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PARLIAMENTARY DEBATES
(HANSARD)

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 20 May 2020

11 am

Prayers—read by the Lord Bishop of Portsmouth 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 that 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. The Virtual Proceedings on Oral Questions will now commence. I ask everyone please to keep questions and answers as brief as possible so that we can fit in as many on the list as possible.

Covid-19: Refugee Camps

Question

11.05 am

Asked by ***Lord Collins of Highbury***

To ask Her Majesty's Government what assessment they have made of the response of international institutions to the impact of COVID-19 on refugee camps.

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, I am deeply concerned about Covid-19's impact on refugees. The United Kingdom is at the forefront of the response and we have pushed to ensure that vulnerable groups, including refugees, are factored into international plans. We are working closely with international partners to provide dedicated support in refugee camps, including hand-washing stations and isolation and treatment centres. Partners are rigorously assessed before they receive funding, with robust checks and measures to ensure that they are delivering effectively.

Lord Collins of Highbury (Lab): My Lords, the head of the UN Refugee Agency warned earlier this week that Covid cases appear to be multiplying fast in Yemen. Almost 10 million people are one step away from famine and half the country's health facilities have been destroyed. Can the Minister detail what we are doing in the UN and with allies to urgently support the people of Yemen?

Lord Ahmad of Wimbledon: My Lords, the noble Lord raises a very important point. We have been at the forefront—he will be aware of the £744 million of UK aid funding which we have committed thus far to global efforts to combat the outbreak of Covid-19, split across three areas: building resilience in vulnerable countries, finding a vaccine and supporting the economic response. We are working with a raft of UN agencies, including the World Health Organization and UNICEF, as well as UNFPA and UNHCR, to support refugees specifically.

The Archbishop of Canterbury: My Lords, the Minister will be aware of the *Global Humanitarian Response Plan* published by the UN and updated this month, which emphasises

"The importance of involving and supporting local organizations … given the key role they are playing in this crisis."

In all areas where the world's 70 million displaced people gather, faith groups and especially churches are often the only remaining organisations with reach from grass roots to leaders, but they are often ignored by international and relief agencies. In many cases, shortage of money and logistics hamper food distribution. What steps are the Government taking to ensure that faith-based local groups are fully involved by all international agencies in all aspects of relief, reconciliation and moral and spiritual support?

Lord Ahmad of Wimbledon: My Lords, what the most reverend Primate said resonates with me. I am a strong believer in the role of faith groups, particularly in the response to Covid. Specifically, we have, for example, allocated £55 million to established agencies such as the International Red Cross and Red Crescent Movement, as well as £20 million to international NGOs including Christian Aid. I share with noble Lords that I shall be convening a meeting of aid agencies working within the faith sector, to see what we can do in a more co-ordinated way across the world in our response to Covid-19, which will directly include faith leaders as well.

Lord Sheikh (Con): My Lords, I commend the Government on their commitment to provide £744 million to combat Covid-19 globally. I refer to the Zaatari refugee camp in Jordan, which I have visited. It is the largest refugee camp in the Middle East, housing nearly 80,000 Syrian refugees. It is a well-run camp and several international institutions are providing help and support. Following the pandemic, there has been lockdown in the camp. Conditions are being controlled but the camp needs additional help. The UK Government have agreed to provide £55 million in aid for refugees in Jordan for a period of three years. Can my noble friend the Minister confirm that aid will be continued, and that refugees in Jordan will have a share of the £744 million?

Lord Ahmad of Wimbledon: My Lords, my noble friend is right to raise the issue of the camps—not just the Zaatari camp in Jordan, which I too have visited, but elsewhere in the world. Of course, measures such as social distancing cannot apply in those camps, so we have been applying practical measures such as hand-washing and sanitation facilities. I confirm that

[Lord Ahmad of Wimbledon]
we will continue to support refugees across the world, including in our work with the Jordanian Government to support refugees from the Syrian conflict.

The Earl of Sandwich (CB): My Lords, following the question from the noble Lord, Lord Sheikh, I know that the Minister is well aware that 5.6 million Palestinian refugees are among those most at risk. Of course, this is mainly because of congestion, so what are the Government doing to respond to the $93.4 million appeal from UNRWA—UNRWA often gets left out of this scene—to make up the shortfall left by the United States?

Lord Ahmad of Wimbledon: My Lords, of course we are aware specifically of the plight of the Palestinian refugees. The noble Earl will be aware that the United Kingdom has increased its support for UNRWA, and we continue to support that agency for the vital support it provides to Palestinian refugees.

Lord Dubs (Lab): My Lords, the Minister will be aware of the "Panorama" programme earlier this week showing the conditions in some of the Greek refugee camps. He will have seen that, for example, in Moria, social distancing is impossible: if the virus were to get into that camp it would be unstoppable. The implications would be disastrous for the people in the camp, but equally disastrous for Greece and the rest of Europe, because it would spread from that camp further afield, so it is in our interest to help them. There are very few washing facilities there, and no social distancing is possible.

Lord Ahmad of Wimbledon: My Lords, the noble Lord is quite right to raise the issue of Greece. The UK is one of the world's leading refugee resettlement states, resettling more refugees than any country in Europe. Specifically, we are offering Greece technical support to meet the challenges it currently faces and we regularly liaise with Greece on the challenges and burdens it is currently having to endure in relation to refugees within the country.

Baroness Sheehan (LD): My Lords, given that cross-border aid delivery to Syria remains the most viable option for getting vital humanitarian aid into the north-west of the country, will the Government do all they can to urge members of the UN Security Council to reinsert the Iraq-Syria crossing at Yaroubiya as a named border crossing when Resolution 2504 comes up for renewal in July?

Lord Ahmad of Wimbledon: I can assure the noble Baroness and all noble Lords of our commitment to Resolution 2504 and the need for an extension of the humanitarian corridors that currently operate in the north-west of the country.

Baroness Helic (Con): My Lords, according to UNHCR, we need to pay urgent attention to the protection of refugee, displaced and stateless women and girls during this pandemic. They are among those most at risk: doors should not be left open to abusers and no efforts should be spared to help women surviving abuse and violence. What specific steps are the UK Government taking to ensure that refugee women and girls in camps do not become victims of abuse at this time?

Lord Ahmad of Wimbledon: My noble friend is quite right to raise this issue. I recently engaged in a virtual call with Pramila Patten, the SRSG on preventing sexual violence in conflict for the UN. I will be having further discussions on this to ensure that we give maximum support to girls and women who suffer because of conflict—and the Covid crisis brings this into focus.

Baroness Coussins (CB): My Lords, will the Minister pay tribute to the work of Translators Without Borders, which DfID helps to support? Its work with Rohingya refugees in Bangladesh, for example, found that older women have very limited access to information about Covid-19. It provides support in 89 languages, has produced a multilingual glossary on Covid to help health workers and monitors social media in multiple languages to eliminate fake or inaccurate data—work that no other international organisation undertakes. Will the Minister look positively at TWB's need for more funding to leverage language technology to meet the needs of refugees?

Lord Ahmad of Wimbledon: My Lords, I fully align with the sentiments of the noble Baroness and of course I will look at all future funding requests.

Lord McConnell of Glenscorrodale (Lab): My Lords, thousands of asylum seekers, potential refugees, are now unaccounted for in Libya, following hundreds being returned to the shore and many detention camps being closed as a result of Covid-19. Will the UK actively support safe, direct humanitarian evacuation corridors out of Libya in order to ensure the protection of the most vulnerable at this most difficult time?

Lord Ahmad of Wimbledon: My Lords, the noble Lord highlights an important issue around Libya and the conflict that continues to engulf the country. We are of course working with international partners to see what we can do in-country to reach a political settlement, as well as to provide support for the vulnerable, including refugees, in the country.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed. We now come to the second Oral Question, from the noble Lord, Lord Palmer of Childs Hill.

Inheritance Tax

Question

11.16 am

Asked by ***Lord Palmer of Childs Hill***

To ask Her Majesty's Government what assessment they have made of (1) the amount of inheritance tax paid, and (2) the measures being taken to avoid paying any such tax; and what plans they have, if any, to ensure that inheritance tax is paid promptly.

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

Baroness Penn (Con): My Lords, from our latest estimates, inheritance tax receipts for 2019-20 totalled £5.1 billion. HMRC has a duty to collect the correct taxes as laid down by Parliament, and it carries out compliance checks into inheritance tax returns to ensure that customers pay the right amount. Inheritance tax is payable within six months of the date of death and must be paid before probate is granted and the assets in the deceased's estate are distributed.

Lord Palmer of Childs Hill (LD): My Lords, I thank the Minister for her reply. She refers to the UK's total annual £5 billion inheritance tax, which is paid only by the wealthier middle-class, who have less ability and wealth to avoid death duties by imaginative and creative tax plans. Virtually no IHT is paid by the very wealthy in the UK. Tax planning is sensible, tax evasion is illegal, but creative tax avoidance is also unacceptable. The Office of Tax Simplification was asked to review the tax. Can the Minister tell us about its recommendations and the Government's response to them, in particular on how to curb the creative tax industry and those who use it?

Baroness Penn: My Lords, the Government thank the Office of Tax Simplification for the work it has done; they are looking at the results of its two reports very carefully. I reassure the noble Lord that since 2011, inheritance tax and trusts have been brought into the disclosure of tax avoidance schemes—DOTAS—regime, which means that any new and innovative inheritance tax avoidance scheme involving transfers into trust must be disclosed to HMRC, and gives the Government powers to take any enforcement actions necessary.

Lord Wood of Anfield (Lab): My Lords, as the noble Lord, Lord Palmer, said, the very wealthiest are just not paying their share of inheritance tax. In 2016, estates worth £2 million to £3 million paid only 20% rather than the 40% required. Estates worth over £10 million paid on average just 10%. With Exchequer revenue to be at a premium in the years ahead, will the Government urgently examine the closure of the myriad loopholes available to the very wealthiest; for example, through the extensive use of transfers to trust?

Baroness Penn: My Lords, I point out that in 2018-19, inheritance tax receipts were at a record high, and 70% of inheritance tax comes from estates valued at £1 million or more. I believe that the noble Lord is referring to certain exemptions that come under agricultural and business property. While we recognise that there are some concerns, the policy intention behind those exemptions is to allow family farms and businesses to be passed on without having to be broken up to pay inheritance tax. We think that that is an important aim.

Baroness Bowles of Berkhamsted (LD): The APPG on Inheritance and Intergenerational Fairness has recommended replacing inheritance tax with a 10% flat rate gift tax payable on both lifetime and death transfers. Would that not be a good way of getting rid of this hated tax with its complex exemptions and avoidance, and potentially bring forward economic demand benefits?

Baroness Penn: My Lords, the Government keep the tax system under review and any changes made are taken in consideration of economic competitiveness, levelling up growth across the UK and their impact on individuals and businesses. However, I am not aware of any active consideration of the APPG's proposals.

Lord Leigh of Hurley (Con): My Lords, IHT is an iniquitous tax and the noble Lords, Lord Palmer and Lord Wood, have a point, although full disclosure of any schemes has to be made in box K of IHT 100. Will my noble friend the Minister consider taking a look at the two major loopholes? The first is the definition of "business" within BPR and the second is the exemption for non-doms of non-UK assets?

Baroness Penn: My Lords, under the definition of businesses, certain criteria must be met in order to qualify for the exemption. It is restricted to trading businesses which provide goods and services and is not available to those dealing either wholly or mainly with securities, stocks, shares or land.

Lord Holmes of Richmond (Con): Does my noble friend agree that we are well overdue for a transformation of our tax system across the piece? We need a public debate led by the Government on this. Only after that could we truly say who should pay and how they should pay it. Will she take this suggestion back to the department and then report to the House how such a public discourse could be undertaken?

Baroness Penn: Changes have been made to inheritance tax in recent years; notably, that from 2017, implementation of the residential non-rateable band, which allows families who have built up an asset, usually the family home, to pass it on to their direct descendants. As I said in a previous answer, we keep the tax system under review; for example, we have considered and continue to consider carefully reports from the Office of Tax Simplification.

Lord Livermore (Lab): My Lords, as my noble friend Lord Wood made clear, wealth inequality in the UK is even greater than income inequality. As the Government consider how to pay for the current coronavirus crisis, will the Minister commit to the principle of fairer taxation of both income and wealth to ensure that those with the broadest shoulders genuinely bear the biggest burden?

Baroness Penn: The Government are committed to a fair taxation system. We recognise that the current pandemic will have an impact on public borrowing and we will need to look at the sustainability of our public finances in the future. Our immediate focus is on providing financial support now for those who have been hit by the pandemic and on supporting jobs and livelihoods while we are in the period of social distancing and other coronavirus-related restrictions.

Baroness Ludford (LD): My Lords, I fully support IHT being paid when it should, but I also support the campaign against excessive and burdensome bereavement bureaucracy being run by the charity Cruse Bereavement Care and the *Times*. In that context, can the Minister

[Baroness Ludford]
explain and justify why HMRC obliges the completion of onerous IHT forms in certain circumstances, even if the sole beneficiary is a spouse who is exempt from paying the tax? If she cannot answer me now, will she commit to reviewing this issue?

Baroness Penn: I pay tribute to the noble Baroness for her campaigning in this area. I reassure her that the Government have recently implemented an online service for inheritance tax where excepted estates can provide assured accounts to HMRC through a simple online portal. We will continue to consider ways of making the payment of tax more simple; for example, during the pandemic we have recognised that the provision of wet signatures may not be possible so we have introduced the acceptance of e-signatures in their place.

Lord Campbell-Savours (Lab): My Lords, does not the current crisis and its impact on the wider tax take offer us the ideal opportunity to reform inheritance tax by abolishing it and treating inheritance as income under the Income Tax Acts, with an added tax-free allowance or threshold? This would increase the tax take, substantially widen the recipient base, make for a far more equitable distribution of wealth, and foster entrepreneurship on potentially a huge scale. Why not seize this opportunity while we have it?

Baroness Penn: My Lords, as I have said, we will look at the public finances and how we can put them on to a sustainable footing after this crisis, but during this crisis our focus is on getting support to households now. We have made a number of changes to the inheritance tax system recently, including the Office of Tax Simplification report, and we will continue to keep all these aspects under review.

Baroness Gardner of Parkes (Con): My Lords, Australia abolished federal inheritance tax in 1979. Following that, by 1984 all estate duties, state and federal, were removed nationally. Have the Government assessed the pros and cons of systems used by other countries in this inheritance tax issue and, if not, will they commit to doing so? These answers may cover many of the points raised by other noble Lords in this Question.

Baroness Penn: The Government often look at systems in other countries to see what can be learned from them. In the UK, the Government think that inheritance tax makes an important contribution to the Exchequer, while balancing the importance of allowing those who have worked hard and built up an asset that they want to pass on the ability to do so.

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

Covid-19: Ireland

Question

11.26 am

Asked by ***Baroness Ritchie of Downpatrick***

To ask Her Majesty's Government what discussions they have had with the government of Ireland about the development of a co-ordinated all-island approach to the lifting of COVID-19 related restrictions.

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

Viscount Younger of Leckie (Con): The UK is committed to working with the Government of Ireland on our response to the Covid-19 pandemic. There have been regular discussions of our approach, including between Ministers and officials from the UK and Irish Governments and the Northern Ireland Executive. We are determined to work together to ensure that our measures safeguard the health and well-being of UK and Irish citizens and abide by our obligations under the Belfast Good Friday agreement and the common travel area.

Baroness Ritchie of Downpatrick (Non-Afl): My Lords, Northern Ireland is now involved in a contact-tracing programme. How much better would that be if it was done on an all-Ireland basis because of the local geography, as stated this morning by Professor Bauld from the University of Edinburgh? What concerted action will the Minister take with the Irish Government as co-guarantors of the Good Friday agreement to ensure that such an all-Ireland approach to contact tracing takes places to suppress the virus and save lives?

Viscount Younger of Leckie: The noble Baroness is right in that making paths towards proper contact tracing is very important. We have very good co-operation between Northern Ireland and Ireland on this. The more rapidly we can identify those who have been in contact with those infected, the more quickly they can self-isolate and lower the R rate. I can tell the noble Baroness that much work is going on on developing one app. There are a couple of apps at the moment, and the two Governments are working closely together to look at the best way forward.

Baroness Rawlings (Con): My Lords, in discussion with Ireland on the co-ordinated approach for lifting restrictions, when we find a vaccine for Covid-19, what are Her Majesty's Government doing to prevent the anti-vaccine movement convincing people not to be vaccinated?

Viscount Younger of Leckie: Clearly this is of concern. We will use all means possible to counter any disinformation that is circulated from that quarter. The key to bringing an end to this cruel virus is to find a vaccine against it, and we will recommend that people have it. Of course, the UK Government will license a vaccine only when it is effective and safe.

Lord Singh of Wimbledon (CB): Does the Minister agree that Covid-19 has jolted us into interdependence and common concerns? Does he agree that co-operation and the development of a common strategy between Eire and Northern Ireland is necessary not only to help a smooth move out of the current lockdown but because the experience and trust gained will be invaluable in tackling economic and other areas of difference?

Viscount Younger of Leckie: The noble Lord is absolutely right. Having clear co-operation on Covid-19 is incredibly important. The UK Government, the Northern Ireland Executive and the Irish Government

share the goal of working together to ensure that we take complementary measures to safeguard the health and well-being of UK and Irish citizens.

Lord Clark of Windermere (Lab): As noble Lords are aware, between Great Britain and Ireland lies the self-governing British Crown dependency of the Isle of Man. Although its Parliament has total responsibility for Covid-19 matters, will the Minister bear in mind the island's interests in any relevant joint discussions?

Viscount Younger of Leckie: Yes, absolutely. I will take that back to the department. The Isle of Man is part of the common travel area, so we should bear in mind its interests in relation to Ireland and Northern Ireland in tackling this dreadful virus, and we do.

Lord Bruce of Bennachie (LD): Is it not imperative that the lifting of restrictions in Northern Ireland takes full account of the Province's unique position in relation to the Republic of Ireland, the United Kingdom and the common travel area? Is it not also desirable that testing and tracing practices should be closely aligned, as the noble Baroness, Lady Ritchie, has said? We should not require cross-border travellers to operate two systems—indeed, to have two different apps on their phones, as the Health Minister suggested. Is this not pursuing difference for difference's sake?

Viscount Younger of Leckie: The noble Lord is right in that, as I said earlier, we are developing an integrated test-and-trace programme. The details are rather sparse at the moment and conversations continue. It could be app, web or phone-based. I reiterate that this is a key way of helping us to work more closely together on getting out of this virus.

Lord Empey (UUP): Were the Government aware that the Republic was going to impose a 14-day quarantine period on travellers from Britain when the UK Government had decided not to impose one on travellers from the Republic? What does the Minister think of the implications of this decision for the operation of the common travel area and the free movement of people within these islands?

Viscount Younger of Leckie: The operation of the common travel area and free movement are vital. For those who fly into Ireland from outside the EU, there is a 14-day quarantine and people doing that will be advised to fill in a form so that addresses are known. People need to take responsibility, having come in. As I say, the common travel area is absolutely non-negotiable and should remain as is.

Lord Moynihan (Con): Given that there are 28 all-Ireland sports governing bodies, will the Minister seek as co-ordinated an approach as possible with the Government of Ireland for the lifting of restrictions covering sport, especially during steps three, four and five of the Northern Ireland Executive's five-step plan?

Viscount Younger of Leckie: Absolutely. My noble friend will know that Ireland has a timetable, a five-phase approach which includes the resumption of sports. Northern Ireland also has a five-point plan, which is understandably rather different and has no timetable. However, I will take his comments back and make sure that they are known.

Lord Wigley (PC): Further to the point made by the noble Lord, Lord Empey, is the Minister aware that many citizens of Northern Ireland enter Great Britain via Dublin and Holyhead? In those circumstances, if Covid testing takes place, what will be the position of Northern Ireland citizens following that route? What discussion has taken place with the Welsh, Irish and Northern Irish Governments on the issue?

Viscount Younger of Leckie: I cannot give the noble Lord specific details, but I can tell him that there are extremely close and regular links between the CMOs in all four nations. I am certain that these discussions will come up regularly. As I said, contact tracing within the four nations is incredibly important in terms of getting it right and managing it effectively.

Baroness Crawley (Lab): Can the Minister say what monitoring and follow-up has been made of the working of the memorandum of understanding signed on 7 April between the Irish Government and the First Minister of Northern Ireland so that both Governments adopt similar approaches to Covid, as many noble Lords have mentioned, and therefore assist cross-border industries?

Viscount Younger of Leckie: The noble Baroness is right that there is this memorandum of understanding. Health officials both north and south of the border are working closely together with the sole aim of making sure that there is a co-ordinated approach to tackling this virus.

Lord Alderdice (LD): Given that Covid-19 is a whole-of-government challenge, and arguably our most serious health and economic challenge since partition, have Her Majesty's Government had or requested an online meeting of the British-Irish Intergovernmental Conference? If not, why not, given the need to ensure that all levels of the two Governments are engaged in co-operating, and especially given that we have now left the EU, whose institutional meetings ensured regular intergovernmental contact between the UK and Ireland?

Viscount Younger of Leckie: I will take that point back, but the noble Lord will know that there are constantly meetings going on at different levels, not only between the UK Government but, much more to the point in relation to the subject of this Question, between Northern Ireland and Ireland. I have not mentioned the quad meetings. The Secretary of State speaks to party leaders regularly and, as I have mentioned, the CMOs speak regularly, so there are different areas. I will certainly take that point back.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed and we now come to the fourth Oral Question.

Dental Care
Question

11.37 am

Asked by ***Lord Farmer***

To ask Her Majesty's Government when they plan to permit the resumption of routine dental care.

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

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, the NHS and the Chief Dental Officer have worked hard to reopen the dental sector, with the aim of restarting routine dental care as soon as we safely can. In the meantime, over 500 urgent dental treatment centres have been set up in each NHS region, to provide urgent face-to-face care for patients.

Lord Farmer (Con): I thank the Minister for his reply. Untreated and moderate dental problems can become severe and potentially life-affecting. Infected teeth were a major cause of death in the 19th century. I note the 500 urgent dental care hubs already set up in England following strict guidelines, but can my noble friend say why the regulator cannot simply modify the existing guidelines used in the hubs to make them transferable to local dental practices?

Lord Bethell: The noble Lord is entirely right that poor dental care is extremely damaging to individual health. The current situation is one that we massively regret, but the safety of patients and dental professionals is paramount. The aerosols generated by dental drilling and other dental practices leave the threat of germs in the air in a dental practice for hours to come, which could be caught by staff or future patients. It is for that reason that we have focused the infection protocols in 500 special units that have the right kit, the right training and the right arrangements.

Lord Hunt of Kings Heath (Lab): My Lords, I declare my interest as president of the British Fluoridation Society. I recognise the work done in setting up urgent treatment centres, but they are patchy in England and many provide only for pain relief and tooth extraction. Many high street dentists are in danger of bankruptcy, because the Chancellor's schemes to help businesses have not been applied to them. Will the Minister consider setting up a programme of work with the BDA and the Chief Dental Officer to establish a national plan to get dentistry back on track and save the profession from ruin?

Lord Bethell: My Lords, I completely understand the points that the noble Lord has made. He refers to a situation that we are fully aware of, and I completely agree with his analysis. The truth is that tooth extraction avoids some of the risks that I described, but treatment in the centres is not limited to extraction and other protocols are arranged. The Chief Dental Officer is working on a dental plan, and we are liaising with colleagues in the Treasury to see what more can be done to help dental practices.

Lord Rogan (UUP): My Lords, United Kingdom dentists, too, are heroes and heroines of this pandemic. In Northern Ireland 100 dentists were sought to run emergency clinics, but more than 400 stepped forward, and dozens more have volunteered to work in care homes. A recent BDA survey warned that three-quarters of Northern Ireland's dental practices could collapse by the summer because of Covid-19. Like the noble Lord, Lord Hunt, I ask the Minister urgently to consider adopting a UK-wide approach to saving our dental sector from disaster.

Lord Bethell: The noble Lord's concerns are well understood. Practices that depend on private income are particularly affected, because the NHS has guaranteed the income to NHS practices for their NHS work. We are working on a UK-wide national plan, and it is a massive priority for the Government.

Lord Duncan of Springbank (Con): My Lords, I echo the points made by the previous speaker: £7.8 billion is spent on private dental health care, yet dental practices of this nature are among the only businesses not to receive the full business rate relief. Will the Minister commit to ensuring that they receive adequate provision, as a matter of urgency, to ensure that these practitioners do not disappear from the high street?

Lord Bethell: My Lords, I cannot make the commitment that my noble friend seeks at the Dispatch Box, but I promise to convey his thoughts to the discussions taking place between DHSC colleagues and the Treasury.

Baroness Harris of Richmond (LD): My Lords, a recent poll of around 2,000 dentists and dental professionals found that 97.5% of them supported a vote of no confidence in the leadership of the office of the Chief Dental Officer of England. What is the Government's assessment of this?

Lord Bethell: My Lords, it is not the role of the Department of Health and Social Care to have a view on the popularity of the Chief Dental Officer. All I can say is that the support he has provided for the profession is enormously appreciated, and we have a lot of confidence in his work.

The Earl of Shrewsbury (Con): My Lords, I declare an interest in that my brother-in-law is a dentist. My noble friend will be aware that many private dental practices have already sourced and stocked their requirements of PPE. Is he satisfied that when NHS dental care resumes, practitioners will have adequate supplies for dentists, their staff and their patients?

Lord Bethell: My Lords, the Government are buying billions of items of PPE and putting them into the supply chain. That supply chain includes dentists, and we are working hard to ensure that all dentists, both in

the urgent treatment centres and in other dental practices that may reopen in the short term, have exactly what they need.

Lord Low of Dalston (CB): My Lords, when will the NHS be able to look beyond the current crisis and get back to routine eye care by opticians and eye clinics, which plays such a vital part in preventing blindness?

Lord Bethell: The arrangements for eye care, similarly, are an extremely delicate matter, because the eye is a potential source of infection, and both workers and patients are at risk through work done by opticians. We are extremely keen to get back to normal, but we put the safety and care of patients and staff first.

Baroness Thornton (Lab): My question to the Minister is an amalgam of those already asked, and I want to press him on them. Everyone needs dentists to be able to survive this pandemic and to be open to do their job as soon as possible. What financial support might be given to the sector to make that happen? What steps are the Government taking to ensure that there are treatment guidelines and access to PPE?

Lord Bethell: My Lords, I completely endorse the point made by the noble Baroness, Lady Thornton. I lost a front tooth a few weeks ago and I cannot wait for the dentists to reopen because it is both uncomfortable and embarrassing. We are providing enormous financial support through NHS contracts, which we have honoured 100% through the epidemic whether or not dentists are seeing patients. However, we recognise that there is a problem with the private sector, and we are working with colleagues in the Treasury to try to find a solution.

Lord Bradshaw (LD): It is the private dental sector that is probably in most trouble, because of a lack of financial support given by the Government and the question whether private dentists have adequate access to PPE, to which the Minister has referred. Will he address those questions? What meetings have taken place with the BDA to deal with these problems?

Lord Bethell: My Lords, at present there are restrictions on private dentists opening; the guidelines are clear on that. We are putting in place provision of PPE for when those guidelines are amended to allow the reopening of dental practices. We are also giving thought to how we will get through the large backlog of dentists' work that will need to be done to catch up on those missed appointments.

Baroness Boycott (CB): It was pointed out recently by Public Health England that snack buying has gone up hugely in the past few weeks of the crisis. As Ministers know, the main reason that children go into hospital and have anaesthetics is to have all their teeth out as a result of eating sugary foods. Will the Minister guarantee that, when the crisis is over, the Government will bring the obesity Bill back to Parliament and get it through this time, because this is a tragedy for our youngsters?

Lord Bethell: The noble Baroness is entirely right. I confess to having a profound biscuit habit through the Covid epidemic which I am wrestling to get over. On a serious note, the Covid epidemic has put a spotlight on the health of the nation. There seems to be some evidence that we have suffered badly from the epidemic partly because of obesity. The Prime Minister has commented personally on this issue. It will be a priority of the Government to address this point once the epidemic is over to restore the health of the nation and to tackle obesity.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has now elapsed. I thank all who put questions and the Ministers who answered. That concludes the Virtual Proceedings on Oral Questions. The Virtual Proceedings will resume at a convenient point after 12 noon for the Private Notice Question on scientific evidence relating to the reopening of schools.

11.48 am

Virtual Proceeding suspended.

Arrangement of Business

Announcement

12.01 pm

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

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, Virtual Proceedings of the House will now resume. I remind Members that these proceedings are subject to parliamentary privilege and that what we say is available to the public both in *Hansard* and to those listening and watching. Members' microphones will be initially 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 microphones will be again set to mute.

Covid-19: Schools

Private Notice Question

12.02 pm

Asked by ***Lord Watson of Invergowrie***

To ask Her Majesty's Government what action they are taking to publish scientific evidence which (1) ensures the re-opening schools on 1 June will be safe for pupils, staff and parents, and (2) includes the impact on the (a) national, and (b) regional, reproduction rates (R number) of COVID-19.

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

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, the first two batches of SAGE papers were released on 20 March and 5 May. Further batches will be released shortly. From the week commencing 1 June, we hope to welcome back more children to early years, schools and further education, provided that the Government's five key tests justify the changes at that time.

Lord Watson of Invergowrie (Lab): My Lords, I thank the Minister for her reply, but I have to say that it is somewhat vague. This is National Thank a Teacher Day: a national campaign to record our gratitude to teachers and school support staff. This year, it also embraces the millions of parents and carers thrust into the role of temporary teachers during school closures. The Minister will have seen today that various local authorities across England are now advising schools in their area not to open. With Public Health England having said that R values vary across different regions, it is difficult to understand the logic of the Government's decision that schools should reopen nationwide on 1 June. Will the Minister reveal to noble Lords what the Government's scientific evidence says about reopening schools in communities which have an R value that is closer to 1 than the average?

Baroness Berridge: I join the noble Lord in thanking all of our teachers and draw attention to the fact that 80% of education settings are open for vulnerable children and the children of critical workers. I applaud their hard work. The R rate is not broken down regionally and is not published in that form. It is a UK-wide estimate range which is published each week. The individual modelling groups include epidemiological information on the intensive care unit rate of admissions, the death rate and the rate of hospital admissions. It is an average value that can vary across communities, but it is not published on a regional basis.

Lord Pickles (Con): My Lords, in order to assist local authorities that are reluctant to reopen schools, will my noble friend consider publishing the Government's assessment of the effects of a prolonged school lockdown on the emotional, educational and economic chances of disadvantaged children?

Baroness Berridge: My Lords, it is obvious that the good and protective factor that a school provides to children cannot be replaced. I assure my noble friend that in making this decision, consideration was given to the future education and social outcomes for children, alongside the health and epidemiological information and data. We are deeply concerned about the effect of continued school closures, particularly on disadvantaged pupils, and are looking at a range of interventions to help them catch up.

Lord Storey (LD): My Lords, did the Minister agree with the Government's Deputy Chief Scientific Adviser when she added another condition, saying that Ministers have been told that changes to lockdown would require an effective system for tracing and isolating to be in place? She went on to say that changes should be based on observed levels of infection, not a fixed date. How does this affect schools?

Baroness Berridge: When the Government announced the five tests to be satisfied to plan for reopening on 1 June, we also included the enabling programmes mentioned in the road map. This includes the contact-tracing system. Testing has been ramped up, with a view to being able to introduce a "track and trace" system. This is in accordance with the scientific advice we have.

Baroness Blower (Lab): My Lords, I refer the House to my entry in the register of interests in relation to the National Education Union. Speaking in another place on 13 May, the Secretary of State said he was happy to share all advice received from SAGE. The National Education Union has analysed the SAGE evidence and papers available on GOV.UK. Most of the evidence explicitly relating to children and education—80% of it; nine out of 11 papers—is unpublished. SAGE has not published any evidence for over a week, at a time when critical decisions are being taken, and there is no record of SAGE papers for the last month, published or unpublished. Will the Minister urge the Government to expedite the publication of all scientific advice and evidence, in particular relating to "test, track, trace and isolate", to try to build confidence among the public, parents and the education workforce in how schools could open to more children and students safely, bearing in mind that, as she said, schools are generally open for vulnerable children and the children of key workers and that teachers not in schools are at present teaching their pupils both online and through a variety of means?

Baroness Berridge: My Lords, the Secretary of State outlined that the evidence will be published. As I have said, the latest updates from SAGE have been published; the latest was on 5 May. We are committed to transparency and enabling access to the evidence on which we rely. On that evidence, Public Health England's guidance to us is that there can be a hierarchy of controls in schools, beginning with nobody symptomatic being in schools. Once those controls are in place, we can substantially reduce the risk of transmission in education settings.

Baroness Meacher (CB): My Lords, Germany closed its schools within three weeks of its first case being identified. This and its very early "test, trace and isolate" strategy appear to account for its remarkable success in controlling deaths from Covid. Does the Minister agree that schools should reopen only in areas with a capacity to test, trace and isolate absolutely fully across the community, so that if a child in a school is identified as having Covid, the school could close for 14 days, then reopen and press on with its wonderful work?

Baroness Berridge: My Lords, we are seeking to learn from the experience of other countries but this is a disease and it is affecting populations in different ways so we will be introducing a track, trace and test system in the UK that is specific to our community and to the NHS. Indeed, if any child or staff member becomes symptomatic they are to go home and isolate for seven days, and they and their families will be able to get a test. If that proves positive then, with the reduced class sizes of 15 who are not intermingling in the school, or at least not intermingling as much as possible, the disease can be contained. If there is an outbreak within a particular setting, the Public Health England local health planning scheme will be advising schools on that issue.

The Lord Bishop of Winchester: My Lords, as with many schools, Church of England schools have remained open during the lockdown for the children of key

workers and vulnerable children. Our teachers are working extremely hard to provide educational and pastoral support to our students at this time of unprecedented challenge. Can the Minister confirm whether school leaders will be granted the discretion to reopen at a pace dictated by their local circumstances and context, considering the significant mental, spiritual, physical and social impact that the current situation is having on children, especially those from the most disadvantaged and vulnerable families?

Baroness Berridge: My Lords, school leaders, teachers and support staff are indeed concerned about the education of their children and have been undertaking risk assessments in relation to whether vulnerable children are better off at home or in a school setting. We are of course aware that each school building, as well as each cohort of students, is different, so in the current plans we have enabled head teachers and school leaders to have the discretion to include a child that they view as vulnerable who might not be in the categories that the Government have outlined, and indeed it is they who will be doing the risk assessments of their buildings. We trust those professionals to do this job, relying on the guidance that we have given them. Away from the headlines, many teachers, head teachers and support staff are planning in anticipation of being able to reopen on 1 June should the five tests be satisfied.

Lord Lucas (Con): Will my noble friend confirm that the Government will issue some guidance next week on how and when boarding school pupils may safely return to school, on permitting boarding schools to quarantine themselves—that is, running quarantine facilities for pupils who are returning from overseas—and to cover the measures that are being taken to avoid visa delays for overseas pupils?

Baroness Berridge: My Lords, I have been in touch over this period directly with the head of the Boarding Schools' Association to talk about their specific issues. We will shortly be issuing guidance to them, particularly in relation to year 6 international boarders. At such a time as international travel resumes, we will of course expect them to abide by the guidance that is in place in relation to self-isolation or quarantine, depending on what is in force at that time. Obviously we will be advising them on what constitutes a household or isolation of a household for those purposes. The guidance will be out shortly.

Baroness Young of Old Scone (Lab): The Science and Technology Committee of your Lordships' House heard yesterday in its evidence session from the science community that there is not yet sufficient scientific evidence about the transmission rate of Covid-19 by children, many of whom are asymptomatic, to adults, including teachers. The reliance that the Government are putting on the test, trace and isolate system means that it must be reliable, but it rather begs the question whether they are satisfied with the scientific advice that they are getting on the infectivity of children. And why is the R number not published regionally if the test, trace and isolate system is showing that action will have to happen regionally?

Baroness Berridge: My Lords, this is a new virus and the scientific understanding of it is developing. The current understanding is that there is a high degree of confidence that the severity of the disease in children is lower and there is moderate to high confidence that the susceptibility to clinical disease of children up to the age of 11 to 13 is lower than for adults. Hence, this is forming the basis, along with Public Health England guidance on the hierarchy of controls in schools, of the plans to reopen schools in the week of 1 June, assuming that the five tests are satisfied at that time.

Lord Mann (Non-Afl): Every school can have an elected trade union health and safety workplace representative with statutory powers to carry out risk assessments. How many have done so?

Baroness Berridge: My Lords, I am not aware of how many health and safety officers have performed such risk assessments, but I will seek to obtain the information for the noble Lord. It is the responsibility of school leaders to carry out those kinds of risk assessments in the course of planning to reopen on 1 June.

Lord Hayward (Con): My Lords, I am pleased that my noble friend has emphasised the number of schools and multi-academy organisations that say they want to go back. I welcome the efforts of the teaching professions over the past few weeks where schools have remained open. However, is there a final date by which a decision has to be taken, which should apply to all local authorities, as to whether schools reopen on 1 June or some other date?

Baroness Berridge: My Lords, this two to three-week period is vital for schools to plan for reopening, but the tracking of the disease in the population will not be static during this period. My noble friend is correct that there is a notice period in the road map by which the Government will tell schools the position of the scientific data at that point.

Baroness Massey of Darwen (Lab): My Lords, of course I wish for schools to open, but I was in a meeting yesterday where I met the UN Secretary-General's special envoy on Covid-19. He emphasised that the seriousness of this virus cannot be underestimated, nor can its uncertainty. He said that we should have "a comprehensive defence everywhere". Can the Government guarantee that every school that opens will have a full operational defence plan that protects staff and children?

Baroness Berridge: My Lords, I am grateful for the noble Baroness's acknowledgement that the population is having to deal with a time of great uncertainty around the disease. The department has published detailed guidance, including a planning framework for schools to be able to reopen. If they enact the hierarchy of controls when they reopen we can substantially reduce transmission of the disease in those settings.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed. The Virtual Proceedings will now adjourn until a convenient point after 12.30 pm for the Motion in the name of the noble Lord, Lord Callanan.

12.17 pm

Virtual Proceeding suspended.

Arrangement of Business

Announcement

12.31 pm

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

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, Virtual Proceedings of the House of Lords will now resume. I remind Members that these proceedings are subject to parliamentary privilege and that 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 microphones will again be set to mute.

We now come to the Virtual Proceedings on the Motion in the name of the noble Lord, Lord Callanan. The time limit is one and a half hours.

Weights and Measures Act 1985 (Definitions of "Metre" and "Kilogram") (Amendment) Order 2020

Motion to Consider

12.32 pm

Moved by ***Lord Callanan***

That the Virtual Proceedings do consider the draft Weights and Measures Act 1985 (Definitions of "Metre" and "Kilogram") (Amendment) Order 2020.

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

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, this order was laid before the House on 16 March 2020. The purpose of this statutory instrument is to update the Weights and Measures Act 1985 with new definitions for the metre and kilogram units of measurement. I emphasise that this does not represent any change in policy; it is simply about updating the unit of measurement definitions in UK law to align with those agreed internationally. It ensures that UK legislation is in step with the rest of the world.

I emphasise that the values of the units of measurement themselves are not changing. A kilogram will weigh the same as it did before the definitions were amended and a metre length will also still be the same. Therefore, there will be no direct impact on business or consumers. Businesses will not need to change their weighing or measuring equipment and consumers will have no need to be made aware of the changes. Perhaps I may give some background for the aid of noble Lords, providing the context of the changes that have been made and the processes that sit behind them.

The new definitions have been approved by the International Bureau of Weights and Measures. Currently 102 countries, including the UK, are members or associated members of the bureau. In fact, the UK was a founding member in 1875, alongside France, India and the US, recognising, even then, the need for consistency and accuracy of measurement to support fair and effective international trade.

The UK has remained at the forefront of both legal and scientific metrology for over 140 years since the bureau was founded. The bureau's key objective,

"to … be the coordinator of the world-wide measurement system, ensuring it gives comparable and internationally accepted measurement results",

is relevant even today. It ensures that the International System of Units—also known as SI base units—is uniform and accessible for the purposes of international trade, high-technology manufacturing, human health and safety, protection of the environment, global climate studies and the basic science that underpins all of those.

An accurate and agreed standard is essential to ensure consistency in weights and measures across all these applications. For example, it is critical not only that medicines are measured accurately to ensure correct dosage, but that consumers of any goods sold based on measurement have transparency and get what they pay for. This is vital, as in the UK some £342 billion-worth of goods are sold based on the measurement of their quantity, equating to some £6.23 billion every week. In addition, £280 billion-worth of goods per year are weighed or measured at the business-to-business level.

Originally, the definitions to determine the value of a unit of measurement were based on physical standards. Historically these might have been references to parts of the human body, utensils, or amounts that animals could carry. In more recent times, the physical standards became more sophisticated. For example, until now the kilogram was defined by reference to a piece of platinum and iridium that was held in a vault near Paris. As the definitions have developed, they have moved away from physical standards, as those physical standards can deteriorate over time and become less accurate. Even the slightest dust or cleaning can lead to deterioration of the metal and affect accuracy.

Until now, the kilogram was the only remaining definition based on a physical standard. Following decades of discussion, scientific research and testing, the new definitions for seven base units of measurement were agreed and recognised by the International Bureau of Weights and Measures in November 2018. The new definitions were deemed by the bureau to come into effect on 20 May 2019. Under the EU withdrawal agreement, we are proposing to implement the definition changes on the same date as member states of the EU: 13 June this year.

The seven base units of measurement with these new definitions are the metre, kilogram, ampere, second, candela, mole and kelvin. The definitions that we are concerned with today are those of the metre and kilogram. The new definitions are based on a set of seven defining constants, drawn from the fundamental constants of physics and other constants of nature, from which the definitions of the seven base units are

deduced. For example, the value of a kilogram can now be determined from Planck's constant, which remains accurate under all circumstances. It is interesting to note that the redefinition of the kilogram was made possible using technology developed here in the UK. The UK's National Physical Laboratory, one of the leading national metrology institutes in the world, played a key part in the redefinition of the kilogram. This change ensures that unit of measurement definitions are scientifically robust and accessible to all globally. It also ensures uniformity and accuracy and will stand the test of time, because no dust or cleaning will affect them.

For the UK to stay in step with the rest of the world and meet our obligations under the withdrawal agreement, we have taken steps to amend our legislation. In September 2019, regulations amended the definitions for all seven of the SI base units in the Units of Measurement Regulations 1986 and made amendments to certain definitions in the Weights and Measures Act 1985. Those amendments, in Statutory Instrument 2019/1211, were made using powers under Section 2(2) of the European Communities Act 1972 and are timed to come into force on 13 June 2020.

The Weights and Measures Act also contains the definitions of the metre and kilogram units of measurement. I have been advised that amending them requires the use of powers provided for in the Weights and Measures Act itself. That is why this new statutory instrument is before your Lordships today: to amend the Weights and Measures Act definitions of the kilogram and the metre. This will ensure that all of the UK's law is consistent and up to date, and that we are complying with the terms of the withdrawal agreement. Our intention is that this amendment should come into effect alongside the Weights and Measures Act 1985 (Amendment) and Units of Measurement Regulations 1986 (Amendment) Regulations 2019, which is SI 2019/1211. That will happen on 13 June this year.

To conclude, this statutory instrument is simply about making UK legislation consistent and up to date, reflecting the new scientific definitions that underpin the legal and scientific metrology framework. There is no policy change. This is simply a technical change to ensure that the UK is in step with the rest of the world and therefore meeting our obligations under the withdrawal agreement. I emphasise once again: there is no direct impact on businesses or consumers, and I commend this order to the House. I beg to move.

12.40 pm

Baroness Northover (LD): My Lords, I thank the Minister for his introduction, and his officials for their clear exposition of this order. The order reflects our interlinked world. It is vital that measurement is agreed across borders. As the notes explain, this is clearly essential for international trade, high-technology manufacturing and basic science.

Standard weights have been vital in coinage and valuable metals, going back to ancient times, where we can see that coins were devalued by having slices taken off them to make additional coins. As the Minister said, the International Bureau of Weights and Measures was established in 1875. By then, the industrial powers of Germany and the United States needed increasing standardisation, as the chemical and pharmaceutical industry was developing. Medicinal pills, with which we are so familiar, were introduced so that doses could be standardised. We can see the economic damage of the lack of such agreement even today in Africa. Rail lines in one country, formerly under one colonial ruler, meet the border of another which was formerly under another colonial power, and the gauges do not match. Colonial powers were looking to bring goods to the ports and out to them. They were not concerned about infra-African trade, and that disadvantage remains.

As science and industry develops—for example, in nanotechnology—measurements need to be further refined and standardised. This would certainly not be a time to hanker after some ancient era of Britain—or any other country—going its own way in measurement. If we are to compete and trade internationally, or even with our major partners in the EU, and in the science, we need to ensure that we are in line with international, tighter and more precise definitions. In the future, we will not be able to rely on EU mechanisms for checking this; we will need to build capacity to do so ourselves. Can the Minister assure me that we will do so?

As the Explanatory Note says, there is no reason to review this decision, as it is putting us in line with international practice. What will be needed is a watchful eye on whether we need to take action if further and tighter definitions come along, as they surely will. Are we also taking action to ensure that developing countries are brought into this system to facilitate their own science, health and trade, and, as we seek globally, to help tackle climate change? In the meantime, it is very nice to be able to agree with the Minister, at least in this area.

12.43 pm

Lord Hope of Craighead (CB): My Lords, I am extremely grateful to the Minister for his introduction to this measure and for the clear way in which he set out the background to what we are being asked to consider. I was attracted to this measure simply because, as a lawyer, I appreciate that weights and measures are part of our law and fundamental to a great deal of what goes on in trade and in the scientific community.

However, when I began to look at the measure and its definitions, it seems that we find ourselves in an extraordinary position. The measure sits rather uneasily with the first rule of law, which is that the law should be accessible, clear and predictable, particularly where, as we find in this case, a criminal sanction is attached to a breach of the rules that the law lays down. One has to have regard to the context set by the Act itself: the Act lays down what the units of length and mass are to be for any measurement of length and mass that is to be made in this country: the yard or metre, the pound or the kilogram, as the case may be. We are given formulae that define exactly—the word "exactly" is used—how to measure a yard by reference to a metre, and a pound by reference to a kilogram.

When we look at the schedule, we see that, among other things, "METRE" and "KILOGRAM" are set out in capital letters, to highlight their prominence in the whole system, whereas everything else is in lower case. The whole process is policed, if one can put it like that, by Section 8 of the Act, which provides that

[Lord Hope of Craighead]
no person shall use for trade any measurement which is not included in the schedule. Section 8(4) provides that a person who contravenes that provision shall be guilty of an offence which is punishable by a fine on summary conviction of up to £1,000. The word "exactly" is crucial to the whole process.

The interesting thing is that the existing definition of "metre" is sufficiently clear for the Oxford English Dictionary to publish it in full, whereas it would be very difficult to do that with what we have now. We now have a greatly expanded definition and my concern is that, if a lay man were to look at these things, he would find it frankly very difficult to understand. The definitions as they will now stand cannot by any stretch of the imagination be described as accessible or clear to members of the public. Of course, I understand the value of this for other reasons, but that is my principal concern.

Therefore, can the Minister explain in simple language how a tradesman who is trying to remain within the law should interpret these new definitions? If that is not possible, why should we adopt these since we are no longer in the EU?

12.46 pm

Lord Bourne of Aberystwyth (Con): My Lords, I thank the Minister for presenting these draft regulations with such clarity on what I believe is World Metrology Day. I strongly support these regulations, which, as he quite rightly said, do not actually change anything in a legal sense.

The Explanatory Memorandum makes it clear that these regulations are for purposes that are very much in our interest domestically in terms of furthering international trade, high-technology manufacturing, global climate studies, and, very topically, safety and security, as well as basic health and the basic science underpinning these; this is all set out in paragraph 7.3. The Government and the Minister are quite rightly committed to these aims.

I particularly commend the Government on two aspects of their approach. The first is their keeping the devolved Administrations very much in the frame. Coming in the speakers' list, as I do, between two distinguished Scots, that seems an enlightened thing to support in any event. These are reserved matters, but it represents best practice to share information. The Government are absolutely right to do that and I commend them.

Secondly, the Government are clearly working closely with the International Bureau of Weights and Measures, based in Saint-Cloud, just outside Paris. As the Minister said, we are a founder member of the organisation. Its head is a Briton, the physicist Martin Milton. Clearly, this international engagement is very much in our interest and represents global Britain at its best. I would appreciate it if the Minister could say a little more about engagement with the bureau. It is very important that we engage with international organisations going forward, and not just this one. Involving as it does 102 member states and associate states, this is very much an international body. As I understand it, this does not have a European Union dimension at all; it is truly international across the piece.

As I say, I strongly support these regulations. They do not change the law, but represent best practice and are very much in the United Kingdom's interest.

12.49 pm

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I am very pleased to follow such a noble and distinguished Welshman. I too thank the Minister for his fascinating introduction, particularly his remarks on the platinum lump near Paris used to define the kilogram. He will therefore not object when I remind him that it was also the French who created the metre in the 1790s. It was described as being one ten-millionth of the distance from the equator to the North Pole along a meridian through, of course, Paris. That is not an easy thing to calculate, but they did it. Notably, though, its introduction came about following the French Revolution, when the new French Republic wanted to throw its weight behind a new system which distanced itself from the ancien régime—interesting in today's circumstances.

Let us fast forward many years. I am old enough to remember when we changed from inches, feet and yards, ounces, pounds and tonnes to metres and kilograms, way back in the swinging sixties. However, I am a bit surprised that—given the present Prime Minister and Government, and as we are on a path to what they describe as becoming a free country—we are not being asked to revert to those units, along with our new blue passports.

Given—unfortunately in our case—the motivation to put weight behind a new regime that distances itself from the European Union, to the dismay of many, but not to me, we are still bound to meet our obligation under EU law as applied under the withdrawal agreement, as the Minister said. Positively, as a result, we are continuing to ensure that the United Kingdom keeps abreast with the European Union and worldwide developments on this instance of metrology.

The noble Lord, Lord Bourne, mentioned the devolved authorities. What consultation has taken place with them? In the case of Scotland, is a legislative consent Motion required and, if so, what is its current position in consideration? Since this movement is to ensure uniformity across the world, have these changes been discussed with our Crown dependencies and overseas territories to make sure they are also in line? I alerted the Minister to these questions, and I will be interested in his reply.

Finally, I am looking forward to the day when a metre is no longer best known as half the social distance that we are obliged to keep apart, so that we can once again meet in the Palace of Westminster and discuss these matters in a far more convenient and fruitful way.

12.52 pm

Lord Rennard (LD): My Lords, the early 1970s saw a series of changes that I began learning about while at primary school. At that time, many people were confused about how the country was taking steps towards the adoption of metric measurement, decimalisation of the currency and membership of what was then generally still known as the Common Market. There was little awareness in this country about the history

of the metric system being adopted in many other countries as older systems, some of them based on units set in Roman times, were replaced.

It was not appreciated by everyone in the UK at the time that we remained free to sell pints of beer, use road signs based on yards and speed limits set in miles. Governments did little to persuade people that metrication was not being forced upon us in the way that the noble Lord, Lord Foulkes, described French revolutionaries and the Emperor Napoleon doing some two centuries ago. This failure accounts for some of the prejudice against metric systems, even though they have been central to arrangements that allow countries to trade successfully with each other.

As my noble friend Lady Northover said, they have had an important role in public safety as well as protecting consumer interests. International standards are generally a good thing, which is why this order makes sense. The principle of international standardisation was recognised in the Weights and Measures Act 1824, but that applied only to the British Empire as we sought to impose the standard imperial system of weights and measures upon it. Parliamentary Select Committees throughout the 19th century kept recommending the general adoption of metric systems, only for progress to be blocked for fear of a public backlash.

Meanwhile, British scientists were at the forefront of the metrication movement. It was the British Association for the Advancement of Science that promoted the centimetre, gram, second system of units as a coherent method of measurement. It was the British firm Johnson Matthey that was accepted by the General Conference on Weights and Measures in 1889 to cast the international prototype metre and kilogram, although it was not until 1965 that the UK began an official programme of metrication. We have dragged our feet or, I should say, our 30 centimetres on this. Perhaps the Minister could enlighten us on progress on metrication generally, given the importance of international standards to trade.

12.55 pm

Baroness McIntosh of Pickering (Con): My Lords, I congratulate the Minister on so expertly taking us through the order today. I hope noble Lords will spare a thought for my late mother who, having been brought up in Denmark where she was used to metrication, moved to the UK in 1948, where she learned a whole new times table of feet and inches, only to have to revert back to metrication in the 1960s and 1970s.

Following on from what the noble and learned Lord, Lord Hope, said about potential criminal offences, can my noble friend explain what the role of trading standards officers in England will be when this change is applied and what resources are available to them? I cannot imagine the number, so perhaps he can say how many infringements there have been. I am conscious of the fact that trading standards officers, and local authorities generally, will have a huge draw on their resources, particularly with regard to Covid-19. It would be interesting to know how much pressure this will put on them.

My noble friend did not refer to the consultation, but the statutory instrument states that the Secretary of State consulted a range of bodies. Will my noble friend explain how wide that consultation was and what form it took?

There is clearly a different system in Northern Ireland. Can my noble friend give assurances that there are no problems on the border between Northern Ireland and the Republic of Ireland in so far as any different standards that might apply? I assume that Northern Ireland will simply apply this order separately.

What future relationship will we have with the International Bureau of Weights and Measures? We have always been there as a sovereign state. Will that continue on the same basis?

With those few remarks, I welcome the order and the opportunity I have had to learn a great deal more about the metre and the kilogram than I perhaps knew in the past.

12.58 pm

Lord Liddle (Lab): My Lords, I join others in congratulating the noble Lord, Lord Callanan, on the clarity of his exposition at the start of the debate on this very complex matter. It is also nice to see him at the virtual Dispatch Box once again. To tell the truth, I am rather missing him from all the debates that we had together on Brexit. It is a shame, in a way, that he has gone to another department—certainly his successor does not appear to wish to engage the House on the issues of our future relationship with Europe in quite the same depth that he was so nobly and willingly keen to do—so it is a pleasure to be debating something with him again today.

This is essentially a very technical measure; I thought the noble Baroness, Lady Northover, put it very well in explaining its importance. However, in the past this business of weights and measures has of course been of no small amount of political significance. I would just like to make some comments on that.

We will all remember the great brouhaha of the early 2000s about the "Metric Martyrs", the refusal of traders in some of our markets to go along with these standards. They were taken to court, and this was described by the *Daily Mail* as the EU's "bureaucratic bullying". I think it was described by many people who were opponents of the EU at the time as a classic example of the EU bullying its way into something that good Brits wanted to have nothing to do with. What makes the row about the Metric Martyrs quite poignant is that, of course, one of the people who were greatly involved in it was a man called Mr Steve Thoburn, a trader in Sunderland. It was a case involving Sunderland City Council that brought this issue to prominence, and of course Sunderland was the city that voted overwhelmingly for Brexit.

Baroness Bloomfield of Hinton Waldrist (Con): I remind the noble Lord of the speaking time limit.

Lord Liddle: Yes. I believe that the Government should now be acknowledging that this issue is nothing to do with EU sovereignty but was to do with international standards, and that it is desirable for Britain fully to follow international standards. I humbly suggest that the Minister, as a former North East MEP, writes to the *Daily Mail*, the *Daily Telegraph* and all those others—

Baroness Bloomfield of Hinton Waldrist: I suggest that the noble Lord draws his comments to a close.

Lord Liddle: Of course I will. I suggest that he writes to them and explains that the great brouhaha about EU bullying was so much nonsense.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, it may be worth remembering that the time recommended for each contribution is three minutes. On that basis, I now call the noble Lord, Lord Wei.

1.03 pm

Lord Wei (Con): My Lords, I also thank the Minister for the clarity of his opening remarks. I welcome this change. I am going to disagree with the previous speaker and some of the others, because I believe that there is an interesting nuance to this measure and its context that goes way beyond the debate around the metric system versus imperial.

In fact, it is true to say that Britain and British scientists and thinkers have played a key role in developing the metric system, with the likes of Kelvin and, more recently, Kibble, who developed some of the techniques that have led to the current definitions that we are discussing today. Undoubtedly, in future the accuracy that this change will bring will be of great benefit in many fields: astronomy, quantum physics, computing and telecommunications, as well as more generally in business.

To me, this measure starts to potentially exemplify a positive trend towards decentralising control. No longer will we need to reference a lump of metal in Paris; we can actually develop our own understanding of these measures in laboratories in Britain. I am therefore saddened that the Explanatory Note says that we have to align with Europe in order to develop these standards. We were part of developing this system, so I do not think we necessarily need to reference any other country. In my view, we need to be able to make our own decisions, especially with Brexit, sovereignly about what measures we want to move forwards, and if our choice is to align with international standards then that should be our choice.

I have a question for the Minister: until recently there were apparently only two laboratories in this country that had the instruments to do these measurements. I would be keen to know whether there are more labs that have been equipped, resourced and encouraged to make these measurements on a regular basis around the country, so that we can decentralise even away from London or wherever we take our national standard from, and local communities, local scientists and manufacturers of weight and measurement instruments can actually develop these standards in accordance with the natural norms of the Planck measurement and so on.

I welcome this move and, while I would not say that it is necessarily about internationalism, although it is good to have common standards for trade, I would encourage the Government to give us clarity in the coming months and years on how we will develop our own sovereign decision-making on this. For example, will future decisions on changes are made to this system and others fall under the purview of chief scientists?

1.05 pm

Lord Holmes of Richmond (Con): My Lords, I thank the Minister for his clear, concise and measured introduction. Weights and measures are critical to almost every element of life, not least trade. We are in an enviable position here in the UK because of the National Physical Laboratory and indeed the UK Accreditation System which is ably chaired by my noble friend Lord Lindsay, and I pay tribute to him for all his work in that area. Given that, can my noble friend the Minister say how the Government will use the advantage we have across weights and measures standards in the post-Brexit world? I believe that we have a clear competitive advantage that we can exploit. This demonstrates that weights and measures are not just about quantity; they are also about quality.

I was lucky enough to be one of the directors of the London 2012 Olympic and Paralympic Games. Whenever we were asked to give a sense of how big something was in terms of space, we would use football pitches. If it was for length or height, we used London double-decker buses. This instrument shows that we have clear, accurate and world-leading means of taking measurements, many of them stemming from our history here in the UK. It is perhaps a shame that we are not bringing these regulations into force on the anniversary of the Metre Convention, but it is excellent that this debate is being held on its anniversary, the title for which is "Measurements for global trade"—just so.

Will the Minister consider what the most difficult unit of measurement is and how he would go about measuring it? I refer to the House of Lords minute. I wish these regulations godspeed—however we choose to measure that.

1.07 pm

Lord Blencathra (Con): My Lords, I thank my noble friend the Minister for giving us the chance to speak on this important subject. Indeed, we used to speak of nothing else but the Planck and Avogrado constants in the Bishops' Bar, so let me make some mischievous points today.

The current definitions have been in effect since 1985, and they have worked perfectly. Since 1889, the IPK has been used to define the mass of the kilogram. It is a golf ball-sized object made of 90% platinum and 10% iridium and is regarded as the most perfect object to define its weight because of its stability. There is the original IPK itself, six sister copies and hundreds of national prototypes that are held by world Governments.

The excuse for this change is that the boffins say that the IPKs are unstable because their weight varies over time by up to the weight of 50 specks of dust. Their masses are calibrated as offset values. For instance, K20, the US's primary standard, originally had an official mass of 1 kilogram minus 39 micrograms in 1889. In 1948, it was down 19 micrograms, or 19 specks of dust, but the latest verification shows it to be precisely identical to its original 1889 value. These specks

of dust variations are accounted for all the time by using offset values. It is like the North Pole and magnetic variation, which everyone simply recalculates by taking the variation into account. For 130 years, there has never been a problem with any national IPK distorting the weight of a kilogram, so why change it?

The 1985 Act states that a metre is defined as:

"the length of the path travelled by light in vacuum during a time interval of 1/299 792 458 of a second."

Can my noble friend tell the House whether that simple definition has caused any errors over the past 35 years? Have there been critical measurement mistakes because the second has not been defined as

"taking the fixed numerical value of the caesium frequency Delta nu caesium, the unperturbed ground-state hyperfine transition frequency of the caesium 133 atom."

Will I have to return my tape measure to B&Q since the metre scale no longer corresponds to 1.09361 yards? Will the Minister tell us what practical differences these changes will make?

In conclusion, I would prefer my noble friend to tackle the law-breaking by many councils which are illegally introducing metric measures on road signs. The law is absolutely clear: metric units are not permitted on distance signs, whether by themselves or in conjunction with imperial units. Distances must be in miles and yards only, and that applies to all traffic signs, not just those for motorists. Yet there are countless examples of councils erecting illegal signs in metric units. Will my noble friend therefore take up this matter urgently with the Department for Transport to make sure that all councils obey the law of this country and not what they might wish it to be?

1.10 pm

Lord Fox (LD): My Lords, those who review *Hansard* tomorrow may find the noble Lord, Lord Blencathra, using words that they never expected him to utter. I think that many of your Lordships have been going back to their science, chemistry and physics lessons to prepare for this debate. As a science graduate, it is a pleasure to hear a bit of science, albeit in this context. I was interested to hear the noble Lord, Lord Holmes, questioning the Minister about the unit of time used to measure Members' speeches. I have been allocated eight minutes for this summation, and I believe that I will use less than that, which will make up for some of the other, more elastic interpretations of the minute.

I join other speakers who have commended the Minister on the clarity of his explanation. This is a challenging piece of secondary legislation, and he has done a magnificent job in explaining it, so much so that I feel that there may be a future in home schooling or suchlike for him, so I congratulate him.

During the Brexit campaign, there were many spurious reports about people campaigning or indeed being told that exit was an opportunity to return to the great British verities of pounds and ounces in our shops; the noble and learned Lord, Lord Hope, reflected a little of that in his speech. I am therefore pleased that the Minister is sticking to his metres, and I am relieved by his reassurance, which I hope will reassure the noble Lord, Lord Blencathra, that this will not change the weight of potatoes in his carrier bag.

The question on reinforcement asked by the noble and learned Lord, Lord Hope, and the noble Baroness, Lady McIntosh, is important, and the general enforcement of weights and measures is the sharp end of this Bill.

It is difficult to introduce anything that has not been said around the Bill. However, I have a point around internationalism, which the noble Lord, Lord Foulkes, and my noble friend Lady Northover, were particularly adept at introducing. The noble Lord, Lord Foulkes, made the point that the metre was originally adopted in 1799, and my noble friend Lady Northover set out the internationalism aspect. In effect, this is a parable of international co-operation, which was to a large extent European. We are dealing here of course with the metre and the kilogram, but the whole suite of SI measurements rests on a foundation of seven defining constants.

The noble Lord, Lord Wei, and the Minister alluded to the role of UK scientists. Looking back, we have the Planck constant: Max Planck was a German physicist; the Boltzmann constant: Ludwig Boltzmann was Austrian; the Avogadro constant: Amedeo Avogadro was Italian; caesium hyperfine splitting frequency—caesium was discovered by the chemist Bunsen and the physicist Kirchhoff, both of whom were German. The luminous efficacy of specified monochrome source is a harder call, but Joseph Fourier from France is an important precursor of the ability to measure that. However, the Minister and others will be pleased that when we come to the speed of light in a vacuum, I name James Maxwell, the brilliant British scientist, who first proposed light as an electromagnetic wave, as its progenitor. That leaves us with the elementary charge—the charge of a proton. Here we have to thank the American, Robert Millikan, for his famous oil drop experiment—I am sure all your Lordships remember it—which helps to measure that.

Of course, this is making a point, and the Minister is right to highlight the role of British institutions and scientists in this. However, the SI system is founded on centuries of international scientific co-operation. This is, therefore, an opportunity to speak up for international scientific co-operation. Long may it continue. These days, never has it been more needed to combat the situation we find ourselves in.

My noble friend Lord Rennard and the noble Lord, Lord Liddle, talked about the history of weights and measures. I think the history of science and co-operation is a much more important aspect. Schemes such as Erasmus and Horizon Europe are the basis on which European scientific co-operation were founded. I hope the Minister agrees that these are very important and must continue, so that we can continue to do the important things that this SI sits beneath. I also hope he shares my wish that the immigration Bill is not used to make things harder for scientists, technicians and their families to contribute to the future of science in this country.

I welcome this SI and the debate we have had and look forward to the answers the Minister can give us, particularly on the questions about enforcement. Overall, in a world in which unilateralism is seen to be the name of the game, this is a beam of multilateral light.

1.16 pm

Lord Bassam of Brighton (Lab): My Lords, it seems an amazing slice of luck that we are debating this on World Metrology Day, which—as others have noted—celebrates the signing of the Metre Convention by 17 nations, most of them European, in 1875. It sought to co-ordinate international measurements and the development of the metric system. I congratulate the Minister on the clarity of his exposition. I thought I detected an internationalist, perhaps even a European, in his tone. As other noble Lords have said, this instrument plays up the importance of international agreements, particularly across trading nations.

Neatly, the current worldwide measurement system is known as the International System of Units, or SI, and today's SI reflects revisions to this system so that, as colleagues have said, it is based on the fundamental constants of physics and other constants of nature. The seven base units, including metre and kilogram, were therefore redefined. This SI amends the Weights and Measures Act 1985 to reflect this. Despite these changes, a kilogram will still have the same mass and a metre will still be the same length, as colleagues have said. While, like others, I would like to play my part in shortening the 2-metre distance to allow people to get closer to loved ones, I am glad that we use this measurement as a way of ensuring a safe space for social distancing.

As the Minister said, the order partially implements Commission directive 2019/1258. However, perhaps he could give us some clarity on what parts of the Commission directive are not implemented and why. Does the UK want to continue reflecting the EU's metrological definitions after the transition period? We need an answer to that.

As I understand it, this order is connected with similar regulations from last year. All come into force on 13 June this year. Does the Minister know of any issues in how these regulations interact with each other? Such changes seem small in comparison with the extreme events of the moment, and rightly so, but they remain important. I was struck by the aim of the International Bureau of Weights and Measures to ensure that our measurement system is uniform and accessible worldwide for the purposes of international trade, human health and safety and, most importantly, the protection of the environment.

I have enjoyed this wide-ranging debate, particularly the contributions from the noble Lord, Lord Foulkes, and the noble Lord, Lord Fox, with his plea for internationalism. I hope the Minister can assure us that internationalism will remain at the heart of our measures on weights and measures. I support these changes.

1.20 pm

Lord Callanan: My Lords, I too thank noble Lords for their valuable contributions to what I thought was an extremely interesting, albeit short, debate. Of course, metrology is a subject that may at times seem a little remote and archaic, but it is actually of fundamental importance to all our lives: from the medical weighing of babies to the food that we eat, metrology affects us all in everything we do. As soon as humans started to trade, they needed common units: for measurements to have meaning, they must use common standards. That is why it is so important that we have agreed global standards that can ensure accuracy wherever they are used. I remind noble Lords once again of the huge volume of goods sold in the UK alone on the basis of measurement of their quantity. It is £342 billion-worth of goods, equating to £6.23 billion every week; and a further £280 billion-worth of goods per year are weighed or measured at the business-to-business level.

I shall now address some of the points raised during the debate. I start by thanking the noble Lord, Lord Liddle, for his very kind remarks: I too enjoyed sparring with him over Europe, and I am sure there will be lots of opportunity to do that in the future. I can confirm, in response to the noble Baroness, Lady Northover, that we do have capacity to build our own mechanisms now that we have left the EU, and that the Government are committed to maintaining the UK's role as a leader in international metrology and in science.

In answer to the queries raised by the noble and learned Lord, Lord Hope of Craighead, no tradesmen will have to change their practices as a result of these changes. The value of the units of measurement themselves are not changing, as I said in my introduction: a kilogram will still weigh the same as before the definitions are amended. We are adopting the new definitions to ensure that the UK remains at the forefront of metrology, which is where we want to be, and, while this does implement a European directive, which we have agreed—of course, we are obliged to do so under the withdrawal agreement—that is not the most significant aspect from our policy perspective. These changes have the support of the British science community, led by the National Physical Laboratory, and they reflect our ambition for the UK to remain a leader in international science.

My old sparring partner, the noble Lord, Lord Foulkes, raised the question of a legislative consent Motion. I am pleased to tell him that units and standards of weights and measurement are reserved in Scotland under Schedule 5 to the Scotland Act 1998, and therefore it was not necessary for any legislative consent Motion to be tabled. That said, of course we have made contact with all the devolved Administrations to inform them of the proposed changes, and no objections have been raised. I can also confirm that this order does not extend to Crown dependencies or British Overseas Territories. These are separate jurisdictions and must make their own provision for updated units of measurement.

The noble Lord, Lord Rennard, raised the question of progress on metrication. The Government recognise that many people have an attachment to the imperial system and a preference to use imperial units in their day-to-day lives. At the same time, we recognise that the majority are not familiar with imperial units and that the use of metric is a necessity for British businesses to compete in markets around the world. The system that we have in the UK takes account of both preferences—the need for both imperial and a single, comprehensive set of units of measurement—by allowing for indications, in trade use, to be provided in imperial and metric, as people so choose.

It is important that consumers can tell how much of a product they are buying so that they can easily make comparisons to identify the best deal. Being able to

compare prices and quantities is a fundamental principle of fair trade, and that is why, on the whole, today we have a single metric system of units of measurement. However, now that we have left the EU—much to the chagrin of the noble Lord, Lord Liddle—it is entirely for the UK alone to decide on any future approach to meet the needs of all British people and businesses.

My noble friend Lady McIntosh of Pickering asked about enforcement. I can confirm that trading standards' responsibilities and resources are not affected. Enforcement of the Weights and Measures Act will remain the responsibility of local authority trading standards departments.

In response to the question about consultation, statutory consultation was undertaken in accordance with the requirements of the enabling powers in the Weights and Measures Act. On 15 August 2019, the Government wrote to organisations representative of those with an interest in the changes, setting out the approach that we intended to take to update the legislation and seeking their views. They were asked to respond by 27 August 2019.

I can give my noble friend the names of some of the consultees: the National Physical Laboratory; the British Standards Institution; the UK's national accreditation body, UKAS; the Royal Society; the Royal Academy of Engineering; the Institute of Physics; the Institute of Measurement and Control; the Legal Metrology Experts Group, representing trading standards departments; and the UK Weighing Federation, representing manufacturers of weighing equipment. Discussions were also held with the NPL, and no concerns were raised by any of the stakeholders. As I said earlier, a statutory consultation was undertaken in accordance with the requirements of the enabling powers.

The statutory instrument before your Lordships will bring in, on 30 June, the changes that are needed to maintain pace with the international definitions. I close by reiterating that no policy change is involved here. Although it is important, this is simply a technical change to ensure that the UK is in step with the rest of the world. In making the change, we will also be meeting our obligations in line with the EU withdrawal agreement. A kilogram will weigh the same as before the definitions were amended and a metre will still be the same length, but now they will be based on the most up-to-date science. I commend this draft instrument to the House.

Motion agreed.

1.27 pm

Virtual Proceeding suspended.

Prisoners (Disclosure of Information About Victims) Bill

Virtual Committee

2.31 pm

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

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): My Lords, this Virtual Committee will now begin. I remind Members that these proceedings are subject to parliamentary privilege, and that 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. The Virtual Committee will operate as far as possible like a Grand Committee. A participants' list for today's proceedings has been published and is in my brief, which Members should have received. The brief also lists Members who have put their names to the amendments, or expressed an interest in speaking, on each group. I will call Members to speak in the order that they are listed. 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 press an amendment or to say "Not content", 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.

We now start with 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" if the Question is put made that clear in debate. It takes unanimity to amend the Bill in this Committee; this Committee cannot divide.

Clause 1: Murder, manslaughter or indecent images: prisoner's non-disclosure

Amendment 1

Moved by ***Lord Blencathra***

1: Clause 1, page 1, line 11, leave out "the Parole Board believes" and insert "the prisoner has been certified by two registered medical practitioners as not suffering from irreversible memory loss; and

(d) the Parole Board reasonably suspects"

Member's explanatory statement

This amendment and the next in the name of Lord Blencathra would make it mandatory for the Parole Board to reject parole applications where a prisoner refuses to say where and how they disposed of a body, and the prisoner has been medically certified as not having irreversible memory loss.

Lord Blencathra (Con): My Lords, these little amendments are straightforward—at least, in my view. If passed, they would make it mandatory for the Parole Board not to release any prisoners who refused to divulge where and how they have disposed of the bodies of their

[LORD BLENCATHRA]
victims. I have built is an exception for the minority who may have genuine and irreversible memory loss and are therefore unable to state that.

The reason for the amendments as quite simple. We all know that even when there is no criminality but a person is killed and no body is found, or someone is lost at sea, relatives find it very difficult to get closure. But where someone has been murdered, we have all seen the terrible distress of the parents—for example, of the Moors murders victims or of those murdered by the IRA—when the perpetrators will not reveal what they did with the bodies. It is, we are all told, one of the most difficult things for relatives to contend with. Can one imagine the anguish and the sheer injustice of it if a convict refuses to reveal what they have done with the victims, they continue to thumb their nose at the relatives of the victims and the Parole Board, but they can still be considered for early release?

My noble and learned friend and other noble and learned friends may say, "Well, don't worry, in those circumstances the Parole Board would be highly unlikely to release that convict", but why should it be at the discretion of the Parole Board based on its "belief" as to a person's honesty and integrity?

If a convict, in full possession of their faculties and their memory, refuses to divulge what they did with the bodies of their victims, why should the Parole Board be put in the invidious position of having to come to a subjective judgment based on psychologists' reports. Parliament should say that, in such circumstances, no one will be considered—I stress "considered"—for early release until they say what they have done with the bodies. If a convict refuses to admit that they have done anything wrong in killing someone, would they be considered for release? I believe not. Thus, if they will not talk about the disposal of their victims, they should automatically be excluded from any consideration of early release.

It is not as if the Parole Board has a great track record of coming to the right judgments, as we have seen in the Worboys cabbie rapist case. He should never have been considered for early release and is rightly still behind bars.

Only last week, Mr Justin Russell, the Chief Inspector of Probation, released a report stating that the number of murders by offenders released on probation rose from 70 in 2015 to 114 in 2018, an incredible increase and a fifth of all homicides in England and Wales. Of these, two-thirds had been assessed as "low or medium" risk on release, which meant that there was a lesser level of supervision and checks by probation officers and police.

This is not the time or place for me to set out my views on the naivety of many on the Parole Board, who swallow any old guff that the psychologists put in front of them: that a convict has seen the error of their ways and is now safe to release. Indeed, I do not have to make that observation, since the statistics that I have just cited speak for themselves.

Sociopaths, psychopaths, serial killers and rapists such as Ian Brady, Worboys and Joseph McCann are incredibly devious and calculating. If they can qualify for consideration for early release by keeping quiet about what they did with the bodies, why on earth should they own up? By doing so, they might trigger a further investigation which could lead to a further charge for another murder. Also, there might be such revulsion at how they disposed of the bodies that no Parole Board would ever dare consider them for early release. Therefore, there is an incentive for them to keep quiet and let everyone think that they killed their victims nicely and gave them a Christian burial.

We should use the certainty of no consideration for early release as the only weapon we have to get those people to talk. The Parole Board cannot do that, since the Bill allows it to consider their application and come to a belief judgment. If we remove that possibility, there is a chance of getting them to talk about what they did to the bodies. For the sake of grieving relatives and for the sake of justice, I beg to move.

Lord Blunkett (Lab): My Lords, I support the amendments because of the change that took place when the challenge to the right of the Home Secretary went through the judicial system and the safeguard that existed was therefore withdrawn. I do not share the view that the Parole Board is full of naive people. It has an incredibly difficult job and needs all the support and guidance it can get. I have my own disagreements with it, including on the case of David McCauliffe, who has been in prison for 32 years and did not commit murder or rape, although he did commit some totally heinous crimes.

I speak to this amendment because, like other Home Secretaries, I had to deal with Myra Hindley and Ian Brady. When Keith Bennett's aunt, on behalf of the family, made her appeals to me to see if we could get an identification of where the little boy, Keith, was buried, my heart went out to the family. It was one of those distressing moments that Home Secretaries and now Justice Secretaries have to deal with in cases of murder, particularly where the body has not been identified and there is not therefore the opportunity to grieve properly or to lay the remains to rest. Winnie Johnson, Keith's mother, died in 2012 without ever knowing where he was. No parent should have to put up with that.

As I have spoken about already, like my predecessors I was able to block the release of the Moors murderers because the power then existed with the Home Secretary. For reasons relating to human rights—it was not to do with the incorporation of the ECHR into the Human Rights Act but with the appeal that went through the judicial system—that power was taken away and, as described, now rests with the Parole Board.

In the circumstances, we are asking the impossible of the Parole Board: to make a judgment on a situation in which somebody has knowingly refused to identify the place in which they put the body of the individual they murdered. For the parents of a child, that is so horrendous as to require a much more rigid approach than we would normally take in giving judges and the Parole Board, quite rightly, the discretion they need to deal with cases. That is why I am in support.

Lord Garnier (Con): My Lords, my noble friend Lord Blencathra's Amendment 1 and the amendments in the next group to be moved by the noble Baroness,

Lady Bull, and spoken to by the noble and learned Lord, Lord Hope of Craighead, are concerned with the prisoner's state of mind or mental capacity at the time of his application to the Parole Board for release on licence. The amendments may start from different places but end up in more or less the same place. The difference between them is where the assessment of the prisoner's state of mind begins.

In short, if one agrees with my noble friend Lord Blencathra, it is essentially for the prisoner to persuade two doctors that he is not pulling the wool over the eyes of the Parole Board about not being able to remember where the victim's remains are. If I correctly anticipate the argument of the noble and learned Lord, Lord Hope, it is for the Parole Board to be satisfied that the prisoner's state of mind or mental capacity is of such a quality that he is able to disclose, but has not disclosed, their whereabouts.

2.45 pm

With the greatest respect to my noble friend and the noble and learned Lord, I am not entirely sure that there is much of substance that separates them. In reality, they are doing nothing more than accentuating the need for greater certainty at the Parole Board hearing about the true state of mind and knowledge of the prisoner seeking release. It could be said that my noble friend wants a dispassionately independent or objective assessment of the prisoner's state of mind from two medical professionals to inform and bind the Parole Board panel, fettering its discretion, whereas the noble and learned Lord is prepared to leave it to the Parole Board panel to reach its own conclusion on the matter without expressing a view on how it obtains the information necessary to reach its conclusion, so long as it takes into account the prisoner's state of mind or mental capacity to make the requisite disclosure.

It will be recalled that my noble and learned friend the Advocate-General said at Second Reading that

"the Parole Board must particularly take account of what, in its view, are the reasons for this non-disclosure. This subjective approach will enable the board to differentiate between circumstances such as when, for example, the non-disclosure is due to a prisoner's mental illness, and cases when a prisoner makes a deliberate decision not to say where a victim's remains are located. Subjectivity is fundamental to the proper functioning of the Bill. It is for the Parole Board, as an independent, court-like body, to decide what bearing such information has on the risk that a prisoner may present and whether that risk can be managed safely in the community. The Bill reflects the established practice of the Parole Board but goes a step further and puts a legal duty on the board to take the non-disclosure into account."—[*Official Report*, 28/4/20; col. 195.]

The amendment moved by my noble friend Lord Blencathra brings with it an emphasis familiar to those of us who have had the privilege of listening to his speeches on criminal justice policy in your Lordships' House and previously in the other place, where he served as a Home Office Minister and a knowledgeable Back-Bencher. He was always listened to with great respect and I often agreed with him.

On this occasion, however, I am not persuaded that what he has proposed adds anything to what my noble and learned friend the Advocate-General said at Second Reading. His amendment is, of course, characteristically clear and forthright. It leaves no room for doubt about what he wants and intends to happen. I accept that prisoners convicted of murder or manslaughter should expect justice but not sympathy when asking the Parole Board to order their release after 20 or 30 years of a life sentence if they have not disclosed what they have done with their victim's remains, particularly when they could have disclosed that information at or before conviction or sentence, when they must have known, or were more likely to have known—even with a trial some time after the event—precisely where the victim's body was to be found.

The Bill as currently drafted does not preclude the Parole Board from but commands it to take the prisoner's non-disclosure into account, and, as my noble and learned friend said at Second Reading, the Parole Board is a "court-like body". Knowing, as I do, a fair number of judges who have taken part in Parole Board hearings and been members of it, I have no doubt that its hearings will be conducted in a court-like way and that Clause 1(2) and Clause 1(3) in murder and manslaughter cases, and their equivalent provisions in cases of indecent photographs of children, will be resolutely and fairly applied.

All this is fine as far as it goes within the terms of the Bill itself. However, as I said at Second Reading, although Members of Parliament, Members of your Lordships' House and others outside Parliament and politics have campaigned for the Bill with the best of motives, it is, in my judgment, a Bill that will disappoint. I listened with care to what was said at Second Reading in your Lordships' House, having read the debates in the other place. I do not wish to be offensive, but mostly I heard and read enthusiastic applause. What Marie McCourt and the public at large need is a law that is clear, that deters and that bites. Such a law can be based only in a specific criminal offence of non-disclosure, tried not by a court-like body, but in public, by a judge, in an actual court, with suitable sentencing powers. Until we get to that point, while appreciating what the supporters of these amendments are getting at, I suggest that we let this Bill, imperfect as it is, pass unamended.

Lord Adonis (Lab): My Lords, there is clearly great public concern underlying this Bill. However, as he did in a very persuasive speech at Second Reading, the noble and learned Lord, Lord Garnier, has just asked whether it will make any difference whatever. The more speeches one hears, the less convinced one becomes that this is in fact going to change anything. What it does is put the discretion that currently exists, and the facts that currently have to be taken account of by the Parole Board, on a statutory footing. However, it has not been made clear at any stage why putting these on a statutory footing will make any difference to the current arrangement, where it is required to take account of these factors anyway.

In his persuasive speech at Second Reading, the noble and learned Lord, Lord Garnier, argued that non-disclosure of a body should itself be an offence which could lengthen a sentence. However, the response from the noble and learned Lord the Advocate-General raised as many questions as it answered. He said that the sentencing judge will

"take account of the non-disclosure when deciding on the length of the tariff".—[*Official Report*, 28/4/20; col. 214.]

[Lord Adonis]
Therefore, it is a factor at the moment, but it is also a factor in respect of the Parole Board. To a lay observer such as me, that leaves us in the somewhat confusing position of not knowing where the penalty lies. Does it lie at both ends? Is a longer sentence imposed because of non-disclosure, and because it is a factor in respect of the Parole Board, or not? I would be grateful if the Minister could address that further.

Underlying all this, completely understandably, is massive public concern, which focuses particularly on especially gruesome cases. My noble friend Lord Blunkett said that, in the past, decisions on such cases have been made by the Home Secretary, reflecting—to be direct about it—public sentiment, which tended to go with those crimes that got the most media coverage at the time they were committed. Now, this discretion lies with the Parole Board, but the big problem is that the Parole Board is not really accountable to anyone at all. I welcome the Minister's point about the role of the courts themselves, because the judge is formally required to consider factors when imposing a sentence. As we explore how we give effect to the real intention of the Bill, I wonder whether there might be some role for the courts—a judge—to take the final decision on whether a prisoner should be released in these circumstances.

Baroness Sanderson of Welton (Con): My Lords, having not been able to take part in Second Reading, I welcome the chance to take part in today's debate. I appreciate that we are now in Committee and therefore I will keep my comments brief.

I hope that the Bill will not disappoint, for I think it achieves something of immeasurable value. To all who have lost a loved one and who wait, day by day, if not hour by hour, to be reunited with them, it says that their son, daughter, mother or brother has not been, and will not be, forgotten. It gives victims dignity and it reassures their families that they are not alone in their quest to lay their loved one to rest. This might seem small comfort, but, in the circumstances, it is an important message to relay.

The families' needs are paramount, and I fear that, despite the best of intentions, Amendment 1 could end up causing further distress. Irrespective of the fact that a "no body, no parole" rule does not allow for potential miscarriages of justice, should it be open to legal challenge, families may find that their suffering is in fact made worse over time. Given that they have already suffered in ways we cannot possibly imagine, I know that this is something we would all wish to avoid.

More generally, I hope noble Lords will not mind if I take this opportunity to welcome the inclusion in the Bill of the statutory obligation for the Parole Board to consider the non-disclosure of information about the identity of children featured in the taking and/or making of indecent images. I declare my interests as set out in the register as someone who works with the victims of child sexual abuse as part of the Independent Inquiry into Child Sexual Abuse. I work on the Truth Project, which runs parallel to the inquiry and was set up so that victims could come forward and tell their stories—so that after years, very often decades, of not being listened to, they could finally be heard. While their experiences are, of course, different, the effects of abuse are all too often the same: lack of self-worth, guilt that this was somehow their fault, lives gone unfulfilled and people's futures fundamentally changed through no fault of their own.

I would argue that, as a society, we are still coming to terms with the reality of child sexual abuse, so I welcome that the Bill acknowledges the very real harm that these indecent images can do. That is a big step forward and another way in which the Bill offers crucial support for victims and their families. I thank noble Lords for allowing me to make these extra comments. I hope that we will pass the Bill unamended.

Lord Mann (Non-Afl): My Lords, we heard at Second Reading the case of Helen McCourt. I have looked at how many more cases there have been in England since then of murder convictions where there is no body. There have been quite a number, with victims including Sarah Wellgreen, Jenny Nicholl and Danielle Jones. The interesting but predictable correlation is that the victims are all children and women. The last male victim was Mark Tildesley, aged seven—like Keith Bennett, a child murdered by an older man. I refer noble Lords back to terms that I used at Second Reading: power games and the misuse of power. It is no coincidence that it is young children—young boys and girls—and women who are the victims of crimes where there is no body and yet a murder has taken place.

This is more than a moral crusade, more than an ethical issue. It is more than trying to shape public demand—although I am sure that public demand is huge on this. I recall the heckling outside the Old Bailey many years ago, when a man was about to be convicted of murder and the call went out, "Hand him over to the women of Bermondsey." Then, and now, we could get a significant majority in the country to acclaim that as a concept. That is not the way we do justice—but if we do justice using legislation through the parliamentary system, where there are weaknesses we need to address them. The fact that young children and women are the victims demonstrates the power game continuing behind bars. It is a misuse of power—the understanding that the murderer retains power over the family and friends grieving the lost one. The murder is motivated in these cases by that power. Therefore, the law needs to address how we deal with that. It is a double anguish, a double punishment that the families receive. It would not be a double punishment if this amendment were passed.

Therefore, to echo what others have said about the case that above all others dominated my early years, the Moors murderers, and Winnie Johnson's public anguish, which we saw over many decades in our media, while there are many more anguished families who are less vocal and choose other ways to grieve, I do not think that we have the system right. I support the amendment in the name of the noble Lord, Lord Blencathra.

3 pm

Lord Mackay of Clashfern (Con): My Lords, my noble friend who proposed these amendments has been well known to me as a very clear, well-informed campaigner for many years in a number of different situations. I am also very conscious of the tremendous pain that is felt by a family who have lost a loved one

in circumstances where they are unable to come to closure because they do not have the body of their loved one. However, we have to look at this carefully and that is what I suggest we do.

These amendments deal with a situation in which the prosecuting authority did not have access to the victim's body in a murder or manslaughter case. In former times, it was difficult to secure a conviction in such a case, but prosecutors' powers and the means of investigation at their disposal has enabled success in such cases to be easier now. Where a prisoner has pled not guilty and persistently proclaimed his innocence, it will not be consistent with his position to give such information. The circumstances in which such information might not be available are many. It might be impossible for him to know what happened to the body, for example if he was not a principal in the case, but an accessory who gave the lethal weapon to the perpetrator at some distance from the scene, or he was not the person who took charge of the body after the crime and had no knowledge of what was done with it. These are just some of the circumstances in which what happened to the body might not have been known to the prisoner and where the Parole Board cannot know or have a reasonable suspicion that he did. Yet, in each of these circumstances, the family's pain is the same as if he did know. The result is that it is not always possible to find a just retribution for that pain.

The fact that the prisoner would not disclose the fate of the body would be known and would be a consideration at the time of the sentence. Co-operation with the police in their inquiries is a relevant factor in the determination of a sentence. This would be an important element in that aspect of the sentencing decision. The extent of the prisoner's involvement would be much more freshly known at the time of the Parole Board hearing.

The Parole Board's function in making its decision is to consider whether it is satisfied that it is no longer necessary for the prosecution of further protection of the public that the prisoner should be confined. In my submission, it would be utterly contrary to that duty to refuse release, as proposed in the amendment, without any discretion to the Parole Board. I therefore object to the amendment and oppose it. To require the board to consider this matter, thus to commit it to the board's discretion, is a wise and just way to recognise the severe pain inflicted on the family of the victim in the circumstances disclosed. The prisoner will know that this is to be considered and that this situation is unlikely to be a factor in his favour, so he might be encouraged to disclose what he knows.

In my view there are serious difficulties in making this matter a separate legal offence, as was proposed by my noble and learned friend Lord Garnier, for whom, as a lawyer and otherwise, I have the greatest respect. This is a matter that would be difficult to disentangle from the jury's verdict on the murder—and the last thing we want is two different verdicts on the same case by different juries. However, I do not need to elaborate on that today, because that is not what is proposed. I conclude by emphasising the fact that I do not consider this a just way of dealing with a very painful problem.

Lord Naseby (Con): My Lords, I shall be brief, because a great deal has been covered already, particularly by the noble Lord, Lord Mann; he spoke on Second Reading, as I did myself, and we explored some of this then. The Committee should be grateful to the noble Lord, Lord Blencathra. As was said on Second Reading, the Parole Board seems far from ideal in the present circumstances, and to have the safeguard of two registered medical practitioners is the least we can do, particularly in a high-risk situation. We are talking about men and women who have carried out terrible crimes. Bearing in mind the risk that they potentially pose to society, the safeguards in the amendment would be very helpful.

Baroness Barker (LD): My Lords, I welcome the debate, and I am glad that the noble Lord, Lord Blencathra, has tabled the amendment, because it is right that we should subject the Government to scrutiny. In drafting it, the noble Lord has gone some way down the road towards matters that were discussed in another place, such as whether we should have a rule of no disclosure and no release at all. He has not gone quite that far; he is just seeking to stop early release. Members of your Lordships' House should go back and read the debates in another place on that matter. If anything, the Commons was inclined to go down a more severe road than that suggested by the noble Lord, Lord Blencathra, but in the end it decided not to. We should pay attention to its reasons for that—particularly in the light of the remarks of the noble and learned Lord, Lord Mackay of Clashfern, who, as ever, dispensed wisdom to those of us who are non-lawyers, which I greatly appreciated.

May I ask the noble Lord, Lord Blencathra, what difference his amendment would make in practice? My understanding is that its main thrust would be to require two medical opinions, which the Parole Board would have to follow; it would take away the board's discretion. Does he have evidence of the Parole Board making decisions, particularly in cases involving such high-profile serious offenders, either without taking account of medical opinion or disregarding it completely? That seems to be what his amendments suggest may happen, and I am not sure whether there is evidence for that.

The Parole Board has the most difficult of tasks. It is always likely to disappoint one person, or one side of an argument, or another. It frequently finds itself having to defend publicly the judgments it has made, so I would be surprised if it was routinely dismissing or not paying attention to medical assessments. Indeed, it would have to have a medical assessment made by a medical practitioner to determine somebody's mental capacity. I simply wish to know from the noble Lord what deficiency in the proceedings of the Parole Board he seeks to address and on what basis.

Lord Ponsonby of Shulbrede (Lab): My Lords, I am winding up for the Opposition on this short but very interesting debate. I want to open by addressing the point made by my noble friend Lord Blunkett. He concluded in his support for this amendment that we are asking the impossible of the Parole Board. Although I recognise his immense experience, I question whether that basic assumption is true, and I take up the point

[Lord Ponsonby of Shulbrede]
just made by the noble Baroness, Lady Barker, that we entrust the Parole Board with these extremely difficult decisions. All the members of the board who I have ever met are extremely responsible people. My understanding of this amendment is that it would require two medical opinions, after which the Parole Board would make its decision, and it is right that the Parole Board should have that responsibility.

My main objection to the amendment is that by making it inevitable in some way that people will find it impossible to get out of prison, they could be tempted to knowingly give wrong information and to do so as a form of torture, if you like, because they know that it will cause more distress to the parents involved. We should not give them that power. We should retain the responsibility and the subjective judgment of the Parole Board in making these difficult decisions.

I also listened to the noble and learned Lord, Lord Garnier, and the response to his points by the noble and learned Lord, Lord Mackay. They are both extremely experienced lawyers. I must admit that I was initially attracted to the solution proposed by the noble and learned Lord, Lord Garnier, but I listened with interest to the objections of the noble and learned Lord, Lord Mackay, and his method of solving the conundrum before us.

This amendment is not appropriate for the Bill, and I think we should pass the Bill as amended. While I acknowledge the point made by my noble friend Lord Adonis questioning whether the Bill is necessary, I think it is right that the practice of the Parole Board is put into statute, otherwise there may be other legal mechanisms of challenging the Parole Board's decisions if it is adopting this practice but is not supported by proper legislation being in place. On that basis I would reject this amendment. We will consider the other amendments in due course, but largely speaking the Bill should pass unamended.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): I thank noble Lords and noble and learned Lords for their contributions to the debate in Committee —[*Inaudible.*]

The Deputy Chairman of Committees (Lord Faulkner of Worcester): Could the noble and learned Lord, Lord Keen, please lean a little closer to the microphone?

Lord Keen of Elie: Yes, of course, although I do not think I could get much closer. Can you hear me?

The Deputy Chairman of Committees: That is better.

Lord Keen of Elie: Despite Amendments 1 and 3 having—[*Inaudible.*]

The Deputy Chairman of Committees: Sorry, we are still not hearing you.

Lord Keen of Elie: I am not sure what I can do about that. Can you hear me now?

The Deputy Chairman of Committees: That is better, yes.

Lord Keen of Elie: I believe the host has stopped the video. I will continue, if I may. Amendment 1, as indicated, would require certification by two—[*Inaudible*] —the application of the release provisions to the prisoner. Of course if the result of the assessment is that the prisoner is found to be suffering from irreversible memory loss, the Bill's provisions would not apply to that prisoner. The amendment creates a requirement for medical certification in all cases where the board considered the provisions might apply before such provisions—[*Inaudible*]—as part of the release assessment. That of course contrasts with the Bill's current approach, which is to allow the Parole Board as an independent—[*Inaudible*]—prisoner has not disclosed. So the amendment alters the subjective test that requires the board to—[*Inaudible*]—which they had not disclosed to, I think I quote, "reasonably suspect" that the prisoner has such information. Again, the replacement of "believe" with "reasonably suspect" would lower the threshold—[*Inaudible.*]

The Deputy Chairman of Committees: I am so sorry to the noble and learned Lord, Lord Keen, and I apologise to all noble Lords. We have to adjourn for 10 minutes while we try to sort out this technical problem. We will resume shortly after 3.25 pm.

3.19 pm

Virtual Proceeding suspended.

3.26 pm

The Deputy Chairman of Committees: My Lords, we will now resume the Committee stage of the Prisoners (Disclosure of Information About Victims) Bill, and I hope that we will hear from the noble and learned Lord, Lord Keen of Elie. Perhaps I may suggest that he starts his remarks from the top.

Lord Keen of Elie: I thank the Deputy Chairman of Committees and apologise to noble Lords for any inconvenience that has been caused. It is not clear what the problem was. [*Inaudible.*]

I was turning to look at Amendments 1 and 3, which, despite having separate effects on the Bill's provisions, when taken together have the cumulative effect of preventing the Parole Board considering the release of any prisoner who has failed to disclose the relevant information, unless they have been certified as suffering from "irreversible memory loss". [*Inaudible.*]

The Deputy Chairman of Committees: I apologise to the Minister but we cannot hear him properly. We will adjourn for five minutes in the hope that he will be able to dial in to speak in the debate. The Committee is adjourned until 3.34 pm.

3.27 pm

Virtual Proceeding suspended.

3.32 pm

The Deputy Chairman of Committees: My Lords, welcome back. We are on Amendment 1 of the Prisoners (Disclosure of Information About Victims) Bill. I hope we will now hear from the Minister, the noble and learned Lord, Lord Keen of Elie.

Lord Keen of Elie: I thank noble Lords for their patience. I now turn to consider Amendments 1 and 3, tabled by my noble friend Lord Blencathra. Although they have separate effects on the Bill's provisions, when taken together, the two amendments have the cumulative effect of preventing the Parole Board considering the release of any prisoner who has failed to disclose the relevant information, unless they have been certified as suffering from "irreversible memory loss".

Amendment 1 creates a requirement for medical certification in all cases in which the board considers that the provisions might apply to a prisoner, before such provisions would apply as part of the release assessment. This contrasts with the Bill's current approach which is to allow the Parole Board, as an independent expert body, to form its own belief as to whether a prisoner has the necessary information regarding a victim's remains, which that prisoner has not disclosed.

In addition, the amendment alters the subjective test that requires the board to believe that a prisoner has information regarding a victim's remains which they have not disclosed to a test that it "reasonably suspects" that the prisoner has such information. That would lower the threshold of the evidential standard required by the board to satisfy itself.

Of course, mental impairment, including irreversible memory loss, may well be a reason for such non-disclosure, and I fully expect the Parole Board to consider these issues after consultation with medical and other experts, as it does now. In these circumstances, I see no need for a prior medical assessment to take place, which may be unnecessary and which would unjustifiably fetter the board's subsequent handling of such cases.

Furthermore, the reference to reasonableness here is, I suggest, unnecessary. As a public authority, the board is already obliged to act reasonably, and to prescribe this in the Bill may undermine these existing general law principles. I do not consider that to be the appropriate approach in this instance.

Turning briefly to Amendment 3, which would deny release to any prisoner who failed to disclose the information under consideration in this Bill, unless they were suffering from irretrievable memory loss, as set out in the preceding amendment, it raises very real difficulties. Parole Board consideration of the case would cease until the prisoner disclosed the relevant information or the medical evidence changed. Precluding release on such grounds may very well give rise to a challenge under Article 5 of the European Convention on Human Rights, as once a prisoner has served their minimum tariff, and is found no longer to pose a risk to the public, continuing detention would be regarded as arbitrary for the purposes of Article 5. I will come back to elaborate upon that in a moment.

In addition, as was touched upon by my noble and learned friend Lord Mackay of Clashfern, a failure to disclose relevant information may not be solely due to memory loss but, alternatively, may be due to mental impairment or mental ill-health, or could be a consequence of genuine changes, for example in geography, which meant the location of a body could no longer be identified. Furthermore, creating a blanket ban on release may even create an incentive for offenders to lie about the location of a body. In these circumstances, I encourage noble Lords to consider very carefully what the Bill currently enables the Board to do, which is to investigate these issues and to come to a subjective view in this context.

I will now touch upon a number of points raised. The noble Lord, Lord Blunkett, alluded to the question of the Home Secretary's former power to block release. I just note that the Lord Chancellor and Justice Secretary does have the power now to review a decision of the Parole Board, and has exercised that power.

With regards to the points raised by the noble Lord, Lord Adonis, in the context of the sentences that we are looking at—that is, life sentences and certain extended sentences—there are two elements to the sentence: the punitive element and the preventive element. The punitive element is essentially the tariff which is set by the court at the time of sentencing, or the minimum period within the life sentence that the accused or convicted person is going to have to spend in custody. That will have regard to a number of factors including, for example, the non-disclosure of the whereabouts of a victim.

The preventive element is addressed by the Parole Board, and not by the court. As my noble and learned friend Lord Mackay of Clashfern observed, the test there is whether it is no longer necessary for the protection of the public that the prisoner should be detained. An element for consideration at that point is whether a failure to disclose the whereabouts of a victim or victims would indicate a continuing threat to the public in that context. To have an absolute bar on the prisoner being released, on the grounds of non-disclosure, would not fit with the appropriate test which has to be applied by the Parole Board at the preventive stage. I reiterate that this would take us into territory where the whole process could potentially be challenged under Article 5 of the convention. It would be extremely unwise for us to legislate on such an issue in circumstances where we left that legislation open to future challenge from the court. That is hardly going to bring any comfort to the families of victims and others.

In these circumstances, I do not consider that it would be appropriate to go down the road suggested by my noble friend Lord Blencathra. I would add only that I concur with the observations made by my noble and learned friend Lord Mackay on the matter of a further criminal offence of non-disclosure. As I indicated before, there is a common law offence of not disclosing the whereabouts of a body, but even if one was to be convicted of that, in the context of a life sentence having already been imposed, there would be another concurrent sentence and that could only lead to a degree of confusion. That is putting aside for the moment the very real difficulty that was identified by my noble and learned friend Lord Mackay of two juries coming to quite different conclusions on the evidence in related trials.

In all of these circumstances, I would invite my noble friend to withdraw the amendment.

The Deputy Chairman of Committees: I have had notification that the noble Lord, Lord Adonis, wishes to speak after the Minister.

Lord Adonis: No, I simply wished to observe that we could not hear a word that the Minister was saying the first time around, but he was extremely clear the second time and I thought he gave a very effective response.

The Deputy Chairman of Committees: In that case, I call the noble Lord, Lord Blencathra, to reply to the debate.

Lord Blencathra: My Lords, I thank my noble and learned friend for his response and I am grateful to all noble Lords who have contributed. I shall try to comment briefly on all the points raised. I cannot say that I am disappointed with my noble and learned friend's reply, since I had no expectation that our Ministry of Justice would countenance the radical proposal that some convicts not deserving of leniency should stay locked up.

Consideration for early release is not a fundamental right; it should be earned by a whole range of factors. Some of these may be subjective and judgmental, such as reports on the convict's behaviour in prison, his attempts at learning a skill or trade, anger management and so on. Others, I believe, should be a simple statutory bar that removes any discretion from the Parole Board. One would be that a convict who admits that he killed a person but refuses to admit that it was wrong should not be considered for release until he is willing to make that admission. The other case, in my opinion, is the one before us today: no one should be considered for release if he has not given details of how and where he disposed of the bodies of his victims, with the exception for the minority who have genuine memory loss.

My noble and learned friend said that if a prisoner lies about the location of the body and it turns out to be false, he forfeits his right to consideration for early release. I am not suggesting that we take the prisoner at his word; we would not be so naive as to say, "Okay, you'll get early release; you've told us where the body is", and then a few weeks later discover that he has lied about it—of course not. Nor do I accept that a bar on early release would necessarily be in contravention of Article 5 of the treaty. My noble and learned friend said that it could—I think these were his words—"potentially put us in that territory". That is far from certain.

I am grateful to the noble Lord, Lord Blunkett, who spoke with considerable authority on this matter. If my arguments are not convincing, I hope that the House will in due course listen to him. I was also moved by what the noble Lord, Lord Mann, said. He, too, had experience of the pain of the families of the Moors murder victims, who were deprived of closure because the killers kept that power. He stressed the word "power", which is a very good term. If a prisoner can still be eligible for parole and not divulge information about the bodies, he retains that power over the relatives, the victims and the Parole Board.

I am grateful to my noble and learned friend Lord Garnier for his kind and typically overgenerous comments and, as usual, his very thoughtful and learned contribution. I hope that the Government will explore his idea of a proper court hearing to decide on disclosure, despite what my noble and learned friends the Advocate-General and Lord Mackay of Clashfern said. I take the point that my two doctors suggestion is another attempt to get some certainty when a prisoner may not be able to recall. I accept that getting certainty may be difficult for a wide variety of reasons, as my noble and learned friend Lord Mackay of Clashfern highlighted. However, I hope that he would agree with me that, where a prisoner considered to have memory recall simply refuses to divulge information, parole should not be considered in any circumstance. That is a quite different matter from a prisoner who is unable to recall, however that is determined.

3.45 pm

In all my time in government, especially in the Home Office, I always found it impossible to get any legal changes through if my noble and learned friend Lord Mackay of Clashfern was opposed to them, because he could always find the legal loopholes in our proposals. In all honesty, our final Bills were all the better for his exacting analysis. He makes the point that a prisoner who refuses to disclose will have that taken into account in sentencing. That is true, but here we are considering whether that prisoner should qualify for early release based on their behaviour in prison. No matter how many extra years the sentencing judge may have added, that is a separate matter from consideration of early release, which depends on what someone has done in prison, not before.

I must say to the noble Baroness, Lady Barker, that I do not think that any of us knows about the internal workings of the Parole Board and how it considers evidence about a prisoner. My amendment is not a criticism of the Parole Board or a suspicion about how it operates in this regard; it is to remove the need for it to come to a subjective belief. I take the view that some things, such as a refusal to disclose where bodies are or how victims were killed, should automatically debar consideration of early release for thsose prisoners who do not have memory loss.

I am also grateful for the contributions of my noble friend Lady Sanderson, the noble Lords, Lord Adonis and Lord Ponsonby, and my noble friend Lord Naseby. While I do not accept my noble and learned friend's arguments, this is not the place to persist with my amendment, so I beg leave to withdraw it.

Amendment 1 withdrawn.

The Deputy Chairman of Committees: We now start the group beginning with Amendment 2. I remind noble Lords that if they wish to speak after the Minister, they should email the clerk during the debate. It would be helpful if any noble Lord intending to say "Not content" when the question is put could make that clear in the debate. It takes unanimity to amend a Bill in this Committee. The Committee cannot divide.

Amendment 2

Moved by ***Baroness Bull***

2: Clause 1, page 1, line 14, after "prisoner" insert "is able to but"

Member's explanatory statement

This amendment seeks to ensure that account is taken of the prisoner's state of mind in determining whether they can make a disclosure.

Baroness Bull (CB): My Lords, it has long been recognised that the withholding of information about the location of victims' remains can have a devastating impact on the lives and mental health of their families. This Bill enshrines in law what is already the practice in parole boards, which is fully to consider the failure by a prisoner to disclose this information or, indeed, to disclose the identity of child victims of indecent imagery. By removing any discretion to disregard non-disclosure, the Bill will play an important role in helping families come to terms with what for most of us is unimaginable grief. It is for these reasons that I supported the Bill at Second Reading. In doing so again today, I repeat my tributes to Marie McCourt and to those people who have campaigned tirelessly over several decades to see legislation of this sort brought before the House.

Amendments 2 and 4 in Clause 1 and Amendments 7, 8, 10, 11, 13, 14, 16 and 17 in Clause 2 make two connected points. The first is that parole boards must take account of the prisoner's state of mind when determining whether they can in fact make a disclosure, and the second is that the prisoner's mental capacity within the meaning of the Mental Capacity Act 2005 to make the disclosure, is taken into account. Out of necessity, the amendments are repeated at relevant places in the Bill, so I am essentially speaking to two amendments, and these two amendments stand together.

My amendments address the concern I raised at Second Reading that, as drafted, the Bill fails to provide adequate protection for prisoners with mental health issues, and therefore seeks to balance the imperative for justice with the appropriate regard for human rights. Since that occasion, I have discussed these concerns with colleagues working in mental health and with others working in mental health charities, including the charity Rethink. I am grateful to them and to the noble and learned Lord, Lord Hope of Craighead, for their expert advice, and it is with their support that I have tabled these brief amendments.

In response to my questions at Second Reading, the noble and learned Lord, Lord Keen of Elie, said:

"We are confident that the provisions of the Bill are sufficient and effective to apply in the contexts of non-disclosure, psychiatric conditions and mental illness."—[*Official Report,* 28/4/20; col 214.]

Speaking in the other place, the Lord Chancellor and Secretary of State for Justice, Robert Buckland, further clarified the Government's acceptance by saying:

"This subjective approach is fundamental to the proper functioning of the Bill."—[*Official Report,* Commons, 11/2/20; col. 748.]

In other words, the Government accept that the approach has to take into account the circumstances of the particular prisoner. This acceptance is important because the consequences of deliberate non-disclosure will, in most cases, give rise to a longer period of imprisonment. The Government rightly accept that these consequences should not flow on a strict liability basis, but only where in effect the non-disclosure is culpable and where there is, as conventional principles dictate, the combination of a relevant act carried out with the requisite degree of either intentionality or recklessness.

This approach has to be correct; any other approach would come dangerously close to suggesting that the mere fact that there is missing information means that the prisoner should be held responsible for withholding it. While the Government's acceptance of this key point is welcome, the Bill does not at present specifically direct the Parole Board's attention to the consideration of whether, first, the prisoner has the mental capacity to decide whether or not to disclose the information, and/or, secondly, whether for some reason—for instance, because of the presence of mental disorder—they cannot form the requisite intention to withhold the information.

It is difficult to know how extensive a problem this might present, as it has always been challenging accurately to estimate the number of prisoners with mental health problems in England and Wales. The 2017 report from the Public Accounts Select Committee showed that people in prison are more likely to suffer mental health problems than those in the community, and successive reports from the noble Lord, Lord Bradley, the National Audit Office and others have all highlighted that it is unknown precisely how many prisoners have mental illnesses. Figures from NHS England in March 2017 showed that nearly 8,000 prisoners, 10% of the prison population, were receiving treatment for mental illness in prison. It is estimated that 37% of NHS expenditure on adult healthcare in prisons is on mental health, which is more than twice the proportion within the NHS budget as a whole. The Public Accounts Committee also found that imprisonment can exacerbate mental illness, due to what it describes as,

"a deteriorating prison estate, long-standing lack of prison staff and the increased prevalence of drugs in prison."

This is highly relevant to the Bill, given that parole hearings are likely to take place some considerable time after sentencing.

The World Health Organization points to several factors that have negative effects on the mental health of prisoners, including exposure to violence, enforced solitude or, conversely, lack of privacy, absence of meaningful activity, insecurity about the future and inadequate mental health services. Prisoners with mental health issues are often subject to bullying and extortion; they may even have their medication stolen. The Royal College of Psychiatrists has expressed concerns that its members are unable to deliver adequate mental health services in prisons.

These points bear repeating here because they demonstrate both the scale of mental health problems in the prison population and the potential for mental health to deteriorate during imprisonment. By extension, mental capacity may also change during imprisonment, given that, as defined within the Mental Capacity Act 2005, lack of capacity may be related to mental health, learning disabilities and neurodegenerative conditions such as dementia. The charity Rethink and other experts believe that these particular conditions are likely to be overrepresented in the prison system. Capacity is also specific to a given decision, rather than universal, meaning that a person who lacks capacity for some kinds of decisions may well be able to make others. The Mental Capacity Act code of practice is clear that a person can have capacity to make decisions in certain areas—for example, deciding what activities to undertake—while lacking it in others, such as a decision to disclose information. The potential for capacity to change over time, particularly with mental health conditions such as dementia, is especially relevant

[Baroness Bull]
here, as the Government are rightly focused in the Bill on the present position. This makes it all the more important that parole boards are directed to take into account the current capacity of an offender to disclose information about a victim, the presence of mental illness at the time of the hearing, the place of the offender in their mental health recovery and their compliance with any treatment for mental health conditions.

As the Bill is presented, it would indeed be possible for the Parole Board to take these matters into account in the very broad discretion provided by each of the relevant clauses. This could also be amplified in any guidance provided to the Parole Board, but I contend that the Parole Board is not directed with sufficient precision to consideration of whether refusal to provide the relevant information is deliberate, and hence culpable. As the consequences of deliberate nondisclosure are, and are intended to be, serious, the test to be applied by the Parole Board should explicitly reflect this.

To conclude, my amendments would ensure, first, that specific focus is placed in that broad discretion on whether the refusal to disclose information is deliberate and therefore culpable, hence also relevant to consideration of the likely risk that the prisoner will pose; and secondly, that when considering questions of the prisoner's capacity to make the decision to refuse to disclose the information, the Parole Board is doing so by express reference to the provisions of the Mental Capacity Act 2005. This is of no little importance, given the time-specific nature of the test for capacity in the Act. The focus of the Parole Board's attention should be on whether the prisoner currently has the capacity to make the decision, rather than the position historically. This will be of particular relevance where the prisoner has a progressive condition such as dementia.

The Parole Board's broader discretion to take account of all other relevant factors remains unfettered by the amendments. I urge the noble and learned Lord to consider these amendments and the attempt behind them seriously. I believe that they in no way undermine this important Bill; rather, they strengthen it by directing the Parole Board explicitly to determine whether prisoners' withholding of information is deliberate, conscious and therefore culpable, and not unimportantly a potentially legitimate signifier of continued risk. I beg to move.

Lord Hope of Craighead (CB): My Lords, I will speak to Amendments 2 and 4, to which I have added my name. I am most grateful to the noble Baroness, Lady Bull, for her introduction to the group. I too completely understand the policy reasons that have given rise to the Bill. I have the deepest sympathy for those who feel that they can have no closure until they are given the information that the Bill refers to.

A tragic headline in the *Scotsman* only three weeks ago read:

"We cannot say goodbye until Suzanne is found."

This was a reference to the case of Suzanne Pilley, of whose murder her former lover, David Gilroy, was convicted in 2012. It is now 10 years since she went missing, and her body has still not been found. Her family believe that he is the only person who knows where it is. The problem is that Gilroy has maintained throughout, despite his conviction, that he is innocent. He says that he cannot reveal where the body is and that it had nothing whatever to do with him. There seems to be no way out of this impasse, but the family's distress is very real and very deep. As the noble and learned Lord, Lord Mackay of Clashfern, said, sadly, it is not always possible to find a just solution to their pain.

However, we need to be very careful about exactly what it is that the Bill is trying to achieve—or, to be more precise, about the test that the Parole Board is being asked to apply when it takes non-disclosure into account. The noble and learned Lord, Lord Garnier, was quite right in his understanding that our amendments seek to leave it with the Parole Board to make the judgment. As the noble Baroness, Lady Kennedy of Cradley, said at Second Reading in the Chamber in April, this is not a "no body, no release" Bill, although that is what some campaigners would have preferred. We need to be clear: is the Bill about simply delaying release as a punishment, or securing the release of information? Surely, it is only by securing the release of the information that the board will be able to give closure to those most affected. I hope the Minister will be able to confirm that it is the latter and that the point of the Bill is to strengthen the power of the Parole Board to encourage disclosure. "Encourage" is perhaps too mild a word because of course, we have to face the fact that disclosure must have been asked for repeatedly, time and again, ever since the prisoner was first interviewed by the police. Nevertheless, one can only hope that, however this is done, the board will be able to achieve that objective.

4 pm

It is worth bearing in mind, too—I hope that the Minister can confirm this—that we are contemplating a conversation between the board and the prisoner which may take place many years after the date when the crime was committed. That is because the board cannot begin to consider the prisoner's case for release until their case has been referred to it by the Secretary of State. That, at least, was the system I worked with when I was the Lord Justice General in Scotland. As I understand it, this system continues to be used for public protection decisions under the Crime (Sentences) Act 1997, which this Bill seeks to amend. A case cannot be referred until the tariff component of the life sentence has been served, which nowadays for murder is normally not less than about 15 years. The timing is important, because, as the noble Baroness, Lady Bull, pointed out, imprisonment is likely to exacerbate poor mental health. The longer the period in prison, the greater its effect will be, so these will not be easy cases.

I greatly respect the work that is done by the Parole Board. I attended a number of its meetings in Scotland when I was Lord Justice General, as I needed to know how it went about its work in connection with some of the duties that I had to perform in that capacity. I found that great effort is put into gathering information about the prisoner, including their mental state, from a variety of sources, so that when it comes to consider making a public protection decision it does not start with a clean sheet of paper. It will almost certainly have a very large bundle in front of it to work through and study. It will also have to bear in mind that it may need to give reasons for its decision, especially when

issues about non-disclosure come up. That is why I suggest that, in fairness to the board as well as to the prisoner, absolute clarity is needed as to exactly what the board is expected to look for when dealing with these very sensitive cases. It needs to be understood as well that this issue will become critical only when everything else in the prisoner's history and conduct points to release.

At Second Reading, the Minister said that the subjective test that the Bill lays down will enable the board to distinguish between cases where, for example, the non-disclosure is the result of a psychiatric disorder or where it is a deliberate decision not to disclose. As I understand it, "subjective" means nothing more than that it is for the board to form its own view when making the public protection decision. That is as it should be, and our amendment would not disturb that in the slightest.

This still begs the question as to what precisely the board should look for when it comes to a non-disclosure decision where a reason as to whether to delay a release that would otherwise be appropriate may need to be given. With great respect, I think that the Minister was right to distinguish between a psychiatric disorder on the one hand and a deliberate decision on the other. The implication of what he said is that, if it is the former, the non-disclosure should not count against the prisoner when considering their case for release—for it to do so would be to adopt the unacceptable "no body, no release" approach. However, if it was deliberate, it should indeed count against them, with the further implication that they would probably not be released until they made a disclosure. As I understand it, if that is what the Bill seeks to do, the fact that the non-disclosure must be regarded as deliberate if it is to be taken into account needs to be stated clearly and unequivocally in it.

I support the noble Baroness's amendments because this degree of clarity is missing in the Bill. The clarity that I suggest we need can be addressed in one or other, or both, of two ways. The first is simply, as Amendment 2 proposes, to insert "is able to but" in new Section 28A(1)(c) before "not disclosed". This would make it absolutely clear that the Parole Board should look for a decision that could be regarded as deliberate because the prisoner was able to disclose the information and their refusal may hopefully be changed by the threat of delayed release, so that the families could obtain closure. If the non-disclosure is not deliberate—for example, if the prisoner cannot help it due to mental disorder and is not able to address the point at all—delayed release until disclosure, which could never happen because of their state of mind, would be wholly unfair and unjust.

The second way, as Amendment 4 proposes, is to make express reference to the prisoner's mental capacity as a factor that must be taken into account. The two amendments would give clarity to these provisions without in any way undermining the overall purpose of the Bill and the discretion of the Parole Board. They would, however, help the Parole Board in the performance of this new statutory duty.

I hope that the Minister will feel able to look very closely at these proposals. The board needs to know, with as much precision as can be achieved, what this measure expects it to look for when taking non-disclosure into account as grounds for delaying release when making the public protection decision. That is what subjecting it to a statutory duty requires.

Baroness Barker: My Lords, I will address the same amendments in this group as were listed by the noble Baroness, Lady Bull. Amendments 5, 6, 9, 12 and 15 will be addressed by my noble friends Lord Thomas of Gresford and Lord German. I declare an interest as a member of an advisory board at the charity Rethink Mental Illness.

Like the noble Baroness, Lady Bull, I want to draw attention to the decisions being taken about a prisoner's state of mind and their mental capacity to answer questions relating to the release of information about bodies. I was a member of the scrutiny committee in your Lordships' House that did the pre-legislative scrutiny on the Mental Capacity Bill. Like the noble and learned Lord, Lord Mackay of Clashfern, I took part in the passage of that Bill through Parliament. I was part of the body that reviewed it and have subsequently been one of the Peers who participated in the Mental Capacity (Amendment) Bill.

When the post-legislative scrutiny of the Mental Capacity Act took place, it became very apparent that while it is widely regarded as being a very necessary and very innovative law, it is a law which is largely misunderstood and often ignored in practice. Some professionals, particularly in the world of health and social care, are very adept at understanding the concepts behind the Mental Capacity Act and are deploying them in their everyday work, but they are few and far between. Noble Lords who have listened to the noble Baroness, Lady Finlay, may have picked up on the fact that even within the medical profession, many practitioners simply do not understand what mental capacity and the tests of it are under this legislation.

During the review of the Mental Capacity Act, we spent virtually no time looking at the questions of how the Act is used within the criminal justice system, and I suspect that that was because it is not widely understood. As the noble Baroness, Lady Bull, made clear, the Mental Capacity Act rests upon the capacity of a person to make a particular decision at a particular time. It is not lawful to make a read-across from a person's incapacity to make one decision to an assumption that they cannot make another. Therefore, in every case, it is for the Parole Board to decide at that point whether the prisoner has the capacity to withhold information, and that may vary over time.

It is right that we should discuss this, and we should look at putting these provisions in the Bill for three reasons. First, there are some conditions under which mental capacity can fluctuate. As mentioned by the noble Baroness, Lady Bull, some mental health conditions—the effects of drug and alcohol or degenerative diseases, the onset of dementia—may mean that over time the capacity of a prisoner to release this information diminishes.

The second is that there needs to be training and good practice for all practitioners throughout the criminal justice system in determining mental capacity. That includes members of the Parole Board. I wonder

[Baroness Barker]
whether, in his summing up on this amendment, the Minister might say what training members of the Parole Board have and what guidance is available to them in making determinations under the Mental Capacity Act. Do they call on Mental Capacity Act practitioners, as people in social services do when they come to determine the capacity of an individual to make any decision?

In saying all this, I am acutely aware that, in some of these cases, the crimes happened a very long time ago. I understand that Helen McCourt's case was one of the first in which DNA evidence was used. Some prisoners who have been in prison for a very long time could be victims of a miscarriage of justice. It is extremely important when we look at their refusal to impart information about the whereabouts of a body that we do so with great care and make sure that we are not misjudging a lack of mental capacity.

Lord Thomas of Gresford (LD): My Lords, I am addressing Amendment 5 and the subsequent amendments to the same effect in relation to similar subsections in the Bill. I did not have the opportunity of speaking at Second Reading, so perhaps I can make one or two observations before I come to my amendments.

First, it is my experience that prosecutions where there is no body are comparatively rare. They do happen, but I recall only three or four cases in my own career where such things took place. If the Minister has information on this, I would be interested to know how many people subject to the provisions of the Bill are currently incarcerated in prison.

The noble Lords, Lord Blunkett and Lord Mann, referred to the Moors murders case. I was present in court at the Chester Assizes during that case as a pupil in support of the late Lord Hooson, who appeared on behalf of Brady. I can testify to the distress and huge impact that that case had on the families of victims—but not only them. It had an impact on the counsel who appeared in the case and indeed, I believe, on the judge.

Brady subsequently attempted, many years later, to take the police to places where he said he had buried bodies—to no effect. We cannot know whether this was a genuine attempt on his behalf to uncover the remains or whether he was simply, as has been put earlier in this debate, grinding the knife into the victims' families. It is a terrible indication of what can happen to families in these circumstances.

My other point relates to the amendment from the noble Lord, Lord Blencathra. He relied on medical evidence, almost putting it in the place of the Parole Board. I prosecuted a double murder from mid-Wales which gave me a particular view. It was not a case where the bodies of the two victims were not available, but the defence was diminished responsibility. On the side of the defence in the original trial were no fewer than five psychologists and psychiatrists, giving evidence about the mental capacity of the defendant. On the prosecution side, there were four such expert views. After the conviction of the defendant, having observed their cross-examination in the witness box, one of the witnesses on behalf of the prosecution decided that the defendant really did suffer from mental incapacity. An appeal was launched on that basis. It was successful and there was a retrial in which there were then six experts for the defence and three for the prosecution. The defendant was still convicted of murder at the second trial by a majority of 11 to one.

What impacted on me was that members of the medical profession are accustomed to taking a history from patients, which they accept. There is no questioning of what they are told to any great degree. Therefore, to put the decision on the release of a prisoner undergoing life imprisonment in the hands of medical people is, to my mind, wrong. There should be a proper judicial process. I do not agree for a moment with the noble Lord, Lord Blencathra, that the Parole Board will swallow any guff put before it—that is simply not what experience tells us.

4.15 pm

Turning to my amendments, I was much impressed by the speech of the noble and learned Lord, Lord Garnier, at Second Reading, in which he made points that he has repeated today. It occurred to me that his problem was, as the Minister described it, that giving a sentence for a separate offence of failing to disclose the whereabouts of remains would be ineffective because it would have to take place immediately and concurrently and could not be brought into effect at some indeterminate time in the future.

My mind turned to the Newton hearings, which are commonplace in court and in which a judge will determine, without a jury, when an issue is in dispute. It seems to me that a proper way of dealing with these cases would be that, if there was a dispute and the judge could ascertain that, then there should be a trial on that issue before sentencing. For example, the judge could announce after a jury's verdict or after a plea of guilty that he would sentence on the basis that there had been a culpable and deliberate concealment of the remains.

If issue were taken by the defendant with that indication from the judge, a trial could be held on Newton principles, whereby at the time of trial—very much closer to the events with which the court was concerned—it could be determined whether the defendant had mental capacity and to what degree he was culpable. Prior to sentencing, the judge could come to a conclusion. In his sentencing remarks, he would make quite clear the degree to which the tariff was being extended by reason of a finding of culpability, and that would be built into the system so that the Parole Board would not consider the matter until the tariff had been completed. That would seem sensible, and the victim's family would know from the very beginning that there had been a finding of culpability that had affected the sentence.

The problem at the moment is that the Parole Board comes to conclusions on issues that might be 15 or 20 years old, relying on medical and any other evidence before it. However, if a Newton hearing had taken place, the Parole Board would be very much strengthened in the view that it took.

I appreciate that with many prisoners currently serving life sentences or sentences of extended degree there will never have been a Newton hearing. However,

if the provision that I suggest in my amendment were adopted, it would encourage judges, who could be given directions by the senior judiciary to follow that course, first, to say that they would deal with the defendant on the basis that he was culpable and, secondly, to hold a Newton hearing. In future, this might be a much more satisfactory way of dealing with matters than the current situation, in which the Parole Board looks at the matter with a lower standard of proof many, many years later.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I support Amendment 2 and the other amendments in the name of the noble Baroness, Lady Bull. I contributed to the Second Reading debate on the Bill a few weeks ago in the Chamber, where the noble Baroness made a powerful speech. Like other noble Lords, I welcome the Bill and pay tribute to the campaigners who have got us to this point.

The amendments before us allow us to have a debate on the detail of the issue in question. The balance that has to be stuck here is between justice and the denial of a funeral to a victim's family, which brings further pain and distress to a family denied the ability to grieve properly, a prisoner with mental health issues and respect for human rights. These are extremely difficult issues that have to be approached with thoroughness. Decisions being made clearly and victims being listened to are an important part of the work that we expect the Parole Board to do.

The Parole Board has to take account of several factors in making its decisions. I have never met a member of the Parole Board, unlike my noble friends Lord Blunkett and Lord Ponsonby, but the Parole Board deserves our support in the difficult job that it is asked to do. I do not doubt that it undertakes its responsibilities with the utmost seriousness, making difficult and important judgments independently, and I wholeheartedly endorse the comments of the noble and learned Lord, Lord Hope of Craighead, in that respect.

The noble Baroness, Lady Bull, has posed a number of points for the Minister to address about the state of mind of the prisoner at a particular time as well as the prisoner's mental capacity. I very much see the point that the noble Baroness is making: that these issues should be taken into account at the time of the hearing. I look forward to the Minister's reply on these points and on other points made by noble Lords.

Baroness Watkins of Tavistock (CB): My Lords, I support the amendments in the second group in the name of the noble Baroness, Lady Bull, and the noble and learned Lord, Lord Hope, particularly in relation to Amendments 2 and 4, which are reiterated in subsequent amendments. I reinforce my full support for the Bill and congratulate the Government on bringing it forward.

I support the concept of removing any discretion to disregard non-disclosure by prisoners when parole boards are reviewing their cases. This is because there is a very small minority of people who may have severe mental health problems but who are also well able to give the impression that they have complete amnesia. I was interested in what the noble Lord, Lord Thomas of Gresford, said earlier about healthcare professionals believing what they are told by people with mental health problems. I actually worked in Broadmoor and introducing as part of the concept as a trainer that you should not read a patient's records until you had got to know the patient a bit. That is sometimes quite shocking because you trust people but then find that significant things they have told you are in fact extremely inaccurate. So we must be clear that medics are not on the whole easily fooled by the very small minority of people who are able to display very significant selective amnesia.

Of much more interest to me at the moment in relation to this Act is that the Mental Capacity Act 2005 and its subsequent amendments, as referred to by other noble Lords, particularly the noble Baroness, Lady Barker, indicate that we have a growing population with significant acquired brain injury, severe psychosis and, of course, a range of neurodegenerative progressive disorders, known largely as the dementias, which mean that prisoners who have been in prison for 15 to 30 years may well have developed cognitive difficulty during the period of their imprisonment. When they then apply to the Parole Board, it is right that they have full access to a medical assessment in line with their human rights. I believe there will be a proportion of people who apply in this way who do not have sufficient cognitive ability at the time when they come to the Parole Board that they will be able coherently to remember the kind of issues that we have raised during this debate.

In summary, I support the approach of the charity Rethink Mental Illness that these amendments would provide an explicit reference to mental capacity, meaning that there would be consistency adopted by parole boards when reviewing individual cases. I would like to see the amendments supported, but I am also very aware that, in the review of the Mental Capacity Act, we were able to deal with some things by ensuring that they would be put into guidance for practitioners. That may be something to consider in relation to the amendments tabled by my noble friend Lady Bull.

Baroness Jones of Moulsecoomb (GP): I wish to speak in favour of this group of amendments, particularly those tabled by the noble Lord, Lord Thomas of Gresford.

Where a Newton hearing has taken place in respect to the relevant facts of an offence, it makes sense that those findings must be taken into account by the Parole Board when making a decision affected by the Bill. In effect, a rigorous "mini-trial" has been carried out, and a judgment given, so this information should quite obviously be used by the Parole Board.

In some circumstances, this might go in favour of the prisoner; in others, it might go against them. Either way, justice will be served by using the proceeds of Newton hearings. Without doing so, the Parole Board is at risk of ignoring or contradicting the findings of the Newton hearing which set the grounds for the prisoner's sentence in the first place. That would not make sense and would create ripe grounds for judicial review of the Parole Board's decision. It is almost inevitable, I would have thought, that a judicial review would conclude that it must be taken into account by

[Baroness Jones of Moulsecoomb]
the Parole Board. In the interests of clear legislation, and for the clarity of prisoners and victims, the Government really have to accept these amendments.

Lord Naseby: My Lords, I do not wish to contribute at this point, but I will listen to the Minister's response.

Lord Thomas of Cwmgiedd (CB): My Lords, I wish to speak briefly to the amendments tabled by my noble friend Lady Bull, and to support them, but before turning to that, I will make two points.

I entirely agree with and support the purposes of the Bill because, as has been shown on so many occasions, closure is impossible to achieve to any degree without knowledge of what has happened to the body of the deceased. However, there is another observation which it is important to make. If there is to be a proper review and recasting of the Parole Board system, which is long overdue, it is not sensible to make piecemeal amendments at this stage. Therefore, I urge that this Bill be passed without significant amendment.

The only amendment which I support, and I do so warmly, is that tabled by my noble friend Lady Bull. My reason for doing so is very straightforward. It is my experience that, when hearing evidence, trying to determine whether someone has had memory loss and whether that loss is genuine is an extremely difficult exercise. Medical opinion may well vary on either side of the argument. Therefore, it is very important that, if there is a case in which mental capacity or the mental state of the convicted person is to be examined, it is done very carefully before the board. It seems self-evident that if, after a long time in prison, a person is to be considered unsuitable for release because disclosure of the whereabouts of the body or other matters has not been made, the judgment should take into account, if the question arises, whether the prisoner has the mental capacity to recall the events, whether his mental health permits him to do so or whether this is all phony. That is a difficult determination and it should be done by the board.

4.30 pm

I do not suggest that the Committee should adopt the other amendments. I will say one thing to try to clarify what has been said in relation to findings of fact made by the trial judge. As Schedule 21 requires a court to have regard to concealment of the body, it is my experience that invariably a judge has made findings, either set out in his sentencing remarks after clarifying matters if the plea is one of guilty, or after hearing evidence and reaching his own determination of the matter. In my experience also, a person who has not disclosed the whereabouts of the body, even for a relatively short period of time, is normally considered for a longer sentence because of that fact.

It is important for this Bill and for the Parole Board to bear in mind that the judge will have made findings many years before, and it cannot be right that someone is punished again if he has already been punished for non-disclosure of the whereabouts of the body. However, it seems to me right in principle that the suitability for release, which is a different consideration, is something to which the Parole Board can have regard, particularly taking into account the mental capacity and mental health of the prisoner, and a very careful distinction has to be made.

As the process of time at which the second assessment has to be made is very different to the original assessment by the trial judge, for which the prisoner will have been punished, it seems that this is pre-eminently a matter for the Parole Board having regard to all the factors that were before the judge, and all the evidence and other factors that are before it. In reviewing decisions of the Parole Board, my experience has been generally that it sets about matters of this kind with great care and takes into account all the evidence. I would leave the discretion to the Parole Board, subject to making it very clear what is put forward in the proposed amendments in the name of the noble Baroness, Lady Bull. I do not think that any further amendments to the Bill are required.

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

Lord Woolf (CB): I have listened to what has been said in the debate so far with considerable interest. I am afraid that I was unable to attend Second Reading, but I have read the transcript of it with particular interest, and I am bound to say that what the noble and learned Lord, Lord Garnier, had to say then was particularly important. I have been helped in my consideration by what has been said in the debate today.

We start off with the fact that anybody who knows victims who have been put in the position of those who were the sponsors of the legislation which we are now considering knows that what they had to go through because they were not able to find out what happened to their deceased relative causes the greatest anguish. They certainly deserve to be protected from suffering any more anguish than is absolutely necessary. The question before us is: what is the best way to achieve the redress to which they are entitled, bearing in mind the practicalities of our criminal justice system?

I was also very impressed by what the noble Lord, Lord Thomas of Gresford, said, and his reference to a Newton hearing. That deserves important attention, because it is a way of achieving the best possible result when this sort of problem has to be considered. The prisoner should know that if he is voluntarily failing to disclose information that he has, there is a risk that he will suffer a substantial increase in the period for which he is detained. That is the most likely thing to produce the result that anyone must hope for. And if that be so, the question is: what is the best way to achieve this in a just manner? It has to be done in a just manner, because if it is not, there is a danger of making the prisoner, quite undeservedly, the subject of some concern and sympathy.

That brings me to the Newton hearing, because I believe this is best left in the hands of the trial judge. I think that the noble Lord, Lord Thomas of Gresford, said the same thing—indeed, so did the noble and learned Lord, Lord Thomas of Cwmgiedd. The judge has been listening to the trial and he knows the facts of the trial, so for him to deal with it is ideal. Otherwise there can be difficulty. What the noble and learned Lord, Lord Mackay of Clashfern, said about the sort of problem that could arise indicates why it could be

important for the judge to deal with it. If he told the defendant that he was going to deal with it, there could be a Newton hearing in public, in which the victims would see that the matter had been investigated properly, and have the judge's knowing response to what was causing them concern.

If at the end of the trial there were any reason for a prisoner to say, "I can't recall", or "I can't give you information because I didn't deal with what happened at that stage", people would hear it, and hear the prisoner being questioned and cross-examined about it. The relatives of the deceased, too, would hear that process being conducted, so they would know that it had been fully investigated. If, as I believe would happen in most circumstances, the judge came to the conclusion that the defendant was erecting a smokescreen to try to hide what he was doing, which was so malicious, the judge would find the matter, and in due course it would, as the noble Lord, Lord Thomas of Gresford, pointed out, be taken into account by the Parole Board.

It has been suggested that that should be done much nearer the time of the questioning being considered by the Parole Board—but I suggest that a better time would be not later in the day, when all sorts of other matters can arise to muddy the water, but immediately after the trial. The record on Newton hearings is very good; they have resolved problems where facts have needed to be resolved, and that is a process which can be conducted fairly.

It is also important that the situation should be one where justice has been done. If it is done in the way that would be carried out at a Newton hearing, that would be achieved. Although the amendments put forward so far may not satisfactorily deal with the situation, I suggest that there is plenty of time before the Bill becomes law to achieve what is suggested in the amendment I am addressing, as put forward by the noble Lord, Lord Thomas. I suggest that is the sensible thing. One of the advantages of a Newton hearing is that the procedure which takes place is short and curtailed at the end of the trial.

Lord German (LD): My Lords, I too was precluded from taking part at Second Reading, but I have read the transcripts in *Hansard*. There are two substantive issues in this group of amendments, and neither of the two sets takes away the required subjectivity of which the Minister has spoken.

The amendments tabled by the noble Baroness, Lady Bull, supported by the noble and learned Lord, Lord Hope, and my noble friend Lady Barker, seek to ensure that the prisoner has the mental capacity to provide the disclosure information required. The Mental Capacity Act 2005 defines mental capacity by saying that

> "a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain."

It follows that the Parole Board would need to have received the appropriate professional advice that this test of capacity would not apply. If the advice was that the prisoner lacked the mental capacity under this definition, that would be a material fact for the Parole Board to take into account.

It is presumed that the prisoner could therefore not be expected to provide an answer to the disclosure question if the test was not passed. This test is also a relevant issue in the decision to be taken by the Parole Board on grounds of public safety, which of course is the pre-eminent thing that it has to do. Many noble Lords have outlined in debating these amendments that the Parole Board's task is to determine whether failure to disclose is both deliberate and culpable. These amendments provide more precision for the board to make its decision.

I now move on to the amendments in the name of my noble friend Lord Thomas. They have the intention of providing the Parole Board with an increased level of relevant information on disclosure by including the issues raised by Newton hearings. A Newton hearing may be held where a defendant has been found guilty at trial or has entered a plea of guilty but the issues in dispute which could affect sentencing were not resolved by the verdict of a jury. In the course of a Newton hearing, the prosecution will call evidence and test defence evidence in the usual manner: in front of a judge. This includes that it can call witnesses to give evidence if required. If the issue is within the exclusive knowledge of the defendant, as is the case with the situations defined in the Bill, they should be prepared to give evidence as well. Where they fail to do so without good reason, the judge may draw such inferences as they think fit. This increased level of information would become available to the Parole Board when taking into account the issue of disclosure in considering parole if these amendments were in place.

At Second Reading in the House, and in Committee today, as mentioned by the noble and learned Lord, Lord Woolf, noble Lords have pressed the Government to make non-disclosure an offence at the time of a first trial. My noble friend's proposal seeks to take the intention of the words of the noble and learned Lord, Lord Garnier, and put them into an established legal framework. Newton hearings may be a fairly recent legal procedure, but in the matters relating to the purposes of the Bill such a hearing could have a profound effect on the outcome for the victims. Justice is not just a point in time for them; it can last a long time, and for some a lifetime. For victims, coming to terms with their grief, anguish and hurt can last forever. That is why the justice system has to do everything in its power to make this coming-to-terms period as short as possible.

The amendments to this tightly drawn Bill do not determine that there shall be a Newton hearing but simply that, if one has taken place, the Parole Board shall take note of its proceedings, which will provide it with internal and external information—for which I am sure it would be grateful—and will determine whether there was remorse and whether the perpetrator had knowledge of his or her victims that he or she had chosen not to disclose. It may be easier to achieve this disclosure, and hopefully provide solace to the victims, at this early stage.

While these amendments do not require that there are Newton hearings, their inclusion in the Bill would send a powerful message to the judiciary of the significance of such a hearing, particularly its impact on victims, and therefore they might become a regular feature in

[LORD GERMAN]
future—but they are not part of the Bill. I commend these amendments to the Minister and look forward to a positive response to these proposals.

4.45 pm

Lord Ponsonby of Shulbrede: My Lords, as the noble Lord, Lord German, has just said, there are essentially two groups within this single group of amendments. The first was introduced by the noble Baroness, Lady Bull, on mental capacity and making sure that the Mental Capacity Act 2005 is properly taken into account in the Parole Board proceedings. I was persuaded by the argument of the noble Lord, Lord Thomas of Gresford, that while we should not do piecemeal reforms of the Parole Board system—I anticipate that the Minister will say there will be a larger-scale review of the Parole Board system—this aspect of the mental capacity of the offenders who come before the board should nevertheless be taken into account.

The noble Baroness, Lady Bull, was very persuasive in her speech. She alluded to my noble friend Lord Bradley's report, in which he pointed out that it is unknown how many people in our prisons have mental disorders. As the noble Baroness, Lady Bull, said, it should be no surprise that quite a lot of prisoners' mental capacity deteriorates because of their time in prison, for the reasons she gave in her speech. The other point she made was about dementia. We are often dealing with people on very long prison sentences, and dementia is becoming an ever more real issue. For those reasons, I support the amendments in the name of the noble Baroness, Lady Bull.

The amendments in the second part of this group were introduced by the noble Lord, Lord Thomas of Gresford, who spoke about Newton hearings as a possible way of resolving this conundrum. I have some experience of Newton hearings in a much lower capacity in magistrates' courts. I regularly have Newton hearings, trying to resolve whatever the issue of the day is. My experience is that, in practice, it is quite difficult to narrow the issues and look just at the issue in dispute in a Newton hearing. It is very often the case that the wider events surrounding the events as a whole are brought into the case, even when one is trying to narrow the issue.

While I understand the suggestion and think it interesting, I am also mindful of the points made by the noble and learned Lords, Lord Mackay of Clashfern and Lord Thomas, that the sentencing judge will have heard the whole case in any event and can explain their view on the reason the offender has not disclosed the location of the body and make it quite explicit whether there is an uplift to the tariff because of the way the offender has behaved. I am open-minded on that point; I have just raised some questions that arise from my own experience in the lower courts.

Nevertheless, these amendments are interesting and constructive. I hope that, when he comes to reply, the Minister will treat them in that way.

Lord Keen of Elie: I thank noble Lords and noble and learned Lords for their contribution to the debate prompted by these amendments. I begin with a number of general remarks which may well be familiar to noble and learned Lords, but perhaps not to everyone.

I believe there was a reference at one stage of the proceedings to early release, and I emphasise that we are not dealing here with any issue of early release. As I mentioned in response to observations from the noble Lord, Lord Adonis, we are generally dealing with a life sentence or extended sentence, and when we come to look at that, we can identify two elements—in what I shall refer to as a life sentence. There is the punitive element, which is the tariff fixed by the court, and a preventive element, which is the issue addressed by the Parole Board in the context of public protection. The Parole Board's role comes into play only at the end of the tariff—the punitive element of the sentence—at which point the Parole Board has to determine whether there should be a continuation of custody or a release under licence, having regard to the public protection test.

The noble and learned Lord, Lord Thomas, was quite right in observing that in most, if not all, of these cases, the judge will have made findings in fact that will address, among other things, whether there has been disclosure of a victim's whereabouts. If that becomes an issue, there is scope for what is termed a Newton hearing. But generally, the trial judge—whether after plea or after trial—will be in a position to make findings in fact on that issue, and to then reflect those findings in fact in the tariff he imposes upon the individual in question when applying the punitive element of the sentence. I emphasise that because the noble and learned Lord, Lord Thomas, made the point that there should not be punishment again. That is quite right: it is not the role of the Parole Board to punish. The role of the Parole Board is to determine, by reference to the public protection test, whether at the expiry of the tariff it is appropriate for an individual to be released from custody, albeit under licence.

That takes me to an observation of the noble and learned Lord, Lord Hope, who asked whether the object of this legislation is to delay release as a punishment. The answer is clearly no. The issue being addressed is in the context of public protection, and whether the failure to disclose indicates to the Parole Board that there is a very real and material question about public protection, and whether someone should be retained in custody. Indeed, if the object of this legislation was to punish, it would potentially be in breach of both Article 5 and Article 7 of the European convention. I stress that this is not the object of this legislation at all.

I turn specifically to the amendments tabled—first, to those in the name of the noble Baroness, Lady Bull, which really have two limbs. The first is covered by Amendments 2, 7, 10, 13 and 16, and the second by Amendment 4 and subsequent amendments. The first limb would ensure that the Bill's provisions apply only to prisoners who are "able" to disclose relevant information about the location of a victim's remains but had not done so. The second limb would particularise a prisoner's mental capacity as one of the possible reasons for non-disclosure.

The Bill in its current form affords the Parole Board a wide scope to subjectively consider the circumstances of a prisoner's non-disclosure. The test is broadly drafted to give the Parole Board, an independent judicial body with experience of assessing risk and

evidence, sufficient flexibility to take all circumstances into account when making a determination about non-disclosure, including the ability, whether mental or physical, of an offender to disclose.

The amendments as drafted would confine the operation of the provisions to prisoners deemed able to make such a disclosure but who had not done so. However, there may be cases where an offender has had ample opportunity to co-operate with the police or the authorities over many years to reveal a victim's whereabouts but has refused to do so. If such an offender later became unable to disclose—by reason of age or mental illness, for example—the provision of these amendments would not apply to that offender and the board would be unable to consider a previous refusal to co-operate in its assessment of that prisoner's risk, yet these previous persistent refusals may well be considered as reflecting quite materially on the risk that the prisoner posed to the public in the event of release on licence.

The current Bill avoids such difficulties by allowing the Parole Board to consider all possible reasons in its view to explain non-disclosure, including considering historical refusals. That flexible approach is underlined by Clause 1(3), which makes clear that the imposition of the statutory duty does not in any way limit other matters that the board must or may take into account when conducting such an assessment.

The existence of mental health difficulties or a lack of mental health capacity would doubtless be a relevant circumstance to be taken into account, but there would also be other relevant circumstances. By not specifically referring to particulars in the Bill, we are not giving some more significance than others; we are instead allowing the Parole Board to use its expertise in how it approaches such cases. It is therefore for the board itself to take a subjective view of what the reasons might be, and then it is for the board to decide what bearing that information may have on the subsequent assessment of suitability for release, which is the relevant test that the Parole Board has to address.

We have deliberately avoided any delineation in the Bill of what the reasons for non-disclosure may be, to preserve this flexible and subjective approach. Noble Lords have correctly identified that a prisoner's mental state is likely to be a significant factor in assessing reasons for non-disclosure but there may also be other reasons, such as, as I mentioned, geographical change, mental impairment or issues of mental capacity that may not have occurred at an earlier point but will still be relevant to a current assessment. In these circumstances, I will be inviting the noble Baroness to withdraw this amendment.

I move on to the amendments tabled by the noble Lord, Lord Thomas of Gresford, which specify that where a Newton hearing has been carried out to ascertain certain disputed facts—generally where there has been a guilty plea, but it may take place after a trial—that should be considered by the Parole Board. The short point that I would make is that these are matters that it will be within the competence of the Parole Board to consider, and the board can call for all material pertaining to sentencing, including the terms of any Newton hearing that may have taken place. I apprehend that what the noble Lord may have in mind is perhaps to encourage judicial activity when sentencing in these cases to ensure that they address the non-disclosure of the whereabouts of a victim. However, as the noble Lord, Lord Thomas, observed, that is something that will invariably be taken into account by a trial judge in fixing a tariff for the sentence that he is going to impose.

5 pm

If there is a dispute of fact that is material to the issue, there may be a Newton hearing, albeit my understanding is that they are not that common. I note the observation of the noble Lord, Lord Ponsonby, that, in his experience, they can in fact be quite difficult hearings to determine. I emphasise that they clearly are a relevant basis for consideration by the Parole Board and, therefore, the Parole Board already has the means to call upon such material if it wishes to do so.

The noble Baroness, Lady Barker, raised the question of the Parole Board's competence to address issues of mental health. I would observe that, where such issues arise, the Parole Board is in a position to ensure that there is a suitable psychologist or psychiatrist board member of the panel who would be available when required. That expertise is available to the Parole Board when it comes to consider these cases.

The noble Lord, Lord Thomas of Gresford, asked a very particular question about how many offenders at present in prison will be subject to the provisions of the Bill. I cannot answer that question immediately, but I will take steps to see if that information can be ascertained. If it can be easily and reasonably ascertained, I undertake to write to him and place a copy of the letter in the Library.

I again thank noble Lords and noble and learned Lords for their contribution to this debate. It appears to me that we ultimately have a common objective so far as this Bill is concerned but, at this stage, I invite the noble Baroness to withdraw her amendment.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, the noble Lord, Lord Thomas of Gresford, and the noble and learned Lord, Lord Hope of Craighead, have indicated that they wish to speak after the Minister. I call the noble Lord, Lord Thomas of Gresford.

Lord Thomas of Gresford: My Lords, I am very grateful to the Minister for his reply, but I think it is necessary to distinguish where there has been a plea of guilty and where there has been a plea of not guilty in a trial. Very often, when a person pleads guilty, he will, with the assistance of his legal team, put together a basis of plea, which is handed to the prosecution for consideration. If it accepts the basis of plea, there is no problem but, if there is an issue, a Newton hearing will be held to determine whether the prosecution which refuses to accept the basis of plea is correct or whether the defendant who is pleading guilty is correct. The judge will sentence accordingly.

That is one situation. Another is after a trial, when there has been a finding of guilt. Let us take a circumstance where a group of people have attacked an individual and one of the group says, "I didn't take part"—indeed, I remember a case where precisely that happened; the

[Lord Thomas of Gresford]
defence was, "I was trying to discourage them so they'd go away"—but, at the end of the trial, the defendant is found guilty. At that point, the judge says, "I will sentence you on the basis that you are withholding information as to where the body was buried." The defendant could then say, "I've been found guilty, but the others took the body away and I want to be heard on that, because I don't know where they went and where the body was ultimately buried. You cannot sentence me on the basis of the facts the jury has found—that I was a party to a killing—when I don't know where the body went." That situation does not involve mental incapacity at all and such a situation should be investigated at the time and not 15 or 20 years later by the Parole Board doing its best, unassisted by medical evidence because it would not arise. It seems to me that issues of that nature should be determined prior to sentencing for the actual offence, whether there is a plea of guilty or a finding of guilt. That should involve a hearing of the sort that I have proposed.

Obviously, my amendment does not require the Parole Board to order a hearing. As the Minister anticipated, my purpose is to encourage the holding of Newton hearings where necessary. I do not believe that they are quite as rare or unusual as he suggests. In this particular instance, with proper directions being given generally to judges to hold Newton hearings where appropriate, they would be useful and helpful to the board's ultimate determination. They would be of great significance concerning culpability.

Lord Keen of Elie: My Lords, I accept what the noble Lord, Lord Thomas, has observed. In cases of this kind, the judge will wish to take into account the disclosure or non-disclosure of the whereabouts of a victim and the circumstances in which the offender can or cannot make that disclosure. There may be circumstances in which that might necessitate a Newton hearing, and so be it. That would be done contemporaneously with the determination of the tariff in the sentence. When later on we get to the preventive element after the tariff has been served, the Parole Board will be able to call for all that material, whether it be a Newton hearing or otherwise.

I hear what the noble Lord, Lord Thomas, has to say about the importance of determining these issues at the time of trial and sentence; I do not disagree with him at all. It may be that some element of encouragement will be given if it is required, although I take from the observations of the former Lord Chief Justice—the noble and learned Lord, Lord Thomas—that there may be little requirement to encourage in a matter that is dealt with in this way day in and day out.

Lord Hope of Craighead: My Lords, I refer the Minister to his remarks about historic refusals. Reading proposed new subsection (1)(c), I do not get the impression that it is talking about historic refusals and I do not think that anything in the noble Baroness's amendments would cut the ability of the board to look at them. What the opening words of the subsection are talking about is a situation where the board

"believes that the prisoner has information"—

talking about it in the present tense so that the board can consider it in a situation where it thinks that the prisoner is able to do something. That is where the words suggested by the noble Baroness would fit in very well.

Would the Minister like to reflect carefully on exactly what subsection (1)(c) is talking about and reconsider his point as to whether these amendments would cut out historic refusals, which would be highly undesirable, of course?

Lord Keen of Elie: It does appear that the amendment has that effect even it was unintended. I will give the matter further consideration, as invited to by the noble and learned Lord.

Baroness Bull: My Lords, I am grateful to the noble and learned Lord, Lord Keen of Elie, for his comments and I have listened carefully to his response. I also express my gratitude to all noble and noble and learned Lords who have spoken in support of my amendments. Aside from generously sharing his considerable expertise with me in advance of today's debate, the noble and learned Lord, Lord Hope of Craighead, helpfully extended my arguments to include the possibility that the convicted prisoner is not in fact able to disclose the information because, despite the findings of the court at trial, they are innocent. One hopes that this is rarely the case, but of course history shows that it can indeed be so.

I am also grateful to the noble Baroness, Lady Barker, who sounded a useful warning about the general understanding of the Mental Capacity Act and concerns about the extent to which it is drawn on and applied within the prison environment. She raised an important question about training for practitioners in the criminal justice system, including members of the Parole Board, in applying the provisions of the Act. The Minister responded to a point about competence, but I am not sure that he responded to the point about training more broadly to enhance understanding of the Act within the criminal justice system. Perhaps he would write to us on that point.

The noble Baroness, Lady Watkins, spoke from her position of vast experience, including in Broadmoor, and reminded us that medical personnel are usually well able to distinguish between genuine mental disorders and what was referred to earlier as "guff". Her views of course bear considerable weight here.

I am grateful to the Minister for addressing the two limbs of my amendments in so much detail. Like the noble and learned Lord, Lord Hope, I was confused by his point about previous refusals not being taken into account. I am grateful to him for agreeing to reflect further on that, in response to the noble and learned Lord's further comments. He argued that state of mind and/or mental capacity are just one of several reasons why disclosure might not be possible. However, given what we have heard today from the noble Baroness, Lady Barker, about understanding the Mental Capacity Act as it is applied within the criminal justice system, and the potential for the infringement of human rights, I contend that there is justification for expressly including this reason in the Bill.

The noble Lord, Lord Kennedy of Southwark, set out very clearly the difficult balance between the rights of a grieving family, who have been by extension the

victims of a heinous act, and the rights of a prisoner, convicted of that crime but who suffers a mental health disorder or who, for whatever reason, lacks the mental capacity at the time of the Parole Board hearing to disclose the information requested of him. I know that every noble Lord who has spoken today is acutely aware of this tension and of the importance of this Bill, not just in putting the needs of victims at the centre of the justice system and helping grieving families to achieve closure but as part of a wider and necessary process to increase the efficiency, transparency and accountability of the parole system.

My amendments do not seek to alter the intention of the Bill in any way. As the noble Lord, Lord German, pointed out, neither of the amendments takes away the subjective capacity of parole boards. They simply seek to add clarity through the insertion of the words "is able to, but", and an explicit reference to consideration of mental capacity. I continue to believe that these simple amendments would support the Parole Board in the fulfilment of the new statutory duty that the Bill places on it by enshrining in law what government has already accepted: that parole boards need to take state of mind and mental capacity into account. This would empower them to do so with confidence and consistency.

I am very grateful to the noble and learned Lord for considering the amendments. I am disappointed that he has not been persuaded by my arguments and those of other noble, and noble and learned, Lords. However, for the time being, I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendments 3 to 6 not moved.

Clause 1 agreed.

Clause 2: Manslaughter or indecent images: prisoner's non-disclosure

Amendments 7 to 18 not moved.

Clause 2 agreed.

Baroness Scott of Bybrook (Con): My Lords, due to the necessity of a few short adjournments earlier this afternoon, I suggest that we continue without any further adjournments this evening.

The Deputy Chairman of Committees: My Lords, we now move on to the group consisting of Amendment 19. 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" if the question is put could make that clear in the debate. It takes unanimity to amend the Bill in this Committee. The Committee cannot divide.

5.15 pm

Amendment 19

Moved by ***Baroness Barker***

19: After Clause 2, insert the following new Clause—

"Provision of information to victims' families

(1) Where the Parole Board makes a decision for which it is required to take into account a prisoner's non-disclosure under section 1 or 2, the Parole Board must inform the relevant persons of—

(a) the timings of hearings where the prisoner's release from prison is being considered;

(b) the relevant persons' rights in relation to requesting a judicial review of the Parole Board's decision;

(c) the length of the sentence that will have been served by the prisoner at the time of the hearing; and

(d) any other rights that the relevant persons have relating to the provision of information.

(2) The Parole Board must take reasonable steps to contact the relevant persons to ensure they have access to the information in subsection (1).

(3) The Parole Board must provide the relevant persons with the information in subsection (1) unless they declare to the Parole Board that they do not wish to receive such information.

(4) In this section, the relevant persons are—

(a) where the prisoner's sentence has been imposed for murder or manslaughter, the victim's parents or guardians, children and siblings; or

(b) where the prisoner's sentence has been imposed for an offence relating to indecent images as defined by section 28B of the Crime (Sentences) Act 1997 (as inserted by section 1)—

(i) the victim or suspected victim (if the victim's identity is not known for certain) if the victim or suspected victim is over the age of 18; or

(ii) the victim or suspected victim's parents or guardians if the victim or suspected victim is under the age of 18."

Member's explanatory statement

This amendment would require the Parole Board to provide the victim, suspected victim, or their family with information relating to the prisoner's hearing.

Baroness Barker: My Lords, I was inspired to table Amendment 19, which stands in my name, by three experiences. The first was that, prior to the Bill's Second Reading, I spent a considerable amount of time talking to Helen McCourt's mother. She stressed to me the importance of families being informed fully and involved in hearings about release.

My second experience happened very many years ago. I knew Iris Bentley, and I watched her in her latter years as she came to the end of her decades-long campaign to obtain a pardon for her brother Derek Bentley. She was a woman of immense fortitude, diligence and grace. They are very different cases, but in both, the amount of time and effort it took for those women to seek and obtain justice from a system that largely ignored them was remarkable. They were two very strong, determined women who refused to be ignored. Not everyone is so resilient, and nor should they need to be. They should automatically be involved and included by the criminal justice system.

My third experience is that I lived for many years in a Pennine town. Anyone who did at that time could not be unaware of or unsympathetic to the suffering of the families of the Moors murder victims—and that suffering continues today.

From talking to Marie McCourt, I understand that there are at most 100 prisoners to whom this legislation would apply. There are not that many, but the families of their victims suffer perhaps more than anybody else

[Baroness Barker]
in the criminal justice system. For them, not to be told that a release hearing will take place, nor where and when it will take place, is a trauma. These hearings might happen many years after there has been a conviction, but their importance to victims and victims' families never diminishes. One needs only to look at what happened to the victims of John Worboys to know about the importance of making sure that people are informed and included.

By the time a release hearing is reached, relatives who are desperate to know what has happened to their loved one are running out of time and the means to compel the prisoner in question to tell them what has happened. It is wrong not only to ignore them but not to advise them that they might not be involved in something that they might see as their last hope of achieving a resolution.

My amendment would place in the Bill that it is the right of relatives to receive information about the timing and location of a release hearing and about their rights, particularly in relation to judicial review. In putting this in the Bill, my intention is that the Parole Board will know right from the moment that the sentence is passed that it is under an obligation to maintain contact with victims' families and that the onus is on the board, not the families, to maintain contact. It is not unusual for families to be told that they have not been contacted because they have moved or their details have changed, and the Parole Board has simply failed to keep their details up to date.

Release hearings and the prospect of release are a time of heightened anxiety for victims' families. It can be a grave disappointment that there is no further prospect of the prisoner disclosing information about the victim, but for some there is also the knowledge that the perpetrator will be released into the community and might well know or discover where their victim's family lives. I know that victims are very fearful of that. At that time, the onus should be on the Parole Board to keep victims' families fully informed. It is the very least that they should expect. This might be a seemingly simple procedural matter, but it is of immense importance to people who are victims of these prisoners. Therefore, it is in that vein that I beg to move.

Baroness Kennedy of Cradley (Lab): My Lords, I support the amendment. I agree with the noble Baroness, Lady Barker, that much more needs to be done to support victims in the parole process. The amendment would provide information rights for victims and their families, which are desperately needed. As I noted at Second Reading, many parents involved in the George case sadly found out about her release on Facebook or via the local newspaper. That is completely unacceptable. I am sure that every effort was made to contact the parents in that case, but the system places the onus on the victim or their families, as the noble Baroness, Lady Barker, eloquently set out. It is made their responsibility to opt in and keep in touch with victim liaison officers; it has to be the other way around. The Parole Board should have a duty to ensure that accurate information is given to victims and their families in an appropriate timeframe. The amendment would give them that reassurance.

I particularly welcome proposed new subsection (3). Rather than there being an opt-in approach, victims and their families should automatically be included in the scheme for information unless they opt out. In a meeting a few months ago, the Victims Commissioner and the chair of the Parole Board acknowledged that not all victims opted into the victim contact scheme. They noted that this caused distress to those who failed to opt in and who later discovered through third parties that the offender had been released. They agreed that the current requirement for victims to opt into the scheme was a concern. The amendment addresses that concern. In addition, technology should be developed to modernise information flow to victims and their families so that they can keep their contact details up to date and keep up to date with the details of the case.

The type of additional support outlined in the amendment will not only help victims and their families but help to build public confidence in the system. I hope that the Minister will highlight his support for the principles raised in the amendment, commit to improving the victim experience of the parole process and give assurances that the needs and experiences of victims and their families will be central to the pending review of the parole system. Will he indicate whether he is willing to discuss the amendment further before Report?

Baroness Healy of Primrose Hill (Lab): My Lords, I welcome the Bill and am sorry that I was unable to speak at Second Reading. I pay tribute to the ground-breaking work done by my colleague in the other place, Conor McGinn, following the campaign by Marie McCourt, the mother of Helen, who was tragically murdered and whose remains have never been found or their location revealed by her murderer, now released.

It is right that the refusal by serious offenders to disclose information about their victims—including the whereabouts of a murdered victim and the identities of child victims in the case of offenders who take or make indecent images—is always taken into account by the Parole Board when making decisions about their possible release, and will now be a statutory requirement.

I support Amendment 19 in the names of the noble Baroness, Lady Barker, and the noble Lord, Lord German, and believe the effectiveness of the Bill will be proved only if we can assure victims that their concerns are a priority in the justice system. Victims cannot be an afterthought; there have been too many occasions in the past when painful interviews with the bereaved, still suffering terrible grief, are broadcast in which they say that no one had told them in advance that those who had done terrible things to their loved ones had been released.

The Victims Commissioner reported recently that victims are less satisfied than ever that their views are taken into consideration. Can the Government assure the House that victim involvement in Parole Board decisions will improve with the passing of this Bill? I hope that the amendment will therefore be accepted. I know that the Government will point to a future, wider root-and-branch review of the operation of the Parole Board as a way of increasing transparency, but they have an immediate opportunity to do so by accepting Amendment 19.

The Deputy Chairman of Committees: Lord Naseby. No? I am not getting a response from the noble Lord, Lord Naseby. If I do not hear any more, I shall move on to the noble Lord, Lord German.

Lord German (LD): My Lords, this amendment, tabled by my noble friend Lady Barker, puts victim right at the centre of the parole functions. The amendment has two major functions: to ensure that victims are contacted, and to provide victims with information about the Parole Board's hearing of the case of the prisoner's parole. Much more needs to be done to support victims. The issue of strengthening the victim contact scheme as a whole is important and, while associated with the Bill, is beyond the scope of it. I look forward to the Minister telling us when his root-and-branch review of the Parole Board will take place. "In the fullness of time" was the response we got at Second Reading, and I think we ought to know when full time will be up.

However, there are matters in the Bill that relate to the Parole Board's functions and to the work it has to do for victims. There are considerations that affect the way the board should engage with victims. First, cannot the system be modernised so that victims' views can be taken by video link, rather than having to travel in person to the prison where the perpetrator is located? This process can in itself add to the anguish felt by victims who have struggled to come to terms with the grief they have suffered. Sentencing and conviction is just the start of justice for victims. The parole process can easily add to a victim's pain, and it is essential that everything be done to minimise the trauma this can cause, amplified by the heinous crimes committed, which are the subject of the Bill.

The amendment requires that victims should be contacted as of right. Too often we have heard cases where victims have just not known what is going to happen, and suddenly they find that the perpetrator is released into the community, they have no idea what the conditions were, and they have simply to face up to the fright and misery of that happening. It has to be at their choice that they actually receive the information about the Parole Board's operations; they have to be given the option to do that. That means we must have an opting out of receiving information: in other words, it is the duty of the Parole Board to give information to victims—to do everything it possibly can to give them that information—and it is the victims' choice whether they receive that information. Of course, that means that, over time, we would expect some people to say, right at the beginning, "I do not want to hear any more; I do not want to have any more information". But at this particular point, at the point of possible release into the community, there has to be that option, and contact has to be made as of right.

We know of too many examples of victims finding out the result of the parole process only from media reports, as the noble Baroness just said, from social media or, worst of all—can you imagine?—from reporters calling victims to ask for their comments on the release of the perpetrator. Thus far the service has adopted much more of an opting-in approach to receiving information than an opting-out approach, which I think is crucial in making sure that victims have their rights upheld. For example, I am sure Members will recall the case of Worboys being debated in your Lordships' House last year, when this matter came to a very important head. Within the narrow scope of the Bill, which leads to only a relatively small number of cases being considered, I do not think this obligation on the Parole Board will place a large administrative burden on its workings. But these Parole Board cases are of great significance to victims, and victims have a right to know what is happening and to have their say should they desire to. They need a consistent infrastructure for exercising these rights. This amendment enables victims to opt out of knowing about and participating in the parole process, but the default position is that they will always be given that opportunity.

With modern technology, keeping in contact with victims is so much easier. Tracing victims if they change their address, telephone number or email will be much simpler and quicker. Governments have databases which can make it much easier to locate people whose contact details have been mislaid. There should be an obligation, therefore, on the Parole Board to maintain the contact details of victims, so that when this time comes, as in the Bill it will do, it is obliged to make sure that the victims understand and know their rights, and that they have a right not to hear anything and to opt out of the information if they so desire. That is what this important amendment would do: give rights to victims that are recorded as being consistent, and which are so important to people who are suffering such misery.

5.30 pm

Lord Ponsonby of Shulbrede: My Lords, all noble Lords who have spoken on the amendment have supported it with some passion. The noble Baroness, Lady Barker, who moved it, spoke forcefully about relatives' right to hear about release hearings and about putting the onus on the Parole Board to inform victims' families, rather than victims' families having to use their own initiative to remain in contact with the Parole Board. As she rightly said, this is very important for families. There should be automatic membership of the victims contact scheme. People should not have to opt in, although they should, of course, have the option of opting out.

My noble friend Lady Healy had it absolutely right when she said that of course we understand that there is to be a wholesale review of all aspects of the Parole Board, but that here we have an opportunity right now to do something about this, something that has received cross-party support and is very much in the spirit of supporting victims through this often very protracted process. It is a difficult process, but we can do something about it right now.

In his summing up, the noble Lord, Lord German, made the same points about putting victims at the centre of the Parole Board's functions. He alluded to the benefits of modern technology. I have to say, again with my magistrate's hat on—although I do not speak for the magistracy in any way—that even with the best modern technology, it is sometimes quite difficult to locate people, particularly if they do not want to be located. However, that is not a reason for not putting the onus on the Parole Board, and I very much support the amendments.

Lord Keen of Elie: My Lords, I thank noble Lords for their contributions to the debate on the amendment, and I thank the noble Baroness, Lady Barker, for her submissions on it. In the context of the Bill, we are dealing with particularly disturbing forms of crime and particularly disturbing consequences. However, we must have regard to all victims of crime, not just of these crimes, in determining the appropriate step to take in order properly to take account of their views, interests and concerns.

Processes are already in place, by virtue of the Parole Board Rules, the victims' code and the Domestic Violence, Crime and Victims Act 2004, that address the issues referred to in the amendment. Both the National Probation Service and the Parole Board communicate information to victims, and where a family member is affected by an offender's action, they too, of course, will be victims and will be contacted. Where a victim wishes to receive information, this will be provided by their victim liaison officer. Victims can receive information regarding the date of a parole hearing and the outcome of a review. Indeed, they may request a summary of a Parole Board decision and can also provide a victim personal statement to the Parole Board to explain the impact of the crime upon them. They have the right to request that certain tailored licence conditions be applied.

Victims are also informed of the avenues for making a request for reconsideration of a decision. Such reconsideration will be carried out by the Secretary of State. Following a request for reconsideration, they will receive reasons why their request was or was not successful. Thereafter, a victim liaison officer will provide information regarding judicial review, if that is requested.

In recent times—I note the reference to the Worboys case—the National Probation Service has improved the way in which it communicates with victims, such as using email or telephone as opposed to letters, while being mindful of the victim's preferred method of contact. We have also tightened processes to ensure that victims are informed of developments, such as being notified of the date of oral hearings, in a timely manner. We have expanded the criteria for victims who are eligible for contact under the National Probation Service victim contact scheme. We are trialling a new process whereby all eligible victims are referred directly to probation to reduce the risk that they are not offered use of the victim contact scheme directly. Therefore, we have taken steps to improve the system. However, the Parole Board is an independent body and it requires a degree of flexibility in how it operates. To impose these statutory obligations on the Parole Board, and the Parole Board alone, would, I suggest, be going too far.

I hear what is said about the idea of an opt-out rather than an opt-in scheme for victims and what is said about the need to improve the involvement of victims, particularly those in the present category. I will be happy to discuss that at a meeting, as suggested by the noble Baroness, Lady Kennedy, before the next stage of the Bill. However, I also note that there is a proposal for a review of the Parole Board. I cannot give a precise date for that review but, again, I will be happy to take that up in discussions with the noble Baroness, Lady Kennedy. At this stage, however, I invite the noble Baroness, Lady Barker, to withdraw the amendment.

The Deputy Chairman of Committees: My Lords, no noble Lords have indicated a wish to speak after the Minister, so I now call the noble Baroness, Lady Barker.

Baroness Barker: I thank all noble Lords who have taken part in the debate on this amendment. It would have been easy to dismiss this as a minor procedural matter, but I have long held the view that when people have frustrations about the criminal justice system or indeed the workings of the Home Office, as many of those arise from the way in which the system works and the procedures that are adopted as from the decisions of substance that are made. Our criminal justice system can be extremely difficult to work with at a basic administrative level.

I particularly welcomed the support of the noble Baroness, Lady Kennedy of Cradley, for our proposal that there should be an opt-out rather than an opt-in scheme. It is high time that we moved to that, and I do not think that it would necessarily put any undue obligations or administrative burdens on the probation service or the Parole Board. My noble friend Lord German spoke about the increased use of technology, which will be life in the new world for everybody. I think that it can be done in ways that minimise trauma to victims, maximise inclusion and make life administratively easier for those who are responsible for implementing it.

I am glad that the noble Lord, Lord Ponsonby, recognised that there is cross-party support. I, too, think that it is a matter that could be looked at in the near future. I do not think that it has to wait for the full, wider review of the Parole Board. I very much welcome the Minister's offer of a meeting. I hope that he might consider including in that some of the victims' representatives, for whom this is not theoretical but a crucially important matter in their lives. We all wish to see this Bill make the statute book. Therefore, at this point, as the Minister predicted, I beg leave to withdraw the amendment.

Amendment 19 withdrawn.

Clause 3 agreed.

The Deputy Chairman of Committees: My Lords, I am getting a little background disturbance. I am not sure whether it is intended to get my attention, but I shall proceed on the basis that it is not. That concludes the Virtual Committee's proceedings on the Bill. The Virtual Proceeding will now adjourn until a convenient point after 6.30 pm.

5.41 pm

Virtual Proceeding suspended.

Arrangement of Business

Announcement

6.30 pm

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

The Deputy Speaker (Baroness Finlay of Llandaff) (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 have finished speaking, their microphones will again be set to mute.

We now come to the Virtual Proceedings on the repeat of the first Urgent Question. 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, led by the Opposition Front Bench. The Minister will respond to each question in turn. I ask that all questions and answers be brief, so that we can call the maximum number of speakers.

Covid-19: Care Homes

Commons Urgent Question

The following Answer to an Urgent Question was given on Tuesday 19 May in the House of Commons.

"One of the first things we knew about coronavirus as it began its dismal spread across the world was that it reserves its greatest impact for those who are physically weakest, especially the old. In the UK, 89% of all deaths have been of those aged above 65. From the start, we have worked hard to protect those in social care. In early March, we put £3.2 billion into social care—half through the NHS and half through local authorities—and we have repeatedly set out and strengthened guidance for infection control and support.

For anyone who has a loved one living in a care home and for all the residents and staff, I understand what a worrying time this has been. I am glad that we have been able to protect the majority of homes, and we will keep working to strengthen the protective ring that we have cast around all our care homes. As I said in the House yesterday, last week we set out a further £600 million to strengthen infection control, and this comes on top of a substantial programme of support.

First, on testing, from the start we have tested symptomatic residents of care homes, even when testing capacity was much lower, and this has always been a top priority. We are now testing all care home residents and staff in England—those with symptoms and those without—and this is being done according to clinical advice, starting with the most vulnerable, and extending to working-age residents too.

Secondly, we have strengthened the NHS support available to social care. We are putting in place a named clinical lead for every care home in England and have brought NHS infection-control expertise to the sector.

Thirdly, we are making sure that local authorities play their part. Councils are conducting daily reviews of the situation on the ground in local care homes, so that every care home gets the support that it needs every day.

Fourthly, we are supporting care homes to get the PPE that they need.

Fifthly, we have increased the social care workforce during this crisis and provided more support. Altogether, this is an unprecedented level of support for the social care system. I thank colleagues across social care for their hard work.

We have also broken down some of the long-standing barriers, including between health and social care, and we have learned the importance of making sure that money for social care is ring-fenced specifically for social care, as the £600 million agreed last Friday has been. On top of that, we are requiring much better data from social care, because partial data has bedevilled the management of social care for many years and made policy-making more difficult. Regular information returns are required in return for the latest funding, and we are looking to change the regulations to require data returns from every care provider, so that we can better prepare and support social care.

Our elderly care homes provide for people towards the end of their life. They do an amazing job and deserve the praise that they have received from the public during this crisis. Residents are looked after when they need care the most: their hands are held, their brows are mopped and they are made comfortable. As a collective result of our efforts—especially the efforts of care colleagues throughout the country—62% of care homes have had no reported cases of coronavirus.

The figures released today by the Office for National Statistics show that the number of deaths in care homes has fallen significantly and is down by a third in just the past week, from 2,423 to 1,666. This morning's statistics confirmed that 27% of coronavirus deaths in England have taken place in care homes, compared with a European average of around half, but whatever the figures say, we will not rest in doing whatever is humanly possible to protect our care homes from this appalling virus, to make sure that residents and care colleagues have the safety and security they deserve."

6.31 pm

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

Baroness Wheeler (Lab): My Lords, this Urgent Question taken yesterday in the Commons on coronavirus and care homes covered much of the ground in the Statement taken by us last night. Sadly, it is clear that Ministers' claims to have thrown a protective ring around care homes ring hollow in the light of the latest ONS figures on deaths in care homes: 9,495 residents in England and 480 in Wales. These figures are still ringing alarm bells, as the number of deaths involving Covid-19 as a percentage of all care home deaths continues to rise this week. As Martin Green of Care England told MPs yesterday, most care home residents should have been prioritised from the start. He also stressed that there are still huge issues with testing, with results lost and staff waiting eight to 10 days to find out whether they have coronavirus.

I ask the Minister about reports on the PHE study on genome tracking to investigate outbreaks in care homes, which last month found that bank and temporary agency care workers, often employed on zero-hours contracts, had unwittingly transmitted Covid-19 between

[Baroness Wheeler]
care homes as cases surged and they were moved from home to home to cover staff vacancies. Does this not raise even further doubts and questions about this ring of protection? Why was this issue not recognised early on as a crucial factor in any infection-control strategy?

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, the issue the noble Baroness raises was recognised in the very early stages. The problem of itinerant staff who move from one resident or patient to another was always going to be one of the most difficult to tackle. They perform an absolutely vital role in the care of non-domiciliary patients. That is why we put more money in to pay for more staff, provided PPE for the staff who were working and continue to upgrade the testing arrangements for both staff and patients, to ensure that they are protected.

Baroness Brinton (LD): Yesterday, Professor Dame Angela McLean said testing had been prioritised in the NHS over care homes. Today, Justice Secretary Robert Buckland said the Government had prioritised the NHS over care homes as well. Yesterday's Health and Social Care Select Committee also heard members of the care sector report continuing and widespread problems with PPE—chaotic, unreliable and extremely expensive, with the Clipper system promised two months ago still not rolled out. When will the Government ensure that our care sector gets the urgent priority support outlined in the Government's social care action plan on 15 April, needed to keep residents and staff safe?

Lord Bethell: The noble Baroness is quite right to focus on the importance of social care, but I think she unfairly characterises the effort made to ensure that social care is protected. The social care action plan announced on 15 April has been enormously important and extremely effective. Also on 15 April, we rolled out outbreak testing for all symptomatic care home staff and residents. We brought in extra funding on 16 April, with £850 million in existing social care grants. There has been new guidance and more money for local authorities, and we have launched a workforce recruitment campaign for care home staff. An enormous amount has been done. Care homes were always vulnerable, and we have sought to put every possible measure in place to protect them.

Baroness Newlove (Con): My Lords, I am grateful for the Statement. Unfortunately, I am having hearing issues, which are overriding the voices.

Can the Minister tell us what the business model is for care homes? We are seeing so many deaths in our care homes because of Covid-19 that it highlights that there may be underlying issues. We must think of the staff who are caring for the most vulnerable in our society.

Lord Bethell: My noble friend raises one of the key features of our social care system. It is provided by 12,000 different care home providers—or 16,000, depending on how you measure it—many of whom have very different business models. This creates a rich and diverse tapestry of provision, but it is also extremely difficult to engage with from a central campaign provision. That is one of the challenges that we have faced when rolling out support such as PPE and testing. We do not believe that the business models are inappropriate, but undoubtedly we have challenges when we are trying to reach all the care homes with an equal and central format.

Lord Bilimoria (CB): My Lords, the Statement says that 27% of coronavirus deaths in England have taken place in care homes, whereas in Europe the average is around half—but does the Minister agree that in Hong Kong, Singapore and South Korea there were zero deaths in care homes, and in Germany, a country with a population of 90 million people, 3,000 deaths? Also, can he confirm that no patients were ever sent from a care home to a hospital and then back from a hospital to a care home without being tested? Can he reassure us, as the Statement says, that the testing of all care home residents and staff, with and without symptoms, is now taking place? That is 2.5 million people. When will it be done by, and will it be done on a regular basis? Some care homes are saying that it will be necessary to test many times a week.

Lord Bethell: The statistics which the noble Lord refers to are correct. It is probably more appropriate to compare the British care home statistics with those in Europe rather than Asia, which had previous experience and different models. With regard to care home testing, not everyone needs to be tested every day. Not every care home has an outbreak, and we must focus our resources on those that do. Regular testing may be necessary for them, but it is not correct that, for example, 2.5 million people need to be tested every week. That is not the advice from the scientists or the CMO. We want to focus our tests where Covid-19 has been found, and we must use our testing resources to expunge the disease from those locations.

The Lord Bishop of Portsmouth: My Lords, we know how crucial the social care sector is, and the huge challenges it faced even before Covid-19, with 120,000 care assistant vacancies. Can the Minister therefore respond to the excellent suggestion from the most reverend Primate the Archbishop of Canterbury that we establish a royal commission on social care, not to blame but to learn, so that we have the right information to make the right decisions and provide the right services for these most vulnerable people?

Lord Bethell: My Lords, this Government have already made a very clear commitment to review the social care sector; that was made before coronavirus. The experience of coronavirus will no doubt put a massive spotlight on our provision for social care. It is entirely right that we review all of our arrangements. The vacancy question that the right reverend Prelate raises is an important one, and that is why we have launched a massive recruitment campaign, and why we have brought in minimum wage legislation which has seen rises in the pay of social care workers that are historically at the high end.

Baroness Altmann (Con): My Lords, care homes tell me that they are still being required to take residents from hospital who may have Covid-19. May I ask my

noble friend whether scientific and medical advice supported the guidance issued in the action plan of 15 April that, prior to discharge into care homes, patients must be tested but will be discharged "pending the result", despite spare capacity in the NHS? Will the Government urgently consider altering that guidance?

Lord Bethell: My Lords, the guidance has been reviewed by the CMO, and we stand by it. I can confirm that all patients leaving hospital for care homes are, as a routine, tested. When they arrive at a care home, they are treated as if they might have Covid, and they are put into an area of isolation, until either the test has come through or their diagnosis has been confirmed. This is a way of protecting care homes, and it is necessary to continue the traffic of people from hospital to care homes, in order to have the beds available for those who need them more.

Lord Turnberg (Lab): My Lords, among the many reasons why we have done so badly in protecting our care home residents from this dreadful illness is the almost complete lack of adequate public health services at the local level. A few years ago, when I was chairman of the then Public Health Laboratory Service, we had a robust network of public health expertise in every locality which did all the testing and tracing of infectious diseases across the country. All that has been eroded over very many years, and I fear we have lost that local expertise—the doctors and the other staff that could have done the job that we are now left struggling to fulfil far too late. I ask the noble Lord whether he will make it a priority now, as a matter of urgency, to begin to fill that huge gap in our network of local public health services.

Lord Bethell: The noble Lord is more expert on the history of public health than I am, but I do not doubt the story that he talked about. I reassure him that Covid has definitely made us all think again about the very clear priority that local public health provision must and will provide. I would like to pay testimony to those public health officials—public health directors, environmental health officers, infection control officers—who play, and are currently playing, a huge role in controlling the epidemic.

Baroness Prashar (CB): My Lords, the Statement is encouraging on one level but very disappointing on another, since it does not recognise that initially there were delays and problems. Consequently, care workers in those homes were working in very difficult and distressing circumstances, often without PPE and on low pay, in many cases below the real living wage. Will the Minister agree that they deserve not just applause but proper protection and a real living wage?

Lord Bethell: My Lords, we ensure that the social care system is funded so that providers can pay the national minimum and living wages to care workers. Since the introduction of the national living wage in 2016, care worker pay has increased at a faster rate than before. I share the noble Baroness's praise for care workers. As a group, our million-plus care workers have massively delivered for the country. They deserve our praise, our thanks and a tribute from this House.

Baroness Blackwood of North Oxford (Con): My Lords, I congratulate the Government on publishing the data behind their assessment of the Roche and Abbott ELISA tests. The transparency is welcome, but given the latest evidence on how asymptomatic cases affect transmission and how challenging infection control has been in care homes, can the Minister say whether care workers and care home residents will now be prioritised for antibody as well as PCR tests to give them the best data to improve infection control?

Lord Bethell: My noble friend Lady Blackwood is quite right that the Roche and Abbott antibody tests are a great step forward. It shows how diagnostic technology is progressing very quickly. We are determined to use all the benefits of modern technology in the fight against Covid. Our announcements on antibody testing in the NHS, in the care service and for key workers will be announced shortly. When it is, I assure her that NHS and social care workers will be on an equal footing.

Lord Dubs (Lab): My Lords, in answer to an earlier question, the Minister said that it was not appropriate to compare us with what happened in Hong Kong, South Korea and Singapore, which had no deaths in care homes at all. He preferred to compare us with Europe. Is the truth not that we took our eye off the ball and that as a country we failed to learn from what was happening elsewhere? We failed to learn good practice and we actually lost two months, where we did nothing very much until we tried to catch up just now. Surely we failed pretty badly.

Lord Bethell: The noble Lord makes a comparison that history will have to judge on, I am afraid to say. I think that I am making a fair point when I say that Britain can really only benchmark itself against its close neighbours. The experience of Asian countries taught them an enormous amount, but it is not one that has seemed proximate or relevant to us in recent times. I am afraid that I can only leave it to history to judge whether we made mistakes. It would be wrong for me to prejudge that at this moment.

The Deputy Speaker (Baroness Finlay of Llandaff) (CB): My Lords, I must apologise because I allowed everybody to come in. I had mistaken the timing and had allowed this to run for 15 minutes instead of 10. I must make it clear that this does not set any precedent. It was my error.

The Virtual Proceedings will now adjourn until a convenient point after 7 pm for the second Urgent Question repeat.

6.47 pm

Virtual Proceeding suspended.

Arrangement of Business

Announcement

7.01 pm

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

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, good evening. 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 have finished speaking, their microphones will again be set to mute.

We now come to the Virtual Proceedings on the repeat of the second Urgent Question. Please note that it has been agreed in the usual channels to dispense with the reading of the Statement itself and that we will proceed immediately to questions, led by the Opposition Front Bench. The Minister will respond to each question in turn. I ask that all questions and answers be brief—no more than 70 words—so that we can get the maximum number of speakers.

EU: Future Relationship

Commons Urgent Question

The following Answer to an Urgent Question was given on Tuesday 19 May in the House of Commons.

"I am grateful for this opportunity to update the House on the progress of our negotiations with the European Union. I have today laid a Written Ministerial Statement before the House, which provides a comprehensive update on the third round of our negotiations with the EU on our future relationship. We have also today made public the UK's draft legal texts. My right honourable friend the Secretary of State for International Trade has also published the new tariff schedule that we will operate at the end of the transition period for those countries with which we do not have a free trade agreement.

Negotiators from the UK and the EU held full and constructive discussions last week via video-conference. The talks covered trading goods and services, fisheries, law enforcement and criminal justice, and other issues, with both sides discussing full legal texts. The discussion underlined that a standard comprehensive free trade agreement, alongside other key agreements on issues such as law enforcement, civil nuclear and aviation, all in line with the political declaration, could be agreed without major difficulties in the time available. There remain, however, some areas where we have significant difference of principle, notably on fisheries, governance arrangements and the so-called level playing field. The EU, essentially, wants us to obey the rules of its club, even though we are no longer members, and it wants the same access to our fishing grounds as it currently enjoys while restricting our access to its markets.

It remains difficult to reach a mutually beneficial agreement while the EU maintains such an ideological approach, but we believe that agreement is possible if flexibility is shown. The agreements that we seek are, of course, built on the precedents of the agreements that the EU has reached with other sovereign nations. To help facilitate discussions in the fourth round and beyond, the Government have today published the full draft legal text that we have already shared with the Commission and which, together with the EU's draft agreement, have formed the basis of all discussions. The UK texts are fully in line with the Government's document entitled *The Future Relationship with the EU: The UK's Approach to Negotiations*, which was published on 27 February. Copies of the legal text have been placed in the House of Commons Library and are also available online at GOV.UK.

The Government remain committed to a deal with a free trade agreement at its core and we look forward to the fourth round of negotiations beginning on 1 June, but success depends on the EU recognising that the UK is a sovereign equal."

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

7.02 pm

Baroness Hayter of Kentish Town (Lab): While I was grateful to hear the Answer from Mr Gove, it is a shame that we cannot question the actual negotiator, David Frost, who seems to be following something other than the political declaration signed by the Prime Minister in October, and whose unprecedented letter to Michel Barnier yesterday called the EU proposals "unbalanced" and "egregious", claiming that the EU is treating the UK as unworthy to be a partner in trade talks. Can the Minister confirm that this letter was signed off by a Minister, that it represents the UK's attitude and that it is the normal way of undertaking delicate talks?

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, the noble Baroness is always critical of the role of Mr David Frost, the Prime Minister's Sherpa. Mr Frost acts on behalf of the UK Government and, in my view, is doing an outstanding job. I think many noble Lords would agree that his letter was not unreasonable, but reasonable in setting out some of the areas of difference which we hope can be clarified. I believe that it is still very possible, as Mr Frost said, to agree a "modern and high-quality" free trade agreement and other agreements. He has suggested ways to find a rapid and constructive way forward.

Baroness Ludford (LD): How can the Government reproach the EU for being inflexible and ideological when they are insisting on many club membership benefits that they know are incompatible with the rather thin, minimalist relationship in which they reject the EU's rules? Why, on the other hand, are they being so unambitious in areas such as foreign and defence policy, given that the UK surely has a great deal to contribute to a common European effort in an era of such uncertainty about the US and China? Why is there no proposed treaty on these matters, and why are the Government cavalier about a no-deal outcome at the end of the year? Are they refusing to contemplate an extension to the transition period because they think that the dire economic effect of no deal would be hidden by the effects of the corona-virus?

Lord True: My Lords, I certainly reject the last part of the noble Baroness's question. I noted that today the Liberal Democrats introduced in another place a Bill to extend the transition period for two years until January 2024—a Bill, by the way, that comes without a financial memorandum. I just wonder when the party opposite is going to clock the decision made by the British people. The British Government are negotiating in good faith with ambition, hope and a constructive state of mind to reach a free trade agreement with the EU. We are confident that that is possible.

Lord Howard of Rising (Con): How is it possible to negotiate with the EU when Monsieur Barnier's starting point is to deal with the UK as if it were a colony rather than an independent sovereign nation, with which the EU has a large trade surplus?

Lord True: My Lords, I am not chasing either my noble friend or the noble Baroness, Lady Ludford, into descriptions of other people's positions with epithets. Mr Barnier is an excellent negotiator, but my noble friend is right that the EU mandate is perhaps somewhat less viable than that of Monsieur le Duc de Talleyrand. It is a pity that those mandating the EU negotiations have not noticed that 23 June 2016, 12 December 2019 and 31 January 2020 have changed much in this country, and it does not serve in these circumstances to have learned nothing and forgotten nothing.

Lord Kerr of Kinlochard (CB): I doubt if the Statement or Mr Frost 's letter will greatly advance the negotiation. I am struck by its petulant and querulous tone and the view that we are entitled to pick and choose. The Statement ends by saying that progress is possible only if the EU recognises that we are now a sovereign equal. I have two quick questions on sovereignty for the Minister. First, does he regard France, Spain, Germany and the 27 sovereign states as equally entitled to determine their own interests? Secondly, when we called in the political declaration for an overarching institutional framework that could be an association agreement, we must have had a different view on sovereignty because we now say that such an agreement is appropriate not for a sovereign equal but only for applicants for EU membership. I am really puzzled about this sovereignty doctrine. Is Israel or South Africa applying to join the EU? Do we think Ukraine is not a sovereign equal?

Lord True: My Lords, Question Time is not the moment for a debate on sovereignty. I must say I think the noble Lord probably used some much firmer language than Mr Frost in his diplomatic career occasionally. One of the issues is a sense that the EU wishes to exercise influence and authority within this country after the end of transition. The noble Lord quoted Latin the last time he spoke. I commend to him the wise advice of the Emperor Augustus, "consilium coercendi intra terminos imperii"—that is, a power should stay within its own fixed bounds. On issues such as the so-called level playing field, the jurisdiction of the ECJ and fisheries, we are asking the EU to recognise that the UK has chosen to be an independent state.

The Earl of Kinnoull (Non-Afl): My Lords, in the last week my committee has had meetings with senior representatives of the European Commission, the European Parliament and the EU 27. An emerging theme has been the need to rebuild mutual trust, and a vital part of addressing that is interparliamentary work. When asked about the EU proposals on inter-parliamentary work, the Minister told the House on 12 May:

"the government are keenly supportive of such proposals".—[*Official Report*, 12/5/20; col. 657.]

Michel Barnier talked on 15 May of a "lack of ambition" on the respective roles of the European Parliament and the British Parliament. I ask the Minister: which is correct?

Lord True: My Lords, I do not think there is any distinction between the two. The Government wish to see good relations between this Parliament—both your Lordships' House and the other place—and other parliaments around the world, including the European Parliament. But it remains the Government's view that while we are of course supportive of dialogue between parliamentarians, it is for your Lordships and those in the other place to determine how they wish to engage; it is not for a Government to bind this and future Parliaments to a particular methodology by a treaty.

Baroness McIntosh of Pickering (Con): My Lords, the Sherpa's letter states that the draft fisheries agreement put forward by the UK is very close to the EU-Norway agreement, yet surely the success of an EU-UK fisheries policy will be that our produce—particularly that coming from a long distance, such as shellfish from Scotland—will have access to the French, Belgian and Dutch markets. How does my noble friend the Minister think that will be achieved by what is set out in the letter?

Lord True: My Lords, we have published a framework text to assist the negotiations on fisheries. It is based on precedent, but arrangements obviously will differ, as it is usual for those sorts of agreements to be tailored to the specific fisheries interests of the coastal states. That will be so in this case.

The Deputy Speaker (Baroness Garden of Frognal) (LD): Lord Morris of Aberavon? He does not seem to be there so I will move on.

Baroness Deech (CB): My Lords, I congratulate David Frost on reaching out to member states and remind him of the wise words of his late namesake, Sir David Frost, who said:

"Diplomacy is the art of letting someone else have your way."

Will the Government encourage Mr Frost to stand up for British values for the benefit of this country, and not just to think about the economy?

I must raise the arbitrary dismissal of Eleanor Sharpston, the British advocate-general at the European Court of Justice. She was sent packing before her term ended, even though her post is not attached

[Baroness Deech]
to UK membership. If you sack a member of the court, judicial independence is meaningless. This is not a court that we can remain subject to. I hope the Government will make representations on behalf of Eleanor Sharpston.

Lord True: I thank the noble Baroness for her comments. I cannot comment on individual cases but I note what she says. I reiterate that it is the intention of this Government that the ECJ will not have jurisdiction in the United Kingdom after the end of transition.

The Deputy Speaker: My Lords, I apologise to the noble and learned Lord, Lord Mackay, and the noble Lord, Lord West of Spithead, but the time allocated for the Statement is now up. The day's Virtual Proceedings are complete and are adjourned.

Virtual Proceeding adjourned at 7.13 pm.

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