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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Wednesday 13 May 2020

11 am

Prayers—read by the Lord Bishop of Durham in a Virtual Proceeding via video call.

Arrangement of Business

Announcement

11.04 am

The announcement was made in a Virtual Proceeding via video call.

The Lord Speaker (Lord Fowler): My Lords, Virtual Proceedings of the House of Lords will now begin. I remind Members that these proceedings are subject to parliamentary privilege and what we say is available to the public both in Hansard and to those listening and watching. Members' microphones will initially be set to mute, and the broadcasting team will unmute their microphones shortly before we reach their place in the speakers' list. When Members have finished speaking, their microphone will again be set to mute.

Virtual Proceedings on Oral Questions will now commence. I ask everyone to please keep their questions and answers as brief as possible, so that we can get through as many people on the list as we possibly can.

Universal Credit

Question

11.05 am

Asked by ***Baroness Lister of Burtersett***

To ask Her Majesty's Government what assessment they have made of the impact of the benefit cap on the incomes of Universal Credit claimants following the increase in the Universal Credit standard allowance announced by the Chancellor of the Exchequer on 20 March.

The Question was considered in a Virtual Proceeding via video call.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, we monitor the impact of the benefit cap policy and publish these findings every three months. The latest available statistics were published last week, on 7 May, and reflect the position as at February this year. The next publication, scheduled for 6 August, will reflect the current position and the impact of the increases awarded from April of this year.

Baroness Lister of Burtersett (Lab): My Lords, welcome as the increase is, many thousands will not benefit because of the cap, which is already causing real hardship and unfairness, as demonstrated by the Work and Pensions Committee, yet it is not realistic or safe at present to expect people to seek work or reduce housing costs to avoid it. Will the Government now listen to anti-poverty and faith groups, the IFS and others, and urgently fulfil their statutory duty to review the cap and suspend it, or, if operationally easier, raise it significantly?

Baroness Stedman-Scott: I must be very clear that it is not the Government's intention to change the current level of the benefit cap. What I want to point out is that claimants may benefit from a nine-month grace period, where their universal credit will not be capped, if they have a sustained work record. Exemptions will also continue to apply for the most vulnerable claimants who are entitled to disability benefits and carer benefits. I finish my answer by saying that the Government have quickly and effectively introduced £7 billion-worth of measures that benefit those facing the most severe financial disruption.

Baroness Couttie (Con): Many people who have recently found themselves made redundant as a result of the Covid-19 crisis will be struggling on universal credit. Some of these people will have decided to isolate with vulnerable loved ones to provide them with the care that they need to be protected from the disease. This can lead to added expense. Will the Government consider removing the benefit cap for such people?

Baroness Stedman-Scott: Claimants who receive certain benefits for caring or for a severe disability or health condition will not have their benefits capped. This ensures that the most vulnerable people are protected. Universal credit households are exempt from the cap if the household earnings are at least £604 each month. Households may also be exempt for a period of nine months, if they have a sustained work history.

Baroness Meacher (CB): My Lords, advances for universal credit claimants have to be repaid when claimants finally receive their benefits—after at least five weeks, and often very much longer than that. But their benefits will be well below subsistence level, due in part to the benefits cap, but also to the two-child limit, and to very tough rent and council tax rules. Could any Minister maintain their mental health in these circumstances? I absolutely could not—and I mean that. Will the Minister plead with her colleagues for urgent further changes—I understand that some have been made—to protect the mental health of universal credit claimants?

Baroness Stedman-Scott: The noble Baroness makes an excellent point: these are very difficult times. People are struggling in all sorts of ways, and we are mindful of the impact of mental health issues. I am afraid that I am unable to make any commitments around the points that the noble Baroness made, but I will say that, in these very difficult times, nobody has to wait five weeks. Since 16 March, we have issued 700,000 advances, and the majority have received their money within 72 hours.

Baroness Sherlock (Lab): My Lords, can I bring the Minister back to the point made by my noble friend Lady Lister? The Government's argument for the benefit cap was that you can always escape it by just going and

[Baroness Sherlock]
getting a job or moving to a cheaper house. But that is simply not possible at the moment. The Minister says that the Government are not going to lift the cap. Given the demand from the IFS and over 50 organisations, and given the Commons Library estimates that an extra 18,000 families are being drawn into the benefit cap as a result of the Government's actions, can she tell the House not merely that they will not do it but why they will not do it?

Baroness Stedman-Scott: I draw the noble Baroness's attention to the fact that, in a repeated Oral Statement and at Oral Questions, the Secretary of State was absolutely clear that this benefit will not be changed. I agree with her that things are very difficult at the moment. That is why we have tried to be as flexible as we can by introducing this £7 billion package which gets to the people who are in the most difficult group, removing the minimum income floor, increasing UC, pausing deductions for historic debts, introducing statutory sick pay from day one and increasing working tax credits from over £1,000 to £3,000. I cannot give her any other answer than that, but I can make a commitment to take her question back to the department and again ask what she and others would like me to ask.

Baroness Janke (LD): Is the Minister aware that 85% of those who have had benefits capped are single parents, many of whom have lost jobs through the current crisis? To ease the severe hardship these families are suffering, will the Government at least consider suspending the benefits cap pending a future review?

Baroness Stedman-Scott: The benefit cap is reviewed once in every Parliament. The Secretary of State will do this, although I cannot tell noble Lords when. Until that happens, I am not aware of any intention or plan by the Government to remove the cap.

The Lord Bishop of Durham: I thank the noble Baroness for again highlighting how the benefit cap is trapping families in poverty. In light of the report published last week by the Church of England and CPAG which estimates that around 60,000 more families will be affected by the two-child limit due to Covid-19, what assessment have Her Majesty's Government made of the impact of this limit on families who have made a new universal credit claim since the lockdown?

Baroness Stedman-Scott: I will need to go back to the department and ask whether an assessment has been made. I am mindful of the recent Child Poverty Action Group report and was grateful to receive an advance copy. My officials are carefully considering this, and I hope to be able to write to the Child Poverty Action Group and the Church of England this week to cover the point that the right reverend Prelate just made.

Lord Balfe (Con): My Lords, I point out that, as far as I am aware, Labour is not committed to ending the benefit cap; let us start by saying that. It seems that we can never do enough, but would the Minister agree to look very carefully at the situation as it unfolds and confirm that, where we can make minor adjustments, we will? But we have to realise that there is a limit to the amount of money we can spend.

Baroness Stedman-Scott: My noble friend makes a very valid point. These days are very difficult and the situation is fast-changing. We are reviewing and considering things on a daily basis. There is nothing at all in our plan that aims to make life worse for people; in fact, it is quite the opposite. When noble Lords look at what we have done, we have moved quickly and effectively to try to bring additional resource and support into the system.

Baroness Boycott (CB): My Lords, one of the drivers of food bank usage identified by Feeding Britain—I declare an interest—is the monthly sums deducted from universal credit to repay advance payments. The Chancellor's plans to lower the rate of deductions and extend the repayment period are not due to take effect for another 18 months. Would the department not consider bringing them forward immediately for existing claimants and replacing advance payments with targeted grants for all new claimants from now on?

Baroness Stedman-Scott: I advise all noble Lords that there is no plan to convert advances to grants. I must be clear about that, although I know that it is not what people want to hear. However, I will take the point back to the department and see whether there is any movement, and I will give a written response to the noble Baroness.

Lord Liddle (Lab): Given that, because of Covid, we are in all likelihood entering a period of much higher unemployment when it will be more difficult for people to get a job, does the Minister agree that there is a case for a review of universal credit and suspending the benefit cap until such a review has taken place?

Baroness Stedman-Scott: I think that I have answered the questions about the benefit cap and reviewing benefits quite adequately during the course of the Question. I agree that these are very challenging times. We have launched a job help website and an employer help website. We will turn every stone to ensure that we help people back to work as quickly as possible.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has, regrettably, elapsed.

Syria

Question

11.15 am

Asked by ***Baroness Cox***

To ask Her Majesty's Government what assessment they have made of the impact of the COVID-19 pandemic on the humanitarian situation in Syria; and what steps they are taking to initiate the lifting of sanctions on that country.

The Question was considered in a Virtual Proceeding via video call.

The Minister of State, Foreign and Commonwealth Office and Department for International Development (Lord Ahmad of Wimbledon) (Con): My Lords, after years of conflict, Covid-19 poses a particularly significant threat in Syria. The United Kingdom is working closely with the United Nations and partners to adapt our humanitarian response. We are also supporting the UN-led political process, which the Syrian regime must engage with seriously for sanctions to be lifted. EU sanctions, which we continue to apply during the transition period, are carefully targeted on specific sectors and individuals—[*Inaudible*.]

Baroness Cox (CB): My Lords, I thank the Minister for that reply. Does he acknowledge that UK-backed sanctions make it impossible for many civilians to obtain food, medicines and life-saving medical equipment, causing widespread avoidable suffering and death, gravely exacerbated by coronavirus? As the UN's special rapporteur emphasises, it is undisputed that sanctions do

"contribute to a worsening of the humanitarian situation".

Will the Minister therefore agree to accept advice from UN experts, who emphasise that it is now

"a matter of humanitarian and practical urgency to lift … economic sanctions immediately"?

Lord Ahmad of Wimbledon: The United Kingdom ranks among the leading donors to the humanitarian aid to Syria. The noble Baroness mentioned sanctions —[*Inaudible*]—specifically targeted on the Assad regime and businesspeople related to it. Importantly, on the issue of supporting ordinary Syrians, food and medical supplies used for humanitarian purposes are not subject to these particular sanctions, as the noble Baroness will know.

Baroness Uddin (Non-Afl): My Lords, nearly 10 years on since the Syrian conflict started, hundreds of thousands of people have lost their lives and their loved ones. Some 8 million are internally displaced and 6 million are languishing mostly in refugee camps. The Conscience Movement, a women-led organisation based in Istanbul, says that 10,000 women remain imprisoned by the Syrian Government. While I acknowledge that sanctions cause humanitarian catastrophe, what representation can the Minister and our Government make to the international community to ensure the urgent release of these women, who often face rape and torture, prior to any consideration of lifting sanctions?

Lord Ahmad of Wimbledon: The noble Baroness raises an important point on the issue of sanctions and that during conflict that women—[*Inaudible*.] We are appalled by the acts of the Syrian regime, often at the cost of its own citizens. I assure the noble Baroness that we are talking—[*Inaudible*]—ensuring that the advice—[*Inaudible*]—Syrian regime to act.

Lord McInnes of Kilwinning (Con): My Lords, only this week, Amnesty International published a report outlining the attacks the Assad regime and its allies have unleashed on humanitarian and non-military targets in Idlib since May last year until February this year. Surely this underlines why sanctions must continue until there is an agreed political settlement and requires us to ensure that our humanitarian aid continues to be funnelled through NGOs in Syria.

Lord Ahmad of Wimbledon: My Lords, I agree with my noble friend. The situation in Idlib is desperate, but, again, the UK has been at the forefront, providing £118 million of support to the suffering people in Idlib. Most recently, an RAF jet delivered more than 37,000 tonnes of aid. We are prioritising Idlib, but I agree with my noble friend that the sanctions must still apply until such time—[*Inaudible*.]

Lord Hylton (CB): The Minister will know that I was in Syria each year from 2015 to 2017. Does he agree that, even then, sanctions were doing more harm to ordinary Syrians than to their Government? Will he now argue for their removal, first, on health and medical goods; secondly, on food; and, thirdly, on reconstruction materials?

Lord Ahmad of Wimbledon: The noble Lords asks about sanctions; I believe that I have answered this in part already. The sanctions do not apply to—[*Inaudible.*]

The Lord Speaker (Lord Fowler): Minister, there is something seriously wrong with your sound production, but we will go on.

Lord Collins of Highbury (Lab): I agree with the Minister that no one should be able to act with impunity, and that includes agents of the Assad regime. Certainly, the NGO experience of distributing through a Damascus hub suggests that lifting sanctions would not change the situation for millions of Syrians in the north. Can the Minister update us on what his efforts are achieving in keeping aid corridors open through renewal of UN Resolution 2504?

Lord Ahmad of Wimbledon: The noble Lord raises an important point on Resolution 2504. Most recently, my right honourable friend the Foreign Secretary had a call with the Minister about the importance of keeping those corridors open. We hope that not only will this happen but that we will be able to open up additional humanitarian corridors.

Baroness Northover (LD): Will the Government consider time-limited sanctions relief for Syria to permit international transactions and supplies and to make the health of the civilian population a priority?

Lord Ahmad of Wimbledon: I have already made clear the Government's position on sanctions, which is taken together with our EU colleagues. These will not be lifted until such time as we see meaningful engagement from the Assad regime.

Baroness Hodgson of Abinger (Con): My Lords, I understand that Turkey and Turkish-backed forces have cut water supplies several times to some 460,000 people in the Al-Hasakah Governorate in

[Baroness Hodgson of Abinger]
north-east Syria, exacerbating the situation there and putting many people, especially children, at enormous risk. Can my noble friend the Minister encourage the Government to use all available means to persuade the Turkish Government that water flow must be restored?

Lord Ahmad of Wimbledon: Turkey is an ally and a member of NATO. I assure my noble friend that we continue to make representations about the importance—[*Inaudible.*]

Lord Green of Deddington (CB): My Lords, this is not a question about sanctions as a whole, but their application to food and medicine. The Minister said—if I understood him correctly on this line—that sanctions do not apply to food and medicine. However, in practice, financial sanctions are impeding the purchase of food and medicine. Will the Minister undertake to look into that and make sure that they are not accidently preventing supply of such materials to ordinary Syrians?

Lord Ahmad of Wimbledon: As I have already made clear, our sanctions regime applies specifically to ensure that humanitarian support—[*Inaudible*]—can be taken forward and ordinary citizens receive this. I take note of what the noble Lord has said, but we are very clear—[*Inaudible*.]

Lord West of Spithead (Lab): My Lords, civil wars are very bloody and unpleasant. There is no doubt that, as they come towards the end game, they get more bloody and unpleasant. There are no good guys in terms of the fighting in these wars; both sides always behave appallingly. Do the UK Government really think that a future with the bulk of Syria run by the Assad Government, with a tiny enclave run by disparate groups of jihadis—many of whom are as bad as Daesh—would be stable moving forward? Would it not be better to stop sanctions and try to come alongside the Assad Government and influence it in a way that we wish to influence it?

Lord Ahmad of Wimbledon: We have been very clear on the issue of the Assad regime; it is now very much a matter—[*Inaudible.*]

The Lord Speaker: My Lords, the time allowed for this Question has elapsed. I apologise for the reproduction and clarity of the Minister's replies.

Covid-19: Sports

Question

11.26 am

Asked by ***Lord Caine***

To ask Her Majesty's Government what support they are making available for sports affected by the COVID-19 pandemic.

The Question was considered in a Virtual Proceeding via video call.

Lord Caine (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and draw attention to my interests in the register.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, the Government recognise the impact that Covid-19 is having on the sports sector. We continue to engage with sporting organisations to understand how it is affecting them and to provide support. The Chancellor has already announced a host of measures to help businesses, with £330 billion of government-backed guaranteed loans as well as the Coronavirus Job Retention Scheme. In addition, our national sports council, Sport England, has announced £210 million of funding to help sport and physical activity organisations to deal with the short and long-term effects of the pandemic.

Lord Caine: I am grateful to my noble friend for that reply. As she will be aware, few, if any, sports are embedded within communities quite like rugby league, particularly here in the north of England. On behalf of the entire rugby league family, I therefore thank the Government for recognising the special place that our great sport has in society through the vital support package that was announced on 1 May. I commend also the work of the Rugby Football League. What discussions are now taking place on a road map to allow the season to resume—it has in fact only just begun—behind closed doors at first, beginning with allowing players to start training?

Baroness Barran: I take this opportunity to thank my noble friend for the work that he has done in this area. I recognise the role that rugby league plays in communities, having visited the Castleford Tigers ladies team training—I think he is a Leeds Rhinos fan, but we can agree on the impact. In addition to the guidance published on Monday on how to ease lockdown and resume training for different sports, officials are convening with medical officers to share best practice and planning, looking at a safe return to training. That is obviously a first step to returning to fixtures. We know that rugby league will work within this and the public health guidance that goes with it.

Lord Pendry (Lab): My Lords, it is obvious that many sports are affected at a higher level because of this crisis. However, I want to emphasise the problems facing many lower football league clubs, many of which are in danger of extinction. On a positive note, it is pleasing to know that the Football Foundation, of which I am president, has come together with its partners, the FA, the Government and Sport England, to launch a new pitch preparation fund consisting of £10 million of financial support for struggling clubs at the lower level. Can the Minister assure the House that, although that is a healthy beginning, it will continue to be a focus for further assistance, recognising that these clubs are very often the hub of social activities within the communities in which they reside?

Baroness Barran: We absolutely recognise that clubs are an integral part of the country and of communities around them. Officials and Ministers are regularly

engaging to understand and collaborate with clubs to make sure that we can support them through this extraordinarily difficult time.

Lord Taylor of Warwick (Non-Afl): My Lords, under Project Restart, the Premier League is considering returning by 12 June. However, can the Minister say what the Government are planning to help less wealthy clubs outside the Premier League which want to emerge from this fight as victors, not victims?

Baroness Barran: I have already explained some of the funding which has been provided across a range of sport. We very much welcomed the move by the Premier League to advance £125 million to the English Football League and the National League. All plans that are being developed need to be in line with public health guidance, but we hear the urgency in the noble Lord's question.

Baroness Rawlings (Con): My Lords, I welcome the Government's decision regarding support for sporting activities. They are vital for the mind as well as the body. Tracing and tracking will be as important as ever. Can the Minister consider encouraging people to keep a daily diary on everyone they meet and everywhere they go so that, should they fall ill with Covid-19, that would be a simple, cheap, easy way to trace it?

Baroness Barran: I completely agree with my noble friend on the importance of sport and exercise for one's mental as well as physical health. I welcome her suggestion and will share it with ministerial colleagues.

Lord Addington (LD): My Lords, do the Government agree that to benefit from sport, people have to be encouraged back in at grass-roots level? Will the Government give us an assurance that they will make sure that everybody knows when it is safe for children and those in the junior ranks to start attending practice sessions and training, and that this information will be made available through all normal media channels?

Baroness Barran: The noble Lord makes an extremely good point about communication and making sure that children hear about the opportunities available for them, so I will take that point back. I also draw his attention to the recent announcement that the Community Emergency Fund has been increased from £20 million to £35 million; that supports just the sorts of organisations to which he refers.

Lord Moynihan (Con): I welcome Sport England's excellent set of initiatives. However, does the Minister agree that waiting until the forthcoming spending review—potentially this autumn—to learn about UK Sport funding for teams for Tokyo's Olympics next year is too long a period of uncertainty for our Olympic and Paralympic athletes, and that it casts further doubt and shadows over selection processes?

Baroness Barran: I understand my noble friend's interest in getting clarity as quickly as possible. I can only reiterate that officials and Ministers are working very closely with all those involved to make sure that we have the strongest possible case to put on their behalf at the spending review.

Baroness Bull (CB): My Lords, in terms of the physical demands and the reliance on specialist training conditions, professional dancers are effectively elite athletes engaged in a team sport and, like athletes, they will need a significant period of training before they are fully match fit and ready to perform. Can the Minister tell the House what discussions are taking place about support for this sector, and about the safe return to training of professional dancers who, like athletes, contribute so much to our global reputation and sense of national pride?

Baroness Barran: I will need to write to the noble Baroness about the specifics of what engagement there has been with elite dance. Our clear aim is to set out a series of principles that will allow a return to safe training for all those engaged in elite and grass-roots sports.

Lord McConnell of Glenscorrodale (Lab): I should record my interest in the Lords' register in relation to Scottish Athletics and the Commonwealth Games (Scotland) Endowment Fund. I would like to ask the Minister about those Scottish, Welsh, English and Northern Irish athletes either training or based in the different nations who are on UK performance funding. Will full discussions be held with the devolved Governments of Scotland, Wales and Northern Ireland to ensure that all UK high-performance athletes have the same access to a return to coaching, medical facilities and training, although obviously in conditions of safe social distancing, over the coming weeks?

Baroness Barran: My honourable friend the Minister for Sport is co-ordinating those conversations but, again, I will raise the importance of this issue with him.

The Lord Speaker (Lord Fowler): My Lords, sadly, the time allowed for this Question has elapsed. We come now to the fourth Oral Question. Please keep contributions reasonably short.

Economy: Bank of England Forecasts

Question

11.37 am

Asked by ***Lord Lamont of Lerwick***

To ask Her Majesty's Government what assessment they have made of the forecasts for the economy included in the Bank of England's Monetary Policy Report and Interim Financial Stability Report, published on 7 May.

The Question was considered in a Virtual Proceeding via video call.

Baroness Penn (Con): My Lords, the Bank of England has specific statutory responsibilities for monetary policy and financial stability, as well as operational independence from the Government to carry out those responsibilities. The Monetary Policy Committee has constructed an illustrative economic scenario based on a set of stylised assumptions to inform its policy decisions. Given the committee's operational independence, the Government seek to avoid commenting on its assessments and monetary policy decisions.

Lord Lamont of Lerwick (Con): My Lords, I thank the noble Baroness for that reply. The Governor of the Bank of England, commenting on the MPC report, said that it would not be until the end of next summer that the economy would fully come back. Given that that sombre assessment was based on the assumption in the report that social distancing would be phased out between June and September, do the Government recognise that there are whole sectors of the economy—hospitality, accounting for 10% of the labour force; airlines and transport—that simply cannot operate profitably with social distancing? While we all understand why social distancing is necessary now, do the Government also recognise the awkward truth that we will not get back to where we were with a full recovery unless, as the MPC report assumes, we find at the appropriate time a way for social distancing to be phased out so that it does not become part of the so-called new normal?

Baroness Penn: In setting out this week their road map for the easing of the lockdown, the Government have stated that step 3 would not take place any earlier than 4 July. We will seek to reopen some of the remaining businesses, particularly those in hospitality and leisure, by finding ways for them to do so safely. However, we acknowledge that this will be difficult for some businesses. We will continue to be guided by the science and we will target economic support based on how we progress with the phased reopening.

Lord Davies of Stamford (Lab): My Lords, in the course of the Government's efforts to mitigate the collapse of demand in the economy with their furloughing system and so forth, which I thoroughly approve of, they are accumulating a lot of debt. Before this crisis, we were fast approaching a level of public debt at 90% of GDP, which is unprecedentedly high. At the time of the collapse of Lehman Brothers 12 years ago, by comparison, we had a 60% public debt to GDP ratio, so with each crisis we are reducing our freedom of manoeuvre and our scope for absorbing shocks in the future. Against that background, do the Government have a notion of the maximum debt ratio which ought to be acceptable and which they can use as a discipline in planning the fiscal deficit in future? If so, will they say what that is?

Baroness Penn: The Government have set out their fiscal rules and continue to abide by them. With this pandemic, we face unprecedented economic circumstances. Our focus at the moment is on protecting health and jobs, and supporting businesses. As the OBR has made clear, the cost of inaction would be far higher.

Baroness Kramer (LD): My Lords, will the Minister explain how the V-shaped economic recovery contemplated by the OBR and the Bank of England is consistent with the collapse in global trade and growing protectionist sentiment? How do the Government square the UK's need to grow exports with their calls for favouring British companies, extensive onshoring and shorter supply chains?

Baroness Penn: The Bank of England and the OBR have made it clear that what they have produced are scenarios rather than forecasts. The Bank of England's scenario certainly took into account the effect of this pandemic on levels of global trade.

Lord Lilley (Con): My Lords, the Bank's report makes it clear that the construction sector has been hard-hit by the lockdown. It is vital to revive it, since it generates activity across the economy. Given that we have learned that regulators can, under public pressure to respond to the crisis, greatly accelerate their normal decision-making processes without sacrificing standards, will the Government urge all planning authorities to speed up decision-making on planning applications immediately so that we can get Britain building again?

Baroness Penn: We are keen that all planning decisions are made in a timely way. Construction is one of the sectors where we have provided Covid-secure guidance to allow people to get back to work, safe in the knowledge that they will be returning to safe workplaces.

Lord Kakkar (CB): My Lords, I draw attention to my declared interests. Economic and population health modelling has suggested that regular, routine and repeated testing for the SARS-CoV2 virus of the entire population, rather than just symptomatic individuals and their contacts, could facilitate mass labour participation and the necessary consumer behaviour required to maximise economic activity ahead of widespread vaccination. What assessment have Her Majesty's Government made of this approach?

Baroness Penn: The Government are clear that "test, track, trace, isolate" will be a core part of the next phase of our response. We will seek to do this in different ways, and to learn lessons from previous pandemics and approaches in other countries. For example, we are using asymptomatic testing in health and care home settings to help reduce the spread of this disease.

Lord Livermore (Lab): My Lords, both the Bank of England and the OBR have forecast that unemployment will double to 2 million, highlighting the severe impact this crisis is having on those not covered by the Government's job retention schemes. Will the Minister therefore commit to improving the generosity of universal credit and consider introducing the active labour market policies seen in other countries, including job search support and job guarantees for the young?

Baroness Penn: The Government have already improved the generosity of universal credit by £20 a week and raised the value of the local housing allowance. The

best thing that we can do in getting people back to work is to get the virus under control and allow the economy to be open. We will of course continue to keep under review any further measures that we need to support people who have, sadly, lost their job during this crisis.

Baroness Sheehan (LD): My Lords, once the lockdown has been eased, the trillions of pounds invested globally in economic recovery packages will have a significant impact on the Paris climate goals. A very recent study in the *Oxford Review of Economic Policy* on choices for this investment shows categorically that what is good for the economy is also good for lower emissions. Will the Government give thought to making green economic stimulus a central plank of the UK-led COP 26?

Baroness Penn: We are very keen to have a green recovery which uses the Government's policies in working towards economic growth but which also supports our commitment to net zero by 2050.

Lord Wood of Anfield (Lab): My Lords, pursuing the Question put by the noble Lord, Lord Lamont, one of the—[*Inaudible*]—about the scale and speed of recovery. It said that growth could hit 15% for 2021 as a whole. Does the Minister not agree that inducing excessive optimism about the speed of the recovery has its own risks, and does she agree with the former Chancellor, Sajid Javid, who said today that a—[*Inaudible*]—unlikely?

The Lord Speaker (Lord Fowler): I am afraid that we got only part of your question. Minister, can you make something of that?

Baroness Penn: I will attempt to do so. In terms of optimism, or otherwise, about the speed of the recovery, the OBR's and Bank of England's scenarios are not those of the Government. We do not make our own economic forecasts. I would also point out that they are scenarios rather than forecasts, and the Bank of England said that the risk in its scenario was probably more on the downside. The Government are focused on providing support now for jobs and businesses so that they are protected during this time and so that we can recover as quickly and as safely as possible.

Lord Marland (Con): My Lords, we welcome the positive report by the Bank of England—it has not always been so positive. However, we must be mindful that it did not take into account the extension of the furlough scheme until October and its total cost of £100 billion. Would my noble friend the Minister like to comment on that and perhaps ask the Bank of England to revise its estimation, given the changes to the government handouts that have just happened?

Baroness Penn: I believe that the Bank's scenario took into account the gradual unwinding of the lockdown and of the support schemes matched to it, completed by the end of quarter 3. However, the Bank makes its own decisions about any scenarios or forecasts that it produces to inform its own decision-making and policy-making.

The Lord Speaker: My Lords, the time allowed for this Question has now elapsed. I apologise to the two Members who were unable to get in but I thank all noble Lords. That concludes the Virtual Proceedings on Oral Questions. The Virtual Proceedings will resume at 12.30 pm and, until then, stand adjourned.

11.48 am

Virtual Proceeding suspended.

Arrangement of Business

Announcement

12.30 pm

The announcement was made in a Virtual Proceeding via video call.

The Deputy Speaker (Lord Russell of Liverpool) (CB): My Lords, Virtual Proceedings of the House of Lords will now resume. I remind Members that these proceedings are subject to parliamentary privilege and what we say is available to the public both in *Hansard* and to those listening and watching. Members' microphones will initially be set to mute, and the broadcasting team will unmute their microphones shortly before we reach their place in the speakers' list. When Members finish speaking, their microphone will again be set to mute.

The Virtual Proceedings on the Motion in the name of the noble Lord, Lord Rosser, will now commence. This is a time-limited debate. The time limit is one and a half hours.

Motor Vehicles (Tests) (Amendment) (Coronavirus) Regulations 2020

Motion to Consider

12.31 pm

Moved by ***Lord Rosser***

To move that the Virtual Proceedings do consider the Motor Vehicles (Tests) (Amendment) (Coronavirus) Regulations 2020.

Relevant document: 11th Report from the Secondary Legislation Scrutiny Committee

The Motion was considered in a Virtual Proceeding via video call.

Lord Rosser (Lab): My Lords, this is a take note Motion. I am not opposed to the principle of the regulations, which introduce a one-off, six-month exclusion from the requirement for light vehicles to hold a valid MoT test certificate, but I have a number of points and questions to raise with the Government.

[Lord Rosser]

To start, what were the key factors behind these regulations? The Explanatory Memorandum states that

"given the widespread impact of COVID-19 there are likely to be local difficulties in obtaining testing imminently, with more widespread difficulties as the pandemic develops."

That suggests that the basis of the regulations is an assumption, rather than hard evidence, about local and more widespread difficulties.

The Explanatory Memorandum goes on to state that without the regulations

"many people may have to unlawfully use their vehicle without an MOT, to reach work or do essential shopping, which is a particular concern for vulnerable people"

and:

"The lack of a valid MOT may also mean that vehicles cannot be taxed and using a vehicle unlawfully may also invalidate insurance cover."

These last two points depend on the accuracy of the assumption that Covid-19 has led to difficulties in obtaining testing. However, I hope the Government can confirm that they have ensured that the DVLA has updated its records and systems so that people in the six-month exemption period will not have problems renewing their car tax or over insurance cover.

Returning to the point about difficulties of obtaining testing, which would presumably be caused by garages being closed or short-staffed due to the incidence of Covid-19, my local garage was shut for three weeks in April, but it then reopened, since after another month there might not have been a business left at all. The Government did not say that garages had to close. Indeed, they encouraged them to remain open, and I assume they have issued appropriate advice on maintaining social distancing at work for garage mechanics.

There are 23,500 test stations, and in normal times there is a surplus of capacity, according to the Explanatory Memorandum. Can the Government say what that level of spare capacity in normal times actually is? What is the maximum number of MoT tests on vehicles covered by these regulations that can be carried out per six months in a normal year compared with the number actually carried out per six months in a normal year? How many MoT tests on light vehicles covered by these regulations were carried out in the four weeks prior to the announcement of the lockdown, and what was the maximum number of MoT tests that could have been carried out in the four weeks prior to the announcement of the lockdown? By how much has the maximum capacity for testing been reduced so far during this pandemic, and what do the Government estimate that maximum capacity to be at present?

Presumably the Government wish to see the terms of these regulations, with their one-off, six-month exemption from an MoT test, brought to an end as soon as possible. If the principal reason for these regulations is concern about present testing capacity, the Government must surely have their finger on the pulse of changes in the maximum available testing capacity.

The continuation of these regulations ought surely to be reconsidered as soon as the required level of testing capacity is available. Unless the Government are going to argue that the MoT test is actually somewhat unnecessary—in which case, why do we have it in the first place?—there must be potential safety issues in allowing light vehicles that would not pass their next scheduled MoT test to remain on the road for a further six months. It is not good enough for the Government simply to say, as they do in the Explanatory Memorandum, that

"vehicle users are still required by the Road Traffic Act 1988 … to ensure vehicles are in good working order."

There will apparently be millions of light vehicles on the road that would have failed their scheduled MoT test had it taken place. The Explanatory Memorandum says that around 16.6 million relevant MoTs are due to expire over the first six months of these regulations. It also says that 29% of those tested, around 4.9 million vehicles, would have received a dangerous or major MoT failure over the same six-month period. That is then shrugged off in the Explanatory Memorandum with the statement that

"however the maintenance requirements and low risk of incidents occurring from vehicle defects mitigates this risk",

followed by

"but, the risk remains low during the 'stay at home' rules as trips are made for essential purposes only."

Three days ago, that position changed. Rather than stay at home, we are now told by the Government to "stay alert", which I suppose is pretty good advice for all road users and pedestrians with 4.9 million vehicles that would have failed their MoT with a dangerous or major failure allowed on the roads under the six-month exemption.

I recognise that a decisive majority of road accidents or incidents are the result of human error rather than vehicle defects, though it would be surprising if a vehicle defect did not increase the likelihood of human error, but nevertheless the six-month exemption increases the likelihood of accidents or incidents due to vehicle defects. An impact assessment would have addressed that point, but there is no impact assessment due to lack of time. What, then, is the Government's estimate of the increase in the number of incidents due to, in whole or in part, vehicle defects that would have been picked up in an MoT test, but were not, as a result of the six-month MoT test exemption?

I also understand that vehicles are being sold on the basis of up to six months still left on the MoT when that period is the six-month exemption, and does not mean—as implied—that the vehicle passed an MoT test between six months and up to a maximum of a year ago.

The DVSA has separately issued certificates of temporary exemption from the requirement to hold a test certificate for goods vehicles and public service vehicles. What is the MoT failure rate for these vehicles, and how many such vehicles were due an MoT test in the six months to the end of this September? Returning to the non-existent impact assessment, will the Government now produce one, since impact assessments often provide helpful and illuminating information not otherwise readily available?

The importance of MoT tests in the present situation has also been further emphasised by the Government's announcement on Sunday that they are actively

encouraging people to return to work if they cannot work at home, and that they should avoid travelling by public transport if they can travel by other means, including by car. In other words, the Government are now encouraging people to use their cars rather than public transport—perhaps the first Government ever to do that. People are also now being told they can use their cars to drive as far as they like to an outdoor space.

In other words, one of the key risks to which I referred a few moments ago—of 4.9 million vehicles that would have received a dangerous or major MoT failure over the six months to the end of this September being on the road—is no longer being mitigated to the same extent by the "stay at home" rules, under which trips are made for essential purposes only.

The Government say:

> "This instrument is being introduced to address the ongoing pandemic and will be revoked if it no longer serves a useful purpose."

Do they envisage revoking the regulations early, taking into account that there would be a backlog of MoT tests to be carried out for a few months as well as the normal number of such tests? I have heard it suggested that 20% of garages may not survive the pandemic as viable businesses. Do the Government have any estimates of how many of the 23,500 testing centres may not survive the present situation, and the impact this could have on testing capacity?

Do the Government have any figures for the percentage of eligible people who already could have availed themselves of the six-month test extension facility for light vehicles and who have done so by not having their MoT test done by their scheduled date, as opposed to the percentage who could already have availed themselves of the facility but have chosen not to do so, perhaps preferring to have the assurance that their vehicle is not one of the 29% that would have received a "dangerous" or "major" MoT failure? The answer to that question must also be a factor in determining when the testing capacity exists to enable the order to be revoked, and a return to a situation where MoT tests are undertaken at the time laid down.

Six-month MoT test extensions will start to terminate at the end of September. Are there any circumstances under which the Government would continue that extension period beyond the six months, or will vehicles that have had that six-month exemption definitely be required to pass an MoT test after then in order to be driven lawfully on our roads?

I hope the Government will be able to provide the answers, today or subsequently, to all the questions I have raised. We must by now have a clearer picture of the situation in respect of testing capacity. If the Government can provide the evidence that it is insufficient, the order should continue, but when the evidence indicates the testing capacity is available, then the Government should seriously consider revoking this order, since deferring the need for an annual MoT test by six months or 50% must represent a potentially significant road safety issue. I beg to move.

12.42 pm

Earl Attlee (Con): My Lords, I am grateful to the noble Lord, Lord Rosser, for raising this issue, but I think that the order is a sensible precaution. I believe that the Minister and her department are operating magnificently. For instance, last week she and her officials sorted out a problem I had raised about abnormal load movements within 24 hours from start to finish.

It is important to recognise that having an MoT testing regime is not just about the direct safety benefit of detecting vehicle faults but much more about keeping our vehicle fleet operating at a very high standard, without a race to the bottom under economic pressures. Also more important nowadays is minimising environmental harm by means of emission testing. The good news is that the standard of our private car and commercial vehicle fleet is far higher than it was a few decades ago. I have a somewhat technical interest to declare, in that I currently operate a heavy goods vehicle exclusively under an order made under Section 44 of RTA 1988, but might want to operate it under C&U rules. Lack of goods vehicle testing capacity may cause me some inconvenience at some point in the future.

In effect, the order extends an existing MoT certificate but does not allow a vehicle to be operated without a recent certificate at all. That is fine for cars, but not necessarily for goods vehicles. There may be sound reasons why it is necessary to bring a goods vehicle back into operation; for instance, after a significant overhaul or refurbishment. I understand that the Minister has the power to relax testing requirements for an individual vehicle, but officials are using it only sparingly, for vehicles involved in combating the coronavirus, but not generally, even for reliable operators. Before noble Lords get too excited about my suggestion, I point out that goods vehicle operators are already obliged to inspect their vehicles for safety about every six weeks, so my proposal would have a limited adverse effect on road safety.

12.45 pm

Lord Rennard (LD): My Lords, it is unfortunate that after many years of encouraging the use of public transport and attempts to reduce traffic congestion and use of fuel, and to improve air quality, the Government are now having to encourage limited use of cars again. The legal requirement for cars to be given MoT tests is not without reason, so there must be safety implications arising from their suspension. A number of cars that will be driven during the exemption period would have failed their test.

The noble Lord, Lord Rosser, asked many important questions. In particular, can the Minister confirm how many cars would normally have failed an MoT in a six-month period, allowing an estimate to be made of how many cars being driven over the spring and summer might have failed this test? What steps are the Government taking to encourage motorists to follow advice from sources such as the AA and the RAC about keeping their cars safe and roadworthy? What efforts are they making to advise motorists to check

[Lord Rennard]
the condition and pressure of their car tyres, their vehicle's oil levels and coolants and the functioning of their windscreen wipers and lights before they resume driving?

The role of the rescue services is important at this time, especially in supporting key workers travelling to their essential jobs. Perhaps it is time to thank organisations such as the AA and the RAC which are offering to rescue any NHS worker who needs their help without charge.

How are the Government liaising with the insurance companies over the consequences of suspending the operation of MoT testing? Some insurance companies may be in a healthy financial position, as they claim full premiums from motorists even when people are driving a lot less and presumably making fewer claims. Are the Government advising these companies that they should not cancel someone's insurance cover simply because their car has not had an MoT during this period, as lawyers advise they may be able to do? Are they advising motorists that they should notify their insurance companies if they do not obtain an MoT when it would normally be due? Finally, are they talking to car manufacturers and dealers about whether a lack of an MoT, if due in this period, may invalidate warranties?

Much is being decided in haste during this crisis and I ask therefore that issues such as those in this order be kept under careful review and that the suspension of testing will be ended as soon as is practicable.

12.48 pm

The Earl of Erroll (CB): My Lords, I agree that this is a very practical and sensible relaxation of the rules, which will help keep people able to work as the lockdown is eased. Without it, there would have been more hardship than we would have wished, probably among the less well off, who are less able to afford newer vehicles.

However, as others have said, safety is extremely important and it may be worth the Government putting out messages on public television or whatever about what defects would certainly be prosecuted by the police if you get stopped. Exemption from an MoT does not mean that you are allowed to drive a dangerous car. For instance, damaged tyres are critical. I have noticed very occasionally that the inside wall of the tyre may be damaged, and that gets picked up only at the MoT because not many of us like crawling under our car regularly just to check. If it has not been serviced for a while, it can go unnoticed.

Brake pads are important; yes, lights can come up on the dashboard, but I am not sure that everyone understands them. However, if the noise should alert people, maybe these messages should be put out publicly. Wiper blades, as mentioned by the noble Lord, Lord Rennard, are very important in bad weather —or even in good weather when your windscreen gets clogged up with flies and you have to use the windscreen washers. Some basic messages on things such as that should be promulgated, because we do not want unsafe cars on the road.

I am not sure what exactly qualifies as essential services, but garages and small car servicing shops should be treated as essential. The people who sell the parts and things that we need should also be treated as essential; I think that they already are.

If one wants an MoT before the new deadline—this may be a very good way of getting a car checked anyway—presumably that journey would be regarded as important enough to qualify under the rules for essential journeys or for getting to work. It would be useful to have that clarification.

I also hope that it will be possible for the DVLA to send out reminders to vehicle owners when the new deadline for their car is due because a lot of people will have the wrong date in their reminders and diaries.

12.51 pm

Lord Holmes of Richmond (Con): My Lords, it is fair to say that these regulations represented a practical, proportionate intervention at that stage of the crisis, not least for our front-line workers to whom we owe an enduring debt of gratitude.

However, since the guidance has changed materially, I have some questions for my noble friend the Minister. What impact has this had on small businesses, not least those garages that employ five people or fewer? In the light of these changes, does it not make sense for the regulations to be reviewed on a weekly, perhaps even fortnightly, basis? What data are the Government collecting on vehicles on the road? For example, how many are being stopped, how many are being taken off the road and how many fines are being issued? How has the risk addressed in the regulations been balanced against the other risks that it inevitably brings to bear? I am particularly concerned about the situation for taxis and private hire cars. Are the Government looking at this issue?

The guidance has changed materially as of Sunday evening, as we saw this morning. As JM Keynes put it, "When the facts change, I change". Should the regulations be under review in that context? This morning, we saw that the traffic on the roads has increased materially, as guided by government. Does my noble friend agree that we need to ensure not only that passengers in those cars are safe, in terms of reducing their Covid risk, but that the vehicles in which they travel are safe for them, for other road users, for pedestrians and for us all?

12.53 pm

Lord Carrington of Fulham (Con): My Lords, I declare my interests as in the register.

We understand perfectly the reasons for these regulations. At this time, it is important that we remove as many burdens from people as possible and ensure that no one is forced into contact with others if it can be avoided. However, I wish to point out a couple of problems. I support the regulations but we will need to get MoT stations back to normal operation as soon as possible.

My first point concerns safety. It goes without saying that maintaining mechanical and emissions standards for motor vehicles is safety-critical for all

road users and for reducing air pollution, which has been one of the few benefits of the present crisis. MoT testing stations play a vital part in this. They are not there to catch the crook or wide boy who wants to drive unsafe vehicles on the road, although they have a part to play here. The overwhelming majority of vehicles that fail their MoT do so because they have faults that their owners were unaware of. For instance, a six-month delay in getting an MoT test means that some faults, for example in brakes that were fine 18 months before at the last test, are now dangerous. The MoT test is set up to ensure that the brake pads are thick enough to last for 12 months of normal usage of that vehicle—18 months may remove that safety margin.

The second issue concerns the nature of MoT stations themselves. Outside Northern Ireland, they are overwhelmingly small businesses set up as small independent garages specialising in MoTs. They are sometimes part of repair garages, because the repair garage is fed from the work generated by the MoT testing. If you find that your car has failed the MoT on something minor such as a faulty brake light, it is often convenient for the vehicle owner to get a quote from the garage doing the MoT and get the MoT done quickly on the spot if the price is right.

By delaying MoTs for six months, we take out six months cash flow from these small businesses; many will not survive, regardless of government loans and furlough schemes. This could lead to a shortage of MoT stations in future, which are not easily replaced because of the technical skills required to carry out MoTs and the licensing to ensure that they are carried out correctly. While this regulation solves our pressing problems at this time, the shorter the time that MoTs are delayed the better, for the sake of us all and of the small businesses involved.

12.56 pm

Lord Berkeley (Lab): My Lords, I am grateful to my noble friend Lord Rosser for the opportunity to debate these regulations. The MoT is an essential safety requirement for those who use the road. You can just as easily kill somebody by having a defective car that has failed an MoT as you can with the coronavirus, so the whole regulation needs to be put into perspective. Like my noble friend Lord Rosser, I ask the Minister to explain what exactly is the reason for this. Is it because the testers have too much work doing something else or because the DVLA is not ready to process the information?

As other noble Lords have said, there are something like 23,000 testing centres in this country. I decided to see how easy it would be to get an MoT test this morning. I googled "MoT test" and managed to book a service with a mythical car—I do not drive or own a car—an XJ12, petrol, 2010 model, for two weeks' time on 22 May. There are probably many other testing centres that would have taken my booking so I cannot quite see the problem of lack of testing facilities—if, indeed, that is the problem.

A period of several weeks or months of not driving one's car can create an equally serious problem, as other noble Lords have said. One can now drive from London to Cornwall and back in a day; you cannot spend the night anywhere, but you can drive. That is the kind of situation where latent defects in vehicles could pop up.

The other issue I would like to raise with the Minister is that of attributable accidents. In other words, if you have not bothered, frankly, to have an MoT test, you are exempt because of these regulations, and you have an accident where somebody is badly hurt or killed, who is to blame? I would blame the Government for bringing in unsafe regulations when they were not necessary. The Minister will probably have a much better answer to absolve the Government but, after all, somebody will have to pay compensation and that seems very unfair.

Finally, the noble Earl, Lord Attlee, and others have mentioned the problem of PSVs and HGVs, which are not covered by these regulations. As the noble Earl said, they are mostly run by professionals, but there are bad apples in every industry, including PSVs, HGVs and all types of cars and vans. The problem with the bigger vehicles is that they can cause much more damage when they have an accident. Can the Minister explain whether similar regulations have been brought in to absolve PSVs and HGVs from such tests for six months, and with what justification?

1 pm

Lord German (LD): My Lords, I will concentrate on two specific issues: revocation of the SI and the connected effect on the business of MoT test centres.

As it stands, the SI has effect until 30 September 2021. There is no sunset clause, as explained in paragraph 14.2 of the Explanatory Memorandum. The explanation provided is that

"it is not appropriate to provide for a review of this instrument as it will cease to have effect after a short and fixed period of time."

Paragraph 7.6 of the EM tells us that this instrument

"will be revoked if it no longer serves a useful purpose."

I want to press the Minister to consider whether 18 months is a short period. Given all the shifts in the Government's approach to the pandemic, as restrictions are lifted or amended, surely it would have been sensible to build in a different approach in Regulation 2(3). If, as we all hope, we can take steps to return to a sense of normal road activity by the end of the year, surely a review clause would be more appropriate. The alternative, as laid out in paragraph 14.1 of the Explanatory Memorandum, is a new instrument to be laid before Parliament. That process would itself extend the intention of revocation by a month or two.

The case for this review clause is strengthened by paragraph 7.4 of the EM, which informs us that the purpose of the instrument is to

"enable drivers to continue to travel for a purpose permitted by law, such as purchasing essential food and medicine".

We are discussing an SI when the regulations on lawful driving have already been changed. In England people can now drive to places where they wish to exercise, such as beaches or the countryside, but I suggest that they do not come over the border into Wales because they could be fined under laws the Welsh Government have put in place.

[Lord German]

The effect of these regulations in England is that people are now free to travel on the roads in their cars; it is just the purpose of their end destination that is defined. If changes proceed at this frequency, the case for a more flexible approach to revocation is strengthened.

Public safety needs to be maintained above all. In 2018-19, 10 million vehicles—nearly a third—failed the MoT test. Nearly one in 10 failed with a dangerous fault, the most serious grade in the three-tier MoT system. Of the 30.5 million MoT tests taken, 10 million cars failed, 2.8 million of those for dangerous faults.

The Explanatory Memorandum tells us that there is spare capacity in local MoT testing stations. Many are one-person operations, making social distancing possible. I urge the Minister to reflect on improving the revocation mechanism to ensure that we do not endanger the public with dangerous cars on our roads.

1.03 pm

Baroness Ritchie of Downpatrick (Non-Afl): My Lords, I welcome the debate on the regulations. There is no doubt that motor vehicle regulations that enabled the three or four-year testing of vehicles' roadworthiness have been an important step in improving the standard of vehicles over the last 40 years. They have been an important boost to our economy—to garages, mechanics and the new, evolving car industry—but there is no doubt that coronavirus has changed our landscape in every possible sector.

As the noble Lord, Lord German, said, these motor vehicle regulations have also contributed to safety on our roads. The test certificates are required for taxation and car insurance purposes. In Northern Ireland—where other issues existed because of faulty lifting gear, in whose replacement the Minister invested a considerable amount of money—they have been extended for one year. In fact, as the noble Lord, Lord Carrington of Fulham, said, those motor vehicle testing centres are now coronavirus testing centres; this is a different situation from that in GB.

I would like the Minister to provide answers to several questions that are common to these regulations. Is she confident that the backlog in vehicle testing will be addressed whenever the regulations are revoked? Is she confident that the problems with the roadworthiness of cars will not accumulate and therefore cause road safety issues? Is she satisfied, given the possible files on such cars due for MoTs, that they will remain roadworthy for the next six months?

There is another issue, which I have raised with the Minister. Small garages depend for their throughput of work on people bringing cars up to standard. They have lost that work at this time, as severe restrictions are in place because of Covid. Can the Minister give some thought to how such businesses could be assisted in the short term? They will be impacted by the economic downturn which will ensue. There is also a case for vehicle owners to have personal responsibility for looking after the standard and roadworthiness of their cars; it is a dual responsibility. Finally, is it time to review the actual system—the duration or eligibility criteria—for motor vehicle testing regulations and go for three, four or maybe five years?

1.06 pm

Lord Blencathra (Con): My Lords, I congratulate my noble friend the Minister and the Department for Transport on bringing forward these regulations. It is a very sensible thing to do. I should declare a personal interest in that my MoT is due to run out at the end of May; or rather, my car's MoT is due to run out then. According to the NHS, my personal MoT ran out years ago.

I am one of those who would not be able to go out to get an MoT without these regulations, so the six-month extension is sensible and it should give enough time to get an MoT. Let us face it, if we are still in lockdown in six months' time then God help us; we will not need MoTs since we will be back to the era of the horse and cart. However, will my noble friend keep this under review and, if necessary, speak to the Communities and Local Government department with a view to extending garage opening hours, possibly with Sunday working? I suspect that, as most noble Lords have said, most garages and MoT centres will go flat out to clear any backlog but if a bottleneck occurs, extending garage opening hours might be a solution.

The other point I wish to raise is more concerning. We all know that insurance companies will use any excuse not to pay up. I worry that if a vehicle is involved in an accident, the insurance company will refuse to pay because the car did not have an MoT even though there is the six-month extension. I can imagine a scenario where a vehicle is involved in a collision—from a minor one to one involving loss of life—and the reason for that accident is traced to something such as a faulty or worn steering wheel rod. The insurance company could argue that if the car had had an MoT after 12 months, this fault would have been found and that the accident occurred only because the 12-month period had been exceeded. That is a hypothetical example; no doubt motoring experts could find better ones. Will my noble friend assure me, and all other motorists, that insurance will cover completely all possible accidents occurring after the 12-month period and be valid over the 18-month period?

1.09 pm

Baroness Kennedy of Cradley (Lab): My Lords, I too thank my noble friend Lord Rosser for tabling this debate, which has allowed some interesting points to be made and questions raised. I can understand the decision to extend MoTs during the lockdown. However, we are now encouraging people who can work safely to go back to work. Do the Government therefore have any plans to change these MoT exemptions?

As we begin to transition out of the lockdown, a cause of concern for us all is a second wave of the pandemic. If we find ourselves in another lockdown in the autumn, will the Government look at extending MoT expiry dates again? If so, when will that decision need to be made? I know that some trade bodies for garages were disappointed and wanted a much shorter MoT extension. Do the Government plan to conduct an assessment of the impact of that decision on garages, MoT centres and motorists before making any further recommendations?

Like many noble Lords, I want to raise the issue of insurance. With more than 1 million cars failing their MoTs each year, there are undoubtedly cars on the road during the extension period that would have failed their MoT. I know that the Government have said that car owners must ensure that their cars are safe and roadworthy, and although they have a responsibility to do that, they are not mechanics. Given that, can the noble Baroness say what conversations the Government have had with the Association of British Insurers about the issue of roadworthiness for vehicles with extended MoTs being a factor in insurance claims? What plans do the Government have to provide guidance for motorists on making their cars roadworthy during this time?

Finally, vehicles that are parked on a public highway without an MoT can be reported, and therefore car owners can be fined. If a car's MoT was due just before the end of March 2020 but the owner is self-isolating, staying at home or at home because they are clinically vulnerable, they are at risk of getting a fine. Filling in a Statutory Off Road Notification would be the last thing on their mind—even if they realised that they had to do it. What conversations have the Government had with the police to ensure that those who are self-isolating are not penalised for not having an MoT if it was due just before 30 March 2020? I look forward to the noble Baroness's reply.

1.12 pm

Lord Goddard of Stockport (LD): I note that the government website states:

"Vehicles whose MOT certificate had expired by more than 12 months at the time of application for a new test are not eligible for a TEC … These vehicles should not be driven on public roads."

As the noble Baroness, Lady Kennedy, has just said, that means that if the MoT ran out just before the lockdown, the car cannot be used on a public road. Do the Government have any idea of how many cars are being driven around on public roads with no TEC or MoT certificates? Are the owners going to be reported or prosecuted? I also note that heavy duty vehicles are being given only a three-month exemption, not six months. Do the Government have any plans to revise the guidelines to bring all transport vehicle testing in line?

In a previous life, I owned and drove a black cab as well as my own car, a private hire vehicle, a minibus and, as a PSV driver, even coaches. The testing of every one of those vehicles was rigorous and regular to ensure the safety of all passengers, which is as it should be. But from my memory, almost 40% of those vehicles failed on their first visit to the test centre. The noble Earl, Lord Erroll, was quite right to say that tracking and tyres are major defects that are picked up only on MoT certificate testing. People do not get under their cars with mirrors to look at the sides of their tyres. Also, vehicles which have been left standing for months on end will have flat spots. If someone gets in their car and drives at speed, the tyres will be more at risk.

One of my other concerns is the present licensing laws for private hire vehicles. For instance, operators can get a licence in one part of the country and operate in another. In Stockport, we have private hire operators working from as far away as Wolverhampton and Rossendale. These vehicles are not the responsibility of Stockport Metropolitan Borough Council because the original licensing authorities are responsible for finding out whether such vehicles have been tested. Many older people are still using taxis and private hire cars to get to hospital and to go shopping. These vehicles need to be serviced and maintained safely. Can the Minister assure me that mechanisms are in place to ensure public safety, as we come out of lockdown more and more, and that all forms of transport testing, from car to coach hire, are in place to protect the public?

As MoT stations come online more, why can they not test earlier and the six-month limit be brought forward to provide testing earlier for key workers? It could be argued that taxi and private hire drivers are key workers, so they should be able to get early testing.

1.14 pm

Lord Mann (Non-Afl): My Lords, I recognise and support the Government's rationale in bringing forward this change. The last thing that we want is to unnecessarily criminalise any driver or inadvertently leave people doubly locked in at home because they cannot use their vehicle, for example, to get to a doctor's surgery or to pick up a prescription. I echo the remarks of the noble Lord, Lord Blencathra, that, without this change, some people would be discriminated against.

Therefore, I support the change, but I think that the Government should be looking at things beyond it. They have, rightly, encouraged and allowed bicycle repair shops to open. Although I am fully in favour of the maximum number of people shifting to using bicycles, in some parts of the country that would be rather a full-time occupation for people as they tried to get to work and to get around for their business. I would like the Government to give out a stronger message that garages can be open for business and that, where possible, they should be.

For some of us, this is the perfect time to arrange for an MoT to be done. I would be quite happy for the six-month period to be brought forward and to allow MoTs to be carried out earlier, because garages can employ caution and use safety measures. Using myself as an example, I could drive my car to a garage for an MoT and would be happy to leave it there for a week. I could walk home, then walk back to pick it up. Not only would that allow social distancing and no human contact, but it would allow the car to remain in isolation for, say, three or four days before it was touched by the garage.

The nation's productivity could be damaged if we built up a bottleneck in the future, meaning that people had to disrupt their working lives to get an MoT carried out. Therefore, in addition to this measure, I urge the Government to provide encouragement to bicycle repair businesses, as they have done, to encourage garages to open and, where possible, to encourage people to use them and get their MoTs done.

1.17 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, first, I thank my noble friend Lord Rosser for tabling this take-note Motion. It has enabled us to look at an important issue and to hear responses to questions from the noble Baroness, Lady Vere.

[Lord Kennedy of Southwark]

I support the extension but, as with much that the Government have done to address the Covid-19 pandemic, the communication has let them down. Therefore, my first question to the noble Baroness is: what can she say about the communication side and what lessons has she learned?

The purpose of the MoT is that, three years after buying a new car and then every year after that, you will get a professional to look at the car and certify that it is roadworthy. A car's roadworthiness is a prime consideration for insurance companies. Can the noble Baroness tell the House what discussions she or her officials have had on this matter with the Association of British Insurers? Maybe the change brought in by this measure will not mean that your insurance is automatically invalidated, but it must raise questions if you are involved in an accident. Can she confirm what data is held on the DVLA's motor insurance database, and has this data been updated to take account of the decision to grant this extension? Has she or her officials ensured that no driver will have a problem in getting their car insurance renewed as a result of the extension?

My noble friend Lord Rosser raised a number of serious points regarding the risk of an increase in the number of accidents due to a number of vehicles with serious or major defects that would have failed an MoT being on the road in an unroadworthy condition. I look forward to the noble Baroness responding carefully to the points raised by my noble friend. If a response cannot be given today, perhaps a detailed letter can be circulated to all speakers in this debate. What is the noble Baroness's estimate of the time it will take to get the backlog of tests completed when this extension is ended?

I agree with the noble Lord, Lord Carrington of Fulham, about the risks to small businesses in Great Britain which do the testing and, often, the repairs to the vehicle that has just failed. I have done that myself when I have owned a car that has failed the MoT test: I have asked the garage that the car was at to do the repairs to bring the vehicle up to standard. It is convenient for the car owner; it is part of the business model of the garage; and it has qualified staff doing the tests and the work on the vehicle to bring it up to standard. What assessment have the Government made of the risks to businesses in those cases?

I thank all those who have taken part in this debate and look forward to the response of the Minister.

1.20 pm

Baroness Randerson (LD): I start by thanking the noble Lord, Lord Rosser, for seeking this opportunity to debate this SI. Along with many noble Lords who have spoken today, I acknowledge the emergency situation in which the Government introduced this legislation, when the House was not sitting and with no opportunity for parliamentary scrutiny. However, we are now a couple of months on and have experienced, we hope, the peak of the virus. Indeed, the Government are urging England to go back to work. Therefore, we are looking at this SI with a degree of hindsight. I hope that the Minister will agree that the timescale envisaged by it goes beyond what was needed to solve a short-term problem.

In my experience, MoT garages are not the most crowded of workplaces; indeed, some are effectively one-man businesses. Appointments are made by customers, so social distancing is not a great problem. Therefore, garage staff are presumably now back at work. The need for this SI stems from the instruction to the public—that is, vehicle owners—to stay at home. However, on Sunday night, the Prime Minister changed that instruction for England, as several noble Lords have noted. So is this SI still needed at all?

I want to ask the Minister about the dates to which this SI applies. The Explanatory Memorandum makes it clear that the scheme for exemptions applies only to vehicles for which an MoT test was due on or after 30 March. If your MoT was due on 29 March, for instance, and you did not get it, then you are not entitled to the waiver. Yet the lockdown was announced on 23 March. Why this hiatus of a week? I know of a driver whose MoT was due on 26 March, but her garage shut immediately on 23 March when the lockdown was announced. She was unable to get her MoT. When she needs to drive again, this gap will cause her problems. What should she do? Can the Minister explain why the SI does not date from the start of the lockdown?

I hope that the Government will move to revoke this SI as soon as possible, as paragraph 7.6 of the Explanatory Memorandum sets out, because the sudden withdrawal of MoT business has had a big financial impact, particularly on small garages which rely on MoTs and subsequent repairs. It has had a knock-on effect on welding businesses, for instance. Many noble Lords have raised this point.

Almost one in three vehicles taken for testing fails to such an extent that it is classed as dangerous or as having major faults. I accept that there has been a low risk of breakdowns et cetera during the lockdown, but we are already past that period in England. The statistics I cited indicate that the MoT exists for good safety reasons. As the Explanatory Memorandum points out, some 16.5 million MoTs will expire in the next six months.

I want to ask about the exemption granted to goods vehicles and public service vehicles under the Secretary of State's powers. What are the terms of this and how long will it last? Buses often carry children, for instance, and we owe a special responsibility to them, and to their parents, that they travel in safety. The commercial reality is that both bus companies and haulage companies have suffered badly in the last eight weeks. It is an obvious financial saving for them if they do not have to pay for an MoT, but it is important that that financial saving does not stretch to failing to keep vehicles up to high safety standards.

The Explanatory Memorandum says that there will still be a legal obligation on motorists, hauliers and bus operators to ensure that their vehicle is safe, but there is no mechanism for enforcement built into this SI. I fear that the only enforcement will come after the accident, when the police inspect the wreckage and charge the driver with having an unsafe vehicle.

Throughout my comments, I have referred to England specifically, but the territorial extent of this SI includes Scotland and Wales, as the noble Lord, Lord German, has already pointed out. It has been well rehearsed

over the last few days that the three Governments have now diverged in their advice on working and travelling. How will this divergence be reflected in the Government's approach to this issue? Above all, I seek an assurance that the devolved Governments will be fully consulted as and when changes are made.

This has been a remarkably unanimous debate, in that most noble Lords have made it absolutely clear that they support the purpose of the SI but believe that its extent, in terms of time, is probably now too lengthy and too specific.

The noble Lord, Lord Rennard, made very important points about insurance and warranties. I ask the Minister to respond specifically to those legal questions and to the point raised by the noble Lord, Lord Berkeley, about blame after an accident.

I look forward to the Minister's reply. I accept, as do other noble Lords, that the SI was a sensible solution to a short-term problem for worried motorists, but I believe the Government should ensure that it remains short term.

1.28 pm

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, I thank the noble Lord, Lord Rosser, for providing the opportunity to consider these regulations and to probe the Government's intentions around vehicle testing for light vehicles, known as the MoT. The testing of HGVs and public service vehicles, such as buses, is covered in other regulations, but I will try to touch on these if I have time, and if not I will write.

The MoT market consists of a network of around 23,500 privately owned and operated test stations. Many of these garages combine both MoT testing and maintenance and repair work, as was noted by my noble friend Lord Carrington.

As the outbreak of Covid took hold, it became clear that temporary changes would need to be made to the MoT testing regime. The reasons were threefold. Prior to 23 March, the date on which the Government announced the lockdown, there was a noticeable drop of about 10% in the number of cars brought in for testing. This suggested that drivers did not want to risk infection. By then, elderly people certainly could have been choosing not to use their cars. Furthermore, the Driver & Vehicle Standards Agency, the DVSA, which oversees MoT testing, started receiving reports of vehicle dealerships, MoT testing stations and repair garages closing or reducing staff numbers. Drivers also noted that they were unable to get tests. Finally, on 23 March, the Government issued "Stay at home" guidance, which specified essential travel. Getting an MoT was not regarded as essential travel.

We recognised that, although car use would fall dramatically, most people would still need their car for short essential journeys, and key workers, particularly in the NHS and the care sector, would still need to get to work. We also recognised the ongoing need for roadworthy light vehicles, so that home deliveries of food could continue, for example.

There is also the issue of those not using their car at all. They of course have the option to make a statutory declaration when it is not in use on the road, but that is feasible only for those who will not use their car at all and have an off-road place to store it. For those who must use their car very infrequently or have to park their car on the road, the vehicle must have an MoT, so this action helps them too.

With around 8.3 million vehicles due for a test over a three-month period—about 92,000 a day—the department took the decision to reduce the risk of people being exposed to Covid-19 and enable them to comply with the stay-at-home guidance by introducing the changes under these regulations. Our actions, including discussions with insurers, also avoided difficulties with insurance policies, some of which required MoT tests to remain valid. The effect of the changes is that all light vehicles due to be examined between 30 March 2020 and 29 March 2021—a one-year period—are or will be excluded from the requirement to hold a test certificate for six months. The duration, namely to the end of September 2021, was set to cover the potential extent of the outbreak, as we saw it then—it is great to have hindsight—plus a grace period, which would allow the testing industry to recover and ensure that it is not immediately overwhelmed by a bow wave of cars coming to be tested.

Our decision to extend the MoT validity of affected vehicles by six months was taken after very careful consideration. We balanced the need to provide a sufficiently long extension to deal with the immediate impact of the epidemic with the need to avoid an unnecessary impact on road safety. We felt that the six-month period was appropriate; it is unlikely to change in the current circumstances. The duration of the changes remains under review and, if no longer required, this instrument will be amended to bring forward the last day on which a six-month exclusion can begin. A six-month exclusion that has already begun will not be curtailed. I repeat: we are looking at bringing forward the date for the period under which one gets this extension, but that decision has not been taken for the moment.

On tax and insurance, vehicle excise duty remains due on those vehicles eligible for this extension. The DVSA is updating its records as these extensions are added to people's vehicle records and is then feeding this information through to the DVLA, which collects excise duty. Once that has been updated on the DVLA system, anyone can tax their vehicle as normal. We consulted the insurance industry when we were drafting this legislation. It should be noted that the Association of British Insurers said:

> "In this unprecedented situation, insurers will not penalise you if you can't get an MOT. Safety is paramount so check your brakes, tyres and lights before driving."

The noble Baroness, Lady Kennedy, mentioned fines. The department has been in touch with the police and the DVLA and they have reassured us that they will take a pragmatic approach to enforcement during this time. No one wants to see fines levied on vulnerable people who are simply unable to drive their car at this time.

In the event that a vehicle is involved in an accident—an important point raised by my noble friend Lord Blencathra—the attribution would be to a vehicle being unroadworthy rather than not having an MoT.

[Baroness Vere of Norbiton]
This is very important: the vehicle would be unroadworthy; it is not simply the fact that it did not have an MoT. A vehicle may become unroadworthy at any time, even if you have an MoT, so it is vital that drivers fulfil their legal responsibility that their vehicle is safe to drive, whether or not it has been tested.

As I have noted, even though many vehicles will be excluded from the requirement to hold a test certificate during this period, users are required under the Road Traffic Act to ensure that vehicles are in good working order. An MoT covers only certain things and is not the same as taking your car for a full service down at the garage. Drivers can be prosecuted if their vehicles are found to be in an unsafe condition when driving on the road.

The department has estimated that over the six-month period covered by the exclusion, approximately 29% of vehicles would have received a "dangerous" or "major" MoT failure. However, this increased risk is significantly mitigated by the reduction in trips; the current data shows a 58% drop in the amount of traffic on the roads. Although traffic is increasing at this time, particularly given the changes to government guidance, we expect a continued depression versus pre-Covid levels. I reassure noble Lords that, in the current environment, if one chose to get an MoT to get a car roadworthy for essential journeys, that in itself would be an essential journey.

Road safety is incredibly important to all of us. That is why the roadworthiness caveat exists in the regulations and why the Government have urged garages to remain open where possible. We are actively encouraging garages to remain open because we want to make sure that there are places for people to go to get their essential maintenance and repairs carried out.

Furthermore, the DVSA has issued guidance to drivers on what to do to keep a car safe and roadworthy. We are of course in regular contact with the AA and the RAC. Those organisations are repeating and reiterating these messages about getting cars on the road and getting your car back on the road when it has not been driven for a period.

The noble Baroness, Lady Randerson, asked why 30 March. We were working at pace, as I am sure noble Lords will understand. Given that regulations could not be made retrospectively and we had to have a certain date from which they would be valid, that date necessarily had to be the short period after the imposition of the lockdown because the regulations had to be drafted and laid in Parliament. There had to be due process. There are vehicles whose MoT fell due before 30 March. These vehicles cannot have their MoT extended because it is not available to us using existing legislative routes. This is a second reason why the Government have urged garages to remain open where possible and we are very pleased that around 60% have done so, although some have a significant reduction in capacity.

MoT testing is still taking place and it is possible to find somewhere to get your car tested if it needs to be. The DVSA has published guidance on how to conduct tests while adhering to social distancing measures. As some noble Lords pointed out, some centres have just one person working there and certainly often fewer than five. It is possible to continue to carry out tests. Other measures recommended by the DVSA include enhanced cleaning, using contactless payment where possible and not issuing a paper copy of the MoT certificate, which can be printed or downloaded at a separate time. Our records indicate that the overall testing levels for vehicles with tests due before 30 March were normal, so we believe that there is no significant change in the levels of compliance.

Many noble Lords noted that these changes are quite significant. We recognise that. They were made following extensive consideration and consultation, required by the Road Traffic Act 1988. We consulted a wide range of different organisations, including the AA and the RAC, the Association of British Insurers, the Independent Garage Association and the SMMT, which represents new car manufacturers, mentioned by the noble Lord, Lord Rennard. We consulted all these organisations and 15 responses were received, which expressed broad support for the proposals. As raised by noble Lords today, concerns included the financial impact of the proposals on the testing industry, as well as difficulties relating to the reintroduction of testing. We recognise that there will be challenges and we will have to overcome them.

The Government have consulted and continue to engage with the devolved Administrations, as requested by the noble Baroness, Lady Randerson, primarily on a day-to-day basis at official level on these matters, but Ministers in my department have ministerial-level discussions with them. Vehicle testing in Northern Ireland is devolved and Northern Ireland has taken its own approach, as noted by the noble Baroness, Lady Ritchie, by exempting both light and heavy vehicles for 12 months outright.

Given the urgency of the situation, we were not able to undertake a formal impact assessment. However, we did a proportionate analysis, looking at the impacts on things such as the ability of key workers to be able to get to work if they do not have an MoT, the road safety implications, effects on congestion, and financial losses to both the DVSA and garages. The financial impact on businesses has been estimated to be significant, possibly around £650 million, and a loss to DVSA will need to be considered.

Tests are going on at the moment. We are looking at 20% to 25% of normal test levels—the noble Lord, Lord Berkeley, shared his success in booking one, so I am pleased that that there is availability out there. Some 60% of garages are open, and we believe that that number will continue to rise. It looks like between 75% and 80% of people are taking advantage of the extension.

We recognise the financial impact on garages, and the Government have done an enormous amount to support businesses during these difficult times. There is the Coronavirus Job Retention Scheme, which garages can use, and the coronavirus bounce-back loan will be particularly suitable for some of these smaller businesses. Given that financial support, we anticipate that there will be no issue with a significant reduction in capacity in MoT testing stations as we pull out of the current crisis.

As regards pulling out of this crisis, the situation is being kept under review. The regulations may be revoked or altered, and we will bring back further proposals to the House. However, we will absolutely make sure that we do not reintroduce the MoT test unless it can be conducted safely, with the least possible risk to people's health, both MoT staff and those going in for the tests. We will also make sure that there is capacity within the sector. At the moment, on average, an MoT tester does only nine tests a week, so we believe that there is significant capacity within the system.

I am aware that I have now run out of time, and I have not covered HGV and PSV testing, which is separate to the regulations under consideration today. With the forbearance of noble Lords, I would therefore like to write in more detail and will also cover matters that I have not been able to consider—for example, the details around taxis and PHVs and how that interacts with local authorities and taxi licensing, and so on.

At times like these it is important that legislation is enacted quickly, in this case to protect the health of drivers and those working in garages. I am extremely grateful for the input of all noble Lords today, and these deliberations will be taken into account as we consider future changes.

1.44 pm

Lord Rosser: I thank all noble Lords who have taken part in the debate. It has been useful, and I thank the Minister for her response, which certainly provided answers to a number of the issues that have been raised. Obviously, I do not intend to proceed any further on this Motion.

Motion agreed.

1.44 pm

Virtual Proceeding suspended.

Private International Law (Implementation of Agreements) Bill [HL]

Virtual Committee

2.31 pm

Relevant documents: 8th and 11th Reports from the Delegated Powers Committee

The proceedings were conducted in a Virtual Committee via video call.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): My Lords, this Virtual Committee will now begin. I remind Members that these proceedings are subject to parliamentary privilege and what we say is available to the public both in *Hansard* and to those listening and watching.

I shall begin by setting out how these proceedings will work. This Virtual Committee will operate as far as possible like a Grand Committee. A participants' list for today's proceedings has been published. I also have lists of Members who have put their names to the amendments, or expressed an interest in speaking, in each group. I will call Members to speak in the order listed in my brief, which Members should have received. Members' microphones will be muted by the broadcasters except when I call a Member to speak and whenever a Question is put, so interventions during speeches are not possible and uncalled speakers will not be heard.

During the debate on each group I will invite Members to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request and will call the Minister to reply each time. Debate will take place on the lead amendment in each group only; the groupings are binding and it will not be possible to degroup an amendment for separate debate. Leave should be given to withdraw amendments. Whenever I put the Question, all Members' microphones will be opened until I give the result. Members should be aware that any sound made at that point may be broadcast. If a Member intends to say "Not content" to an amendment, it will greatly assist the Chair if they make this clear when speaking on the group. As in Grand Committee, it takes unanimity to amend the Bill, so if a single voice says "Not content", an amendment is negatived, and if a single voice says "Content", a clause stands part.

I shall now put the Question that Clause 1 stand part of the Bill. All microphones will be open until I give the result.

Clause 1 agreed.

The Deputy Chairman of Committees: We now come to the group beginning with Amendment 1. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. It would be helpful if anyone intending to say "Not content" when the Question is put made that clear in debate. It takes unanimity to amend the Bill in this Committee; this Committee cannot divide.

Clause 2: Implementation of other agreements on private international law

Amendment 1

Moved by ***Lord Falconer of Thoroton***

1: Clause 2, page 2, line 27, leave out subsection (1) and insert—

"( ) The appropriate national authority may make regulations for the purpose of, or in connection with, implementing the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters signed at Lugano on 30th October 2007 (the "2007 Lugano Convention"), in the event that the United Kingdom becomes a party to the Convention in its own right."

Lord Falconer of Thoroton (Lab): My Lords, the effect of the three amendments in this group—Amendments 1, 4 and 5—is that the power in Clause 2 which allows a Minister by regulations to change the law of the United Kingdom to reflect an international treaty on private international law that the country has entered into would be restricted to the Lugano convention only.

It is perhaps sensible if, in addressing the three amendments in this first group, I set out the context, in effect, of most of my amendments in Committee. Clause 1 introduces into the domestic law of the UK the content of three private international law treaties:

[Lord Falconer of Thoroton]
one dealing with the abduction of children from one country to another; one dealing with the enforcement of child support and family maintenance orders; and one dealing with commercial agreements where a choice of court clause is specified in the agreement. The effect of bringing these three conventions into UK law is that the terms of those conventions become part of our domestic law and are what our courts then give effect to as part of the law. For example, the Hague abduction treaty means that where a couple bring up a child in one country, where there is custody with one parent, and that child is abducted by the other parent to another country—for example, the UK—then, according to that convention, the UK courts, as a matter of domestic law, should return the child to its normal place of residence and should refuse to do so only if there is fear for the child's safety.

These private international law agreements change the law of the country as a result of agreements that the Executive have entered into. We on these Benches have no objection to those three treaties being brought into domestic law—this is a piece of primary legislation—but we have very considerable objections to Clause 2, and our primary position is that it should not stand part of the Bill. It allows the Government to change the law of the country by delegated legislation, even by changing primary legislation, to give effect to agreements that they have entered into in private international law.

Our objections are, in effect, threefold. First, as a matter of constitutional propriety, this is wrong. It is wrong that there should be such little accountability by Parliament in respect of potentially very significant changes in the law. In support of that principled constitutional objection, I have the support of the Constitution Committee, which is chaired by my noble friend Lady Taylor, the Delegated Powers Committee, which is chaired by the noble Lord, Lord Blencathra, and the chair of the Treaties Sub-Committee, my noble and learned friend Lord Goldsmith. All see this as a matter of constitutional impropriety.

In the face of that unanimity of view about what is a constitutionally improper thing to do, what is the Government's justification for doing this? I have scanned carefully the two speeches by the noble and learned Lord the Advocate-General for Scotland, Lord Keen of Elie, at Second Reading about why this move is justifiable. He gave no general explanation in either speech. He acknowledged in his opening speech that there might be an issue about the Lugano convention, which deals with the jurisdiction and enforcement of judgments between, among other things, members of the European Union. He said that we might end up in a situation where we want to join the Lugano convention, that we have to do it before the end of the transition period, and that we would negotiate it only at the very end of the period. He said that because of those exceptional circumstances there should be power to join the Lugano convention by delegated legislation.

For that reason—and that is the only example given—we have tabled, by way of probing amendments, Amendments 1, 4 and 5, which restrict the power to the Lugano Convention because of those special circumstances. There is a live debate about whether the UK should join the Lugano Convention, and in his speech at Second Reading the noble and learned Lord, Lord Mance, set out the shortcomings of the convention.

My preference is that we delete Clause 2 altogether and that, if the Government of the day join an international convention that has effects on our domestic law, that should be approved only by primary legislation. It is said that private international law is a "narrow" and "specialist" topic. The complex rules surrounding it can be both narrow and technical, but they deal with hugely important issues that affect everybody, such as family life, consumer, personal injury and international trade issues. That the law is complex does not mean that the issues covered are not of real significance.

I invite noble Lords to consider whether they wish to restrict Clause 2 only to the Lugano Convention, but that is in the wider context of urging them not to allow the Government this wholly inappropriate power, never used previously and for which no proper justification has been given. I beg to move.

Lord Pannick (CB): My Lords, I support the observations so powerfully made by the noble and learned Lord, Lord Falconer of Thoroton. I too am concerned about the width of Clause 2. My concern arises from the discussions and conclusions of your Lordships' Constitution Committee, of which I am a member, serving under the distinguished chairmanship of the noble Baroness, Lady Taylor of Bolton.

As the noble and learned Lord, Lord Falconer, said, the committee concluded that Clause 2 raises matters of considerable constitutional concern. The concern is that, with the exception of EU law—from which we are in the process of extracting ourselves—it is a fundamental principle of our constitution that international agreements can change the content of our domestic law only if and when they are given force by an Act of Parliament. The Constitution Committee saw no justification for the change that Clause 2 would introduce—that is, to confer on Ministers a power to achieve such a result by statutory instrument.

We recognise that many of the international agreements to which Clause 2 would apply are technical in nature and that their text cannot be changed after negotiations have concluded; nevertheless, we think there is no justification for allowing our law to be changed by statutory instrument without the need for full parliamentary debate. Clause 2 will allow not just for the implementation of the text of the international agreement but for "consequential, supplementary, incidental" provisions. It will allow Ministers to create new criminal offences by statutory instrument. These are matters requiring detailed scrutiny of a Bill through the various stages of the parliamentary process, during which amendments can be debated and, if necessary, divided on. Members of the Constitution Committee are concerned to maintain ministerial accountability to Parliament. This is not emergency legislation; it is a proposal for a permanent shift in power to the Executive.

2.45 pm

The question raised by these amendments is whether there is a case for making an exception in relation to the Lugano Convention. The noble and learned Lord,

Lord Falconer, indicated that his preference is for removing Clause 2 altogether, but there may be a case for Lugano as an exception. Lugano provides a large measure of certainty on which countries' courts may hear a civil or commercial cross-border dispute and ensures that the resulting judgment can be recognised and enforced across borders. It is far from perfect, as the noble and learned Lord, Lord Mance, indicated during a powerful speech at Second Reading. However, it provides a large measure of certainty—though not complete certainty because, happily for lawyers, disputes arise. I declare an interest as a practising barrister. Last July, I argued a case in the Court of Appeal for four days on the meaning of two of the Lugano Convention provisions.

The United Kingdom cannot accede to Lugano at the end of the transition period without the agreement of the EU and the other signatory states: Denmark, Iceland, Norway and Switzerland. My understanding is that, in the Bill, we cannot implement Lugano into domestic law for the period after the transition period. A delegated power may be needed in this case because there may be an urgent requirement to address the matter for commercial certainty. It seems that a delegated power to implement Lugano is much less objectionable than the current content of Clause 2 because Lugano has been part of our law for more than 10 years and serves a valuable function.

Finally, if the Minister wishes to proceed with Clause 2 in its current form—notwithstanding the objections that he has heard and will hear during the debate—I hope and expect that the noble and learned Lord, Lord Falconer, would want to test the opinion of the House on Report. I therefore ask the Minister for an assurance that there is no question of a Report stage on this Bill that includes Clause 2, at least in its current form, until arrangements can be made to ensure a vote by remote access for all Peers.

Baroness McIntosh of Pickering (Con): My Lords, I am sympathetic to the context set out so eloquently by the noble and learned Lord, Lord Falconer of Thoroton, and supported by the noble Lord, Lord Pannick.

At the outset, I seek clarification on a question similar to that put by the noble Lord, Lord Pannick. As the Deputy Speaker set out, it appears that we can debate only those amendments that form the first amendment of each group and that we are unable to have clause stand part debates. If my understanding is correct, does that mean that we cannot debate and subsequently vote on a clause stand part debate, as the thrust of Amendment 1 seemingly seeks the ability to do? It would be helpful to have that clarification.

As has been expressed so far, it appears that the purpose behind Clause 2 relates to the Lugano convention. Does it have implications for the Brussels II recast, if not also for the Brussels I recast convention? I entirely endorse the comments that have already been made about the importance of the Lugano convention, particularly to those in the UK who wish to obtain judgments and orders in the UK but also to those across the EU 27. This gives individual citizens and businesses the right to make concrete their desire to ensure that judgments obtained anywhere in Europe will remain readily enforceable in the UK and the EU 27. It facilitates trade and a level playing field and affects inward investment in the whole of Europe. It avoids competing jurisdictions, which I think we all want to avoid, and is central to protecting workers' rights and consumer protection under insurance policies, which I hope we are all signed up to.

I have some short questions for my noble and learned friend in the context of Amendment 1 and the original Clause 2. What steps is he taking to enforce the terms that are similar to the Brussels II recast convention to give them effect? Have they been set in motion? What stage are we at with the EU 27 regarding matrimonial matters?

I understand, as set out by the noble and learned Lord, Lord Falconer of Thoroton, that we are leaving agreement to join the Lugano convention until the 11th hour of the 11th day—literally right on the deadline of our leaving the European Union and terminating the transitional arrangements. Why are we leaving it so late in the day? Have soundings already been taken as to the likelihood of the EU and EFTA member states agreeing our application to join the Lugano convention, for the reasons given by the noble Lord, Lord Pannick, and the noble and learned Lord? On balance, I would say that Lugano was a good thing to join.

Do the original Clause 2 and the Bill as currently drafted intend to give effect to not just the Lugano convention but the Brussels II recast convention? Can my noble and learned friend confirm my understanding that we would not in any way be conferring jurisdiction on the Court of Justice of the European Union but only giving weight to the relevant decisions, as we are currently obliged to do under the Vienna Convention on the Law of Treaties and common law?

The Deputy Chairman of Committees: It may help the noble Baroness if I answer the procedural question she put at the beginning of her speech. It is possible for the Virtual Committee to debate every clause stand part question—indeed, each clause has to be stood part in this procedure—but it is not possible to vote on that at this stage. If that will be required at a later stage, voting can take place. I hope that she finds that helpful.

Lord Anderson of Ipswich (CB): My Lords, as I understand it, the amendments in this group have two aims: to curb the overbroad power to implement relevant international agreements by regulation, and to signal in primary legislation that there is no objection to giving the force of law to the Lugano convention. I support the first, which is furthered by other groups of amendments, and am sympathetic to the second. However, for the reasons given by my noble and learned friend Lord Mance at Second Reading on the interrelationship between Lugano and the 2019 Hague Convention, there seems to be a question of whether we should sign up immediately to Lugano, even if the EU gives its consent, which is perhaps not a given. I would welcome the Minister's considered comments on that.

It was good to hear the Minister say at Second Reading that the United Kingdom, should we become a party to Lugano, could drive for its amendment so

[Lord Anderson of Ipswich]
as to incorporate into it the material improvements that as an EU member state we did so much to help deliver in the form of the recast Brussels regulation. Speaking as a practitioner—I declare an interest as a practising barrister—and as a former member of the EU Justice Sub-Committee, with some awareness in both capacities of the defects of the Lugano convention, I suggest that we not only could do so but should do so.

Lord Adonis (Lab): My Lords, the arguments put forward by my noble and learned friend Lord Falconer seem utterly compelling and are supported not only by every speaker in this debate so far but also by the Constitution Committee, chaired, as he said, by my noble friend Lady Taylor.

My aim in speaking is not to contribute to the specific discussion on the amendment, though I think it is overwhelming, but to comment on the Virtual Proceedings, because understanding what happens in this Committee will be hugely important to how we take forward both the Virtual Proceedings and hybrid proceedings afterwards. I hope that I can be permitted to comment on what is happening, as I will at later stages of our discussions, because this will be so important to the Procedure Committee in deciding how to take forward our proceedings hereafter. Of course, the noble Lords and the officials doing that will read the record; it is important to have in *Hansard* what is happening at these key stages.

I want to make three points that have occurred to me already. First, it is not clear to people taking part in these proceedings who exactly is in the Committee. At the moment I can see only a handful of faces. After the Deputy Speaker calls people to speak, they suddenly appear from nowhere on my screen. It is very pleasant to see them appearing but it is not at all clear who will appear next. I cannot see the Minister at all; I assume that he is in the Committee, but that is not evident on the screen. My second key point is that it is a bit haphazard as to whether people can be followed, depending on the quality of audio and visual equipment.

Thirdly, I flag up the point made by the noble Lord, Lord Pannick, about Report. My understanding is that it will be possible to table amendments exactly as tabled in Committee on Report, because we cannot vote in Committee—a hugely important point. In the discussion in the Chamber last week about how Report would be handled, the Leader of the House and my noble friend the Leader of the Opposition gave an almost categorical undertaking that we would not have Report until we had a hybrid House, so that it is possible for Members to participate in the Chamber and we can have the usual cut and thrust that we have in the Chamber, particularly when we are dealing with legislation and technical points.

I simply make the point that, from my observation of proceedings so far, it is essential that Report takes place in the Chamber and we should not have Report for this highly important Bill until it is possible to have the hybrid proceedings in operation.

Lord Mance (CB): My Lords, I support the observations of the noble and learned Lord, Lord Falconer, and of the noble Lord, Lord Pannick. At Second Reading, I described this Bill as, by its own lights, a sensible measure, but said that its lights were rather dimmer than the halogen welcome given to it by the Explanatory Notes. I took some issue with Clause 2. The reality is that we are grasping in the half-light for whatever instruments we can find to replace the full toolkit of the Brussels regulations—including I and II, to which the noble Baroness, Lady McIntosh, referred—which were in existence when we were members of the EU. This has been apparent ever since the House of Lords European Union Committee's 17th Report of Session 2016-17, *Brexit: Justice for Families, Individuals and Businesses?*

In some areas, such as divorce jurisdiction, there seems to be simply no substitute in sight. In others, Clause 1 identifies three limited instruments, each in its own right very sensible. The second, the Hague choice of court convention, would protect the exclusive choice of court clauses in favour of UK courts, which are so important to the United Kingdom's financial and business markets. The protection would be increased if the UK also signed up to the 2019 Hague Convention, which my noble friend Lord Anderson referred to and the Explanatory Notes mention as a possibility.

3 pm

The Explanatory Notes also highlight an evidently recent executive decision to sign up to the 2007 Lugano Convention. At present, that is a second-best convention that applies only to Norway, Iceland and Switzerland faute de mieux. What is proposed is to extend it to govern our relationship with EU states in place of the first-choice Brussels regulations regime. The Explanatory Notes do not mention that joining Lugano would deprive the UK of almost all the benefits otherwise expected from ratifying the Hague choice of court convention 2007, as well as any from ratifying the 2019 Hague Convention. That is because Lugano would trump these conventions as regards all EU states. The only other states that have ratified Lugano in the last 13 years of its existence are Mexico in 2007, Singapore in 2016 and Montenegro in 2018. Unless the Hague choice of court convention 2007 therefore applies against EU states, adherence to it has at present almost negligible value.

Secondly, Lugano is a much less satisfactory regime than either the Hague choice of court convention or the current Brussels regime. It lacks key aspects of the recast Brussels regime, as has already been mentioned. These date from the recast in 2012. For example, it does not protect arbitration satisfactorily but, most fundamentally, it has a strict lis pendens rule, according to which automatic priority is given to any court first seized within a European state, however inappropriate that court is to decide the question. This is particularly apt. It is misused to displace and disrupt agreed choice of court clauses pointing to other courts, such as the London courts. That is the so-called Italian torpedo, named after an Italian professor who, very frankly, gave it in the light of the use of the tactic by the commencement of proceedings in Italy to frustrate, in particular, intellectual property cases brought elsewhere in the EU.

Thirdly, there is no recognition in Lugano of any interests that third countries might have. For example, a New York exclusive choice of court clause is ignored,

it appears, under Lugano. That is not the case under Brussels as recast. Finally, it lacks the key provision in the 2019 Hague Convention that entitles courts to refuse to recognise or enforce a judgment given in breach of any choice of court clause. It might be that one day Lugano will be reformed, as has been mentioned, but that has not happened in 13 years. If we join it, one must hope that that happens quickly.

In my Second Reading speech I saw the question of whether Lugano would trump the Hague Conventions of 2007 and 2019 as a matter of choice or sequencing, but subsequent research leads me to conclude that, as a matter of public international law, Lugano will always prevail, in whatever sequence the UK might choose to ratify these conventions. The inconsistency between them is therefore axiomatic: once you adhere to Lugano, it trumps the other conventions whenever you adhere.

It may be that all the implications of signing up to Lugano have been thought through, but it may not be. It is an important decision—the sort on which Parliament should have a direct, primary say. That is the basic objection, which the noble and learned Lord, Lord Falconer, has mentioned, to the whole of Clause 2. The objection has been persuasively reinforced by the reports mentioned, in particular the Constitution Committee's report I referred to. The Constitutional Reform and Governance Act does not answer the objection relating to Clause 2, the CRaG process being described by the Constitution Committee as "limited and flawed".

The same objection also grounds the current batch of amendments, although they treat Lugano as an exception. The noble Lord, Lord Pannick, has discussed the reasons why Lugano might be regarded as an exception and they really amount to this: the end of the implementation period is now nigh, and, if Lugano is held to be a good thing, then t'were well t'were done quickly. As regards other measures, apart from Lugano, none is or can be identified as having anything like that urgency, and Clause 2 simply goes too far. Direct parliamentary legislation is possible and appropriate, especially, as has been pointed out, in the light of the various subsidiary provisions and the width of the discretion.

That is also how matters have proceeded in the past. International conventions are agreed and signed but have no domestic effect without domestic legislation. The domestic legislation normally needs putting into place before any ratification at international level. That is how matters proceeded with treaties generally before CRaG and would, apart from the Bill, doubtless proceed after CRaG—to take two examples, with the Carriage by Air Act 1961 and the Carriage of Goods by Road Act 1965. I could give noble Lords the sequence, but it would take too much time. Those are conventions with provisions going beyond private international law, an aspect to which I will revert. But that is not the present point.

The Civil Jurisdiction and Judgments Act 1982 provides an example that follows that sequence and relates exclusively to private international law, which gives effect to the Brussels regime at the moment. The UK, after lengthy negotiations, signed a convention—the original Brussels convention—dated 9 October 1978, which provided for its accession to the convention regime. The Act giving domestic effect to that decision was dated 13 July 1982, and the UK ratified the convention only one to two years later. In the ordinary course, domestic legislation of a primary nature would precede ratification at an international level.

The Explanatory Notes mention two other measures: the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933. Those are confined measures with nothing like the width of delegated power in Clause 2. They are confined to recognition and enforcement of judgments, first in Her Majesty's overseas jurisdictions and, secondly, in similar courts in other foreign countries. They do not cover jurisdiction or co-operation or have anything like the width of the present Clause 2

In summary, leaving aside Lugano, it is implausible for the Government to suggest that either speed or reputational risk requires, for the first time in history, so unlimited—not only in width but in time, as there is no sunset clause—a delegated legislative power to implement any such future private international law measure agreed at the international level. Such measures normally take years to agree, and often years thereafter to ratify and implement domestically, and no one holds that against any particular country.

The international scene is in fact littered with conventions that have achieved little or no ratification or domestic implementation. The 2019 Hague Convention itself, to which the Explanatory Notes refer, dated 2 July 2019, as yet has only two signatories, Uruguay and Ukraine. Not even alphabetical consistency has been sufficient to persuade the UK to yet add its signature, and ratification and domestic implementation lie well ahead.

I therefore suggest that the Government should think again about the desirability of dealing with important, even if technical matters, in the manner proposed indefinitely by Clause 2. In the present context in particular, that means in respect of any measure going beyond Lugano.

Lord Marks of Henley-on-Thames (LD): My Lords, I have added my name to the objection to Clause 2 standing part of the Bill, to be moved by the noble and learned Lord, Lord Falconer, for all the reasons that he gave, supported by the noble Lord, Lord Pannick, and others. That will be addressed in more detail in group 6, later today.

As has been said, this amendment is a limited version of the removal of Clause 2, permitting the Lugano convention to be implemented. Indeed, the Lugano convention was cited at Second Reading by the Minister as a reason for taking this power to implement international conventions by regulation. He confirmed at Second Reading the Government's intention to implement the Lugano convention.

In the Government's response to the report of the Delegated Powers and Regulatory Reform Committee, the Minister claimed that the urgency of implementing Lugano is such that it could not be done in time for the end of the transition period. He is supported in that by the briefing of the Bar Council for this

[Lord Marks of Henley-on-Thames]
Committee stage, which wants to see the convention implemented as part of domestic law before the end of the transition period. Indeed, it mounts a powerful argument for that. However, I am not convinced.

For my part, I would prefer to see Clause 2 removed in its entirety, because there should be no reason why the Government cannot lay primary legislation before the House before implementing Lugano. Even given the difficulties of Virtual Proceedings and the hybrid Parliament, provided that we could vote, it could be done. That would be the correct way to do it, and it would allow for proper and informed debate on the Lugano convention, which, at the moment, we are to be denied.

At Second Reading, as he has today, the noble and learned Lord, Lord Mance, stressed the importance of the English choice of jurisdiction clauses in commercial contracts of many types to the status of London as a legal centre and to the status and recognition of English commercial law, which contributes not just to London lawyers but to London's centrality to the global commercial system. The recognition and enforcement of English jurisdiction clauses is under threat as a result of our leaving the European Union and losing the protection of the 2012 Brussels recast regulation.

As the noble and learned Lord has pointed out, the problem—along with other problems with the Lugano convention, to which he has drawn attention, both at Second Reading and today—is that that convention does not replicate Brussels recast, in a number of ways. He has drawn attention to the "Italian torpedo", whereby a choice of court clause can be overridden by subsequent litigation commenced in defiance of an English jurisdiction clause. He has also drawn attention to the advantage of the 2019 Hague Convention, coupled with the 2019 choice of court convention, to which we could sign up. The particular relevant advantage is that, under the 2019 convention, courts may refuse to recognise a judgment given in a contracting state if that judgment breaches a choice of court clause. If we sign up to Lugano as it stands then, even if we later signed up to the 2019 Hague Convention, as the noble and learned Lord, Lord Mance, pointed out, Lugano would trump that protection.

3.15 pm

All things considered, there is clearly a difficult balance to be drawn between getting the immediate advantages of Lugano with its provisions on jurisdiction recognition and enforcement, and sacrificing the very important English choice of jurisdiction clauses. The very fact that there is a difficult balance to be struck is an argument for primary legislation. Giving the Government the power to make that decision without proper public debate, widespread consultation and full parliamentary consideration is dangerous. I agree with the noble Lord, Lord Pannick, that Lugano by itself is less objectionable than Clause 2 in its unlimited generality, but the fact that the clause, even as amended, deprives us of an opportunity for debate, is an example of why it is so pernicious.

Before closing, I would ask the Minister to indicate to us where we are on our application to join Lugano, where we are on securing the necessary consent of the European Union to our joining Lugano, and where we are on European Union states joining Lugano. These can be added to the questions raised by the noble Baroness, Lady McIntosh, because it seems to me that it would be very difficult indeed to agree to this amendment without going down the route advocated by the noble and learned Lord, Lord Falconer, and removing Clause 2 altogether, until we have clear answers to these questions from the Minister justifying the urgency as well as justification to support the decision taken in principle to join Lugano.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I thank all noble Lords for their contributions to the debate. I shall of course speak to each of the amendments, Amendments 1, 4 and 5. When taken together, as the noble and learned Lord, Lord Falconer, observed, they have the effect of restricting the power to implement international private law agreements contained in Clause 2 in the 2007 Lugano Convention. But they not only limit the power of the United Kingdom to implement private international law agreements in this way, they also restrict our ability to mirror any such arrangements as between the United Kingdom's different legal jurisdictions, and indeed as between the United Kingdom and the Crown dependencies and overseas territories.

Of course we accept, as we have previously, that the most pressing need for the power is in relation to the Lugano convention itself. Our application to rejoin the convention as an independent contracting party was made on 8 April—

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): We appear to have lost the noble and learned Lord the Minister. Is he still with us?

Lord Keen of Elie: I think that I am coming back. I apologise, but something happened on the computer.

We have made the application and it is hoped that, subject to agreement, we will be able to rejoin the Lugano convention from the end of the transition period.

I will pause to notice some of the observations made by my noble friend Lady McIntosh of Pickering and the noble Lord, Lord Marks, with reference to Brussels Ia and IIa restated. My noble friend asked in a number of ways what steps we are taking with regard to what she termed the Brussels convention and what progress is being made on that matter. I think we have to remind ourselves that Brussels Ia and IIa do not form an international convention; they are internal instruments of the EU to which you may be a party only if you are a member of the EU. We of course have the transition period during which we enjoy the benefits of Brussels Ia and IIa until the end of the year, but there is no basis on which we can be members of Brussels, as was suggested, after the end of the transition period. That is why we are concerned to apply for membership of Lugano.

With regard to a number of the observations made by the noble and learned Lord, Lord Mance, of course I readily acknowledge that Lugano is not as well developed in a number of respects as the Brussels Ia and IIa restated provisions. We are well aware of

that. We would hope to advance Lugano once we are a member, but we have to acknowledge that it is not on a par with Brussels Ia and IIa.

However, Lugano is not the only potential use of the power in Clause 2. For instance, Amendment 1 would prevent us joining two other private international law agreements on which the Government are currently considering their position. They are the Singapore convention on mediation and the Hague judgments convention of 2019. I will return to the latter in a moment because it has been mentioned before.

With regard to the Singapore convention, I have shared with noble Lords a copy of an exemplar statutory instrument to demonstrate the sorts of agreements that we may wish to implement under the Clause 2 power. While the final decision on joining that convention is still to be taken, I invite noble Lords to look at that exemplar statutory instrument when considering the ways this power might be used. The instrument contains what are, essentially, technical implementing regulations for a treaty agreed at the level of international law. The choice for this House and the other place at the point of implementation is about not the specific provisions of an agreement, but whether to approve the United Kingdom's implementation of the whole agreement in domestic law.

Beyond those two examples of private international law agreements which already exist, and which the UK is considering joining, we are actively engaged in work through the Hague conference to develop rules on jurisdiction in international civil and commercial cases. The global arena of private international law is constantly developing. We have been active in it in the past, and hope and intend to take a leading role in the future.

Restricting the scope of the Clause 2 power in the way envisaged by this amendment would, I suggest, prevent the United Kingdom implementing any future agreements in a timely manner. That would in turn delay the benefit of those agreements to citizens and businesses. I regard that as an unsatisfactory position, given that in many cases there is considerable advantage to be gained from such international co-operation in the area of private international law. It would also mean that primary legislation will be needed to insert into a schedule to the Civil Jurisdiction and Judgments Act 1982 the text of the United Kingdom's declarations and reservations in relation to the 2005 Hague Convention and the 2007 Hague Convention, in the absence of which the terms of the United Kingdom's accession to those agreements will be far less accessible to users.

I also point out that it will mean that the definition of "relevant international agreement", as used in subsections (2) and (3), and presently defined in subsection (7) by cross-reference back to subsection (1), will be unclear. That term is also used in Schedule 6 and defined by cross-reference back to Clause 2. In addition, the way that Amendment 1 has been drafted would not in practice allow us to make implementing regulations in advance of becoming a contracting party but only after joining. In that respect, I venture that it is defectively drafted because, essentially, one has to take these things in a particular order.

I turn to Amendment 4. As drafted, Clause 2(2) allows the terms of an international agreement, subject to suitable modifications, to be applied between United Kingdom jurisdictions: for example, between England and Scotland. Amendment 4 seeks to restrict this power to allow for only the Lugano convention to be applied in this way. International agreements on private international law would not ordinarily apply between the United Kingdom's three jurisdictions because such agreements apply only between contracting parties and it is the United Kingdom Government, not their separate jurisdictions, who join international agreements. Although the relationship between the different parts of the union are perhaps far deeper than they are between foreign jurisdictions and ourselves, it often means that the rules between different UK jurisdictions need to be detailed and bespoke. Applying the same rules between United Kingdom jurisdictions that we apply with foreign jurisdictions will, not invariably but very often, be desirable. For example, it could reduce the number of sets of rules that courts need to apply in cases raising cross-border issues, making them more efficient and easier for courts, lawyers and litigants to understand. It would also mean that intra-UK private international law rules are at least as effective and up to date as the rules applied between the United Kingdom and foreign jurisdictions. Clause 2(2) allows for such keeping pace but would be exercised only if the relevant jurisdictions agree that it is beneficial to do so.

These sorts of arrangements are not without precedent. All three UK jurisdictions already apply rules that mirror the EU Brussels 1A regulation on jurisdiction for cross-border cases and much of the EU maintenance regulation as between themselves. The fact that, thanks to Schedule 4 to the Civil Jurisdiction and Judgments Act 1982, a modified version of the Brussels 1A rules is applied to cases between Scotland, Northern Ireland and England and Wales means that there might be limited prima facie rationale for suggesting that we replace this with the application of the rules under the Lugano convention. The rules are already substantially similar.

However, in addition, the amendment that I referred to has an altogether more significant deficiency. By limiting the intra-UK application of private international law agreements to the Lugano convention, the amendment may well result in the perverse situation in which the intra-UK rules are out of step, out of date and less effective than those governing the relationship between all three of these jurisdictions and a foreign jurisdiction. If the amendment were accepted, separate primary legislation would be needed to achieve this, potentially resulting in the intra-UK rules being less effective and less comprehensive than the rules that we apply with foreign jurisdictions until such primary legislation was passed.

Perhaps I may give an example. If the United Kingdom decided in future to join a new private international law agreement dealing with cross-border cases regarding children, the inability to implement that agreement between the UK's jurisdictions at the same time as implementing an agreement between the UK and foreign jurisdictions could lead to families finding it more difficult to resolve disputes where parents live in, say, Northern Ireland and England than where one parent lives in the United Kingdom and the other in a foreign country. That would be a very strange outcome.

[Lord Keen of Elie]

Amendment 5 has an effect similar to that of Amendment 4 in that it seeks to restrict the ability, under the Clause 2 power, for the United Kingdom to enter into arrangements with the Crown dependencies and overseas territories that mirror, subject to suitable modifications, the provisions of a private international law agreement to which the United Kingdom is a party. As I explained in relation to Amendment 4, the UK Government are the contracting party to international agreements on private international law. As such, these agreements would not ordinarily apply as between the United Kingdom and one of the Crown dependencies or overseas territories.

However, as with the relationships between the different legal jurisdictions of the UK, applying the same rules between the UK and the Crown dependencies and overseas territories that we apply with foreign jurisdictions will sometimes be desirable. It can ensure that the relationships between the various members of the wider UK family can be at least as effective and up to date as those applied between the United Kingdom and foreign jurisdictions. Clause 2(3), as presently drafted, allows for such keeping pace but only if the relevant territorial Government agree that it is beneficial to do so.

I submit that this builds on a significant body of precedent. Both the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933 enable the Government, via Order in Council, to recognise and enforce civil and commercial judgments from the Crown dependencies and overseas territories where reciprocal arrangements have been entered into with them. Furthermore, Section 39 of the Civil Jurisdiction and Judgments Act 1982 enables the Government, by Order in Council, to apply a modified version of the Brussels 1968 convention between the United Kingdom and a Crown dependency or overseas territory. Indeed, an order was made in respect of Gibraltar in 1997 to do exactly that: applying a modified version of this convention to relations between the UK and Gibraltar—an arrangement that sustains to this day.

3.30 pm

The United Kingdom having the ability to implement arrangements based on the 2007 Lugano Convention between the United Kingdom and the Crown dependencies and overseas territories may well hold value if the UK does succeed in becoming a participant in that convention. However, limiting this ability to implement private international law arrangements with the Crown dependencies and the overseas territories only to those based on the Lugano convention would result in the intra-UK family rules in other areas of private international law simply failing to keep pace with future developments. Primary legislation would need to be brought forward each and every time the United Kingdom wanted to mirror the provisions of a private international law agreement as between itself and one of the Crown dependencies and overseas territories, which I suggest would be a wholly disproportionate requirement.

It might also be helpful for me to point out at this stage that my consultation has extended to the Attorney-Generals and Governments of the Crown dependencies and overseas territories, who are all supportive of the Bill in this form. From this engagement, there is clear support for the intentions of the Bill, including this power to implement such mirroring arrangements with them where it is of mutual benefit to do so.

As I have noted before, the immense value of private international law agreements is not limited to the Lugano convention, and private international law is an area of productive international co-operation and activity. Such productivity will continue, and we would expect future agreements to build further and deeper levels of co-operation.

I submit that it is in the UK's interests to implement private international law agreements in domestic law and mirror those arrangements, with appropriate modifications, as between the different jurisdictions of the United Kingdom and as between the United Kingdom and the Crown dependencies and overseas territories, without the delay that would inevitably arise if primary legislation were required on each occasion. This power is both reasonable and proportionate. Delays to these matters would be detrimental.

I noted the point made by a number of noble Lords that the amendment is somehow seen as a subsidiary amendment to the desire to remove Clause 2 entirely from the Bill. However, taking these amendments as they stand, I submit that they would have a detrimental effect on our ability to take forward our agreements with regard to private international law, both as regards foreign jurisdictions and the position intra-UK with the other jurisdictions and with the Crown dependencies and the overseas territories. In these circumstances, I ask the noble Lord to withdraw the amendment.

I will add one further point. I was asked about a procedural issue by the noble Lord, Lord Pannick, regarding Report and Clause 2. Clearly, that will be for the relevant authorities to determine. However, my understanding is that we will not take these matters to Report unless and until there is the ability for the House to vote on them, whether by being present in the Chamber or by means of remote voting. I understand, but cannot give any undertakings in this regard, that steps are being taken to consider remote voting, just as these matters have been addressed in the other place.

Again, I thank noble Lords for their submissions to the debate but ask the noble and learned Lord, Lord Falconer, to withdraw the amendment.

The Deputy Chairman of Committees: My Lords, the following noble Lords indicated a wish to speak after the Minister: the noble Lord, Lord Foulkes of Cumnock, the noble Baroness, Lady McIntosh of Pickering, the noble and learned Lord, Lord Mance, and the noble Lord, Lord Marks of Henley-on-Thames. I shall call them in that order and ask the Minister to respond to each of them in turn.

Lord Foulkes of Cumnock (Lab Co-op): I had not intended to intervene at this stage. However, since this is, or ought to be, very similar to Committee if we were sitting in the Chamber, I hope that Members will understand why I do so. It is not to deal with questions that the Minister raised about Crown dependencies and overseas territories—although he answered the question that I had intended to ask later on, on other amendments, so that will shorten the debate later—nor

indeed about the different jurisdictions within the United Kingdom. Again, that will be dealt with in subsequent amendments and I can come back to that during that debate.

I want to say two things. First, I agree totally with what my noble and learned friend Lord Falconer said; that will surprise neither him nor the Minister. Secondly, the noble Lords, Lord Adonis and Lord Pannick, made important points, which the Minister just touched on. As the noble Lord, Lord Adonis, said, we should note the significance of this being the first Committee stage of a Bill that we have held virtually. It is very important that we see that it operates properly.

As it happens, two members of the Procedure Committee are in this debate: the noble and learned Lord, Lord Morris of Aberavon, and me. At the committee's last meeting, we asked for a report on the workings of this Committee stage—that is, how it will proceed. At its next meeting, the committee will discuss the procedure for virtual voting. If my noble and learned friend Lord Falconer hopes to divide the House on Report, as he indicated—I hope that he will—that cannot be done without virtual voting. It would be improper and unconstitutional for that to take place. My noble friend Lord Adonis should be reassured by that.

Finally, I hope that the Minister will treat this Committee stage just as he treats Committee stages on the Floor of the House—that is, take account of what has been said, be prepared for a challenge on these issues on Report and bear all this in mind before bringing the Bill in its present form back on Report. I hope he takes note of that.

Lord Keen of Elie: My Lords, I of course am listening to the contributions made to the debate in Committee and will take account of the observations that have been made. I make no comment on the procedural issues that the noble Lord raised.

Baroness McIntosh of Pickering: My Lords, I thank my noble and learned friend for his full answer to the concerns that were raised. Perhaps I misunderstood his response, but I think that the thrust of the interventions of noble Lords—nearly to a man and a woman—was that it is inappropriate to seek to put into UK law by delegated secondary legislation a new treaty that the Minister and the Government seek to sign. The thrust of the remarks was that it should require primary legislation. Have I misunderstood my noble and learned friend on that point? Why are the Government resisting the usual procedure of agreeing to implement anything that has been agreed by the Government by way of international treaty through primary legislation?

Lord Keen of Elie: First, let me make it clear that I do not accept that it is an invariable constitutional practice that the implementation in domestic law of an international law treaty is undertaken by way of primary legislation only. Secondly, when it comes to the implementation of a treaty that has been entered into at the level of international law, the purpose of drawing it down into domestic law is either to accept it into domestic law or not to accept it into domestic law. There is no scope for amending the terms of the treaty that has already been entered into. Therefore, the use of the affirmative statutory instrument procedure is considered appropriate. It gives this House and the other place ample opportunity to debate whether they should draw down the treaty obligations into domestic law. There is, essentially, no real scope for amendment; therefore, we consider the affirmative procedure perfectly adequate for that purpose.

Lord Mance: I have just a few points to raise with the Minister. At one point, he said that the first amendment would prevent us joining two other measures, the Singapore mediation convention and the 2019 Hague Convention. It is too easy to slip into that sort of language. What he really means is that it would prevent us joining those measures without proper parliamentary scrutiny by primary legislation.

In response to the Minister's last point, yes or no can be a very important question, even if you cannot amend an international treaty once it is made; Lugano is a classic example. It is a difficult decision, as has been illustrated. It is also very easy to say that we would be prevented from implementing future measures in a timely manner, but there is no real evidence for that at all.

The Minister took various rather minor—if I may call them that—drafting points on, for example, the definition of related international instruments and ancillary provisions. Those would all be sorted out if the principle of the first four amendments was accepted.

On that principle, the Minister also took various points about the intra-UK relationship, suggesting that Amendments 4 and 5 raised complexity. As I see it, those amendments are perfectly simple. They ensure that the general power marches in tandem with the specific power to legislate Lugano into the intra-UK jurisdictional relationships and interrelationships with overseas territories. They are "keeping pace" amendments and there is nothing inconsistent or complicated about them.

As to the 1920 and 1933 Acts, I pointed out in my previous remarks that they are quite different, minor and limited measures relating to recognition of superior court judgments overseas, coming either from UK overseas territories or from territories with which we have reciprocal arrangements. Those judgments would have been recognised as common law by action on the judgments, which would operate as an estoppel in any event, so they are minor amendments.

It is true that the Civil Jurisdiction and Judgments Act contained some provisions for delegated legislation in respect of, for example, Gibraltar. However, it was a piece of primary UK legislation in the first place, and it is no doubt a tribute to the quality of the UK Parliament's consideration of that legislation if overseas territories are willing to accept that they should be legislated for on a delegated basis.

Lord Keen of Elie: I thank the noble and learned Lord, Lord Mance, for his further observations. I simply notice this: for the last 20 years, Parliament has had no oversight of the drawing down of these obligations into domestic law because it has been an EU competence. That has not led to any dramatic constitutional issue, as far as I am aware.

[Lord Keen of Elie]

In the meantime, however, we have introduced CRaG, which means that the entering into a treaty at the level of international law is now subject to scrutiny by Parliament. After that scrutiny, the Executive can enter into the relevant treaty. Then, when it is drawn down into domestic law, the affirmative statutory instrument procedure ensures that both Houses of Parliament have an opportunity to scrutinise and debate this. There is no difficulty about that; it is the outcome that matters.

However, I notice the noble and learned Lord's observation that there is little that can be done by way of amendment at that stage. That is why we would suggest that the affirmative procedure was a perfectly adequate mechanism, as distinct from primary legislation.

The Deputy Chairman of Committees: My Lords, before I call the noble Lord, Lord Marks, I should say that the noble Lords, Lord Adonis and Lord Pannick, have indicated their wish to speak after the Minister. I shall call them in that order after the contribution from the noble Lord, Lord Marks of Henley-on-Thames.

3.45 pm

Lord Marks of Henley-on-Thames: My Lords, I was not suggesting—and neither, I believe, was the noble Baroness, Lady McIntosh—that we can stay in Brussels recast or rejoin it after the end of the transition period. I was merely regretting the loss of the benefits of Brussels recast and pointing out that Lugano, if we joined it after the transition period ended, would not offer us comparable benefits. Apart from conceding that point, the Minister has not addressed the points made—notably by the noble and learned Lord, Lord Mance—that joining Lugano may be undesirable, and that we are deprived of the opportunity of debating that in the context of primary legislation. That, I think, is a point that he needs to address.

Lord Keen of Elie: On that point, of course I accept that Lugano does not go as far as Brussels Ia and IIa—Brussels restated. We are all well aware of that. As regards the interplay between Lugano and the Hague Convention 2019, one has to bear in mind that Hague has not been signed or acceded to by the EU. We do not know if or when it may intend to do so. Indeed, it is noteworthy that it took the EU 10 years to sign and accede to the Hague Convention 2005. On the other hand, Lugano is there and available as a convention. A number of noble and learned Lords have acknowledged its importance in the context of private international law. Therefore, it is appropriate that we proceed with Lugano at this stage.

Lord Adonis: I took the Minister's response to my noble friend Lord Foulkes to mean that he did not recognise the constitutional doctrine that international treaties could take effect in UK law only by primary legislation. I took him to speak of "recent precedents". Can he tell the Committee what those recent precedents are?

Lord Keen of Elie: I mentioned them earlier in my observations with regard to the 1920 and 1933 Acts, which, by Order in Council—not even a statutory instrument—can draw these matters down into domestic law.

Lord Pannick: An important part of the Minister's argument is that an affirmative procedure suffices because all that Parliament is doing is approving, or not approving, an international agreement which cannot be amended. The noble and learned Lord, Lord Mance, has already made the point that this may involve very detailed and important policy questions. Can the Minister comment on a further point that, in any event, Clause 2 confers power on the Minister, not only to make regulations for the purpose of implementing the international agreement but in connection with implementation? He will know that implementing legislation often includes provisions which may be of some importance, which are not mandated by the international agreements but arise from them.

There may be discretionary decisions to be taken—for example, in relation to the creation of criminal offences. Therefore, I put to the Minister that it is not good enough to say that all Parliament is doing is implementing an international agreement which has already been negotiated and agreed. There are policy decisions that the statutory instrument will contain, and primary legislation is required so that Parliament can debate these policy choices in a proper, effective way and, if necessary, seek to amend the provisions, which are distinct from those contained within the agreement itself.

Lord Keen of Elie: There may of course be incidental policy issues that arise when we come to draw down into domestic law an obligation, or obligations, undertaken at the level of international law. Clearly, in circumstances where there were policy choices to be made, a Government would consult upon those matters to bring forward policy choices that were acceptable to stakeholders. If they were not acceptable to Parliament, even after consultation, Parliament would not pass the affirmative SI in question. I do not accept that it is necessary in each and every instance to bring forward primary legislation for this purpose. In those exceptional cases where there may be consequential issues to be addressed, clearly they will be addressed at policy level. They will be consulted upon and the matter brought forward. The Government will not bring forward a policy proposal for an incidental measure without realising that Parliament would be prepared to accept it. That would be a pointless exercise.

Lord Falconer of Thoroton: This very interesting debate has raised, in effect, two substantial questions: as a matter of principle should there be the Clause 2 power at all and, if not, should we nevertheless make an exception for the Lugano convention?

First of all, should there be this power at all? In a speech that might be described as a Scottish smokescreen—because it dealt primarily with drafting issues and issues about the dependent territories and, important as those are, did not really address the principle at all—the noble and learned Lord, Lord Keen of Elie, gave one line to justify this unprecedented power. He said that not having this power under Clause 2 would prevent implementation of any international treaty "in a timely manner". I forgive the noble and learned Lord for putting it in such wide terms and assume he means private international law treaties only. With respect, what he says is plainly wrong.

The noble and learned Lord was given the opportunity on two occasions to provide evidence that it would prevent the implementation of private international law treaties in a timely manner, once before the Delegated Powers Committee of this House and once before the Constitution Committee. The Delegated Powers Committee said that the Ministry of Justice

"offers no empirical evidence that delay has been caused to stakeholders by late implementation of private international law agreements … The argument from delay, apart from involving unsubstantiated assertion, might justify dispensing with Acts of Parliament in other areas where governments need to legislate quickly."

It rejected it on grounds of lack of evidence and on grounds of principle.

The Constitution Committee also looked at the very same assertion made to it, and said:

"However, the Government offers no evidence to support this argument. The UK has become a party to only 13 Hague Conventions over the course of nearly 60 years. In respect of some of the Conventions the UK has signed, full ratification and implementation has taken years to complete. The Hague Convention of 13 January 2000 on the International Protection of Adults … was ratified for Scotland in 2003 but has not been ratified for England and Wales or for Northern Ireland … While there may or may not be an increase in the number of PIL agreements that are made in the coming years, there is nothing to suggest that PIL agreements will be produced at a rate that would preclude implementing them via primary legislation, nor that there are exceptional circumstances so urgent that resort to a fast-track bill would be impossible. It is therefore difficult to give weight to the Government's argument that reputational damage will result from not having the power."

Anybody who has looked at this in detail thinks the Minister's argument is rubbish. It is not surprising that he never mentioned it at Second Reading.

The Minister then cited occasions when it has been done before, in particular two primary Acts of Parliament: the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933. Reading those is worth while. The 1920 Act refers to a provision whereby a judgment obtained in one dominion can be enforced in other dominions as long as the dominion passes a power to agree to that. The 1920 Act—the 1933 Act is the same, but not in respect of the Empire—says that if another country agrees to this convention, we can add the name of that dominion or country to the list, having approved the convention by primary legislation. The idea that those two Acts give support to the proposition that we can now import wholesale into our domestic law every international treaty we enter into is absolute nonsense. They provide no sort of precedent at all. I really hope the Minister has noted that every single person who spoke took the view that Clause 2 was inappropriate.

As far as Lugano is concerned, I thought the points made by the noble and learned Lord, Lord Mance, were powerful. I do not know whether they are right or wrong, but they illustrate that we need a proper debate about Lugano: we cannot just import Lugano into our law by secondary legislation. Our debates about Lugano today—which, as one speaker identified, were not answered by the Minister; we never debated Lugano, we simply debated the principle of whether Lugano could be an exception to the deletion of Clause 2—illustrate that this very important convention, about which two views prevail, should be the subject of primary legislation. Of course, I will come back to this on Report.

The important point that was made about procedure, and which is worth emphasising, is that we cannot change a Bill unless there is consent, or as a result of a Division which agrees to change that Bill. It means that we cannot proceed with legislation until we have the ability to divide on legislation, whether remotely or in person. We cannot get to the next stage of this Bill until we have the power to divide. With the permission of the House, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): We now come to the group beginning with Amendment 2. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. It would be helpful if anyone intending to say "Not content" when the Question is put made that clear in the debate. It takes unanimity to amend the Bill in this Committee: this Committee cannot divide.

4 pm

Amendment 2

Moved by ***Lord Falconer of Thoroton***

2: Clause 2, page 2, line 29, leave out "relating to" and insert "that agreement exclusively relates to"

Member's explanatory statement

This amendment ensures that Clause 2 shall apply only to those international agreements that exclusively relate to private international law.

Lord Falconer of Thoroton: My Lords, I shall try to deal with this group very quickly. It illustrates the width and uncertainty of the power given in Clause 2. Clause 2(1) states:

"The appropriate national authority may make regulations for the purpose of, or in connection with, implementing any international agreement, as it has effect from time to time, so far as relating".

As I understand it, if there is a treaty that relates partly to private international law and partly to other things, the Government can use regulations to implement the part that relates to private international law and make any regulations relating to that. For legal certainty, it would be much more appropriate if this power could be used only if the agreement it covers relates exclusively to private international law. That is what Amendment 2 does.

The next amendment in the group is Amendment 6. Clause 2(5) states:

"Regulations under this section may include provision about … legal aid."

For reasons that are completely mysterious, provisions about legal aid can be made under a Bill on private international law. There should not be power under this Bill to deal with legal aid. If the Government want to make provisions about legal aid that might relate to the consequences of a private international law agreement, they should be made under legal aid legislation, not under this Bill.

[Lord Falconer of Thoroton]

Line 22 of page 3 of the Bill allows the Government, by regulation, to introduce changes to our domestic law in respect of not only agreements that have been entered into but of agreements to which we are expected to become a party. That would mean that if the Government reasonably believe they are about to sign something they can pass legislation that gives effect to it. What happens if we do not sign it? I suggest that we restrict the power to where the United Kingdom is a party to such an agreement. It would not cause a problem in relation to time. We normally sign and become a party before ratification, so the amendment would not cause any difficulties.

Amendments 10, 11, 12 and 13 would restrict the definition of private international law in a variety of ways. Currently, the definition of private international law in the Bill is not an inclusive definition but states what private international law includes but not exclusively. It says that it includes

"jurisdiction and applicable law … recognition and enforcement in one country or territory of … a judgment, order or arbitral award … an agreement, decision or authentic instrument determining or otherwise relating to rights and obligations"

and "co-operation between … countries". First, for legal certainty reasons it should not be a definition that includes only some examples and nothing else. It should relate only to those for the purposes of legal certainty. Secondly, it should not deal with arbitral awards because if it does it will be stamping on the toes of other bits of legislation. Thirdly, when the Bill refers to

"an agreement, decision or authentic instrument determining or otherwise relating to rights and obligations"

that covers practically everything. It needs to be restricted.

The final amendment in this group relates to Clause 2(8), which allows model laws to be introduced. Model law is where a number of countries agree, for example on insolvency, that certain principles should be agreed across borders to apply to that area of law. There is no reciprocal requirement for each country to introduce the model law and it is for each country to decide how it implements a model law. Clause 2(8) would allow, for example, the UK to introduce by statutory instrument wholesale changes to our insolvency law, even though there was no reciprocity with other countries. It would be a door that opened a range of legislation on insolvency simply because some of the provisions included model laws. It is wholly inappropriate that this should be in the Bill. I beg to move.

Lord Anderson of Ipswich: My Lords, those of us who are less than happy with Clause 2 have three options: restricting it to Lugano, as we have just debated; voting to remove it altogether, as both the Delegated Powers and Regulatory Reform Committee and the Constitution Committee have recommended; or voting to trim its scope in a variety of respects, as the amendments in the name of the noble and learned Lord, Lord Falconer, in this and the following group seek to achieve. I welcome the amendments in this group, essentially for the reasons given by the noble and learned Lord, which there is no point in my repeating.

However, Amendment 16, which would remove the reference to model laws, is particularly important for two reasons. First, as the noble and learned Lord said, model laws are not international conventions but, as expressed by the Bar Council, collections of soft law provisions which often need to be modified substantially before being given effect in domestic law. The noble and learned Lord, Lord Falconer, illustrated that very well with the example of insolvency. Secondly, model laws are not subject to the provisions of CRaG and cannot benefit from such "limited and flawed" comfort—in the words of the Constitution Committee from April 2019, repeated today by the noble and learned Lord, Lord Mance—as may be given by the operation of its mechanisms.

That said, I incline to think that these amendments, even viewed collectively, are insufficient to meet the substantial constitutional concerns that the Constitution Committee identified in its recent report on this Bill, concerns which to my mind the Minister has not yet allayed, for example with his remarks on timing and reputational damage. That is a matter for the debate on whether Clause 2 should stand part, on which I see that a good deal of firepower has been virtually assembled and which I do not seek to pre-empt or express a final view on at this stage.

Finally, I think we all want to acknowledge the enormous efforts made by the staff of the House to ensure that debates on legislation such as this can take place in a coherent manner. I hope that I do not tempt the fates by saying that. However, I echo the comments of my noble friend Lord Pannick and the noble Lord, Lord Adonis, that voting on the Bill must be possible, by whatever means, when it is brought back on Report. I am grateful for the reassuring words of the Minister on that, but I would be even more grateful if he would upgrade his reassurance into an undertaking, which I think he indicated it was not.

Lord Morris of Aberavon (Lab): My Lords, I am indebted to the noble Lord, Lord Rowlands, for drawing my attention to the impressive eighth report of the Delegated Powers and Regulatory Reform Committee, of which he is a member, and the Minister's reply.

Any expertise I acquired in the course of my academic education in Cambridge has, I fear, slipped away. I am glad that, as a law officer, I was not particularly troubled by questions of private international law, in stark contrast to public international issues such as advising on Kosovo, Iraq, Sierra Leone, the United Nations and elsewhere. My remarks are addressed to Amendment 16 but equally apply to a lot of issues I would have raised on the stand part debate, and therefore I may be excused from repeating them when we come to that issue as the same questions arise.

Having examined the evidence in the two documents, surely the preferred course is a matter of judgment. I leave on one side the hugely impressive technical arguments we have heard during this debate. The issue is this: does one depart from the practice of 100 years of the need for primary legislation to implement a treaty or does one bow to the urgency and the apparent narrow window to implement the application of the Lugano convention before the end of the transition period? Other examples have been cited, but I do not expect that they have the same urgency as that.

The noble Lord, Lord Anderson of Ipswich, mentioned the hearing of the Justice Sub-Committee, which I used to chair, in which some rather fundamental concerns were raised about Lugano in the course of the evidence, particularly regarding family matters.

The Minister believes that proceeding by statutory instrument is necessary to implement agreements in a timely manner. That is the issue he puts before us today. The question that concerns me is, while there might be a discrete argument for dealing with issues in the way proposed during the transition period, has it occurred to Her Majesty's Government that it might be more acceptable to put forward a much narrower clause to deal with a specific mischief such as Lugano? I agree with the spirit of the remarks made by my noble and learned friend Lord Falconer.

It would be better if we had something much narrower to deal with the specific issue than the rather wide power that is now being granted to the Government. That certainly would have the attraction of being more proportionate. Failing that, my submission would be to delete Clause 2 altogether. That really would meet the harm that has been ventilated so ably in the course the debate.

The Deputy Chairman of Committees: I believe that the noble Lord, Lord Adonis, does not wish to contribute at this point. I therefore move on to the noble and learned Lord, Lord Mance.

Lord Mance: My Lords, as has been pointed out, these amendments illustrate the width of the delegated power proposed. They really matter only if Amendments 1, 4 and 5 fail and Clause 2 remains in the Bill unaltered. I basically agree with all my noble and learned friend Lord Falconer said and will add some comments on only some of the amendments.

On Amendment 10—replacing "includes" with "means"—Clauses 2(7) contains a quite exhaustive definition. "Includes" suggests that it is not exhaustive and that there are further things to be covered. To suggest that the definition is only partial in that way is a recipe for future doubt and argument.

Amendment 2 aims to rephrase the power

"so far as relating to private international law"

to read so far as

"that agreement exclusively relates to"

private international law. In his letter responding to the Delegated Powers Committee's report, the noble and learned Lord, Lord Keen, pointed out that the Warsaw convention, governing the responsibility of international aviation carriers, and the CMR convention —he described it as the Geneva convention, but it is better known as the CMR convention—governing the liability of international road carriers each contain an individual provision relating to private international law. He went on to say that

"importantly, only those individual provisions could have been implemented under the clause 2 power in the Bill."

That statement illustrates the reason for this amendment, because if that is how this Bill is or may be interpreted, it certainly needs amendment. It is wholly inappropriate to use this Bill to cherry pick a provision about jurisdiction, for example, or recognition of judgments out of a composite scheme, and to suggest that the Bill enables such a provision to be enacted without any context.

Take either convention. The jurisdiction provisions—who can be sued and where—make sense only in the light of the provisions regarding who can claim and who is liable. To require a consignor or consignee of goods, whether by air or by road, to sue in a particular country without incorporating the provisions that create the cause of action, and provide against whom the cause of action is, would be completely to misunderstand the scheme of such conventions. They are conceived as a composite package. Take the CMR convention—the acronym is French, but it deals with transport. The concept of a contract for the carriage of goods by road is fundamental to the operation of that convention, but it is an artificial one which may be satisfied by status and activities, such as taking over goods and the consignment note, rather than on ordinary contractual principles. If you incorporated the jurisdictional provisions, you would not incorporate the liability provisions—the two do not make sense separated.

The insertion of the words "exclusively relates to" in Clause 2(1) would ensure that it is only pure private international law agreement matters that can attract the use of the general delegated power, if that remains at all in Clause 2.

Turning to Amendment 3, I declare a potential interest as a practising arbitrator, in view of the definition in the Bill of private international law to include recognition and enforcement of an "arbitral award".

The Deputy Chairman of Committees: My Lords, for information, Amendment 3 is in the next group of amendments. In this group we have Amendments 2, 6, 9, 10, 11, 12, 13 and 16. I hope that that is helpful.

Lord Mance: Yes, it is very helpful. Have I started addressing Amendment 3 by mistake? I certainly did not intend to. I want to address Amendment 11, which seeks to include the words "or arbitral award" in the definition of private international law.

As I said, I declare an interest as an arbitrator. Perhaps I might mention that, although I may not speak on this, I chair the Lord Chancellor's Advisory Committee on Private International Law, which is referred to later, in proposed Amendment 20. I assure the Committee that that committee had nothing to do with that amendment.

To go back to arbitral awards, the recognition of arbitration clauses and the enforcement of arbitral awards are matters governed by special international agreements, most notably the highly successful 1958 New York convention and the 1966 International Centre for the Settlement of Investment Disputes convention, also known as the World Bank convention. The current Brussels regime, the Lugano convention, the Hague Convention on Choice of Court Agreements and the 2019 Hague Convention are all extremely careful to exclude arbitration expressly. But this definition for some reason includes it. One of the virtues of the 2012 recast of Brussels 1 was to reinforce that exclusion still further. London is a world centre of arbitration, and there would be concern about any suggested intervention by delegated legislation.

[LORD MANCE]

The inclusion of a reference to an "arbitral award" is therefore inappropriate and will arouse concern. It will also raise the further question: if arbitral awards are within private international law, what about international agreements on the jurisdiction of arbitrators? Is the word "jurisdiction" in Clause 2(7)(a) to be interpreted as enabling delegated legislation about arbitral jurisdiction?

The response at Second Reading from the noble and learned Lord, Lord Keen, was not comforting. He said:

"We do not intend to intrude wholesale on the New York convention or other aspects of arbitration, but it might be that there will be bilateral or multilateral … issues where a party wishes to refer to arbitration … we will want to have the power to proceed with such an agreement."—[*Official Report*, 17/3/20; col. 1451.]

On the face of it, that suggests that, so far as the Government have any clear conception of why these words are there, they would cover jurisdictional issues—in other words, issues about where a party wishes to refer to arbitration and not just the recognition and enforcement of arbitral awards. That is an unwise and unnecessary indication of possible future interference by international agreement and delegated legislation in one of this country's more successful export activities.

Surely the better approach is: if it ain't broke, don't fix it. If, at the international level, the New York or ICSID convention is supplemented, their domestic implementation should be by primary legislation, as it currently is under the Arbitration Act 1996 and the Arbitration (International Investment Disputes) Act 1966.

Finally, on Amendment 16, I endorse what has been said by my noble friend Lord Anderson and the noble and learned Lord, Lord Falconer. Admirable though they may be, model laws do not have the same status as international agreements and frequently need close attention before domestic implementation.

Lord Thomas of Gresford (LD): My Lords, in his letter of 19 April in response to the report of the Delegated Powers Committee, the Minister said:

"The Committee's Report implies that the power in clause 2 of the Bill would allow the Government to implement agreements on any aspect of private law with a foreign element, rather than merely agreements on the much narrower subject area of *private international law*, as defined by clause 2(7) of the Bill. … It will not be possible for matters outside of the areas indicated by the definition of 'private international law' in clause 2(7) to be implemented using the power."

The Minister echoed what was set out in paragraph 7 of the Explanatory Notes, which state:

"PIL agreements cover a discrete area of law that is narrowly defined."

One would therefore have expected the interpretation of Clause 2(7) to be narrowly defined, but as the noble and learned Lord, Lord Falconer, pointed out, there is a width and uncertainty about these provisions that really do not follow the expressions being used.

For example, the definition clause for "international agreement", which Amendment 9 deals with, includes,

"an agreement to which the UK is, or is expected to become, a party."

What does that mean? Does that mean that legislation will be brought forward under these provisions and regulations brought forward in respect of an agreement to which we are not a party? As the noble and learned Lord, Lord Falconer, pointed out, what happens if the agreement is not ultimately made and the negotiations fall through? We would then, presumably, have regulations on the statute book dealing with an agreement to which we were not a party.

The definition of "private international law" is also contained in that same subsection, and Amendments 10, 12 and 13 demonstrate the loose wording that is used in case anything has been missed. That is rather typical of the drafting of the legislation. It is so drafted that anything can be brought in and the door is kept open. For example, it includes "rules and other provisions", and there is to be co-operation in relation to the

"service of documents, taking of evidence and other procedures"

not defined. Paragraph (c)(ii) deals with

"anything within paragraphs (a) and (b)."

It is so loose and ill-defined.

So the purpose of the amendment moved by the noble and learned Lord, Lord Falconer, is to define the scope of regulation-making powers of the Bill so that the regulations should be confined exclusively to the field of private international law. Any provisions that trespass into any other territory could not be incorporated into domestic law by these regulations. I wholly support what he says about that.

I also support what was said by the noble and learned Lord, Lord Manse, on arbitral awards and model laws.

But I am interested in Amendment 6. Perhaps the Minister will share his thoughts about any proposed regulations concerning legal aid. What proceedings in the field of private international law does he envisage? To what is this directed? Would these be additional provisions to existing legal aid regulations? Would there be more hoops or fewer? Would there be more generous or less generous provision, and in what fields?

Lord Keen of Elie: My Lords, I begin with Amendment 2, which as the noble and learned Lord, Lord Falconer, noted, would seek to limit the scope of the Clause 2 power to implement agreements to those that relate exclusively to private international law, whereas of course in its present form of drafting it is clearly intended to extend to the implementation of private international law provisions in wider agreements. In previous correspondence, as noted by the noble and learned Lord, Lord Mance, I referred, as an example, to the jurisdiction of the provisions of the 1961 Warsaw Convention, which is concerned with international carriage by air. The point made by the noble and learned Lord, Lord Mance, was: why would you seek a power to implement such a private international law provision outwith the wider terms of the relevant international agreement? There may be some force in that point. It is one that I would like to consider further, and I will do so before we reach Report.

Amendment 6, which was just referred to by noble Lords, seeks to remove legal aid from the scope of the matters about which Clause 2 regulations can make provision. In the light of the observations of the noble Lord, Lord Thomas, perhaps I should explain that the Bill as presently drafted does not expressly include legal aid in the scope of the definition of private

international law. However, under Clause 2(5)(c), it allows for regulations that implement or apply a private international law agreement to make provision for legal aid. This would mean that, where a private international law agreement to which the UK chose to become a party included obligations in relation to legal aid, those could be given domestic effect through Clause 2 regulations.

The reason for that approach to the matter of private international law and legal aid in the Bill is that, although there is some doubt about whether legal aid is typically encompassed in the scope of what is referred to as private international law as generally understood by practitioners and academics, there are circumstances in which a private international law agreement could contain specific legal aid provisions. This normally arises, as one might expect, in the field of family law. For example, there is a requirement in the 1980 Hague Convention on international child abduction for a contracting state to apply the same legal aid rules to citizens of, and persons habitually resident in, other contracting states in matters covered by the convention as it would to its own citizens and residents. It is therefore the Government's view that, should similar conventions arise in the future providing for critical cross-border co-operation in matters of private international law, it would be unfortunate if there were to be a delay in people benefiting from the provisions of such an important convention.

Where a private international law agreement imposes requirements relating to legal aid that go beyond the sorts of areas for which the United Kingdom Government currently provide such funding domestically, we would need to think very carefully before proceeding. However, the normal process of consultation during the development of, and before taking the international steps to join, a convention of this nature would provide an opportunity for consideration of any legal aid implications.

In short, the amendment would create unhelpful doubt around whether the Clause 2 power could be used to implement a private international law agreement that included provisions relating to legal aid, and indeed it might even render that impossible.

Amendment 9 seeks to restrict the Clause 2 power to implement in domestic law only the private international law agreements to which the UK is already a contracting party and nothing further. It will not be possible for the Government to take the final steps necessary under international law for the United Kingdom to become bound by a new agreement in this area, such as depositing an instrument of ratification, because, in order to do that, the necessary implementing legislation must already have been made and, as a result of this amendment, it would need a different legislative vehicle.

4.30 pm

This amendment would make it more difficult for us to remain, as it were, a player at international forums such as the Hague Conference on Private International Law because if the new conventions were adopted there, and we intended the United Kingdom to become bound by them, we would not have a ready-made legislative vehicle for their implementation in domestic law in what might be regarded as a timely manner. More immediately, the amendment may mean that we could not use the power to implement existing private international law agreements that the United Kingdom either seeks to join or is considering joining in future; that would include the Lugano convention, subject to our application being successful. On Lugano, that is particularly problematic because there would not be time to take through bespoke primary legislation between the outcome of our application being known and the end of the transition period.

I turn to the first of what appear to be several amendments proposing to amend the definition of private international law in Clause 2(7). The first, Amendment 10, seeks to change the definition from non-exhaustive to exhaustive. That means that, for an agreement to be implemented via the delegated power in Clause 2, it must relate to rules and provisions about a matter expressly listed in the paragraphs of the definition at Clause 2(7). The reason the Bill contains a detailed but indicative, rather than exhaustive, definition of private international law is that there is no standard exhaustive definition of private international law.

It is generally recognised, however, that private international law agreements belong to a very narrow category of agreement in a specialist area of law. Our definition aims to give a detailed indication of the sort of matters typically contained in such international agreements. These are generally understood to reflect the limits of the expression "private international law". The definition is based on examples of existing private international law agreements or instruments. We are confident that it will be generally clear whether an agreement falls under the power, which will not be able to be used to implement agreements outside the usual scope of the narrow field that is private international law.

In the case of multilateral agreements, these are likely to be agreements adopted at international forums such as the Hague Convention; we currently participate in 13 Hague conventions. We are, of course, aware that the Hague conference has a busy programme of work on new private international law projects. This could lead to a new or updated convention or other instruments on private international law that we may wish to implement in due course. It is also possible, then, that new or updated agreements may contain provisions that fall outside an exhaustive definition of private international law, or there may be uncertainty as to whether the power in the Bill could be used to implement it if the definition is drafted exhaustively. New primary legislation would then be needed for the United Kingdom to meet its international obligations fully. Again, that has the implication of delay.

A past example of a private international law agreement that includes supplementary provisions in relation to which there could have been some doubt over whether they fell within the core concept of private international law rules is the 1980 Hague Convention on international child abduction. This convention, adopted by the Hague Conference on Private International Law, is primarily about the recognition and enforcement of decisions and cross-border administrative co-operation between relevant authorities, but it includes obligations around the prompt return of a child that may not be considered fitting within an overly restrictive definition of private

[Lord Keen of Elie]
international law. That is why I believe we have taken an appropriate approach to give sufficient clarity on the scope of the Bill, while allowing us not to limit unduly its effectiveness to accommodate some margin or flexibility that will future-proof our legislative requirements in that area.

Amendment 11 seeks to remove the express reference to arbitral awards, alluded to by a number of noble Lords. It is not clear whether the intention of the amendment is to remove any agreement on private international law concerning arbitration from the scope of Clause 2, but it is at least doubtful whether in practice the amendment would have that effect. Let me be clear, as I hope I was before, that the Government recognise the importance of arbitration and the role of the New York convention on the recognition and enforcement of foreign arbitral awards. Arbitration has of course been a real success story for the United Kingdom legal services sector, with London a leading global seat for international arbitrations. Of course, we want to support this in the years to come and thus ensure that London remains a global centre for arbitration.

Perhaps I may turn for a moment to the amendment in question because what I want to be clear about is this. The Government do not intend to use the Clause 2 power to amend the current implementation in domestic law of the New York convention. There are certainly no plans to implement any specific international agreements in private international law covering aspects of arbitration. But the definition of private international law, as currently drafted, covers rules on the recognition and enforcement of various types of decisions or agreement that determine or relate to rights and obligations ranging from court judgments to private agreements, such as agreements between parents on maintenance payments, and we consider that the rules on the recognition and enforcement of arbitral awards would naturally fall within that range. By expressly including arbitral awards in the scope of the private international law definition, we ensure that we can capitalise on any developments in the years to come in private international law, including those related to arbitration, and that arbitration is not separated from—indeed, potentially left behind—other aspects of international law implementation in the future. Again, I seek to reassure noble Lords that any broader change in our approach to arbitration, including arbitral awards, would include full consultation with the sector. We have no intention of changing our approach in this area at present.

Amendment 12 also seeks to narrow the definition of private international law in Clause 2(7) by providing that, in terms of rules and provisions about co-operation between judicial and other authorities on procedural matters, only the service of documents and the taking of evidence would be expressly included in scope. It is well understood and accepted that for substantive private international law rules relating to jurisdiction-applicable law in recognition and enforcement to operate effectively, there needs to be a level of procedural co-operation between the relevant authorities in the participating countries. While I accept that the most important elements of this procedural co-operation have, at least traditionally, been the serving of documents and the taking of evidence across borders, it is not true to say that these are the only matters on which such co-operation has existed. For example, the European Union has also had procedural rules in respect of the operation of cross-border small claims procedures and cross-border orders of payment, In my view, the inclusion of the words "and other procedures" provides helpful clarity that the power in Clause 2 could be applied should we wish in the future to implement any private international law agreements that contain similar procedural and technical co-operation alongside more traditional rules, and make that effective.

Amendment 13 seeks to narrow the definition of private international law by limiting the class of rules and provisions about co-operation between judicial or other authorities which are expressly included in the definition of private international law to those which are about service of documents, taking of evidence and other procedures, or exclusively about matters of jurisdiction, applicable law and recognition and enforcement of the types of foreign judgment and agreement listed therein.

To my eyes, the practical effect of the amendment is unclear. As I referred to earlier, the definition of private international law has deliberately been drafted to be non-exhaustive, and this amendment would not by itself change that. However, it could potentially add unhelpful confusion as to the Government's intentions when reviewed by practitioners.

To deliver its full benefit, the power in Clause 2 must be able to be used to implement the full range of possible future private international law agreements in the years to come. Any attempt to restrict the power in the way the amendment proposes could result in primary legislation being required more often, leading again to potential delays in the implementation of relevant agreements.

Amendment 16 would remove Clause 2(8). Subsection (8) allows for the Government and devolved Administrations to implement any model law pertaining to private international law adopted by an international organisation of which the United Kingdom is a member. As has been noted, model laws on private international law have the same intent as international agreements relating to private international law—in other words, they seek to achieve uniformity and reciprocity in different jurisdictions—but rather than forming part of international law, as is the case with a treaty, model laws, as the noble and learned Lord, Lord Mance, observed, provide a template for countries to implement the same legal rules, adaptable where necessary, in a way that is suitable to their own jurisdiction. Model laws are not binding at international law. Countries can incorporate all or part of them into their domestic law in a way that accommodates diverse legal traditions. In the end, however, they have a very similar effect to international treaties: they reduce conflict between different jurisdictional laws and legal systems, and the effect is to enhance access to justice. They are often selected by international organisations as the most appropriate mechanism for co-operation because of this flexibility, and they allow for a wider number of countries to participate and co-operate in what might be regarded as shared principles and a common approach to cross-border issues.

Reference has already been made to insolvency, where the United Nations Commission on International Trade Law—UNCITRAL—model law on cross-border insolvency provides a common framework in which some 50 jurisdictions participate. I accept that the issue of model law is not subject to the CRaG process. Nevertheless, such model laws have an important role to play. They are a relatively recent phenomenon; they were not conceived when earlier legislation such as the 1920s Acts were being considered, but they are an important area of law. The power in Clause 2(8) is essentially of the same scope and subject to the same limitations as any binding international treaty implemented under the same clause. For example, such model laws will still need to fall under the definition of private international law and will be subject to consideration before they are drawn down into domestic law by reason of the affirmative procedure that I have previously referred to.

Clause 2 is therefore a reasonable and proportionate provision that delivers clear policy objectives. Of course, I understand why noble Lords have scrutinised the scope of the definition and probed our rationale for it. In a way, it is almost a shadow of the wider objection that is taken to Clause 2 as a whole, but these amendments would not add to what is carefully drafted legislation and, in some respects, would detract from its clarity. It is in these circumstances that I invite the noble and learned Lord to withdraw his amendment.

4.45 pm

Lord Falconer of Thoroton: The extraordinary tedium of that answer should not detract from the enormity of what the Minister has just said. He basically said "I can't really give you a definition in the Bill of a private international law agreement but we, the Government, will know it when we see it. Yes, it's true that we're taking power to do things that nobody really wants us to do, but generally we won't do it—and if we were thinking of doing it, we'd consult first." That was in relation to arbitral awards. In relation to model laws, he was saying, "It did occur to us that this looked like quite a convenient power for us to have, so could we have it?"

My answer is that this debate illustrates what a danger Clause 2 constitutes. I also look with real scepticism at the suggestion that the Government would consult, when they did not consult the Lord Chancellor's Advisory Committee on Private International Law, chaired by the noble and learned Lord, Lord Mance, at all on the network of private international law instruments they introduced in the light of us leaving the European Union; they did not consult at all on this constitutionally unacceptable Bill. Although it was very hard for us to listen to that speech, it was quite an important one. I beg leave to withdraw my amendment.

Amendment 2 withdrawn.

Baroness Scott of Bybrook (Con): My Lords, I think it timely that we should now adjourn until 5.15 pm. That means that broadcasting will stop. Noble Lords may leave their device and turn off their microphone and camera, but please do not close the call or shut down. We will resume proceedings and broadcast at 5.15 pm.

4.47 pm

Virtual Proceeding suspended.

5.16 pm

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): My Lords, the Virtual Committee will now resume. We come to the group beginning with Amendment 3. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. It would be helpful if anyone intending to say "Not content" when the Question is put made that clear in the debate. It takes unanimity to amend the Bill in this Committee, which cannot divide.

Amendment 3

Moved by ***Lord Falconer of Thoroton***

3: Clause 2, page 2, line 31, leave out subsections (2) and (3)

Lord Falconer of Thoroton: My Lords, we have adumbrated many of the same points over and over, because they keep coming up again and again, so I will try to restrict my remarks on these amendments to essentially only new points. This group of amendments effectively deletes the Government's regulation-making power where the regulations in effect intend to say how an international treaty shall apply either as between Scotland, England, Wales and Northern Ireland—within the United Kingdom—or as between the United Kingdom and the Isle of Man, any of the Channel Islands or a British Overseas Territory.

The effect of my amendment is that the Clause 2 power cannot be used where it is proposed to apply an international convention between the parts of the UK; to apply an international convention between the UK and a relevant territory; or to amend, extend, adapt or revoke any declaration made at the time of ratification. It is wholly wrong that any of these things should be done by regulation as opposed to primary legislation. I use these amendments simply to indicate the width of the power being sought. I beg to move.

Lord Wallace of Tankerness (LD): My Lords, I will make two preliminary points. The first echoes what has been said in many of our proceedings so far this afternoon. Perhaps not surprisingly, as a member of the Constitution Committee, I do not think that Clause 2 should be in the Bill, for all the reasons already outlined both in committee reports and by a number of your Lordships in debates on earlier groups. I have not yet been persuaded or heard any argument to the contrary, so my primary position is that Clause 2 should not be there.

The second point is that, where these amendments relate to jurisdictions within the United Kingdom, it is a question not of whether it should be done but of how. In his response to the first group of amendments, the noble and learned Lord, Lord Keen, gave some good reasons why, as a matter of public policy, there should be certainty in the arrangements, for argument's sake, for enforcing a Scottish court's order in England, as there would be for enforcing an English court's orders in France. Therefore, it is a question not of whether there is merit in having some kind of intra-UK arrangements but rather of how it should be done.

[Lord Wallace of Tankerness]

During Second Reading I reflected briefly on this and referred to the briefing from the Bar Council. It is perhaps worth going back to it and reminding ourselves what it said in relation to the provisions in Schedule 6:

"The question, however, whether to apply an international convention's rules between parts of the United Kingdom is often a very difficult one. Where it is to be applied, extensive amendments to that convention are often appropriate, (an example being the provisions in the Civil Jurisdiction and Judgments Act 1982, which apply a substantially modified form of the European Union rules to intra-United Kingdom cases). The Bar Council is concerned that schedule 6 does not provide sufficient safeguards in this respect and considers that it should be amended to provide the requisite clarification."

I endorse that. It is not a question about whether it should be done. We have heard that, for example, in the Civil Jurisdiction and Judgments Act 1982 there were requirements to amend or change the rules for intra-UK cases.

It is also important to note that we are giving powers to the national authorities—not just the United Kingdom Parliament but to Scottish Ministers and Northern Ireland Assembly Ministers. As far as I can see—I stand to be corrected if I have not noticed something—these regulations would be brought in without any consultation between the different Administrations. There is no doubt that private international law is a devolved matter as far as the Scottish Parliament is concerned, but negotiating international treaties does not affect the sovereignty of the United Kingdom, and it seems to make some sense that there should be some negotiation, or at least consultation and discussion among the constituent parts of the United Kingdom, before regulations are brought forward. As far as I can see, neither Clause 2(2) nor Schedule 6 makes any provision for that.

My position is that it is not a question about whether it is right and proper that there should be intra-UK arrangements but rather that what is proposed in the Bill does not provide adequate safeguards about how that should be done.

Lord Adonis: I have nothing to add to this discussion.

Lord Marks of Henley-on-Thames: My Lords, the question raised by my noble and learned friend Lord Wallace of Tankerness is about how legislation should be made regulating implementation between jurisdictions within the UK and between the UK and other relevant territories. It seems to me that Clause 2(2) and (3) and Schedule 6 infringe the principles of devolution, particularly in the lack of provision for consultation with Scotland and Northern Ireland, as he pointed out. They also infringe the autonomy of the other relevant territories. For those reasons it seems to me that, in addition to the general reasons about the width of Clause 2 and the points already made by the noble and learned Lord, Lord Falconer, we will support amendments such as these on Report.

Lord Keen of Elie: My Lords, as with the previous groups of amendments, the underlying theme is that Clause 2 should not stand part of the Bill, but we have to look at these amendments in the context that it does stand part. They would therefore limit the power conferred by that clause—that context is important.

When discussing Amendments 4 and 5, I pointed out that, in the context I have just described, they in turn would result in an unacceptable restriction of the power in Clause 2 and would mean that co-operation on private international law matters between different parts of the United Kingdom family would be significantly less well developed than it is between the United Kingdom and international partners. As a matter of policy, we see no way to justify such a position. Why, for example, should two parties in London and Edinburgh have less legal certainty about the way in which their dispute will be resolved than if the dispute was between parties based in London and Paris or New York? Of course, the point is then made that it is not a question of whether, but how. If you are able to have this regulatory-making power under Clause 2 with regard to foreign jurisdictions, why not intra-UK?

If, as suggested by the noble and learned Lord, Lord Wallace, the concern is the power being perceived as risking imposing a position on Scotland, Northern Ireland, the Crown dependencies or overseas territories without consultation or consent, I would seek to assuage those concerns. Such arrangements under the power would require the agreement of all the relevant Administrations—the United Kingdom Government and the Government of the relevant devolved Administration, Crown dependency or overseas territory. Indeed, such a measure would be considered only after the Government had consulted appropriately with relevant stakeholders, and the statutory instrument to give effect to such a "mirroring" provision—that is what it would be—would still be subject to the scrutiny of the affirmative procedure, as I noted before.

There are examples where such mirroring-type relationships already apply. We apply a modified version of the terms of the 1968 Brussels Convention, an instrument that was the forerunner to Brussels I and the recast Brussels IA regulation, between the United Kingdom and Gibraltar. That works perfectly well. Therefore, assuming Clause 2 stands part of the Bill, we do not see any reason why it should be amended in the way suggested.

I now turn to Amendment 18, which would in turn require fresh primary legislation if the UK wished to amend or revoke, at a later date, any declarations it chose to make when it first implemented a new international agreement. This would mean, for example, that if, in implementing the 2005 Hague Convention, the Government decided to replicate the current EU declaration in regard to certain insurance contracts being out of scope of the convention and then wished to review that decision later, primary legislation would be required to implement that change.

Our policy intention is to replicate the current EU declaration in relation to the exclusion of certain insurance contracts when we accede to the 2005 Hague Convention later this year, because this is how the convention rules currently apply here and, given the tight timeframe between now and the end of the transition period, it makes sense to maintain the status quo and then review in the longer term. Under the proposed amendment, if we wished to change our position following that review, we would have to wait for a primary legislative vehicle to give effect to that change. In our view, that would simply create undue delay on a matter which

could be addressed through secondary legislation without losing any of the desired scrutiny. It is in these circumstances that I respectfully ask the noble and learned Lord not to press his amendments.

The Deputy Chairman of Committees: One speaker has indicated that they wish to come in on the amendment.

Lord Wallace of Tankerness: My Lords, I note what the Minister said about fears that something might be imposed on Scotland or Northern Ireland, but as I read it, Scotland or Northern Ireland could actually impose something on England. He then went on to say that there would of course be discussion, negotiation and consultation. If that is the case, why does it not say so on the face of the Bill? Would he be minded to give further thought to these provisions and how they are drafted to secure some degree of consultation, which does not, I would argue, detract in any way from the devolution settlement?

Lord Keen of Elie: Let me be clear: I do not accept the underlying premise of the noble and learned Lord's argument. However, I am perfectly content to look at this before the next stage of the Bill in order that I can, again, reassure him of the position. There is no intent here to proceed to regulatory-making power without the consent of the relevant devolved Administration. That would be wholly inappropriate, and I accept the noble and learned Lord's observation that it would conflict with the devolved settlement. However, I am perfectly willing to look at this again.

5.30 pm

Lord Falconer of Thoroton: The Minister remorselessly misses the point over a period of time. The purpose of the amendment is to ask the question: is it right that you can have a different private international law settlement as between the two countries or as between the United Kingdom and the other territories? Should that be decided upon by a Minister without primary legislation? The way the Minister answers that is to say, "You have to assume that it's got to be done by secondary legislation", which does not deal at all with the point. I beg leave to withdraw my amendment.

Amendment 3 withdrawn.

Amendments 4 to 6 not moved.

The Deputy Chairman of Committees: We now come to the group beginning with Amendment 7. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. It would be helpful if anyone intending to say "Not content" when the question is put made that clear in the debate. It takes unanimity to amend the Bill in this Committee, which cannot divide.

Amendment 7

Moved by ***Lord Foulkes of Cumnock***

7: Clause 2, page 3, line 14, leave out sub-paragraph (i)

Member's explanatory statement

This amendment and the next in the name of Lord Foulkes are to explore whether conflict might arise as to whether it is the responsibility of Scottish Ministers or of the Secretary of State in consultation with Scottish Ministers.

Lord Foulkes of Cumnock: It is appropriate that these amendments follow those we have just been discussing, Amendments 3 and 18. I am pleased that four very distinguished lawyers will participate in this debate, as well as the Minister, who is an equally distinguished lawyer. I should explain that I am not a lawyer—although, mind you, that will become blindingly obvious during the course of what I have to say. These are very much probing amendments. I, like the vast majority of members of this Committee, hope that we will not have Clause 2. However, if we have it, we will need some clarification. I will therefore confine myself just to some questions for the Minister.

On the question of the appropriate national authority, in the Bill there are two different options in relation to Scotland. First, there is approval by Scottish Ministers—it would be for the Scottish Government to decide—or approval by the Secretary of State with the consent of Scottish Ministers. Will the Minister explain the difference between the two? How is it decided which of these two is appropriate, and who decides whether it should be approved by Scottish Ministers or by the Secretary of State with their approval? Will it be clear which treaties are UK treaties, dealt with by UK legislation, or by Scottish legislation? Of course, this applies equally to Northern Ireland, although my amendments do not apply to that. Does the Minister envisage that there might be a dispute between the devolved Governments and the United Kingdom Government? We have seen a few of those recently, sadly. If so, how would the question of who would be responsible for resolving the disputes be resolved?

Secondly, are there likely to be any cross-border elements that apply both to Scotland and to England and Wales in this case, and if so, how would they be dealt with? For example, could custody of children create any difficulties? We have seen the problems regarding people moving over the border to deal with or to avoid custody being taken by one parent or the other. Could that create difficulties?

Thirdly, English law and Scots law are different with regard to issues such as power of attorney. Could power of attorney which was dealt with in one jurisdiction be different and not applicable in another jurisdiction, and would that create problems?

Fourthly, on global contract law, which, again, is one of the treaties and part of the Bill, is there an issue of which jurisdiction might settle any dispute? If so, would this go to the English or Scottish court? How would the dispute be decided, and by whom?

Finally, this Bill requires a legislative consent Motion of the Scottish Parliament. I understand that that Motion has been lodged. When does the Minister expect it to be dealt with, and does he envisage that there will be any problem? Those are my questions for the Minister. I look forward to his replies, and to the interventions of distinguished lawyers, including, in particular, two Scots lawyers of great distinction. With that, I beg to move.

Lord Wallace of Tankerness: My Lords, as the noble Lord, Lord Foulkes of Cumnock, has said, it is welcome that we have this opportunity to probe. In his

[Lord Wallace of Tankerness]

Explanatory Statement, which appeared next to this amendment on the Marshalled List, the noble Lord said that it was

"to explore whether conflict might arise as to whether it is the responsibility of Scottish Ministers or of the Secretary of State in consultation with Scottish Ministers."

But, as he indicated in his remarks just now, that is not actually in the Bill, which speaks of

"the Secretary of State acting with the consent of the Scottish Ministers".

That is a crucial difference.

There is no doubt that negotiating or joining an international agreement on private international law is a reserved matter for the Government of the United Kingdom as a sovereign state. Equally, there is no doubt that private international law is a devolved matter. Section 126(4)(a) of the Scotland Act makes that expressly clear. Therefore, the implementation of these agreements is within the legislative competence of the Scottish Parliament.

It is right, therefore, that Scottish Ministers should be one of the appropriate national authorities. Equally, there will be occasions—perhaps a number of occasions—when it makes sense for the United Kingdom Secretary of State to make regulations with respect to the whole of the United Kingdom with the consent of Scottish Ministers. In paragraph 8 of their legislative consent memorandum, the Scottish Government draw attention to this fact:

"In 2018, the Scottish Ministers (with the approval of the Scottish Parliament) consented to two UK statutory instruments … including devolved material relating to the 2005 and 2007 Hague Conventions."

So there is a very recent precedent for regulations to be made in the sphere of private international law. It has been done by a United Kingdom statutory instrument, but with consent not just in the case of Scottish Ministers but with the approval of the Scottish Parliament. These are often pragmatic matters, but the fact that it requires consent means that the UK Government cannot override the Scottish Parliament. The noble Lord, Lord Foulkes asked whether the legislative consent Motion has been passed; I checked yesterday—I do not think it has. But paragraph 19 of the Scottish Government's memorandum says:

"The Bill is drafted to respect the devolution position: the Scottish Ministers make provision for implementation in Scotland with UK Ministers only being able to do so with the consent of the Scottish Ministers. Legislation in this area has in the past been taken forward on a UK basis and it may be convenient for it to be so in the future so the Scottish Government recommends this approach."

There is one final matter which is not really germane to the terms and text of the amendments but I shall be grateful if the Minister is able to respond. Given that the implementation can be a matter for the Scottish Government, what engagement is he aware of with Scottish Government officials in some of the negotiations on these private international law agreements? For example, two agreements are referred to in paragraph 53 of the Explanatory Notes: the 2019 Singapore agreement and the 2019 Hague Convention. Is the Minister aware of any engagement or involvement by Scottish Government officials? Quite clearly, if the next step is implementation, it is important that Scotland is a party to these negotiations, albeit at the end of the day, as responsibility for joining these international agreements rests with the United Kingdom.

Lord Hope of Craighead (CB): My Lords, the noble Lord, Lord Foulkes, explained in his introduction that these are probing amendments, and I hope that the Minister will understand my remarks in that context. I would like to speak to both amendments but my main focus is on Amendment 8, which seeks to leave out sub-paragraph (ii) in Clause 2(7)(b)—that is, the reference to the Secretary of State acting with the consent of Scottish Ministers. However, anything that I might say now is without prejudice to my support for the notice given by the noble and learned Lord, Lord Falconer of Thoroton, and others of their opposition to the clause standing part of the Bill at all.

I have three points to make. The first reinforces what others have already said. It is important to know which of these authorities is expected to exercise the powers referred to in this clause. That is because if it is the Scottish Ministers, paragraph 4 of Schedule 6 applies and the regulation has to be laid before the Scottish Parliament as a Scottish statutory instrument under Section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010. If it is the Secretary of State, it comes under paragraph 2 of Schedule 6 as a statutory instrument in this Parliament and the Scottish Parliament will have no say in the matter at all. The word "or", which lies between those two alternatives, gives no guidance as to which of them, or in what circumstances, it is to be. My first question, following what others have said is: why is that?

This clause is about implementation and application—implementation in Clause 2(1) and application as between the relevant jurisdictions in Clause 2(2). I think that I could understand the position if the Bill said that implementation in Clause 2(1) was a matter for Scottish Ministers and application as between the jurisdictions was a matter for the Secretary of State with the consent of Scottish Ministers, but that is not how the Bill stands at the moment.

For example, on implementation, if one were considering the UK acceding to the Lugano convention, about which so much has already been said, it would seem that nothing more is needed to implement it into Scots law that an instrument at the instance of Scottish Ministers. One can look again at the illustrative statutory instrument—the Singapore convention, which the Minister attached to his helpful letter of 5 May. It gives the force of law to that convention in England and Wales. If the same were to be done for Scotland, surely that would be a matter for the Scottish Ministers alone. Therefore, in the context of implementation, what part has the Secretary of State to play at all?

My second point concerns whether the reference to the Secretary of State is consistent with the Scotland Act 1998. Paragraph 7 of Schedule 5 to that Act provides that international relations are reserved matters, but paragraph 7(2) states that paragraph 7(1) does not apply to

"observing and implementing international obligations"

or

"assisting Ministers of the Crown in relation to any matter to which"

paragraph 7(1) applies. Therefore, the matters dealt with in paragraph 7(2) are devolved, as indeed is private international law itself, as the noble and learned Lord, Lord Wallace, has pointed out.

This clause is about implementation and application, and it would seem to fall squarely within paragraph 7(2). I should have thought that that reinforces the point that these should be matters for Scottish Ministers only. Section 53 of the Scotland Act provides for a general transfer of functions exercisable by a Minister of the Crown to the Scottish Ministers. That reinforces my query as to what function the Secretary of State has in this matter at all.

5.45 pm

My third point is simply a teasing matter about terminology. The matter is not assisted by the fact that in this Bill the UK authority is described as the "Secretary of State". In the Scotland Act, that authority is described as a "Minister of the Crown"; for example, in Sections 56 and 63. So too in the European Union (Withdrawal) Act 2018 we are told that the relevant authority there is a "Minister of the Crown". The change of terminology puzzles me somewhat: why "Secretary of State" here and "Minister of the Crown" in the other contexts?

To sum up, the reference in Clause 2(7)(b)(ii) to

"the Secretary of State acting with the consent of the Scottish Ministers"

is very welcome in its reference to consent. When I made contributions on the withdrawal Bill I tried frequently to introduce the word "consent" without any success, so to see that word here is music to my ears. One must be thankful for small mercies. However, I cannot help thinking that Clause 2(7)(b)(ii) should not be in the Bill at all. If it is to be kept in, I would be grateful if the Minister would say, first, why mention is made here of the Secretary of State at all; secondly, how that is compatible with the provisions of the Scotland Act; and, thirdly, why the expression "Minister of the Crown" is not being used here instead.

Lord Adonis: I have nothing to add on this group.

Lord Thomas of Gresford: My Lords, I am of course speaking as a Welshman. We have a very limited interest in the provisions being discussed, but I have some questions. Since the time of Henry VIII, who has a great deal to answer for, the jurisdiction of England and Wales has been merged. Only in very recent years has there been a suggestion that Wales should have its separate jurisdiction. We are one of the three jurisdictions that will be subject to the Bill's provisions; we go along with England. I would like to know whether there is any prospect of consultation with Welsh Ministers about what provisions are being brought into effect, because private international law covers such a wide range of things. It has particular relevance to family life in Wales as much as anywhere else. Will there be any consultation? If so, what will it be?

Lord Falconer of Thoroton: I simply underline the points made by my noble friend Lord Foulkes and the noble and learned Lords, Lord Wallace and Lord Hope. As far as my noble friend Lord Foulkes is concerned, the purpose of these amendments is to probe; as far as I am concerned, they illustrate the lack of thought that has gone into Clause 2. They simply underline the sense that there should not be a Clause 2.

Lord Keen of Elie: My Lords, I am obliged to the noble Lord, Lord Foulkes of Cumnock, for tabling what he very candidly pointed out were probing amendments. I am also obliged to the noble and learned Lord, Lord Wallace, who drew on his experience of the devolved Administrations and was able to outline the position in this matter. I will come in a moment to address the questions raised by the noble and learned Lord, Lord Hope, in the context of these provisions.

As the noble Lord, Lord Foulkes, pointed out, two authorities are identified in this part of the Bill that might proceed to implement matters of private international law in Scotland. That is consistent with legislation in other areas. The Secretary of State might decide, with the consent of the Scottish Ministers, to make UK-wide provision for implementation. That is why he is one of the identified national authorities, because there are circumstances in which the Scottish Ministers would be entirely content for there to be UK-wide provision.

Alternatively, if that is not the case, Scottish Ministers may themselves then proceed as a national authority to implement the matter in domestic law. That is because, as the noble and learned Lord, Lord Wallace, pointed out, the position is that—I am sorry, something came up on another phone and rather distracted me—the implementation of private international law is a devolved issue under the Scotland Act, so allowance is made for both provisions.

As regards this Bill, an LCM was discussed between officials. The Scottish Ministers have recommended that such an LCM should be provided, and the noble and learned Lord, Lord Wallace, pointed out the terms of the recommendation that Scottish Ministers have made to the Scottish Parliament with regard to this matter. Indeed, there was prior discussion about these proposals last year, when the Lord Chancellor, for example, was in communication with the Scottish Government on matters of the convention. Perhaps I can clarify this by reference to the points made by the noble and learned Lord, Lord Hope. The Secretary of State may be a national authority with the consent of Scottish Ministers because Scottish Ministers may, as sometimes happens, wish to see UK-wide regulations made here for implementation. Alternatively, as the national authority, they may choose to do that for themselves. The Secretary of State clearly does have the power to do that because under the Scotland Act there is the power to legislate for the entirety of the United Kingdom as regards the implementation of a matter that is otherwise within the devolved competences, so that does not raise an issue either.

With regard to the matter of whether or when it would be one national authority or the other, that is simply a matter that will be discussed, as it is in other contexts, between the United Kingdom Government and Scottish Ministers. If Scottish Ministers are content that the UK Government should legislate UK-wide on this matter, that will happen. If they are content for that to be done, then Scottish Ministers will deal with

[Lord Keen of Elie]
the matter. The Secretary of State cannot deal with the matter without the consent of Scottish Ministers, so I hope that that puts minds at rest in this regard.

As regards the identification of the Secretary of State as an authority and the reference, for example, in the Scotland Act to a Minister of the Crown, I accept that the reference in this Bill is more limited. Because I cannot answer immediately, I will consider why it was thought appropriate to limit it to the Secretary of State as opposed to the wider reference to a Minister of the Crown. But I will look at that to see whether there is an issue there that needs to be addressed.

As regards consultation on the implementation of international treaties, that is not an issue, but as regards entering into international treaties, that is of course a reserved matter. I recognise that it is appropriate that Scottish Ministers and others should be consulted on these matters for their interests when they arise. I do not understand that to be a difficulty in this context, nor a matter that would require express provisions in the terms of this Bill.

I thank the noble Lord, Lord Foulkes of Cumnock, for his probing amendment and I hope that I have been able to put minds at rest as regards why there are two identified national authorities for the purposes of Clause 2. In the event that Clause 2 stands, these are appropriate alternative mechanisms for the implementation of these provisions.

One final matter raised by the noble Lord, Lord Foulkes, was the issue of contract, but of course, where you have a contract, it will have a choice of jurisdiction and a choice of law. If the contract has Scotland as a choice of jurisdiction and Scots law as the choice of law, that will be binding if we have a situation in which, for instance, the Lugano provision applies. I hope that that answers the query in so far as I have understood it.

I cannot give a precise date for the provision of the LCM, but as the noble and learned Lord, Lord Wallace of Tankerness, himself indicated, Scottish Ministers have recommended the granting of an LCM, and it is not anticipated that there will be any difficulty. With that, I invite the noble Lord to withdraw the amendment.

Lord Foulkes of Cumnock: My Lords—

The Deputy Chairman of Committees: As no further speakers have indicated that they wish to intervene on this amendment, I call Lord Foulkes.

Lord Foulkes of Cumnock: I apologise for jumping in a little prematurely.

This has been a very useful debate and the Minister has answered a number of my questions. It is awfully useful that he is taking away the third point raised by the noble and learned Lord, Lord Hope, about Ministers of the Crown. But the debate has highlighted that there is a difference of opinion between the noble and learned Lords, Lord Wallace and Lord Hope, on the one side, and the noble and learned Lord, Lord Keen, on the other. Now, it is not unusual to find different opinions among two or three lawyers, but it highlights that there may be a problem around whether this is to be dealt with by the Secretary of State, after consultation with and the permission of Scottish Ministers, or directly by Scottish Ministers. I hope that is something that can be looked at further.

Nevertheless, in the light of the explanations given, I beg leave to withdraw my amendment.

Amendment 3 withdrawn.

Amendments 4 to 13 not moved.

The Deputy Chairman of Committees: We now come to the group beginning with Amendment 14. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. It would be helpful if anyone intending to say "Not content" when the Question is put makes that clear in the debate. It takes unanimity to amend the Bill in this Committee. This Committee cannot be divided.

Amendment 14

Moved by ***Lord Foulkes of Cumnock***

14: Clause 2, page 3, line 39, leave out paragraphs (a) and (b)

Member's explanatory statement

This amendment and the next in the name of Lord Foulkes are to explore any issues regarding how this Bill might impact on the constitutional position of the Crown Dependencies and Overseas Territories in relation to the United Kingdom.

Lord Foulkes of Cumnock: My Lords, this brings me to another of my special interests, and one that I have been pursuing for some time. Amendments 14 and 15 concern the Isle of Man, the Channel Islands—namely Jersey, Guernsey, Alderney and Sark—and the dependent territories. I will not mention all of the dependent territories, because those such as the Falklands are not quite so relevant in this context, but they include Gibraltar, the Cayman Islands, Turks and Caicos, the British Virgin Islands and Bermuda. I mention those particularly and not by chance, because many are well known as tax havens and the offshore basis for companies whose principal trade and activities are elsewhere, and not on those islands.

My first question is this. In an earlier intervention, the Minister indicated that there has been consultation with the islands' authorities, and that they had approved the provisions in the Bill. But with whom were these consultations? Were they with just the governor, or were they with the directly elected councils and parliaments of the various overseas territories and Crown dependencies? It is important that the elected representatives were involved in these discussions. Secondly, what response has there been? I understand from what the Minister said that the islands have all agreed, but was that agreement conditional in any way?

6 pm

As I said in respect of the earlier amendment, the Bill deals among other things with global contract law. The very helpful background briefing that the Ministry of Justice has produced states that

"the Crown Dependencies may be authorised to conclude their own international agreements by a process of entrustment."

It would be helpful if the Minister could explain this. The briefing goes on to say that

"the UK retains responsibility at international law for all of their international obligations."

It is therefore the British Government who have responsibility for ensuring that all these territories maintain their international obligations. How is this done? What monitoring takes place? Who is responsible for it? The Government of the Turks and Caicos Islands have had to be suspended not once but twice. Interestingly, that was by a Conservative Government. I was the opposition spokesman on foreign affairs the first time that the constitution was suspended. The then Minister, Tim Eggar, came to me and asked whether the Opposition would agree. Of course, we did so because of some of the things that were going on in the islands. There has to be very careful monitoring of this.

I turn finally to the choice of court of arbitration. If there is a choice of court of arbitration, could some people—there are the tax dodgers, let us face it; we have seen a lot of it recently—choose the jurisdiction in which their matters were dealt with and the judgments made? I imagine that some of them would love to go to Jersey or to Cayman—just to name a couple arbitrarily.

Some matters here need careful scrutiny. I hope we will get a clear response and undertaking from the Minister that they are being kept under careful and constant review. I beg to move.

Lord Thomas of Gresford: My Lords, I have nothing to add to the points succinctly made by the noble Lord, Lord Foulkes.

Lord Adonis: I have nothing to add.

Lord Falconer of Thoroton: I have nothing to add.

Lord Keen of Elie: My Lords, I thank the noble Lord for what I understand are, again, probing amendments. As I perhaps explained, the Crown dependencies and overseas territories have a constitutional relationship with the United Kingdom whereby the United Kingdom is responsible for their foreign relations. This means that the Crown dependencies and overseas territories do not generally themselves join international agreements, including agreements in the area of private international law, which we are concerned with here. Instead, an agreement that applies in the United Kingdom can usually be extended to apply also in a Crown dependency or overseas territory. We work with those Crown dependencies and overseas territories to determine where and when they would wish to have a private international law agreement apply between them and other contracting parties. The scope of the United Kingdom's ratification of that agreement is then extended to them. This means that multilateral agreements extended to the Crown dependencies and overseas territories apply only between those jurisdictions on the one hand and the other contracting parties on the other, but not between the Crown dependencies and overseas territories and the UK. To apply the agreement with the UK, there needs to be a separate mirroring arrangement, as it is sometimes termed. I referred to that in responding to earlier amendments.

The general power within Clause 2(3) allows the United Kingdom to maintain and develop a private international law framework with the Crown dependencies and overseas territories as well as with foreign partners. That is the intent here.

The noble Lord asked about consultation. There was consultation, not with the governors of the Crown dependencies and overseas territories, but with each attorney-general and their officials. My understanding is that they were entirely content with the way in which these provisions are extended to the benefit of the Crown dependencies and overseas territories.

The noble Lord raised the question of entrustment. It does not directly arise in this context, but entrustment is where the United Kingdom essentially consents to a Crown dependency, for example, entering into an agreement at the level of international law. That can sometimes happen where, for example, a Crown dependency wants a reciprocal agreement with a foreign partner.

The behaviour of the overseas territories is monitored by the Foreign and Commonwealth Office and there are instances in which, for the purposes of good governance, the United Kingdom will intervene in the affairs of an overseas territory. The noble Lord himself gave an example in respect of the Turks and Caicos Islands where that has been done.

As regards the choice of court or arbitration that the noble Lord referred to, in so far as I understand his point, I would respond that it is up to parties to a private contract to determine how their disputes, if any, will be resolved. For that purpose, the parties can choose a law or legal system to apply to their private contract and the jurisdiction in which their disputes will be resolved. That is an issue that arises only in the context of their private contract and in the context of what we are dealing with here, which is private international law. At the level of private international law, we are concerned with the way in which other jurisdictions respect that law, respect the choice of jurisdiction and, indeed, then respect the judgment of that jurisdiction when it comes to enforcement.

I hope that answers the points raised by the noble Lord. I thank him for the probing amendments, but I invite him to withdraw Amendment 14.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I am not aware that any other noble Lords have expressed a wish to speak after the Minister, so I call the noble Lord, Lord Foulkes of Cumnock.

Lord Foulkes of Cumnock: My Lords, I am really very grateful to the Minister for a helpful reply; he has dealt with each of the points that I raised very properly and helpfully. This is an issue that I feel strongly about generally and will need to pursue in another context in the light of that. I beg leave to withdraw my amendment.

Amendment 14 withdrawn.

Amendments 15 and 16 not moved.

Debate on whether Clause 2 should stand part of the Bill.

The Deputy Chairman of Committees: I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. It would be helpful if anyone intending to say "Not content" when the question is put made that clear during debate. It takes unanimity to amend the Bill in this Committee; this Committee cannot divide.

Lord Falconer of Thoroton: My Lords, I believe that Clause 2 should not stand part of the Bill. We have discussed these matters at considerable length today. I simply make the point that it will be constitutionally unprecedented if we end up in a situation where the Government have complete power in relation to private international law agreements in the future, not only to implement the changes to domestic law that are required by secondary legislation but to make regulations that relate to those agreements or connect with them, which goes very much wider than the terms of the agreement itself.

We have discussed considerably today the justification for this unprecedented power and it has been demonstrated —mainly on the question about timely implementation— not to withstand any degree of examination. I feel strongly that the House should reject Clause 2; we cannot do it in this Committee but, when the time comes, we should vote to remove it from the Bill. I think it is a separate debate as to whether there should be a special power in relation to Lugano, but this provision gives unlimited power for an unlimited time to introduce the consequences of international agreements into our domestic law with no primary legislation.

One final point, which has been made by the Constitution Committee, is that the consequence of doing this by secondary legislation is that it can be challenged in the courts and set aside by the courts on the grounds of judicial review. So not only is it constitutionally inappropriate, not only will it damage the quality of our private international law, but it will lead to legal uncertainty. Actions will be brought in court but set aside. I will invite the House on Report not to allow this provision to stand part. There is unanimity in this Committee with the exception—the plucky exception—of the Minister in that respect.

Lord Pannick: My Lords, I agree with the observations of the noble and learned Lord, Lord Falconer of Thoroton. I gave my reasons earlier for thinking that Clause 2 should not stand part and I shall not repeat them. I shall add just one further point. There has been discussion this afternoon, particularly from the noble Lords, Lord Adonis and Lord Foulkes of Cumnock, about the disadvantages of Virtual Proceedings, disadvantages notwithstanding the exceptional efforts made by the clerks and the staff, for which we are all very grateful, to ensure that these Virtual Proceedings can take place. The additional disadvantage that I want to mention—additional to those which have already been identified—arises from the correct observation of the noble and learned Lord that the Minister stands alone on this subject; all other speakers have explained why Clause 2 is objectionable.

The point is that if we were on the Floor of the House, the Minister would not just hear and see those who are speaking; he would see and hear expressions of disapproval from all around the House, including from his own Benches; he would sense the degree of concern that there undoubtedly is about the constitutional implications of Clause 2. This debate has highlighted those concerns, but I hope the Minister will understand that there is a very widespread concern around the House, not just from those who have spoken today but from those who would be present in Committee were normal proceedings to apply. By their presence and their body language, other Members of the Committee would indicate their profound concern. I hope he will take all that into account before Report.

Baroness Taylor of Bolton (Lab): I am in a slightly different position from many noble Lords because I joined this Committee sitting simply because of the strong feeling on the Constitution Committee, which I chair, that Clause 2 should not be part of the Bill. I am not a lawyer, so I have listened to the last nearly four hours with great interest. I knew that this was a complex area; having listened to all that has been said I think it even more incredible that the Government are actually suggesting that issues of this kind should be decided simply on their say-so and by secondary legislation. I cannot comment on the details and complexities of Lugano or anything else, but I have heard qualified senior lawyers talking about this, and anyone who has heard that would be convinced that there should be proper parliamentary consideration of all these issues before the Government are allowed to take any direct action. It is simply wrong, I think, that these matters will be determined by secondary legislation.

The Constitution Committee was unanimous in its view: we do not divide on party lines anyway, but it was not a difficult discussion, because members of the committee thought it was blindingly obvious that Clause 2 should not be part of the Bill.

We did, of course, have another thought at the back of our minds. That is the fact that we have been increasingly concerned, over many years, by the way in which the Government have used—or maybe abused— secondary legislation. We have seen an increase in the powers taken through secondary legislation. It is a question of not just the number of SIs but their content. The noble Lord, Lord Pannick, referred earlier to some of the consequences that might arise from this situation in the creation of new criminal offences if Clause 2 remains. We have seen new criminal offences created by SIs produced by the Government. I know that the noble and learned Lord, Lord Judge, will speak later; I am sure that he will emphasise this very significantly.

Put simply, the Constitution Committee thinks it wrong that international agreements should be dealt with by the Government through secondary legislation. I certainly hope that either the Government will think again about this or that this clause can be taken out on Report. I share the concerns expressed by my noble and learned friend Lord Falconer, my noble friend Lord Adonis and others about the procedure whereby we cannot vote at this time and express our opinion

properly. However, I urge the Government to consider absolutely all that has been said today and realise that it is not good for parliamentary democracy and accountability for Clause 2 to remain part of the Bill.

6.15 pm

Lord Judge (CB): During the rehearsal for this afternoon, I was asked to say my piece, and I used two words. I said, "Henry VIII". Just in case it was not apparent to anybody who heard me say that,I was trying to convey, as I did on 17 March, when the rather claustrophobic shades of the pandemic were closing in on us, that the Bill unnecessarily invests excessive power in the Executive and does so by secondary—

The Deputy Chairman of Committees: My Lords, the Committee is having some problem in hearing the noble and learned Lord, Lord Judge, and I wonder whether his connection is stable.

Lord Judge: Shall I start again?

The Deputy Chairman of Committees: Perhaps start again, or perhaps go at least two sentences back.

Lord Judge: I will try again. On Henry VIII, I was trying to convey that the Bill unnecessarily invests excessive powers—

The Deputy Chairman of Committees: Lord Judge, I am afraid that there is a problem with your connection. I suggest that we move to the next speaker and hope to come back to the noble and learned Lord at the end of the list, by which time I hope his connection will be better. If that is acceptable, I ask the broadcasters to please unmute the noble and learned Lord, Lord Goldsmith.

Lord Goldsmith (Lab): My Lords, I was looking forward to hearing the noble and learned Lord, Lord Judge, and saying that I agree entirely with what he said. I still imagine that I will agree with him, even if he has to come in a little later in the debate.

I start by declaring two interests. The first is as a practising lawyer whose practice includes international, commercial and public law cases, so some of the things discussed today affect the practice that I carry on. The second, and more important for present purposes, is that I am the recently appointed chairman of your Lordships' EU Sub-Committee on International Agreements. It is in that capacity that I put my name forward to speak today.

My focus is on Clause 2. I have not spoken in any of the other debates that have taken place but, for all the reasons powerfully advanced by my noble and learned friend Lord Falconer of Thoroton, my noble friend Lady Taylor of Bolton and the noble Lord, Lord Pannick —and in the future, no doubt, by the noble and learned Lord, Lord Judge—I see this as a very unusual and constitutionally unprecedented thing. I could not improve on the speeches made already, including those of the noble and learned Lord, Lord Mance, in an earlier debate, and the noble Lord, Lord Anderson of Ipswich.

However, I want to deal with one aspect in my capacity as chairman of the EU International Agreements Sub-Committee. It has authorised me to write to my noble friend Lady Taylor expressing its agreement with the conclusion that the Constitution Committee had reached in its report and concurring with its opinion that the clause, if it goes through, would reduce parliamentary scrutiny of international agreements inappropriately.

It is not an answer, as my noble and learned friend Lord Falconer has rightly said, to say that this is dealing purely with technical things. I know from experience that, although they may be technical, they are matters of great moment and matters of great importance both to the people who are making agreements and to this country. It is common for lawyers to be asked to advise which law should be put into an agreement or which law should govern any disputes that have to be dealt with, and the Bill would affect that.

As I understand it, two principal answers have been given about why the Government say this is appropriate. One is that all agreements will have been subject to parliamentary scrutiny, and that is the bit on which I particularly want to focus. The problem with that is that, as the Constitution Committee said,

"current mechanisms available to Parliament to scrutinise treaties through CRAG are limited and flawed".

That is particularly so because of the gaps in the CRaG coverage—some of them have been mentioned today, such as model law—and the timing of CRaG means that an agreement will have been concluded by the time, strictly speaking, that the CRaG processes come into effect.

I shall quote one paragraph, paragraph 19, from the Constitution Committee's report on CRaG, *Parliamentary Scrutiny of Treaties*. Professor David Howarth from the University of Cambridge observed:

"From the Whitehall point of view, everything is perfect. The whole process is under the control of Ministers. Parliament does not really get a look-in until after signature and, even after signature, the CRAG processes are very difficult for anyone to operate, especially in the Commons where the Government controls the agenda."

That is the problem with CRaG.

The committee which I am honoured to chair may be an important part of the response to that lack of scrutinising ability. We are only in the foothills of our work, and we do not yet know how well this will work. Quite a lot will depend on how the Government engage with us and with Parliament more generally. I hope that they will wholeheartedly engage not only once an agreement has been concluded but at earlier stages. I know there is some disappointment already that, for example, the amendments made by this House to the previous Trade Bill have not found a place in the current incarnation of the Trade Bill.

Some assurances have been given in the context of the conclusion of trade agreements. Dr Fox made some important statements about the consultation and engagement that will take place. In its paper *Public Consultation on Trade Negotiations with the United States*, the DIT repeated the assurances that it gave. For example, paragraph 39 of that report repeats commitments made in its earlier paper, including,

"confirmation that at the start of negotiations, the Government will publish its Outline Approach, which will include our negotiating

[LORD GOLDSMITH]
objectives, and an accompanying Scoping Assessment, setting out the potential economic impacts of any agreement."

The second argument perhaps put forward is that the issue will be only yes or no and therefore the affirmative procedure, as proposed in the Bill, will be enough. I am not persuaded by that argument. It will often not be a question of yes or no. For example, there are treaties which contain options for the member states, such as powers to derogate from particular provisions. Under this binary approach to approval or engagement by Parliament, how will those treaties be considered? Or there may be methods of implementation which are available under the agreement. But more fundamental is the fact that if there is a power to amend that could strengthen the hand of the Government in negotiations, and there is some evidence that in some countries where scrutiny is not limited to yes or no, that is the case.

It seems inevitable that unless the Government drop this, as many noble Lords are urging them to do, this will come back on Report. If in doing so, the Government intend to rely upon the argument about the effect of parliamentary scrutiny under CRaG, they will need to give a very clear explanation of how they will engage with Parliament and the EU International Agreements Sub-Committee so that we can see the reality of what parliamentary scrutiny of the negotiation and conclusion of agreements will be. I look forward to those explanations being given, and in the meantime I support the amendment.

Baroness Jones of Moulsecoomb (GP): My Lords, like the noble Baroness, Lady Taylor, and the noble Lord, Lord Foulkes, I am not a lawyer, but I care about democracy and I care very much that if the Government make promises, they should actually deliver on them. Clause 2 is a case of the Government reneging on promises made only last year. I voice my concern about Clause 2, which would allow Ministers to subjugate our national law to international agreements and the jurisdiction of foreign courts, with minimal parliamentary scrutiny from people such as noble Lords, who actually know what they are talking about.

Last year, the Government promised us that we would take back control of our laws and our courts; there was no caveat that we would then delegate our laws to international organisations with nothing more than a tick-box exercise by Parliament. The clause gives far too much power to international trade organisations and allows model laws to be imposed on us at the whim of a trade Minister.

I am also concerned that this measure would be better addressed in the Trade Bill, so that we could develop a comprehensive and coherent system of scrutiny for agreements relating to international trade. Otherwise, we end up with different scrutiny arrangements for trade agreements and the private international law agreements that might go alongside them. Will the Minister please explain how this clause fits with the Government's promise of Parliament taking back control of our laws and courts? I look forward to Report and the vote that I am positive will happen.

Lord Thomas of Gresford: Two questions arise when laws are made by secondary legislation: is there democratic legitimacy and has there been proper scrutiny? If private international law raised simply technical issues, that might be less important. But as has been said so often today, private international law raises a wide of range of matters; in particular, family law issues, where basic human rights are frequently involved.

On parliamentary scrutiny, the Minister referred to the ample opportunity for debate in the affirmative procedure. We all know about the affirmative procedure. It is a yes/no question, as the noble and learned Lord, Lord Goldsmith, pointed out a moment ago. The matters before the House cannot be amended and frequently, nothing happens as a result of any Motion that may be moved in opposition. If it is Her Majesty's Opposition's policy not to vote in favour of a fatal amendment, the whole process is completely nugatory. I have heard Labour Whips tell their members not to vote in the case of a fatal amendment simply for that reason alone. Their turn will come.

The affirmative procedure is not in any way proper parliamentary scrutiny. Scrutiny under the Constitutional Reform and Governance Act 2010 has proved to be a non-event. It has already been quoted, but I will do so again: the Constitution Committee referred to that procedure being "limited and flawed" and indeed never properly applied.

It could be said that you can have democratic legitimacy providing there is direct participation in the legislative process by means of consultation. It is very noticeable that in this Bill there is no provision for consultation. Schedule 6 is devoid of any mention of it. That gives an opportunity for those affected by legislation directly to influence its content. Consultation is not everything: it has its problems. There are issues, for example, about the quality of the consultation document. That document may not reach the hands of everybody who is affected. The choice of who gets the document will be with the Government. Organisations or individuals may not have the time or the skills to deal with it. Strong groups who are well organised may have a disproportionate influence in the consultation process. It is of course useless, unless the Government are prepared to take the views of the consultees into account.

6.30 pm

Surely, if consultation is to give democratic legitimacy and afford a measure of scrutiny before legislation comes to Parliament, the Government should produce a report of that consultation, covering all the points that have been raised and giving reasons for agreeing or disagreeing with its findings. Parliament can then assure itself that full and proper consultation has taken place. We do not have that. The super-affirmative procedure set out by the noble and learned Lord, Lord Falconer, covers these points admirably, but I shall have more to say on the question of criminal offences at a later stage.

Lord Howarth of Newport (Lab): My Lords, I agree that Clause 2 should not stand part of the Bill. Under our normal procedure for Committee in the Chamber, I would have been able to come in earlier when I saw how widely the debates on previous groups were ranging. However, with the rigidity of Virtual Proceedings, I was unable to do so.

I underscore the points made by all noble Lords, all of whom—except the Minister—have objected to Clause 2. This clause is constitutionally offensive on a variety of grounds. The issues that arise in private international law are many, varied and important. They may be complex and technical, but they are not obscure or trivial. In family disputes, questions of divorce, child custody and child maintenance can cause great anguish to all concerned. By definition, if a commercial dispute comes to court, it is of great importance to the parties involved.

What is Parliament for? Our responsibility is not simply to wave through significant new legislation, but to scrutinise it and satisfy ourselves on behalf of the people of our country that it is appropriate. That can be done only through the processes of primary legislation. It cannot be done through our procedures for regulations. Even my noble and learned friend Lord Falconer's super-affirmative procedure would not be satisfactory. The Minister has suggested that these regulation-making procedures provide ample opportunity, but they do not because there is no scope for amendment and scrutiny is still relatively perfunctory compared to the lengthy process of primary legislation.

Hitherto, new private international law has been incorporated into our domestic law by way of primary legislation. The Minister disputed that, but he was unable to give us convincing examples of when that had not happened. What we are seeing is part of an objectionable behaviour pattern on the part of the Government. They seek to evade full parliamentary scrutiny and arrogate power to themselves to save themselves inconvenience.

The noble and learned Lord, Lord Judge, was about to discourse on the matter of Henry VIII powers—I hope he will. We see egregious Henry VIII powers in this Bill, including an open-ended power to implement any future international agreement, even if it overthrows existing primary legislation. We see the deployment of those innocent-sounding but weasel words "in connection with", "consequential" or "supplementary" legislation, which would enable this Government to smuggle in very significant legislative changes in an arbitrary fashion.

Clause 2(5)(a) and Schedule 6, concerning enforcement powers, would allow the creation of new criminal offences, the extension of existing ones or increases in the penalties applying to them. Again and again, your Lordships' House has said that is not an acceptable practice on the part of the Government when legislating. We see in Clause 2(5)(b) the Government taking a cavalier approach to questions of data protection, which are extremely sensitive and important matters in this era of surveillance capitalism and in the context of measures being taken to protect us against a pandemic.

At Clause 2(5)(c) a power to alter the regime for legal aid without scrutiny is brought in. This too is a super-sensitive policy and legal area, as we know from the history of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, in consequence of which, I am sorry to say, the Government forfeited the trust of Parliament, the people and the legal profession.

The Government's justifications for taking these open-ended, wide-ranging powers in Clause 2 are specious. They suggest that there may be an urgent need to legislate; we have had a significant discussion about the Lugano convention. The intervention by the noble and learned Lord, Lord Mance, made it very clear that, while there may be urgency for us as a country to resolve whether or not we wish to participate in the Lugano convention, that is certainly not something to be dealt with by statutory instrument. It will possibly need to be dealt with by fast-track legislation, though again we should always be wary of that. There is certainly no case for allowing it to go through under the terms of this law.

It is almost comic to see the Government plead that they will be eager to implement Hague conventions. Let me gently remind the Minister that successive Governments of this country took 63 years to legislate to implement in our domestic law the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. It did not get on to the statute book until 2017; despite endless pressure from Parliament, successive Governments refused to make time to legislate for it.

The Government make the case that, as there is little or no scope to amend international agreements, scrutiny by Parliament would be otiose. However, it is for Parliament to determine on principle whether or not to adopt important new legislation. If it decides that it is appropriate, it is again for Parliament to determine the manner in which that legislation is to be implemented in the specific circumstances of the United Kingdom—what we might refer to as the vernacular of implementation.

The Minister conceded that the Constitutional Reform and Governance Act 2010 would not permit scrutiny of model laws, but he went on to say that model laws are a very important area of law. Surely, therefore, we need something beyond the zero scrutiny that CRaG would permit. The point has just been made by the noble Lord who spoke previously that statutory instruments fail to provide the same legal certainty as primary legislation. Recourse can be had to the provisions of the Human Rights Act and it may always be possible that what is legislated by way of statutory instrument can subsequently be modified and superseded by the development of the common law.

The Minister sought to assuage the anxieties of some of us that the provisions in the Bill would ride somewhat roughshod over devolution and fail to respect the status and responsibilities of the devolved Administrations. He gave some satisfaction in what he said about Scotland, but I think no satisfaction to the noble Lord, Lord Thomas of Gresford, or me about how the provisions affect Wales. Of course, in Wales there is no provision for co-decision by Ministers in the devolved territory as there is in Scotland and Northern Ireland.

Finally, the Minister, in pleading with us to be reassured, pointed out that, up until now and for a long period, the adoption of private international laws had been a matter for European Union competence. But we have just spent four years in a political convulsion to establish the right to make our own laws in our own Parliament, accountable to our own people, and for Parliament not to be obliged to rubber-stamp obscure deals made on our behalf by people who are not accountable. We have sought in all the agonising political disputes of the last four years to re-establish not executive

[Lord Howarth of Newport]
absolutism but parliamentary governance. Having gone to all this trouble, we cannot accept the provisions of this legislation. Clause 2 should not stand part of the Bill.

Lord Hope of Craighead: My Lords, this matter has been so fully covered by the speeches already made that I have little to add other than my full support for what has been said. I hope very much that we may be able to hear from the noble and learned Lord, Lord Judge, before the Minister speaks.

I do, however, wish to emphasise two points. First, I refer to what I said in support of Amendments 7 and 8 in the name of the noble Lord, Lord Foulkes of Cumnock. The lack of clarity about whether it is the Scottish Ministers or the Secretary of State who are to exercise the powers referred to in Clause 2(1) and Clause 2 (2) is surely an indication, among others, that this Bill is seeking to do too much. The umbrella phrase "any international agreement"—I stress the word "any"—indicates that it is intended to catch a wide variety of international transactions and model laws relating to private international law. At present, with the possible exception of Lugano, we have very little idea of what they might be. It seems likely, however, that they will not be many. The pressure on Parliament, if we were to proceed by way of public Bills and not statutory instruments, would be quite limited. It is therefore hard to see why we are having to go down this road at all.

Secondly, there is no sunset clause in the Bill. I could understand it, although I would not like it, if the Bill were designed to deal only with measures that needed to be enforced before the end of the implementation period or shortly afterwards. But without such a clause, the Bill is entirely open-ended; committing all international agreements and model laws to the statutory instruments procedure, as a permanent feature of our laws whatever they may be, seems to me to be a hostage to fortune.

Lord Adonis: It is very clear that the Committee is overwhelmingly against the Government on Clause 2, although we hope that the Minister will reflect further before Report. Assuming that the Government stick to Clause 2 on Report, it is clear that the House will want to debate it further and, probably, divide on it.

I turn to the procedural issues that are raised thereby. First, although we pay tribute to the officials and the remarkable technical team who have managed our proceedings—and done so, I would say, to the efficiency limits of the technology available—our reflection on the last few hours is that it has been patchy at best. We have not been able to hear in this debate from the noble and learned Lord, Lord Judge, one of our most distinguished Members, and I could barely hear the noble and learned Lord, Lord Morris, another of our distinguished colleagues, when he was speaking earlier. I do not think we would find it acceptable in any other circumstances to proceed to a vote or a decision of the House while key Members were being silenced and were unable to participate in the debate.

The noble Lord, Lord Pannick, referred earlier to the interchange between Members, which of course is necessarily reduced when we are online, but perhaps I may also draw attention to something that has become very clear in this debate. We need to separate the ability to vote online from the process of debate that leads to votes. Clearly, we cannot have a Report stage until it is possible to have a reliable system of voting online. I hope that our colleagues on the Procedure Committee—I think that my noble friend Lord Foulkes, who is here, is one, as well as the noble and learned Lord, Lord Judge—will bring to the attention of the committee an issue that has become very clear in this debate: the big divorce between the ability to participate online, which is extremely restricted, and the engagement of the House as a whole.

6.45 pm

When we debate and make decisions in the Chamber, the House as a whole is engaged—not that every Member who votes is necessarily in the Chamber for a debate that leads to a vote, although normally quite a high proportion are—by virtue of the fact that every Member is in the House, at least while voting. They are aware of the issue and a large number of them are engaged with the subject of the debate. That is particularly important on the government side. On this occasion, only one Conservative Member besides the Minister has spoken, whereas in the Chamber quite a number would be present and able to listen to the arguments.

Therefore, if we proceed to an online vote with an exclusively online debate, we will be faced with a debate almost entirely divorced from the process of voting. Indeed, while I have been listening to the discussion, I am afraid I have allowed myself to be distracted and have looked at what is going on on Twitter. Successive online votes have taken place in the House of Commons this afternoon. One of my Labour colleagues—I shall not identify who it is—has been tweeting about how she has been able to give online interviews and indeed construct and send tweets while voting, so little engaged has she been in the subject of the votes.

Therefore, I hope that it is possible for our colleagues on the Procedure Committee to take back what I think will be the strong feeling in the Committee based on today's proceedings that it is not good enough to have just an online process of voting. We need debates to take place in the Chamber on a hybrid basis, obviously allowing people to participate from outside too, but with real interaction and engagement in the Chamber leading up to the vote so that we have the best approximation possible to proper parliamentary debate and engagement before we divide.

The Deputy Chairman of Committees:: My Lords, I am hoping to call the noble and learned Lord, Lord Morris of Aberavon, in a second, but, before doing so, I should say that after the noble and learned Lord I intend to call the noble and learned Lord, Lord Judge, whose contribution we were not able to hear earlier. I understand that his connection is now properly established. I call the noble and learned Lord, Lord Morris of Aberavon. Is he with us? I think we must assume that the noble and learned Lord, Lord Morris, will not be joining us at this time. Is the noble and learned Lord, Lord Judge, available?

Lord Judge: Can you hear me?

The Deputy Chairman of Committees: I can certainly hear you, Lord Judge.

Lord Judge: Good. Do you mind if I ask whether you heard anything that I said when I started last time?

The Deputy Chairman of Committees: In the interest of making sure that everybody hears everything that the noble and learned Lord has to say, perhaps I may suggest that he starts again from the top. I think that would be preferable to trying to start in the middle.

Lord Judge: I thank the Deputy Chairman very much. I apologise to those who have already heard me say this but, when I was tested at the rehearsal to make sure that my machine was working and I was well plugged in, my only response was "Henry VIII". It was a wonderfully short speech. Effectively, it said what I wanted to say. However, just in case anybody does not know what I meant, I was intending to convey my view of the Bill, as I did on 17 March at Second Reading, when the awful, claustrophobic shades of the pandemic were closing in on us. Having listened to the debate and read the report of the Constitution Committee, I summarised my view of the Bill by saying that it unnecessarily vests excessive power in the Executive by means of secondary, not primary, legislation. It is a very simple principle and it is wrong. At the time, I submitted to the House in what I hope was my characteristic way—understated—that it was not exactly regulation-light.

The result of reading the report and listening to today's debate—I do not wish to add to the many wonderful contributions that have been made—is that I can be less circumspect this time: this Bill is now heavy. It is overweight with regulation.

Why can we not be realistic about what the affirmative process actually does? It is not a means of controlling the Government. When, in 2015, a go was had at trying to stop a Conservative Government using Labour Government legislation to achieve £4.5 billion-worth of change to fiscal issues, it was apparently regarded as a constitutional outrage. That is us. As far as the Commons is concerned, unless something has happened very recently, it is 1979 since it rejected an affirmative resolution. That suggests that if we are honest with ourselves, the affirmative resolution process, even the super-affirmative, is not nearly as good as every Government of any colour always says it is supposed to be.

The fact of the matter, although I cannot identify a particular Henry VIII clause here save and except the usual ones about amending and getting rid of primary legislation, is that, from his underworld, Henry VIII has hacked into departmental computers. Alternatively, he has been inserted—resurrected and put into departmental computers. We must be very careful about attaching so much weight to the use of secondary legislation that might affect individuals', companies' and organisations' rights. That is really all I want to say at this stage. I will say something about the regulations relating to the creation of criminal offences, but I support the concerns that have been expressed all round. Thank you very much for helping me to get that through, Deputy Chairman.

The Deputy Chairman of Committees: We were very glad to have your contribution.

Lord Marks of Henley-on-Thames: My Lords, for some years I had the privilege of serving on the Delegated Powers and Regulatory Reform Committee under the chairmanship of my noble friend Lady Thomas of Winchester. That committee has increasingly come to stand as a crucial protector of the role of Parliament, alongside the noble and learned Lord, Lord Judge, whom I was delighted we were able to hear. The committee has acted in attempting to limit the Executive improperly taking powers for government Ministers to change the law by delegated legislation in significant ways and ways for which delegated legislation has never in the past been deemed appropriate.

The committee usually expresses itself, or certainly has until recent years, in circumspect terms and the Government have traditionally accepted its recommendations. The committee has left it to the House to implement its recommendations if the Government do not agree to do so. The clarity and decisiveness of the recommendation in paragraph 15 of the committee's report on this occasion is anything but circumspect. The conclusion speaks for itself:

> "We are of the view that clause 2 represents an inappropriate delegation of power and we recommend that it should be removed from the face of the Bill."

The committee is forcefully supported by the report of the Constitution Committee, chaired by the noble Baroness, Lady Taylor, from whom we have heard, and includes the noble Lord, Lord Pannick, from whom we have also heard. Paragraph 19 of that report contains the kernel of its conclusion:

> "We are not persuaded by the arguments the Government has made in support of this power. If the balance between the executive and Parliament is to be altered in respect of international agreements, it should be in favour of greater parliamentary scrutiny and not more executive power."

Another important point made by the Constitution Committee, mentioned by the noble and learned Lord, Lord Falconer, and the noble Lord, Lord Howarth, is that delegated legislation is amenable to judicial review so that future regulations implementing international treaties could be the subject of challenge. It is entirely right that delegated legislation, which involves an exercise of executive power of itself, should be capable of being challenged as unlawful.

However, it would be a highly undesirable consequence of the Bill if, when enacted, the lawfulness of conventions entered into by the United Kingdom Government as a matter of our domestic law could not be guaranteed to our international convention partners until such challenges were determined.

I also agree with the point made by the Constitution Committee, my noble friend Lord Thomas of Gresford and the noble and learned Lord, Lord Goldsmith, that the CraG procedure is at present inadequate and ineffective as an instrument of parliamentary scrutiny.

In the light of all that, can the Minister say whether, given the Constitution Committee's report published on 4 May, he is prepared to go away and reconsider his extremely negative response, dated 17 April, to the Delegated Powers Committee's report? I ask, because if these important committees of your Lordships' House are going to be routinely ignored by government,

[Lord Marks of Henley-on-Thames]
parliamentary democracy is entering treacherous territory, in which the conventional boundaries between executive power and parliamentary sovereignty are roughly and unceremoniously shifted by the failure of government to adhere to well-established, valuable and principled conventions.

The central point is this. As it stands, the Bill involves moving a whole area of legislation—that of implementing private international law treaties in domestic law—from Parliament to the Executive. That is a dangerous extension and an unwelcome trend—noted by the noble Baroness, Lady Taylor—in our constitutional arrangements from parliamentary democracy to government by an overmighty Executive. If it is private international law agreements this year, what might follow next year? This House has rightly sought to resist the trend, which is dangerous and must be stopped. As parliamentarians, and respecting the traditional role of this House as a guardian of the constitution, we have a responsibility to stop it.

Lord Keen of Elie: My Lords, I thank noble Lords and noble and learned Lords for their contribution to this part of the debate. Since the commencement of this Committee, the matter of whether Clause 2 should stand part of the Bill has in a sense been the elephant in the virtual Chamber—or perhaps the virtual elephant in the Chamber. I therefore do not intend to rehearse or repeat the arguments that have been made repeatedly in Committee. However, I want to make it clear that the Government regard the powers in Clause 2 as essential to achieving their objective to build up the United Kingdom's position in private international law, not only in the immediate future but in years to come.

Of course, there is one particularly pertinent example of our ambition; namely, our ambition to accede to the 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and the desire—indeed, the need—to do that before the end of the transition period. It would be gravely unfortunate if a gap was to emerge between the end of the transition period, when we continue to look to the Brussels I and IIa regime, and the application of the 2007 Lugano Convention. We are concerned that that should be avoided.

Briefly, first, we consider that the proposal in Clause 2 is not only essential but proportionate. International law agreements are generally uncontroversial and technical in nature, and the detailed content of the private international law agreements to which the Bill will apply will already be determined at the international level; they are by their very nature clear and precise in their terms.

7 pm

Secondly, I do not accept that the terms of Clause 2 are novel or unprecedented. As I sought to point out earlier, there are a number of precedents for the use of delegated powers to implement international agreements on private international law.

Thirdly, the Constitutional Reform and Governance Act 2010—the CRaG process—can be used to ensure scrutiny at the level of treaty-making law or international law. There is then the affirmative statutory procedure, where steps are taken to draw down that international law obligation into domestic law, with, I venture, sufficient scrutiny for a treaty which is not in itself amenable to amendment at the level of domestic law.

Although repeated reference was made to the employment of primary legislation to carry out this process, the noble Lord, Lord Howarth, made the telling point that successive Governments can take years to identify the time for primary legislation to bring into domestic law a treaty obligation that has been entered into. Sometimes, quite exceptionally, it can take more than 50 years. I accept that that is an exception, but it nevertheless illustrates why we seek to bring forward Clause 2 in its present form.

Listening to noble Lords, I detect an element of concern about the terms of Clause 2. It is something that I will consider before we reach Report, where a number of noble Lords have made it perfectly clear that they will want to revisit this issue and may want the opportunity to divide the House. However, at this stage, I invite noble Lords to allow Clause 2 to stand part of the Bill.

Earl of Devon (CB): I understood that I would get an opportunity to speak before the Minister rather than after him, as I have been on the list for the past few days, but I shall proceed none the less with what I was going to say. At the risk of flogging rather a dead horse at this stage, I wish to add that while I support the basic aims of the Bill, I do not support Clause 2.

Private international law and our membership of the Hague and other global jurisdiction and enforcement conventions are an essential part of our global standing and our ability to welcome and to home families from overseas. They are essential particularly to the professional and legal services markets in which we are world leaders. I note my interests in the register, and particularly my work as a dual-qualified, cross-border litigator, whose practice touches variously on this area.

I shall not speak at length because pretty much all the issues have been addressed in some detail. However, I thought that your Lordships might appreciate some stories from the front line. Unlike many of our eminent jurists in the Lords, I am currently active in this space and spent 10 years as a litigator in California, as a California-qualified litigator, in which capacity I advised often on jurisdiction clauses and dispute resolution provisions.

For the most part, the most popular forum for these was the courts of England and Wales, irrespective of the parties—typically, one of them was an American party, but we dealt with parties from all around the world. There were plenty of reasons for this, not least the English language, our time zones, our excellent legal services, our use of the common law and precedent, the independence of our judiciary, and the broad membership we have of cross-border conventions, such as those under consideration in the Bill.

Finally, and perhaps most important, is the rule of law—particularly the transparent, thorough and long-established legislative process by which our laws are passed. This is the reason that England and Wales is so often chosen as the preferred third-party forum for jurisdiction and dispute resolution clauses. That is

directly threatened by Clause 2. Indeed, by seeking to short-circuit the long-standing practice of passing treaties by primary legislation, the Government are in danger of undermining one of the most important pillars that supports the UK's pre-eminence in the provision of dispute resolution services in the global market.

I note that the US-UK trade negotiations started recently. Can the Minister give us any indication as to whether the subject of private international law has been raised within that forum? Is any pressure being brought to bear on the UK Government to align their cross-border enforcement and jurisdiction regime towards that of the US, which obviously takes a very particular line in these matters? We know, for example, that the current US Administration disfavour cross-border co-operation. I understand that in recent rounds of Hague conference negotiations, the US has become increasingly reluctant to engage. It is taking a back seat while burgeoning economies, such as China, are increasingly engaged.

Finally, before we reach Report on this crucial Bill, we must have either mastered virtual voting or returned to a normal practice. This is too important an issue to slip through at such a procedurally challenging time. I appreciate your Lordships' indulgence.

Lord Keen of Elie: As regards the UK-US negotiations, I say only that I am not in a position to comment on how far they have gone, or on whether they have engaged the issue of private international law at all.

Lord Adonis: Perhaps I may add to my earlier contribution to the Committee, since it looks as if we will vote on this issue on Report. We are all agreed that it is a hugely important constitutional issue.

The House of Commons, which has been conducting its first online votes this afternoon, has descended into complete chaos on its latest vote. I can report to the Committee that on what was, I think, the third vote it held—after its Members had had an opportunity to get to know the system—there were 22 Tory rebels, including the Chancellor of the Exchequer, Rishi Sunak, who accidentally voted the wrong way. The Deputy Speaker, Eleanor Laing, pointed out that some MPs are struggling with the new electronic voting system but, she added, there was no need to rerun the vote because there was a majority of 51 for the Government.

I will point out two things for the benefit of our colleagues on the Procedure Committee. First, there is no natural government majority in the House of Lords, so how are we to know whether people have voted the wrong way accidentally? The constitution of our country could be rewritten because people did not understand the system of voting. Secondly, although I have the highest regard for all our colleagues in the House, if Members of the House of Commons are struggling with the new electronic voting system, it is fair to say that some colleagues in our House may also struggle with that new system.

I see not just a flashing orange light but a flashing red light about moving to electronic voting at any early stage in our proceeding, and certainly on a matter as grave and serious as this. If this were to be our first vote and it descended into chaos, as in the House of Commons, nobody could say that we were not warned.

Lord Keen of Elie: My Lords, the noble Lord, Lord Adonis, has made a number of extremely telling and important points. We are clearly in a situation where we must ensure that we have either an entirely reliable voting system in the upper Chamber, or alternatively a clear and telling government majority. I suspect that it is more likely that we will seek to secure the former.

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): My Lords, I shall now put the question that Clause 2 stand part of the Bill; all microphones will be opened until I give the result. As many as are of that opinion shall say "Content".

Noble Lords: Content.

The Deputy Chairman of Committees: To the contrary, "Not content".

Noble Lords: Not content.

The Deputy Chairman of Committees: My Lords, it takes unanimity to amend the Bill. If a single voice says "Content", the clause stands part. The Contents have it.

Clause 2 agreed.

Clause 3 agreed.

Baroness Scott of Bybrook (Con): My Lords, this may be a convenient moment for the Virtual Committee to adjourn.

The Deputy Chairman of Committees: My Lords, the Virtual Committee stands adjourned.

7.12 pm

Virtual Proceeding suspended.

Arrangement of Business

Announcement

7.19 pm

The announcement was made in a Virtual Proceeding via video call.

The Deputy Speaker (Baroness Finlay of Llandaff) (CB): My Lords, the Virtual Proceedings on the Statement will now commence. Please note that it has been agreed in the usual channels to dispense with the reading of the Statement itself, and we will proceed immediately to questions from the Opposition Front Bench.

Covid-19: Business

Statement

The following Statement was made yesterday in the House of Commons.

"I would like to update the House on the Government's new Covid-19-secure workplace guidance. On 23 March, the Government announced lockdown measures and required certain businesses and venues to close. Our message to

[Baroness Finlay of Llandaff]
workers was that if you can work from home, you should work from home, and millions did. At the same time, the Government provided guidance on how those who could not do their work from home could continue to operate as safely as possible in workplaces that were not required to be closed. I want to thank the many workers in distribution centres, supermarkets, transport, construction and manufacturing across the country who have been playing their part in keeping Britain moving. I hope that the whole House recognises the constructive spirit in which employers have worked with their workers to follow this guidance.

The Prime Minister yesterday set out steps to beat the virus and restart the economy, so that we can protect jobs, restore people's livelihoods and fund the country's vital public services. To support this, we have published new Covid-19-secure guidelines, available to UK employers across eight settings that are allowed to be open, from outdoor environments and construction sites to factories and takeaways. This also includes guidance for shops that we believe may be in a position to begin a phased reopening, at the earliest, from 1 June. The Government have consulted approximately 250 stakeholders in preparing the guidance. It has been developed with input from firms, unions, industry bodies and the devolved Administrations. We have worked with Public Health England and the Health and Safety Executive to develop best practice on the safest ways of working across the economy.

As we return to work, the Government want to give employers and workers confidence that their workplaces will be safe for them to return to, because we recognise that this is an anxious time for many. We recognise that workers want to know that their employer has taken every step to ensure a safe workplace, and we recognise that employers who take steps to keep workers safe want to know that they are doing the right thing. I believe that we have reached a consensus in doing that, and I am encouraged that businesses, representative groups, workers and trade unions can get behind this guidance.

The guidance has five key points at its heart. First, people should work from home if they can. Employers should continue to take all reasonable steps to help people work from home. For those who cannot work from home and whose workplace has not been told to close, our message is clear: they should go to work. Staff should speak to their employer about when their workplace will open.

Secondly, social distancing should be maintained in the workplace wherever possible. Employers should redesign workspaces to maintain 2-metre distances between people, stagger start times, create one-way walk-throughs, open more entrances and exits, or change seating layouts in break rooms. Thirdly, where people cannot be 2 metres apart, the transmission risk should be managed. Employers should ensure that every step is taken to reduce the risk when people cannot maintain 2-metre distancing. This can include putting up barriers or screens in shared spaces, creating fixed teams of partnering to minimise the number of people in contact with one another, or keeping the activity time involved as short as possible.

Fourthly, cleaning processes should be reinforced in line with the guidance. Employers should frequently clean work areas and equipment between uses to reduce transmission, provide hand sanitiser and washing stations, and pay attention to high-contact objects like workstations, door handles and keyboards.

Fifthly, a Covid-19 risk assessment must be carried out, in consultation with workers or trade unions. In line with the current health and safety law, all employers must carry out a Covid-19 risk assessment. They should identify risks that Covid-19 creates and use the guidance published to take measures to mitigate these risks. Employers should share the results of their risk assessment with their workforce. A downloadable notice is included in the documents that employers should display in their workplaces to show their employees, customers and other visitors that they have followed the guidance. They should also consider publishing the results on their website, and we expect all employers with over 50 workers to do so.

The aim of this approach is for employers to create a collaborative working environment, building confidence and trust between employers and workers. I think the House will recognise that this is already the case across the UK, because the UK has a proud record as a leader in health and safety in the workplace. Our guidance operates within current health and safety, employment and equalities legislation, which is some of the strongest in the world, and we will continue with this approach. We will work closely with the Health and Safety Executive, which has the resources it needs to meet current demand, but of course we want to ensure that this remains the case during the Covid-19 pandemic as people return to work. So the Government are making up to an extra £14 million available for the HSE, equivalent to a 10% increase in its budget. This extra money will provide resource for additional call centre staff, inspectors and equipment if needed. In many cases, this will meet the demands of employers and employees who would like further information on how to ensure that workplaces are safe. For the extremely small minority of businesses that do not follow the rules, the HSE and local authorities will not hesitate in using their powers, including enforcement notices, to secure improvements.

The measures I have set out in respect of social distancing and cleaning are the best ways to manage the risk of transmitting Covid-19. Based on the scientific evidence, the use of PPE in the workplace is not recommended by the Government except in clinical settings and a handful of other roles stipulated by Public Health England. Of course, if a worker currently uses PPE to protect against other hazards, such as dust in an industrial setting, they must continue to use it. Workers have the option to use face coverings, which are simple cloth coverings. There are some circumstances in which wearing a face covering may be marginally beneficial as a precautionary measure. The evidence suggests that wearing a face covering does not protect you but may protect others if you are infected but have not developed symptoms. Wearing a face covering is not required by law in the workplace. If workers do choose to wear one, they should follow the workplace guidance on how to use it.

We have been guided by the scientific advice in establishing this position. Today, we provide a framework for how employers can keep workers safe in the workplace. This additional support and clarity, combined with more resource for the HSE, can give employers and workers the confidence they need to return to work safely. As we reopen new sectors of the economy, we will continue our collaborative approach when providing guidance for additional workplaces, meaning that we can provide a clear and safe route back to work for millions. I commend this Statement to the House."

The Statement was considered in a Virtual Proceeding via video call.

7.19 pm

Lord Stevenson of Balmacara (Lab): My Lords, we do not underestimate the challenges of lifting the lockdown that has been in place since 23 March 2020. It is in all our interests for it to happen safely and we recognise that there are difficult decisions confronting the Government and the businesses that have to adapt to these unprecedented circumstances.

We are pleased to note that the Government have talked widely to stakeholders, unions, industry bodies and the devolved Administrations about their plans for the removal of the lockdown. I hope that this commitment to solidarity in what has often been a contested area of public life is a harbinger of a commitment to work together on all aspects of industrial life, not just what is required to beat this pandemic.

I have three main questions for the Minister. First, surely the acid test for the five-point plan, across the eight workplace settings identified in the Statement, is whether ordinary working people who cannot work from home will have sufficient protection when they commute to and from their workplace, and in the workplace itself, from the measures announced yesterday. The Statement says:

"First, people should work from home if they can … For those who cannot work from home and whose workplace has not been told to close, our message is clear: they should go to work."

What have the Government put in place for those who have followed this instruction and returned to work? Can the Minister confirm that there is to be no new legislation for this? Absent that, existing statute and common law means that employers have a duty to assess the risk of workers being exposed to Covid-19 and to implement ways of reducing that risk. In practice, we are told that this will require changes in working practices—screens, barriers, floor markings, signage, hand sanitisers, face masks and potentially a whole range of other interventions. In larger companies the outcome of this assessment has to be shared with employees, although there may well be a case for making this mandatory for all but the smallest premises.

We accept that much of the advice published yesterday is sensible and may be effective in reducing the risk of infection, but does the Minister accept that it will take time to procure and set up, and does he have advice for employees who have serious concerns about whether their workplaces are safe now and will be during the period while the physical adaptations and changes in working practice are being undertaken? Who will decide whether workplaces are safe now and in the future? The answer seems to be the Health and Safety Executive, established under the Health and Safety at Work etc. Act 1974, and reliance on the Management of Health and Safety at Work Regulations 1992, as amended. Can the Minster confirm that this is the statutory provision that the Government are relying on and can he set out for us today the sanctions and penalties for employers who do not comply?

Secondly, can the Minister expand on the scientific advice that underpins this policy? As I understand it, the reproduction rate of the disease—the R number—is currently between 0.5 and 0.9. Given the large variation in the range given, can he explain precisely how this number has been calculated and give us a sense of the confidence limits that presumably must apply to it? More importantly, if we are going to rely on the R number, can he tell us when and how frequently information about R is going to be published and, in particular, what value of R would trigger the Government to review and possibly reverse the instruction to people to "go to work"? Is it when R is greater than 1.0? What R values will be specified before further lockdown relaxation stages can take place?

Finally, the recent ONS figures for sectoral mortality show that men working in the lowest skilled occupations had the highest rate of death involving Covid-19, with security guards having one of the highest rates. Men and women working in social care, a group that includes care workers and home carers, both had significantly raised rates of death involving Covid-19. There are also ethnicity and regional variations of significance. Does the Minister agree with me that these figures suggest that there may be a need to refine the measures recently introduced and that a case exists to go further, so that those currently carrying the highest risks of dying from Covid-19 have better protections from catching the disease in their workplace?

Lord Fox (LD): I thank the Minister for repeating the Statement, and I wholeheartedly thank his department for adding a considerable degree of clarity to the shambles that we were treated to on Sunday. In bagging the "Countryfile" slot last weekend, the Prime Minister may have notched up high ratings, but did the Government really want 27 million people to witness him waffling on about non-specifics? For people to return to work requires confidence. Employees need to know that their employer is doing the right thing, and businesses need to know what they must do to keep employees safe. The Government, particularly the Prime Minister, set the foundations for that confidence. As one businessperson said to me this week, the way this has been sprung on people is ridiculous and shows no understanding of or regard for safety at work.

When these guidelines were published, they were very helpful, and the Statement notes that they have been broadly welcomed by the working world. However, the phasing should have included the drafting process and time for companies to start risk assessments and consult their staff and workers. Only then should the Government have announced a return to work.

I turn to some specifics. The noble Lord, Lord Stevenson, has ably approached the important issue of employee rights, and I endorse his comments. To avoid duplication, I shall probe the position of

[Lord Fox]
employers more deeply. Quite rightly, the guidance does not supersede any current legal obligations relating to employers' health and safety practices. However, it is clear that coronavirus exposes businesses to additional risk beyond their experience. As the guidance states, each business will need to translate the guidelines into specific actions that it will need to take, and there are a great many variables. What is the formal process for checking that a business has translated the guidelines correctly? What constitutes an acceptable risk assessment? Should it be conducted in house or always by an independent third party? For example, can a business request an HSE audit to validate its approach? If it does, who would pay for it? In short, what constitutes sufficient due diligence?

It also seems that the complexity of supply chains has been hard to capture in the documentation. For example, a manufacturing business has many dozens of suppliers. For a tier 1 business to reopen, all those supply chain businesses have to reopen too, and they get smaller as the chain gets longer. The risk assessment process is even more onerous for smaller SMEs, so can the Minister tell us how the department will support SMEs to get back to work? For example, will the Government consider setting up a free service for SMEs to help them draw up their risk assessments? In the event that an employee falls ill and blames the company, who is liable? Have the management acted properly? What about insurance? We have seen problems with business interruption insurance. Have Her Majesty's Government spoken with the insurance industry? Are compliant employers covered by their current insurance? In the event that the worst happens, how do employers demonstrate that they have done enough to avoid prosecution?

That takes us to the Health and Safety Executive. My noble friend Lord Newby spoke of the need financially to bolster the HSE, and we welcome the extra £14 million for its budget, but does the Minister agree that this sum is piffling compared to the cuts of £100 million or so that that organisation has experienced over the past decade? In the debate yesterday, the Leader of the House was asked whether the HSE is fit for purpose, and I do not think she responded, so I will rephrase that question and break it down. By how much does the HSE need to grow to do this job? What needs to change for it to take on this extra challenge? What is the timeline? When will it be ready to do this new job, and does it have the management capacity to do it? We must remember that, under Brexit, the HSE is already taking on other new, important functions.

Finally, I heard nothing about how the manufacturing and construction sectors will be supported with testing. As it stands, businesses that are deemed critical get particular access to testing. This week's published advice talks about isolation in the event of an outbreak in manufacturing and construction firms, but what about testing? Can the Minister please acknowledge this challenge? Can he please undertake to deliver sufficient support on testing so that employees of these companies can really be kept safe? This is going to prove to be a really important issue. In the end, the Government need to do everything possible to ensure that back to work does not become back to square one.

7.29 pm

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): I thank both noble Lords for their questions, of which there were a number. I will endeavour to answer as many as possible.

On return to work, reducing pressure on the transport system is one reason we are encouraging everyone to work from home if they can. Where this is not possible, we are encouraging people to avoid rush hour to help maintain social distancing. We are also encouraging people to walk and cycle where they can and have recently announced a £250 million emergency active travel fund, the first stage of a £2 billion investment.

The noble Lord, Lord Stevenson, asked about the new legislation. I can confirm that the guidance is non-statutory and does not change the obligations relating to health and safety, employment or equalities. Currently, employers have a duty under UK law to protect the health and safety of their workers and other people who might be affected by their business. This includes considering the risks that Covid-19 represents. Currently open businesses should review their risk assessments in line with the new guidance and introduce any additional measures they consider reasonably practicable to mitigate the identified effects of the new virus.

On non-compliance, where the HSE identifies employers who are not taking action to comply with the relevant legislation and guidance that control public health risks, it can consider a range of enforcement actions. Health and safety legislation is enforced by the Health and Safety Executive, the Health and Safety Executive for Northern Ireland and local authorities. If the enforcing authority finds that an employer is not taking action to properly manage workplace risks, a range of actions are open to it, including offering specific advice and issuing enforcement notices. An enforcement notice is a legal document that requires an employer to take action as required, creates a legally binding requirement and can ultimately lead to prosecution.

The noble Lord, Lord Stevenson, asked about the R number. I will give him a scientific answer: if R is below one, on average each infected person will infect fewer than one other person. The number of new infections will fall over time. The lower the number, the faster new infections will fall. Where R is above one, the number of new infections is accelerating; the higher the number, the faster the virus spreads through the population. SAGE assessed that at the beginning of the epidemic R was between 2.7 and 3. Currently, it says that it is between 0.5 and 0.9, meaning that the number of infected people is falling. As our priority is to protect the public and save lives, we will ensure that any adjustments are compatible with the five tests. The information on R is published twice weekly on the website of the Medical Research Council Biostatistics Unit.

I think it was the noble Lord, Lord Fox, who asked me whether we are confident that the HSE and local authorities have enough resources to enforce this. Yes, we are. As I said in the Statement, we have announced an additional £14 million for the HSE for extra call centre staff, inspectors and equipment. Government

will resource local authorities as necessary, as we understand more about the workload that Covid-19 entails for them.

7.33 pm

The Deputy Speaker (Baroness Finlay of Llandaff) (CB): We now come to the 30 minutes allocated for Back-Bench questions. I ask that questions and answers be brief so that we can call the maximum number of speakers.

Baroness Verma (Con): Can my noble friend confirm that businesses in multioccupancy properties where business rates are shared among the businesses and added to the rental agreement are able to access business grants through local authorities? Many businesses I have spoken to have said that they have not been able to do that so far. If not, what is available and how quickly can they access it? Like all businesses, they are having to make adjustments for safe working, and this all comes at a cost.

Lord Callanan: I thank my noble friend for her question. We have announced a package of support to help businesses with their ongoing business costs in recognition of the disruption caused. This package includes the small business grant fund, specifically for hereditaments in England that were eligible for relief on 11 March under the small business rates relief fund. The funding is to support small and rural businesses which are ratepayers on a property, as these businesses are more likely to have ongoing fixed costs during this period. Unfortunately, businesses that were not eligible for percentage SBRR relief on 11 March are excluded.

Nevertheless, there are other new measures to provide support to those businesses, including CBILS, deferral of the next quarter of back-payments for firms until the end of June, representing a £30 billion injection into the economy, and a new fast-track finance scheme providing loans with a 100% government guarantee. In addition, there is also the bounce-back loan scheme, which will ensure that the smallest businesses can access loans in a matter of days. We are working currently with local authorities to try to make sure that this support is delivered as fast as possible.

Baroness Drake (Lab): My Lords, the Government have to transition out of lockdown through a precarious route that protects people's health, rebuilds the economy and phases down the exceptional measures. The manner of that journey and the impact on different communities is of huge national interest and requires consensus within Parliament and across the devolved and local governments, which in turn will drive greater public and business confidence. The transition out of the job retention scheme, for example, could, depending on how it is handled, trigger widespread redundancies and business closures. What further initiatives will the Government take to build and to hold a consensus with Parliament and the devolved and local governments on how these national interests can best be met? Because at points they are currently not. Can we have greater clarity on how and when they will share their plans going forward on the phasing down of current emergency financial measures and their replacement with the second-wave support package so that people can understand the consequences and plan?

Lord Callanan: The noble Baroness makes a number of good points. We are endeavouring to work with other political parties. The Opposition have been consulted on many measures; of course, the devolved Administrations are present in many of the meetings at which these decisions are taken; similarly, we regularly host conference calls with local authorities to try to communicate information as much as possible. Ultimately, she makes a very good point, and we will endeavour to proceed with the maximum consensus possible.

Lord Clement-Jones (LD): My Lords, I cannot see any reference in the guidance on working safely, or the FAQs, to the arts and entertainment sector. This is a really badly hit but massive contributor to our culture and economy. Surely, if house viewings can restart, musicians and other creative artists, many of whom are suffering real financial hardship, can be given a clear indication about when they will be able to return safely to work, rehearsal, performing and recording. If estate agencies can open for business, why not museums and galleries and certain other arts and entertainment facilities? What guidance do the Government have on this? Can the Minister pledge that creative workers, along with live performance venues, will be financially supported for as long as necessary?

Lord Callanan: The noble Lord makes a very good point. I can tell him that earlier today we announced five new ministerial-led task forces that have been set up to develop plans for how and when currently closed sectors can reopen safely following the publication of the UK's road map. This includes a DCMS-led task force considering some of the sectors he refers to: recreation and leisure, including tourism; culture; heritage; libraries and entertainment. As part of this scientific-led approach, each task force will work across government and engage with key stakeholders to ensure that the guidelines are developed and that those sectors can reopen as quickly as possible.

Baroness Falkner of Margravine (Non-Afl): Does the Minister accept that, in the social distancing measures they have given for business, the 2-metres distance is not necessarily a measure that is recommended by the World Health Organization? The WHO recommends only 1 metre, and other countries have differing metrics—1 metre, 1.5 metres and so on. Does he accept that it is fairly onerous for businesses, some of which just do not have the capacity to keep that kind of distance? Will the Government review it as practice evolves and as the rate of R starts coming down?

Lord Callanan: Of course, we are always reviewing these measures and acting on scientific advice. I think we all have to accept that that scientific advice will evolve as the knowledge of the virus increases. The noble Baroness, as she usually does, makes an important point: these are things that we keep under constant review, so that we can get the country back to work as quickly as possible.

Lord Balfe (Con): My Lords, one of the good things that has come out of this crisis has been the way in which people work together and in particular the contribution of the trade union movement to working

[Lord Balfe]
with the Government. I know that the unions welcome the positive attitude of the Government. I would like a reassurance, which I am sure that the Minister will be happy to give, that they will continue to work with the unions. As these measures wind down, of course there will be a lot of detailed points, but where responsible trade unionism and a listening Government come together, I hope that we can continue to have the good relations that we have had up until now. I welcome the Minister being able to confirm that the good relations with the trade union movement will continue.

Lord Callanan:: I am indeed happy to confirm to my noble friend that we are very happy to work with all responsible trade unions, and we included them in developing this guidance and we are happy with the many constructive contributions that we receive. We continue to work with them on developing sensible guidance for business that gives UK workers the utmost confidence that they can return to work safely. Of course, we will always consider any new, sensible suggestions.

The Deputy Speaker: Lord Hendy. Lord Hendy? We do not have Lord Hendy, so I call Lord Bilimoria.

Lord Bilimoria (CB): My Lords, we are grateful to the Government and the Chancellor for all the help for business, including the extension of the job retention scheme until October. However, the Statement on workplace guidance makes no mention of testing at all, and today it is almost two months since the director-general of the WHO said, "Test, test, test", and the Prime Minister has said that there is now a target of reaching 200,000 tests a day by the end of this month. Will the Minister tell us whether companies and businesses have access to testing for their workforces so that employees can be tested when they go to work? They can then have the confidence if they have a negative test that they can work knowing that they are healthy, and their colleagues and consumers can also have that confidence. Is testing available widely to employers and businesses now?

Lord Callanan: The noble Lord makes a very valid point. Our priority remains that testing patients to inform their clinical diagnosis is extremely important. We are also offering tests to all essential workers, including NHS and social care workers with symptoms, anyone over 65 with symptoms, anyone with symptoms whose work cannot be done from home and anyone who has symptoms of coronavirus and lives with any of those identified above. Yes, testing is extremely important. The Prime Minister has addressed that and we have a strategy that we are working towards.

Baroness Pidding (Con): At the beginning of the coronavirus crisis and the introduction of lockdown, in many communities throughout the country, especially in our villages, it is our small local businesses such as independent bakers, greengrocers and butchers who provide essential services. They have really stepped up to the challenge, often working extraordinarily long hours and having to make significant adaptations to their working practices to ensure a safe environment for both staff and customers. In the coming weeks, we hope to see people attracted back to our towns and high streets as we move towards the gradual reopening of retail outlets. That is of course hugely welcome. However, will my noble friend join me in urging the public not to forget those small community businesses that were such a lifeline, and still are, and repay them with their continued patronage?

Lord Callanan: My Lords, as always, I am very happy to join my noble friend in paying tribute to the many small community businesses up and down the country that play such an important part in our community life, and our message to them is a simple one. We will stand by them. We have announced an unprecedented range of measures to help them get through this extremely difficult and challenging period. The bounce-back loans scheme, which I am sure my noble friend is aware of, is a 100% government-backed loan scheme for small businesses. Any business will be able to borrow between £2,000 and £25,000 and have access to that cash, literally, within days. Those loans will be interest-free for the first 12 months. Businesses can apply online in a short and simple form. I totally agree with my noble friend that we need to stand by these businesses.

Lord Campbell of Pittenweem (LD): My Lords, in the present circumstances it is clear that many businesses —particularly small ones, as has been mentioned—are desperate to avoid liquidation or bankruptcy, with employees in turn equally desperate to keep their jobs. In those circumstances, how can we be confident that both will not be tempted to cut corners?

Lord Callanan: That is why we have put in place such a strong enforcement regime. We have given extra resources to the Health and Safety Executive and local authorities to help them enforce these demands. Ultimately, it is a matter of trusting in the many sensible, established companies up and down the country to do the right thing for their employees. Most companies are endeavouring to do that; it is in their interests, and that is why they are successful. We will not hesitate to take enforcement action against the small minority that do not.

Lord Dobbs (Con): My Lords, the only way we will recover is to grow our way out of this mess and create new wealth. Does my noble friend accept that the Government's overwhelming priority is to get business back to work? To do that, our firms will need as much certainty as we can possibly give them. Does he agree that the suggestions we heard in the debate yesterday that the trade deal with our friends in the EU should be delayed—perhaps by up to two years—is, frankly, delusional? How can we expect employers and employees to do their job if they do not know what the rules will be for years to come? There are no easy options, but does he not agree that endless delay is the daftest option of all?

Lord Callanan: My noble friend is tempting me to go back to my previous role on Brexit. Of course, we will approach the negotiations constructively. I am sure he will be delighted to know that our position has not changed. We will not agree to any of the EU's

demands to give up our rights as an independent state. We are committed to getting a deal by the end of the year and will not extend the transition period.

Lord Wood of Anfield (Lab): My Lords, as the Government try to navigate a gradual return to work for millions, I am sure the Minister will agree with the central importance of the need to dovetail the financial ambition of winding down the furlough scheme with the public health ambition to protect workers going back to their workplaces. In particular, I know there are worries that the Government will with one hand reduce support for furloughed workers sometime after the end of June and, with the other, demand workplace health and safety conditions that make a return to normal work impossible. I am thinking of establishments such as smaller cafés and restaurants and small entertainment venues. Can the Minister assure those businesses that the end of furloughing will be conducted in a co-ordinated, sector-specific and company-specific way, to ensure that some firms do not have a situation in which the Treasury expects a return to work while BEIS and the Health and Safety Executive make such a return impossible?

Lord Callanan: We have extended the scheme significantly to support firms through the transition out of lockdown. We are doing right by them and expect those firms to do right by their staff. As the economy gradually reopens, it is fair that firms begin to pick up some of the cost of their workers' salaries, but we will of course want to do this in a specific and phased way to make sure that these businesses can manage to survive and trade their way back to success.

The Deputy Speaker: After the noble Baroness, Lady Ritchie of Downpatrick, I will call the noble Lord, Lord Hendy. I call the noble Baroness, Lady Ritchie of Downpatrick.

Baroness Ritchie of Downpatrick (Non-Afl): My Lords, yesterday the Ulster Bank published a report showing that for the first three months of this year there was a contraction in business activity put down to coronavirus. Can the Minister describe the work that the Government, working with the Northern Ireland Executive, will now do to assist private sector businesses in Northern Ireland to survive the pandemic and to ensure that they can continue with some form of financial and economic activity?

Lord Callanan: My Lords, as the virus of course does not respect borders or boundaries, we will continue to work very closely with all the devolved Administrations, including the Northern Ireland Executive, to support consistency for employers and a four-nation approach to kick-starting the UK economy. As I set out in previous answers, we have announced a range of unprecedented measures to support the UK economy.

Lord Hendy (Lab): My Lords, each of the eight guidance notes published on Monday advises:

"Workplaces should not encourage the precautionary use of … PPE to protect against COVID-19 outside clinical settings".

That advice is surely contrary to the clear statutory duty set out in the Personal Protective Equipment at Work Regulations 1992 to provide PPE to any employee in respect of whom risk has not been eliminated by other measures. The importance of this duty is magnified in the light of the Office for National Statistics report to which my noble friend Lord Stevenson referred, which identifies various occupations at an increased risk of death from Covid-19. Will the Minister indicate whether the guidance might be reconsidered in each of these eight notes?

Lord Callanan: Where workers already wear PPE for protection against non-Covid risks such as dust, they should of course continue to wear this. In relation to Covid-19 specifically, we have worked very closely with the medical community to develop this guidance and we will of course be guided by the science so that we do not put lives at risk in future.

Lord Leigh of Hurley (Con): My Lords, when I saw that there was to be a Statement on business, I hoped it would include further guidance on the financing of business. While I congratulate the Government on their immediate and world-beating assistance to companies through debt, it is not the long-term answer. Does the Minister agree that the next step in helping businesses will be to help them repay the debt and that, to do that, they will need equity funding? First, will he tell me what steps will be taken for modest amounts of equity to be invested in SMEs? Secondly—I draw your Lordships' attention to my registered interests—can he tell me what the Government will do to help those companies that struggle not with raising money on public markets but with the costs of being on a public market, exacerbated by MiFID II and enormous regulation? This has meant that those markets are now shrinking, which will consequently make it difficult for UK plc to raise the equity it will need to flourish.

Lord Callanan: As usual, my noble friend raises very good points. I point him towards the future fund, which will be launched this month and will provide convertible loans ranging from £125,000 to £5 million to UK-based companies, subject to at least equal match funding from private investors. These convertible loans may be a suitable option for many businesses that rely on equity investment and are unable to access the CBILS. These companies will be vital in ensuring that the UK retains its world-leading position in science, innovation and technology.

Lord Blunkett (Lab): I assure the Minister that I am very supportive of trying to overcome the challenge of persuading people to go back to work without ending up with gross pollution and congestion. However, in light of the interview that the Secretary of State for Transport undertook this morning on Radio 4, what advice are the Government giving to employers who find that their staff are refused access to public transport, whose consequent late or non-arrival at work puts their jobs in jeopardy?

Lord Callanan: Of course, we want employers to be as flexible as possible and to consider, for instance, staggering arrival and departure times from work to enable people to avoid peak times wherever possible. As I said, we are also encouraging people to walk and cycle wherever they can; we recently announced

[Lord Callanan]
a £250 million emergency active travel fund to help with that. Ultimately, it will require both employees and employers to work together to take into account each other's needs and to use common sense.

Lord Bruce of Bennachie (LD): Given the decision of the devolved Administrations to maintain their guidance to stay at home and to limit the return to work, will the Government carefully monitor the path of the virus across the UK? If there is significant variation in the incidence of cases or deaths between England and the rest of the UK, will the Government revise the guidance in their documents? Can the Minister give an assurance that workers, companies and, indeed, Governments in the devolved Administration areas, or indeed anywhere in the United Kingdom, will not be penalised for maintaining a cautious approach which might prevent a second spike?

Lord Callanan: Of course, we keep these matters under constant review. It is not our intention to penalise anyone. We want to continue to work together with the devolved Administrations in all parts of our United Kingdom.

Baroness Altmann (Con): Given the costs of the commendable measures taken by the Government to protect jobs, can my noble friend the Minister tell the House whether the Government will consider raising some of the funding for the job retention schemes by issuing specially targeted pension-fund gilts, for example, which pension schemes could use to better match their liabilities, and for which they have significant funding?

Lord Callanan: My Lords, the Prime Minister has said that we will do whatever it takes to win the fight against the pandemic. My noble friend has made an interesting suggestion, which I will certainly pass on to the Treasury, but the PM has declared to businesses and workers that we will stand by them. As I have said in previous answers, we have announced an unprecedented range of support measures for businesses, such as CBILS and the bounce-back loan scheme.

The Earl of Caithness (Con): My Lords, I declare my interests as in the register. I congratulate my noble friend the Minister and the Government on the clear, detailed advice that has come out in the last 48 hours.

I would like to ask my noble friend about estate agency. Given that this poses a considerable extra burden on people, with estate agents, surveyors et cetera coming to their houses, and given that we know there have been a number of rogue agents breaking the Government's current laws, does he agree that there is an urgency to appoint a regulator of property agents with power to act against rogue agents? They now pose an extra threat to people who are in fear of this disease?

Lord Callanan: Since the lockdown restrictions were implemented in March, more than 450,000 people have been unable to progress their plans to move house. All buyers and renters will now be able to complete purchases and view properties in person, and estate agents, conveyancers and removal firms can return to work—while, of course, following the appropriate social distancing guidelines. If employees have concerns about their employers' compliance they can raise them, ultimately, with the HSE or their local authority.

Lord Dholakia (LD): My Lords, the country is well aware of the front-line contribution of our diverse communities during the present crisis. A disproportionate number have lost their lives. The Minister mentioned in the Statement that the Government consulted approximately 250 stakeholders in their preparation of the guidance notes. What consultations have taken place with key black and ethnic minority organisations? Has the Minister consulted catering organisations on their dietary requirements at the present time?

Lord Callanan: The noble Lord makes a good point. The number of ethnic minority communities that seem to be adversely affected by this virus is indeed very concerning. I can confirm that we have, of course, fulfilled our equality duties within the guidance. We have had this subject constantly at the forefront of our minds as we formulated this guidance. We have consulted widely across all business and industry.

Lord Truscott (Ind Lab): My Lords, I declare an interest as set out in the register. Does the Minister recognise that many millions of the self-employed in SMEs will not benefit from the Government's generous furlough scheme and, in many instances, cannot yet go back to work? Will the Minister at least commit the Government to extending the self-employed income support scheme until the end of October?

Lord Callanan: I thank the noble Lord for his question. As I have said in response to earlier questions, we keep these schemes under constant monitoring and assessment. We are always open to modifying or extending them if it proves necessary.

Baroness Hooper (Con): My Lords, in the international context, can my noble friend tell us what consideration is being given to helping firms and businesses whose trade depends on imports and exports? For example, is there any special advice relating to transport, particularly given the crisis in air transport? Are British embassies overseas being fully kept up to speed on all developments and requirements in this area, because this is also important and relevant to small and medium-sized enterprises?

Lord Callanan: The noble Baroness makes some very good points. In my view, it is essential that all businesses experiencing increased costs and disrupted cash flow as a result of the virus are supported. The FCO is working to monitor closely coronavirus throughout the world and we are using our diplomatic network to do our utmost to help all British companies.

Lord Flight (Con): It looks as though the most important long-term change resulting from the coronavirus crisis will be a huge increase in the number of people working from home, which will in turn have other big economic effects. The Government's five key pieces of guidance refer to working from home as only a good thing; the main territory not so far addressed is the personal tax implications of millions of people working

from home. Will the Government stick with the existing tax laws or introduce a simplified standard tax deal relating to their premises for those who work from home?

Lord Callanan: My noble friend makes a very good point. I agree that this crisis will result in a long-term increase in the number of people working from home. When an employee must work from home, for example because of the crisis, the employer can pay them a small amount per week, free from income tax and national insurance contributions, to cover additional costs such as heating and power. Alternatively, of course, they can reimburse their actual expenditure. I will certainly ensure that my noble friend's comments are passed on to the Treasury for consideration for any future tax changes.

The Deputy Speaker: My Lords, that concludes the questions on the Statement. I thank all noble Lords for their concise questions and the Minister for his concise answers. The Virtual Proceedings will now adjourn until a convenient point after 8 pm for the Urgent Question repeat.

8.02 pm

Virtual Proceeding suspended.

Arrangement of Business

Announcement

8.13 pm

The announcement was made in a Virtual Proceeding via video call.

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): My Lords, the Virtual Proceedings on the repeat of the Urgent Question will now commence. I will call the Statement and the Minister will repeat the Statement in the usual way. There will then be 10 minutes for questions, led by the Opposition Front Bench. The Minister will respond to each question in turn. I will call each Back-Bench Member on the speakers' list to ask a question and the Minister will answer. I ask noble Lords to ask brief questions and to give brief answers so that as many noble Lords as possible can be called. Each speaker's microphone will be unmuted prior to asking a question and returned to mute once their question has finished.

Covid-19: Economic Package

Statement

8.14 pm

The Statement was made in a Virtual Proceeding via video call.

The Minister of State, Cabinet Office and the Treasury (Lord Agnew of Oulton) (Con): My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer to an Urgent Question given yesterday in the other place by the Chancellor of the Exchequer. The Statement is as follows:

"Mr Speaker, the Government's economic plan is one of the most comprehensive in the world. We have provided billions of pounds of grants and loans for businesses, tens of billions of pounds of deferred taxes, income protection for millions of the self-employed, and a strengthened safety net to protect millions of the most vulnerable people. These schemes speak to my and this Conservative Government's values. We believe in the dignity of work and we are doing everything we can to protect people currently unable to work.

Yesterday, my right honourable friend the Prime Minister set out our plan for the next phase of the public health response, and today I can confirm the next stage of our job retention scheme. This scheme has been a world-leading economic intervention, supporting livelihoods and protecting futures. Seven and a half million jobs have been furloughed—jobs that we could have lost if we had not acted. Nearly 1 million businesses would have closed shop.

As we reopen the economy, we will need to support people back to work. We will do so in a measured way. I can announce that the job retention scheme will be extended for four months, until the end of October. By that point, we will have provided eight months of support to British people and businesses. Until the end of July, there will be no changes whatever, and from August to October the scheme will continue for all sectors and regions of the UK but with greater flexibility to support the transition back to work. Employers currently using the scheme will be able to bring employees back part-time. To change their incentives, we will ask employers to start sharing with the Government the cost of paying people's salaries.

Detailed guidance will follow by the end of May, but I want to assure people today of one thing that will not change: workers will, through the combined efforts of the Government and employers, continue to receive the same level of overall support as they do now, at 80% of their current salary, up to £2,500.

I am extending the scheme because I will not give up on the people who rely on it. Our message today is simple. We stood behind Britain's workers and businesses as we came into this crisis and we will stand behind them as we come through the other side."

8.17 pm

Lord Livermore (Lab): My Lords, I am grateful to the Minister for repeating the Chancellor's Statement. We welcome the extension of the job retention scheme, the additional flexibility provided and the fact that the Chancellor has listened to concerns by maintaining a level of support at 80%. Advance briefing to the media suggested that people need to be "weaned off" state support. I hope the Minister shares my concerns about the use of such language and agrees that nobody ever wanted to find themselves in this situation. The amount that firms will be asked to contribute must avoid triggering further redundancies, so could the Minister confirm when employers will be required to start making contributions, whether these contributions will be phased in and what level of contribution they will be asked to pay?

Lord Agnew of Oulton: My Lords, all the details that the noble Lord has asked about are being worked out at the moment. That is why we will not be able to announce the full details until the end of this month.

[Lord Agnew of Oulton]
However, as was set out in my right honourable friend's Statement yesterday, our overriding priority is to protect jobs in this country and to protect businesses. A balance needs to be struck to achieve those two things.

Baroness Kramer (LD): My Lords, I have just three very quick questions for the Minister. First, will the self-employment income support scheme also be extended in the same way that the furlough scheme is being extended for those who have been in employment, which is obviously a vital decision? Secondly, in the light of leaked Treasury documents today, will he confirm or deny that the Government are looking at a two-year pay freeze in the public sector to deal with what will be an extremely high deficit, estimated at £337 billion this year? Lastly, he will be aware that alternate funders are finally getting accredited to participate in the Government's Covid schemes, but many banks are now cornering the market because only they can access cheap money from the Bank of England. Will the Government level the playing field and open up the Bank of England's term funding scheme to all accredited funders and do so rapidly to limit the damage?

Lord Agnew of Oulton: My Lords, the newly announced self-employment income support scheme, which opened today, will be kept open as long as it is needed. That is what we have said all along: we will do what is needed. We need to see how successful it is and how many people it gets to. I am not aware of any advanced thinking on a pay freeze on the public sector or any other measures. As my right honourable friend said yesterday, it is too early for us to be looking at these measures. We need to get through this stage of the crisis. On the noble Baroness's third question, we have been increasing the number of lenders available on all schemes since they opened. I am sure that this will continue.

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): I remind all noble Lords to please ask brief questions.

Lord Marland (Con): My Lords, I draw attention to my various business interests listed in the House of Lords register. I start by complimenting the Chancellor and his team. I am sure all noble Lords would like to thank my noble friend the Minister for his tireless efforts throughout this horrendous crisis. The programme of support for business has been far better than that in 2008. The pressure on banks, for example, to perform has been a very good thing and the furlough scheme has been an act of near genius. I also applaud the new scheme for the self-employed, launched today, which the Minister touched on a moment ago. Perhaps he can advise noble Lords of the applications received to date.

I urge caution, however, in announcing an extension to the furlough scheme until October. That will not only cost us £100 billion but will, I am afraid, support many businesses that were ailing before this crisis. I am also aware of a number of profitable and productive businesses that will continue to use it when they have strong enough balance sheets to support their activities without government support. Will the Minister assure us that steps are being taken to prevent malpractice?

Lord Agnew of Oulton: I thank my noble friend for his supportive comments. The self-employment income support scheme opened today at 8 am, and by lunchtime we had had 110,000 applications, worth in aggregate some £360 million. HMRC has undertaken to do everything possible to get payments out within the next six working days.

On my noble friend's other point about the furlough scheme being too generous, as the Office for Budget Responsibility has said, if we do not take these sorts of measures, the cost to our country and our society will be even greater. However, we will be vigilant to ensure that the scheme is not abused.

Lord Singh of Wimbledon (CB): While the measures announced are welcome, does the Minister agree that more fine-tuning will be needed in the coming months to meet the needs of different parts of the country and different economies, for a fair and balanced recovery?

Will the Minister find ways of adding to the well-deserved clapping of hands for low-paid members of the NHS and staff in care homes with some degree of monetary reward, to emphasise how much their dedication —often at real risk to their own health—means to us all?

Lord Agnew of Oulton: I assure the noble Lord that we are aware of the regional differences that will emerge in the aftermath of this crisis. It is worth reminding the House that the furlough scheme, for example, applies across all devolved regions.

On his comments on health sector and social care workers, I add my congratulations on, and respect for, the huge amount that they have done. We cannot at this stage commit to any future payments, because, as I mentioned, we will have an enormous financial hill to climb at the end of this crisis. However, I recognise the great work that they have done.

The Lord Bishop of Durham: The extension of the JRS is extremely welcome. Here in the north-east, we have a worryingly high infection rate and among the highest average death rates per capita. Will Her Majesty's Government consider taking a regional approach to phasing out the JRS, ensuring that the economic and social needs of each region are reflected adequately in the Government's ongoing support?

Lord Agnew of Oulton: To answer the right reverend Prelate's question, what we have always done through this crisis over the past few months is take a flexible approach and respond as events confront us. If we see that different regions are suffering more than others, we will, of course, look on that as sympathetically as we can.

Baroness Neville-Rolfe (Con): Could my noble friend explain in more detail what the Chancellor meant when he said he would ask employers to share with the Government the cost of paying people's salaries under the furlough scheme from August? In spite of what he said, I hope he can give us an idea of some of the thinking going on. For many reasons, I support the aim

of weaning people off government support, but businesses need to quantify this extra cost very soon to determine their route ahead.

Lord Agnew of Oulton: In response to my noble friend, unfortunately I cannot give any more information at the moment, but businesses will be made aware within the next 10 days to two weeks.

Lord Desai (Lab): Will the Minister bear in mind that, given the prospect of higher unemployment for a long time, universal credit and other arrangements will have to be enhanced for a considerable period? Have the Government budgeted for an increase in unemployment benefit and universal credit?

Lord Agnew of Oulton: My Lords, we have improved the terms of universal credit since this crisis began by increasing payments by £20 a week. We have seen 1.6 million claims since the beginning of the crisis, and all new and existing claimants will benefit from the increased generosity of these payments.

Lord Taylor of Goss Moor (LD): Given that the Government have clearly not finalised the scheme as they cannot tell business how much they will contribute, will the Minister ensure that his colleagues take account of two figures that might cause perverse consequences? One is that individuals who need to be shielded and therefore cannot work, even if the business has work for them, are currently eligible for the furlough scheme. Clearly it is important that that continues, but it would be unreasonable and perverse if businesses found that they were financially advantaged by putting those people on statutory sick pay or even making them redundant when they cannot work. Businesses are being asked to support people in that situation, and it is important that they are fully protected on the furlough scheme cost. Similarly, there are businesses and charities that are not allowed to open by the Government and may still not be allowed to open. If they are not allowed to take people into employment, surely it is right that they should be fully covered for the cost of the furlough scheme, for the risk is that these businesses, which are bleeding money, will be forced to make people redundant.

Lord Agnew of Oulton: My Lords, my right honourable friend in his Statement yesterday extended the existing terms of the furlough scheme until the end of July. I think we will have better knowledge of the disease and our ability to contain it by then, but I take on board the noble Lord's comments and I will take them back to my colleagues in the Treasury.

The Deputy Speaker: My Lords, the time allotted for the Statement is now up. Today's Virtual Proceedings are complete and are adjourned. Good night.

Virtual Proceeding adjourned at 8.29 pm.

Volume 803
No. 57

Wednesday
13 May 2020

CONTENTS

Wednesday 13 May 2020