the effectiveness of introducing a requirement for vessels to operate a vessel monitoring system for fisheries enforcement purposes. This is a satellite-based monitoring system, which at regular intervals provides data to the fisheries authorities on the location, course and speed of a vessel. This provides a picture of fishing activity which can support targeted enforcement action, which is why it is currently a requirement for all UK-registered vessels over 12 metres in length, but this is not prescribed through primary legislation.

Defra ran a public consultation in February 2019 to introduce inshore vessel monitoring systems—IVMS—for all British fishing vessels under 12 metres in length operating in English waters. In its response to the consultation, Defra concluded that IVMS would be introduced and that it would bring forward the required statutory instrument. The requirement will also apply to all English-registered vessels wherever they are fishing. I understand that the devolved Administrations are adopting similar policy proposals; picking up on the point of the noble Lord, Lord Teverson, here the devolved Administrations, entirely within their gift, are adopting similar policy proposals.

The balance the UK Government are trying to achieve is a proportionate and practical approach to monitoring and enforcement that reflects the risk of discarding. This includes factors such as the fishery being exploited, the type of gear being used and the size of the vessel. Further, in respect of Amendment 80A as it relates to foreign vessels, we are also clear that we wish to ensure a level playing field between UK-registered vessels and any foreign-registered vessels which we allow to fish in our waters. In principle, ensuring that the same standards apply to foreign vessels as to our own is a sound concept.

We wish to conclude the trials and assess them. We recognise that enhanced monitoring has huge potential benefits and I am genuinely grateful to all noble Lords who have raised this matter. It is extremely serious and we need to undertake more work to come forward with further proposals on it.

On the points raised by the noble Baroness, Lady Jones, on the catch certificate app, obviously the safety of fishers is paramount. While it is important that catch records be submitted as soon as practically possible, this should take place only once the vessel and its crew are in a safe place. Catch records ought to be submitted in port when it is safe to do so, not at sea. We know that most fishers operate in good faith and make efforts to comply with catch recording guidance, but I thought it helpful to say that we want to be pragmatic about these points and have an overriding objective of keeping people safe.

I turn to the requirement in Amendment 124 to develop a framework to tackle illegal, unreported and unregulated—IUU—fishing. The Government agree that we should seek to eliminate IUU fishing and remain committed to co-operating globally to this end. The EU's IUU regulation will be incorporated into UK law as retained EU law. The UK aims to be a global leader in the fight against IUU fishing.

I was interested in the exchange between the noble Baroness, Lady Young of Old Scone, and the noble Lord, Lord Teverson, on the fisheries management plans. I fully intend for us to have this meeting. I will ask scientists to come to it, because obviously the fisheries management plan was intended to be a new insertion into this second Bill precisely to ensure that every stock is managed and fished sustainably. I would like the opportunity, before we get too jaundiced about it, to work together with noble Lords to see, with the scientists, what we can make of it and how

best to take it forward, because it is an opportunity to make sure that the management plans of all stocks are in good order.

The noble Lord, Lord Krebs, raised MSY. I am very happy to talk to him about it. MSY is—I note the number of eminent people he referred to—internationally accepted. However, if I recall right, we recognised at Second Reading that it is just one tool, which is why we have included a range of sustainability objectives in the Bill. As the noble Lord will know well, ICES provides advice about MSY. I was interested in what the noble Baroness, Lady Jones of Whitchurch, said on this. MSY is internationally accepted. I am very happy to discuss MSY with the noble Lord; it is a term used both in this country and internationally, so it would be a personal endeavour of mine to understand what other points he wishes to make.

In this context, I hope that I have explained the work already in hand on REM. We recognise that this is an extremely important area both now and for the future. We are bringing forward these proposals, but for the sake of this debate I hope my noble friend feels able to withdraw her amendment.

Baroness McIntosh of Pickering: My Lords, I am grateful for this debate. I am stung by the words of the noble Baroness, Lady Jones of Whitchurch, who said I was being absolutist—which is probably very fair—but we have had a very good discussion here.

We can trade all the experts we like. I was particularly taken by Pat Birnie, who was a one-time adviser to the then Government, and she taught me international law of the sea. I wish I retained all that she told me, for the purposes of this debate. On maximum sustainable yield, that is a wider debate that we have to have because it is my understanding, confirmed by the Minister, that we have international obligations, such as the Johannesburg Declaration on Sustainable Development which we agreed in 2002. We have to look at the wider implications of these international obligations, to which we have subscribed, in the context of moving away from the common fisheries policy to the new regime set out under the Bill.

I was delighted that my noble friend explained the results of the consultation as regards the under-10s, because that is a very particular category. I am now much more aware of why we need a lead-in period, if we are to introduce these for over-10s. This is, I am sure, something we can return to in the separate debate on the fisheries management plans and at the next stage of the Bill. In these circumstances, I thank those who contributed, I thank my noble friend for his reply, and I beg leave to withdraw the amendment.

Amendment 77A withdrawn.

Amendments 78 and 79 not moved.

Clause 15 agreed.

Clause 16 agreed.

Clause 17: Power to grant licences in respect of foreign fishing boats

Amendments 80 and 80A not moved.

House resumed. Committee to begin again not before 4.36 pm.

Coronavirus
Statement

4.27 pm

Lord Bethell (Con): My Lords, with the leave of the House, I shall repeat an Answer to an Urgent Question asked in the other place earlier today. The Answer is as follows.

"Madam Deputy Speaker, the coronavirus outbreak continues to advance around the world. The number of cases in China and South Korea keeps rising, but at a slowing rate. However, the outbreak in Iran, Italy, Switzerland and now France and Germany is growing. In Italy alone, we have seen 1,492 more cases overnight and 102 more deaths. Here in the UK, as of this morning, there were 319 confirmed cases. Very sadly, this now includes four confirmed deaths. I entirely understand why people are worried and concerned, and we send our condolences to the families.

The UK response is guided by our four-point action plan. We continue to work to contain this virus, but we are also taking action to delay its impact, to fund research and to mitigate its consequences. Throughout, our approach is guided by the science. That is the bedrock on which we base all our decisions. Our plan sets out what we are prepared to do, and we will make the right choices of which action to pursue at the right moment.

The scientific advice is clear: acting too early creates its own risks, so we will do what is right to keep people safe. Guided by the science, we will act at the right time and we will be clear and open about our actions and the reasons for them. These are the principles that underpin the very best response to an epidemic like this.

Turning to research, I can report that we have made available a further £46 million to find a vaccine and develop a more rapid diagnostic test. We will continue to support the international effort. Here at home, the NHS is well prepared with record numbers of staff, nurses and doctors. I want to thank all those involved for their work so far.

The number of calls to the NHS 111 service has increased and we have recruited an extra 700 people to support that effort. The 111 online service is now dealing with more inquiries than voice calls. To date, Public Health England has tested nearly 25,000 people and the time taken to test is being reduced as we bring in a new system for faster results.

Responding to coronavirus will take a national effort and everyone must play their part. Of course, that means the Government, but it also means everyone washing their hands more often and following public health advice. There is much more that we can all do both through volunteering and through support for those who are most vulnerable. We will shortly bring forward legislative options to help people and services to tackle this outbreak. The Bill will be temporary and proportionate, with measures that last only as long as is necessary, in line with clinical advice.

I can also report that over the weekend we initiated action to assist the 120 passengers on the "Grand Princess" cruise ship off the coast of California in coming home.

[LORD BETHELL]

We will stop at nothing to get this response right and I commend the Statement to the House.”

4.31 pm

Baroness Thornton (Lab): My Lords, I thank the Minister for repeating the Statement. I shall ask three questions as quickly as I can so that as many people as possible can get in to speak.

My first question concerns vulnerable people in residential homes and the learning disabled who may be being supported, either by charities or at home by their parents. We need to include these people in the planning. I do not expect the Minister to respond to the point, but I will put it on the table. There are lots of people who have not been mentioned but need to be taken into account.

The 111 service is clearly under incredible pressure, given that it apparently took 120,000 calls in the first week of March. I want to ask the noble Lord about the training that 111 staff are receiving. If 700 new people have been taken on, how is their training being accelerated and is it being properly funded?

Finally, when the Select Committee saw Professor Whitty last week, he explained that half of all coronavirus cases in the UK are most likely to occur in just a three-week period. Based on recent trends, have the Government estimated when that peak might begin, and is the noble Lord sure that hospitals have enough bed spaces so that they are able to cope?

Lord Bethell: My Lords, the noble Baroness has expressed concerns about those in residential homes and people with learning difficulties. The needs of all the most vulnerable in society are paramount. There is no doubt that intense pressure will be put on social services, social care and clinical care. We are doing all we can to ensure that support is in place, which will include the mobilisation of civil society, charities and volunteers to take up some of the pressure being put on those services.

On training provision, modern call centres have very flexible working arrangements whereby staff are brought on and off contracts. Those who have already received 111 training are being brought back on to the front line. The funds for that are properly in place.

On the timing of the peak, it is impossible to say with certainty when that will be, but the CMO is crystal clear: we will do everything we can to spread it out over the summer and we will keep this House and the public up to date.

Baroness Brinton (LD): My Lords, I also thank the Minister for answering the Urgent Question. Going back to my point about advice for vulnerable people, it is good to hear that advice is finally planned, but vulnerable people need that advice now. I have been saying this in your Lordships’ House for about three weeks. Will the Minister please let us know when we are going to get it?

My second question follows up on the previous one about 111. In addition to the worrying report from the woman on the “Today” programme this morning who kept not getting return calls over a three-day period, despite a high temperature, cough and many other symptoms, we also picked up on people ringing 111 with clear symptoms being told that they cannot be tested because they cannot name an individual who has been diagnosed with coronavirus. I repeat the same question: are the new call handlers being trained effectively?

Lord Bethell: The noble Baroness is absolutely right about the importance of guidance and I reassure her that an enormous amount of work is being done to draft clear guidance for employers, volunteer groups and all parts of society, which will include case studies, FAQs and detailed recommendations. That work is being guided by the CMO and senior officials at PHE.

As for 111, we look very closely at the metrics for the return of calls. Overall, the headline figures suggest that the 111 service is bearing up incredibly well under intense pressure, but I do not deny that there must be people who have had bad experiences. These pressures sometimes lead to poor results and we will keep a very careful eye on that.

Lord Kakkar (CB): My Lords, I declare my registered interests. Clearly, the decision to move from the phase of containment to that of delay is essential to sustaining the ability of the health delivery system to deal with this problem.

What objective criteria will be used to determine how that decision is taken? How are the behaviour and natural history of this disease elsewhere in the world being used to inform when we should move from containment to delay?

Lord Bethell: The noble Lord asks an important question. The truth is that it is more of an art than a science. Efforts were made to look at clear metrics for triggering this result, but it is a complex situation and our understanding continues to develop. It is ultimately up to the judgment of the CMO and the confidence of the Secretary of State to make that call.

Lord Lamont of Lerwick (Con): My Lords, how many intensive care facilities are at upwards of 90% of utilisation and what can be done to increase the amount of facilities for people who need respiratory aid? What additional intensive care units could be created and what other facilities could be made available?

Lord Bethell: Enormous effort is being put into increasing the number of intensive care facilities, particularly in the area of respiratory support. Different types of respiratory support unit are being put in place and the number is increasing on a multiple rather than an arithmetic scale.

It is not just the kit that is an issue but the people needed to operate it, because these units and the respiratory machinery are extremely technical. We are putting enormous effort into ensuring that the right people are in place to work the machines.

Lord Lea of Crondall (Non-Afl): My Lords, can the Minister shed further light on which countries research vaccines and how this can be agreed internationally? Are there difficulties with the process by which this

division of labour is carried out? There could be a lot of duplication and not sufficient single-minded co-ordination.

Lord Bethell: The noble Lord asks an important question about the critical element of the research phase of our plan, and we have announced £46 million of additional funding for this area. Britain's scientists are providing a leading contribution to the international effort. That effort is being conducted in an extremely transparent, open source fashion, with important details on genomic material being shared widely and openly. My understanding is that it is being done in a spirit of public collaboration.

Lord Patel (CB): My Lords, does the Minister agree that what we have learned so far from the outbreaks in other countries, and even the small number of deaths in this country, is that the vulnerable groups are people aged over 65—more men than women—and those with underlying conditions? What is the Government's strategy to protect the elderly and reduce their risk of getting this disease?

Lord Bethell: The noble Lord is entirely right. The CMO's effort is now to identify those groups who require the greatest priority of assistance. We are not sure, and the CMO has not declared, at exactly what age that should start. He is considering publication of the exact details of the priorities in future. It seems that it is not necessarily gender-specific but that the state of your immune system is the key driver. In some areas, of course, men have very bad habits when it comes to things such as drinking and smoking. The CMO has made it clear that if you want to do one thing to avoid getting the virus, it is giving up smoking.

Baroness Finlay of Llandaff (CB): Will the Government give specific guidance on deferring or cancelling gatherings of clinicians and other healthcare professionals at conferences and examinations required for career progression, and specifically ask the regulators to allow alternative routes of registration and validation?

Lord Bethell: The noble Baroness asks an important question about trying to keep our clinical staff healthy and fit. That is one of the biggest priorities in an epidemic such as this, because the pressures on the NHS are made worse if clinical staff are themselves poorly. At this stage the CMO has not decided that the cancellation of conferences or major events is proportionate, but that remains one of the options laid out in our CV plan. If necessary, provisions for videoconferencing and alternative ways of attending training will be considered and put in place.

Fisheries Bill [HL]

Committee (3rd Day) (Continued)

4.42 pm

Amendment 81

Moved by ***Lord Teverson***

81: Clause 17, page 13, line 25, at end insert—

"( ) A licence granted under this section must require that foreign fishing vessels fishing in British waters comply with at least the same minimum technical regulations as British vessels for that same fishery."

Member's explanatory statement

This amendment ensures that foreign vessels have to comply with the same technical rules as British vessels.

Lord Teverson (LD): My Lords, I also support Amendment 82 in the name of the noble Lord, Lord Grantchester. Before I start, I will go back to the previous group of amendments and say how much I welcome the Minister's statement on IUU fishing. This is absolutely fundamental to the wider global issues around sustainability of fish stocks, which are under great pressure. Unfortunately, a great deal of illegal fishing still goes on. The UK's work in this area in the past has been really important. In many ways we have led the EU; let us remember the common fisheries policy. I am glad to hear reaffirmation of that today.

I move on to what I hope is a very easy amendment. It seems important that any foreign vessels allowed to fish in UK waters or our economic zone should have to comply at least with the same technical regulations as our own vessels. I have put that in as an amendment; I assume the Minister will stand up and say, "It's already happening" or "We're going to make sure it is". I certainly hope that is the case with the excellent amendment in the name of the noble Lord, Lord Grantchester, about employment practices and safety standards. Obviously, we are all very aware of the safety issues on fishing vessels—on all vessels, indeed, but particularly in fishing, which is one of the most dangerous activities. I look for confirmation on both of those. I beg to move.

Lord Grantchester (Lab): My Lords, I am grateful to the noble Lord, Lord Teverson, for tabling Amendment 81, and rise to speak to my Amendment 82, which is on the same matter. I hope that is helpful.

The noble Lord's amendment requires foreign fishing vessels in British waters to comply with the same standards as British vessels. My amendment is very similar, making it clear that as the UK will be granting licences, the licensing authorities in the UK must make sure that all fishing boats, including foreign vessels, comply to UK standards on safety and employment practices.

Equal standards, the level playing field and equivalence have bedevilled all regulations between the UK, the EU and soon others, through all trade negotiations, not least with the USA. In fisheries, as in agriculture, there is clear interest that fair and equal competitive standards must be adhered to across the board. The Committee has recognised the tough and dangerous working conditions in which all UK fishers work; the whole of the UK would want these to be as safe as possible. It is equally important that employment standards and regulations in the UK must not be undermined by any lesser standards that may pertain overseas.

In conversations, officials in the Minister's department have indicated that the technical side of this issue is dealt with in the Bill. Could the Minister specify its location? I am not sure whether employment law and practices are dealt with specifically, although the Minister may reply they are included in licence conditions.

[LORD GRANTCHESTER]
These amendments make sure they are, and that compliance is mandatory for both UK and foreign boats.

Election promises on standards must be upheld in legislation, not merely stating that we are leaving the EU on 31 January and that our future relationship must be decided by 31 December. These standards also need to be put in specific legislation.

Lord Cameron of Dillington (CB): My Lords, I add my support for Amendment 81 on the equitable treatment of British and foreign-licensed boats. I would have added my support to the previous group of amendments on remote electronic monitoring, but the mood of the House was not for another person to stand up and agree. But I will do so now.

We will be in close negotiations with the European Union, and—we have been looking into this on our Select Committee—equitable treatment of our boats and foreign boats will be an important part of those negotiations. The point that this might involve the enforced application of REM can be made to the European Union. As I said in the debate on discards a week or so ago, the prevention of discards is European Union law. It is its policy; the EU passed it, not the British. So it cannot, in all equity, claim that having cameras is an ask too far, because it is its law we are trying to enforce.

Baroness Bloomfield of Hinton Waldrist (Con): I am grateful to noble Lords for this short debate, particularly to the noble Lord, Lord Teverson. He is right to emphasise the need for proper safety regulations for all vessels fishing in our waters.

Amendment 81 seeks to ensure that all vessels, regardless of nationality, follow the same technical conservation measures when operating in UK waters. Schedule 2 to the Bill extends domestic legislation containing technical measures, such as restrictions on the size of velvet crab that can be caught, to foreign vessels. Under the common fisheries policy, this legislation has been able to apply only to British boats, so this change provides for the first time the level playing field between British and foreign vessels sought by the noble Lord, Lord Grantchester. Further, Schedule 3 provides the powers to set conditions on licences and to extend those conditions so that they also apply to foreign vessels. I make it clear that our intent is to ensure that equitable approaches for licence conditions apply to both domestic and foreign boats in the future.

This amendment seeks to mandate additional licensing criteria for foreign vessels. We regard this as unnecessary, as measures to achieve equitable treatment are already provided for by the Bill.

Finally, the amendment does not take into account the devolved competence of the fisheries administrations to set their own licence conditions in their waters, where they do not conflict with delivering what has been agreed internationally.

Amendment 82 seeks to address two very serious issues. As my noble friend the Minister noted in his opening speech at Second Reading, and as we have discussed previously in Committee, fishing remains one of the most dangerous occupations. I regret that too many deaths and injuries still occur in our waters. However, safety at sea—for all vessels, not just fishing boats—falls within the remit of the Maritime and Coastguard Agency—the MCA—which has powers to enforce safety regulation.

Under the Fishing Vessel (Codes of Practice) Regulations 2017, a non-UK fishing vessel must not enter UK waters unless,

"if its registered length is 24 metres or over, it has been certified by its flag State as complying with the requirements of the Torremolinos Protocol"

on the safety of fishing vessels,

"or … if its registered length is less than 24 metres, it has been certified by its flag State as complying with the requirements of that State applying to vessels of that length".

If a foreign vessel does not comply with these requirements in the future, it will not be granted a licence to fish in UK waters.

The MCA is also working to implement the International Labour Organization's work in fishing convention into UK law. Its aims are for all fishermen to have decent living and working conditions, regardless of employment status. It entitles all fishermen to written terms and conditions of employment, decent accommodation and food, medical care, regulated working time, regular payment, repatriation, social protection, and health and safety onboard. It also provides minimum standards relating to medical fitness.

Lastly, I note that the noble Lord, Lord Cameron of Dillington, mentioned discards and European law. This will be covered at a later stage.

With this explanation, I hope that the noble Lord, Lord Teverson, will feel able to withdraw his amendment.

Lord Teverson: I am very convinced by the Minister. However, coming back to the fact that this is devolved, I must admit that the thought of Scottish waters insisting on it and English waters not doing so rather boggles the mind. But I am very happy to withdraw the amendment, given those assurances.

Amendment 81 withdrawn.

Amendment 82 not moved.

Clause 17 agreed.

Amendment 83

Moved by ***Baroness Jones of Whitchurch***

83: After Clause 17, insert the following new Clause—

"Enforcement of licences

(1) A Minister of the Crown must, before the end of the period of 6 months beginning with the day on which this Act is passed, lay before Parliament a statement containing the policy of Her Majesty's Government in relation to the—

(a) routine patrolling of waters within British fishery limits, and

(b) enforcement of the requirements under sections 14(1) and 16(1).

(2) The statement under subsection (1) must include a declaration of whether, in the Minister's opinion, the United Kingdom has sufficient resources to undertake the actions mentioned in subsection (1)(a) and (b).

(3) If, in the Minister's opinion, the United Kingdom does not have sufficient resources to undertake the actions mentioned in subsection (1)(a) and (b), the Minister must, within 30 days of making the statement, publish a strategy for acquiring such resources.

(4) A strategy published under subsection (3) must be laid before each House of Parliament.

(5) For the purpose of this section "sufficient resources" includes—

(a) an appropriate number of vessels,

(b) an appropriate number of personnel, and

(c) any other resource that a Minister of the Crown deems appropriate."

Member's explanatory statement

This amendment requires a Minister of the Crown to outline the Government's policy in relation to the patrolling of British waters and enforcement of fisheries licences, and, in the event of the UK not having sufficient resources, requires publication of a strategy for them.

Baroness Jones of Whitchurch (Lab): My Lords, my proposed new clause seeks to clarify whether we have sufficient resources to patrol British waters and enforce fisheries licences, an issue we did begin to touch on in previous debates.

Apart from the odd skirmish, we have had a settled agreement on the distribution of fishing rights in UK waters and shared waters in recent times. However, leaving the EU and the common fisheries policy will potentially change all that. We do not know the outcome of the trade negotiations with particular regard to fisheries, but there are bound to be winners and losers—and there may well be bad losers.

We very much hope that the settlement works to everyone's advantage, but that seems unlikely. The truth is that most commentators expect fisheries to be a highly emotive part of the UK-EU negotiations. I am sure that the noble Lord will seek to reassure us otherwise, but it seems unlikely that UK fishers will see a return to the unconstrained access to UK waters that they were promised in the referendum and beyond. The potential for bad feeling and a sense of betrayal could prevail from a number of quarters.

This brings us on to the resources needed to manage these disputes, which is the issue covered by our amendment. The Minister's helpful letter following Second Reading described how offshore fisheries enforcement in English waters will be primarily delivered by two vessels operated by the MMO. In addition, the Royal Navy is increasing its offshore patrol vessels from four to eight in 2020, but only two of these would regularly be available to support fisheries enforcement. This does not seem sufficient for what could be choppy waters, and it is not clear whether Ministers consider these numbers sufficient or how they intend to deploy this capacity once the UK is an independent coastal state.

Therefore, we are seeking to require a statement setting out whether the UK has sufficient resources to patrol our waters and to enforce the licences. This includes whether we have sufficient vessels and personnel. It should also clarify what training Royal Navy personnel will be given in this specialist, potentially somewhat diplomatic, enforcement requirement. For example, what orders will enforcement boats be given when interacting with those they suspect of breaching licensing arrangements?

Given the PM's stubbornness on the transition period, everyone is having to work on an accelerated timeline. We need to be confident that the UK is prepared to take up these opportunities to bring the matter to Parliament. Unless the Minister can offer a guarantee of a debate in the weeks and months to come, it seems we will get clarity only by introducing a statutory reporting requirement as set out in this amendment. I beg to move.

Lord Teverson: My Lords, I thank the noble Baroness, Lady Jones, for an excellent and important amendment. There is no point doing any of this stuff if we cannot enforce it, and enforcement on the high seas is one of the most difficult tasks that there is in terms of enforcement of laws and regulations, as we well know.

I absolutely take the noble Baroness's point—I hope the Minister does as well, although I am sure he does—about the sensitivity of this. If negotiations are difficult, potentially we will have quite angry people on the seas from 1 January. It is important that any incident can be dealt with properly and diplomatically. We saw in the Baie de Seine, back in the latter part of 2018, how a dispute on the high seas quickly becomes dangerous and difficult to control—sense came when the two Governments came together afterwards to sort it out. There are all sorts of tensions there.

The question I particularly want to ask the Minister is about something that came up when the Secretary of State was in front of the EU Energy and Environment Sub-Committee last week. One of the officials there with the Secretary of State said that a lot of the money going into enforcement was part of the Brexit process and therefore temporary. I would be interested to hear from the Minister what sort of budget has been put forward for additional enforcement over the time of Brexit and a potential Australian-style deal at the end of this year. What is the ongoing enforcement funding likely to be? There is too much temptation for the Treasury to be generous—realistic, shall we say—with enforcement funding over the Brexit transition period but thereafter ask Defra for huge economies in enforcement as it has done in the past. Assurances from the Minister, or otherwise, would be very useful at this stage.

5 pm

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I thank the noble Baroness for her amendment. The UK Government's robust fisheries enforcement system is delivered in England by a number of agencies working in partnership, in particular the Marine Management Organisation, or MMO, the inshore fisheries and conservation authorities, or IFCAs, and the Royal Navy. Fisheries enforcement is a devolved matter, with each Administration ensuring that appropriate control and enforcement matters are in place in its waters.

As I am sure noble Lords are aware, the UK has recently taken significant steps and we have been working closely with the devolved Administrations to

[LORD GARDINER OF KIMBLE]
ensure that the UK can enforce its fishing rights. As the noble Baroness said, the Royal Navy is increasing its force of offshore patrol vessels, or OPVs, from four to eight ships over the next year. Currently, four are operating at sea, conducting enforcement and overseas tasking, with four in build or regeneration. Of these, at least—I emphasise the "at least" to the noble Baroness—two Royal Navy OPVs are always provided to support MMO activity in English waters.

The MMO's core provision includes two offshore patrol vessels and up to two aircraft. IFCAs provide an additional layer of inshore surface surveillance capability, which includes 22 vessels. Administrations share assets when appropriate. This may be as a joint working, MoU or chartering arrangement. For example, the MMO and the Welsh Government have agreed an MoU to undertake joint working and patrolling in each other's waters.

Marine Scotland's aircraft and patrol vessels have operated in other Administration's waters, and it is receptive to requests for its assets to assist when possible. Marine Scotland operates a fleet of three marine protection ships and two surveillance aircraft. In Northern Ireland, DAERA has one fisheries protection vessel, accompanied by two fast-response rigid inflatable boats, or RIBs, dedicated to inspection work. Wales operates three vessels: a 24-metre monohull, a 19-metre catamaran and a 13-metre fast response cabin RIB.

In respect of England, via the MMO we have increased the number of front-line warranted officers by 50% for 2019-20, which is 35 people, putting in place a framework to increase aerial surveillance capacity by a maximum of two surveillance aircraft as risk and intelligence demands and chartering two additional commercial vessels to enable an increase in routine sea-based inspections to supplement provision from the Royal Navy Fishery Protection Squadron. I say to the noble Baronesses that it is one of the oldest front-line squadrons in the Royal Navy. It goes back many centuries and has a long history of dealing with these matters. There have been all sorts of instances in the past and, if this were to occur again, I am confident that our service men and women would have the ability and knowledge to deal with these matters proportionately and sensibly.

Additionally, it is also important, since we had an earlier discussion about this, that surface patrol vessels are complemented by satellite-based surveillance technologies such as vessel monitoring systems, or VMS, and electronic reporting systems, or ERS, monitored by the MMO from Newcastle. The noble Lord, Lord Teverson, will know about this, but when I and the noble Lord, Lord West of Spithead, went to the MMO, this was a feature of every vessel we were taken through. I am sure that the MMO would be very pleased for noble Lords to look at this interesting capability. I would be very happy to facilitate that.

These provisions are in line with the MMO's latest assessment, based on a risk-based, intelligence-led control and enforcement strategy. This is regularly monitored and reviewed, which is entirely appropriate to ensure that in all circumstances we are receiving that assessment.

The amendment's proposed requirement for a Minister to declare the UK Government's fisheries enforcement resources sufficient duplicates our existing policy and procedure. In addition, noble Lords will also be aware of the Joint Maritime Operations Coordination Centre, or JMOCC, which was officially approved by the Home Secretary in October 2017. The JMOCC has enhanced the co-ordination of cross-agency patrol capabilities, increased information and resource sharing, promoted prioritisation across government assets and enhanced aerial surveillance operations to derive maximum surveillance benefit. In place in its operational headquarters, the JMOCC has highly trained and professionally qualified representatives from key stakeholders, including Border Force, the Ministry of Defence, the Department for Transport, the National Maritime Information Centre and the police, as well as the MMO and Marine Scotland. This ensures that available resources can be fully and appropriately utilised across the United Kingdom, thereby maximising our maritime capability, including fisheries protection.

As I have highlighted, the control and enforcement is a devolved matter, and it will continue to be for each devolved Administration to decide how best to control its waters and what new arrangements may be needed in future. In that context, I should say that Defra, the Scottish Government, the Welsh Government and the Northern Ireland Executive will continue to work together to share information and ensure a co-ordinated approach to monitoring, compliance and enforcement across UK waters. That will be undertaken.

I have perhaps gone into more detail on some of the abilities for all parts of the United Kingdom to contribute to this process, so I hope noble Lords will forgive me for that detail. I hope with that explanation—

Baroness Jones of Whitchurch: There were other questions posed by the noble Lord, Lord Teverson, to which I hope the Minister will respond. Going back to the Navy, the Minister talked about the MMO having a risk-based intelligence review that justified the number of vessels it was able to provide. However, it seems to me—I am sure my noble friend Lord West would reiterate this point—that there is a sense that the Navy is overstretched, and that the two or four vessels to which the Minister referred as being available do not seem a lot in the short term. I am sure that eventually things will settle down again, but in the next 18 months I can see that small skirmishes could break out because of misunderstandings in all sorts of places. People could misunderstand the new rules, for example. It only needs something to happen in the English Channel and the Irish Sea at the same time for resources to be stretched. Does the Minister think that there are sufficient resources? That is the real question, not what everyone else thinks. Does the Minister, who is ultimately responsible, feel that this is sufficient resource?

Lord Gardiner of Kimble: I absolutely understand the point made by the noble Baroness. My assessment is that this is at the right level, and the fact is that the Royal Navy is growing or doubling its vessels. That is why I emphasised the phrase "at least". There is an agreement between the MMO and the Royal Navy

about those two things. I emphasised "at least"; all our efforts will be to ensure that there are no difficulties at sea, which would be in no one's interests. That is precisely why I explained about the doubling of the number of front-line warranted officers, and why I outlined increasing aerial surveillance and the work of surveillance technologies. All this is upscaling, precisely to accommodate the point made by the noble Baroness, if we are in potentially uncertain times, rather than where we were before. I described the increase in almost every feature of what is available to us at sea, including technology and personnel, to accommodate the possibilities that the noble Baroness outlined. I am basing my judgment on a much more rigorous assessment than me just saying yes to the noble Baroness. It is also why JMOCC is so important, because so much of this is intertwined with those organisations involved in JMOCC. It is terribly important that the MMO and Marine Scotland are part of that because there may be a time when fisheries protection becomes an issue and all this resource across the United Kingdom and the Royal Navy may need to be deployed.

I will say that the answer is yes, but it is not a glib yes. It is because the people who understand these areas have assessed and advised us that we should increase what we have done. That is why I am confident that we are where we should be. However, I emphasise to the noble Lord, Lord Teverson, that it is really important that all these matters are kept under review. That is why I deliberately emphasised that, on this matter, there is strong working with all four fisheries administrations in the United Kingdom interest.

Lord Teverson: How long will the temporary financing of extra resources last and when it will end? At that point, there will be a question mark. Will we go back to where we were when, effectively, for many years there was no real access to the Royal Navy at all because it was off doing other things? This is a really important point to clarify.

Lord Gardiner of Kimble: I apologise to the noble Lord and the noble Baroness that I have no further detail other than to say that I am confident. We have upscaled in the way that we have—constructing vessels and all we are doing is not like turning on and off a tap—and are increasing the number of Royal Navy vessels for this sort of demand. If we were to need additional support because something happened, I am confident that all the resources would be at our disposal.

I do not think we need to discuss a theoretical point, but if in 10, five or three years' time all is well and we have good negotiations and agreements, the most important thing—the responsibility that all Governments should have—is the safety of UK interests and the safety of people at sea. Obviously, we will need to have all that I have outlined with the assessment that the MMO is constantly reviewing. I imagine that, down the line, there may be an assessment that there is not much of an issue and we are working towards having that capability, but that would be for the future. For now and for the foreseeable future, however, it is precisely why the Navy is upscaling the number of vessels and why we have done what we have by increasing the number on the front line.

I have been handed a note that says that all matters for future enforcement funding will be the subject of the spending review, but we will put in a robust bid, as befits our status as an independent coastal state. I hope I have not offended the Treasury by saying that.

I apologise. I should have addressed that, but in the meantime, I hope I have outlined to the noble Baroness that this is obviously an area of continuing interest and continuing responsibility.

Lord Teverson: Perhaps the Minister can write to me with the figures for the current enforcement budget for England and the amount of Brexit special funding from the Treasury. They are discrete amounts and I would be interested to know what they are.

Lord Gardiner of Kimble: Yes, I will endeavour to ensure that a letter is directed to the noble Lord and the noble Baroness and put in the Library.

5.15 pm

Baroness Jones of Whitchurch: I thank the Minister for that reply. We wish him well in his application in the spending review. I suppose that is what we should say first.

We here today really do not have an understanding of the scale of the problem. We are talking in a vacuum. Once the trade negotiations are complete, we will have a much better idea. We will really know who the winners and losers are—who is angry and who is not. At that point, I would like to think that the Government will have the flexibility to draw on other resources that may not be currently available.

I may be anticipating a problem that will not exist or will be 10 times worse than I have already described. It seems wrong when we have a Bill such as this to just say, "Let's wait and see", but I do not think we have much of an option at this stage. I would like to think that we have the flexibility to look at this issue of resources again at some point, even if not through the structure of the Bill. In the meantime, I beg leave to withdraw.

Amendment 83 withdrawn.

Amendment 84 not moved.

Clause 18 agreed.

Schedule 3: Sea fishing licences: further provision

Amendments 85 to 87 not moved.

Schedule 3 agreed.

Clause 19: Penalties for offences

Amendment 88

Moved by ***Lord Grantchester***

88: Clause 19, page 13, line 35, at end insert "not exceeding £50,000"

Member's explanatory statement

This amendment replicates the level of fine in Scotland and Northern Ireland for England and Wales, in order to probe the maximum amount under Clause 19(1)(a).

Lord Grantchester: My Lords, I shall move Amendment 88 and speak to Amendment 89. These are the subject of this group. Clause 19 provides for penalties to be imposed for offences under various other clauses. I am using these amendments to probe the sentencing regime in relation to offences and the relevant merits and parity between the UK Administrations.

Clause 19(1) deals with having a licence and licence conditions, as well as the part of Schedule 3 concerning complying with information. It specifies that, on conviction, the penalty will be a fine in England and Wales. The amount is not specified. In Scotland and Northern Ireland, information penalties can be up to the statutory maximum but do not exceed £50,000 for any other cases.

It may be that this is a little confusing—merely a fine being given in England and Wales and that fine being a maximum of £50,000 or, in Scotland or Northern Ireland, the statutory maximum for information breaches. Can the Minister explain these discrepancies across the Administrations? It may be that each have their own powers that they wish to defend certain aspects of, or it may signify that there are certain fundamental differences in approaches between the Administrations in their penalty schedules. Can the Minister also explain why fundamental licence breaches receive only a fine rather than any other sanction? I beg to move.

Baroness Bloomfield of Hinton Waldrist: My Lords, this amendment had me a little puzzled. I wondered whether the noble Lord had, like me, been a magistrate prior to 2012, when the law changed in England. That is at the root of the differences.

Amendment 88 would bring fines in England and Wales for offences committed under Clauses 12(3), 14(6) or 16(6) or paragraphs 1(4), 3(2) or 3(3) of Schedule 3 in line with those in Scotland and Northern Ireland. It would similarly limit fines on conviction on indictment to the same amount through Amendment 89.

In England and Wales, the fines for offences align with the provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Section 85 of that Act removed the statutory maximum fine on summary conviction and replaced it with a fine of any amount. This gave magistrates, who impose the vast majority of fines, greater flexibility to identify the most effective and proportionate punishment appropriate to the offences and offenders before them. These are not custodial offences in other areas of fisheries legislation, so this is the only penalty that can be imposed. The approach that we have taken on penalties in the Fisheries Bill is consistent with Section 85 of the 2012 Act and other existing fisheries legislation, and ensures a consistent and coherent sentencing framework in England and Wales. The reason for the difference in Northern Ireland and Scotland is that they are separate jurisdictions and the changes made by the 2012 Act applied only to England and Wales.

The reason no limit is placed on fines for conviction on indictment in the Bill, as Amendment 89 probes, is that the enforcement provisions mirror those in the Sea Fish (Conservation) Act 1967. The offences under that Act and other fisheries legislation provide that, where someone has committed an offence and been convicted on indictment, the court has the discretion to impose a fine without a limit. Not only is this consistent with the approach taken in other fisheries legislation, it is consistent with the underlying policy that the Crown Court should not be constrained in its ability to set a fine, in order that it may take into account both the seriousness of the offence and the financial circumstances of the offender. Finally, this amendment would change the position in Scotland and Northern Ireland, which would cut across devolved competencies.

With this explanation, I hope that the noble Lord, Lord Grantchester, will feel able to withdraw his amendment.

Lord Grantchester: I am grateful to the Minister for her complete explanation. I beg leave to withdraw my amendment.

Amendment 88 withdrawn.

Amendment 89 not moved.

Clause 19 agreed.

Clauses 20 to 22 agreed.

Schedule 4 agreed.

Amendment 90

Moved by ***Baroness Jones of Whitchurch***

90: Before Clause 23, insert the following new Clause—

"Negotiations on fishing opportunities previously governed by the Common Fisheries Policy

(1) A Minister of the Crown must, before the end of the period of three months beginning with the day on which this Act is passed, lay before both Houses of Parliament a statement containing—

(a) information on the status of negotiations with the European Union and other relevant parties on fishing opportunities after IP completion day which were governed by the Common Fisheries Policy before IP completion day,

(b) the policy of Her Majesty's Government in relation to access, after IP completion day, for British fishing boats to EU quota for distant waters outside of the British fishery limits.

(2) To meet the requirement under subsection (1)(a), the statement must include a declaration of whether Her Majesty's Government intends to reclaim the United Kingdom's full share of EU quota on IP completion day or over a period of time."

Member's explanatory statement

This new Clause requires a Minister of the Crown to lay a statement before Parliament outlining the status of UK-EU fisheries negotiations and the Government's policy in relation to (1) ongoing access to EU distant waters quota for British fishing boats and (2) the time period over which it will reclaim the UK's share of EU fishing quotas.

Baroness Jones of Whitchurch: My Lords, this amendment addresses a running concern in the Bill that Parliament will be precluded from knowing the

details of the trade negotiations as they affect fishing opportunities until it is too late to comment or influence the outcome. In his letter to Peers, the Minister referred to future treaties, including a framework on fisheries with the EU needing to be laid before Parliament before it is ratified. We would argue that this is too late for Parliament to have any real influence. As we have previously said, this is a particularly sensitive issue given the promises made to UK fishers, and to the electorate, about reclaiming our share of EU quota as we leave the EU at the end of the year.

The Minister has previously stated that this Bill is intended to be negotiation-neutral, but the reality is that we cannot debate our transition to being an independent coastal state without considering the prospects for a future UK-EU deal on access to our fishing waters. If this Bill is not the right vehicle for parliamentary scrutiny of future arrangements—it appears from what the Minister has said that it is not—then many of us will feel frustrated. It is important to clarify what the alternative is. New subsection (1)(b) proposed in the amendment includes a specific reference to retaining a share of EU quota for distant-waters fishing outside UK limits. This is an aspect of the fisheries debate which has not received as much attention, but it is important for parts of the UK fleet.

We appreciate that the UK position is that we want to reach an agreement with the EU and vice versa. However, if that does not prove possible, the default position is that the UK will unilaterally repatriate 100% of quota for UK waters next year, while potentially cutting off access to EU waters immediately for those who fish those distant waters. This could have a huge implication for the UK fleet, much of which relies on continued access to those distant waters. We do not know whether the Government intend to do this or whether they would negotiate some other form of transitory agreement with the EU. It would be helpful if the Minister could clarify the Government's thinking on this issue.

Meanwhile, I hope that noble Lords will support the amendment. It seeks to give a clearer role for parliamentary scrutiny over these decisions, which could have profound implications for the future of our fleet. I beg to move.

Lord Teverson: My Lords, I am very pleased to support the amendment. If there has been one mistake made since the referendum—apart from the result of the referendum which, of course, is indisputable and I entirely accept—it is that the Government have attempted to exclude Parliament from so much. That has been part of the reason why we have had the three years of turmoil that we have had. It is therefore important that the Government keep Parliament involved or up to date on how these negotiations are working; though clearly Parliament is not looking for the final resolution, those negotiations have to take place in that context.

Last week, I was concerned that when the Secretary of State was in front of the EU sub-committee, he stated that the Scottish Administration—or a Scottish Minister—would not be allowed in the room when the negotiations took place. He was very specific about it: I questioned him and checked what he had said. He said it was because this was not a devolved matter but a matter for the United Kingdom. It was slightly ironic, given the discussions we have had on this Bill. Will the Government reconsider that position, because the Scottish fishing industry is fundamental to the UK fishing industry? This is an area on which the Government ought to change their view. I very much support the amendment and the spirit in which it was introduced.

Lord Gardiner of Kimble: My Lords, I am also grateful to the noble Baroness for her amendment. The UK Government remain committed to keeping Parliament and the public informed of the progress of negotiations. On 27 February, the Government published *The Future Relationship with the EU: The UK's Approach to Negotiations.* This makes clear that the UK and the EU have committed to use best endeavours to agree a new fisheries agreement by 1 July 2020. In line with the practice of other independent coastal states, the agreement would provide a framework for annual negotiations on access and quota and set out a mechanism for co-operation on fisheries matters where we share an interest with the EU. The Prime Minister has already committed to providing further details as the negotiating process develops. Both Houses will also have access to their usual arrangements for scrutinising the actions of the Government—and I am in no doubt, looking at various noble Lords here tonight, that your Lordships will take full advantage of these.

As your Lordships will be aware, negotiations for a fisheries framework agreement and our future relationship with the EU started last week. It is important to note that, as the Chancellor of the Duchy of Lancaster noted in the other place, the UK Government hope that by June, the broad outline of an agreement will be clear and capable of being rapidly finalised by September. Subsection (1)(b) in the amendment itself refers to distant waters. It is not clear whether "distant waters" was intended to have a specific meaning, but we have taken it to mean waters for which the UK is not the relevant coastal state and which are outside EU waters. Therefore, I make it clear that we will also seek to negotiate fisheries framework agreements with key partners in other coastal states, such as Norway. Again, these agreements will pave the way for annual negotiations on access and fishing opportunities in third-country waters, which I know will be of particular interest to our distant-waters fleet and others whose businesses rely on accessing fishing opportunities in those waters.

As with negotiations with the EU, the Government will keep Parliament informed of the progress of these negotiations. Where we have fisheries or conservation interests in international waters, the UK will join relevant regional fisheries management organisations in its own right and, in so doing, we will continue to collaborate with other coastal states where we have shared interests in fisheries in international waters.

In all these negotiations, leaving the EU creates an opportunity for the UK to secure a fairer sharer of quota, or fishing opportunities, for our own fleets. I assure noble Lords that that is what this Government are determined to achieve but, with all these negotiations, the UK Government must retain flexibility—we may not agree but I think the noble Lord, Lord Teverson, was going along those lines—with regard to the timing

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and content of our updates to Parliament, in order not to undermine our positions in live and ongoing negotiations. We believe that the amendment would remove this flexibility, obliging the Government to publish a statement at a particular time, potentially while negotiations are still ongoing. This risks undermining our negotiating positions entirely.

5.30 pm

I was not at the meeting to which the noble Lord, Lord Teverson, referred, so I would like to discuss with the Secretary of State the manner in which he said what he did. What I will say is that international negotiations are a reserved matter and responsibility, so it would be for the UK Government to be head of any delegation. However, we have been clear that we will work closely with the devolved Administrations. When I attended the Fisheries Council, I worked very closely with the Scottish, Northern Irish and Welsh Ministers responsible. We sit at the same discussions and work very closely together. In order that I do not misquote anyone, and although I trust the noble Lord, Lord Teverson, implicitly, I would like to get the circumstances in which the Secretary of State replied. We have been clear that, as now, we will want to work closely with the devolved Administrations. That is why I outlined our procedures with the Fisheries Council.

Baroness Jones of Whitchurch: I think I am going to ask one of my dumb questions, which I know the Minister will tolerate. I am trying to understand the process here, because 1 July is quite soon for the negotiations to be complete. The Minister said that both Houses will be able to scrutinise. Scrutiny quite often happens after the event. How will Parliament be kept informed of those negotiations before the ink is on the paper and everything is a signed and sealed deal? Which bits of the two Houses will see this before it is signed? We had a skirmish about this with the overall withdrawal agreement and it would be good not to have to repeat that anguish for something as specific as this. Can he reassure me that we will see those details and be allowed to comment on them before it is all signed off?

Lord Gardiner of Kimble: I think it would be best if I just repeat that the Prime Minister has already committed to provide further details as the negotiating process develops. I have said those words at the Dispatch Box twice now, and that both Houses will have access for scrutinising the actions. I well understand the point the noble Baroness is making. Obviously the Government have responsibilities for negotiations, but the Prime Minister has already committed to provide further details as the negotiating process develops. I do not think anyone could interpret that as being at the end, when everything has been said and done.

Baroness Jones of Whitchurch: In that case, I am grateful to the noble Lord and I think it would be helpful if he could just check the point that the noble Lord, Lord Teverson, raised—I know he said he would—about what was said at his committee last week. I will look at *Hansard* carefully but, in the meantime, I beg leave to withdraw the amendment.

Amendment 90 withdrawn.

Clause 23: Power of Secretary of State to determine fishing opportunities

Amendment 91 not moved.

Amendment 92

*Moved by **Baroness Jones of Whitchurch***

92: Clause 23, page 15, line 16, leave out “may” and insert “must”

Member’s explanatory statement

This amendment makes it compulsory for the Secretary of State to make a determination relating to annual fishing opportunities.

Baroness Jones of Whitchurch: My Lords, Amendments 92 and 97 are in the name of my noble friend Lord Grantchester and Amendment 96 is in my name.

Amendment 92 raises an important question about the role of the Secretary of State in overseeing the total stocks that can be fished by UK fishing boats in a calendar year. It addresses what happens if the combined policies of the joint fisheries authorities and the fisheries management plans add up to a greater allowable catch than science tells us is sustainable for UK waters. Somebody needs to keep an overview of the overarching picture and, in the absence of another competent authority, we argue that this role should fall to the Secretary of State. Hence our amendment requires that the Secretary of State “must”, rather than “may”, determine annually the maximum quantity of fish to be caught and the maximum number of days at sea. This determination should lie at the heart of our commitment to deliver the objectives set out in Clause 1.

We also have some sympathy with the amendment in the name of the noble Baroness, Lady McIntosh, which explores why the determination is limited to our international obligations, rather than applying to all UK fishing agreements. It would also be helpful to have some clarity on the existing wording. For example, do our international obligations cover the general sustainability commitments in UNCLOS? What happens if we fail to reach an agreement with the EU? Would that mean that there would be no obligation to make an annual determination? I hope the Minister is able to shed some light on these issues.

Amendment 96 requires the devolved Administrations to be consulted on this determination. It is a probing amendment to check whether the consultation provisions in Clause 24 apply also to this clause. I assume that this is the case, but it would be good to have this on the record. The amendments in the names of the noble Lord, Lord Lansley, and the noble Duke, the Duke of Montrose, go further and extend the categories of those who would be consulted to a wider group of interested parties, and I think these proposals also have merit. However, it is vital that any determination made under this clause is subject to the best scientific evidence, and the amendment in the name of the noble Baroness, Lady Worthington, makes this absolutely clear. This is a matter we have spoken about before and we reinforce our support for it again.

Finally, our amendment builds in a process for proper parliamentary scrutiny of the Secretary of State’s determination by insisting that it should be subject to affirmative approval. A number of noble Lords are on the same page here. We want to ensure

that UK fishing does not exceed the best scientific evidence but that the Secretary of State plays a role in overseeing this responsibility, and we want all appropriate stakeholders, including Parliament, to be consulted. I hope noble Lords will see the sense of this and will support these amendments. I beg to move.

Baroness McIntosh of Pickering: My Lords, I associate myself with the amendments in the name of the noble Baroness, Lady Jones of Whitchurch, and the noble Lord, Lord Grantchester. I shall speak to my Amendment 92A. In the absence of my noble friend Lord Lansley, who is travelling from an engagement and has not yet arrived, I shall speak also to his Amendment 100, and to Amendments 101 and 102 in the name of my noble friend the Duke of Montrose, to which I have appended my name.

The noble Baroness, Lady Jones, was kind enough to lend her support to Amendment 92A, which just seeks clarification as to what my noble friend the Minister means. I thought the easiest way of extracting that information was to suggest that we delete Clause 23(2) because on the present reading of that—and looking at Clause 36, which in some respects is clearer—it looks as though the Government are looking either to have quotas only in connection with international agreements, as the noble Baroness said, or are moving away from quotas completely. If it is the Government's intention to move away from quotas, particularly as regards other than the international fisheries agreements that the UK has subscribed to, it begs the question of what the means of dividing up the allocation of fisheries schemes will be if not quotas. There seems to be a degree of confusion among the experts between Clause 23(1) and (2). It begs the question of whether it applies to all fisheries agreements or only international obligations, and whether the Government are moving away from quotas. I do not think the Government have said anywhere that they are planning to move away from quotas, so I hope that the Minister will put my mind at rest.

Amendment 100, tabled by my noble friend Lord Lansley, is designed to set out the need to consult not only fishing policy authorities—as at present—but representatives of British fishing boats. I see my noble friend has appeared; apparently I am on the right track. I hope the Minister will look favourably on my noble friend's amendment. I am delighted to see him in his place, and I am sure that he would have spoken to it much more eloquently. I would certainly like to lend my support to this; it is extremely important. The Minister has said on other occasions that he is indeed looking to consult as widely as possible, so I am sure that it will be amenable to him, and I hope that he will support Amendment 100.

I have appended my name to Amendments 101 and 102, tabled by the noble Duke, the Duke of Montrose. Amendment 101 seeks to impose a duty on the Secretary of State to consult relevant stakeholders who are making or withdrawing a determination under Clause 23, and would fit neatly in Clause 24. The reason for this is that the consultation provides for scrutiny by—I would say—all interested parties. A requirement on the Secretary of State to consult, as set out in this amendment, would help ensure openness and transparency over the Secretary of State's actions. Indeed, similar requirements are found in Clauses 27 and 34, in connection with consultation. This is not anathema to the Government in any shape or form.

Similarly, Amendment 102 seeks to impose a duty on the Secretary of State to include, within a notice of reasons for making or withdrawing a determination under Clause 23, a requirement to publish such reasons for making or withdrawing a determination in connection with fishing opportunities, providing for additional scrutiny of the Secretary of State's actions by stakeholders.

I am grateful for the opportunity to have spoken to those amendments.

Baroness Worthington (CB): My Lords, I have Amendment 103 in this group. I feel we are getting into the heart of the Bill here, under this section entitled "Fishing Opportunities", and—like the noble Baroness, Lady McIntosh of Pickering—I would be grateful for some explanation from the Minister about how Clause 23 relates to the rest of the clauses in this section. It seems to say that these powers are only for purposes of complying with international obligations; I assume that is because we are envisaging a process by which we are negotiating with other member states in the European Union in relation to shared fishing stocks. That will have an overlaying influence over the allocation of rights in our own waters, and then there is the question of devolution when we hand that over to the devolved Administrations. I am looking forward to receiving confirmation that this is the case, and an understanding of why we have these determinations written out here, which will obviously then apply—the Secretary of State will be determining in a calendar year the quota that is allocated within the UK on this basis. It feels a little confusing, and I am therefore looking forward to a much clearer explanation from the Minister.

5.45 pm

My Amendment 103 was designed merely to reinsert the principle that we are trying to break away from the common fisheries policy, I think for good reason. It is not delivering a sustainable industry, and it is certainly not delivering a thriving and vibrant fishing industry which we would like to see return to our waters. As has been said many times, one of the main issues is that under the CFP, scientific advice is received and then a trading negotiation occurs on top of that advice, which means we are not allocating quota sustainably. My Amendment 103 simply states the obvious: we should not, in this process of continuing to negotiate with the EU about access to our waters, fall back into that trap of overallocation as a result of trade-offs and negotiations that happen after we have received scientific advice. I hope that the Minister can reassure me that this is at the core of what we are seeking to achieve.

I absolutely support the amendment which seeks to make the powers under Clause 23 subject to the affirmative resolution. This feels like a crucial part of how this is going to work in practice. If there is any doubt that this could undermine our ability to set quota or effort limits, this must be subject to affirmative resolution so that we get a chance to scrutinise it. I worry that a little loophole could open up here if this is indeed negative.

[Baroness Worthington]
I am happy to lend my support to this part of the debate, and I am sure we will come on to it now in subsequent groups, as we get into the nitty-gritty.

Lord Gardiner of Kimble: My Lords, I am grateful to the noble Lord, Lord Grantchester, for his amendment, and to the noble Baroness who moved it. Although I recognise that the aim of the amendment is to make it compulsory for the Secretary of State to determine annual fishing opportunities, it would oblige the Secretary of State to determine all fishing opportunities on an annual basis. Some stocks are determined on different timescales, and for some non-quota species, there is no specific determination. I assure noble Lords that the original provisions are sufficient to ensure that the Secretary of State fulfils the function of determining UK fishing opportunities, through Clause 23(1) and (2), and that Parliament is able to scrutinise these determinations through Clause 24(2)(b).

Further, for non-quota stocks—for which we do not currently have the science to make an accurate determination—the fisheries management plans, as outlined in the joint fisheries statement, will set out policies for getting stocks to their maximum sustainable yield. For such stocks, this will necessarily include our plans for improving the scientific data and evidence that will underpin the future management of our non-quota fisheries. I say to the noble Lord, Lord Teverson, that this is why he should be more positive about the fisheries management plans, bearing in mind the point that the noble Baroness, Lady Young of Old Scone, made earlier. I think this is an opportunity, particularly where the science is not the strongest, and we need to improve it—this is where we can get down to some of the pragmatic ways in which we can improve all stocks.

Lord Teverson: I am sure that there is the potential to do that, and I look forward to the meeting; I am very pleased that the Minister is going to bring this meeting together, and maybe we will find a way forward from there. I do not in any way write them off, but when they are purely UK territorial waters, that is where I have a problem. So I endorse the Minister's comment.

Lord Gardiner of Kimble: There was, shall we say, licence on my part there because I thought it might excite intervention. Anyway, I look forward very much to the discussions. Anyone who wishes to come is welcome; I will send a wide invitation and get scientists there so that we can get to the heart of some of these matters.

On Amendment 92A, the power set out in the clause would be used to set the UK's total allowable catch, or the absolute amount the UK is able to fish, reflecting the outcome of the negotiations with the EU and other coastal states. It could also be used to ensure our compliance with Article 61 of the United Nations Convention on the Law of the Sea, or UNCLOS, which provides that catch levels should be set at sustainable levels, taking into account the best scientific evidence available. As an independent coastal state, we are committed to working closely with our partners to manage shared stocks sustainably and to share fishing opportunities on a fair and scientific basis.

It is imperative that we meet our international obligations, such as those I have described under UNCLOS, as we strive to set a gold standard for sustainable fishing around the world. I say to my noble friend that sustainability, as set out in the objectives of the Bill, is a key driver for our future plans for the industry and our negotiations. We have been clear that, in entering into negotiations and making determinations, we will be informed by independent scientific advice from ICES, the International Council for the Exploration of the Sea, CEFAS, the Centre for Environment, Fisheries and Aquaculture Science, and its equivalents in the devolved Administrations. In conjunction with our commitments through the scientific evidence objective, this provides the assurance that determinations will be fully informed by the best available science.

The existing clause also ensures that we respect the devolution settlements. The Secretary of State will make determinations on UK fisheries opportunities only where this relates to an internationally negotiated outcome, which is a reserved competence. Removing this subsection would give the Secretary of State powers to set fishing opportunities directly for each devolved Administration, which would contravene the devolution settlements. This clause provides the necessary reassurance to the devolved Administrations that the Secretary of State would not seek to overstep on areas of devolved competence.

Our fisheries White Paper made it clear that for existing quota we will honour the allocation and distribution through the FQA units. However, we have been clear that we will explore alternative methods for allocating and distributing any additional quota negotiated both at UK level and within England.

Baroness Worthington: To be absolutely clear, does the Minister mean that we will honour the allocation of the FQAs in perpetuity or for a transitional phase? If so, how long will that transition be?

Lord Gardiner of Kimble: My Lords, I will write to the noble Baroness on that. The reason for taking this decision at this time is to provide certainty on the current allocations. The point about potential changes concerns any additional quota; I will write if I have any further information on anything suggested to the contrary, but our intention is that the existing distribution will remain. We will explore alternative methods, one of which is to ensure that there is benefit to coastal communities from our additional quota. I do not think I am in a position to give further clarification unless I get some information shortly, but I will make sure that point is covered if I have any further detail. That is precisely the position; to have continuing certainty at this time of change for the existing quota.

In addressing Amendments 96 and 97 together, I am glad to confirm that the Secretary of State would of course consult the devolved Administrations and the MMO before making regulations under Clause 23(8), which would be subject to parliamentary scrutiny. I will provide further reassurance that these regulations would also be subject to public consultation. This power relates to a highly technical matter: how to

calculate a "day at sea". It could be used, for example, to determine when a boat is deemed to have left or returned to port, entered the UK's inshore waters or, by stowing its fishing gear, not to be fishing. Consultation with the devolved Administrations on this power will be set out in a memorandum of understanding.

Further, I would like to provide reassurance that the UK Government have carefully considered the delegated powers in the Bill and the procedures that would apply to regulations. The regulations may also refer to provisions made under separate powers to regulate days at sea arrangements under paragraph 1(3) of Schedule 3 to the Bill, which are licence conditions and therefore not subject to parliamentary procedure. The Government consider that we have struck the right balance between the need for parliamentary scrutiny and the need to be able to react quickly to make what are often technical amendments by secondary legislation.

I am sure your Lordships will be aware that the Delegated Powers and Regulatory Reform Committee of this House considered the proposals for all the delegated powers in the previous Bill when it was progressing through its stages in the other place. The committee said:

> "Of the Bill's 15 delegated powers that have a parliamentary procedure, only four are solely governed by the negative procedure, and justifiably so."

The committee published a new report on 26 February on this Fisheries Bill and did not change its views on the procedures we have adopted.

I recognise the intention behind Amendments 100 and 101 but will explain why this is already covered. Clause 24 sets out the duties that will apply to the Secretary of State when determining UK fishing opportunities. It does not relate to the subsequent allocation of those opportunities to the fisheries administrations or to their distribution to the fishing industry. This clause aims to ensure that, as far as possible, the interests of the whole of the United Kingdom are taken into account when the UK's fishing opportunities are set.

In England, Defra and the Marine Management Organisation already regularly engage fishers and industry representatives on fishing opportunities through a number of different routes. This engagement covers both the determination of fishing opportunities and their subsequent management over the fishing season. It is also unclear how these amendments would improve current engagement. Consulting such a wide and undefined group is likely to cause delays in publishing UK fishing opportunities and could complicate the process of negotiating and implementing the UK's international obligations.

Turning to Amendment 102, as I made clear, to ensure that we are fishing sustainably and meeting our international requirements, it is important that we are able to determine the UK's fishing opportunities. Clause 23(2) allows determinations to be made for the purpose of complying with an international obligation. To reiterate, to respect the devolution settlements, the determination can relate only to the high-level function of setting the UK's overall pot of quota, in line with any internationally negotiated outcome or the UK's overarching obligations under international law.

Clause 24 requires the Secretary of State to consult the devolved Administrations and the Marine Management Organisation before making or withdrawing a determination. This is to ensure that the interests of the whole of the UK are taken into account when the UK sets its fishing opportunities. The Secretary of State is required to publish any determination or withdrawal and lay it before this House. At that point, the UK Government will need to explain the reason for the withdrawal and new determinations.

Finally, while I support fully the aim of Amendment 103 to ensure that fishing opportunities are determined in accordance with the best scientific advice available, I believe this amendment is covered. The Government's commitment to using the best available scientific advice to guide our negotiating position and, by extension, determination of fishing opportunities is already given force in the Bill through the scientific evidence objective in Clause 1. I have been clear that in our negotiations with other coastal states and in responding to other international obligations, we will be informed by independent scientific advice such as that from ICES and CEFAS. I think the noble Baroness, Lady Worthington, referred to the importance of that.

The UK's approach to making any such determination —including the position it will adopt when negotiating with other coastal states on fisheries management decisions of shared interest—will also, necessarily, take into consideration socioeconomic analysis as well as the views of the devolved Administrations, industry, environmental NGOs and other stakeholders. Further factors to be taken into consideration will include aspects such as gear types, choke risks and the dynamics of the fishing fleet.

UK negotiators must be able to take a flexible approach in negotiations and that includes considering the best available scientific advice alongside the range of other factors I have just mentioned. But as I said, the Government's commitment to using the best available scientific advice is already clear.

6 pm

Baroness Worthington: I am grateful for the Minister's response. I would just like to clarify that my amendment did not say that we should seek scientific advice, but that no allocation should run counter to that advice to enforce the basic point that if we carry on allocating over what is scientifically advised, we will all be diminished. We will have fewer fish stocks, less profitable fisheries and a more degraded environment. I still do not think that the point has been accepted that we cannot continue to allocate over scientific advice and still have a flourishing industry.

Lord Gardiner of Kimble: I take the noble Baroness's point. It is why, in rerunning the objectives debate on Clause 1, the whole range of those objectives is absolutely entrenching our desire for sustainability and the environmental sustainability that I know the noble Baroness and all noble Lords desire.

As I have said, and I can only reiterate, we will be—

Baroness McIntosh of Pickering: Is my understanding correct? Did my noble friend say that Clause 23(2) could be used to allocate the unused quota to under-10-metre boats, rather than just being for international obligations?

Lord Gardiner of Kimble: I had better look at the Bill again, and check exactly what I said so that I do not, in any way, say anything to the contrary. Certainly, the mechanism for new quotas and how we best benefit coastal communities is an area we are looking at with considerable interest. Clause 23(2) allows:

"A determination under subsection (1) may be made only for the purpose of complying with an international obligation."

The determination can relate only to the high-level function of setting the UK's overall pot in line with any international negotiated outcome, or the UK's overarching obligations under international law. This might be even more of a clincher. On my noble friend's point, I will look at *Hansard*, because I did not intend to make that inference and I do not think I did. For the record, Clause 23 is for the determination of only the UK pot of quota. It does not provide for allocating to industry at fisheries administration level.

To conclude, I absolutely take the point of the noble Baroness, Lady Worthington: the best available scientific evidence is absolutely clear. We all want the same thing. With that explanation, I hope the noble Baroness will feel able to withdraw her amendment.

Baroness Jones of Whitchurch: My Lords, the Minister has given a lot of detail, so I feel that I too will have to go back and read through *Hansard*. I am trying to clarify our very simple first amendment, the one that would put "must" rather than "may" in Clause 23(1). At the moment, it reads:

"The Secretary of State may determine, for a calendar year—

The maximum quantity of sea fish that may be caught by British fishing boats;

The maximum number of days that British fishing boasts may spend at seas."

Our amendment said:

"The Secretary of State must".

If it is okay in some calendar years for the Secretary of State to determine that, I am not quite clear why it is not okay every year, which is what our amendment would have achieved. In which years is it all right to do it, and in which years is it not? This is where I am lost, because if the principle is accepted—which it clearly is because it is spelled out there—why not do it every year?

Lord Gardiner of Kimble: Again, the problem with the amendment stating "must" is that it concerns the determination of all fishing opportunities. If it says "must", the amendment becomes a requirement that would involve stocks determined on different timescales. There are also some non-quota species where there is no specific determination. The word "may" allows the determination of the annual fishing opportunities. The problem with the amendment making it "must" is that it brings in these non-quota species. The issue I have sought to put across is that making the determination compulsory embraces all stocks—because it "must". Obviously, there will be annual fishing opportunities for all those that involve quotas and so forth, and we will be having annual negotiations and arrangements. It is not that the Secretary of State will suddenly say, "I don't think we'll do this, this year"; it is that making it "must" brings in these stocks determined on a different timescale and non-quota species. That is the problem as I understand it: the amendment has that legal interpretation.

The original provisions ensure that the Secretary of State fulfils the function of determining UK fishing opportunities through Clause 23(1). Making it a "must" brings into scope stocks that would not be subject to the determination of annual fishing opportunities. That is as I understand it. If it is any different, perhaps I can discuss with the noble Baroness, but that is, in our view, the problem with the interpretation of that amendment.

Lord Teverson: I strongly support this amendment and, if that is the case, clearly the Government should just bring forth an amendment themselves. It should say that for quota species it should be a "must". That is how we solve it. Clearly there must be that assessment or process every year for quota species. It is obvious and clear. The Government need to bring forward their own amendment to make sure that it includes only quota species.

Lord Gardiner of Kimble: Again, the provision talks about "for a calendar year", so these are annual fishing opportunities. "Annual" means every year; it does not mean that by saying "may", the Secretary of State can decide not to bother one year. That is not the case—rather, it is about the fixing of annual fishing opportunities.

As I say, I have been informed that the original provisions are sufficient to ensure that the Secretary of State fulfils the functions of determining UK fishing opportunities, but if I have anything further that will assist noble Lords, I will of course communicate it. I think that the interpretation of this power to determine serves the correct purpose, but if there is a pressing need to have discussions with noble Lords on the matter outside the Committee, I am happy to do so. However, as I say, I have been advised that there is no problem with it.

Baroness Jones of Whitchurch: I feel that the more we dig, the more complicated and confusing this gets. I understand that the noble Lord has to read out the brief he has been given, but I share the concern of the noble Lord, Lord Teverson, that if it is not here, where is the wording to say that there will be an annual determination of the fishing stock? It may be that it is somewhere else in the Bill and I have missed it, but if it is not, it should be here. The noble Lord, Lord Teverson, has made a helpful suggestion about how the Government could address that point. I am still not clear on what the Minister said about what would apply and what would not, but the overarching point to make is that it needs to say in the Bill that there is a total number of fish stocks; that needs to be spelled out somewhere.

I think that I am reassured by what the Minister has said about consultation, but again it is one of those things which is covered in a number of different places in the Bill. We need to make sure that everything lines

up so that the reassurance he has given means that this is covered elsewhere Bill, as well as by the comments he has made today.

I note what he said about the Delegated Powers Committee report, which has reminded me that I should take another look at it, but on the basis of what he said, I am sure that the committee has not raised any issues, so I will not pursue that.

I turn finally to the point about the scientific advice which was raised by the noble Baroness, Lady Worthington. I think that we have a running theme of agreeing to disagree on this. Once again, we hear what the Minister has to say but we do not feel that the wording is good enough, so we may bring this back in some form on Report. There is a general view around the Committee that we need to pin down the significance of the scientific advice and make sure that it is heeded on all occasions. That is what the noble Baroness is trying to do.

That is enough for now and I beg leave to withdraw the amendment.

Amendment 92 withdrawn.

Amendment 92A not moved.

Amendment 93

Moved by ***Baroness Bakewell of Hardington Mandeville***

93: Clause 23, page 15, line 23, at end insert—

"(2A) When making a determination under subsection (1), the Secretary of State must engage with any other state that exploits a shared stock with a view to ensuring that—

(a) shared stocks are managed in accordance with the UK's international law obligations and in accordance with the fisheries objectives of this Act, and

(b) fishing mortality is below levels which will restore or maintain those shared stocks above levels capable of producing the maximum sustainable yield.

(2B) For the purposes of subsection (2A)(b), where the biomass of the stock or the level of fishing mortality consistent with achieving the maximum sustainable yield cannot be estimated reliably using the best available scientific advice, the Secretary of State must—

(a) not postpone or fail to determine fishing opportunities for the stock on the ground that there is an absence of, or uncertainty in, that evidence,

(b) have regard to the interdependence of stocks, the biological characteristics of the stock, and any environmental conditions affecting the stock, and

(c) engage with any other state that exploits a shared stock with a view to ensuring that fishing opportunities are determined—

(i) at a quantity which functions as a suitable proxy for maximum sustainable yield, and

(ii) in a manner that is consistent with the scientific evidence objective and the precautionary objective.

(2C) Where neither a formal agreement nor a common arrangement is made with another state that exploits a shared stock, the Secretary of State must—

(a) take all necessary steps to ensure that fishing of shared stocks is carried out such that fishing mortality is below levels which will restore or maintain those shared stocks above levels capable of producing the maximum sustainable yield, and

(b) provide, and make public, an annual report to the appropriate legislature outlining the steps taken pursuant to paragraph (a).

(2D) For those stocks for which fishing opportunities are not determined pursuant to section 23(1), fisheries policy authorities must—

(a) ensure that exploitation does not exceed the maximum sustainable yield exploitation rate, or

(b) if the current biomass of the stock or the level of fishing mortality consistent with achieving the maximum sustainable yield cannot be estimated reliably using the best available scientific advice, ensure that exploitation—

(i) does not exceed a level determined by a suitable proxy for maximum sustainable yield, having regard to the interdependence of stocks, the biological characteristics of the stock, and any environmental conditions affecting the stock, and

(ii) is consistent with the scientific evidence objective and the precautionary objective."

Baroness Bakewell of Hardington Mandeville (LD): My Lords, this amendment introduces binding legal commitments not to fish above scientifically recommended sustainable levels. We have touched on this issue in other amendments. I am indebted to the Greener UK organisation for its assistance and we have had a long debate today on Amendments 112 and 124, which are all about sustainability.

The UK shares almost every stock in its waters with another coastal state. While the UK will gain control of its exclusive economic zone as an independent coastal state, the fish that live in these waters will continue to cross between borders and are therefore not the sole responsibility or property of the UK. I have referred to this previously, as have other noble Lords. As the noble Baroness, Lady Jones, said earlier, we are all on the same page here.

The purpose of the amendment is to set clear sustainability criteria in relation to negotiations with other countries to ensure that a clear and robust process can be developed to prevent overfishing. The amendment also requires authorities to set fishing limits in line with sustainable levels for any other stock that is not subject to Clause 23(1), including stocks that are not shared with other coastal states.

The Fisheries Bill must have a strong focus on the UK's domestic and international commitments to rebuild healthy fish stocks and recover, restore and protect marine habitats and species, enabling the sustainable management of shared resources in co-operation with international partners. This represents international best practice as set out in the common fisheries policy regulation, the United Nations Convention on the Law of the Sea, the United Nations fish stock agreement and its sustainable development goal 14. All of these highly respected and reputable international organisations cannot be wrong in wishing to see best practice and fish stocks preserved.

Article 2 of the common fisheries policy commits the EU not to set catch limits above MSY by 2020, but this same commitment has not been included in the Fisheries Bill. While MSY is not the only measure, it is important. Instead, there is a simple aspirational objective to achieve a healthy biomass for stocks as set out in the precautionary objective in Clause 1(3)(b). However,

[Baroness Bakewell of Hardington Mandeville]
it is not legally binding and lacks a timeframe for when it should be delivered. This is a regression in standards from the common fisheries policy and not one that future generations would wish us to sign up to. It is vital to protect against short-term political pressure to set catch limits higher than scientific advice, which will lead to overfishing.

6.15 pm

I understand the plight of some fishermen, especially those working the mixed fisheries. This has been flagged up by the National Federation of Fishermen's Organisations, which has lobbied heavily on this matter. Fishermen wish to increase their catches, but that must be sustainable. Setting catch limits up to or preferably below maximum sustainable yield levels allows for the maximum proportion of fish to be removed from a stock year on year without reducing the stock's ability to maintain its population at healthy levels. This is the only way we can ensure the fishing industry in this country well into the future.

If the UK sets fishing opportunities above MSY levels or decides to set fishing levels according to an alternative system from neighbouring coastal states, it will fail to implement its international legal obligation to meet Articles 61.2 and 61.3 of UNCLOS and its commitment to sustainable development goal 14 to end overfishing by 2020. Can the Minister give the Committee a reassurance that this will not happen? If it does, not only will the UK miss these targets, it will fail to realise the significant social, economic and environmental benefits of restoring stocks above biomass levels capable of producing sustainable fish stocks. It will also fail to increase the resilience of fish stocks in response to environmental changes such as rising sea temperatures. Again, that is something I have referred to in previous debates on the Bill, as have others. The UK is less likely to improve the stability of catches or to reduce the risks associated with overfishing or natural ecosystem fluctuations in the complex mixed fisheries that are prevalent in our waters.

In order to be effective, this must also be underpinned and supported by properly resourced and effective monitoring, control and enforcement. We are looking for the Minister to give a legal commitment on the face of the Bill not to fish above sustainable levels. I believe that the maintenance of sustainable fish stocks is the golden thread which runs through this Bill, so they must be protected. I beg to move.

Lord Krebs (CB): My Lords, I rise to speak briefly in support of the amendment because it provides me with an opportunity to give part two of my lecture on maximum sustainable yields, although I detect that the undergraduate audience is less than enthusiastic about hearing it. However, I want to ask the Minister the following question. The classic textbook on maximum sustainable yield was written by William Ricker in 1975. In it he defined it as

"The largest average catch or yield that can continuously be taken from a stock under existing environmental conditions."

The three key elements of that definition are "average", "continuously" and "existing environmental conditions". I hope the Minister will tell us whether, given that the Government are set on harvesting at MSY—which, as I explained earlier, I think is a mistake—there is a definition in their mind of "average". To give three possibilities, is it the arithmetic mean, the geometric mean or the harmonic mean?

There must also be something in the Government's mind about "existing environmental conditions", which the noble Baroness, Lady Bakewell, already referred to. What does "existing environmental conditions" mean and how will the change in MSY be linked to changing environmental conditions? The Government must also have in their mind a definition of the word "continuously". Perhaps the Minister could clarify those points for me.

Baroness Worthington: My Lords, I cannot say much more than the noble Baroness has already said, very eloquently. I lend my support to this amendment because it addresses a fundamental question about Clause 23.

In the next group we will discuss some of these issues in relation to Clause 25 in great detail. For now, I fully support the idea that we should be putting these conditions into this agreement. It is similar to my Amendment 103, so I do not want to rehearse it, but I was struck by the noble Baroness's comments about the fact that we should be managing this stock for future generations and not simply for the short-term economic needs of those who are benefiting from the status quo.

Not to trivialise the debate, but my children are engaged in the marine environment for a number of reasons, not least through watching the wonderful BBC series "Octonauts". The Octonauts' phrase is that we should explore, rescue and protect. I hope that the Bill can be transformed into one which enables us to explore the fishing industry with data, rescue those stocks that are in need of respite and their levels to be restored, and protect the socioeconomic conditions of the whole fishing industry, not just a subset.

Lord Grantchester: My Lords, I am grateful to the noble Lord, Lord Teverson, and the noble Baroness, Lady Bakewell, for tabling Amendment 93, which allows us to return to two previously debated topics: international co-operation and the need to ensure fishing at sustainable levels.

The noble Lord, Lord Teverson, has previously spoken cogently about shared stocks and the interdependency of sustainability across nation states. The Committee has had several assurances from the Minister on both these topics yet concerns remain. Despite many challenges, especially in relation to the UK and the devolved Administrations' activities, NGOs and stakeholders remain concerned that the legislation before the Committee does not truly give effect to the Conservative Party's manifesto commitment to introduce a legal commitment to fish sustainably.

There are negotiations on trade yet to come, where there could be little transparency regarding sustainable outcomes without a commitment to produce annual reports. Instead, we see a commitment subject to caveats of fishing sustainably when circumstances allow and when the UK can strike relevant agreements at international level.

I will not repeat instances from previous Committee debates, but careful consideration must be given to how this framework can add value to the ponderous steps in that direction in the CFP, and brought back on Report. Movement in these areas would give us a level of reassurance that we are heading in the right direction.

However, as it stands, and as Greener UK points out, the objectives on biomass do not go far enough, and in any event are not fully binding. The Bill does not include legal commitments on international co-operation, with the Government falling back on their participation in existing international agreements, even though these are limited in scope.

The Committee can acknowledge that there are areas where the UK will want to diverge from the common fisheries policy. We have all been critical of the CFP for failing to achieve its targets in relation to MSY. Here, I admit to being in the kindergarten stage, having not even reached undergraduate. The fact is that these targets are recognised at international level and the Committee will need to consider how pressure can be brought in this aspect.

If we do not improve the Bill, the UK could be left with a regression in environmental standards resulting from the CFP. We will be left in a situation where the Government say they want to go further than the EU has allowed us to, but where there is no statutory duty to match what came before. This is why those NGOs, and certainly those on these Benches, are so concerned. We cannot let sustainability be left to non-binding policy statements, which can, in a number of cases, be overwritten or overridden. This is no basis for a fully independent fisheries regime; nor will it give the UK any cast-iron basis on which to negotiate with international partners.

The Minister may resist this amendment, but I ask that in the meetings which he has assured the Committee can be undertaken before Report, we might bring forward further improvements that the Government may be willing to sign up to.

Lord Gardiner of Kimble: My Lords, I am grateful to the noble Baroness for her Amendment 93, which sets out a number of requirements relating to the determination of fishing opportunities by the Secretary of State and fisheries authorities.

Starting with subsection (2A), it is important to be clear that the UK is already required to comply with its international obligations, including those under UNCLOS to co-operate with other coastal states to manage shared stocks sustainably. When it comes to shared stocks, noble Lords can be assured that we will be engaging with the coastal states with which we share those stocks. Furthermore, when carrying out his functions relating to the determination of the UK's fishing opportunities, the Secretary of State will also be bound by the policies set out in the joint fisheries statement and any Secretary of State fisheries statements, as well as by the fisheries management plans. Repeating these requirements in the way proposed by this amendment is not necessary.

Proposed subsection (2A)(b) seeks to ensure that fishing opportunities for shared stocks resulting from negotiations with coastal states are set on the basis of the maximum sustainable yield for those stocks. The UK remains committed to the principle of the maximum sustainable yield. However, our negotiating partners might not always attach the same degree of priority to realising this goal. In those circumstances, the UK must be able to take this into account and negotiate accordingly or risk parties walking away altogether, with potentially worse outcomes for the sustainability of those stocks.

The noble Baroness is right to raise the challenge of fisheries management with limited scientific evidence. Shared understanding between nations becomes imperative in these situations. That is why the UK is so committed to continued engagement through ICES as well as global objectives such as the UN's relevant sustainable development goal.

Although we will seek to influence and engage responsibly, it is not appropriate for the United Kingdom to seek to solve problems which may be caused by other countries. Subsections (2C) and (2D) of the amendment would introduce duties requiring the United Kingdom to act unilaterally to set fishing opportunities consistent with MSY, irrespective of the behaviour of other coastal states. This could lead to a number of unacceptable outcomes, such as disadvantaging the United Kingdom in negotiations by imposing stricter responsibilities to achieve MSY than those applying to other coastal states; and, more seriously, risking the creation of a perverse incentive for other coastal states when negotiating with the UK to either set higher TACs, or unilaterally claim larger shares, in the knowledge that under our own legislation we would be legally bound to reduce our own quotas as a consequence.

These possible consequences would not be in the interests of fish stocks, our broader marine ecosystems or, indeed, our fishing communities. I must reiterate that creating an inflexible situation for UK negotiators could result in the United Kingdom having to walk away from negotiations altogether, with unilateral quota-setting as a consequence. Experience has shown that unilateral quota-setting in the absence of an agreement between countries is a recipe for overfishing—something we all wish not to happen.

6.30 pm

As I have said, the UK remains committed to applying independent scientific advice, and especially the concept of MSY, in negotiations on fishing opportunities. As an independent coastal state with a major interest in many shared transboundary stocks, the United Kingdom will look to exert an even greater influence on sustainable and responsible fisheries management. In this vein we are already working to: agree new frameworks for fisheries management with other coastal states; join priority regional fisheries management organisations where we have fishing and conservation interests; and prepare to enter other multilateral negotiations as an independent coastal state. We will continue to work tirelessly to achieve our sustainability objectives in all these fora. This is in addition to the joint fisheries statement or Secretary of State's fisheries statement, in which we will look to set out our policies to deliver on the objectives set out in Clause 1, including ensuring that all stocks are managed sustainably.

[LORD GARDINER OF KIMBLE]

I know I will never convince the noble Lord, Lord Krebs, that we should use MSY; I reiterate that it is the recognised international standard—but not the only measure. I am happy to meet the noble Lord—I might get some of our scientists together so that there can be, shall we say, some exchange at the level that he would enjoy. I take the point. As I said before, it is not the only tool. We have to start somewhere, and it is internationally recognised. I am sure that the introduction of a new concept through this Bill is not something the Government will wish to put forward, although we absolutely will want to see what are the best ways of fishing sustainably in future.

On the commitment to sustainable fisheries, I say in particular to the noble Baroness, Lady Bakewell, but also to all noble Lords, that we have emphasised these points in the objectives. However, due to the international nature of fishing and fishing stocks, which span national negotiations, MSY for many stocks can be achieved only through international negotiations and relies on the good will and shared ambitions of other parties too. In part, this is why—we have to concede this—the EU as a whole has not met the 2020 target. It is also why achieving MSY by 2020 was a target for the EU as a whole and did not apply to individual member states, precisely because many stocks cover broad geographic areas. This demonstrates how critical it is to achieve MSY through negotiations with other coastal states. We will use our negotiating power as an independent coastal state to seek to achieve sustainable fishing at an international level.

I also say—particularly to the noble Lord, Lord Grantchester, but also to others—that the joint fisheries statement is a legally binding document in which the policy authorities set out their policies for achieving the objectives in Clause 1. I do not think I will ever be able to persuade certain noble Lords that this Bill covers sustainability in the way they most desire. Their perfect form would not actually be in our interests, but I absolutely endorse the spirit that the noble Baroness, Lady Worthington, and all noble Lords have expressed: sustainable fishing is the way to vibrant communities. As I have set out in my remarks, the Government have that responsibility to negotiate and work with other parties and coastal states. Particularly with shared stocks, this will be the only way in which all of us who wish to share those stocks can achieve that desirable outcome: vibrant stocks.

In summary, although I know that the noble Baroness has all the best intentions in this, the Government think that as drafted this risks unacceptable consequences—unintended by the noble Baroness, I am sure—for our country. Given our existing obligations under international law, we feel that this is not required. As I say, I have taken on all the points made and understand the spirit in which they were made, but on this occasion I respectfully ask whether the noble Baroness feels able to withdraw her amendment.

Baroness Bakewell of Hardington Mandeville: I thank the Minister for his response and all noble Lords who have contributed to this short debate. I say to the noble Baroness, Lady Worthington, that my granddaughter is also addicted to "Octonauts"; I quite like it as well.

I have heard what the Minister said and the difficulties around imposing MSY or some other very strong sustainability criteria. This is an issue that noble Lords across the whole House are extremely concerned about. Sustainable stocks are absolutely vital to the fishing industry. I understand the argument will be made that fishermen will want the fish to be there so that they can catch them, but sometimes that leads to overfishing of some stocks. I am grateful for the reassurance that the joint fisheries statements are legally binding documents, but we do not have them at the moment and it is possible that some of these statements will take a little while to come in. In the meantime, we need to be assured that sustainable fishing will take place. I completely agree that sustainable fishing leads to vibrant communities, but we need to maintain sustainable fish stocks across the board.

Given the number of times we have debated this, I feel certain that we will return to this in some form or other on Report, but in the meantime I beg leave to withdraw the amendment.

Amendment 93 withdrawn.

Amendment 94

Moved by ***Lord Teverson***

94: Clause 23, page 15, line 27, at end insert—

"( ) Any rise in the total quantity of an annual quota in England shall be disproportionately allocated to the under-10-metre fleet."

Member's explanatory statement

This amendment aims to gradually increase the viability of smaller fishing vessels and protect coastal communities.

Lord Teverson: My Lords, I come to two amendments; I cannot imagine there is any way the Government could disagree with them, but we will see how we do. They are entirely in line with government policy, as I understand it. In fact, I have given credit before to the Secretary of State. When he was Minister, he managed a redistribution to the under-10-metre fleet, despite the resistance of the English legal system, for which I give him credit.

Amendments 94 and 106, to which I will speak as well, state that we are in a situation in which it is the Government's intention, through their negotiations later this year, that we will move to a system of zonal attachment, or whatever you want to call it. The outcome is that we should have more entitlement and shed the straitjacket of relative stability, and there should be more fishing opportunities for the UK fleet. That is the bottom line. Amendment 94, which I am perfectly happy to write in future as an English as opposed to a UK amendment, says that as we increase those harvesting opportunities for the UK fleet, the local fishing fleet's proportion, which is estimated at between 2% and 5% of quota, should increase. Those are the fishers in this industry under greatest pressure. They are part of local communities, and the ones the fisheries campaign around Brexit focused on, if we are honest. Let us deliver on that and make a commitment that the redistribution strongly biases the under-10-metre fleet.

In the agriculture and farming sector, we often concentrate on and hear the question: how do we make sure we get new entrants into the agricultural industry? Yet, we talk about this only infrequently in fisheries, where the barriers are equally high. Here is another opportunity, through the increased harvesting opportunities which the UK—or English—fleet will have, to have a scheme for new entrants and younger people. This industry, on the whole, has a fairly aged profile and not a lot of new entrants. Here is an opportunity for new entrepreneurs and people with new ideas to come into the industry and start to thrive.

Having said that, as the amendment states, if people move out of the industry or are not able to succeed for whatever reason, their quota cannot be sold on. It has to come back to the authorities or to the state. These propositions make the Bill almost mildly exciting for the industry. I hope the Minister can grab that opportunity.

I also support, in general, Amendment 105 in the name of the noble Baroness, Lady Worthington. As in my amendment, with which we started Committee, this all comes down to who owns the stocks. The noble Baroness introduces the interesting concept of those stocks being held in trust. I am concerned that we are stuck in a straitjacket at the moment in the way quota is distributed. The Minister said earlier, on one amendment, that FQAs are staying as they are, so we will still be in a situation where almost half—40%—of English quota is effectively owned by foreign vessels. I put this question to the Minister: even if we increase our quota, largely get rid of relative stability—or at least move towards that—and increase UK catch opportunities, and I am a Danish, Dutch or French corporate that owns fishing rights in the UK, what will I do? Am I going to be excluded from UK fisheries? No, I will just use my deep pockets to buy more UK quota; rather than having my Dutch, Danish or Spanish-flagged vessels fishing extra UK quota, I will have a British flag on my boats. So the status quo is maintained.

It comes down to this: even if we have the additional catch limits, I see no reason why there will be any difference in the structure of the industry; it will be completely open to foreign individuals to buy British companies that own British quota. What is going to change? Companies on the other side of the Channel or the North Sea, or in Ireland, have the deep pockets to do this. Moving slightly away from my amendments, I bring the Minister's attention to who owns the quotas and fish stocks, and the possibility of bringing them into public trust. At the moment, FQAs are effectively owned by well-off and profitable companies, individuals or families. They pay no rent or income whatever to the UK, the taxpayer or British citizens. I am very interested in the Minister's response to the amendment of the noble Baroness, Lady Worthington.

6.45 pm

Baroness Jones of Moulsecoomb (GP): My Lords, I rise to speak to my Amendment 104. Like the noble Lord, Lord Teverson, I am concerned about historic fishing rights. One of the supposed benefits of taking back control of our fisheries policy—in fact, of taking back control of everything—was that the opportunities could be used to develop a common-sense fishing policy that would benefit our left behind coastal communities.

My Amendment 104 seeks to make good on that promise, by ensuring that fishing rights are allocated to the greatest benefit of local economies, rather than continuing to be based on historic catch levels. If the Government support my amendment, it will level up our coastal fishing towns and spur on a wave of new entrants to the industry. It removes reference to historic catch because historic catch levels have little or no relevance to decisions about future fishing rights. There is a lack of clarity about them, and this is an opportunity to make things much clearer and fairer. These decisions should be based on an assessment of economic and social benefit, along with all the other environmental and ecological factors set out in the Bill, which should not perpetuate an existing flawed system.

I know that the industry bodies are briefing heavily against changing this, but the Government seem perfectly willing to tackle industry bodies when they want to; it is just a question of political will. As with so many amendments to so many Bills, my amendment seeks to change the discretion to a duty, by changing the "may" to a "shall". This is important because the "may" is weak and unenforceable, whereas this should be a duty on the relevant authorities to ensure that fishing rights maximise the economic and social benefits, within the environmental and ecological limits.

Finally, my amendment recognises the core principle that our fish stocks are an asset held on trust for all the people. I hope the Government agree with that; it is a point that has already been made. This seems like a missed opportunity to reinvigorate fishing communities. The Minister just talked about vibrant communities, and the heart of this amendment is that we should be seeking to create them.

Baroness Worthington: My Lords, I rise to speak to Amendment 105 in my name. We are getting to the heart of the Bill in this discussion and amendment grouping. The advice I sought when seeking to amend Clause 25 was: "Don't bother; rewrite it." It has been hastily drafted and gives little clarity to legislators, hence the desire to present a different Clause 25. At the heart of that lies the insertion of the basic principle that the right to fish is held in public trust, as the noble Lord, Lord Teverson, said.

To clarify, in coming out of the CFP we are establishing a new legal system in the UK. That is a tiered approach which takes back control of our waters, and creates a clear process which establishes the concept of a legal fishing right, held in trust for the public. We are dispensing with business as usual, carrying on as we were, and tinkering at the edges. We are fundamentally trying to make it clear that the Secretary of State holds in trust for the public the right to give out the property right to fish.

The reason we need this in the heart of the Bill is that, by being silent on this issue and not clarifying it, we are in danger of allowing the courts to continue to make precedent that will determine how these rights are viewed. In one case, the Association of Fish Producer

[BARONESS WORTHINGTON]
Organisations took the Government to court over an attempted reallocation of the FQA. Mr Justice Cranston at the time found in favour, essentially conferring a property right on a representative body of private interests to the detriment of the public interest. It is crucial the Bill addresses this, and Amendment 105 is my best attempt, with the assistance of expert legal advisers, to redraft this clause to be crystal clear.

As drafted, Clause 25 is confusing. I urge the Minister to ask his officials why the clause starts with reference back to something that we are leaving. We are supposed to be writing fit-for-purpose legislation to determine our own future, yet here we are, referencing the common fisheries policy. The clause as drafted is therefore unclear, obscure and hard to follow.

The proposed new clause tries to introduce the very important principle that this is

"public property held on trust for the people".

That must be the basis on which we go forward. The criteria we use for the transferal of this publicly held trust into private hands must be completely transparent and objective. The Minister will, I am sure, point me towards Clause 1, which sets out a lot of lovely objectives. Those objectives are fantastic, but what links them to the fundamental process of the allocation of rights and of fishing opportunities? There is no link, except in the plans, which we have yet to see and will not be able to scrutinise. This proposed new clause would require that we set out transparent objective criteria for the process of moving the allocation from public to private ownership.

Proposed new subsection (5) sets out that we should have the ability to reward selective fishing gear and the use of techniques that reduce environmental impact. I am not in any way saying that it is perfect to include this here, but it is an important principle that when allocating these rights we should attach conditions, as we have done in the agricultural debate, to something that is being transferred from public trust to private ownership. It is simply not good enough to say that they employ people and make a small contribution to GDP; they have to be responsible for helping restore our natural environment to the point at which it can be fished sustainably and we can see a more vibrant industry as a result.

I was reflecting on the Minister's comment on the previous group that we cannot be overly onerous or restrictive in our rights-giving, because others will not do that, so there is no point. I am afraid that is a bit of a weak argument, and I hope I have misunderstood the Minister. The field I am most experienced in is climate change; another tragedy of the commons. Exactly the same argument was played back to us by various parts of government when we were trying to pass the Climate Change Act, which restricts the UK's emissions of greenhouse gases: "What's the point in the UK going further? If others are going to cheat the system, we need to be allowed to cheat too." Clearly, that is a race to the bottom; we need to inspire a race to the top. The only way to trigger such a race is to grasp this opportunity and set out world-class legislation. If we say that we have to cheat because others are cheating, we will not get anywhere; it will be a continuation of where we are today. And where we are today is dismal for everyone, fishers included.

I encourage the Minister to question his officials, even further than he already does, on the principle of our not going further than the perceived lack of action overseas. We are taking back control and it is incumbent on us to use it wisely and not, in the passing of the Bill, tie our hands by stating in any way that we will continue with the system of handing out quota according to current perceived property rights. We must start with a fresh slate.

I do not want to rehearse arguments we have had before on the devolution issues, but it ought to be crystal clear that we are taking back the ability to set our own fishing management plans. That is of course subject to negotiation, but we go into those negotiations in the spirit of levelling up and inspiring better behaviour, not of descending to the level we have seen in the past through the CFP. With the UK Secretary of State conducting those negotiations on behalf of the four devolved nations, the outcomes should be clearly passed through to them. I do not believe that anything in the proposed new clause goes against the devolution settlements. Devolved matters can be respected but, at the same time, we need to be really clear about how UK negotiations on allocations will go out to the four devolved countries.

I would hate to think that some sort of deal has been negotiated, outside the scrutiny of Parliament, in which an agreement has been reached and the allocation of the pie already settled, and that all we are doing now is arguing over what we might get more of through the repatriation of quota currently used by foreign vessels. If that is all we are doing, we have missed a massive opportunity. We must start from the basis of making fishing more sustainable across the piece. That requires us to have conversations with the devolved nations about whether the effort is correct at the moment, or whether there needs to be a redistribution.

I note the other amendments in the group on redistribution to the under-10-metre fleets and on allowing new entrants. Those are hugely important measures, but if all we are doing is squabbling about the imagined repatriation of some small extra quota, we are missing the opportunity to look again at whether we are distributing in the right way what is essentially a public asset.

I apologise for getting rather out of breath, but I am very passionate about this. I will allow other noble Lords to come in on these issues, but I will say this. As the noble Baroness, Lady Jones, noted, this is complex, and as we get into the details it gets ever more complex. But Clause 25 as drafted does not help us and does not offer clarity. We need to link the objectives set out at the start of the Bill with the mechanics of the Bill in a much more rigorous way. We need the ability to question and review, and to come forward with a transition—no one is saying that there will be a revolution overnight. We cannot tie our hands legally by accidentally continuing the status quo: that must be our guiding principle as we scrutinise this legislation. I am delighted to take part in this debate.

Lord Cameron of Dillington: My Lords, I put my name to Amendment 105 because I think that this group of amendments, around Clause 25 and the overhaul of the fishing opportunities, is a really important part of the Bill. I do not think that Defra and the devolved authorities have yet given it quite enough thought. As the noble Baroness, Lady Worthington, has said, it is an opportunity and we must not let it slip.

When we discussed the sustainability objectives on day 1 of Committee, the object was to put in place a framework that put sustainability at the forefront of the objectives. We will no doubt come back to that on Report. During the discussion, the Minister emphasised that sustainability included social and economic sustainability, as well as environmental. During the discussion, the noble Earl, Lord Caithness, suggested that we could mimic the Agriculture Bill, where public good by farmers is to be rewarded. I think that it is in Clause 25 where we can put all that into practice: where we can take the ethereal objectives in Clause 1 and put them into practice.

Like the noble Baronesses, Lady Worthington and Lady Jones of Moulsecoomb, I considered putting down a comprehensive clarification of article 17 of the common fisheries policy. But already having a reputation for rather badly worded amendments to this Bill, I decided to desist; I thought that I would ride on their coat-tails instead. In the end, I do not necessarily think that either amendment is right, but this is an area where we might take advantage of the Minister's well-earned reputation for discussion and compromise and, I hope, persuade him and the Government to bring forward their own amendment on the subject, spelling out in detail exactly what the allocation of the fishing opportunities should be.

Perhaps I could spell out where I stand. First of all, we have to take it for granted that the total allocation of quota in each fishing area is well within the levels of sustainability and actually encourages the growth of the fishing stock. I have assumed that the existing borderline harvesting of many stocks will not just continue; a point made by the noble Baroness, Lady Worthington.

Now we come to the all-important criteria for the allocation of this quota. This is sustainability in practice and is as important as the framework of objectives set out in Clause 1. I will list my criteria, which the Government and others may wish to amend or add to.

First, the allocation must take account of the impact of the boat's fishing on the environment. This would involve taking account of any damage to the vegetation on the seabed, for instance, with beam trawling and pulse trawling coming to mind. It also means taking account of the impact of fishing on the wider environment, for instance the seabird population. How do the boats in question mange the recovery of lines, hooks and, above all, plastic fishing equipment? There would be other aspects of this environmental criteria, but that is probably enough for starters.

Secondly, on the vessel's history of compliance, I know this is already included in article 17, but I would like to see every part of the allocation process set out clearly for all to understand.

Thirdly, with historic catch levels, I do not want to go back to the relative stability and the allocation of quotas in the 1980s but, clearly, for the purposes of a stable fishing industry and for the encouragement of reinvestment, it would be sensible if a boat's quota did not change too dramatically, up or down, from year to year.

7 pm

Fourthly, the use of selective fishing gear is part of the reinvestment we should be looking for. I know that the Minister mentioned last week that it was already part of the criteria, but I do not think that sales of selective fishing gear are booming. If it can be proven by invoices that the boat in question is genuinely doing its best to catch only what it is allowed to or intending to catch—and thus avoiding discards or catching fish that are sensitive—then the quota allocation should be biased in its favour.

Fifthly, and importantly, there is the boat's contribution to the local economy and community, which we have been over many times in our debates. Are the fish being landed locally? How many full-time jobs are being created by the boat's fishing activities, both at sea and, probably more importantly, on shore? Also coming under this category is whether the boat has a recognised apprentice scheme for encouraging local youngsters. I think that is important.

That is probably enough of a stab at some of the more important criteria. To some extent, this amendment is tied up with the "under-10" amendments, such as Amendment 94 and the "new entrants" one, Amendment 106, in this group, both of which I support. I would like to have the seen the new entrants amendment added to slightly because I always compare this with water rationing in Australia. In the Murray-Darling river basin, for instance, when the Australian Government allocated the quota for abstracting water, they took quite a substantial amount into a government reserve. I would like to see us do that. In Australia, they wanted to cater for environmental disasters and mistakes in water distribution, but I think the same thing applies to us. We should not be fishing on the limit. We should try to make certain that there is some reserve, and that would be best held by the Government.

I return to Amendment 105. If, indeed, quota is a national commodity—and that has been mentioned by several speakers—and if we manage to negotiate a little extra, then I believe the principles of allocation should be set out very clearly so fisherman are aware of the standards they should aspire to. I would like the Government to give more thought to Clause 25 and, as I suggested earlier, perhaps have a conversation with interested Peers to ensure that the general principles of sustainability from Clause 1 are firmly embedded within the principles for future allocation of what will be our quota.

Lord Lansley (Con): My Lords, I apologise for my late arrival at the Committee. I believe my noble friend Lady McIntosh very ably excused me for being late and introduced the amendment in an earlier group—for which I am grateful. I was at a memorial service for a good friend, Professor Ian Calder, who was not only a distinguished forensic pathologist but also a great pleasure to be around.

[LORD LANSLEY]

Noble Lords who have put forward amendments in this group have got to the heart of the issue. I will particularly pick up from the point made by the noble Baroness, Lady Worthington. One of the central processes following any international negotiations is the determination of fishing opportunities and their allocation. However, we suddenly lapse into a reference to Article 17 of the common fisheries policy. I thought we were escaping from that and setting out for ourselves.

Indeed, the noble Baroness, Lady Jones of Moulsecoomb, does us a service in her amendment by reminding us what is in the second sentence of Article 17, which otherwise is not referred to in the Bill. It would not have been onerous on the Government's part for Clause 25 to replace Article 17. Then we could have seen the Government's intentions. I am looking for the Bill to be very clear about the sequencing and the processes. If I understand correctly, and I may entirely be wrong because I think the Bill does not tell me, under Clause 23 the Government will make a determination following international obligations and must consult the devolved authorities, as Clause 24 tells us. Therefore, by extension, I assume, although it does not say so, that the determination under Clause 23 will include the allocation of fishing opportunities between the national fisheries authorities of the United Kingdom. Is that the case?

That having happened, Clause 25 then says by what process the national fisheries authorities should distribute those fishing opportunities. I gently say to the noble Baroness, Lady Worthington, that I think there is a problem with Amendment 105 because although it refers to the United Kingdom allocating fishing opportunities between relevant national authorities and using transparent and objective criteria for that purpose, it does not remove Article 17 and, subsequently, refers to "English" fishing opportunities and "English" fisheries authorities. Unless I am very much mistaken, we are legislating here not only for England but on behalf of national fisheries authorities across the United Kingdom. Therefore, Clause 25 must say how the national fisheries authorities in the other parts of the United Kingdom should allocate their fishing opportunities. We need to know whether they have criteria distinct and different from those that will be applied by the English authorities. As drafted, I think they can use different criteria and the joint fisheries statements are likely to reflect different criteria where those apply.

Baroness Worthington: I just want to clarify things. We see the need for two tiers of transparent objective criteria: one on the allocation of the pie out to the four devolved nations and then a subsequent set of similarly transparent criteria for the allocation to the English fisheries. I think we get on to that in Clause 27 on fishing opportunities in England. The noble Lord is right that we have to be consistent in the two levels.

Lord Lansley: Happily, I think we are in agreement about this. There are two tiers of allocation: the determination of fishing opportunities between the national fisheries authorities and the process by which each national fisheries authority is to do its own task.

That brings me back to the point I was not able to make in a previous group for Amendment 100. However, listening to the bulk of that debate none the less persuaded me that I may, in any case, have directed my amendment at the wrong place and that Clause 25 is where it really matters. This is the point at which if we move away from historic catch levels, for example, things such as the extent to which we do—we may or may not do so, I do not know—immediately become of relevance to the British fishing boats as they are affected by it. For them, that must be the point at which they are consulted. As far as I can tell, Clause 25 and Article 17 which it amends do not say anything about any process of consultation for those affected by the allocation of fishing opportunities. It would be a good idea if they did. None the less, the purport of Amendment 100 is still an argument in relation to Clause 25. I am making the point now, but we may to return to it at a later stage.

Baroness Jones of Whitchurch: My Lords, I am grateful to the noble Lord, Lord Teverson, for tabling his amendments, which address the issue of enabling new entrants to come into the sector, giving priority to the under-10 fleet. That is an issue which we will cover in our own amendments in the next group.

The amendments tabled by the noble Baronesses, Lady Jones and Lady Worthington, explore the criteria used to allocate new fishing opportunities. They stress the importance of using transparent criteria and the economic and social contributions that the new allocations will make to local communities. The noble Baroness, Lady Worthington, goes one step further and identifies the need for incentives to fishers to use selective fishing gear and techniques which will reduce environmental and habitat damage. I am very grateful to her for her considerable efforts in rewriting Clause 25, which clearly is flawed and inadequate in its current form. We all feel that she has done a sterling job in having a go at that, although as this process goes on we are all discovering that it is not as easy as it first appears.

I am also grateful to the noble Lord, Lord Cameron, for his efforts to add his list of improvements that could be made in that clause. In that melting pot, we have enormous agreement for all the arguments being put. These are important principles; we spoke about many of them at Second Reading. We must just find the right place for them in the Bill. We are still struggling with what the Bill's final architecture should look like.

All noble Lords who have spoken are keen for this Bill to create a fairer distribution of quotas. That is what is needed if we are truly to regenerate our coastal communities. It follows from the debate that we had earlier in this Bill about the principle that our fishing stocks are the property of the nation rather than a select few individuals. The point has been echoed today. The noble Lord, Lord Teverson, said that we should recognise that the current system of quota allocation is broken; I agree. Half the English quota is held by companies based overseas, the small-scale fleet holds only 6% of the quota, and the five largest quota-holders control more than a third of the UK fishing quota. We can all see what is wrong with that. These disparities did not happen overnight. They have historic roots which may not easily be dismantled, but

this should not stop us from aspiring to deliver a more fundamental change; we could use the Bill as a vehicle for it.

A number of noble Lords are, like me, still unclear about the extent to which the new licensing regime will enable action to be taken on the ownership of the existing UK quotas. In his letter of 25 February, the Minister makes it clear that the Government do not intend to alter the allocation methodology for existing quota, but as the noble Lord, Lord Teverson, said, what does this mean in practice? For example, will we ever be in a position to challenge the overseas ownership of some of our quotas, even if they are not seen to operate in the national interest? Can we reset the dial on who owns what? Is this something that could be covered in the trade negotiations? It would be helpful if the Minister could clarify some of this.

The noble Lord, Lord Lansley, was anxious to be clear on the sequencing and the processes for landing many of these issues. We are all trying to find the sequencing and the processes. I know that we are just talking of principles at this level so I will not go into enormous detail, but he felt that it was set out in Clause 23 but now we are discovering that it is not Clause 23. We are chasing the holy grail and will carry on doing so. Clearly the new quota allocations provide an opportunity for change. We can and should use this Bill to lay down a more equitable system for distributing them in the future.

We remain concerned about how quota auctions could work in the future. In his letter, the Minister says that it is not intended for an auction scheme to be used to sell fishing opportunities exclusively based on price. I hope that they would not be based on price; this would perpetuate the discredited schemes that we have already, and there would be no real benefits from leaving the common fisheries policy.

We have amendments in a later group about the need to boost the small-scale fleet. Our aim would be to redistribute the new quotas proportionately in favour of the under-10-metre fleet, the backbone of our coastal communities and ports. We will set out the arguments when we come to that group. In the meantime, we support the general principle of broadening quota ownership and rewarding those vessel owners who demonstrate good practice and a commitment to our sustainability objectives. We therefore support these amendments.

7.15 pm

Baroness Bloomfield of Hinton Waldrist: My Lords, I am grateful to the noble Lord, Lord Teverson, and the noble Baroness, Lady Bakewell, for bringing forward Amendments 94 and 106, which seek to secure the position of the under-10-metre fleet and for new entrants. We all want to achieve the same thing. However, as the noble Baroness, Lady Jones, just said, often putting this into the Bill is more complicated.

The Government recognise the importance of the under-10-metre fleet as a cornerstone of our local coastal communities. However, managing our inshore fisheries is a complex task. The fleet is diverse; they catch an assortment of quota and non-quota species using a variety of boats and gear in conditions that differ considerably around the country. Non-quota species are particularly important to the inshore fleet. In 2018, around 77% of the weight and 78% of the value of their landings were from non-quota species such as brown crabs and lobster.

The Government want to support all fishermen, including the under-10-metre fleet, to fish more sustainably, improve our collective understanding of stock health and adapt to technological innovation. That is why they were fully supportive of last October's Future of Our Inshore Fisheries conference, organised by Seafish. Themes discussed by fishermen and stakeholders included greater collaboration, responsibility sharing and devolution of decision-making responsibility.

Turning specifically to quota allocation, in England we have already taken action to increase the quota the under-10-metre fleet receive. Since 2012, we have realigned fixed quota allocation units from the sector to provide a 13% increase to the under-10-metre quota pool. In 2018, the under-10-metre fleet was allocated an extra 1,281 tonnes of quota uplift, which equated to an additional £3 million. These combined actions have helped the under-10-metre fleet to land 36,000 tonnes of fish in 2018.

In England, we are already exploring new methods to allocate any additional quota we may secure. Last summer, Defra ran a call for evidence to seek views on the values and processes which underpin good quota management. As may be expected, views expressed were very broad-ranging and there was no overall consensus. More work is needed with industry and other stakeholders to further develop this approach throughout 2020.

The quota needs of the under-10-metre fleet will be a key consideration here. It is right that we wait until this further engagement is complete before deciding how to allocate any additional quota in England, to ensure that we are allocating it fairly, proportionately and in support of the fisheries objectives, and—to address the concerns of the noble Baroness, Lady Jones of Moulsecoomb—considering the needs of the community.

This amendment particularly concerns English quota allocation, and amends Clause 23, which relates to the determination of fishing opportunities at a UK level. These are two separate matters and it is potentially confusing to link them in this way. I will address Amendments 104 and 105 together. The UK Government share the desire of the noble Baronesses, Lady Jones of Moulsecoomb and Lady Worthington, to see improvements in sustainability. We have already set out a range of key commitments to achieve this. The noble Baroness, Lady Worthington, asked why Article 17 of the common fisheries policy started off Clause 25. It might be helpful if I read out what the Explanatory Memorandum says:

> "This clause amends what will be provisions in retained EU law setting out criteria for the distribution of fishing opportunities. Article 17 of the Common Fisheries Policy Basic Regulation requires that Member States distribute fishing opportunities domestically according to transparent and objective criteria including those of an environmental, social and economic nature. The effect of the amendments is to maintain the existing requirements in UK law and to apply them to the Fisheries Administrations and the MMO."

[BARONESS BLOOMFIELD OF HINTON WALDRIST]
The Bill ensures that Article 17 of the common fisheries policy basic regulation works in UK law as retained EU law. Article 17 requires the allocation of fishing opportunities on the basis of transparent and objective criteria. The Secretary of State follows these criteria when distributing quotas to the fisheries administrations, using the methodology set out in the publicly available UK quota management rules. Each administration is then responsible for distributing its quota share to industry. In England, the methodology is set out in the publicly available English quota management rules. Scotland, Wales and Northern Ireland also publish their own quota management rules. Changes to these rules are normally consulted upon. In fact, Defra recently ran a consultation on the options for allocating reserve quota which is the uplift in quota we get to account for the reduction in discarding within England.

Given that these documents and evidence are already publicly available, it is unnecessary for the Bill to explicitly set out that it will not be exempt under the Freedom of Information Act 2000, as Amendment 105 would provide. The Bill would not be the correct vehicle to seek to exempt the Freedom of Information Act in this way. It is also likely that such information would be covered by the Environmental Information Regulations 2004. The Fisheries White Paper made it clear that we will continue to allocate existing quota on the basis of FQA units. This ensures stability and provides certainty to those who have invested in such units. However, we also said that we will work with the devolved Administrations, industry and other stakeholders to develop a new methodology for the allocation of additional or new quota. These criteria will also be published in the relevant quota management rules.

The amendment would put into statute the principle that fisheries are public property held on trust for the people of the UK. This risks further complicating the legal regime. International law, through the UN Convention on the Law of the Sea, recognises the rights of coastal states over resources, including fish, in their waters. There is a public right to fish, but this right has been restricted as the regulation of fisheries has been added to over the centuries. The last century saw a significant increase in the powers devolved to Scotland, Wales and Northern Ireland. This Bill seeks to ensure as joined-up an approach across the UK as is appropriate. It contains a set of shared fisheries objectives which have been developed by the fisheries administrations and which will be used to ensure that fisheries are managed sustainably.

Imposing a further principle on this regime will complicate things and could undermine this agreed approach. It is not clear what public property held on trust for the people of the UK would mean and what it would add to the sustainability and national benefit objectives. I am concerned that any lack of clarity over the criteria which can be used to distribute fishing opportunities could result in uncertainty for parts of the industry which have invested significant amounts of money in fixed quota allocation units. We recognise that fish are a public asset which should benefit the country as a whole.

Baroness Worthington: I have heard that phrase before that fish are somehow held on trust. Fish are considered to be wild animals and cannot be held by anyone as a property right. We are talking about the allocation of the right to fish, not the fish themselves. They cannot be owned by anybody, but fishing rights can. I want to make sure that that is well understood.

Baroness Bloomfield of Hinton Waldrist: It is understood.

The issue of public property would, we believe, be covered by the socio-economic and other criteria which the Secretary of State is already required to consider. I have just asked for a reply to the question on how the future quota will be dispersed.

Additionally, while I recognise that quota allocation in England is complex, we need to proceed carefully given that, as we have discussed, fisheries management has been plagued by unintended consequences. For example, quota for the Crown dependencies is allocated from the England quota pot. Therefore, the statement about the English fishery as public property held on trust for the people of England could restrict the Crown dependencies' rights. I am sure that the noble Baroness would not intend to do this.

In terms of the bodies involved in allocating quota, Amendment 105 considers inshore fisheries and conservation authorities as English fisheries administrations for allocations. However, inshore fisheries and conservation authorities do not have a role in quota allocation, so we do not support moves to make them so, for reasons we have articulated when we discussed that amendment. So this may inadvertently cause confusion. Further, Amendment 104 would remove the link to a history of compliance. This is a useful and positive tool which could be used to support our strong commitment to sustainability. Removing it would weaken our ability to achieve these aims.

The proposed grant-making powers in the Bill will enable us to support projects that, among other things, protect the marine environment and develop commercial fishing. Financial assistance could therefore be given as part of a future funding scheme to help fishermen move to more selective and less environmentally damaging fishing techniques. We therefore believe that we should continue to rely on the fisheries objectives in the Bill, as well as existing and well-established mechanisms and criteria, which have proven effective and respect the devolution settlements.

Amendment 106, tabled by the noble Lord, Lord Teverson, addresses new entrants. We are aware of concerns—

Baroness Worthington: Before moving on to the next amendment, I just wish to clarify that the main objection to this redrafting is that it would reduce clarity and lead to more ambiguity. I really do not think that is the case. I think this is much clearer. If the Minister is saying that the current situation is so clear, can she say categorically who holds the right to give out a fishing quota? There is clearly a financial benefit, so who is responsible for assessing the value of that

right and for managing it for the public in perpetuity? Precisely, in legal terms, where do those fishing rights reside?

Baroness Bloomfield of Hinton Waldrist: I go back to Clause 23, which applies to the Secretary of State setting the UK quota. Clause 25 relates to the split of UK-level quotas between the administrations and the subsequent distributions to boats within the administrations.

Baroness Worthington: Clause 23 applies only when we have an international agreement. It is clear that UNCLOS, which is the main international agreement, is not implementable in judicial review. Clause 23 is an insufficient answer, I am afraid. There are many other rights we grant that are not covered by that clause.

Baroness Bloomfield of Hinton Waldrist: I shall write to the noble Baroness on that detailed point.

On Amendment 106, which addresses new entrants, we are aware of concerns about shortages in crew and an ageing demographic within the fishing industry. The average age of fishers in the UK is 42. To address this in England, we are working closely with the Seafood Industry Leadership Group, whose work has highlighted the importance to a thriving seafood industry of training, skills development and workforce retention. I take on board the suggestion of the noble Lord, Lord Cameron, on apprenticeship training, which is very much in line with our own intentions. A number of fishing organisations have tried to develop schemes for new entrants, and apprenticeships. They have had varying degrees of success and many lessons have been learned. It is not easy, but it does not mean that fishing organisations should not continue to try. We must also ensure that there are fish for new entrants to catch, which means balancing the environmental, social and economic objectives.

We are also looking at examples from around the world, such as the Faroes, Scandinavia, Jersey and Guernsey, to identify options to support the UK fleet now and to ensure that it has the labour force necessary for its long-term future. To ensure certainty and stability for the UK fishing industry, after discussions with industry and, as stated in the fisheries White Paper, we took the decision not to overhaul the current system of allocation for existing quota. Quota for new entrants could, therefore, be set aside only from increased fishing opportunities gained through negotiations. Part of the work that we are undertaking with industry and other stakeholders this year will include consideration of the option of using additional quota to support new entrants. We have the powers to do this.

Ensuring that fishers can fish sustainably will be an important aspect of the considerations for allocations. The amendment does not refer to any sustainability criteria and could therefore ultimately restrict our ability to set a gold standard for sustainable fishing. I have been advised that there are, regretfully, a number of other practical issues with the amendment as drafted. It is not clear which quota this allocation should be made from: the UK, English, existing or new. Further, it is not clear for how long a new entrant could keep the quota. If it is for the entire career of the fisherman, provided they continue to fish it, the requirement to always have a proportion available for new entrants could mean taking quota from existing fishermen. With this explanation, I hope that the noble Lord will feel able to withdraw his amendment.

Lord Teverson: I thank the Minister for those 101 reasons why it is difficult. My question is: do the Government want a new entrants scheme?

Baroness Bloomfield of Hinton Waldrist: I think that I just said that we do, and how we could do it with additional quota.

7.30 pm

Baroness Worthington: The fundamental point that we are making is: can we ever imagine a point in the future where we can have a break from the existing status quo, which is not working, to one that is working, which involves the fundamental reallocation of these rights to a different make-up of players? It is a fundamental question. Most of us came into this discussion expecting to be able to debate the fundamental principles on which we allocate these rights. What we are being told today is that the only thing open to debate is if we have a potential, additional small amount of quota that comes back to us. That is a missed opportunity. We have all said repeatedly in different ways that to lock in the status quo is to continue the faults of the common fisheries policy.

Baroness Bloomfield of Hinton Waldrist: I note the noble Baroness's disappointment, but that is the Government's position and we have no plans.

Lord Teverson: My Lords, I thank the Minister for going through all that, but another term for stability and certainty is fossilisation. That is what we are being told. The whole Bill is in many ways on that theme, I am afraid. One fundamental question that the Minister did not answer is: what is to stop all the new fishing opportunities landing up exactly where they are at the moment, particularly with foreign-owned companies? I do not understand how anything can stop all our new fishing opportunities being taken by existing players, because they have the money, influence and experience. What stops everything that is new being exactly the same, replicated? I do not understand that.

Baroness Bloomfield of Hinton Waldrist: I am assured that the economic benefit objective will have some bearing on that.

Baroness Young of Old Scone (Lab): My Lords, I have not spoken on this amendment, but I am pretty horrified with the way that it has gone, to be frank. Earlier in Questions, the Minister said that we had legislation that was going to be world class on the environment, agriculture and fisheries, and this Bill is retrenching by the minute to being an endorsement of the status quo. It is very disappointing.

Lord Teverson: Anyway, I look forward to the new entrants scheme. That is good. I misunderstood the Minister, who seemed to suggest it was possible only if it was sustainable. We have a sustainability objective so it obviously cannot happen unless it is, but the whole point of Brexit was to have more fishing opportunities. I particularly thank the noble Baronesses, Lady Worthington and Lady Jones of Moulsecoomb, for really bringing into focus the whole area of allocation of these incredibly valuable rights. We are talking about tens of millions of pounds—more than that, I am sure. I had not anticipated that this was an area that we would have to return to, but we absolutely will have to.

I understand the point about needing some degree of understanding for investment into the future. That is a dangerous argument, because it is exactly what the European Union will argue in terms of all the people from across the water who have invested in fishing in our waters, so we should expect that to be echoed by the other side in negotiations with us over fisheries agreements in the future. As I said, I look forward to the new entrants scheme and fully accept the Government's wish to have a better allocation for the under-10-metre fleet. I fully accept the criticism of the Minister that my amendments are relatively minor in comparison with the grand plan. I am with the grand plan as well, but at this moment, I beg leave to withdraw my amendment.

Amendment 94 withdrawn.

Amendments 95 to 98 not moved.

Clause 23 agreed.

Clause 24: Duties relating to a determination of fishing opportunities

Amendments 99 to 103 not moved.

Clause 24 agreed.

Clause 25: Distribution of fishing opportunities

Amendments 104 and 105 not moved.

Clause 25 agreed.

Amendment 106 not moved.

Clause 26 agreed.

Clause 27: Sale of English fishing opportunities for a calendar year

Amendment 107

Moved by ***Baroness Jones of Whitchurch***

107: Clause 27, page 18, line 6, at end insert—

"( ) reserving a proportion of fishing opportunities for boats whose length is 10 metres or less;"

Member's explanatory statement

This amendment would allow regulations made under Clause 27(1) to reserve a proportion of annual fishing opportunities for small boats.

Baroness Jones of Whitchurch: My Lords, Amendment 107 in my name follows on from our previous debate about the management of, and criteria used for, allocating future fishing rights, which could be the subject of competitive tender or auction. Without repeating the whole debate, the Minister said in winding up on the previous amendment that consideration is being given to the new quota allocation. She also told the noble Lord, Lord Teverson, that there was support for a new entrants' scheme. If that is the case, my challenge back to the Government is: why can we not include the principles of that in the Bill? If the Bill is for anything, it should be for those sorts of future planning activities. I hope we can find a form of wording that incorporates that in the Bill.

We have addressed our concerns about how any future auctions will be run, and what the consequences would be if they were driven solely by the highest bidder. Our amendment would require regulations made to deliver the auctions to reserve a proportion of the fishing opportunities for the under-10-metre boats. The previous debate sought new opportunities for new entrants to the sector. This amendment more specifically focuses on the smaller-sized fleet.

We have already explained the importance of the smaller boats to the economic and environmental sustainability of the sector. They generally use lower-impact gear and provide more jobs per tonne, but their current share of the quota is limited to around 6% of the total. Yet in the UK, the under-10-metre boats represent more than 70% of English fishing boats and 65% of direct employment, so we should be using this opportunity to boost their numbers and their share of the sector.

This is a central argument in our bid to revive the declining and impoverished coastal communities, and for that to work we need a spread of smaller boats accessing the smaller harbours and ports. This intervention is particularly necessary as the small-boat sector is shrinking every year. Between 2007 and 2017, the number of fishers on UK-registered vessels decreased by 10%. In his letter to noble Lords of 10 February, the Minister explained that the Government were indeed keen to support the under-10-metre vessels. He explained that in England they were already taking steps to ensure that they received a higher share of the reserve quota and that further consideration was taking place on the distribution for this year. That is all fine as far as it goes, but it does not represent the step change necessary to really revive the under-10-metre sector.

Nevertheless, given the Minister's previous comments, I hope he will support this very modest amendment. After all, all it does is to require the auction regulations to address the issue of reserving a proportion of the auctioned fishing opportunities for the under-10-metre fleet, so I hope he can support it.

Amendments 108 and 109 address our wider concerns about the competitive tendering and auction processes. They rightly raise whether we should take into account the bidder's impact on the marine environment when allocating new quotas. As we have debated before,

these amendments have considerable merit and are in line with our earlier arguments and I hope the Minister will support them.

Amendment 110 in the name of the noble Baroness, Lady Worthington, proposes a new Clause 27. Again, she has taken on the Government's drafting to a considerable extent. I am grateful for her efforts. She specifies in detail what she feels that the ownership and distribution rights of English fisheries should be. These include quite detailed proposals, but they also keep the competitive tendering and auction principles with which we have some concerns. I look forward to hearing the noble Baroness's explanations for these proposals. It may well be that we will be persuaded at that point. In the meantime, I beg to move Amendment 107.

Lord Teverson: I thank the noble Baroness, Lady Jones of Whitchurch, for putting steel in my backbone again and demanding that this is in the Bill—whereas earlier I sort of retreated a bit.

I am interested in hearing from the Minister how these auction rights will be used. Will they be for all quota or the new quota? I would like to use this opportunity to understand the Government's specific intention for using these rights in the Bill. How will they do it and when? Will it apply to new quota or all quota? I am unclear, because it all starts with the Secretary of State in May. I would be very interested in understanding what the Government intend to do in the near term.

Baroness Worthington: My Lords, I rise to speak to Amendment 110 in my name. I have, perhaps overconfidently, attempted to redraft Clause 27 to set out the mechanism through which the rights to fish held on public trust are reallocated in the context of the English fishery, which is unequivocally the responsibility of the Secretary of State, since we are not talking here about anything that affects the devolved Administrations.

We set out this redrafted clause to try to mesh together the various elements that the Bill is founded on. I strongly believe that this should all be on the basis that this is a right held on trust and conferred to the private sector via the Secretary of State, and that these powers are held by the Secretary of State and then conferred. We see that there needs to be some allocation process by which those rights are transferred. I would like to hear—yet again, rather depressingly—whether this power being taken under Clause 27 applies to all quota or simply quota that may or may not be released as a result of some kind of negotiation with Europe. It feels like a real missed opportunity if it is the latter. Nothing in the Bill should prevent our applying these principles to all quota.

It seems incredible that we are here, at the start of a new decade, thinking about an unlimited right being carried on in perpetuity by the holders of the FQA system. There really needs to be a clarification. In a sense, Amendment 110 and the reworked Clause 27 speak back to Amendment 105 and the reworked Clause 25. They are a pair: the second implements those principles exclusively in relation to the English fishery.

In response to the question from the noble Baroness, Lady Jones, about the auction and competitive tender, this is a valuable tool to have in the kit. It would need to be carefully managed, and we would need to think about how an auction is carried out. There are other auctions for government contracts or rights carried out in different sectors of the economy. The one that I know best is the allocation of contracts for zero-emissions energy, in which case certain pots are made available and certain rules written around the allocation of those rights. If the fear is that these competitive tender processes would always lead to the more dominant players gaining more access, there are policy mechanisms that one can use to mitigate that risk.

This is a crucial clause because it also establishes this concept of payment for something held for the public trust. I am always a bit worried when I hear the Ministers saying, "We're going to use grants to encourage better behaviour." They should not have to use grants, because they are granting a right worth tens of millions of pounds every year. In a sense, they do not need to invent additional financial incentives when they have this existing financial instrument in their hands. It should be seen as such, because it certainly is by the fishing operators. It is not a pastime carried out without focusing on the bottom line and the profitability of the activities. The Government must take that approach.

To bring holding a property right in trust to life for noble Lords, if you own a piece of land or a house and simply give it away and say, "It's fine. You can have that, no questions asked", it is not likely that that property will be well looked after. You would also feel very vulnerable if you did not have a solid legal basis against which that transaction was carried out.

I am afraid that the current drafting of the Bill is not clear. There is still a lot of uncertainty, which is why the courts get involved and we lose legal cases around this question of quota allocation. There is not a really clearly laid out basis on which we do this transaction, confer these very valuable rights and hand them to the private sector.

As I say, this is a partner to Amendment 105. Listing in proposed new Clause 25(5) the links back to the various plans and statements—fisheries management plans and the marine plan—is an attempt to make the Bill holistic, mesh it together and make it read back against itself in a way that has some meaning in the real world. I will leave it at that.

7.45 pm

A noble Lord: Hear, hear!

Baroness Worthington: I will ignore that last comment. I thank noble Lords very much.

Baroness Wilcox (Con): My Lords, I have been sitting here and listening for a long time. I have worked with these people and know their stories really well. We are also very passionate. We do not expect the English to get upset and worried—to love their boats, to want to bring in their youngsters, teach them properly and bring them forward.

I tried to look back and see what things stuck out for me. A lobster hatchery that I put together down in Cornwall is going jolly well—we enjoy it. In those

[BARONESS WILCOX]
days, people were able to take money from the European Community to train children to go to university and learn. At the same time, they would come over and take what they liked: when you came to another place, you were supposed to bring your police with you and not have any cheating. You were supposed to be watching it. However, when you talk to the Spanish and the rest of them, who had a hell of a job to get themselves enough fish, they just took it—they left the police back at home. I grew up like that.

We will find it very difficult to pull our people away from saying, "It's all right now. Everything's fine. We don't need to worry". We do need to. This is what we have heard from this marvellous lady here. I did not know her before, but she is terrific. What these two Ministers have done with patience over hours and hours is something that you do not see at sea.

I remember the first time that you could look down and see all the fish coming, because of the technology that showed it to us—watching us taking loads ourselves and pulling through. We just had to lose it. We had so much that we did not know what to do with it.

At the end of the day, what we do best is fish and chips. We love it down in the West Country. We love to sell it. The frightening thing is realising that our water goes right up to France. We have this huge amount of water around us, this great big place. We also have a place where we can eat the food we love. Hands up—who knows what we eat more of? What is it? Can no noble Lords say what they love to eat? Are you not going to be able to say, "of Britain, of England"? What do we eat? It is beef. We do not eat fish; we eat beef.

I will finish in just a moment. I do not think that it is a problem, or what we are doing is wrong. I think we are recognising, hearing and seeing the great excitement that is coming to us. We have not yet spoken about training up the youngsters to bring them in, get them keen, and get the mechanisms through. I would like to congratulate the Front Bench. I hope that we do not hang around much longer. It has been a long time and I have enjoyed it.

Lord Teverson: My Lords, I congratulate the noble Baroness on her work on the lobster hatchery in Cornwall, which really is something quite special and has been very successful.

Lord Gardiner of Kimble: My Lords, I too thank my noble friend Lady Wilcox very much for her distinguished support for fishing interests over many years.

Amendment 107 in particular would seek to reserve a proportion of English quota to be sold solely to the under-10-metre fleet. In England, the decision about whether to tender any quota is still being considered. I would say to all noble Lords who have contributed to this debate that all these matters are under active consideration. I will want to take back a large number of the points that have been made, but the criteria to be applied to any auction or tender could address concerns raised in relation to the under-10-metre fleet. Measures could be introduced to limit the lots being tendered, the amount of time they are tendered for, and the groups that they are targeted towards. As I have said, the Government will consult on the scheme and any allocation criteria. Other countries, such as Iceland and the Faroes, have explored auction systems for selling national fishing quotas. We will, therefore, also look to learn from these and other countries' experiences. The Bill provides flexibility about how any future scheme might operate. It would already allow a scheme to be made only for the under-10s, for instance.

I turn to Amendments 108 and 109. The Government are committed to using the additional quota we secure to benefit our fishing industry and the coastal communities that they support. I know that the noble Baroness and many noble Lords will be disappointed, but the Government's intention is to use this power to auction and tender additional quota. We recognise that this is an opportunity to support different catching sectors and will be consulting in the future, but the Government are committed to the support of coastal communities. While it is our intention that that these additional fishing opportunities be sold, and fished, the clause does not currently prevent someone from buying it and not fishing against it, as Amendment 108 seeks to provide. That said, I would caution that stopping this additional quota from being fished could reduce the benefit for our coastal communities. Encouraging those who do not intend to fish the quota to compete in auctions could also increase prices, and potentially outprice our fishers.

To address Amendment 109 specifically, I highlight that the quota tendered or auctioned through this clause would be only a proportion of total UK quota, as it relates to England only. It would therefore apply only to a proportion of fishing activity, and we must not forget that a significant proportion of our most valuable catches are actually of stocks that are not covered by quotas. Our ambition is to make the whole fleet more sustainable. We believe that this amendment, while well intentioned, is actually too narrow in focus, given that the Bill already provides a range of tools for fisheries managements to ensure that the impact of fishing on the marine environment is minimised.

Any scheme developed under Clause 27 would be developed in line with the sustainable fishing policies and practices that will be set out in the joint fisheries statement, which we have already discussed at length. However, as with everything relating to fishing, it is not as straightforward as might be imagined to determine what a sustainable fishing method is. As with all gear types, an assessment of sustainability is dependent upon how, when and where they are used. Advances in gear technology have also transformed sustainability and greatly cut unintentional bycatch. It is worth noting, for example, that, in line with a management approach the UK supported when an EU member state, Defra has already taken action to end a fishing technique that has caused concern—one that I believe the noble Lord, Lord Cameron of Dillington, referred to in an earlier group of amendments—being used by English vessels: namely, electric pulse trawling. English licences will be withdrawn at the end of the transition period to end the practice in UK waters by English

and any foreign vessels we allow to fish in our waters. Decisions on a future scheme regarding the sale of English fishing opportunities are yet to be determined and will depend on further exploration and consultation. It is right that we continue to develop the details of the scheme with the relevant stakeholders, so that it is flexible.

I turn to Amendment 110. While I agree with the noble Baroness's intention to ensure that any sale of English fishing opportunities is regulated and based upon clearly defined criteria, I am advised that this amendment would undermine the existing quota allocation system. Case law has recognised that fixed quota allocation units—FQAs, the units by which quota is allocated—are a form of property right. We have committed to maintaining the current system of FQAs in relation to current quota allocations. This has to be taken into account in any new regime for the distribution of fishing opportunities. However, it is also important to highlight again that the UK's sovereign rights over its fisheries and the public right to fish are already recognised in law. UNCLOS recognises in Articles 2 and 56 that coastal states have sovereign rights over the resources, including fisheries, in their territorial waters and EEZ. At home in our domestic courts, as had been referred to, Mr Justice Cranston noted, in the UK Association of Fish Producer Organisations Judicial Review of 2013, that the Magna Carta recognised fish stocks were a public resource and:

"Consequently there can be no property right in fish until they are caught."

Additionally, the amendment links quota allocation and the provision of fishing licences in a manner which could inadvertently lead to confusion. While quota is indeed allocated to licence holders, these two concepts are separate issues and should be treated as such. This distinction is important as it allows, for example, quota to be exchanged between licence holders during the fishing year. Such flexibility helps fishers adapt to weather patterns, choke risks and other circumstances.

I absolutely understand the reason for the amendment, particularly given that the noble Baroness and whoever may be working with her have tabled this new clause. But the Government's position is that there is more work to do on this. We want to consult on it; we want to get it right. All the points that have been raised, not only in the noble Baroness's amendment but elsewhere, are on work that we wish to continue. That is why I am not in a position to confirm support for these amendments, but the work is continuing. I have found the points that have been made very helpful—

Baroness Worthington: I thank the Minister for those comments. Could we have one of those meetings with the specialists in the room? I am merely a voice that is carrying a view from the sector itself. I would certainly appreciate that. In particular, could the Minister confirm that we can have a meeting on this point about the public rights and the allocation?

Lord Gardiner of Kimble: Most definitely. On the basis of my explanation, I hope that the noble Baroness will feel able to withdraw her amendment.

Lord Teverson: I just seek a couple of clarifications. With any new fishing opportunities, there will have to be an auction that people have to pay for, but with existing quota they will not. That gives a competitive commercial advantage, completely, to those who are already incumbents of the industry. I would think that the Competition and Markets Authority would be severely challenged by that. That is a real problem. If they are auctioned, do they then become permanent FQAs for those people, or is it a right for only five years? I was also very interested in the Minister's comments that the rights over the fish stocks come from UNCLOS, which is an international agreement. That suggests to me that this is not a devolved issue. It is clearly a national issue, not a devolved one.

Lord Gardiner of Kimble: Clause 27 is about English fishing opportunities as far as I recall. The other thing I should say is that I have been very clear that the Government's intention is to use this power to auction and tender additional quota. I have also said that the Government will consult on and consider this matter, so in matters of detail, I shall certainly not pre-empt any consideration by confirming or otherwise what the noble Lord has asked. This is obviously a matter that we wish to work further on and explore. I do not propose to take any more observations, but I will say to the noble Baroness that I am very happy for her and any other noble Lords—if they would let me know—to come and have a think piece on Clause 27.

8 pm

Baroness Jones of Whitchurch: My Lords, that is extremely helpful. If the Minister's think piece is going to cover the circumstances in which existing fishing allocations could be or would be revisited—the whole issue of whether they were there in perpetuity or whether there were any circumstances in which the existing regime could be unpicked for whatever reason—I would certainly like to be part of that. I am still confused about how that would work and whether there is any flexibility. As I said, there must be circumstances—for example, if someone were repeatedly breaking the rules or operating outside the national interest—in which the authorities could intervene. I would love to explore what those are because the system feels rather rigid at this time.

I was grateful to the Minister for his warm words about under-10-metre boats. He said the matter was still being considered, and we keep being told that the discussion of whether there is merit in reserving some of the allocation for the under-10s will happen in another place. I am getting a little frustrated about this. I cannot see why, if the mood is going in that direction, it cannot be in the Bill. That is certainly something I want to reflect on and come back to, because I do not think that what we are asking for is unreasonable. If the Government are considering it anyway, I do not see why it cannot be in the Bill. For the moment, however, I beg leave to withdraw the amendment.

Amendment 107 withdrawn.

Amendments 108 to 110 not moved.

Clause 27: Sale of English fishing opportunities for a calendar year

Debate on whether Clause 27 should stand part of the Bill.

Baroness McIntosh of Pickering: My Lords, I am grateful for the opportunity to debate this. We heard the figures earlier for the quota that is held: 29% of the UK fishing quota is owned or controlled by just five families; 49% of the English quota is held by companies based overseas; and the majority of UK fishing boats—79% of which are small-scale—hold only 20% of the UK quota. It is a source of great concern to me, as I said, and it was explored at some length in the Environment, Food and Rural Affairs Select Committee, which I had the privilege to chair for four or five years with my able deputy Barry Gardiner MP, who I know continues to take a great interest in these matters. One of the most shocking things that we discovered was that some of the boats and quotas were owned not just by foreigners but by non-active fishermen. The one that shook me most was that they were owned by English football companies. I therefore hope that the Minister, in summing up this little debate on whether Clause 27 should stand part will assure me that only active fishermen will be allowed to qualify.

My main comments relate to the work done in preparation for the Bill by the Delegated Powers and Regulatory Reform Committee in its sixth report of this Session. The committee was particularly concerned that the power under Clause 27 to distribute extra quota envisages fishing opportunities for British fishing boats that will take effect when the UK takes back control. The report refers in particular to paragraph 153 of the Explanatory Notes, and this is what I would like to press the Minister to clarify today. The original Bill's Explanatory Notes say in that paragraph:

> "The scheme would only be used in relation to the portion of UK quota which may be allocated by the MMO or the Secretary of State to English fishing boats. The scheme could include the requirement that certain criteria are met in order to purchase fishing opportunities, for example environmental criteria."

This is the most important part:

> "It is not intended that a scheme would be used to sell fishing opportunities exclusively on the basis of price."

That has been toned down in the revised Explanatory Notes to the Bill before us today. The last two sentences of paragraph 172 say:

> "The regulations could include the requirement that certain criteria are met in order to purchase fishing opportunities, for example environmental criteria. The regulations could therefore require fishing opportunities to be allocated on criteria other than the price."

It sums up debates held on earlier amendments relating to Clause 27, but I would like the Government to reassure us that quotas will not be tradeable. If they are going to be sold on and the main criterion will be price, we could set up a situation similar to that with the milk quota, and that is totally unacceptable. Will the Minister assure us that that will not happen? That is what the Delegated Powers and Regulatory Reform Committee has also asked us, and I wish to press the Minister in this regard. Will she reassure us that they will not be tradeable and not governed exclusively by price? Would the Minister, in summing up, assure us that, in accordance with paragraph 153 of the Explanatory Notes to the original Bill, it is not the Government's intention that sales of fishing opportunities under Clause 27 should be governed exclusively by price? Will she also offer a full explanation of the Government's intentions with regard to the application of criteria other than price? What will they be? Could she expand on the interrelationship between these other criteria and price and their relative weighting? I am particularly concerned that these quotas might be turned into a tradeable commodity—that they will be governed exclusively by price and that that might extend to people other than our active fishermen. That would be totally unacceptable.

Baroness Bloomfield of Hinton Waldrist: Clause 27 allows for the sale of rights to English fishing opportunities —quota and days at sea, known as "effort"—for a calendar year. I, too, have two copies of the Explanatory Notes, and there must be a third copy because I could not find the original one to which my noble friend referred. We could allocate quota another way, not based on price, but we do not need new legislative powers in the Bill to do that. This power just gives one option for the future approach: an additional quota for a limited period. I have asked for clarification on what other criteria could be used and their relative weighting, but it may be that I will have to write to my noble friend on that issue.

Any sales must be made in accordance with regulations that may include a range of provisions. These provisions could cover rights to be sold by competitive tender or auction, setting minimum prices, payment of compensation to anyone who holds rights but does not use them, and a range of other issues that would ensure that the sale of quota was tightly regulated. The 2018 fisheries White Paper made clear that any additional quota that the UK obtains as an independent coastal state would be allocated differently from the current distribution methods. This clause provides the Secretary of State with the mechanisms to do just that for English quota. Schedule 5 provides equivalent powers for the Welsh Government, for Welsh quota.

I have listened to noble Lords' concerns; this clause now requires the Secretary of State to consult on the regulations, and to make clear that quota could be sold on the basis that price is not the only relevant factor. For example, a determining factor in any tender or auction could be in relation to proof of use of sustainable fishing methods or benefit to a local community. I therefore ask my noble friend not to oppose this clause.

Baroness McIntosh of Pickering: My Lords, I have to say that I find it very disappointing, as the noble Baroness, Lady Jones, said, that the Bill will leave this place without the information being before us. The Minister did not reply on whether it is going to be an entirely tradeable economy or whether it will apply to non-active fishermen, and I find it very disappointing that we will not hear further clarification before the end of Committee.

Baroness Bloomfield of Hinton Waldrist: My Lords, I can commit to writing on the issues of tradeability of fishing rights and non-active fishermen, but I do not have the answers to hand.

Baroness McIntosh of Pickering: I do not think I shall get any satisfaction this evening so I shall not press this matter now, but I will return to it at a later stage.

Clause 27 agreed.

8.10 pm

House resumed.

Continuity Agreement: Kingdom of Morocco

Motion to Regret

8.10 pm

Moved by ***Lord Stevenson of Balmacara***

That this House regrets that, in agreeing a continuity agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Morocco, laid before the House on 20 December 2019, Her Majesty's Government failed to consult adequately with the people of Western Sahara; and calls on the Government to ensure a trade agreement conforms to international law in relation to the people of Western Sahara.

Special attention drawn to the treaty by the European Union Committee, 4th Report

Lord Stevenson of Balmacara (Lab): My Lords, I shall speak about the UK-Morocco association agreement. I also intend to make some remarks about the underlying issue here: Parliament's continuing inability to scrutinise UK trade deals in a meaningful way. As your Lordships' House will be aware, although there will be no direct parliamentary involvement in the UK, a UK-EU trade deal needs the approval of some 38 individual EU national parliaments and regional assemblies before it can come into force; and if we are able to negotiate a free trade deal with the USA, it will come into force only if it is approved by Congress—both the House of Representatives and the Senate. The UK-Morocco Association Agreement is a good example of why the current situation is, to my mind, untenable.

The UK-Morocco association agreement was laid before Parliament on 20 December 2019 and, as it is a treaty, it is subject to the Constitutional Reform and Governance Act 2010. However, it is a negative instrument, so the only meaningful debate possible is the "nuclear option" of a vote to strike down the instrument in either of the Houses of Parliament within the statutory period, which has now passed—a piece of Gilbertian nonsense if ever there was one. The UK-Morocco association agreement is one of the Government's continuity agreements designed to replace EU trade treaties after Brexit. It replaces the EU-Morocco association agreement, as well as the accompanying EU-Morocco dispute settlement mechanism agreement. The Lords European Union Committee drew the agreement to the special attention of the House, with particular reference to Western Sahara as, in the view of the committee, the inclusion of that territory

"raises important questions, especially about how the UK should balance its commitment to Western Sahara's 'undetermined' status."

Western Sahara is categorised as a non-self-governing territory under chapter XI of the Charter of the United Nations. A 1975 International Court of Justice ruling recognised Western Sahara's right to self-determination and, in 1991, the UN launched a mission to hold a referendum for the Sahrawi people to decide whether it should be an independent country or become part of Morocco. That referendum has still not been held. The EU signed a trade treaty with Morocco in 2012 which covered Western Sahara. The European Court of Justice has twice ruled, in 2016 and 2018, that Western Sahara is a "separate and distinct" territory from Morocco under international law, and that no agreement with Morocco can be applied to the territory of Western Sahara without the consent of the Sahrawi people.

The internationally recognised legitimate representative of the Sahrawi people has rejected every proposal that the EU's trade agreement with Morocco should apply to them. A coalition of 93 Sahrawi civil society groups also stated that the people of Western Sahara reject the inclusion of their territory in any agreement concluded by Morocco. The EU amended the wording relating to Western Sahara in its agreement, so that it applies only to products from Western Sahara that are

"subject to controls by customs authorities of Morocco",

and the UK agreement notably includes this phrase. However, the EU Committee report draws the attention of your Lordships' House to the fact that the Sahrawi national liberation movement, the Polisario Front, does not consider the consultation which preceded this compromise to have been sufficient. A letter signed by the general secretaries of the major trade unions and NGOs, including the Trade Justice Movement, War on Want, Global Justice Now and Traidcraft Exchange, was sent to the Government in January this year. The Swedish Government have also made a formal objection.

Last year, the High Court ruled that the territory of Western Sahara is separate from Morocco under international law and that the UK Government are therefore acting unlawfully by failing to distinguish between Morocco and Western Sahara. From my argument so far, I hope it is clear that your Lordships' House owes our EU Committee a considerable debt of gratitude for its work in flagging up this issue. There is, without doubt, a sensitive political decision hidden within this seemingly simple rollover agreement, but the committee's report raises wider questions of how this House and Parliament should deal with ratification of treaties. If we do nothing, surely we are complicit in undermining UN-led efforts to achieve a political solution that provides for the self-determination of the people of Western Sahara. Yet if we raise this issue, as the committee suggests, we are constitutionally unable to do anything, short of the nuclear option of

[LORD STEVENSON OF BALMACARA]
voting down the treaty as a whole. Am I alone in thinking that this situation is unsatisfactory? If we do feel that, what can we do?

8.15 pm

The only statement we have on record about how the Government intend to involve Parliament in future trade deals is the Command Paper that was produced by the Government during the passage of the Trade Bill that was lost just before the last general election. The Command Paper was a rather unsubtle attempt to head off support for an amendment to the Bill, which this House subsequently inserted by a large majority, which proposed a system under which committees of both Houses would take on the responsibility for approving mandates for trade agreements, reviewing progress, and making recommendations to Parliament for the approval of trade deals—a system in which the Commons would of course have the determining voice. Despite the fact that virtually every other major country in the world welcomes the involvement of its parliament in approving treaties and trade deals, why do this Government not wish to concede any authority for trade deals to Parliament? The Command Paper says all the right things, such as:

"the Government is clear that we must have a transparent and inclusive future trade policy that delivers for all parts of the United Kingdom",

that

"there must be a strong and effective role for Parliament in scrutinising our trade policy and free trade agreements",

and:

"We recognise that the best free trade agreements will be those that draw on the extensive expertise and experience of both the House of Commons and House of Lords and have its full support."

But, at the same time, the Government remain of the view that making, amending and withdrawing from treaties are functions of the Executive, which are carried out in exercise of the royal prerogative. I thought we took the view that the royal prerogative power should never trump the powers of Parliament, particularly after the Supreme Court ruling this summer.

Trade negotiations are no longer just a matter of the import and export of physical goods. They are about societal rights, environmental rights, good regulation, the protection of standards, the provision of healthcare and the securing of investment protection. There are trade-offs to be made between all these issues, which means that key societal values are at risk. All treaties dilute our sovereignty to some extent.

As I have argued today in relation to Western Sahara, trade agreements can also engage with geopolitical policies and human rights; these are surely matters in which parliaments have a right to be directly involved. The public are entitled to know what the Government are doing in their name. Ironically, with STAG and sub-groups, it could be argued that the Government are going out of their way to engage with the general public and using that engagement to avoid the fact that they are deliberately side-lining parliamentary scrutiny. Surely, we in Parliament are duty bound to have a role in scrutinising what the Government intend to do, and there will be considerable added value in ensuring that both Houses are fully engaged with trade negotiations and scrutinising what the Executive are doing.

In truth, there is very little difference between us. The Government say that they want to draw on the expertise of Parliament, via a close relationship with specific parliamentary committees in each House. We say the same. But we would like Parliament to operate a modern approach to the approval of trade agreements, with proper roles identified for the Executive and for Parliament, and a system which is appropriate for our representative democratic system.

The trade Bill is due to be introduced—or perhaps I should say reintroduced—shortly, so we can run these arguments again. It would, however, be much better if the Government asked the International Trade Committee in the Commons to lead on this matter, in concert with the soon-to-be formed treaties committee here in the Lords, and for these committees to be responsible for advising their respective Houses on the three-legged stool of mandating, reporting and recommending the approval of trade treaties.

As the case of the UK-Morocco association agreement shows, there is a role for the parliamentary scrutiny of trade treaties which can add value. Just about every other Government in the world involve their parliament; why is the "mother of parliaments" being left on the sidelines? I beg to move.

Lord Shipley (LD): My Lords, I am grateful to the noble Lord, Lord Stevenson of Balmacara, for tabling this regret Motion. He has raised some very important issues about the process for considering trade agreements with which we would concur.

I say at the outset that I have huge respect for the people of Morocco. Theirs is a wonderful country to visit and it feels very much a part of Europe. But with that international standing comes a responsibility to respect international legal judgments and to respect and promote democracy.

This year marks the 45th anniversary of the occupation of the Western Sahara by Morocco. I want to pay tribute to the work of the Earl of Winchilsea and Nottingham, who was a Back-Bench Liberal, and then Liberal Democrat, Peer for over 20 years until 1997, and who campaigned strongly to promote the interests of the Sahrawi people of the Western Sahara, many of whom became refugees.

As the noble Lord, Lord Stevenson, said, in 1975 an International Court of Justice ruling recognised Western Sahara's right to self-determination. In 1991, the United Nations promised a referendum for the people in Western Sahara to decide whether they wished to be an independent country or whether they preferred to become part of Morocco. That referendum—as the noble Lord, Lord Stevenson, pointed out—has never taken place.

Further, in its *World Report 2020*, Human Rights Watch stated:

"Moroccan authorities systematically prevent gatherings in the Western Sahara supporting Sahrawi self-determination, obstruct the work of some local human rights nongovernmental organizations (NGOs), including by blocking their legal registration".

Could the Minister tell the House what discussions Her Majesty's Government have had with Morocco regarding safeguarding the capacity of NGOs to work effectively in the Western Sahara?

The Court of Justice of the EU has ruled that Moroccan territorial jurisdiction does not extend to the territory of Western Sahara or to the territorial sea adjacent to Western Sahara. The consequence of that ruling seems to be that Defra could not lawfully grant fishing quotas to British fishing vessels in waters off Western Sahara. What consideration have Her Majesty's Government given to this ruling? Will there be robust guarantees that all trade to and from Western Sahara is taking place only with the full consent of the people of the Western Sahara? The Minister will understand that the natural resources of Western Sahara are important in this respect. He will be aware that some 15% to 20% of Moroccan exports can be traced back to Western Sahara.

In the current EU-Morocco fisheries agreement, registered vessels, including some from the UK, are allowed to fish extensively off the coast of Western Sahara. For these access rights, I understand that the Moroccan Government receive a €30 million contribution over a four-year period. This is in clear violation of a 2002 UN opinion on the matter, which stated that any such activities must benefit the people of Western Sahara. Could the Minister tell the House what benefit the people of Western Sahara receive from these access rights?

The European Court of Justice, in a judgment of 21 December 2016, determined that the 2012 agreement between the EU and Morocco concerning reciprocal liberalisation measures on agricultural products and fishery products provided no legal basis for including Western Sahara within its territorial scope. This decision was confirmed by the UK High Court in April 2019, yet the UK Government are now seeking to roll over the EU-Morocco association agreement into UK legislation.

I hope the Minister will agree that the UK Government should now enforce the judgment of the High Court so that no goods should be imported into the UK from the Western Sahara under the presumption that they are from Morocco. Only once the people of Western Sahara have expressed their right to self-determination will the UK be able to trade legally in goods produced in the Western Sahara. The UK Government should now use that High Court judgment as a basis to support the UN supervised process of self-determination. I hope the Minister will agree.

Lord Patten (Con): My Lords, I admired the stoicism of the noble Lord, Lord Stevenson, as he sat waiting for his eagerly awaited speech in your Lordships' Chamber for such a long period, while what I can describe only as a lot of wet fish filibustering went on during the preceding proceedings. Then, lo and behold, the noble Lord, Lord Shipley, gets up and gives us another barrel of wet fish off the coast of Morocco.

All that said, while congratulating the noble Lord, Lord Stevenson, on his interesting speech, I have decided to make myself his Official Opposition, as noble Lords can see in this crowded Chamber tonight. That is, I regret this regret Motion very much indeed, first, because of its lack of procedural timeliness and, secondly, in case perceived messages coming from your Lordships' House during this debate harm Anglo-Moroccan relations and the perception of other countries on the north African-Mediterranean littoral which are vital to our security, such as Algeria and Tunisia.

On my first point, Labour did not, I think, at any stage in either place try to force a proper debate or find a way to get the issue raised during the objection period for this excellent UK-Morocco association agreement, which ended on 11 February. The simple facts on the ground are that the agreement, under our procedures, is now deemed to be ratified. The debate on the regret Motion is therefore no more than a bit of interesting virtue signalling and has absolutely no effect on what has happened with this excellent agreement. We must recognise the facts on the ground: the Moroccan Government are in charge of the Western Sahara and have been since the hopelessly failed decolonisation by the Spanish of the area in decades past. What a muddle the Spanish made of that whole process.

It is not just this House that wishes to have a trade association with Morocco; the EU—our neighbours and friends—has also canonised, recognised and re-recognised the reality on the ground in its recent agreements with Morocco. This is despite the fact that the Spanish—I should not have got myself going on the Spanish—still occupy two areas. I am not quite certain what they are properly described as. Enclaves? Exclaves? They are Spanish city states on the north African coast, on Moroccan territory, which Morocco wants back—and quite rightly too. They are called Ceuta and Melilla. The last of those two enclaves/exclaves/city states on the north African shore still has a statue of Generalissimo Franco standing. There is not one of those in Spain, but it certainly signifies the Spanish attitude and pinpoints the strangeness of their attitude to British Gibraltar in comparison.

Morocco says that the disputed territory belongs to it. I have had no connection at all on this with either the Moroccan Government or any special interest groups. The Polisario problem, which is real and which I do not dispute, will take decades, if not generations, to sort out. In the meantime, I do not wish to see our growing bilateral trade with Morocco suffer. It is fast approaching £3 billion a year in visibles, which is a very substantial amount of money, while in invisibles—I work in the City, although I have no interest to declare in this debate—we have excellent and growing links between the bourse in Casablanca, which is growing fast in north African terms, and the London Stock Exchange, which I wish to see flourish. I do not wish to put anything in the way of this growth. I am sure the noble Lord, Lord Stevenson, does not really wish to either.

Secondly, I regard Morocco and its neighbours, Algeria and Tunisia, to be not just important economic partners but also very important strategic partners in defeating terrorism along the north African littoral. Morocco, Algeria and Tunisia are, in their different ways, bastions against terrorism, whatever criticisms people wish to throw against their Governments. They should be much valued for that.

8.30 pm

In a slightly wider context, in greater north Africa, south of the Western Sahara, there is almost a land border between Morocco and Mali, and there is a land border between Algeria and Mali. In the United Kingdom—I know we share similar concerns across the Chamber about security—we are thinking about sending troops and further help into Mali itself. We need to make quite certain that no messages come out of our debate tonight, from anyone, which cast any doubt on the determination of Her Majesty's Government, and Her Majesty's Opposition, to try to do all we can to help defeat terrorist threats along the Moroccan borders and across the whole of the Mediterranean littoral.

Lord Davies of Stamford (Lab): My Lords, I congratulate my noble friend Lord Stevenson on getting the opportunity to debate this, and I particularly congratulate him on his initiative in making a very interesting constitutional suggestion. A lot of colleagues will probably have seen the Order Paper and thought that this subject was slightly technical and esoteric, which may be why the Chamber is not in danger of bursting its seams, but my noble friend has raised a very general point, which is that we are bad in this country at ratifying treaties. It is an important legislative role in other countries and, of course, the United States does it with great thoroughness—with such thoroughness that the executive branch tries to avoid any ratification process starting in the first place. Nevertheless, that is democracy, and I think there is a great lack of democracy here, where the bureaucrats negotiate these agreements and there is no opportunity at all to call them to account, or for Parliament to express a view on the content of these agreements. So I thought it was a very good suggestion, and I know my noble friend Lord Stevenson is a serious and determined colleague. When he makes a suggestion, it is not just intended to be a nine-day wonder. I am sure that he will continue with this and take it further, and he will certainly have all the support I can personally give him.

The agreement with Morocco carries forward our market access which we currently have as members of the European Union—I say "currently have", but that means only long as the transition period lasts. I have to make a confession: during the debates on Brexit over the past four years—we had an awful lot of debates in the media, in this House and in public meetings, and I have taken part in all three types of debate—I quite often attacked the Government, and indeed tried to mock the Government. I said how utterly absurd it was for the Government to say that they wanted to sign more free trade agreements with more countries around the world and to go ahead with Brexit, which involved us overnight losing our access to about 45 different trade agreements that the EU already has with these countries. In actual fact, I must congratulate the Government on having, in this particular case—and one or two others, such as with Jordan—managed to agree in principle to carry forward the existing EU agreement without the discussion breaking, as I suspected it would, into completely new fields, with new demands for new concessions that would make this a very long-winded process. So it is only fair to say that I congratulate them on making that progress.

However, I very much retain my view that it would be a great mistake to open negotiations on new free trade agreements with countries where we are not just carrying forward an EU agreement and with those with which we do not currently have a national free trade agreement before we have concluded the negotiations with the European Union or the United States. When I say "before we have concluded", I mean before we have either concluded them or have determined that there is no purpose in pursuing that particular subject with those countries for the foreseeable future—which of course is another possible outcome.

My reason for saying that is that, whereas in an agreement like this, which carries forward the terms of the existing EU-Morocco agreement, there is no change in the competitive position of exporters from the United States or the European Union—they pay duties at the present time, if there are duties and tariffs, and they will continue to pay them, and they are not a party to this particular deal, so their position is unchanged—if you started to negotiate a new agreement with another country where there are tariffs and quotas, we may find ourselves in a position where perhaps we can negotiate a position in which British exporters will not be paying them while, presumably, exporters from other countries will. British exporters would then gain an advantage in that particular market vis-à-vis exporters from those other two countries—looking at the EU as a country. The EU and the US might be less than pleased, although of course the amounts involved may be tiny. I think that Morocco accounts for less than 0.5% of our exports, but this could happen on several occasions in several different places. It is possible that this could be a considerable factor in the negotiations we might have with the EU and the US.

Goodness knows, those negotiations are going to be complicated enough, and there is no way that the Government will achieve their aim of concluding them by the end of this year. Given that, importing this new complication would be completely crazy and really would be very foolish because, after all, the EU and the US account for three-quarters of our exports. We would be threatening their position, or at least making life more difficult in the context of those important negotiations, for the interests of our exports to countries that represent perhaps less than 1% of our trade. That would not make any sense. I therefore retain my view about the tactics of this, despite recognising that the Government have actually succeeded in carrying forward the EU agreements in these cases in a way that I did not anticipate. I hope the Minister will agree with that apologia on my part.

Before I finish, I have another question to ask. It is clear that on the last occasion, the Foreign Office did not anticipate that the Polisario Front would wish to litigate in order to try to stop the entering into force of an EU-Morocco trade agreement. It has done so and it has succeeded, so it has held up the whole process and we will see what happens. I am told in the briefing which has been produced for members of the European Union Committee:

> "We note that FCO officials have told us that they are confident the UK Agreement is consistent with EU law and the Government's position on the status of Western Sahara."

It may be that they are confident and that they are right. Last time, they were confident, but they were not right; they were wrong. My question to the Minister therefore is: what confidence does he have, and why does he have it, that on this occasion the FCO officials have got it right and that we will not go back to where we started and find ourselves entering into further litigation?

Lord Mackay of Clashfern (Con): My Lords, I would very much like to hear the Minister explain the legal basis on which this matter rests, in view of the issues that have been raised in relation to Western Sahara. The issues raised are quite important, but at the moment I do not see exactly what the answer in which the Foreign Office will be confident is. I am willing to agree that I may be utterly wrong and that the noble Lord may be able to convince us all.

Viscount Waverley (CB): My Lords, the noble Lord, Lord Stevenson, supported by the noble Lord, Lord Davies, made an important general point in his opening remarks. I want to take this opportunity to turn to the subject in hand. My only regret was not following through on a visit when I was in the region, particularly as the opportunity was presented to meet all the parties at the table.

The situation in Western Sahara rumbles on with all its complexities. There are suggestions that Western Sahara is a proxy arena for others. The Sahrawis are living in appalling conditions in Tindouf, with the Polisario Front criminalising any ability to leave the camps in favour of a return to their homeland. Various states are now opening consulates either in or in close proximity to Laâyoune and Dakhla. The UK High Court has implemented the ECJ ruling which recognises the self-determination rights of the Sahrawi people, this following that the EU partnership with Morocco should not include fishery grounds off the coast of Western Sahara. Mauritania has professed neutrality, while Spain's Foreign Minister, Arancha Gonzáles, has reaffirmed the exclusivity of the UN-led political process. Additionally, the inadvertent words of the then UN SG in March 2016 that Western Sahara was "occupied" were inopportune and may haunt reconciliation, particularly as the issue evokes less emotion for Algerians than Moroccans as Algeria has no claim to Western Sahara.

President Bouteflika was considered too set in his inflexible ways, doing, some suggested, the army's and deep state's bidding. There has been hope and indeed expectation in certain quarters that, with the advent of President Tebboune's quest for a "new Algeria", change to his country's foreign policy stance towards Morocco could be afoot. It is interesting to note that the former SG of the National Liberation Front party has recently intimated that the borders be opened, but went surprisingly further by advocating that "Sahara is Moroccan". This may become relevant in that he might be being primed for high office, given that his coming from the same tribe as the President could have connotations in the preparation of the internal landscape, with a plan of strategy on the chessboard.

Across the way, I have been encouraged by King Mohammed's indications of reconciliation through dialogue leading to the normalisation and opening of borders. His country rejoining the African Union will certainly have garnered momentum for this. It is to nobody's benefit that the borders remain closed. Solution can be found when all sides adopt compromise, although attention might be given to the role played by Morocco subsequent to Spain's withdrawal from the region.

Infrastructure investment, provision of basic services and economic and social development projects, which often go unrecognised, have improved the lot in many quarters.

We are not here to debate the benefits that can stem from tariff exemptions that can come only when Western Sahara's status is determined. That discussion is in a different context, and so for another day. It is inconceivable that the UK's position can differ from that of the UN and ECJ ruling. While ongoing aspects remain for consideration, this continuity ratification as presented is necessary.

The Minister of State, Foreign and Commonwealth Office and Department for International Development (Lord Ahmad of Wimbledon) (Con): My Lords, I thank all noble Lords who have taken part in this debate, and in particular, the noble Lord, Lord Stevenson, for rightly raising issues of scrutiny and debate. It is right that the Government—as we have said repeatedly on the issue of free trade agreements—must come to Parliament, stand accountable to Parliament and justify any agreement that has taken place.

I welcome the opportunity for an informed discussion of the UK-Morocco association agreement and the Government's wider work to secure continuity of our trading relationships with countries that have EU trade agreements, which is important to UK citizens and businesses. I noted that despite his scepticism on certain issues to do with rolling over agreements, the noble Lord, Lord Davies, acknowledged that the Government had surprised him in achieving our set aim. I hope that sense of surprise will continue as we move forward on negotiating free trade agreements.

I also thank—as the noble Lord, Lord Stevenson, did—the House of Lords EU Committee and its officials for its detailed examination of our continuity agreements, as set out in its reports scrutinising international agreements. They play a vital role.

I will cover the points that noble Lords have raised, but there are three principal points: the trade continuity programme, the UK position on Western Sahara—an issue raised by several noble Lords—and how the UK-Morocco association agreement relates to both. I am also mindful that my noble and learned friend is sitting on the Benches right behind me. He asked a very pointed question. When it comes in a succinct form from a former Lord Chancellor, you try to make sure you have all your facts in front of you. I hope I will be able to satisfy him in this regard, if not totally.

8.45 pm

Before addressing specific questions on the UK-Morocco agreement, I will first address noble Lords' interest in the progress of the wider trade continuity programme as a whole. The cross-Whitehall programme led by DIT seeks to replicate the efforts of the EU trade agreements to provide continuity once these

[Lord Ahmad of Wimbledon]

agreements cease to apply to the United Kingdom at the end of the transition period. The Government decided on a mandate of continuity because it was the right approach, providing businesses with certainty; many noble Lords raised the issue of certainty. We felt—rightly, I believe—that this provides businesses with certainty and honours the UK's obligations while still an EU member state, when the programme started.

Under the withdrawal agreement, current EU trade agreements can continue to apply to the UK for the duration of the transition period. By the time we left the EU on 31 January 2020, the UK had successfully concluded and signed agreements with 48 countries, accounting for £110 billion of UK trade in 2018. We continue to work with partner countries to secure further continuity agreements. I assure the noble Lord, Lord Stevenson, that we will ensure that Parliament is well informed of this programme of work, laying a report for each agreement to detail our approach to delivering continuity. Where there are significant changes to trade provisions, we have explained these in those very reports.

Across the board, where changes have been made, these are of a technical nature to ensure the operability of the new agreement in a bilateral context. The agreement with Morocco is no exception to that. As the noble Lord acknowledged, the parliamentary report for the Morocco agreement was laid in Parliament on 20 December 2019 and the parliamentary scrutiny period ended on 11 February 2020.

The noble Lords, Lord Stevenson and Lord Davies, raised issues of scrutiny of FTAs. I assure noble Lords once again that the Government are committed to transparency and appropriate scrutiny of our trade policy. We will continue to ensure that Parliament and the public are given an opportunity to provide input as we take forward our independent trade policy. As I said, once negotiations are under way, the Government will continue to keep the public and Parliament informed via regular updates. There is a specific process of scrutiny that stands within the parliamentary committees, which have done an excellent job in this respect.

A number of noble Lords rightly raised the UK position on Western Sahara. As the noble Viscount, Lord Waverley, mentioned, we continue to regard Western Sahara's status as undetermined. We have consistently supported United Nations efforts to achieve a pragmatic and enduring political solution that provides for self-determination of its people. We are clear that this agreement is without prejudice to that position. We welcomed and voted in favour of the extension of the UN peacekeeping mandate in Western Sahara for a further 12 months beyond 30 October. As Minister for the United Nations, I took special interest in that. It is for the parties to the dispute to agree a resolution on the final status of Western Sahara. We strongly encourage co-operation to reach a mutually acceptable solution.

My noble and learned friend Lord Mackay rightly raised the basis of the new bilateral UK-Morocco association agreement. I assure him that this agreement replicates the effects of the existing EU association agreement. In line with the mandate of continuity, it incorporates the full text of the existing EU agreement—modified where necessary to ensure operability in a bilateral context, as I said earlier. I assure noble Lords that the new agreement provides, among other trade benefits, tariff-free, two-way trade in industrial products, with selective liberalisation of trade in agricultural, agri-food and fisheries products.

My noble friend Lord Patten made an important point about ensuring that, as we move forward in a post-Brexit Britain, we demonstrate to our friends that we are looking to increase bilateral trade and strengthen trading relationships. The new agreement covers £2.4 billion in trade of goods and services between the UK and Morocco, and benefits major UK sectors such as the automotive and aerospace industries. The agreement also provides a platform to deepen our bilateral trade and investment relationship going forward. It sends a clear message to businesses, consumers and investors in both countries that our aim is to secure continuity in existing trade arrangements, so that trade continues to flow freely between our two kingdoms.

The noble Lords, Lord Stevenson and Lord Shipley, among others, specifically raised the point of Western Sahara. I assure noble Lords that the territorial application of the agreement, which we have in front of us, mirrors the EU-Morocco association agreement, as most recently amended in this respect. I assure noble Lords: it does not apply to the territory of Western Sahara. The UK agreement, once in force, will extend some trade preferences to certain products originating in Western Sahara, in the same way as the EU association agreement. I assure my noble and learned friend Lord Mackay that it will be in line with the European Court of Justice ruling in 2016.

The noble Lord, Lord Davies, and my noble friend Lord Patten mentioned the issue of the ongoing litigation raised by the Polisario Front in the European Court of Justice. I am sure noble Lords accept that it would be inappropriate for me to speculate on the outcome, at this stage, because it is ongoing litigation. However, we are satisfied that the EU-Morocco association agreement, and therefore the bilateral UK-Morocco equivalent, accords with international law.

The noble Lord, Lord Stevenson, raised the issue of consultations. Certainly there were consultations in advance of the amended EU agreement. We believe that the rollover of this agreement encompasses the same consultation.

Specific questions were raised on the UK's policy on Western Sahara. To reiterate the point I made earlier: the UK considers the final status of Western Sahara as yet to be determined. The UK, as I said earlier, will consistently support the UN Secretary-General's efforts in this respect. UN Resolution 2494 is clear that there is a need for realistic, practicable and enduring political solutions based on compromise. A solution must be just, lasting and mutually acceptable, and provide for the self-determination of the people of Western Sahara—a point made by the noble Lord, Lord Stevenson. I assure noble Lords that the UK supports UN-led efforts to reach a lasting solution in this respect.

The noble Lord, Lord Shipley, asked about NGOs and the broader issue of human rights. I assure noble Lords, more broadly on trade agreements and on this specific issue, that as the United Kingdom's Minister for Human Rights, I am looking closely at this. I assure the noble Lord, Lord Shipley, that human rights form part of our bilateral dialogue with Morocco, and we raise concerns with the Moroccan authorities as we deem appropriate. We have made this case regularly in our discussions with Morocco. We have consistently supported language in the relevant UN Security Council resolutions which, as I said earlier, encourages the parties to continue their efforts to enhance the promotion and protection of human rights in Western Sahara. The protection of NGOs, which the noble Lord talked about, very much forms part of our dialogue.

Notwithstanding my noble friend Lord Patten's remarks that we have had a great dose of fish on the menu this evening in your Lordships' House, the noble Lord, Lord Shipley, raised the issue of fisheries. The UK has not transitioned the EU-Morocco fisheries equivalent, but the UK-Morocco agreement covers trade in fisheries and not access to fishing rights.

The noble Lord, Lord Shipley, asked specifically about Western Sahara being under occupation, and I think I have already covered that in my remarks.

My noble friend Lord Patten rightly talked about the importance of other trade agreements across north Africa; he mentioned both Tunisia and Algeria. I can inform my noble friend that the Tunisian agreement was signed on 4 October 2019, and we are in discussions with Algeria.

To conclude, the UK-Morocco association agreement replicates the effects of the EU-Morocco association agreement. We believe that it provides certainty and confidence to business and consumers, enabling them to continue to benefit from preferential terms. The UK-Morocco association agreement does not prejudice our policy towards Western Sahara. Its status remains undetermined, and we support the United Nations efforts towards a peaceful resolution to this dispute. I assure noble Lords that we will continue to encourage parties to engage with the United Nations political process, and we support the overall goal of a just, lasting and mutually acceptable solution, which will—I stress this point—allow for the self-determination of the people of Western Sahara.

Lord Stevenson of Balmacara: My Lords, I thank all who participated in this wide-ranging debate. I make no apology for that: we will inevitably have to confront the question of how Parliament and the Executive can get closer together and come to a proper arrangement for the review, scrutiny and justification of treaties. But this was never going to be the occasion on which that was settled, and I understand that the Minister was unwilling to get too deeply into the bigger issue. Riding towards us is the relaunched trade Bill, under which we will have the opportunity to do so, so I will hold back any further comments until that time.

A lot of ground was covered in the individual contributions. I am very grateful to my noble friend Lord Davies for his support. The noble Viscount, Lord Waverley, and the noble Lord, Lord Shipley, gave an interesting insight into the detailed politics of the region—not something I know that much about, but I have certainly learned a little in preparing for this debate—and their knowledge and experience have taken us further.

As my noble friend Lord Davies wanted us to say, it is good that there is an outcome to the rolling forward of the agreement. It is good that the Government have done that, and we should recognise that. Having said that, the noble Lord, Lord Patten, made a very good point: there is a much bigger context, including terrorism, of which this is only a part. However, as the Minister mentioned, the relationship we have through the trade agreement will help to cement things in that part of the world, and we should welcome that as well.

Nothing the Minister said led me to think that there will be a change in how the Government are hoping to roll forward other trade agreements. The Executive will rely on the royal prerogative and Parliament will be excluded, even though there will be a lot of consultation. Consultation is good, but it is no substitute—we will come back to that.

We are left with the narrow question of whether, in the words of the noble and learned Lord, Lord Mackay, the Government have drilled down and got to the bottom of the legal niceties of the point. These were raised in paragraph 20 of the document published by the European Union Committee.

I do not expect the Government to respond to this, but it seems to me that the only point the Government are holding on to is that they have rolled forward the existing arrangements made by the EU on Morocco, including on Western Sahara, and recognised in that the issues around the future of the area, support for the United Nations and the need to ensure that there is an eventual settlement to the benefit of the people there. I do not think that this quite does the trick.

The noble and learned Lord asked: are the Government sure that they have got the legal advice right in doing this? The report said that the Government have committed to

"consider carefully the implications of any future ruling from the CJEU."

I understand that presumably that will not exist beyond 31 December 1920—December 2020; I must get the date right, although the Minister is nodding, so I am sure he has picked me up correctly anyway.

There is rather a strange point that I marked out when I first read the report. It said:

"They also explained that conducting any further consultation on the 2019 EU amendment"—

this was the one that reflected the worries of the Western Sahara region about the treatment of its goods in relation to being part of Morocco when it felt it should not be—

"was deemed inconsistent with the UK's mandate to ensure only technical replication of EU agreements while still an EU Member State."

I do not think there is time for further exploration of that but I would be grateful if the Minister might consider writing to us and to those participating in the debate to give us a better understanding of exactly where they get their confidence on this point.

[LORD STEVENSON OF BALMACARA]

If it is true that there is an emerging jurisprudence that suggests that the Western Sahara area is not part of Morocco and has independent rights and applications, and as no specific consultation was undertaken by the UK Government before achieving this agreement, it seems to me that we are underprepared for the reaction that may come back at us. However, particularly after so many fish, this is not the time of night to discuss that and I look forward to hearing from the noble Lord, if he wishes to write. I beg leave to withdraw the Motion.

Motion withdrawn.

House adjourned at 9 pm.

Grand Committee

Monday 9 March 2020

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I remind the Committee that, if there is a Division in the Chamber while we are in session, the Committee will adjourn for 10 minutes from the sound of the Division Bells.

Gambling Act 2005 (Variation of Monetary Limits) Order 2020

Considered in Grand Committee

3.30 pm

Moved by ***Baroness Barran***

That the Grand Committee do consider the Gambling Act 2005 (Variation of Monetary Limits) Order 2020.

Relevant document: 4th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, Section 99 of the Gambling Act 2005 imposes monetary limits on the per-draw and annual proceeds of any lottery promoted in reliance on a lottery operating licence. This order will amend the per-draw sales limit from £4 million to £5 million. As a consequence, the maximum prize limit will increase from £400,000 to £500,000, due to the rule that the prize must not exceed 10% of per-draw proceeds. This order also amends the annual sales limit from £10 million to £50 million.

In July 2019, the Government announced proposals to help society lotteries: that is, fundraising lotteries run by charities and other non-commercial organisations such as sports clubs or local community groups. Last year, society lotteries raised over £330 million, in support of a diverse range of charities, including hospices and air ambulances, which so many in this country rely on. The current annual sales limit has been in place since it was implemented in 2007, and the per-draw sales and prize limits have been in place since 2009. Indeed, the issue was looked at by the DCMS Select Committee in 2015, which recommended that the department and the Gambling Commission examine the sector in some detail. This led to the 2018 public consultation. I am grateful to the committee for raising this important issue.

I know that stakeholders on both sides have strong views, evident in the 1,600 responses the department received to its consultation. A key consideration in developing the changes being debated today has been the relationship between the National Lottery and society lotteries. Together they raise around £2 billion a year, improving our communities and life in this country in countless ways. It is imperative that any changes enable both to grow, and that society lotteries' growth is not at the expense of the National Lottery. As Minister for Civil Society I can say that this is particularly close to my heart, as the sector benefits considerably from funds raised by the National Lottery.

I can assure the Committee that we have considered in detail the relationship between society lotteries and the National Lottery. The final package is underpinned by independent, evidence-based advice from the regulator, the Gambling Commission. It has advised that the changes I am bringing forward today will preserve the balance in the sector and maintain the key distinction between the National Lottery, which offers the largest prizes in support of many good causes, and society lotteries, which offer smaller prizes with a focus on a specified good cause.

I say very deliberately that society lotteries should have a clear focus on the charitable and not-for-profit purposes they support, and it is of the utmost importance that players know which causes they are supporting with their ticket and how much of the ticket price is going to support the cause. I am therefore delighted to see that the Gambling Commission is currently consulting on additional transparency measures for society lottery licences. I take this opportunity to thank it for its consideration of the issue and I look forward to seeing its conclusions.

The most significant change is the increase to the annual sales limit to £50 million. The current limit of £10 million is restrictive for larger society lotteries wishing to grow. Some have set up additional lotteries or an umbrella structure to facilitate growth, which incurs high administrative costs and can be bureaucratic to operate. For large charities operating at or close to the existing limits it is costly to add additional licences, either within an umbrella structure or a multiple-society structure. For example, in response to the consultation, Cancer Research UK estimated that moving to a multiple-society model would cost around £345,000 to set up, with additional annual running costs of around £130,000, thereby reducing the proportion of income for its charitable purposes.

For most societies, a £50 million limit would mean that they no longer need to hold more than one lottery operating licence, leading to cost savings and higher returns to good causes. It also means that society lotteries approaching the current annual sales limit can continue to grow and raise valuable funds for their beneficiaries without stopping or slowing their draws, as some do at present. This order includes transitional provisions to allow licence holders to benefit from the increased limits straight away on a pro rata basis, rather than having to wait until the beginning of the new calendar year.

For the vast majority of the sector, increasing the per-draw sales limit incrementally from £4 million to £5 million, combined with the new annual limit of £50 million, will provide both the headroom for further growth and the flexibility to increase the size and frequency of draws as operators wish. Where individual per-draw lottery sales exceed £250,000, the maximum prize cannot be more than 10% of the proceeds of that lottery. The maximum prize limit will increase from

[Baroness Barran]

£400,000 to £500,000. We know that most society lotteries only offer relatively small prizes compared to their sales, but this change will allow for some additional flexibility, while remaining distinct from the largest prizes offered by most National Lottery games.

The Gambling Commission will be monitoring the impact of the changes carefully and the Government will keep a keen eye on progress, in particular to ensure that additional funds are directed to good causes and do not lead to an increase in administrative expenses. To satisfy ourselves in this regard, the Government will review the impact of the changes 12 months after implementation, looking at new data and evidence that has emerged over the course of the year. As part of this, we will look again at the case for a £1 million prize, as well as the link between sales and the maximum prize, and returns to good causes. Once we understand the impact of the current changes, we will also look at the case for a £100 million licence and any additional conditions that may accompany that.

To conclude, by increasing the limits we will enable society lotteries to raise even more funds for the causes they support by reducing burdensome administrative costs. Recent research published just last month by the Gambling Commission shows that the National Lottery and society lottery sectors are both currently growing, with participation up two percentage points for both, meaning that overall funds raised for good causes are growing. I welcome this approach. It is clear that society lottery funding brings tangible benefits. The Carers Trust stated in its response to the consultation:

"Unrestricted funding gives us the flexibility to allocate funds to projects and posts which are harder to fundraise for, and contribute towards our overheads and running costs."

I look forward to seeing the impact of these changes on organisations working in my sector, and I commend the order to the House.

Lord Foster of Bath (LD): My Lords, I apologise, but this is not quite as simple a statutory instrument as the Minister has said. There are a number of issues and questions that I want to put to her. I was delighted that, on 19 November last year, we were able to celebrate the 25th anniversary of the National Lottery and the staggering £40 billion that it has been able to give to good causes since it was introduced by John Major in 1994. Equally, we should celebrate the incredible work done by small-scale society lotteries that have provided funds for hospices, schools, clubs and many other good causes alongside the National Lottery.

My concern is that the original, untaxed society lotteries were characterised by relatively low prizes and generally limited distribution footprints. Those factors traditionally differentiated them from the National Lottery and, as the Minister said, that distinction helped them both to thrive and funds to go to good causes because they were not in competition.

However, then came the idea of grouping together a number of these society lotteries under a single umbrella; two key examples are the People's Postcode Lottery and the Health Lottery. I have argued on many occasions that, although both of them undoubtedly do good work, they are being allowed to operate contrary to the concept of there being a single national lottery.

As I intend to demonstrate, notwithstanding what the Minister said, they are already having a damaging impact on the National Lottery. Currently, they are run by private external lottery managers and their revenues have increased dramatically, from £179 million to £736 million over the last 10 years. The measures in this statutory instrument look set to cause even greater damage to the National Lottery than has already been done. We must gauge the measures being proposed against the impact that they will have on the National Lottery.

Your Lordships' Committee on the Social and Economic Impact of the Gambling Industry, of which I am a member, has already taken evidence on some of these issues. From that, we know that running concurrently to the legislative process we are discussing today—the Minister has already referred to this—is a public consultation by the Gambling Commission in response to concerns about transparency raised by the previous Lotteries Minister.

Public trust and confidence are vital to preserve the integrity of both the lotteries and the charities that operate and rely on them. Where sales are in the hundreds of millions of pounds and the purpose is charitable, it is only right that the levels of transparency are high—higher than they are now. Players should be able easily to find out how often prizes are awarded, how good causes are chosen and how their money is spent.

For example, we know that the National Lottery has operating costs of about 5% of revenue but, as the Select Committee heard in January when both Camelot and the People's Postcode gave evidence, the People's Postcode Lottery has operating costs of 28%; it spends almost as much on operating costs as it does on giving to charitable causes—in marked contradiction to what the National Lottery does. I also understand that the Health Lottery spends more on expenses than it returns to good causes, although this information is not easy to ascertain. Indeed, DCMS noted that

"the two sector leaders currently return amongst the lowest proportion of revenue to good causes."

So, the Minister says how good these society lotteries are—indeed, the individual small ones are—but we discover that the amount of money that these combined umbrella lotteries give to good causes is almost similar to the amount they spend on administration. I hope that the Minister can assure us that she will watch this issue carefully so that we can make changes leading to higher returns to good causes. As a first step, and before any result of the consultation is seen and any major final decisions are made, can the Minister at least ask those two umbrella lotteries whether they will make public the information on the various issues that I have just raised?

3.45 pm

What is the key component of that administration cost? The vast majority of it is spent on advertising, seen in the volume of advertising on television and radio and in newspapers coming through our letterboxes. Even currently at Westminster Underground station, we see that billboards have been taken out. The advertising I get at home from the People's Postcode Lottery certainly goes out of its way to make it look as if it is

operating in exactly the same way as the National Lottery. Camelot, which operates the National Lottery, told the committee that this had led to a marketing "arms race" in the lottery market. The People's Postcode Lottery is spending 75% of the amount spent on advertising by the National Lottery, yet is only 5% of its size. It is allowed to spend so much because the Gambling Act 2005 removed any cap on expenses, replacing it with the simple condition that expenses should be "reasonably incurred".

Umbrella-style society lotteries can therefore spend significant sums—as they are doing—as long as a minimum of 20% is returned to good causes, and they can claim to be "reasonably" incurring expenses such as these vast sums of money on advertising. Such spending has led to this extraordinarily fast growth, undermining the original intention that there should be a single national lottery. As I will show, that has reduced the funds for National Lottery good causes. What does the Minister understand by a "reasonably incurred" level of expenses? Does she believe that the expenses currently incurred by the two umbrella lotteries are reasonable under that definition?

I have argued for many years for the reintroduction of the expenses cap on the large-scale umbrella lotteries. Is the Minister prepared at least to look at reintroducing a limit of, say, 5% or 10% on the level of expenses allowable for them?

We read in paragraph 10.2 of the Explanatory Memorandum that the Government received clear evidence from the Gambling Commission that

"licensed lotteries have had no … significant detrimental impact on National Lottery sales to date."

I accept entirely that the National Lottery has continued to grow in the face of growing competition from these other organisations. However, a detailed independent report commissioned by Camelot showed that, contrary to the evidence that the Minister and the Explanatory Memorandum gave us, between 2011 and 2017, the impact on the National Lottery was estimated at £703 million in reduced sales and £266 million in reduced returns to good causes.

Understandably, the National Lottery distributors are concerned because they have relied on this funding. Paragraph 7.4 of the Explanatory Memorandum acknowledges that the order increases the per-draw limit, allowing more headroom for these lotteries to continue to grow and providing even greater competition to the National Lottery. If further evidence were needed, we read in paragraph 7.6:

"It is noted that this will bring the top prize potentially offered by licensed lotteries directly in line with the National Lottery's Thunderball top prize."

So, if one wanted evidence that there will be growing competition and impact on the National Lottery, it is provided in the Government's Explanatory Memorandum —on top of the clear evidence that, even before these changes are introduced, there has already been an impact.

Not only will the good causes continue to lose out, but the Treasury has already lost out. The Minister will know that, as the National Lottery is taxed, Governments have lost 12% of the income lost by Camelot and the National Lottery.

Incidentally, I acknowledge that this is outwith the statutory instrument, but it is relevant to the issues we are debating. I wonder whether the Minister is aware of the very strong case that has existed for many years for changing the way in which the National Lottery operates: if the National Lottery was taxed in exactly the same way as other gambling organisations, the evidence shows that there would be increased money not only for good causes but for the Treasury—so I hope the Minister will agree to review that evidence.

Returning to the measure before us, the economic case for whether good causes are best served by having a single National Lottery provider has been revisited on numerous occasions. I am sure that the Minister has been advised of this. Surely, she would have agreed with the evidence, which is there for all to see. It shows that, if there were 10 lotteries offering a jackpot of £1 million each, far less would be returned to society than having a single lottery with a £10 million jackpot. If she is not swayed by that argument, will she at least acknowledge that the evidence on which she is basing today's decision is outdated? The evidence provided to her by the Gambling Commission was, at the time, already outdated—it is now four years out of date—and we have now seen a further erosion of the potential levels of income that we would have had from the National Lottery. I hope that the Minister will acknowledge that it is out-of-date information on which we are basing this decision.

Large prizes are the preserve of the National Lottery, as acknowledged by the Government, who said that

"for many societies, the good cause, rather than the prize, is the primary motivating factor for playing."

However, at the time of the consultation, as the Minister acknowledged, some in the sector were even arguing for a £1 million top prize. That would seem to be parking the umbrella lotteries' tanks on the National Lottery's lawn. It would be a real danger if the Government were to even contemplate going in that direction. I know that it is contained in the statutory instrument, but it would be enormously helpful if the Minister, when she responds, states categorically that she and the Government believe in there being a clear distinction between society lotteries and the National Lottery.

I am supportive of the National Lottery and society lotteries, but I am deeply concerned about the impact of umbrella lotteries that operate in a loophole within the legislation, and in a way that is detrimental to the National Lottery and the good causes it supports. This is not particularly efficient, and it takes vast sums of money in operating costs, rather than giving money to good causes. As a comparison, the National Lottery has a 5% operating cost, whereas one of the umbrella lotteries has a 28% operating cost—that should support the case I am making.

Having said all of that, I am well aware that there is no support for opposition to this, so I shall not seek, at any stage, to divide the Committee on this issue—but I believe that there will be continued erosion of the National Lottery and good causes.

[Lord Foster of Bath]

I end by saying that I hope that the Government will consider and improve transparency measures, reintroduce an expenses cap, review the system of taxing the National Lottery and ensure that there are no further changes that disproportionately benefit, as these do, the umbrella-style lotteries.

Lord Griffiths of Burry Port (Lab): My Lords, I have no difficulty in agreeing entirely with what the noble Lord, Lord Foster, has said about some of the questions that do, and must, remain under review. Certainly, the hardest thing of all is the balance between the interests of the National Lottery and the society lotteries, and this statutory instrument seeks to establish such a balance. It is clear from the supporting documentation and the National Lottery's responses to these proposals that the National Lottery does not feel terrifically positive about that as far as its own interests are concerned.

The present limits on prize money and amounts to be raised were set 15 and 12 years ago, and therefore for me—and, I think, for my party—at this stage it seems reasonable and proportionate to contemplate an increase from £4 million to £5 million, with the same percentages for the top prize money. I do not think that anyone on our side wants to oppose this SI, but we urge that close attention be given to how it all works out.

This is a more satisfactory statutory instrument than some of the ones that I have stood here to ask about. There has been a consultation and an attempt to work out some of the likely impacts of the proposals. The proposals in this statutory instrument seem okay, but we should take with a pinch of salt the suggestion that we might go rather quickly towards much higher totals. We would need robust evidence that the pace of increase was proportionate and appropriate—so that hint ought to be squashed straightaway. As and when it is time to look at further increases, let us do so, but let us not give that hostage to fortune within the proposals before us now.

The umbrella lotteries have been amply referred to by the noble Lord, Lord Foster: I understand that the Minister will clarify that and I shall see whether my thinking on this is right. But one of the objects of moving the figures upward is to make these umbrella lotteries less necessary, and therefore to avoid duplicating administrative costs because of the multiplicity of bodies that come together to form the umbrella. I do not know whether metaphorically you can bring bodies together to form an umbrella, but noble Lords will know what I mean. It would be very good to have a word of clarification on that. Will there be a material reduction in administrative costs? That would go some way towards meeting the point raised, properly, by the noble Lord, Lord Foster.

The extra transparency that the Gambling Commission and committees of the House are looking at has been hinted at. We certainly need to have some answers to the questions that have been raised, and I hope that we will. It is important to note that there has been cross-party approval and support for these proposals, including from the Liberal Democrats—or, at least, named Members in the paperwork that I have received.

Finally—there is no need to say more than needs to be said—a proper process has taken place and a proportionate set of suggestions about increasing the amounts seems to be contained within these papers. I would be very careful about giving a hostage to fortune regarding further increases at the moment, although perhaps later that could be brought to our attention as a separate matter. I would like to know how these umbrella bodies will be affected by the increases in administrative costs that we are talking about. With all that said, we do not want to stand in the way of this SI being approved.

4 pm

Baroness Barran: I start by thanking both noble Lords for their careful scrutiny of the instrument that we are discussing, and for their questions. Perhaps I might start by trying to reassure the noble Lord, Lord Foster. I spend my life trying to reassure noble Lords, but I will try again. Our clear aim is to set a framework that encourages both the National Lottery and society lotteries to thrive. We will monitor the impact of the changes very carefully, and we will not allow the growth of society lotteries to come at the expense of the National Lottery. I hope that that goes some way towards confirming our intent.

The noble Lord, Lord Griffiths, said that part of the purpose of the instrument was to remove the pressure to create umbrellas out of bodies. None of us is quite clear about that; it feels uncomfortable. But, by raising the limit to £50 million, all the current society lottery providers, with the exception of the People's Postcode Lottery, will be able to move from an umbrella structure back to a single structure. This goes back to the point raised by Cancer Research UK in its response to the consultation: that that will remove some administrative costs, which will allow more money to go to good causes. I think that all of us can align on that. I understand that the People's Postcode Lottery has also indicated that it will seek to reduce the number of lotteries under its umbrella. So I hope I have addressed that point.

More broadly, the noble Lord, Lord Foster, questioned whether the changes could have a negative impact on the National Lottery. As the noble Lord knows, the Gambling Commission has advised that changes to the limits will have minimal impact on the National Lottery. The reforms are designed to allow society lotteries to raise more money for the good causes they support, but they take very careful account of the relationship between the society lotteries and the National Lottery. The distinctions remain in terms of the size of prizes and the frequency of draws, so we continue to believe that substitution between the two is likely to remain minimal.

The noble Lord cited the Camelot report in terms of the negative impact on National Lottery sales. Again, I can only reiterate the Gambling Commission's advice, which was based on independent research. It does not believe that it has had a negative impact, and obviously that impact will be carefully monitored. The latest research, published just last month, shows participation in the National Lottery and society lotteries going up by about 2 percentage points. I believe that that evidence was given to the committee that the noble Lord sits on.

The noble Lord also asked about reasonable costs. Obviously with the National Lottery there are economies of scale, but the noble Lord will also be aware that society lotteries have been in existence for a lot longer, and we have a diverse range of business models. The minimum acceptable return that has been agreed with society lotteries is 20%, but obviously the average is 45%. The People's Lottery is at 32%, but we know that it hopes to increase that. Again, the one-year review will look at this in detail.

Lord Foster of Bath: I vowed I would not intervene, but on this I really must, because it is incumbent on the Government at least to define what they mean by "reasonable" in this context. For example, does the Minister think it is reasonable that the People's Postcode Lottery is spending on advertising 75% of what the National Lottery spends? Is that reasonable when the People's Postcode Lottery is currently only 5% of the size of the National Lottery?

Baroness Barran: I am sure the noble Lord will understand that the decision on what the People's Postcode Lottery spends on its marketing budget is for it. What we look at for reasonableness is the growth in money going to good causes, and, given that both parts of the sector are increasing at the moment, we are comfortable with that, but we will keep it under close review.

On transparency, which both noble Lords raised, and the consultation that the Gambling Commission is undertaking at the moment, the Government absolutely agree that society lotteries need to demonstrate the highest levels of transparency. The consultation seeks views on new guidance which will allow society lottery operators to provide players with more information about their odds of winning a prize, how good causes are selected and the breakdown of lottery proceeds. I know that my honourable friend the Minister here would not be afraid to legislate if there were concerns about transparency.

The noble Lord, Lord Foster, asked about reintroducing the expenses cap. He will be aware that that was removed in 2005 and, since then, the approach has been to focus on the minimum return of 20%, with flexibility for operators to split the balance. Obviously, the return is currently significantly higher than that, so there are no current plans to reintroduce the cap. The Gambling Commission consultation will also make players aware of how to access information about the breakdown of proceeds before they buy a ticket.

Returning to the noble Lord's question about reasonably incurred levels of expenditure, I should have added that that is handled by the Gambling Commission, as the regulator for the sector.

Turning to taxation models for the National Lottery, we have discussed them, and options for changing to a gross-profit tax model, with the Treasury, but that remains a matter for the Treasury to decide on.

Lord Foster of Bath: I apologise profusely, but too often we hear from Ministers that decisions on taxation are a matter for the Treasury. I entirely accept that that is true, but there is a duty on, in this case, her department to provide evidence to the Treasury to suggest that it should seriously consider making a change to taxation that would, in this case, benefit good causes and the Treasury itself. My question now is simply: has her department recently provided any of the clear, detailed research evidence that shows that a change would make the benefits that I suggest? Has it done it or not? If it has not, will it agree to so do?

Baroness Barran: The answer is yes. As the noble Lord is aware, the fourth national licence competition will open in April, and both my department and the Treasury have been looking at the case for how the taxation system should work. I have managed to reassure the noble Lord on one thing, which I shall regard as a triumph.

As we have all agreed, the National Lottery is a uniquely important part of British society. Each year, it raises about £1.6 billion for good causes in the heritage, arts, sports and community sectors; that has amounted to an impressive total of £40 billion over its 25 years. Society lotteries raise more than £330 million a year for good causes, and that amount is increasing year on year. It is right that we do everything we can to support both sectors to grow, thrive and optimise the contributions they make to funding good causes across the country.

Motion agreed.

Legal Services Act 2007 (Approved Regulator) Order 2020

Considered in Grand Committee

4.10 pm

Moved by ***Lord Keen of Elie***

That the Grand Committee do consider the Legal Services Act 2007 (Approved Regulator) Order 2020.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I venture to suggest that this order is straightforward and uncontroversial. It designates the Institute of Chartered Accountants in England and Wales—for ease, I will refer to it the institute—as an approved regulator under the Legal Services Act 2007 for the reserved legal activity of the administration of oaths.

In summary, the order, if approved, will allow the institute to authorise and regulate individuals and firms administrating oaths within the scope of the Commissioners for Oaths Act 1889, the Commissioners for Oaths Act 1891 and the Stamp Duties Management Act 1891.

As the Committee is aware, the Legal Services 2007 Act defines six reserved legal activities, which only individuals and firms regulated by one of the 11 approved legal regulators can provide to the public. The administration of oaths is one of these activities.

The institute is already an approved regulator and licensing authority under the 2007 Act, but only in respect of probate activities, which is also a reserved legal activity. It regulates more than 300 firms providing

[LORD KEEN OF ELIE]
probate services and wishes to expand the range of legal services its members can provide. As such, it made the required application to the Legal Services Board, seeking to expand its functions. Following a recommendation from the Legal Services Board, the then Lord Chancellor confirmed in May 2019 that he agreed to make an order to designate the institute as an approved regulator for the reserved legal activity of the administration of oaths. It is envisaged that expanding the institute's remit will improve consumer choice, enhance competition and enable firms who are regulated by the institute to expand their practice.

This order fulfils the statutory objectives in the Legal Services Act 2007 and is supportive of better regulation in the consumer and public interest. I commend the draft order to the Committee.

Lord Thomas of Gresford (LD): My Lords, as the noble and learned Lord, Lord Keen, has just pointed out, this is uncontroversial. I have no objection to it. It took me back to my years as an articled clerk in the late 1950s and early 1960s when the perk that one had was to take clients to another solicitor who would administer an oath on probate papers. This would cost the individual 10 guineas, and the shillings in those guineas were for me. There were only 10 shillings, but at a time when I was earning £4 a week, which was extended to £5 a week when I got married, that was quite a considerable sum.

4.15 pm

I have only one question. It was thought the right policy that oaths should not be administered by the solicitor, or commissioner for oaths, who was handling the case, but should be taken elsewhere to another solicitor. If he did not give the articled clerk the shillings and the guineas, he did not get the work, because the articled clerk knew where to go. Is that still going on, 50 years later? Is that intended to be the practice when it comes to dealing with chartered accountants?

Baroness Chakrabarti (Lab): My Lords, I agree that this is straightforward, uncontroversial and a perfectly appropriate exercise of the relevant power. I am afraid that I have no anecdotes, questions, guineas or shillings, or any other contribution.

Lord Keen of Elie: I am most obliged to noble Lords, if only for their brevity. I am not certain what happened to the shilling or the guinea, but I understand that the practice remains that, where the oath is to be taken, it is taken by a lawyer in a different firm or entity.

The noble Lord referred to the administration of oaths by accountants. That is not necessarily the case. The institute will be the regulator, but it will regulate, in due course, alternative business structures that will include lawyers. Generally speaking, it is to enable those lawyers to be engaged in this reserved activity that this order is being made.

Motion agreed.

Legal Services Act 2007 (Chartered Institute of Legal Executives) (Appeals from Licensing Authority Decisions) Order 2020

Considered in Grand Committee

4.16 pm

Moved by ***Lord Keen of Elie***

That the Grand Committee do consider the Legal Services Act 2007 (Chartered Institute of Legal Executives) (Appeals from Licensing Authority Decisions) Order 2020.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I venture that this is also a straightforward and, I hope, uncontroversial measure. The order relates to the functions of the Chartered Institute of Legal Executives which, for ease, I will refer to as CILEx. In summary, the order—if approved—enables the First-tier Tribunal to hear and determine appeals against CILEx in its role as a licensing authority.

As the Committee is aware, the Legal Services Act 2007 defines six reserved legal activities that only individuals and firms regulated by one of the approved regulators can provide to the public. CILEx is an experienced regulator under the 2007 Act and authorises and regulates individuals and firms in respect of five of the six reserved legal activities: the conduct of litigation, rights of audience, reserved instrument activities, probate activities and the administration of oaths. In February last year, an order designated CILEx as a licensing authority as well as an approved regulator. This meant that, as well as regulating individuals and firms, it can now license alternative business structures. ABSs are legal firms that are partly or wholly owned or controlled by non-lawyers. They were introduced by the 2007 Act to encourage competition by allowing, for the first time, lawyers to join with non-lawyers, for example accountants, to raise external capital. Notable ABSs include Co-op Legal Services and the big four accountancy firms.

ABSs have been permitted by the Legal Services Act 2007 since October 2011, and there are now over 1,300 in England and Wales. Most of the other legal services regulators, including the Law Society and the Bar Council, are already licensing authorities. The 2007 Act stipulates that there must be an independent body to determine appeals against decisions of licensing authorities, and this order enables the General Regulatory Chamber of the First-tier Tribunal to fulfil this role.

Over the last 12 months, since CILEx became a licensing authority, there has been an interim appeals procedure—agreed by the Legal Services Board—in place. However, it is more appropriate that the First-tier Tribunal determines any appeals against CILEx in its role as a licensing authority. The First-tier Tribunal has judges with experience in considering regulatory appeals.

Furthermore, similar orders have been made in the past in respect of appeals against decisions of the Bar Standards Board, the Council for Licensed Conveyancers, the Chartered Institute of Patent Attorneys, the Chartered

Institute of Trade Mark Attorneys and the Institute of Chartered Accountants in England and Wales, when they are each designated as licensing authorities.

I assure the Committee that, although Her Majesty's Courts & Tribunals Service will face additional costs associated with the potential increase in cases to be determined by the First-tier Tribunal, CILEx will meet the set-up and operating costs, so there will be no net financial impact on the public sector.

In conclusion, this statutory instrument is necessary to regulate better in the consumer and public interest. I commend the draft order to the Committee.

Lord Thomas of Gresford (LD): My Lords, I support the order. I declare an interest in that a close family member is a judge in the First-tier Tribunal—but not, I believe, in the General Regulatory Chamber.

I have been a strong supporter of CILEx from its inception. Indeed, I addressed some of its early conferences due to, as I mentioned in relation to the previous order, my experience 50 years ago of the integrity and probity of legal executives who needed a body to represent their interests in the way that that has happened. I am delighted to see that it has been given this particular power. The strange thing is that there was a temporary appeals provision with a panel set up by CILEx itself; clearly that was unsatisfactory. Far better that it should go through the tribunals system. What are the fees of the tribunal likely to be? Will they be more expensive than the present appeals system, unsatisfactory as it is?

Baroness Chakrabarti (Lab): My Lords, again I will be completely uncontroversial, and I can be very succinct: the First-tier Tribunal is undoubtedly more appropriate than the interim arrangement.

Lord Keen of Elie: I thank noble Lords for their contributions. I agree with the observations of the noble Lord as to the importance of CILEx as an institution. I recently met with its representatives, as I do on a regular basis; they bring to regulation a degree of innovation and forward thinking that is to be welcomed.

On the potential cost, fees will be set by the Courts Service. Generally, there are only about 10 of these appeals each year. I do not anticipate the level of fees being an inhibitor to the discharge of these functions.

Motion agreed.

Extradition Act 2003 (Amendments to Designations) Order 2020

Considered in Grand Committee

4.24 pm

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

That the Grand Committee do consider the Extradition Act 2003 (Amendments to Designations) Order 2020.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, this order is essential for the UK to fulfil its obligations under several treaties. It is required to implement an extradition agreement between the EU and Norway and Iceland to which the UK is party during the transition period, and to implement bilateral extradition treaties with Kuwait and Morocco. I shall explain in a little more detail why these changes are being brought at this time and the effect that they will have on our extradition arrangements.

First, the first part of this order will replace the designation of Norway and Iceland as category 2 territories, currently based on the European Convention on Extradition. It makes it clear that Norway and Iceland become territories designated under category 1 of the Extradition Act, based on the surrender agreement between the EU and Norway and Iceland, which entered into force on 1 November 2019. The agreement will facilitate the exchange of warrants between judicial authorities, which is executed through a simplified decision-making system.

In short, this will mean that Norway and Iceland will be treated in a similar way to EU countries for the purposes of extradition. However, there are some differences. Notably, parties can refuse to extradite their own nationals and can refuse extradition on the basis that the offence concerned is "political". This agreement also allows parties to require that an extradition take place only where the offence concerned is a criminal offence in both countries—something known as "dual criminality".

As the Committee is aware, during the transition period, the EU justice and home affairs tools that the UK has opted into, including this agreement, will continue to apply. The legislation will ensure that there is no disparity between our international obligations and domestic law, which could result in legal uncertainty and impunity for wanted fugitives.

The second part of this order will implement the extradition treaties concluded between the UK and Morocco in 2013 and the UK and Kuwait in 2016. The designation of these countries under category 2 of the 2003 Act will allow the UK to process extradition requests from Kuwait and Morocco in line with the obligations of these treaties. Both treaties set out a timeframe in which a full extradition request must be provided to the UK by Kuwait and Morocco when an individual has been arrested on a provisional arrest warrant.

This order therefore also ensures that this is reflected in our legislation by setting out that, in the case of Kuwait and Morocco, the judge must receive the papers within 65 days of the person's provisional arrest, in line with standard practice. This allows for the countries to provide the request to the Secretary of State within 60 days, as the treaty provides for, and for the Secretary of State to have five days to certify the request and send it to the appropriate judge.

Once the designations have been made, the Kuwait and Morocco treaties will be ratified. The introduction of the formal bilateral basis for extradition for conduct covered by these treaties will lead to a more efficient and effective process for extradition between the UK and the respective countries. Morocco and Kuwait are

[Baroness Williams of Trafford]
important partners for the UK, and these treaties will enhance our ability to work in close co-operation with them on important issues.

I urge the Committee to consider the amendments made by this statutory instrument favourably to ensure that the United Kingdom can comply with its obligations under the relevant international extradition arrangements. When considering any request for extradition, our arrangements are balanced by the provisions in the Extradition Act 2003, which serve to protect an individual's rights, including their human rights, where extradition is not compatible with our law.

Extradition is a valuable tool in combating cross-border crime, and offenders should not be able to escape justice simply by crossing international borders. No one should be beyond the reach of the law. Having efficient, clear and effective extradition arrangements is vital for safeguarding our security and preventing fugitives escaping justice. I commend the regulations to the Committee and beg to move.

Baroness Hamwee (LD): My Lords, I thank the Minister for explaining the order. Kuwait and Morocco both still carry the death penalty; according to Human Rights Watch, there were seven executions in Kuwait in 2017, and I understand that it outlaws same-sex relations. Does the Minister have any information about seeking assurances in the past from these countries? She says that they are important partners, but are they trusted partners—as regards their judicial system or how politically expedient their approach to these matters sometimes is?

4.30 pm

I have no comments on Norway and Iceland. You could hardly hope to find a pair of countries more different from Kuwait and Morocco. In Committee in the Commons, the Minister was asked whether it is government policy to remain a signatory to the European Convention on Human Rights. That was in the context of the discussion about human rights in Kuwait and Morocco. The reply was that we are a signatory. We know that; the question was, and is, about the future. I do not know whether the Minister will be in any better a position to talk about government policy for the future on this subject, but clearly it is a matter of considerable interest.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the noble Baroness, Lady Williams of Trafford, for explaining the order. I have no particular comments to make in respect of Norway and Iceland becoming Part 1, and no longer being Part 2, territories other than that, for me, it illustrates what a stupid decision it is no longer to take part in the European arrest warrant procedure. That is obviously for another time but I think that it will benefit nobody but criminals; I am sure that we will come back to that in other debates.

As the noble Baroness, Lady Hamwee, outlined, there are some concerns about Kuwait and Morocco. In respect of Kuwait, the treaty was signed in 2016 but, since then, it has resumed executions and is now talking about lowering the age at which someone can be executed. There are genuine concerns about that and it would be helpful if the noble Baroness could explain what the process will be. We are genuinely worried. We do not support the death penalty in any circumstances and it would be very worrying if people could potentially be sent back to face it. In addition, Kuwait outlaws same-sex relationships, with a maximum prison sentence of seven years, so, again, we would be very worried if someone in that situation were to be extradited to Kuwait.

It would be useful to hear from the noble Baroness whether the Government have received any assurances from the Kuwaiti authorities since the treaty was signed in 2016 and since that country changed its laws regarding executions. In this respect, in 2018, my noble friend Lord Collins of Highbury tabled a Motion that was debated on the Floor of the House. It would be useful to know whether anything happened following that Motion being debated. I look forward to the noble Baroness's reply.

Baroness Williams of Trafford: I thank both noble Lords for the questions on this statutory instrument that they have rightly asked. The noble Baroness, Lady Hamwee, asked whether our intention in the future is to remain part of the ECHR. At the moment, that is our intention, although, as she acknowledged, I cannot speak about what will happen in the future.

The question that I thought might be brought up was about the death penalty in Kuwait. It is important to make it clear at the outset that extradition is prohibited by statute if the person concerned might face the death penalty, unless the Secretary of State gets adequate written assurance that the death penalty will not be imposed. The UK Government oppose the death penalty in all circumstances as a matter of principle. As we all know, it undermines human dignity and there is no conclusive evidence that it is a deterrent. Any miscarriage of justice leading to its imposition is clearly irreparable, so extradition from the UK is not possible where the person has been, will be or could be sentenced to death, and that is made explicitly clear in the Extradition Act.

Extradition is obviously a very important tool in bringing perpetrators to justice. We can maintain extradition relations with countries that have the death penalty while making it absolutely clear that we will never allow a person to be extradited from the UK if they will face the death penalty elsewhere.

Kuwait and Morocco are not listed as priority countries in the FCO's human rights report. Therefore, no explicit exchange of human rights assurances was sought in addition to those that make up the extradition treaty. The point made by the noble Lord, Lord Kennedy, is all the more reason for us to be explicit on extradition and the death penalty.

Our very good relations with both Kuwait and Morocco provide further comfort, so we can raise a range of human rights issues with them. We do so in the context of ongoing bilateral dialogue.

On LGBT status, it is important to note that the same standard of safeguards applies to UK extradition relations with all Part 2 countries. Whether a request is compatible with a person's human rights is assessed by the UK's judiciary in extradition cases. If a court

found that a person would, for example, be subject to inhumane or degrading treatment or punishment as a result of their extradition, they would not be extradited. I hope that provides the comfort that the Committee rightly seeks on this statutory instrument.

Motion agreed.

Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020

Considered in Grand Committee

4.37 pm

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

That the Grand Committee do consider the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.

Relevant document: 5th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, these regulations are introduced under the powers in Section 11 of the European Union (Withdrawal Agreement) Act 2020. They provide an important right of appeal against immigration decisions on citizens' rights. The regulations are required to meet our obligations under the withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement.

The Government have been clear in our commitment to protect the rights of EU, other EEA and Swiss citizens who have made this country their home. They are our friends, our family and our neighbours, and we want them to stay.

The EU settlement scheme makes it easy for EU citizens and their family members who want to stay in the UK to get the immigration status they need. As announced last month, we have already had more than 3.2 million applications, with nearly 2.9 million people granted status. If an applicant disagrees with the decision in their case, they can apply again to the scheme completely free of charge and they have until 30 June 2021 to do so. They can also apply for an administrative review, meaning that their case is reviewed again by Home Office caseworkers, if they are refused on eligibility grounds or granted pre-settled status rather than settled status. The fee for this service, which is £80, will be refunded if the original decision is withdrawn due to a caseworker error. These appeal rights provide further reassurance to EU citizens that they remain welcome and can continue to live and work in the UK and that we will uphold our commitment to guarantee the rights of EU citizens.

The regulations basically do two things. First, they establish appeal rights against a wide range of decisions affecting a person's right to enter and live in the UK under the EU settlement scheme. This includes those refused leave under the scheme or those granted pre-settled status rather than settled status. It also includes those refused entry clearance in the form of an EU settlement scheme family permit or travel permit. The regulations provide an appeal route for those whose rights under the scheme are restricted; for example, where their status is revoked or curtailed.

Secondly, the regulations ensure that existing rules and procedures are applied to the operation of appeal rights. They go further than required under the agreements by providing appeal rights in line with the UK's more generous domestic implementation. This means that anyone who can make an application under the scheme, including non-EU family members, will have a right of appeal if refused or granted pre-settled status.

Appeals under the regulations will follow the same process as current immigration appeals. They will be heard by the immigration and asylum chamber of the First-tier Tribunal. With permission, there will be a further onward right of appeal to the Upper Tribunal on points of law. The exception is where the decision is certified on national security grounds or where sensitive information cannot be made public. As with current immigration appeals, these cases will be referred to the Special Immigration Appeals Commission.

The regulations are undeniably complex. This is because of the number of situations requiring a right of appeal under the agreements. There is also a need to apply existing rules relating to appeal rights, which are themselves complex.

However, we are committed to making the appeals process as simple as possible for applicants. The decision letter will tell them whether they can appeal and will direct them to the relevant information on GOV.UK. There is also support available by phone, in person or in writing for those who do not have access to online facilities or who need additional assistance.

These regulations ensure that we comply with the requirements of the agreements and are an essential part of our commitment to protecting the rights of EU citizens. I commend them to the Committee. I beg to move.

Baroness Hamwee (LD): My Lords, I thank the Minister. She mentioned administrative review. I want to take this opportunity to ask her about the experience so far. I came across a blog, although I cannot remember whose. I think it was a barrister's. It seems to have become the custom for members of the Bar—I am very glad of it—to blog as their way of advertising their services. I will probably get some complaints, having said that. This blog said that, following a freedom of information request, the inquirer found that 89.5% of applications that had gone for administrative review were successful.

The noble Baroness mentioned refunds. Does she know how much has had to be refunded, what the associated costs of doing so might be and whether the Home Office has a view about why this is happening with so much success at that stage?

Since the order came into force on 31 January, when will time start running in the case of decisions made before today or before the matter goes to the House—in other words, before the SI is approved?

I confess to having some concern about Regulation 14, which allows for an appeal from outside the United Kingdom. Will it not be the case that many appellants will have been required to leave? Concerns have been expressed in other parts of the immigration forest about the difficulties of appealing from abroad.

[Baroness Hamwee]

Am I right in thinking that this SI will be the basis for any claim with regard to invalidity—for instance, if the Home Office has said that the applicant is not an EU citizen and is therefore not in the settled status scheme?

Given the number of grants of pre-settled status that have been made, has the Home Office made any assessment of the numbers of appeals against that status from people who think that they should have been granted full settled status? It seems to me that there could be an early and considerable spike in the work.

The Minister mentioned the considerable help currently available from a number of organisations that have received grants to assist applicants for settled status. The EU Select Committee—it may have been the EU Justice Sub-Committee—heard from some of the organisations a couple of weeks ago. At that stage, they were waiting to hear whether their funding would continue after the end of this month. If she has any news on that, the Committee—and, even more so, the organisations concerned—would be glad to hear it.

4.45 pm

Finally, can the Minister give an assurance that the Government will not rely—or at any rate, routinely rely—on the exemption in the Data Protection Act 2018 from the requirement to

"provide information to a data subject"

in the interests of effective immigration control? She will be well aware that I have raised this before, and I alarmed by a report in the press over this weekend about the very large number of occasions where information has been refused. Other than all that, I support the regulations.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the noble Baroness, Lady Williams of Trafford, for explaining the regulations to the Grand Committee this afternoon. The noble Baroness, Lady Hamwee, raised all the points I was going to raise—

Baroness Hamwee: Sorry about that—

Lord Kennedy of Southwark: It is absolutely fine. I shall not repeat them because it would detain the Committee longer than necessary, but the noble Baroness has raised some very important points. I support the regulations and we are pleased they are here, but our concern and worry is that the people who are vulnerable are those who have not picked up on the need to use this system. If they do not use it, they will find themselves, in June 2021, to be in the UK illegally, even if they have been here for many years. That is what we are worried about.

The other point of concern is that there have been a few issues in the Home Office in terms of appeals and other problems in the past. We are very worried that someone might find themselves in difficulty, so what we are looking for from the Minister is some reassurance about that and about how people will be treated. What will the Government do to ensure that people know they need to apply for this? It may well be that some of those people who are here from elsewhere in Europe are in quite low-paid jobs, do not have a lot of money and are just not picking up on it. What we do not want is a situation where people do not understand that they need to apply and find themselves in difficulty with the authorities and potentially being removed from this country when, had they applied, they would have been given the right to stay here. That is the reassurance every noble Lord here is looking for. In principle, I am very happy with there now being a right to appeal, so I will leave it there.

Baroness Williams of Trafford: My Lords, I thank both noble Lords for their points. I thought this would be the easy SI and that every noble Lord would be so happy with the appeal processes. The noble Baroness, Lady Hamwee, asked why so many appeals are successful. An appeal may succeed where new information is provided.

Baroness Hamwee: Does the Minister mean an administrative review?

Baroness Williams of Trafford: I apologise. I meant that an administrative review may succeed when new information is provided. I understand that about 900 applications for the admin review have been received. The noble Baroness asked when it starts—I am assuming 31 January.

On what happens if people miss the deadline, we have been very clear that where there are reasonable grounds for missing the deadline people will be given a further opportunity to apply.

Baroness Hamwee: I am sorry; I did not think I had asked terribly difficult questions. On my question about the time running, there are time limits for appeals, but we have gone beyond the point when the SI is effective because that date is 31 January. I am not clear whether the time from 31 January to now is taken off the time available to an appellant to get the appeal in. This is quite a practical point. I will go on rambling so that the Minister can talk to her officials and is able to get this on to the record as I think that would be helpful. Perhaps I was clear in my question.

Baroness Williams of Trafford: We have some clarity now. It will run—is the noble Baroness asking me how long it will run for?

Baroness Hamwee: No. I am asking whether the period between 31 January and whatever the date is in March counts for the period towards the number of days within which an appeal has to be lodged because the order is in force but people will presumably will not be making applications under it until has gone through the parliamentary process.

Baroness Williams of Trafford: They are already doing it.

Baroness Hamwee: I wonder why we are here.

Baroness Williams of Trafford: On pre-settled status appeals, there are 900 applications for administrative review, but whether they are for pre-settled status I do not know. If I have the figures, I will provide the noble Baroness with them. On her question about immigration control, this is not for the purposes of immigration control. I thought the noble Baroness might be concerned about that. The funding for the groups that are helping runs through the financial year.

Baroness Hamwee: I am sorry for treating this as a conversation, but I understand that their funding goes to the 31st of this month, but they need to know, if they do not know already, whether they will be able to employ people to continue the service.

Lord Kennedy of Southwark: I understand that when this came up in the Commons the Minister said the thing should be resolved in a couple of weeks. That was a week ago.

Baroness Williams of Trafford: That is because we will be announcing the arrangements for the financial year 2020-21 shortly—in the Budget, I am guessing. I hope that rather clumsily answers the noble Baroness's questions.

Baroness Hamwee: I wish to make it clear from these Benches that we do not think that is satisfactory. We understand about financial years and so on, but for a small organisation, or a medium-sized or quite large organisation, which does not know whether it will be able to continue the service it is pretty difficult that it will be within a couple of weeks of the end of the year.

Baroness Williams of Trafford: I totally understand that point. It is frustrating for any group or organisation waiting for future funding announcements to be in this position right at the end of the financial year; I really get that. I just want to answer the last point made by the noble Lord, Lord Kennedy, on vulnerable people. As he knows, we have set out some funding for organisations who will help vulnerable people. I think they are the last cohort of people on whom our attention will need to focus: as he says, people who do not even know that they must apply. That work is well under way across the country and, given the number of applicants, which is 3.2 million, it is clearly going well for most people, but he is right to raise that final cohort.

Lord Kennedy of Southwark: I am glad that the noble Baroness has recognised that point, but can we have an assurance that the Government will look at them sympathetically? There will be people who do not know that they have to apply and, in a few months' or a year's time, find themselves illegally in this country who thought they were here legally. I hope that, at that point, the Government will treat people reasonably and understand that it may well be through no fault of their own—they have not picked it up—they are in these difficult situations.

Baroness Williams of Trafford: Totally, and that is what this reasonable grounds process is all about. We actually want to find reasons to grant people settled status, so the point the noble Lord makes about not being harsh on people is absolutely right. The other day, I came across a Romanian lady who did not know what to do. I helped to point her in the right direction of applying. Yes, those people who still do not know now will need that extra bit of help. I beg to move.

Motion agreed.

Health Protection (Coronavirus) Regulations 2020

Considered in Grand Committee

4.56 pm

Moved by ***Lord Bethell***

That the Grand Committee do consider the Health Protection (Coronavirus) Regulations 2020.

Relevant document: 5th Report from the Secondary Legislation Scrutiny Committee

Lord Bethell (Con): My Lords, in the time available to me, I would like to remind your Lordships of the level of seriousness with which we should address the level of Covid-19 and the context for the Government's response. I will then explain the workings of the regulations in detail and how they fit into our wider strategy for addressing the outbreak.

On 31 December 2019, Chinese authorities notified the World Health Organization of an outbreak of pneumonia in Wuhan City, which was then classified as a new disease, Covid-19. On 30 January 2020, the WHO declared the outbreak of Covid-19 a public health emergency of international concern.

Based on current evidence, the main symptoms of Covid-19 are a cough, high temperature and, in severe cases, shortness of breath. It is a new virus, so there is a lack of immunity in the population and, as yet, no effective vaccine. This means that Covid-19 has the potential to spread extensively in the population.

As expected, case numbers are increasing, but the UK remains well prepared for such outbreaks. As of 9 am on 9 March 2020, 24,960 people had been tested in the UK, of whom 24,641 were confirmed as negative and 311 were confirmed as positive.

Although our knowledge is growing by the day, much remains unknown. The four UK Chief Medical Officers have made it clear that the disease currently presents a moderate risk to the public, but that planning and preparation for the potential of a more widespread outbreak is sensible. As the Prime Minister has made clear, there could be a very significant increase in the number of cases of coronavirus in the UK.

Tackling Covid-19 requires a robust, integrated and proportionate response. On Tuesday 3 March, the Prime Minister introduced the UK's coronavirus action plan, providing the public with information on what the Government have done and on their plans to tackle the coronavirus outbreak.

The Government's approach to tackling Covid-19 can be summarised in four phases: contain, delay, research and mitigate. The Government have focused hard over the past weeks on the containment phase, taking precautionary measures to limit the spread of the virus as much as possible. A crucial aspect of that is ensuring that people who are contacts of known cases or are considered to be at high risk of infection

are isolated from others for a period of time, ensuring that they cannot infect others but can readily access help if they fall ill.

5 pm

However, we have been acutely aware that there are important gaps in our public health legislation that could potentially undermine the success of this policy. It was to address these gaps that the Secretary of State for Health and Social Care laid an instrument before Parliament on 10 February 2020 and made a Statement in the other place on 11 February 2020 about that action. My noble friend Lady Blackwood repeated the Secretary of State's Statement about the instrument in this House and answered questions at the time.

The regulations provide the power to screen, isolate and detain those at risk of spreading Covid-19 and, if necessary, to keep them isolated for a period of time. The powers are proportionate—they include a number of important safeguards to ensure that all actions are proportionate. Importantly, the regulations apply only in respect of Covid-19 and have a sunset period of two years from the date of coming into force.

Clear statutory tests are set out in the regulations to ensure that the imposition of requirements on restriction, including that of detention and isolation, must always be proportionate and necessary. There is a right of appeal to the magistrates' court against the imposition of any requirements. There are also clear checks on detention, such as a requirement for any detention lasting over 14 days to be reviewed as soon as is practicable, and subsequently every 24 hours, by the Secretary of State.

Although the regulations provide powers to impose restrictions on groups, the powers are proportionate to what is sought to be achieved. For example, each person in the group would have to be believed to be infected or potentially infected and to be at risk of infecting others, or to have arrived on the same conveyance from the same infected area. That analysis will be considered for each individual.

These regulations will help us to slow down transmission of the virus and make it easier for NHS and public health staff to do their jobs. While the risk that Covid-19 poses to the public remains moderate, the new regulations are essential to ensure that the Government remain suitably prepared to contain the spread of the virus for as long as possible.

I would like to explain in detail the powers in the regulations for the benefit of the Committee. The powers can be used by different designated individuals depending on what is most appropriate for the circumstance. A Part 2 order is an order that a justice of the peace can make under the Public Health (Control of Disease) Act 1984. These are powers to order health measures in relation to persons, things or premises such as isolation, detention and quarantine. This regime continues to apply as it always did. The regulations do not impact on the current ability of local authorities to apply for orders under the Part 2A order regime.

The Government have taken steps to introduce these regulations in addition to the existing legal framework, as this made it difficult to take appropriate action in advance of an individual becoming unwell, even if there was a strong suspicion that they could be incubating and spreading disease. Secondly, so-called Part 2 orders, which enable restrictions on individuals on public health grounds, could be applied only by local authorities. This potentially undermined a more uniform approach to disease control and meant that the Secretary of State was reliant on others for the timeliness and effectiveness of those critical public health measures. Thirdly, the existing legislation has limited enforcement powers, making it more difficult in practice to deal with people who are trying to evade public health precautions or regimes or who do not follow advice or the conditions that are set.

It is important to note that the regulations are appropriate to the containment stage of the outbreak. Regulation 3 places stringent requirements on when the regulations can apply. First, the Secretary of State must declare that the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health. Secondly, the incidence or transmission of the virus must be at such a point that the regulations may reasonably be considered effective in preventing its further transmission. These are important safeguards. If the declaration of a threat were revoked, the regulations would cease to apply.

Regulation 4 sets out that the Secretary of State or a registered public health consultant may require that someone is detained for screening and assessment either if they reasonably believe that the person is or may be infected with coronavirus and may infect or contaminate others or if that person has arrived in England from an infected area.

Regulation 5 permits them to impose various restrictions to ensure that screening and assessment can take place and to impose further restrictions or requirements as considered necessary for the purposes of removing or reducing the risk of infecting or contaminating others. Regulation 6 outlines in more detail what screening may involve, while Regulation 7 sets out further restrictions which may be applied, including restrictions on travel, activities and contact with others.

Regulation 8 covers the isolation of persons who are or who are suspected to be infected with coronavirus, while Regulation 9 sets out safeguards such as a duty on the Secretary of State to have regard to the well-being of anyone detained, and to review any continued detention over a 14-day period. Again, these are important safeguards when imposing restrictions on individuals.

Regulation 10 relates to the application of the provisions to groups. Regulation 11 enables a registered public health consultant or the Secretary of State to apply for a Part 2A order, which currently can be applied for only by a local authority. Regulation 12 covers appeals, while Regulations 13 and 14 enable police constables to enforce detention requirements or to initiate detention if they have reasonable grounds to suspect that someone is, or may be, infected with coronavirus. It is important to note that they must as far as reasonably practicable consult a registered public health consultant before taking action in relation to initial detention, and must have regard to any guidance from Public Health England. Regulation 15 covers offences, while Regulation 16 sets out that the regulations are subject to sunsetting two years from the date of commencement.

The regulations apply only to England; health is a devolved matter, therefore we continue to consult with the devolved Administrations regarding appropriate measures for any individuals who may return directly to Wales, Scotland and Northern Ireland. That includes options in primary legislation that would cover the entirety of the UK.

These regulations therefore enable the Government to take the necessary steps to minimise onward transmission from individuals who are or may be infected or contaminated with coronavirus and ensure that these are proportionate and effective. While we expect the vast majority of individuals to comply with public health advice without the need for legal enforcement, it is important that we remain suitably prepared for all eventualities. Given the seriousness of the threat posed by Covid-19, the regulations are a reasonable and necessary part of our strategy to protect the public. The Government will conduct a lessons-learned review in line with previous incidents and infectious disease outbreaks.

I take this opportunity to thank all our NHS, Public Health England and other front-line staff, including those on the borders, who are working so tirelessly on the response to Covid-19. Thanks to all their efforts, the Government, the NHS and other front-line responders are well prepared to respond to Covid-19. I also use this opportunity in Committee to thank the public for their pragmatic and sensible response to the situation to date. We must continue to take that approach to ensure public safety and refrain from panic and disinformation. As the Secretary of State for Health and Social Care has said, dealing with this disease is a marathon, not a sprint. We will be guided by the science and the advice of the Chief Medical Officers. We will continue to do everything that is effective to tackle this virus and keep people safe, and the regulations are an important element of that work.

As a final and important reminder, all of us—including noble Lords—can take actions to support the Government's response that are simple but effective, such as washing hands and catching coughs and sneezes in a tissue. These and other precautions, including these regulations, are a necessary and proportionate response to protect public health. I commend these regulations to the House and beg to move.

Baroness Thornton (Lab): My Lords, I thank the Minister for that comprehensive explanation of the order. When I started to read the policy background, it all came flooding back to me, having sat in his position in 2008 dealing with amendments put forward to modernise the legal framework for health protection and considering what powers were needed. My first question, therefore, is, why is the 2008 Act not sufficient to cover the eventuality of this virus, when these regulations relate to the 1984 Act? It is just a technical, anorak-type question and I am interested to know the answer.

I have given the Minister notice of my other questions, the first being about the differing legal structures in the United Kingdom, particularly between England and Scotland. Where are the regulations being considered? Are they being considered? Have they already been adopted by the devolved Administrations?

Echoing the brief discussion we just had in the Chamber, a further question relates to when this becomes a serious and imminent threat. In our scrutiny, we need always to focus on whether the orders and the Bill about to come before us give too much power or just enough power to a Secretary of State.

The statutory instrument refers throughout to detention or isolation. Can the Minister explain the difference between them? Is detention where somebody is arrested and detained, and isolation where they stay in their home? What would compel them to do that? I would like that to be unpicked.

Will the measure add significantly to the workload of magistrates' courts? Has some estimate been made of that, and will it be properly funded?

My next question is about police involvement if people will not take the precautions required of them by law. Can we be assured that the police will be protected appropriately if they have to be involved in arresting or detaining people? That goes for other people involved in incarceration of any sort, because prisons and so on are contained environments that pose their own questions and dangers.

Finally, given that we do not know how long the coronavirus outbreak will last and what will happen, is two years too long a time for these regulations? Would not one year be more sensible?

Baroness Brinton (LD): My Lords, I thank the Minister for his detailed explanation of the regulations. I too have warned him in advance of an area on which I want to focus.

In general, we are content with the principles and are reassured that the Government have made it plain that the measures are a last resort when people will not co-operate and public health is seriously at risk. The points that we are raising are more about the detail of how things will work.

5.15 pm

Reference was made to consistency across the four devolved nations. On a previous Statement, I asked whether there might be a "Gretna Green" benefit to belting over the border. I still want reassurance that there will not be variation between the devolved nations. Can the Minister inform the Grand Committee about discussions going on with the three devolved nations to ensure consistency and to prevent people trying to dash over a border, whether it is towards Gretna Green, across to Northern Ireland or into Wales?

My main point comes back to the question asked by the noble Baroness, Lady Thornton, about why the 2008 Act is not enough on its own. My focus today is very much on what happened in coalition regarding the Health and Social Care Act and the moving of directors of public health into local authorities. My concern is that some directors of public health have been told that they do not qualify as public health officers. Under "Interpretation", Regulation 2(1)(d) defines a public health officer as

"a registered public health consultant or a person working within Public Health England".

That is important because, in Regulation 4, it is that person as defined in the recitals who is able to effect

[Baroness Brinton]
the order. I just want to check that, given the document that was republished and updated in January this year—*Directors of Public Health in Local Government*—which makes it plain right from the start that this is a joint appointment. It says that a director of public health must be

"jointly appointed with the Secretary of State of the Department of Health and Social Care (in practice, Public Health England)"

and local government, and among their statutory duties are

"exercising their local authority's functions in planning for, and responding to, emergencies that present a risk to the public's health."

Paragraph 4.5 of that document says that they must be registered with the General Medical Council, the General Dental Council or the UK Public Health Register, meaning that they are qualified and have to maintain that qualification with all the validations and re-examinations required.

Therefore, my question to the Minister is as follows: directors of public health resided inside Public Health England less than five years ago, but because they are no longer in Public Health England, why do they now suddenly no longer qualify? If it is a misunderstanding in Public Health England, please can we have public reassurance about that? If it is due to a lacuna in the legislation, clearly we cannot deal with that through these regulations but we happen to have a handy Bill coming along in the next couple of weeks in which we could perhaps make that clear. From the conversations that I have been having with directors of public health around the country, it seems that they are, as one would expect, heavily involved with both the health side and the community side. The key stakeholders—such as the fire services, the Courts Service, the police, the Prison Service, universities and those involved in education—are absolutely vital in dealing with matters where members of the public or organisations refuse to follow the rules relating to identification, quarantine and isolation.

Lord Campbell-Savours (Lab): My Lords, as I understand it, this is the first opportunity that we have had, outside of UQs and Statements, to fully debate this whole issue. I want to speak at a little greater length on this matter because I think that we are entering a crisis which perhaps we have underestimated at this stage.

As I understand it, these regulations apply where the Secretary of State makes a declaration that the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health, and that the incidence of coronavirus is at such a point that the measures outlined may reasonably be considered as an effective means of preventing the further transmission of coronavirus. I will argue in my contribution that, prior to the use of regulations, advice should be given in the form of information—far more information than is available at the moment to the public—to help individuals avoid contamination and infection.

Before I start, I need to declare an interest. Some years ago, I had surgery on my lung to remove a tumour, leaving me with half a lung and with COPD on the remaining two lobes. As a result, I have major breathing difficulties. I also want to make it clear that I am not speaking only on behalf of myself; I approach this whole debate as one among the many hundreds of thousands who are in the vulnerable group described as "persons with pre-existing conditions". Before moving to the thrust of my case—on the provision of information, which is what I want to concentrate on—I want to make three points.

First, the use of the terms coronavirus and Covid-19 is unhelpful and confusing. We need single-term terminology in the public debate. Secondly, repeating the statement that masks are of little value and are no defence, which we hear repeatedly on television, is irresponsible. Masks protect others from infection by those who are unaware that they are carriers. If they are so ineffective, why are doctors, nurses, health assistants, virus-testing personnel, ambulancemen, laboratory assistants, research chemists, health professionals generally and even undertakers worldwide all wearing masks, as can be seen on every television screen in the country, every day and every night on every new bulletin?

Thirdly, I am curious about the statistics on mortality rates, particularly among the elderly. The way this debate is being presented, it is as if 1%, 2% or 3% of those who are stricken with this condition may die, but that confuses groups of people, including the elderly and the young. I understand that the real figure for people in the 70 to 80-plus age group is appropriately 15%, which is substantially more. We need clarification on that.

In my view, the public should ignore the advice on masks and follow the practice of health professionals. I understand that this mistaken advice is being given to avoid panic among the wider population. It will do the reverse, as such advice emphasises in the public mind the distinction between the no-panic case from government and the reality of the practice of healthcare professionals on the ground in the real world that they can see on television every evening.

I turn to the provision of information. The best way to secure public co-operation in the avoidance of infection is to provide authoritative information. That is the story behind the calls for freedom of information legislation in the late 1980s. I was at the heart of that debate in the Commons, and our mantra was "information influences conduct". To avoid infection, we need information from authoritative sources that is regularly updated as more information is made available to government. When the public have confidence in the scale of transparency and the source of the information, individuals are more likely to act responsibly. Apart from providing information, the state can do only so much, as is the case with the National Health Service and local authorities. The less information it provides, the less it will influence conduct. The less it provides, the more the fake news merchants will dominate the debate and the more they will influence public reaction and conduct. Inadequate and confused messages from government will lead only to a mix of panic on one hand and resigned inertia on the other. We need more than "Wash your hands, cough and dispose and do not touch your face". It is simply not enough. If you provide more information, the public will make far more realistic assessments of the actions that they need to take. The terms contain, delay, research and mitigate are important, but they are meaningless to

Joe Public. In fact the public will not even know what they mean. As contain morphs into delay and further morphing goes on, the message will become even more confused and obscure. The public want authoritative messages and updated and detailed information on where the dangers lie, in particular to elderly groups.

I have spoken to a number of people in my former constituency over the past week, and I will now set out what I believe the public want to learn and know. These are questions being asked by the vulnerable groups; they want authoritative information and answers.

We are told that the research money has been increased to £40 million. Reuters put out a very interesting article the other day. It reported:

> "A global coalition set up to fight epidemic diseases issued a call on Friday for $2 billion … to support the development of a vaccine against the new coronavirus that is causing COVID-19 infections around the world. Describing the outbreak as an 'unprecedented threat in terms of its global impact', the Coalition for Epidemic Preparedness Innovations (CEPI) said that while containment measures would help slow the spread, a vaccine was key to longer-term control … 'It is critical that we ... invest in the development of a vaccine that will prevent people from getting sick.' … But on Friday it said these funds would be fully allocated by the end of March. 'Without immediate additional financial contributions the vaccine programs we have begun will not be able to progress and ultimately will not deliver the vaccines that the world needs'."

Those were the comments of Mr Hatchett, CEPI's chief executive. On Friday, the British Government announced another £20 million of additional funding. The total is now £40 million or £50 million; I am not absolutely sure about the final figure. The point is that the budget is insufficient. What pressure are we putting on other countries to contribute to this budget to make sure that it meets the demands of those people who believe that it is necessary if a vaccine can be found in the foreseeable future?

Further, is the virus affected by temperature? We read all sorts of things on the internet. If so, at what temperature is it destroyed? That is the first question on my list of questions about the detail.

Should a vulnerable, at-risk person use public transport, be it a train, Tube train or taxi? The public are asking these questions. Should the elderly be using these facilities?

Can the virus survive any of the following circumstances: a hot drink; water; fruit juice; milk; beer or wine; a drink with a high alcohol content; an ice cream; a burger; takeaway food; or a restaurant meal? In each case, what is the lifespan of the virus? Again, the public are asking these questions, each of which should be answered separately.

What general information do we have on the lifespan of the virus? Can a fish, bird, animal or any other species catch the virus? The internet is full of explanations from people who cannot be described as authoritative sources for this information. Of course, the reference behind that is to pets. To what extent can a pet potentially be dangerous?

Can disposable polyurethane gloves be reused following washing? If so, in what fluids? Tens of millions of them are being sold on the internet. The question is, will they be effective if they are used more than once in contaminated circumstances? Will they wash in hot water? I know that these questions may seem naive to some but they are the kind of questions being asked by the general public.

Can a pair of gloves, whether they be made of fabric, leather, plastic or another daily wear material, pass on the virus? If so, can the gloves be decontaminated and reused? Can a simple face mask made of plastic be used repeatedly? Can it be washed for reuse? Is there a difference in terms of efficacy between a single-fabric face mask and a filter mask? I have two such masks here. The question is, are they in any way of use in the circumstances I described at the beginning of my contribution?

What antiviral substances are effective in killing the virus? Also, what substances are ineffective? Is there a base alcohol requirement in any decontaminant? Can the virus survive on any of the following inanimate items and, if so, for how long? Again, we have seen material on the internet, but we have nothing authoritatively on whether and how long the virus can survive on: a light switch; a newspaper; a piece of correspondence; a letter; a fabric, such as clothing; furniture; metal items; glass; a milk bottle; a plastic container; a piece of china; cutlery; a coin; a bank note; plastic packaging on food; a cash machine; a computer; a mobile phone keypad; a handle; handles on public transport, such as on a Tube train; a handkerchief; a toilet seat; a toilet chain; a towel; or a petrol pump nozzle. There is no authoritative information on these items, and we are getting into a dangerous period.

I have listed some of the items that I have been asked about—and there are more. The public will want clear advice and individual answers that identify the likelihood of contamination for each listed item and, crucially, the length of time that the virus could survive under such inanimate item headings.

What advice can be given on the possible contamination of food, such as cold meat, cooked fish and poultry, raw meat and fish, fresh vegetables and salads, fruit, cheese, and spreads, including butter? It might be that the process of vacuum packing affects contamination one way or another—who knows?

Will the Government publish the stats on the age of persons, which I referred to before, who fall under the following categories: in hospital care and deceased—which I referred to before?

Finally, is Worldometer a good source of information? It seems to be the primary source for the public of information on this matter on the internet.

In conclusion, I fully understand that to some, many of my questions may appear to be simplistic, naive and an indicator of my own ignorance. Such criticism is of no concern to me. These questions will stand the test of time. There are 67 million people in the United Kingdom, and these are the kinds of questions many of them are already asking on the internet and in public meetings. We are Parliament and it is our role to secure answers on these from the Government. I do not expect answers to them today, but only after they have been fully considered. I hope that they are made public and are widely circulated to counter misinformation. I can only repeat that, when the public are told the full truth and given the full information in an authoritative form, they will respond positively and constructively. Until that happens, there will be nothing but panic,

[LORD CAMPBELL-SAVOURS]
confusion, upset, frustration and, in some cases, dangerous indifference, particularly among the elderly and the vulnerable groups, who are the focus of my contribution today.

Baroness Finlay of Llandaff (CB): My Lords, first, I apologise to the Committee that I came in late. The business proceeded slightly faster than I realised, but I am most grateful to noble Lords for allowing me to intervene briefly.

The comments made by the noble Lord, Lord Campbell-Savours, clearly illustrated the need for messaging out to the public. One of the difficulties is that the answers to many of his questions are just not known scientifically. It is a range of probabilities only; the way the virus behaves on different surfaces and with different substances is different. The infectivity may vary with the viral load to the individual as well as the individual's own immune system. That makes it really complicated in terms of defining. You cannot give a false sense of security to people by saying, "Well, you are fit and well, and your immune system is okay", because those people may become very ill, particularly if they have a large viral load. We saw that with the Chinese doctor who initially highlighted the problem. Tragically, he died.

I take this opportunity to ask a few questions. This order refers to Public Health England but we have devolved Administrations, and Public Health Wales and Public Health Scotland operate differently. Some aspects of this statutory instrument concern the police and justice, yet the Ministry of Justice and its overarching responsibilities are not devolved, so there is a difficult interface between the devolved and non-devolved competencies. Can the Minister provide some reassurance on the daily round-table consultations that are going on to make sure that decision-making is absolutely seamless and that the devolved Governments are taking forward—and, I hope, mirroring—such legislation so that we do not end up with different systems operating across what are effectively artificial borders? In areas such as Shropshire, there is a huge amount of cross-border flow between England and Wales. Linked to that, can the Minister clarify that equipment, and its distribution to where it is needed, is also part of the consideration of the protection of the public so that we do not have an outcry if one part of the country cannot access equipment as well as another?

Testing is difficult: it is a complex and finite resource, and it takes some hours to run the test. A lot of the public do not understand that it is not like a pregnancy test; it is not a quick dip and a quick answer. With such a finite resource, will the Minister clarify where the governance sits for the management of negative results? One of my anxieties is that people may have a false sense of security from a negative result, because they may get the infection the day after it and subsequently become positive. Although it is helpful to confirm positive cases, a negative result does not mean that you are not going to get the coronavirus infection further down the road.

Linked to the cross-border issues, can the Minister also confirm that the use of beds and the availability of things such as ITU beds and ECMO are being considered across the whole country? I worry that difficult decisions are going to have to be made and it will be very important to have clear standards against which to make them. If it looks as if we are becoming like Italy, that will certainly more than stretch services to the limit; it will take them beyond it.

Will we need additional statutory instruments for the reregistration of people with healthcare professional qualifications of any sort? If so, when will we see them? I was rather hoping that it might be today. This relates to my earlier question about registration on specialist registers. Is the GMC working to find alternative ways of putting those who have completed training on the specialist register without bringing them all together in an exam hall, which seems to be an unwise move when their competencies have already been assessed through training?

That concludes my questions, but I thank the Minister for his clarity, for explaining things really well, for answering questions on the Floor of the House and for answering unanswerable questions with such honesty. It is terribly important that he and those advising him try to be very clear and open about the things that we do not know.

Lord Bethell: My Lords, I will start by talking about two matters that are not central to the regulations but which are important pieces of context. I thank the noble Lord, Lord Campbell-Savours, for his incredibly candid and heartfelt comments, which none of us here could help but be moved by. I would also like to express sympathy for his personal situation. We all know friends, relatives and people who are in a vulnerable position. While the CMO's advice is that for a lot of us the virus does not present a huge risk, for some people it does. That cannot but be on their mind and we think about them a lot, so I am grateful to the noble Lord for bringing that message of seriousness and his personal testimony.

I will also address directly the noble Lord's questions. I am afraid that I cannot answer the important technical questions he asked; I am grateful for his appreciation of that fact. However, I reassure the Committee that our approach is to seek to be as transparent as we possibly can be. In answer to the noble Lord's question, there is a daily update on the PHE website, where all the figures that we know and can prove are published—they go up at 1.45 pm every afternoon. That is a serious matter, and we are looking at ways of making that a more easily accessible dashboard with a deeper set of numbers that you can look at locally; we could then publish as reasonable and proportionate an amount of figures as possible while keeping secure the anonymity of those involved.

The other part of our approach comes very much from the spirit of the CMO himself, whom many of your Lordships will have met. He is an enlightened character who is extremely committed to evidence-based policy recommendations. We all plague him with questions much along the same lines as those the noble Lord, Lord Campbell-Savours, asked, seeking from him reassurances about particular technical questions. He is able to speculate and to say, "Maybe this or maybe that, but I can't give you any clear reassurance on that because there is no data on it".

One of the things about trying to preserve the pact with the public that our decision-making is supported by evidence is to avoid going into the kind of tempting speculation that the situation draws you into. There is temptation there, but, as a cardinal rule, we have to apply a self-restraining ordinance on trying to give people the answers and the speculation that, emotionally, they naturally want. The questions of the noble Lord, Lord Campbell-Savours, are exactly right, and I reassure him that battalions of scientists are trying to get to the bottom of those answers. Lots of evidence is being worked up, and I believe that answers to many of those questions will be forthcoming. However, until they have the sign-off from the scientists, it is not right for us to indulge in speculation. That is the foundation of our approach, which I mentioned earlier. Although it is incredibly frustrating, from a public policy point of view it is the right approach. However, I will try to address just a couple of the questions that the noble Lord asked, without falling into my self-defined bear trap.

The noble Lord, Lord Campbell-Savours, asked about masks. Broadly speaking, except for the most comprehensive hazmat suits that cover you from head to toe, masks are mainly used to limit the number of germs that you emit rather than that you consume. I think we are all interested in the work going on in Taiwan, where all schoolchildren wear masks, not to protect them from the germs but to try to stop them infecting the people next to them. That is an interesting insight, but it is not the approach that the CMO has recommended.

On the delicate issue of mortality rates, I completely sympathise with the noble Lord's point that there is wild speculation on these numbers, and it would be fantastic to have a more reliable set of figures. I will say only that it is extremely difficult to know mortality rates, because you simply do not know how many people have the virus in the first place. Large numbers of people are infected and infectious but completely asymptomatic and never go near a test kit, so we cannot know what the mortality rate is at any age. I recommend that the noble Lord treats all mortality rates data with great suspicion. It is not the way we are guiding ourselves.

5.45 pm

On the coalition on vaccines, the noble Lord is entirely right that substantial resources will be needed to mobilise a usable vaccine around the globe. However, the advice we have is that creating a vaccine for a completely new virus will take longer than the cycle of this virus through the population. While that work is being done, and the Government are supporting it as a matter of urgency, it will not provide a quick or easy answer to our situation.

A lot of the public have asked about pets. It is important. We are aware of reports that a pet dog whose owner tested positive reportedly contracted a low-level infection. Those reports are causing a lot of concern, but the WHO says that there is currently no evidence that pet animals can transmit the disease to humans and the story has been greeted with scepticism by scientists I have met—but we do not have scientific evidence on that.

All noble Lords asked about the devolved Administrations. I shall clarify two things because there is an important point here. The regulations are for England only. We are working extremely closely with the devolved Administrations. There is an extremely good spirit and an extremely collaborative approach. We do not see an administrative or policy issue at the moment. The Secretary of State and the Prime Minister have made it clear that a coronavirus Bill is being considered and one of the matters that could be considered in such a Bill, were it to be introduced, might be the formalisation of these regulations to bring them into line across the four nations. I cannot give cast-iron reassurances on this because we have not published the Bill. It has not been through the process, but we are very conscious of this issue. It is a big priority, and I reassure the Committee that the conversations with the devolved Administrations are working very well and we are hopeful that a solution to this obvious lacuna will be addressed.

The noble Baroness, Lady Brinton, asked about directors of public health. I know that she is concerned about them. The public health consultants who are described in the regulations are members of a register that is run and controlled by Public Health England. They are not the same as directors of public health. I completely understand that there is an argument to be made that perhaps they could or should be directors of public health, but that is not how the regulations are currently drafted. Instead, they are people who are on the register. If the noble Baroness would like to know more about that register, I would be happy to send her details and perhaps a link to where the details can be found.

Baroness Brinton: In the past they have been on that register, and the big concern is the move from one department to another. If I am being told that that is not the case, that is not the feedback I am getting from directors of public health. As the Minister knows, I have other concerns about the relationship between Public Health England and directors of public health, which is why I asked for clarification.

Lord Bethell: I completely understand the point of clarification. If there is information available on what proportion of directors of public health are also public health consultants, we will share it with the noble Baroness. However, the way that the regulations are drafted at the moment means that the powers in the regulations are held not by directors of public health but by public health consultants.

Baroness Brinton: I am sorry to interrupt the Minister again but the point is not about the register kept by Public Health England. My point concerns the definition of public health consultant—I am afraid that *Hansard* now has the relevant document, otherwise I would quote from it—and most directors of public health have to do that qualification because the job description, which is in the statutory guidance, says that they must be registered. That is my problem, and I know that it is clearly a problem for some of them as well. There is a bigger issue here. Should this become a pandemic and we see a large spike in numbers, we will need everyone

[Baroness Brinton]
qualified in public health to be able to do this, and there seems to be a problem in excluding the people at the heart of managing coronavirus within their wider communities.

Lord Bethell: The noble Baroness makes a very reasonable point. My understanding is that this decision was made not on a personnel basis but on an administrative basis. We are seeking to restrict the number of people who are able to execute these potentially quite serious powers. Having a list of available people is a legally clear and responsible way of doing things, but creating a new administrative definition goes beyond the powers of these regulations. However, I have already taken on board the noble Baroness's points about the role of directors of public health in this epidemic. Those points have been listened to and are being followed up, and I will continue the dialogue that we already have in place on that.

The noble Baroness, Lady Thornton, asked why the 2008 powers are not sufficient. The answer is that it is mainly for practical reasons. The 2008 Section 2A powers give local councils powers but mobilising local councils to do things, sometimes at the weekend, sometimes at ports where they are not necessarily administratively present and sometimes overnight, is administratively a challenge. We found that in practice during the containment at Arrowe Park, it was really Public Health England officials on the ground who dealt with the situation and who needed these powers both in their back pocket and in their administration of the situation. That is why we have sought to do this. It is fair to say that a lessons-learned review is expected in the years to come and this will be the kind of issue that we will look at again.

The noble Baroness, Lady Thornton, asked what the difference is between detention and isolation. Although I do not have the legal definitions in front of me, my understanding is that isolation can be in someone's house—literally holding them away from the rest of society—whereas detention involves confining someone to a place that they cannot leave, such as a police cell or a jail. Both are covered in these regulations. It is worth saying that you could, for instance, seek to isolate someone in a hotel room near the Arrowe Park facility and that would be covered.

The noble Baroness also asked about magistrates' courts. I reassure her that MoJ colleagues were fully consulted on this and they did not see a problem. The objective was to try to create a low bar for an appeal to make the appeal process as easy and accessible as possible, recognising that these are very serious powers and we want to make them as sensitive as possible. In terms of police involvement and whether the police would wear suitable suits, they absolutely would. Police officials are highly protective of their workforce. Public Health England is working closely with the police to ensure that they have both the guidelines and the kit necessary to protect the workforce.

On the term of the regulations, I agree with the noble Baroness that two years is longer than we hope or pray this virus will continue. However, the advice from the CMO was that we cannot necessarily plan for that. Viruses sometimes last longer than expected; they can create multiple strains, and it may take time to have the lessons-learned review and to bring in new powers. That said, it is also possible that a coronavirus Bill that overtakes these regulations will be brought to the House later this month and the sunset clauses would necessarily be included in that.

Lord Campbell-Savours: Will the Minister reconsider something that he said to me? He said that he could not answer many of the questions that I asked. Almost all of them were to do with contamination, and virologists can answer them—I am told by a virologist that they can all be answered; we went very carefully through them. Can the Minister take each of the questions that I asked and answer them individually on the basis that virologists will be able to give him the information that he requires?

Lord Bethell: The noble Lord, Lord Campbell-Savours, is entirely right to press me on this. I should be honest: obviously, I am not a doctor. However, we have arranged for another briefing from the Chief Medical Officer in Room G at 4 pm tomorrow. He is the epidemiologist who can convey to the noble Lord both the extent and limits of current understanding of the virus. I have sat with him sufficiently long to have the impression that a lot of speculation, guidelines and history are associated with such viruses that we might reasonably apply to this one. However, its behaviours are not fully understood. Although the genome is broken, we do not fully understand its genetic makeup. The advice from the CMO generally is to hold back on pretending to understand things that are not yet fully explored.

Baroness Thornton: I say to my noble friend that I would not use the internet as my source of information on any of these issues. I would use the BBC, which has been running extra programmes—in fact, I have just received an email from the head of the World Service listing all the extra programmes that the BBC is producing which will give us lots of advice. Its website is useful. I want to put it on the record to my noble friend that I would steer clear of those sorts of discussions on the internet and look at the BBC's websites.

Lord Campbell-Savours: The great majority of the British population will not go into some of the technical areas that my noble friend would go into. That is why I am trying to find a single source of information for people to be able to go to which is authoritative and gives answers, with the latest information and knowledge available, on each of the questions I have asked. I persist in believing that the Government should arrange for this information to be made part of the public debate, because it would be helpful to everyone concerned.

Lord Bethell: I understand the point and will take it back to the department.

The noble Baroness, Lady Finlay, asked about testing. She is entirely right to focus on that, because we are at the stage of the cycle when questions about testing are very much on our minds. She asked where we were focusing our testing. The most important area for testing is those people who are most vulnerable but who might have the virus. She is entirely right that someone who tests negative today may well test positive

tomorrow. Where that is most dangerous is within hospitals. Hospitals are centres of infection. It is one reason why, if you phone 111, they recommend that you do not go to your hospital or your GP. Therefore, testing within hospitals is where we are focusing our resources.

I reassure the noble Baroness, Lady Finlay, that we are moving incredibly quickly to increase capacity of ECMO beds. There will be a huge amount of pressure—we cannot hide that—but those most in need are being prioritised. Training is going on to support those with the technical knowledge of how to run the equipment and purchasing is going on to create new kit.

On reregistration of clinical professionals, all the concerns raised in Committee and in the Chamber about the provenance of people seeking to reregister are fully understood. Provision is being made to make sure that criminal record checks and competence checks are in place. However, these remain incredibly valuable and skilled people who can support us, so we are determined to mobilise them if possible.

Baroness Finlay of Llandaff: I referred to difficult decisions possibly being made. Can the Minister reassure the Committee that the Government are working with the heads of all the royal colleges—particularly their ethics committees—to make sure that unified guidance is going out to commissions across all the disciplines? Unfortunately, the different colleges have at times a tendency to work in their own silo, but this will be across all of them. It will have to go across the professions, rather than across the individual trusts and internal organisations. Therefore, a round table or regular consultation with them to make sure they all give the same messages is important, and it would reassure the public.

Lord Bethell: The noble Baroness, Lady Finlay, makes an important point. The CMO currently has a weekly call with all the presidents or relevant members of the royal colleges, and there is an incredibly energetic interface between officials at PHE and the colleges. New guidance is being drafted at the moment. As our understanding of the epidemic increases so the CMO's certainty and confidence about the advice he is giving will be clearer. We are therefore seeking to publish really good guidance for employers, voluntary organisations and all the groups who need it. The CMO also works closely with the CMOs of the other three nations, and I understand that is an incredibly healthy and productive relationship. It has served very well to ensure that the devolved authorities are fully involved in decision-making and that there is transparency on key issues such as ethics, which the noble Baroness was right to mention.

Motion agreed.

Committee adjourned at 6.03 pm.