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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 3 June 2020

11 am

Prayers—read by the Lord Bishop of Chelmsford.

Arrangement of Business

Announcement

11.05 am

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

The Lord Speaker (Lord Fowler): Good morning, my Lords. Welcome to the last week of Virtual Proceedings. Next week, we plan to introduce the hybrid House and we will follow that with remote voting—in the present circumstances, a system better than most others. However, today we will revert to where we were and Virtual Proceedings of the House 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. Members may now need to accept an on-screen prompt to unmute their microphone. When Members have finished speaking, their microphone will again be set to mute.

Death of a Member: Lord Rea

Announcement

11.06 am

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

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of the noble Lord, Lord Rea, on 1 June. On behalf of the House, I extend our very sincere condolences to the noble Lord's family and friends.

Retirement of a Member: Lord Cope of Berkeley

Announcement

11.06 am

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

The Lord Speaker (Lord Fowler): My Lords, I should like to notify the House of the retirement, with effect from 13 May, of my friend, the noble Lord, Lord Cope of Berkeley, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I should like to thank the noble Lord for his much-valued service to the House.

Virtual Proceedings on Oral Questions will now commence. I ask colleagues to keep their contributions as brief as possible so that we can get as many people into our proceedings as possible.

Covid-19: Local Democracy

Question

11.07 am

Asked by ***Baroness Bennett of Manor Castle***

To ask Her Majesty's Government what assessment they have made of the operation of local democracy in the United Kingdom during the COVID-19 pandemic.

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

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): The Government recognise the impact that the Covid-19 pandemic can have on the operation of local democracy. With the devolved Administrations in Northern Ireland, Scotland and Wales, they took action, including obtaining the necessary legislation, to postpone all local elections and polls until 6 May 2021 and to enable council meetings to be held remotely. In this way, councils can continue to operate in line with public health guidance and to uphold the principles of local democracy.

Baroness Bennett of Manor Castle (GP): The Minister refers to legislation and enabling councils to act, but what are the Government doing to ensure that that local democracy is functioning? Councils' activities seem to range very widely: some are holding full meetings and planning inquiries at which members of the public are able to participate fully, but there are others, such as Peterborough, where the opposition is appealing for a full council meeting. What do the Government intend to do to encourage support and ensure that local democracy takes place, and will they listen to what those democratic considerations come up with and ensure that that guides government policy at Westminster level?

Lord Greenhalgh: Meetings can be held remotely, including via telephone conferencing, videoconferencing, live web chat and live streaming. The noble Baroness is right in that there has been a difference in response. As a former council leader, I know that my own local authority has decided to cancel its AGM in May, whereas other London councils continue to elect mayors and carry out their annual general meetings. The noble Baroness should note that these are devolved administrations, and guidance is available through the LGA, whose website contains best practice guidance. However, we will continue to note where councils are not continuing to function as they should according to the regulations.

Baroness Bryan of Partick (Lab): There is widespread concern that tackling Covid-19 has been too centralised. The mayors and leaders of Greater Manchester, Liverpool, Gateshead, Newcastle and Sunderland have all called for more decisions to be made locally. People are more likely to support plans for recovery when they can see that their local needs have been taken into account.

[Baroness Bryan of Partick]
Can the Minister outline the role of local councils in the decisions that are made on recovery and regeneration of the UK economy?

Lord Greenhalgh: The postponement of elections has enabled councils to focus on their role in response to the pandemic and to lead in the recovery phase. It should be noted that under the Civil Contingencies Act there are 38 local resilience fora, in which councils play their full part in leading in the recovery phase and in the response to the pandemic.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, as the Minister has said, the Covid-19 legislation allowed for by-elections in local authorities to be postponed until May 2021. However, this is leading to a deficit in local democracy. How many vacancies in county and district councils and unitary authorities are now waiting for 2021 to be filled?

Lord Greenhalgh: I will write to the noble Baroness on the specific number of vacancies. However, I make the point that many people involved in by-elections, including one of my colleagues in local government, Councillor Botterill, understand the need to delay these elections. They understand that it is important and that the decision to delay is the right one. However, I will of course write to the noble Baroness with the specific numbers.

Baroness Couttie (Con): I declare my interest as set out in the register. Local councils have had considerable success in bringing in rough sleepers and finding beds to protect them from Covid-19. Even in normal times, the process can be particularly challenging when helping entrenched rough sleepers, so all this is to be applauded. But what are the Government planning to do to sustain and build on this achievement?

Lord Greenhalgh: I first congratulate Westminster City Council, which my noble friend led with such distinction, in its response to getting rough sleepers off the street. Some 90% of rough sleepers—5,300—are now in accommodation. The plan called for by the noble Lord, Lord Bird, was big and bold. The Secretary of State has announced 6,000 supported homes for vulnerable rough sleepers, which really does give a symbol of hope and opportunity, along with £433 million government funding for 3,300 homes to be made available in the next six months. This is a once-in-a-generation opportunity to end rough sleeping.

Baroness Lane-Fox of Soho (CB): Clearly, one of the biggest differentiators between local councils' and government's ability to deliver services is the quality of digital infrastructure, skills and understanding. What extra support is the Minister giving, both to the local digital team that works in his department doing vital work and sharing resources, and to the local councils themselves?

Lord Greenhalgh: The noble Baroness is right that access to broadband is one of the key parameters; it facilitates local democracy. I shall write to the noble Baroness on the specifics of what we are doing to support local councils. Again, I note that many councils are functioning fully and providing that continuity of executive as well as scrutiny of the Government.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I declare my relevant registered interest as a vice-president of the Local Government Association. Will the Minister join me in paying tribute to the work of our locally elected politicians, councillors and mayors during the pandemic? Secondly, will he agree with me that each local authority that has responsibility for delivering elections next May would be well advised to review their procedures so that they are confident that they are able to deliver the administration of the election—everything from the nomination process to the polling day operation and the count—while protecting the public, candidates and staff at that vital time?

Lord Greenhalgh: The noble Lord is right. The local government response to the pandemic has been exemplary. I agree that it would be sensible to review procedures so that there will be a proper functioning of local democracy next May.

Lord Ashton of Hyde (Con): I call the noble Baroness, Lady Barker. No? Then I call the noble Baroness, Lady Whitaker.

Baroness Whitaker (Lab): Given the distrust in government decisions nationally and locally, what thought have the Government given to the promotion of citizens' assemblies, organised remotely, to enable citizens to be party to evidence and discussion?

Lord Greenhalgh: I note the noble Baroness's comments about the functioning of local democracy. Certainly, in my 20 years, I always felt that we had one of the best examples of local democratic accountability through our councillors and engagement with local business groups. I will look at the noble Baroness's comments. We continue to work with other bodies, including citizens' and other assembly groups to ensure that their voices are heard.

Lord Pickles (Con): My Lords, while there has, on occasion, been excessive delegation to officers and a paucity of democratic scrutiny, remote working has generally worked extraordinarily well. I think there are lessons to be learned beyond the pandemic. Will my noble friend the Minister undertake to review the use of videoconferencing for council and committee meetings? Will he undertake to look at pilots to extend this beyond the pandemic, to make it a normal part of local government life?

Lord Greenhalgh: My noble friend is right that remote working and videoconferencing have been broadly well accepted by local councils up and down the land. I will undertake that we conduct that review and look at how this can be continued. Obviously, these regulations have been brought in and are effective only until next May.

Lord Ashton of Hyde: My Lords, in the absence of the Lord Speaker, with the leave of the House, I must tell noble Lords that the 10 minutes allocated for this Question is up.

Royal Commission on Criminal Justice

Question

11.18 am

Asked by ***Lord Ramsbotham***

To ask Her Majesty's Government when they will announce (1) the chair, (2) the timings, and (3) the terms of reference, of the Royal Commission on criminal justice.

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

The Advocate-General for Scotland (Lord Keen of Elie) (Con): The royal commission is an important opportunity to address some of the key issues affecting the criminal justice system. We are addressing the scope, terms of reference and membership of the commission. In doing so, we intend to embrace the lessons we can learn from the present crisis; further announcements will be made in due course.

Lord Ramsbotham (CB): My Lords, I thank the Minister for that response. The prison and probation parts of the criminal justice system are in such a deep crisis—and not only because of the impact of Covid-19. I would have thought it sensible at least to have nominated the chair of the royal commission, so that he or she can monitor any lessons learned from attempts at resolution of that crisis.

Lord Keen of Elie: My Lords, we are confident that the chair and members of the royal commission will be able to take into account the lessons that we can learn from dealing with this crisis in the context of the prosecution of crime, imprisonment and parole.

Lord Garnier (Con): I declare my interests as set out in the register. There is plenty that a royal commission on criminal justice could consider but it is likely to take a long time for any of its recommendations to be implemented by the Government. Our criminal justice system is under dreadful strain and its problems have been aggravated by the Covid-19 crisis. Does my noble and learned friend agree that we need to deal with the growing backlog of criminal trials, improve the state of our court buildings and prisons, and ensure that those lawyers who do publicly funded criminal law cases are paid a decent wage?

Lord Keen of Elie: The criminal justice system faces challenges, which is why this royal commission is so important.

Baroness Butler-Sloss (CB): My Lords, will the royal commission membership include judges, barristers and solicitors?

Lord Keen of Elie: The membership of the royal commission has not yet been finally determined but I am confident that there will be appropriate representation of the legal profession, as there has been with previous royal commissions looking at criminal justice.

Lord Falconer of Thoroton (Lab): As previous noble Lords have indicated, there is an immediate crisis in the criminal justice system, made worse by the Covid-19 crisis—demonstrated, for example, by the fact that there were about 37,000 cases waiting for a jury trial when the crisis struck, and approximately seven of those have been dealt with since. What are the Government's immediate plans to relieve the current huge pressure on the criminal justice system, which obviously cannot wait for the long grass of a royal commission?

Lord Keen of Elie: The senior judiciary has been looking at the ability to carry on criminal trials and work in the criminal justice system remotely, and implementing measures to that effect. We hope that these will be developed in the immediate future.

Lord Dholakia (LD): My Lords, I declare my interest as a trustee of the Police Foundation, which has undertaken a strategic review of policing under the chairmanship of Sir Michael Barber. It is expected that a major report dealing with the current and future challenges facing policing will be published in July. Will the Minister advise the royal commission to seek an early meeting with this review body so that the duplication of work can be avoided and an early report on policing produced?

Lord Keen of Elie: It is clearly intended that prosecution should be part of the royal commission's mandate, and clearly the commission, once established, will invite contributions from all interested parties, so I am confident that the police will have ample opportunity to address the commission on the issues referred to.

Baroness Jones of Moulsecoomb (GP): Will the terms of reference include a specific instruction to address the widespread racial and class injustices in our criminal system?

Lord Keen of Elie: I cannot at this stage specify the precise terms of reference that will be submitted. Of course, once those terms of reference are accepted and proceeded with, they cannot be altered.

Baroness Sater (Con): My Lords, having sat as a youth magistrate for over 20 years I ask my noble and learned friend whether he agrees that, for the royal commission to be a comprehensive review, it must take into account the developments in the delivery of youth justice—substantially different from that of adults—that have occurred since the last royal commission over a quarter of a century ago.

Lord Keen of Elie: Clearly the royal commission will seek to embrace the terms of reference that are finally agreed. As the manifesto indicated, there was the intention to cover the areas of prosecution, trial, sentence and parole.

Lord Hastings of Scarisbrick (CB): My Lords, while I accept the Government's best intentions to deliver justice, could the Minister inform the House of the precise numbers of prisoners still being held under IPP provisions, and the disproportion of black prisoners that IPP continues to blight despite its removal in law? When will the Government end this appalling scourge of denied justice? Will the royal commission finally resolve it?

Lord Keen of Elie: The position with IPP prisoners has been addressed frequently in the past. Of course the legislation in 2012 was not and could not be retrospective. I cannot give a precise number as at today's date of IPP prisoners held nor of their ethnic backgrounds, but I will write to the noble Lord with up-to-date information and place a copy of that letter in the Library of the House.

Baroness Mallalieu (Lab): I declare a personal interest, having a daughter who is a practising member of the criminal Bar. While the commission is welcome and long overdue, the immediate problem needs to be dealt with today as the criminal justice system is on the point of collapse. What steps do the Government propose to take to increase the number of court sitting days, given that there are empty courts and centres throughout the country that were mothballed to save money; that there are recorders who are ready and willing to sit tomorrow alongside the judges; and, as has been said, that there is a backlog of some 30,000 trials, many of them with people in custody?

Lord Keen of Elie: Along with the judiciary, we seek to utilise all the court capacity currently available to us by developing the use of remote hearings. We are also addressing how we can best accommodate jury trials within court accommodation. We will continue to monitor that to see where it can be improved and developed.

Lord Thomas of Gresford (LD): Will the Minister consider recommending to the commission a consideration of the escalating length of sentences, which have probably doubled during my career, and of the impact upon rehabilitation and reoffending?

Lord Keen of Elie: The manifesto commitment was that the royal commission would address prosecution, trial, sentence and parole, and I have no doubt that within that it will give consideration to the length of sentences and the need for rehabilitation.

Lord Kirkhope of Harrogate (Con): While I understand that my noble and learned friend cannot talk directly about terms of reference for the commission so far, the original idea was that it would look at the efficiency and effectiveness of the criminal justice process. Does he agree that to be effective in the eyes of the public, it must also be local? The closure of many magistrates' courts has caused considerable problems in local access to the criminal justice service. Can he ensure that the terms of reference look again at how ordinary members of the public who are involved can get access to the system?

Lord Keen of Elie: I am confident that when addressing these matters the royal commission will have in mind the needs of the public, particularly victims, in the context of access to justice.

Lord Ashton of Hyde (Con): My Lords, the time is almost up for that Question and we have in fact completed the 10 questioners. Just to inform the House, there has not been a coup; the Lord Speaker has had a power cut on the Isle of Wight. That is why, with the leave of the House, I will continue in his place.

EU: British Musicians

Question

11.29 am

Asked by ***The Earl of Clancarty***

To ask Her Majesty's Government what progress they have made on reaching a reciprocal agreement with the European Union to enable British musicians to tour and play in Europe following the end of the transition period.

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

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): The Government recognise the importance to musicians of the continued ability to tour, for both artistic and economic reasons. We are open to negotiating reciprocal arrangements to facilitate this. A reciprocal arrangement based on best precedent will mean that UK citizens will be able to undertake some business activities in the EU without a work permit on a short-term basis. The details, including the range of activities, the documentation needed and the time limit, will be negotiated.

The Earl of Clancarty (CB): Touring and playing in Europe are essential aspects of the livelihoods of UK musicians, as well as being vital culturally. A hard Brexit would be devastating for an industry worth £5.2 billion, without even taking into account the destructive effect that Covid is already having on musicians' incomes. Do the Government recognise that it is therefore crucial that they negotiate a mobility framework advantageous to British musicians, including an EU-wide multi-entry touring visa valid for two years, and that this framework needs to be in place before the end of the transition period?

Baroness Barran: We absolutely recognise that musicians, and the performing arts more broadly, are a crucial part of our culture and our economy. We are working towards a reciprocal arrangement for a touring visa based on best precedent, so that UK musicians could work short term within the EU. However, we do not currently believe that a touring visa, such as the noble Earl suggests, is legally possible.

Baroness Falkner of Margravine (Non-Afl): The Minister mentioned reciprocal arrangements for UK citizens, but I wonder if she could disaggregate that

and concentrate only on people in the performing arts. If reciprocal arrangements are not negotiated, will she consider the UK unilaterally allowing access for EU musicians to come here, in the hope that at least individual EU countries will then reciprocate? If we wait for the arrangements for all professionals to be able to travel back and forth, it will be too late for musicians who have contracts that are signed years in advance.

Baroness Barran: I am sorry if I was not clear; I was aiming to refer specifically to those in the performing arts. There are not currently plans for a unilateral agreement. We are optimistic that we can reach an effective reciprocal agreement. We are not looking for a bespoke or unique deal. We are trying to build on existing free trade agreements and ensure that they are appropriate for our performing arts and wider service sectors.

Lord Black of Brentwood (Con): My Lords, I declare my interest as chairman of the Royal College of Music. At the end of the transition period, new customs requirements will come into force which mean that musicians will be required to purchase an ATA carnet, costing up to £700. For many musicians who struggle financially at the best of times, let alone after the disaster of Covid, that is a big cost which they will not be able to afford. Will the Government either cover the cost of these carnets or include a cultural exemption for musical instruments, so that they are not required?

Baroness Barran: My noble friend is right that the carnet can be expensive, particularly for individual musicians. That is why we are trying to negotiate a reciprocal deal, which may mean that there are new processes that musicians will have to comply with. But we hope that they will be practical and workable for them.

Lord Aberdare (CB): My Lords, the London Symphony Orchestra is one of the world's leading orchestras and a globally recognised UK brand, making a significant contribution to the UK's soft power. No less than 45% of its income comes from international touring. Can the Minister tell us a little more about what specifically the Government are doing to set up mutual arrangements with overseas Governments, including in the EU, to allow a return to international touring for all UK orchestras as quickly and safely as possible?

Baroness Barran: The noble Lord is right that organisations such as the London Symphony Orchestra are crucial to our soft power. We are doing everything in these negotiations, and more broadly, to build the UK's presence globally, with help from organisations such as the Creative Industries Council and others. In relation to the particular strains due to Covid he will be aware that we have announced a cultural renewal task force, which is already busily looking at all these issues.

Baroness Quin (Lab): My Lords, I refer to my interests in the cultural and music sectors, as set out in the register. What place in the discussions so far have these issues occupied? Have they been raised in the EU discussions and does she agree that we must ensure we have the necessary time to avoid a no-deal outcome, which would harm our vital music industry as well as other important sectors of our economy?

Baroness Barran: I fear it is probably not appropriate for me to go into any detail about the nature of those negotiations. It has been said publicly that details on specific sectors will come in the next stage of the negotiations. The Prime Minister has been clear on multiple occasions as to his views on an extension to the negotiations.

Lord Foster of Bath (LD): My Lords, at present a system is in place that prevents the double payment of social security payments when our musicians travel to EU countries. Can the Minister assure us that her department is pressing our negotiators to ensure that any bilateral deal includes continued access to this system? Will she publish her department's analysis of the impact of failure to obtain such an agreement?

Baroness Barran: The department is leading a major programme of work across all our sectors which is trying to ensure that they, and our arm's-length bodies, are well prepared for the end of the transition period in relation to this point and more broadly.

Lord Cormack (Con): My Lords, I appreciate my noble friend's commitment but I urge her to talk to her colleagues in Cabinet and say that this is a very urgent matter. Billions of pounds are involved but, far more important than that, the reputation of our musicians is second to none. It is essential that there is uninhibited freedom for musicians from Europe to play in the United Kingdom and for United Kingdom musicians to play in Europe without having visa or financial barriers, or any other sorts of barriers. We are talking about the international language; let it be spoken loud and clear beyond the end of the transition period.

Baroness Barran: I am more than happy to share my noble friend's advice with Cabinet colleagues. I stress that in all our negotiations we are seeking to minimise any friction through customs or other administrative issues.

Baroness Bull (CB): My Lords, UK musicians rely on the European Health Insurance Card scheme while touring in the EU. While the negotiating mandate mentions that arrangements for healthcare cover for short-term business visitors could be good for trade, can the Minister give a concrete commitment that the Government will maintain European health insurance, as provided by the EHIC scheme, or at least provide an effective equivalent?

Baroness Barran: The Government are looking across all these issues to come up with the fairest and most practical system which facilitates the growth of our creative industries and performing arts around the world, including within the EU.

Lord Wood of Anfield (Lab): My Lords, on touring, there is actually a simple solution. The Government could consider amendments to the Immigration and

[Lord Wood of Anfield]
Social Security Co-ordination (EU Withdrawal) Bill to allow a touring passport for EU musicians—including a carnet, as referred to earlier. Can the Government commit to looking at this legislative option for giving UK musicians the continued livelihood that they need?

Baroness Barran: I think I have been clear already about where the Government's focus is in these negotiations: on building our presence, in Europe and on the global stage, for our critical cultural sectors.

Lord Ashton of Hyde (Con): My Lords, I am afraid that the time allocated for that Question has passed, so I ask the noble Lord, Lord Blencathra, to ask his Question.

Covid-19: Schools

Question

11.39 am

Asked by ***Lord Blencathra***

To ask Her Majesty's Government what plans they have to keep schools open during July and August to ensure students are not disadvantaged by the school closures put in place to address the COVID-19 pandemic.

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 coronavirus outbreak has caused disruption to young people's education, as teachers and parents have had to adapt to remote education. We are working at pace with partners to look at what additional measures may be required to ensure that every child has the support they need to deal with the impact of coronavirus on their education. We will do whatever we can to make sure that no child falls behind as a result of coronavirus.

Lord Blencathra (Con): Has my noble friend the Minister seen Monday's statement by the Children's Commissioner that schools should remain open in the summer to enable children to catch up with their studies? In view of the fact that 70% of teachers have not been giving lessons online and hundreds of schools are still refusing to open, will my noble friend take powers to ensure that schools remain open during the usual summer holiday period so that children are not disadvantaged any further?

Baroness Berridge: My Lords, the Secretary of State has made clear that schools will not be expected to be open throughout the summer holidays. That is not to say that there will not be specific, targeted interventions to help young people who have lost out due to the interruption of their education.

Lord Knight of Weymouth (Lab): I refer your Lordships to my interests in the register. We certainly need action to tackle the widening of the attainment gap during the crisis, and summer schools can work if the targeted pupils attend, but those same children also need well-qualified teachers. How is the department planning to ensure that newly qualified teachers, who have been denied classroom practice this year due to lockdown, have a successful induction in September?

Baroness Berridge: My Lords, the attainment gap between disadvantaged students and their comparator group has narrowed at every level since 2011, and we are keen to ensure that that is maintained. Of course, the role of teachers is vital to that. We are aware that initial teacher training has been interrupted and that there will be certain challenges for newly qualified teachers teaching for the first time in classrooms in the autumn. We are developing the early career framework and are looking to that to support these newly qualified teachers and deal with the challenges that they face.

Lord Rogan (UUP): My Lords, the Prime Minister often mentions that he is indeed the Minister for the Union and his Government talks about their desire to adopt a four-nation approach to tackling Covid-19. What discussions has Mr Johnson or his Ministers—perhaps even the noble Baroness herself—held with their Stormont counterparts about how children in Northern Ireland can safely return to schools in August?

Baroness Berridge: My Lords, education is a devolved matter and it is therefore up to each jurisdiction. There are also certain differences in term dates and, in Scotland for instance, different examinations are taken. It is therefore appropriate, looking at the disease in each of the four nations, for those jurisdictions to make detailed decisions based on the information on the ground. However, at both ministerial level, including the Secretary of State, and official level, there are regular meetings between the four nations on education.

Lord Baker of Dorking (Con): My Lords, I declare my interest as chairman of the Baker Dearing Educational Trust, which supports university technical colleges. I am concerned about disadvantaged students, of which there are many. Some 300,000 students a year fail to get above level 4 in maths and English. They have lost 10 weeks of education and will be out of school for nearly five months of the year. To expect them to take a GCSE next summer would be very unfair. The Government have two alternatives: either reduce the content in the GCSE exams next year or suspend them for a year, which they have done this year and is the preferable solution.

Baroness Berridge: My Lords, we are acutely aware of the gap in education, particularly for disadvantaged students but, throughout this period, vulnerable children have been eligible to attend school and that group of course overlaps significantly with disadvantaged children. On the examinations next summer, Ofqual is currently consulting over the impact on those examinations.

Lord Storey (LD): My Lords, the Minister will be aware that the most vulnerable children are those in care. What extra learning support is being given to those children?

Baroness Berridge: My Lords, in the specific provision for disadvantaged children, one of the main initiatives has been to increase the number of devices, so that they can access online learning. The criteria for distributing the 200,000 laptops and tablets purchased include whether they are care leavers, children in contact with a social worker or disadvantaged students currently in year 10.

Lord Polak (Con): My Lords, so many individuals in the department and within schools are working positively and enthusiastically to ensure that children will be not only safe but educated. Sometimes, I wish the teaching unions would be as positive and enthusiastic. Can my noble friend the Minister confirm that the department has worked closely with the sector, including the unions, throughout the period of partial closures and during preparations for wider opening?

Baroness Berridge: My Lords, I join the noble Lord in paying tribute to all the teachers and support staff who have, during this period, kept most of our schools open for vulnerable children and the children of critical care workers. The department has indeed, at both ministerial and official levels, been consulting and engaging with the unions, mostly on a daily basis, to ensure that their views are put forward in the difficult decisions that we have to make about reopening schools.

Baroness Watkins of Tavistock (CB): My Lords, government statistics show that 75,000 vulnerable children were at school on 21 May, yet 80% of schools were open, so we know that not all places that have been on offer have been taken up. We also know about the distribution of tablets, but what plans do the Government have to ensure digital interconnections for pupils over the summer, particularly those who live in poverty or are in rural areas, where there is real difficulty with some broadband connections?

Baroness Berridge: My Lords, the noble Baroness is correct that about 15% of vulnerable children were in school at the end of that half-term and the numbers had been rising. On the provision of laptops, for those who do not have connectivity they will come with 4G wireless to try to get over some of those issues. All schools have been offered free expert technical help to enable them to access Google Classroom or Microsoft 365 Education, but of course we have also worked closely with the BBC for those children whose only access might be through the television. BBC Bitesize has been hugely successful, with more than 2 million households visiting that service in the first two weeks. In discussions with leaders of academy trusts, it is clear that many teachers and support staff have been delivering printed worksheets to students to ensure that they can access education.

Lord Watson of Invergowrie (Lab): My Lords, if there has been any upside to this crisis, it is perhaps the newfound concern of many in the Conservative Party for disadvantaged pupils. I do not include the Minister in that category, but it has become clear that the demotivating terminology—[*Inaudible*.] It is surely not a positive approach. We agree with the Children's Commissioner that—[*Inaudible*.] Will the Minister say what additional support the Government will provide to schools to enable that to happen? What efforts will be made to encourage schools in the independent sector to allow access to their premises and resources over the summer?

Baroness Berridge: My Lords, I did not catch all the detail of that question, but I believe the noble Lord was asking what support we can give schools during the summer. We are specifically looking to see what interventions we can make, including interventions particularly targeted at disadvantaged young people, and I can assure him that this is a focus; the attainment gap is so important for those young people. I am pleased to tell him that holiday clubs, which are so vital to disadvantaged young people because they also provide food during the school holidays, will take place this summer and a further £9 million of funding has been given to that initiative. I apologise if I missed some of the detail of that question.

Lord Ashton of Hyde (Con): My Lords, the time allowed for this Question has elapsed. I want to pass on a message that I have received from the Lord Speaker, who experienced a power cut on the Isle of Wight, meaning that his internet connection has gone down. He sends his apologies to the House for missing half of Question Time. That concludes the Virtual Proceedings on Oral Questions. Virtual Proceedings will resume at 12 noon for the Private Notice Question on the victims payments scheme in Northern Ireland.

11.51 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 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. The Virtual Proceedings on the Private Notice Question will now commence.

Northern Ireland: Victims Payment Scheme

Private Notice Question

12.02 pm

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

To ask Her Majesty's Government what plans they have to ensure the implementation of the Victims Payments Scheme in Northern Ireland following the passage of the Northern Ireland (Executive Formation) Act 2019.

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

Viscount Younger of Leckie (Con): The Government take this matter most seriously and we are extremely disappointed by the current delay. The Secretary of State has written to and had meetings with the First Minister and Deputy First Minister on this issue and we have been offering and providing all appropriate support to help progress this scheme. Victims have waited too long for these payments. The Government provided a legislative framework for this, and the Executive must deliver.

Baroness Ritchie of Downpatrick (Non-Afl): The Victims Commissioner for Northern Ireland wrote to the Prime Minister and the First and Deputy First Ministers yesterday, urging a resolution. Many of these victims have felt immeasurable pain, trauma and grief over many years. I know some of them, and they felt a sense of relief last year when the legislation was enacted in Parliament for the victims pension scheme. But their hopes were dashed again last week when the scheme was not implemented on 29 May. Can the Minister say when it will be implemented? Will he use his good offices with the Secretary of State, the Prime Minister and the First and Deputy First Ministers to ensure that that happens? Will he also ensure that the funding will become available from the British Government, that the timescale for the regulations and the scheme will be published, and that relief will be brought at long last to these long-suffering victims, whom I entirely support?

Viscount Younger of Leckie: I am totally in line with the frustrations expressed by the noble Baroness. This delay is extremely disappointing, which is why the Secretary of State, the First Minister, the Deputy First Minister and parties are working with a great degree of urgency to take things forward.

Lord Caine (Con): My Lords, victims and survivors who have campaigned for so long and with such dignity will be rightly angry and devastated by the latest setback. Does my noble friend agree that, going right back to the 2014 Stormont House agreement, it was always envisaged that any scheme for victims' payments would be administered by the Northern Ireland Executive and financed through the substantial block grant that they receive? Will he now ask our right honourable friend the Secretary of State to meet again with the First and Deputy First Ministers as a matter of urgency, so that this issue can be resolved without any further delay?

Viscount Younger of Leckie: Indeed. My noble friend is right that the funding of the scheme is to come from the block grant, to be "Barnettised"; this is a devolved matter, and devolved matters are funded through the block grant. He is also right that the Northern Ireland Executive committed to finding a way forward on this matter as far back as 2014. I will certainly pass on the message about the meetings, but I reassure my noble friend that they are happening at different levels, particularly the most senior ones; one happened only yesterday between the Secretary of State and the First Minister and Deputy First Minister.

Lord Hain (Lab): My Lords, what is needed is for the Secretary of State for Northern Ireland urgently to break the deadlock with Northern Ireland's First and Deputy First Ministers over their shameful failure by last Friday, 29 May, as required under the 2019 Act, to begin processing and paying pensions quickly to savagely disabled victims of terrorist attacks. Surely it will be a terrible failure of politics if these elderly, vulnerable victims are forced to judicial review to make Northern Ireland's Ministers honour their legal obligations.

Viscount Younger of Leckie: I certainly acknowledge the role that the noble Lord played in this process in bringing forward Section 10(2) of the Northern Ireland (Executive Formation etc) Act. I repeat: this delay is extremely disappointing, and we are doing our utmost to move this forward. I can reassure the noble Lord that the Secretary of State has it at the top of his priority list. He is dealing with it, with the Ministers, with a great degree of urgency.

Lord Alderdice (LD): My Lords, addressing the funding for the pension remains the immediate and fundamental issue, but will the Minister acknowledge and welcome the indication from the Northern Ireland Justice Minister, Naomi Long, that she is willing to administer the scheme subject to the Executive Office agreeing to designate her department?

Viscount Younger of Leckie: Yes, I take note of that. Part of the disappointment alluded to by the noble Lord was the fact that a department has not been designated to deliver the scheme. Of course, from that come issues such as staffing, premises, resources and, frankly, getting the payments to the most important people in this matter: the victims themselves.

Lord Eames (CB): Will the Minister accept from me that the current stalemate is not only causing great hardship to victims but raises serious questions about the nature of a devolved settlement? On the basis of my years of experience working with victims in Northern Ireland, will the Minister agree with me that Her Majesty's Government have a moral obligation to ensure an end to this stalemate as soon as possible?

Viscount Younger of Leckie: Yes, the noble and right reverend Lord is right. I am in no doubt and it is clear that the hurt and the suffering caused by decades of terrible violence have had a profound and deep-rooted impact on individuals and generations of families in Northern Ireland. As regards morality, the moral duty is implicit on all who are involved. Again—I know the Secretary of State would be nodding as I say this—I urge all parties to get together as soon as possible and expedite these payments.

Lord Duncan of Springbank (Con): Noble Lords will recall the great efforts we went to in order to ensure that the payments could be made at the very earliest date. That date has now passed, and frankly that is shameful. We knew how much it was going to cost and the cost of administering it, and we have let the ball slip through our fingers. It is imperative now

that the Secretary of State meets them urgently. This should be resolvable this week. Every single day is a day too long for those poor victims.

Viscount Younger of Leckie: That is right; my noble friend echoes what I have been saying. To clarify, the UK Government made the legislation establishing a victims payments scheme in January. They did so both to fulfil their legal obligation under the Act and because they are committed to doing what they can to progress the scheme, which has been delayed by political disagreements for too long. We must put those political disagreements to one side and go ahead as soon as possible and make these payments.

Baroness Smith of Basildon (Lab): My Lords, I have listened carefully to the Minister—I assume that the victims in Northern Ireland are also listening—and he does not give me any great confidence that next week, all the processes will be in place, a Minister will be in place to deal with this, and it will happen. It is all very well saying that it is the fault of the Northern Ireland Executive; they say it is the fault of the UK Government. If I were a victim, I would want to bang their heads together to get a solution. Even though the Minister is not the Northern Ireland Minister himself, can he listen to the noble Lord, Lord Duncan, a former Northern Ireland Minister in the House of Lords, and do everything possible—not just warm words—to make this happen?

Viscount Younger of Leckie: Yes, of course. I acknowledge the noble Baroness's role in past matters dealing with victims. She will know that I am giving as much reassurance as I possibly can. This is being dealt with now, as a matter of urgency. I say again: it is not just disappointing but very frustrating for all concerned, particularly the victims, that these payments have been delayed.

Lord Empey (UUP): My noble friend will be aware that the blame for this lies with the Northern Ireland Executive Office. On 24 February, it failed to appoint a department or board, and concealed this fact from victims until just over a week ago. Sinn Féin is trying to link the payments to include those injured by their own hand. That is the reality. Will the Government guarantee that if this obfuscation continues, Westminster will take over responsibility and make appropriate deductions from the block grant as required to ensure that the scheme proceeds immediately?

Viscount Younger of Leckie: I acknowledge the noble Lord's experience in these matters. I am not in a position to give any guarantees but, again, I wish to assure all concerned that this is a matter of great urgency.

Lord Bruce of Bennachie (LD): In January, the then Secretary of State, Julian Smith, said that the

"discussions and delay of the past few years have gone on long enough … The time has come to get this done and deliver for those people who will benefit most."

Yet here we are. This House has a real stake in this issue. Does the Minister recognise that this is a UK-wide issue, as the commissioner pointed out today, because terrorists have murdered and maimed people right across the UK? Surely that reinforces the need for the UK Government to take a lead on funding, to break the deadlock and to ensure that compensation is delivered at the earliest opportunity in the next few days.

Viscount Younger of Leckie: The noble Lord is right. Different parties have been involved in this. I want to make it clear that the UK Government have played a strong role in taking this forward, and I reiterate that the Northern Ireland Executive made certain pledges back in 2014. I also reiterate that it is now up to the Northern Ireland Executive to take this matter forward.

Baroness Goudie (Lab): My Lords, the Explanatory Memorandum to the Victims' Payments Regulations states:

"The scheme will take a victim-centred approach".

We must ensure that that is the case. The Explanatory Memorandum also states that the scheme

"will assist applicants by sourcing relevant evidence".

That is also important. Further, it is important that the scheme has clear guiding principles and that staff maintain a fair, proportionate and transparent victim-centred approach to meet the needs of victims and survivors effectively. Have these principles been formulated? If so, where can one find them? Finally, what staff, if any, have been recruited so that the funding payments can be issued as soon as this is resolved?

Viscount Younger of Leckie: The noble Baroness hits directly on the frustrations that we have at the moment. As we know, there is an obligation to set up a board, which, with the individuals appointed to it, will make judgments on the victims and get into the details. However, until we have a designated department and there is a chain reaction to set up these important processes —again, this must be done as a matter of urgency—we will not go forward quickly. We must do so.

Lord Faulkner of Worcester (Lab): My Lords, the Minister will have detected the unanimous view that this situation must be resolved—and resolved quickly. Indeed, he may have read my noble friend Lord Hain's speech on the Northern Ireland banknote order from last night, which put the case very powerfully and persuasively. I have two questions. Will Citizens Advice or a similar independent agency be set up to assist people in making applications and following through with the provision of medical evidence? Secondly, will the Government or the Northern Ireland Executive make legal aid available for applicants in Northern Ireland?

Viscount Younger of Leckie: Those two questions were precise. I happened to listen to the speech of the noble Lord, Lord Hain, last night; like today, I was left in no doubt about the strength of feeling. I will need to write to the noble Lord, Lord Faulkner, with the specific detail on Citizens Advice and his second question.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed. The Virtual Proceedings will now adjourn

[Lord McFall of Alcluith]
until a convenient point after 12.30 pm for the Motion in the name of the noble Viscount, Lord Younger of Leckie.

12.15 pm

Virtual Proceeding suspended.

Arrangement of Business

Announcement

12.30 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 microphone will again be set to mute.

We now come to the Virtual Proceeding on the Motion in the name of the noble Viscount, Lord Younger of Leckie, the time limit for which is one and a half hours.

Victims and Witnesses (Scotland) Act 2014 (Consequential Modification) Order 2020

Motion to Consider

12.31 pm

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

To move that the Virtual Proceedings do consider the draft Victims and Witnesses (Scotland) Act 2014 (Consequential Modification) Order 2020.

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

Viscount Younger of Leckie (Con): My Lords, the draft order, which was laid before the House on 25 March 2020, is part of the Government's ongoing commitment to devolution.

I start by thanking our police forces for the vital work they carry out on a daily basis. Throughout the Covid-19 epidemic, I am sure that noble Lords have heard of shocking cases of police officers and staff being purposefully spat at or coughed on. In Scotland alone, during the first three weeks of lockdown, there were more than 400 crimes against police employees, and more than 100 cases had a Covid element; 174 were recorded as assaults on police officers.

However, police assault is not confined to the pandemic. Indeed, the honourable Member for Edinburgh West, speaking in the other place a few weeks ago, provided a moving account of her own family's experiences of facing assault while working in the police service. This is not acceptable, and I am pleased to say that the order before us today highlights how Scotland's two Governments have been working closely together to ensure that police in Scotland have greater access to physical and mental support services when these dreadful assaults happen.

I will begin by providing some background to the order, which is to be made under the Scotland Act 1998. This Act devolved powers to Scotland and legislated for the establishment of a Scottish Parliament. Scotland Act orders are secondary legislation, made under the Scotland Act 1998, which are used to implement, update or adjust Scotland's devolution settlement. The order before noble Lords today is a Section 104 order which allows for necessary or expedient legislative provision in consequence of an Act of the Scottish Parliament. It is positive for the union and for the effective functioning of devolution that the UK Government fulfil the function of passing Section 104 orders where legislative provisions are necessary or expedient.

I will explain what the instrument does. This order is made in consequence of the Victims and Witnesses (Scotland) Act 2014 and has been requested by the Scottish Government. Through the 2014 Act, the Scottish Government sought to improve the information and support available to victims and witnesses. In addition, the Act created a new financial penalty, called a restitution order, to be imposed on offenders found guilty of assaulting police officers or other prescribed persons. This order amends Section 24 of the Criminal Justice Act 1991 to make reference to the restitution order, and specifies that it should be handled in the same way as a fine for the purpose of that section.

In doing this, the order makes changes to benefits law, which is within the reserved field of social security. It is outside the executive competence of Scottish Ministers to facilitate or make changes to benefits. Therefore, this order has been taken forward by the UK Government to implement the Scottish Government's required changes.

I will now explain what the Scottish Government intend to do with the change in legislation. As I mentioned, Scottish courts will have the ability to administer a restitution order when an assailant is found guilty of assaulting a police officer. The money collected will then be transferred to a restitution fund, held and managed by the Scottish Government—although functions can be delegated to a third party for the purpose of operating the fund. The fund will directly benefit police officers and staff by providing them with high-quality support where necessary.

The Scottish Government have worked closely with stakeholders such as the Scottish Police Federation, the Scottish Police Benevolent Fund and the Police Treatment Centres to ensure that the new restitution fund will support the physical and mental health and well-being of those affected. In addition, a public consultation paper, *Making Justice Work for Victims and Witnesses*, was published in July 2012, prior to the introduction of the victims and witnesses Bill in Scotland. The responses to this helped shape the design of this restitution order.

Where restitution orders are not paid, this order allows for Scottish courts to apply for a deduction from benefits order to pay the restitution order, in

the same way as many other fines or compensation orders would be paid. Following this amendment, the Department for Work and Pensions will recover restitution orders on behalf of the Scottish Courts and Tribunals Service by direct deduction from an offender's benefits.

Dependent on the Section 104 order being passed today, the intention is to progress the necessary Scottish statutory instruments in the Scottish Parliament, following the Summer Recess. Implementation of restitution orders will be through commencement of Section 25 of the 2014 Act.

This order demonstrates the commitment that the UK Government show to strengthening the devolution settlement and to partnership working between the two Governments to deliver for Scotland. It will make a real difference to the lives of affected police officers and staff in Scotland. It will ensure that there are greater resources available to support specialised services, such as the extremely important work of the Police Treatment Centres in Auchterarder and Harrogate. User testimonials sum up the value of such services, with one user reporting that "the practitioners and staff are truly amazing people, who go out of their way to ensure officers are fixed and well for duty".

It is only right that police officers can access the support that they need, and that offenders can contribute to that. I therefore commend this order to the House. I beg to move.

12.38 pm

Lord McConnell of Glenscorrodale (Lab): My Lords, I endorse all of the comments made by the Minister in his introduction, but I would like to use this opportunity to underline a number of key points and to ask a couple of questions to be answered at the end of the debate.

I too start by praising the work of police officers across Scotland, and their support staff, over the last three months. This has been a difficult time for them, trying to enforce lockdown conditions which, while clearer in Scotland, were not always straightforward. It is to their immense credit that after a few years of real difficulties in Police Scotland—politically and managerially, and in its governance—police officers and support staff have risen to the challenge with real dignity, and a firmness that has made a real impact. We should thank them for that.

The order is important and we of course should endorse it in the normal fashion. It is right and proper that Section 104 orders are part of the system of devolution in the UK, but it is also right and proper that we work in partnership to deliver them and ensure that the Scottish Parliament can implement its legislation.

I have some reservations about earmarking funding in any situation such as this, but I recognise the absolute benefits of this funding for the services and for police officers who have been subjected to assault. While restitution orders are a useful mechanism for raising that funding, their purpose is also to provide more deterrence against attacks on police officers and support staff in the years to come.

For that reason, these orders are welcome. There has been a good, healthy debate in the Commons, and the Scottish Parliament has passed the legislation, and we should support it too. However, I have two questions to pose to the Minister. First, is this order conditional for the Scottish Parliament and the Scottish Government to go ahead with implementation and enforcement of the orders themselves?

Secondly, and perhaps more importantly, it has been nearly seven years since this legislation was passed by the Scottish Parliament. I would be interested, in the interests of transparency, to have the Government confirm when the Scottish Government formally requested that this Section 104 order be processed through the Houses of Parliament. It would be helpful, not least because up to £1 million could have been collected in restitution orders since then. That sum of money obviously has not been available and could have been if the order had been processed more quickly. Understanding the date of the formal request would be helpful to make sure that this decision is as transparent as it possibly can be.

With those remarks, I am happy to endorse the order and the action of the UK Government in working with the Scottish Government to make this happen.

12.42 pm

Lord Campbell of Pittenweem (LD): My Lords, there is no dispute that this legislation, in the form of a statutory instrument, should pass. What is more surprising, as has just been pointed out by the noble Lord, Lord McConnell, is that it has taken so long to come before us. I associate myself with his request for some transparency as to why that should be.

For part of my professional life, I worked very closely with the police, alongside, as it happens, the noble and learned Lord, Lord Hope, who is to speak after me, in the prosecution of serious criminal offences in the High Court of Justiciary in Scotland. But my appreciation for the police is based on a simple proposition. The police are the first line of defence of our community and community values. Of course, that defence has been most evident in the responsibilities that the police have had to ensure that the terms of the lockdown are properly observed.

We have heard, not least in the debate in the other place, that that responsibility is subject to the ever-present risk of life and limb. In particular, I draw attention to the eloquent discussion of that matter from my honourable friend the Member for North East Fife Wendy Chamberlain—happily now my successor—who, of course, served in the police herself and who comes from a family with a long tradition of police service.

I come back to where I began: just exactly why did it take so long? As the noble Lord, Lord McConnell, pointed out, money has been lost as a result. Was it a political difficulty or some problem of officialdom? As he pointed out, £1 million simply has not been available for the purpose for which it was intended. The Scottish Parliament is always asking for new powers. It would have a stronger case for doing so if it was able to show that such powers as it has been given are expeditiously operated.

Two other points occur to me. One is that, when asked for an estimate of how many applications might be made for a restitution order, what was said in the debate in the other place was that there will be somewhere between 250 and 500. There was no factual basis for

[Lord Campbell of Pittenweem]
that estimate. It has great significance when one comes to consider just how much might have been and will be achieved. At the same time it was said in the other place that it was expected that the average value of a restitution order would be £350. Your Lordships can do the arithmetic: at 250 a year it is £87,500, and at 500 it is £175,000.

I have two last questions that I think are important. What assessment has been made of the impact on the welfare of the individuals, or the families of individuals, against whom such an order might be made? I have in mind the particular difficulties that we all know about in universal credit. It would be helpful to have some understanding of what assessment of impact has been available.

My other point, which I offer as an argument for not passing the order, is that it is a little difficult to understand whether the restitution order is a punishment or designed to be a raiser of revenue. Given the circumstances, it is not difficult to reach the conclusion that it is actually neither. That is a matter for some further consideration.

12.46 pm

Lord Hope of Craighead (CB): My Lords, it is a pleasure to follow the noble Lord, Lord Campbell of Pittenweem, in expressing support for this order, but I am concerned by the statistics that the Minister mentioned at the outset of his speech. A disgraceful number of assaults against police officers have taken place during the present crisis. I express my admiration for the way our police forces have performed their quite difficult duties during this very difficult time, in weather that rather encouraged misbehaviour, I am afraid, in certain parts of the country.

At first sight, it seemed rather odd that it was thought necessary to resort to a UK SI to modify an Act of the Scottish Parliament, but those who prepared the Explanatory Memorandum have set out the position very well, as indeed the Minister did in his opening remarks. We are concerned here with a penalty that can be imposed by the courts in Scotland under the 2014 Act for an offence under another Scottish statute, the Police and Fire Reform (Scotland) Act 2012, for assaulting a police officer. To make this penalty more effective in the case of offenders with little means, it is necessary to amend a UK statute—the Criminal Justice Act 1991—which of course can be done only by an order made in this Parliament, under Section 104 of the Scotland Act 1998, as the Minister pointed out.

However, I would be grateful if the Minister could say a little more about how this system is likely to work in practice. The restitution order is an additional penalty for an offence under Section 90 of the 2012 Act—additional, that is, to a sentence of imprisonment or a fine. It seems rather unlikely that a sheriff would make a restitution order on its own, although the new Section 253A, introduced in the 2014 Act, would permit that, so we should have in mind an offender who is being asked to pay a fine, as well as having to satisfy a restitution order out of such money that he has at his disposal.

Where a restitution order is made, the amount involved could be substantial. The sheriff has power under the statute to require the offender to pay an amount not exceeding the prescribed amount, which currently stands at £10,000. The 2014 Act does not give any guide as to how a sheriff is to decide what is appropriate, but we know that the amount ordered does not go to the police officer as a form of compensation for what he or she has suffered at the hands of the offender. It is to be paid to the clerk of court for payment to Scottish Ministers as a contribution to the restitution fund, the purpose of which the Minister described.

I have known—I am sure that the noble Lord, Lord Campbell, does too—ever since my early experience as a legal trainee in the sheriff courts how difficult and how depressing it can be to extract money by way of a fine from people of limited means. Offenders are given time to pay, but all too often the payments are not made. Deducting money from their source of income so that they cannot avoid or delay payment is the most secure way of doing it. That is the idea that has given rise to this order. But almost by definition those who are on social security benefits are people of limited means.

Section 24 of the 1991 Act allows the court, after inquiring as to the offender's means, to apply to the Secretary of State to deduct sums from any amount payable by way of benefits, but will the Secretary of State have any say on how much should be deducted to avoid undue hardship to the offender or his family? What if the amount is to be paid over a long period and the benefit amounts change during that period? Can the periodical amounts be changed if there is a change of circumstances? Are sheriffs to be encouraged in hardship cases to dispense with a fine where a restitution order would be more appropriate? What is being done here might seem to be good idea, but we need to be reassured as to its consequences.

12.50 pm

Lord Wei (Con): My Lords, I share the sentiments of previous speakers about the amazing work of the police throughout our nations during this very difficult time. Normally, I would not have much to say about Scottish matters, having few connections, but having heard about some of the innovations over the years in the Scottish justice system, particularly around restorative justice, I am attracted to this discussion. I broadly welcome this measure in principle. Unquestionably there should be penalties for mistreating the police, particularly with the examples we have been hearing about, such as people spitting on them. It is right to get justice—financially, if necessary—in a way that cannot easily be avoided.

However, I am surprised that this measure is being put forward. I echo previous speakers in asking what thought has been given to the impact for those on benefits who are fined in this way? It would be perverse for the financial stress caused by this measure to cause offenders to reoffend, whether against the police or other people. That does not make sense to me, even if it gives a political win by being seen to be taking harsh action against those who oppose the police.

As part of the broader measures to rehabilitate the offender, including achieving justice and finding funds to support police officers and their families, this can make sense. However, what can be done to ensure that

the guidance that sheriffs and courts are given is applied wisely and judiciously to have the optimum impact and to achieve all the goals it could achieve without some of the adverse consequences that may arise? I am keen to know what guidance will be provided or whether it will ultimately be left to the final judgment of the sheriffs and the courts.

12.53 pm

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I too thank the noble Viscount, Lord Younger, for his excellent introduction. I also express some sympathy for him: having just answered the PNQ on Northern Ireland, he is now dealing with Scotland, yet he has no direct responsibility for either of them, unlike the noble Lord, Lord Duncan, had when he was in his former position.

The Government should sort this as quickly as possible. I echo what was said by my noble friend Lady Smith in the PNQ: this situation should not be allowed to continue. It is a matter between the UK Government and the Scottish Government, and there ought to be more contact and regular meetings between Scottish Ministers and UK Ministers. The noble Lord, Lord McConnell, will recall that at the start of the century, when I was Minister of State, we used to meet regularly—weekly, and sometimes more often—with Scottish Ministers. We had a discussion about free personal care with the DWP and the Scottish Government that we are dealing with now. These are important matters, and we need Ministers in Scotland and Northern Ireland to deal with them.

Returning to the order, I agree that the police are in the front line. It is outrageous that since 10 May, there have been over 100 coronavirus attacks on police. It is not always the perfect picture in Scotland that some in the Scottish Government like to portray. Restitution orders are going to be useful, principally, I hope, as a deterrent rather than bringing the money in. However, I have a few questions for the Minister, which I hope he will be able to answer. I have given him notice of one or two of them.

First, this is going to be quite a complicated procedure, and very difficult between the Scottish Government and the DWP. Is there any estimate of the cost of administering this, and how it compares with the actual money that will be brought in by the scheme? Secondly, will there be some arrangement for monitoring the scheme on a case-by-case basis—not just a blanket monitoring to see how it is operating, but monitoring the impact, as the noble Lord, Lord Wei, said, on the families of offenders? That is a very important point. The knock-on effect on the families of offenders could be very great indeed, and, as the noble Lord said, it could lead to some reoffending. It needs to be monitored very carefully. There need to be safeguards in relation to the unintended consequences of what is being proposed. Can the Minister indicate what the arrangements might be for reviewing this?

I hope that if the noble Viscount cannot answer these questions directly today, then he will take them up. Even though he does not have direct responsibility, he is answering on behalf of the UK Government, so I hope that he will take them up with the Scottish Government if necessary, and that if he cannot answer them today, he will write to me and to the other noble Lords participating in this debate.

12.56 pm

Baroness Northover (LD): My Lords, I too thank the Minister for his introduction to this SI.

During the coalition Government, when I was at the Ministry of Justice, I had a responsibility in relation to women offenders and women in prison. What I learned was chilling. We know that women are more likely to be poorer than men, and that women who come within the justice system, if they are parents, are more likely to be single parents. This is why prison is so devastating for them and for their families. When women go to prison, their children often go into care, and they often lose their housing and possessions. Therefore, I came to this proposal with that gender difference in the effect of penalties in mind.

I fully support the proposal that restitution should be part of a sentence, if judged to be appropriate. We certainly cannot tolerate assaults on police officers, or the other people prescribed here. I too pay tribute to the work that they have been carrying out in this pandemic. It is good to see the fund for victims, including caring for, treating and rehabilitating them, and it is good to hear that this will support the physical and mental well-being of victims. However, on reading the Explanatory Memorandum, I noted that

"an impact assessment has not been produced for this instrument as no, or no significant, additional impact on the private, voluntary or public sectors is foreseen."

The phrase "no significant" impact is what I wish to probe; it was also mentioned by other noble Lords. I note that restitution may be required instead of, or in addition to, dealing with an offender in any other way. It is that "in addition to" which may be significant. I come back to the points that women tend to be poorer than men and have more childcare responsibilities. This order is about deducting from their benefits. This could be in addition to any other fine. Therefore, I want to know what assessment was made of this. Under equalities legislation, the differential effect of every policy is supposed to assessed with a gender lens. I recall, as Equalities Minister, needing to point out to the Treasury that it must do this. Internationally, we are required to do so by signing up globally to the sustainable development goals, and we urge all countries to look at the gender impact of their policies. Was that done in this case?

I have notified the Minister of my concern, in answer to his office asking me, and no doubt all of us, for prior notice of what we intended to ask. Therefore, it would not be a satisfactory answer to assume that there would be "no significant" impact in this case. How much on average are the restitution orders? To what extent are they used in addition to fines, or instead of them? What is the gender breakdown of those receiving them, and were any of these questions asked? In essence, did the Government properly consider any disproportionate effect on women and their children of restitution orders taking additional resources from their benefits? I look forward to the noble Viscount's response.

1 pm

Baroness Wilcox of Newport (Lab): My Lords, I thank the noble Viscount, Lord Younger, for bringing this SI to us today and associate myself with the comments of my noble friend Lord Foulkes about the noble Viscount's workload. He has no responsibility for Northern Ireland and Scotland, and that must be addressed.

I am grateful that this order is part of the Government's ongoing commitment to devolution. The dreadful pandemic has thrown up more questions than answers as we seek to recover from its impact on our working and our personal lives. However, tensions have arisen from government information during the lockdown, as aspects of devolution, indeed the laws of the lands, have become mired in poor communication. Sadly, there has been an assumption by some in public life, the media and the wider public that the information disseminated from the UK Prime Minister's office applies equally across the UK, taking little note of the devolution settlement that has been in operation since 1999 in our countries.

I am glad that officials in the UK Government and the Scottish Government have worked together on this provision and indeed others that are of value to the inhabitants of Scotland, and that it relates to the whole of the UK. It ensures that if people are in Wales or England, these measures apply. Under Scottish law, it is already a crime to assault a police officer, but this legislation allows for restitution orders to be brought into law and the court will be able to impose this new financial penalty. It is of course of significance that serving police officers who are victims of crime are now able to receive greater support for their needs, to support their physical and mental health.

We largely take it for granted that we work in a safe environment, but for serving police officers it can never be that simple. The threat of assault is ever present and over the past five years there has been a sustained increase in reported assaults on officers. Restitution orders are not just a financial penalty for those who assault police officers who are carrying out their daily work; they are about showing those officers that their work is greatly valued by society. We rely on the police every day, but never more so than in the difficult days placed on us by this pandemic.

At this juncture, I pay tribute to all police officers across the UK, but I must mention the work of Gwent Police, who are keeping us safe in my home area under the inspirational leadership of Chief Constable Pam Kelly, who always demonstrates that the best interests of the community are at the heart of policing in our area.

This is not just about money, of course, particularly for crimes of assault on police officers. It can matter greatly to victims of crime, who suffer not only physical effects but strains on mental health. That must not be underestimated. This statutory instrument will work with victims to recognise that the perpetrators will face serious consequences for their actions. It can therefore be fully supported.

There has been a seven-year wait for this scheme and once all stages have been reached in both Houses, it is vital that the Scottish Government implement these restitution orders without further delay. I associate myself with the remarks of my noble friend Lord McConnell about finding out when they will be implemented.

1.04 pm

Lord Addington (LD): My Lords, my eye was drawn to this debate because it is about taking money from benefits. As the noble Lord, Lord Wei, said, people on benefits do not have a great deal of spare money and every time we look at justifiable benefit reductions, we must consider what happens to that person and, more importantly, their family.

It is accepted that economic pressure tends to make certain groups consider criminal activity more frequently, especially those who come from an environment that is used to criminal activity. Increasing economic pressure on those people can lead to them taking that option. Anyone who has worked in any part of the criminal justice system has had people tell them that. They say, "I don't know what to do. I've got no money and a way to make money was presented to me. It was illegal, but I took it". Whether in the grey or black economy, it does not matter.

Having said that, we must remember the principle that if you assault a policeman, a member of the health service or a fireman you are not only breaking the law but attacking someone who is trying to make society a better place. So, what is the balancing act here? Are we considering it properly? If we do not get this right, we may well create more problems for those in the emergency services than we are solving.

The restitution fund is a wonderful idea, but the sums involved are comparatively small. I hope that we can be assured that the fund will not collapse if this action is not taken and no benefits money is transferred into it. We are not talking about raising big sums, in terms of government expenditure. What will happen to that fund? Will it continue? Will there be an impact assessment? As has already been pointed out by the noble Lord, Lord Foulkes, there does not seem to be any mandatory impact assessment. We must look at that.

The principle sounds great, but what about the practice? What is happening? Are we ensuring that we are making the situation better and not doing that wonderful thing of marching forward with good intentions and ending up at the back door of hell? We must look at how this works and the impact on the group in question.

1.07 pm

Lord Naseby (Con): My Lords, I have been looking at victim legislation in England, which is what drew me to this particular SI. I am totally mystified as to why it has taken seven years to implement what everybody is saying is a very important aid to the police. A member of my extended family is in the fire service, which I assume this order also covers. Of course, there are far fewer assaults on fire officers, but they do happen, so it seems just as valid to include the fire service as the police. Also, the Explanatory Note says that the restitution order is "currently set at £10,000". But that was set seven years ago. The implication is that the amount will be increased. Perhaps the Minister can clarify that.

Secondly, there is nothing in the Explanatory Note about what happens if a person appeals. Is the deduction of benefits then suspended? Others have rightly said—and I totally concur, having once been the leader of the London Borough of Islington, a poor part of London—that with people on benefits, it is always the family who suffer. The mother, who is probably looking after half a dozen children, is the one who suffers.

Finally—I am grateful to the noble Baroness who raised this—the last paragraph of the Explanatory Note states:

"An impact assessment has not been produced for this instrument."

As the law was produced seven years ago, there must be some impact. I am amazed that we are to go forward on something for which there has been no impact assessment. A number of questions have been asked by noble Lords, and I shall not repeat them, but this is not quite as straightforward as it appears on the one sheet of paper taken up by the SI.

1.09 pm

Baroness Barker (LD): My Lords, I declare an interest as I know people who have used the services of St Andrews in Harrogate and my noble friend Lady Harris of Richmond is president of that institution. It provides specialist physical and mental health support to police officers. It is uniquely valuable because the treatment may be the same as treatment obtained elsewhere, but the therapists understand the conditions under which police officers sustained their injuries, which is very important.

A lot of speakers have talked about the perils that police officers face at the moment because the Covid legislation has been badly communicated by the Government and ignored by the Prime Minister's adviser, which has led to tensions for understandable reasons. Police officers never know when they go on duty whether a person or situation might suddenly blow up and get out of hand. It is therefore important that we see this order as something that applies generally throughout policing. I am glad that we are discussing it today because ongoing scrutiny of government is important, even on matters such as this where there is a fair degree of agreement.

This order is made as a consequence of the Victims and Witnesses Act (Scotland) 2014 and was requested by the Scottish Government. The Act was passed seven years ago. Why has it taken so long? What was the hold up and who was responsible? I ask because my Scottish Liberal Democrat colleagues Alison McInnes and Liam McArthur at Holyrood have been asking this question consistently since the Act was passed. Each time they were assured that preparatory work was ongoing, yet this legislation has yet to go before the Scottish Parliament. The Minister said in his introduction that the statutory instrument would be debated by the Scottish Parliament after the Summer Recess. Can he tell us when we can reasonably expect the first restitution orders under this legislation to come about?

How many incidents involving the abuse of police officers and civilian staff, who may, for example, be working in custody suites—this applies to them, too—would have been subject to this order had it been in force at any point over the past seven years? The orders might go some way to acting as a deterrent, but we need to know how many officers would have benefited from additional support had it been imposed. Where exactly will the money raised by the order go? Do we know how much restitution orders are estimated to raise every year? Can we potentially establish how much money police support services have missed out on and how much they can expect to obtain in coming years?

Noble Lords have made the point that it is up to the court and the DWP to exercise judgment in these matters and that they may decide not to levy a fine or to impose a restitution order if to do so would be injurious to the circumstances of the person or their family. Offenders can appeal against the imposition of a restitution order or the amount imposed, or to the DWP if they feel they cannot make the payment. How would they do that? Are they able to do so without having to seek further public funds to exercise that right?

My noble friend Lady Northover said that an impact assessment has not been provided for this instrument, and indeed it has not, so it is therefore difficult to gauge the administrative cost of implementing this order. On what basis—

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

Baroness Barker: Sorry. I shall draw my remarks to a close.

1.14 pm

Lord Bruce of Bennachie (LD): My Lords, like other noble Lords, I am happy to welcome this instrument, although I echo the call for there to be Ministers for Scotland and Northern Ireland in the Lords. I mean no disrespect to the Minister, who gave an excellent introduction to this instrument.

As many noble Lords have said, the instrument focuses on assault of a police officer, who is in the front line on behalf of all of us. Any such assault is of course a serious offence. The consequences for that officer can be traumatic and long-lasting, as colleagues of those who have suffered will know. That is one reason why fellow officers have raised funds to support the rehabilitation of victims at home or at facilities such as those in Auchterarder or Harrogate. My noble friend Lady Barker gave us personal testimony about knowing people who have been there. The penalties for being convicted of such assault are rightly wide-ranging and include custodial sentences and fines. It is only right that those convicted of inflicting injury or trauma by such assaults should not only receive punishment but contribute towards the cost of their victim's recovery.

The purpose of today's business is to follow through the 2014 legislation to enable the courts to order recovery of funds from a convicted person's benefits to be paid into a restitution fund to be administered by or on behalf of the Scottish Government. Circumstances vary according to where the victim resides. The assault may have been carried out by someone visiting Scotland who subsequently returned to another location in England or Wales, or it might have been carried out by a Scottish resident who subsequently moved to England or Wales. By passing this instrument, we ensure that recovery from benefits of

[Lord Bruce of Bennachie]
restitution funds, if required, can be made anywhere in Great Britain. However, will the Minister explain why Northern Ireland is not included in this?

It is important that the sanction is not applied in such a way as to damage the convicted person's family or lead to sanctions being imposed. This was highlighted by a number of noble Lords, notably my noble friend Lady Northover in the context of women, and my noble friend Lord Addington. Having said that, someone who has committed an assault should not be exempt from making a contribution to the restitution fund just because they are on benefits, although, as the noble and learned Lord, Lord Hope, reminded us, the £10,000 maximum would surely be well beyond anything that could reasonably be imposed on somebody claiming benefits.

As many noble Lords have pointed out, it is simply not clear why it has taken so long for this SI to be requested since the original law was enacted by the Scottish Parliament in 2014. Indeed, Kenny MacAskill, who introduced the original legislation as responsible Minister in the Scottish Government and is now an MP, said during the debate in the other place that he does not know the reason for the delay. It has been pointed out by the noble Lord, Lord McConnell, and my noble friend Lord Campbell that delay could have led to the loss of significant potential revenue that could have gone into the restitution fund.

I delicately venture that perhaps the bumpy ride that has characterised the creation of Police Scotland might have contributed to that delay. Alone of the parties in the Scottish Parliament, Scottish Liberal Democrats opposed the merger of the previous eight police forces into one. It was ill thought through and badly executed, and many experienced and dedicated officers left the force in considerable disillusionment. There were serious misjudged consequences, such as the appearance of mounted police at Highland Football League matches, a dramatic increase in stop and search, including of children, and increased carrying of firearms by police. In addition, the command of the force was controversial, to say the least. There were suspicions of political interference and the accountability mechanism has still not been settled satisfactorily.

All this has led to a loss of trust, a dramatic reduction in community engagement and often remoteness of understanding of different characteristics of policing in different parts of the country. I do not for a minute suggest that there is ever justification for assault on police officers, but I ask for consideration of whether the scale of the ongoing disruption might have led to some breakdown of trust and engagement, which may in some circumstances have increased tensions.

As many noble Lords have acknowledged, regardless of these difficulties there are dedicated police officers right across Scotland delivering protection and guidance with dedication and professionalism every day, and we owe them our gratitude and support, especially if they suffer in the line of duty. They have been under special pressure in recent months. I think it was the noble Lord, Lord Foulkes, who said that they have experienced more than 100 assaults. That is shocking and I think we all want to thank them for what they do and appreciate that they are doing it on behalf of all of us.

Having said that, I am more than pleased to support the useful step this SI represents in providing resources for restitution and in making a connection between the perpetrator and the victim, an assaulted police officer, in the form of restorative justice. It may not be more than a small contribution. The ability of benefit claimants to pay is a live issue. Nevertheless it is worth recording that there should be a connection between a crime and its consequences, and it is always good for a person who has committed a crime to know that they have a responsibility to the victims of their actions.

1.20 pm

Lord Davidson of Glen Clova (Lab): My Lords, I thank the Minister for introducing the order. Like the previous modification order of the 2014 Act, which came before the House in 2019, this order is certainly laconic. The effective language amounts to some 38 words. None the less it is of significance to police officers and staff in Scotland, to whom the benefits are directed. We support the order in both its terms and its intent. As the Minister observes, it provides, in the form of restitution orders, welcome additional support to those who, in the course of their duties, are at very real risk of assault and injury.

The Minister has eloquently described the recent circumstances confronting the police in Scotland. They have been tested by these changed circumstances, and have met the test. I am gratified to hear that the police in Wales have also met the test produced by these circumstances, as the noble Baroness, Lady Wilcox, pointed out.

My puzzlement that this order has taken so long to come before the House is shared by the noble Lords, Lord McConnell, Lord Campbell and Lord Naseby, and the noble Baroness, Lady Barker. It may be of interest to recall how this has come about. Like the allied order that provides for the victim surcharge scheme, this desirable innovation for Scotland was announced by the Scottish Government way back in 2013, and, as with the victim surcharge scheme, there has been a delay of years—seven years, as has been pointed out—in the introduction of restitution orders in cases of police assault.

I understand that the responsibility to notify the need for both orders lay with the Scottish Government. The noble Lord, Lord Foulkes, explained that in the past fairly useful meetings between Her Majesty's Government and the Scottish Government had taken place. I assume that these meetings did not place in this case, or this problem would have been identified.

In introducing the 2014 Bill on 6 February 2013, the then Scottish Cabinet Secretary for Justice described these police restitution orders as "key proposals", which were

"vital to improving the experience of victims and witnesses".

The initiative to introduce such orders received praise internationally from police unions. A restitution fund was to be set up and administered by the Scottish Government. The fund was declared in the Scottish Government's policy memorandum to be intended to

"support and promote the physical and mental health and wellbeing of police officers and staff".

No one would dispute the laudable objectives thus set out, but—as every other speaker on this matter has asked—why has it taken seven years to introduce the necessary legislation for this vital, "key" initiative to promote the health and well-being of police officers and staff in Scotland? From what the Minister has said, I gather that the restitution fund has not been set up. The noble Baroness, Lady Barker, pointed out that such a fund would make a real difference, and identified the real value that it could produce.

I recognise that the Minister is not responsible for this delay; nor are, I assume, Her Majesty's Government. None the less, is he aware of any reason for this remarkable delay? Did the Scottish Government have second thoughts about their initiative? That seems unlikely, given the laudable aims and the process of consultation that had taken place before the Bill was introduced. Were they concerned that an additional penalty visited on persons might be impecunious? I thought this unlikely, given that the penalty would have been imposed by the court, which, one might think, is well able to assess affordability.

As the noble and learned Lord, Lord Hope, and the noble Lords, Lord Wei and Lord Addington, identified, other questions arise as to how the orders might be imposed. The noble Baroness, Lady Northover, and the noble Lord, Lord Naseby, raised the important point about why no impact assessment was carried out. I would be interested to hear the answer to that.

Could the reason for this apparently mysterious delay simply be that the Scottish Government forgot, or somehow lost interest in, this initiative? That seems a remarkable notion. In any event, can the Minister enlighten the House? I take it that he agrees that any Government who overpromise and underdeliver risk both creating an impression of incompetence and losing the people's trust.

1.26 pm

Viscount Younger of Leckie: I thank all noble Lords who have taken part in this short debate. Many questions were put and I will do my best to answer them. Many Peers, including the noble Lords, Lord Bruce and Lord McConnell, my noble friend Lord Wei and the noble and learned Lord, Lord Hope, spoke about the role of the police, and the fact that they are currently having to tackle some unprecedented issues. I am very aware of the public issues that arose over Durdle Door, which admittedly is several hundred miles from Scotland. Here we are, however, talking about the Scottish police. I make clear, as I did in my opening remarks, that the Scottish police play a very important role and are doing it wonderfully.

I will answer directly a question raised by the noble Lord, Lord Campbell of Pittenweem: whether this restitution order was a penalty or a means of raising income. I think that he thought it might be neither; I absolutely confirm that it is a penalty. On the opposite side of the fence, I was interested to hear the eloquent speech by the noble Baroness, Lady Barker, with her knowledge of people who have been beneficiaries of these rehabilitation sentences.

Several key themes were raised in this short debate, and in a moment I will directly address the issue of the delays. The second theme was the impact on those served with a penalty. My noble friend Lord Wei spoke very sensibly about the fact that we do not want people to reoffend: there is a subtle balance here. This matter was also raised by the noble Lords, Lord Campbell, Lord Bruce and Lord Foulkes.

Finally, before my speech proper, I want to make a slight correction. I alluded to an MP in the other place. She is in fact the MP for North East Fife, not for Edinburgh West.

The question of the delays was understandably raised by the noble and learned Lord, Lord Davidson, the noble Lords, Lord McConnell and Lord Bruce, my noble friend Lord Naseby and the noble Baroness, Lady Barker. While this is a query for the Scottish Government, I am aware that the initial work to set up the victim surcharge module proved more complex than initially anticipated, which had a knock-on effect on the implementation of the restitution orders. The UK Government received the full policy proposal at the end of May 2019. Scotland Act orders take a minimum of one year from full policy proposal to complete, and often much longer. Despite the pressures of Covid-19 and Brexit over the past year, the UK Government have acted swiftly to deliver this order for Scotland in the quickest time possible, preventing any further delays in its implementation.

The Scottish Government plan to take forward their own SSIs following the summer recess. They expect the commencement of restitution orders by the end of the year. I reiterate, however, that these questions are more appropriate for the Scottish Government to answer.

Several noble Lords asked about affordability and how the system will work. The noble Lord, Lord Foulkes, asked about safeguards, and the noble Lord, Lord Addington, and my noble friend Lord Wei spoke about the level of payments and concerns about financial deprivation. The majority of restitution orders are expected to be paid to the Scottish Courts and Tribunals Service—SCTS—by offenders from their income. Deduction from benefits is an exceptional situation rather than the norm. Courts must take account of the ability to pay when deciding whether to impose a penalty, the amount of the penalty and whether to apply for a deduction from benefits order.

When the court writes to the DWP applying for the deduction from benefits order, it has to advise when the court inquired into the offender's means. If an offender's circumstances change, the restitution order can be remitted before the court that imposed it. Courts also have available to them non-financial penalties such as community service. Accordingly, sheriffs will have a role in determining whether an offender can afford to pay a restitution order or for deductions to be taken from their benefits.

The Section 104 order is to give the SCTS the capacity to deal with the exception rather than the norm. This capacity to enforce the penalty in these exceptional circumstances allows the penalty to be introduced with the same level of confidence and, importantly, the same safeguards as existing fines.

The amount of deductions will be decided solely by the DWP as part of its existing policy on deductions from benefits. These policies have caps in place to

[Viscount Younger of Leckie]
prevent undue hardship. In universal credit this cap is reducing further to 25% of a claimant's standard allowance in October 2021. The cap was already reduced from 40% to 30% in October 2019.

The noble Lord, Lord Foulkes, asked about the numbers of police officers involved, but I think he will know that I addressed that in my opening speech. There were more than 400 crimes in which police employees were the victims, and over 100 cases had a Covid element.

The noble and learned Lord, Lord Davidson, asked about the restitution order already being set up by the Scottish Government. I reiterate that no restitution fund has yet been set up. The restitution fund has a statutory basis and the relevant statutory provisions have not yet been commenced. They will be commenced only once there is a full suite of enforcement measures for restitution orders, including deduction from benefits orders. As a result, the restitution fund cannot be set up, as there is currently no statutory basis on which to do so.

The noble Lord, Lord Foulkes, asked about reviews, which is understandable. No review process is required by the UK Government, as this order provides only for the restitution order to be regarded as a fine for the purposes of Section 24 of the Criminal Justice Act 1991. In addition, the Scottish Government will not undertake a bespoke statutory process for the ongoing review or monitoring of restitution orders, but it is expected that the Scottish Courts and Tribunals Service would monitor the collection rates for restitution orders in the same manner as it would for fines.

The noble Baroness, Lady Northover, asked about the disproportionate effect on women and raised some gender issues. Restitution orders are intended to replace fines for the same offence. The Scottish Government's expectation is therefore that the financial impact on offenders will be unchanged. This is because the courts take into account the seriousness of the crime and the ability to pay when setting the level of fine or restitution order, and the pattern is expected to be the same. The key difference is that the money from restitution orders will go towards support for the victims of such assault. The Secretary of State for Work and Pensions applies the legislation relating to the recovery of fines via deductions from benefits even-handedly, on the basis solely of affordability and without regard to gender.

The noble Lord, Lord McConnell, asked whether the restitution order would be implemented without amending reserved legislation. I hope I can reassure him by saying that, while the order could function without the option of deducting sums from benefits, it is not considered a viable option by the Scottish Government. The Scottish Government have advised that there would be resource implications for the Scottish Courts and Tribunals Service if there is no ability to seek a deduction from benefits order. In 2018-19 the Scottish Courts and Tribunals Service reported that 3.4% of the total collected was received from benefit deduction. In addition, the noble Lord may like to know that there are practical difficulties in handling cases in which a restitution order and compensation order have been made and, maybe, a fine imposed. In such cases, Section 253C of the Criminal Procedure (Scotland) Act 1995 lays down the order of preference for payment of the orders and fines. This will be compromised if the restitution order cannot be recovered in the correct order of priority.

The noble Lord, Lord Foulkes, asked a pertinent question about the ability of the Department for Work and Pensions to cope. Will the recovery of the restitution orders create any extra work? In response to the pandemic, the department is accepting new applications for the recovery of fines only where either UC or employment and support allowance are in payment. The department will resume normal service as soon as it safely can. However, even in normal running the impact of the restitution orders on the department's business is expected to be minimal, which I hope gives the noble Lord some reassurance. The department does not anticipate any increase in the overall volume of traffic or the individual amounts to be recovered in respect of Scottish fines, so the period over which recovery is made will be unchanged.

Another theme that emerged during the debate was an impact assessment. I am not sure I will necessarily satisfy all the points that the noble Baroness, Lady Northover, raised. The issue was also raised by the noble Baroness, Lady Barker, and the noble Lords, Lord Addington and Lord Foulkes. Orders made under the Scotland Act 1998 usually do not in themselves have a direct or indirect impact, whether benefit or cost, on business, charities or the voluntary sector, and would therefore not have any regulatory impact. This is the case with this order and is quite usual for constitutional measures. Implementing restitution orders is not expected to impact on business, charities or voluntary bodies. There is also expected to be no significant impact on the public sector. However, research undertaken ahead of the introduction of the victim surcharge in Scotland estimated a recurring annual cost of £115,000 on the Scottish Courts and Tribunals Service for collecting the victim surcharge, which included the cost of restitution orders. Only a small proportion of these costs is attributable to restitution orders, with the bulk attributable to the victim surcharge. Roughly 1%—that is, £1,150—is attributable to restitution orders.

My noble friend Lord Naseby asked about the appeals process. Claimants have a right of appeal to the Department for Work and Pensions if they feel there is insufficient benefit in payment for a deduction to be made. Additionally, however, the claimant can ask the Scottish Courts and Tribunals Service to make a private arrangement to repay the fine at any time, as DWP will make deductions only upon application by the service.

The noble Baroness, Lady Barker, asked a very succinct question about who the restitution fund will benefit. Eligible beneficiaries are persons who have been assaulted, as mentioned in Section 90(1) of the Police and Fire Reform (Scotland) Act 2012—so-called victims. This includes those acting in the capacity of a constable, a member of police staff, a member of other relevant police forces acting in Scotland or a member of a joint investigation team, or other persons assisting those noted above while acting in that capacity. The noble Baroness may like to know—it may not surprise her—that the most likely beneficiaries are

front-line police officers and staff who interact with the public; for example, police officers who patrol our communities to keep us safe and respond to disturbances and reports of crime, and police staff who are in close proximity to those in custody, such as police custody and security officers, who provide for the care, welfare, security and escort of persons in custody.

The noble Baroness also asked what the cost has been to police officers who have missed out on six years of restitution orders being in place. This order highlights the two Governments' strong partnership in working together, which I highlighted earlier. As I said, the Scotland Act orders take around 12 months to progress. However, the Scottish Government estimate that, once established, restitution orders will total around £87,500, and £175,000 a year. However, as one noble Lord alluded to, these levels will take some time to reach as the courts begin to use restitution orders and offenders begin to pay. We judge that over the first four years of implementation the value of these orders will therefore total less than £350,000.

The noble Lord, Lord Bruce of Bennachie, asked why this order does not extend to Northern Ireland. It amends Section 22 of the Criminal Justice Act 1991 and this section currently does not extend to Northern Ireland.

I hope that I have covered all the questions. I will undoubtedly want to read *Hansard*—I am sure noble Lords will too. To conclude, I hope that this instrument, which facilitates further support for police officers in Scotland, demonstrates that we are putting some weight behind this and that the Government are committed to working collaboratively with the Scottish Government to ensure a functioning settlement for Scotland despite the delays, the explanation for which I gave earlier.

On that basis, I beg to move.

Motion agreed.

1.43 pm

Virtual Proceeding suspended.

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

Virtual Committee (2nd Day)

2.31 pm

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

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

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): Good afternoon, 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 will begin by setting out how these proceedings will work. This Virtual Committee will operate like a Grand Committee as far as possible. 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 name to the amendments or expressed an interest in speaking on each group. I will call Members to speak in the order 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 de-group an amendment for separate debate. Leave should be given to withdraw amendments. Whenever I put the Question, all Members' microphones will be open 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 say "Not content", it will greatly assist the Clerk 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", the amendment is negatived; if a single voice says "Content", a clause stands part.

We will now begin. We start with government Amendment 17. I remind noble Lords that anyone wishing to speak after the Minister's winding-up speech should email the Clerk during this debate. The Minister should allow me to call those Members before seeking a decision on the amendment. It would be helpful if anyone intending to say "Not content", when the Question is put makes that clear in the debate. As I said, it takes unanimity to amend the Bill in this Committee; the Committee cannot divide.

Clause 4: Extent, commencement and short title

Amendment 17

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

17: Clause 4, page 4, line 17, at end insert—

"( ) Her Majesty may by Order in Council provide for section 2 (including Schedule 6) and section 3(2) and (3) to extend, with or without modifications, to the Isle of Man."

Member's explanatory statement

This amendment inserts a new subsection into Clause 4. This allows Her Majesty by Order in Council to extend Clause 2 (including Schedule 6) and subsections (2) and (3) of Clause 3 to the Isle of Man.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, this government amendment seeks to allow certain provisions of the Bill to be extended to the Isle of Man through what is commonly known as a permissive extent clause. This is a well-established method of enabling UK legislation to be extended to the overseas territories and Crown dependencies.

I should clarify that the amendment was explicitly requested by the Isle of Man Government due to the legislative pressures that Tynwald, the island's parliament, currently faces. I want to be clear with noble Lords that I am moving the amendment to allow debate and

[Lord Keen of Elie]
to put on record the request from the Isle of Man Government. I recognise that some noble Lords expressed concerns in the earlier parts of this Committee stage about both the scope and purpose of Clause 2, to which this amendment relates. I will therefore seek to withdraw the amendment once noble Lords have had an opportunity to speak to it.

Returning to the detail of the amendment, this permissive extent clause provides for the addition of a narrow delegated power that, when activated, will allow certain provisions of the Bill to apply in the Isle of Man. The power is exercisable by an Order in Council, which can be made at a time agreed between the UK Government and the Isle of Man Government.

Once made, the Order in Council would extend the Clause 2(1) power to the appropriate authority on the Isle of Man. This would enable the Isle of Man to make its own regulations to implement international agreements on private international law. This power could be used only to implement agreements that the United Kingdom has extended to apply in the Isle of Man, which means that both the United Kingdom and the Isle of Man would be able to operate the agreement between their own jurisdictions and the other contracting parties.

In addition, the amendment would enable the Isle of Man to implement an arrangement to apply the terms of a private international law agreement, subject to necessary modifications, between the Isle of Man and the United Kingdom. Clause 2(3) already provides this power to the United Kingdom. The amendment will enable that power to be extended to the Isle of Man to give it the power to do the same, alleviating the need for it to enact its own primary legislation to implement such an arrangement. Of course, in both cases, the arrangement will be about operating a private international law agreement that the United Kingdom has joined, as anything else would fall outside the scope of the power.

The amendment would not affect the United Kingdom directly. It would require the Queen to approve an Order in Council at a meeting of the Privy Council and would allow the Isle of Man also to make use of this important legislation. Should there be any effect on the UK, it is likely that any agreed arrangement relating to applying private international law agreements between the UK and the Isle of Man could be implemented efficiently both here and in that dependency by mutual agreement.

As I have already stated, this measure is limited to the Isle of Man simply because it issued a formal request for the Bill to include this permissive extent clause. We have engaged with the other Crown dependencies and overseas territories on the Bill; they have not requested that this provision be extended to them. In these circumstances, I beg to move.

Lord Adonis (Lab): I have an obvious question relating to what the noble and learned Lord said. Why does he think that the Isle of Man wants this power but other Crown dependencies do not?

Lord Mackay of Clashfern (Con): My Lords, I have always understood that the Isle of Man is different and that special provision therefore needs to be made for it, particularly at its request. Long ago, when I was Lord Advocate, I was called to defend an action of the UK Government, which had imposed restrictions on fishing in the waters surrounding the Isle of Man that were different from the common fisheries policy. I was constrained to argue that the Isle of Man was not subject to the common fisheries policy, since it was different from the United Kingdom. I regret to say that the Isle of Man was not sufficiently different for me to succeed.

I support the amendment as something that is utterly important for the Isle of Man and perfectly in order.

Lord Mann (Non-Afl): My Lords, in Clause 2(7), "relevant territory" is defined as

"the Isle of Man … any of the Channel Islands … a British overseas territory."

On what basis should there be a differentiation for the Isle of Man as opposed to the others—as the noble Lord, Lord Adonis, rightly asked—particularly regarding the two Crown dependencies of Guernsey and Jersey? Would it not be sensible from a UK stance to have consistency, particularly between the Crown dependencies and on our approach to defining "relevant territory", as covered by Clause 2(7)?

Lord Marks of Henley-on-Thames (LD): My Lords, we have no objection to the Bill as passed extending to the Isle of Man at its request, but that is of course subject to the whole question of our objection to Clause 2 standing part of the Bill and to any other amendments to the Bill that may be passed to it. In those circumstances, it is right that the Minister is not pursuing this amendment today, and it would be right that we should reconsider our position on Report.

Lord Falconer of Thoroton (Lab): I am grateful to the Minister for indicating that he is not going to proceed with this amendment today and that he has moved it simply to open it for debate. We oppose the amendment because we oppose in principle Clause 2, which inappropriately gives the Government the power by secondary legislation to introduce important changes to domestic law to reflect private international law agreements. At the moment, if that is the principle that we stand on, in our view it is wrong to say that the Isle of Man, of all the parts of the Crown dependencies, should have a special right to do it by statutory instrument. That, as previous Lords have indicated, would differentiate it from everyone else. We are against it for that reason.

We are also against it because this change would allow for differential application of international agreements as between the various parts of the United Kingdom and, for the reasons we gave the previous time this Committee met, we are against that. So, we oppose the amendment.

Lord Keen of Elie: I am obliged to noble Lords for their contribution to the debate, and note what has been said. Perhaps I may respond to the points made by the noble Lords, Lord Adonis and Lord Mann, and touched upon by the noble and learned Lord, Lord Falconer—although I have a correction to make there. The reason why this is being done only in

respect of the Isle of Man is that the Isle of Man has specifically requested that this mechanism should be available, so that we can proceed by way of an Order in Council from the Privy Council. It will be for the other Crown dependencies to determine whether and when they wish to implement primary legislation within their own legislatures to come within the ambit of such international agreements as the United Kingdom draws down.

The noble and learned Lord, Lord Falconer of Thoroton, referred to variation between parts of the United Kingdom but of course the Crown dependencies are not part of the United Kingdom. They have a unique status and it is for them to determine whether and to what extent they wish to become a party to legislation that draws down into domestic law international treaty obligations. I continue to believe that this amendment is important and respect the request of the Government of the Isle of Man. However, I recognise the concerns expressed about the links between this amendment and the Clause 2 power to which exception is taken. The noble Lord, Lord Marks, and the noble and learned Lord, Lord Falconer of Thoroton, made that point. In these circumstances I will therefore withdraw the amendment, but I intend to continue this discussion at a later date. For present purposes, I beg leave to withdraw the amendment.

Amendment 17 withdrawn.

Clause 4 agreed.

Schedules 1 to 5 agreed.

Schedule 6: Regulations under Section 2

Amendment 18 not moved.

2.45 pm

The Deputy Chairman of Committees: We now come to the group beginning with 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 made that clear in the debate. It takes unanimity to amend the Bill in this Committee; this Committee cannot divide.

Amendment 19

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

19: Schedule 6, page 68, line 8, leave out paragraph (b) and insert—

"( ) provision that creates, amends or extends a criminal offence, or increases the penalty for a criminal offence"

Lord Falconer of Thoroton: This is, in effect, a probing group of amendments, repeating many of the arguments that we discussed on day one in Committee, and the amendments do two things. Amendment 19 would delete the power of the regulation-making authority to create, amend or extend a criminal offence. Amendments 20 and 21 say that the regulation-making power should be subject to the super-affirmative resolution procedure in the UK Parliament; and, in particular, that before any such instrument was made final a consultation would have to be undertaken with the Lord Chancellor's advisory committee on private international law and the European Union Select Committee of the House of Lords.

I make it clear, as I did on the previous occasion, that I am not in favour of this order-making power at all. I refer to Amendment 19 simply to indicate the width of this power, which includes the making or changing of criminal offences. In relation to the super-affirmative procedure, again, I am against it. There should not be that power at all. It gives me an opportunity, though, to make the point that the Lord Chancellor's advisory committee on private international law has been an important source of advice over a long period to the Lord Chancellor and the Ministry of Justice on private international law agreements. It was not referred to at all in the suite of maybe a dozen statutory instruments introduced under the withdrawal Act, in the wake of us changing our private international law arrangements with the European Union. That led to a great loss in the preparation of those statutory instruments. I very much hope that the Minister will give an undertaking that in any subsequent changes in private international law, the Government will consult unquestionably the Lord Chancellor's advisory committee and, as much as possible, the European Union Select Committee of this House. I beg to move.

Lord Thomas of Gresford (LD): My Lords, first, I draw attention to paragraph 41 of the memorandum concerning the delegated powers, which says:

"We do not anticipate using the power to create, extend or increase the penalty for, a criminal offence very often, however it may be needed, in very limited circumstances, in order to implement effective enforcement provisions for some potential future PIL agreements."

I stress: some potential future PIL agreements.

I want to speak mainly to Amendment 19, although I support what the noble and learned Lord, Lord Falconer, said in relation to Amendments 20 and 21 and his criticisms of the super-affirmative procedure. The Committee may recall that in its first sitting, I made comments about the necessity for democratic legitimacy and scrutiny when it comes to the making of legislation in this form. I do not consider that the form of approach of an affirmative resolution on its own is enough. I certainly do not think that the super-affirmative procedure adds very much to that. As for scrutiny, the noble and learned Lord has already referred to the fact that the Lord Chancellor's committee was not given an opportunity to consider the Bill.

Criminal offences are set against the background that everybody is presumed to know what the law is. To put it another way, familiarly, ignorance of the law is no excuse. Any criminal offence created requires clarity, certainty and proportionality. I illustrate this by referring to what is very much in the public eye at the moment, the Health Protection (Coronavirus Restrictions) (England) Regulations 2020. No draft was laid or approved by Parliament by reason of urgency, and one understands entirely that reason, but the instrument has been amended twice since it was passed in March and the latest version came into force on Monday. It had 12 regulations and two schedules in its original form and Regulation 6(1) provides that everyone must stay overnight at

"the place where they are living".

[Lord Thomas of Gresford]

There are certain exceptions, including, at Regulation 6(2)(d),

"to provide care or assistance, including relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, to a vulnerable person".

At that point I gave up further research, but I do not think that particular exception can possibly refer to ordinary childcare. Yet there has been controversy. The Prime Minister and four of the Cabinet have taken one view or interpretation of these regulations and almost everybody else has taken a completely different view on whether what happened was legal or not. An unlimited fine is payable on summary conviction, which can be avoided by complying with a fixed penalty notice. Noble Lords will appreciate that that is typical of the sort of offence that can be created by secondary legislation that nobody understands—I say "nobody understands"; many people understand the drift of it, but the particular detail can be the subject of controversy.

Coming back to the Bill, it is obviously undesirable that there should be a lack of clarity in drafting criminal offences when it is possible for those criminal offences to result in a penalty of up to two years' imprisonment. An unlimited fine is quite a burden, but imprisonment through regulations that refer to other Acts of Parliament—subsection this and sub-subsection that—is entirely undesirable and never gets, whether by the ordinary affirmative procedure or the super-affirmative procedure, adequate scrutiny and understanding by the authorities that have to put it into effect and, most relevantly, by the people who are affected by it and who have to obey the law.

Public international law covers, as we discussed, a wide variety of issues. It is not at all satisfactory for the wide power that I referred to—for some potential future PIL agreements to create criminal offences—to be put in the hands of Ministers. For that reason, this is an aspect of the Bill, never mind the whole of Schedule 2, that I find offensive.

Lord Mackay of Clashfern: My Lords, the Act referred to in the Bill is dated 1982, which shows that we are concerned with the time when I was Lord Advocate and before devolution. I remember it lucidly. It fell to the Lord Advocate to deal, inter alia, with the Scottish position and what the detail involved. I strongly oppose the group of amendments in the name of the noble and learned Lord, Lord Falconer of Thoroton. My understanding of the principle that rules in this area is that when the United Kingdom undertakes an international obligation, that does not become part of the law of the United Kingdom until it becomes part of the domestic law of the United Kingdom and, since devolution, that may apply differently in devolved jurisdictions. A suggestion has been made that the principle goes further and requires that the result can be achieved only by primary legislation doing so directly, without the intervention of subordinate legislation. I do not agree with that. I can see no logical requirement to restrict the power of Parliament in that way.

My noble and learned friend the Minister has already given examples. Since we joined the EU, this has been achieved by a statutory instrument naming the treaty involved, without any further detail. The year 1982 yields another striking example. Section 60 of the Civil Aviation Act 1982 confers power by Order in Council to make provision for carrying out the Chicago convention. If the principle were as claimed, surely the Act could not confer this power. I regard the provisions of the Bill as entirely adequate. Once we undertake an international obligation, it seems right to implement it in our law as soon as possible. The ordinary affirmative procedure seems entirely adequate, particularly since the other place now has power in relation to international obligations.

The noble Lord preceding me, an expert in many of these matters, particularly in the criminal law, requires that the criminal law should not be specified except very clearly and very occasionally in statutory instruments. In my respectful submission to your Lordships, this is a space in which the international agreement must have in it the criminal offence in question, because it is only a reflection of what is in the international obligation that will become part of the law under Clause 2. This seems to me to adequately secure the definition of the offence in question. I will add only that I would like to see the Lord Chancellor's advisory committee consulted as much as possible: it is a very well informed, very good source of solid advice. I also add that if the Government's ambitions are fulfilled for many international agreements in the future, it would be a great pity to saddle the procedure to implement them into our law with unnecessary delays.

Baroness Kennedy of Cradley (Lab): My Lords, I shall restrict my comments and questions to parliamentary scrutiny. Private international law agreements are so important for businesses and individuals when they cross borders that to accept new international conventions into domestic law using broad delegated powers seems a step too far. The Government have failed to make a convincing case for why they need such extensive delegated powers here. What are the barriers that led the Government to propose such a low level of parliamentary scrutiny of new agreements?

Of course, this House is not against the Government getting their business through, but there needs to be appropriate scrutiny, challenge and revision. That is, after all, why we are all here. Amendment 20 offers a set of safeguards absent from the Government's proposals and therefore has my support, as does Amendment 19. It cannot be acceptable to create and impose new criminal offences without consultation and some level of parliamentary scrutiny, the reasons having been eloquently set out by the noble Lord, Lord Thomas of Gresford, and my noble and learned friend Lord Falconer. In responding to these amendments, will the Minister give insight and clarity as to why the Government believe they need such sweeping powers? Do the Government accept the conclusions of the House of Lords Constitution Committee? If not, why not? Do they really believe that private international law agreements are produced at such a rate that proper consultation and scrutiny can be set aside?

As the Constitution Committee noted:

"The UK has become a party to only 13 Hague Conventions over the course of nearly 60 years"

so the need for delegated powers to prevent a delay does not seem a very strong argument. Why is it necessary for these delegated powers to extend to matters wider

than private international law? How do the Government envisage dealing with a future international convention that needs supplementing for a domestic situation? Where will the parliamentary scrutiny be in such cases?

Finally, is it the case, as has been argued by some, that statutory instruments in this area may be quashed under the Human Rights Act 1998, leading to unnecessary legal uncertainty?

In conclusion, I welcome and support the amendments tabled by my noble and learned friend. These are issues that need further consideration by the Government, and I hope that the noble and learned Lord will agree to look at them again.

3 pm

Lord Thomas of Cwmgiedd (CB): My Lords, I will speak briefly in support of the amendments put forward, in the event that such amendments become necessary. I will speak first to Amendment 19.

Private international law, by its very nature, is concerned generally with private individuals and private law. It seems to me, therefore, that if there are circumstances where the ordinary powers of the courts—for example, powers relating to injunctive or contempt proceedings—are insufficient, Parliament ought to have the opportunity of considering whether, in such circumstances, a criminal sanction should be imposed.

As to Amendment 20, it is fair to say that, from my own experience—save as is illustrated by what has happened on this Bill—the Ministry of Justice is fairly good at consulting widely. However, my experience of other ministries is, I regret to say, not as favourable. Therefore, I think it right that, in the event that these provisions become necessary, there be an express obligation, set out in some detail, in relation to consultation.

This has two purposes. First, it makes certain that each department has to think carefully as to whether there is a provision in the agreement it has made, and then set about a proper consultation. Secondly, it is always of value in international obligations to be able to say that the particular obligation concerned, in so far as it affects domestic law, has to be approved by Parliament. One notes that, quite often, this is a matter used by the United States with quite considerable effect. It seems to me that, at this stage, we do not have sufficient experience of knowing how effective CRaG will be.

We have to be very cautious these days in circumstances where framework legislation is now becoming so extensive. If we are to have much more framework legislation—and it looks as if we are going that way—we really have to look much more at our own procedures for considering regulations made under such framework legislation, which this is, in effect.

In the event that it is necessary to have an amendment of this kind, I therefore warmly support that put forward by my noble and learned friend Lord Falconer of Thoroton.

Lord Adonis: Virtually every speaker in the debate has supported what my noble and learned friend Lord Falconer said. The obvious question to the Advocate-General is this: will he reconsider this matter before Report?

Lord Hope of Craighead (CB): My Lords, I would like to say a few words in support of Amendment 19 and make a brief comment on Amendment 20.

Amendment 19 is an issue of principle, rather than detail. Most of what I want to say has already been said by the noble Lord, Lord Thomas of Gresford, and the noble and learned Lord, Lord Thomas of Cwmgiedd. The only point I add is this: when one is considering imposing a criminal sanction on an individual, you have to have regard to the effect of the sanction on the individual in question. For many people, to have a criminal conviction against them is a major disadvantage in future life, particularly for people seeking further employment who have to provide references to their criminal background, if any. It may also affect travel, particularly in countries which deny travel to people who have criminal convictions. Although it may be easy to say that a sentence of not more than two years is not much to trouble about, it is actually something to trouble a great deal about.

That is why the way in which these offences are created, and the extent to which the wording of the offence can be scrutinised, is so very important. It is not a light matter; it is a matter of great importance to the individual. For that reason, there is an issue of principle, which I think lies behind the noble and learned Lord's amendment.

I hope that the noble and learned Lord, Lord Falconer, will forgive me for saying that the framing of Amendment 20 creates a rather strange situation for the devolved institutions, and the legislatures in particular. The way in which Clause 2 defines the "appropriate national authority" is simple, so far as England and Wales are concerned, because it is simply the Secretary of State. But when you come to Scotland and to Northern Ireland, there is a choice: in Scotland, it is either the Scottish Ministers or the Secretary of State for Scotland; and in the case of Northern Ireland, it is the Northern Ireland department or the Secretary of State for Northern Ireland.

I raised the point at our first sitting that there is some doubt as to what exactly the function is of each of these two people. Take Scotland as an example. In what situations is it appropriate for Scottish Ministers to act alone, and when is it right for the Secretary of State for Scotland to act alone? If one is contemplating the use of the super-affirmative procedure, that is available only to the Secretary of State, because anything done by Scottish Ministers can only be the subject of an instrument laid before the Scottish Parliament. The same is true for the Northern Ireland department: it cannot use the UK procedure because its instruments have to be laid before the Northern Ireland Assembly.

I make this point in case, by any chance, this amendment is to go further. I am not sure how far the noble and learned Lord wants to do that, but just in case he does, a bit more thought is required as to how exactly one is to relate this amendment to the position in the devolved Administrations. The way I left it at the first sitting was that I would much prefer that the Secretary of State for Scotland was not involved, and that the question of implementation—a devolved matter anyway—was left with Scottish Ministers. But one way or another, the situation will need to be clarified. The presence of this amendment gives me a chance to

[Lord Hope of Craighead]
reiterate my point that there is a lack of clarity in the way that the Bill is framed, as far as the relevant authority is concerned.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendments 19, 20 and 21 are probing amendments tabled by my noble and learned friend Lord Falconer of Thoroton. I welcome the amendments, as we have a chance to debate these important issues again.

As a general rule, I do not like Governments taking Henry VIII powers. It is much better that primary legislation is made or changed, and that both Houses debate and decide on the issue, rather than procedures such as these, which are not a proper substitute, whether they use the affirmative or super-affirmative procedure.

That brings me on to Amendment 19, moved by my noble and learned friend. This is a particularly important amendment as, without it, criminal offences could be extended or amended, and the penalties for offences could be changed. That is unacceptable. I hope all noble Lords will agree that it is a matter for Parliament to decide, and that there is no justification for doing otherwise. I would therefore like to hear from the noble and learned Lord, Lord Keen of Elie, the justification for not accepting the intent of this amendment, if that is the Government's position this afternoon.

The noble Lord, Lord Thomas of Gresford, made the point that this is no way to make new law and new offences. I very much agree with that. There should be no cases of new offences having penalties agreed without the consent of Parliament, where that would normally be the case. But these powers could be used to circumvent that.

My noble friend Lady Kennedy of Cradley made the point that we have seen very few of these types of agreements in the last 60 years, and that the powers and procedures proposed here do not seem justified in that case. My noble friend also made reference to reports that statutory instruments in this area risk being struck down by the courts. It would be good if the noble and learned Lord, Lord Keen of Elie, could address that point when he responds to this debate shortly.

Baroness Jones of Moulsecoomb (GP): My Lords, Amendment 19 is a very important amendment to probe the Government on what they anticipate the application of Clause 2 will be. I very much enjoyed some of the other contributions today, particular that of the noble Lord, Lord Thomas of Gresford, which was particularly scathing and deserves to be in a newspaper somewhere. I loathe the Government trying to make these power grabs. The idea that they can just extend the concept of a crime is inherently damaging to democracy.

In particular, the key question that I need the Minister to address is in what circumstances he foresees a private international law agreement creating or amending criminal offences. As I understand it, the Bill and the agreements that it seeks to implement are entirely focused on the resolution of disputes between individual people or companies. Can he tell us what situations would give rise to any criminal liability, as opposed to civil liability? Does he anticipate that we will attach criminal fines and imprisonment to civil disputes? If there are not any good examples, why is this provision contained in the Bill and should your Lordships' House not amend the Bill exactly in the way proposed by the noble and learned Lord, Lord Falconer of Thoroton?

Lord Hain (Lab): My Lords, I will speak to Amendment 20 to Schedule 6 in the name of my noble and learned friend Lord Falconer on the matter of proper consultation, which it would require. As a former Secretary of State for Wales and still living here, I am aware that no legislative consent Motion is required for this Brexit-consequential Bill and that the Welsh Government appear to seem at least content with it. But, as my noble friend Lady Kennedy highlighted, there are real concerns about the delegated powers to join future private international law agreements.

I understand that the UK Government have provided assurances to the devolved Administrations that, first, there are not any agreements in view at the moment that touch on matters within devolved competences and that, secondly, if any such agreement emerges the UK Government will guarantee to consult the Welsh Government, and presumably the Northern Ireland Executive and the Scottish Government. I would be grateful if the Minister specifically confirms this when he replies. I ask because, for nearly four years, Conservative Governments have had a sorry record of failing properly to enable devolved Governments to participate in framing a series of European Union withdrawal and Brexit-related Bills. Consequently, UK Ministers were regularly accused, as noble Lords might recall, of a power grab—of using the transfer of functions from Brussels back to the UK to recover to Whitehall previously devolved powers.

The First Ministers of Wales and Scotland both repeatedly complained about a failure of Whitehall Ministers to consult. Indeed, I have argued exactly that in your Lordships' House on several occasions. There were also refusals to grant legislative consent Motions in Wales and Scotland until a satisfactory series of outcomes were belatedly conceded by the UK Government. This is not a good advertisement for the unity of the UK when it is under greater threat than ever.

I will put on record some specific examples of a failure to build consent, as Amendment 20 implies must be the case, because these must not be repeated. The 2017 EU withdrawal Bill, as originally drafted, represented a major assault on devolved competence. It was only as a result of very strong cross-party support in your Lordships' House that the Government were forced to agree to a default position that all powers vested in the EU on matters of devolved competence would revert to the devolved institutions when we left the EU. This has led to a more consensual approach to the work of developing common frameworks where all four Governments agree that there needs to be a shared understanding and approach across the UK.

3.15 pm

Whereas, under Theresa's May's Government, earlier drafts of the withdrawal agreement Bill were shared with the devolved Administrations, the version introduced after the December 2019 election was put forward without meaningful discussion and without proper safeguards for devolved competence. That was why,

for the first time ever, the Senedd—the recently designated name for the Welsh parliament—refused legislative consent, along with the Scottish and Northern Ireland legislatures.

The current Trade Bill was another product of Tory Whitehall unilateralism, and the Welsh Government, for example, have had to work extremely hard to ensure that the Trade Bill contains sufficient safeguards for their requirements. So far these safeguards have only really been given in the form of Dispatch Box commitments by Ministers, rather than formal textual agreements. From the point of view of the Senedd, the fact that the new Trade Bill introduced after the last election removes any oversight role for Parliament has had the side-effect of removing any rights to being consulted on the part of the devolved legislatures. That is unacceptable.

There was also inadequate consultation on the agreement with Spain on reciprocal voting rights in local elections, and elections to the Senedd are now a devolved competence to Wales despite that fact. There was a failure to consult. While the current Welsh Government favour an expansive approach to voting rights for non-UK nationals, this agreement effectively constrains the exercise of this competence by future Senedds that might take a different and less inclusive view of the place of migrants in our society. Understandably, the Welsh Government cannot agree that international agreements which they have not been involved in negotiating should constrict the Senedd's rights. There were similar arguments about the Healthcare (International Arrangements) Bill, where only after a hard-fought battle and in the context of the 2017-19 hung Parliament were the Welsh Government able to get the UK Government to agree an acceptable way forward.

It comes as no surprise that I view the Bill with some scepticism on the principle of building consent. I therefore ask the Minister to give a copper-bottomed guarantee that full consultation will take place well in advance over any issues that might arise from this legislation that fall within a devolved competence in either Wales, Northern Ireland or Scotland.

Lord Garnier (Con): My Lords, as the noble and learned Lord, Lord Falconer of Thoroton, explained in Committee on 13 May, the Official Opposition had no objection to the three treaties covered by the Bill being brought into domestic law via primary legislation, but they had very considerable objections to Clause 2. Their primary objection to Clause 2 on 13 May, repeated today, was that it would allow the Government to change the law by delegated legislation.

I have no doubt that other noble Lords who have yet to speak, like noble and learned Lords and noble Lords who have already spoken, will support the noble and learned Lord, Lord Falconer, in his arguments while paying due regard to the contribution of my noble and learned friend Lord Mackay of Clashfern. For my part, I agree with the noble and learned Lord, Lord Falconer, on the matter of principle but gently remind your Lordships' House that none of his arguments based on constitutional impropriety found favour with the Government of which he was a distinguished member between 1997 and 2007.

I spent a fair amount of time, when on the Opposition Benches, arguing with the noble and learned Lord's colleagues, as he does now with mine, that the misuse of secondary legislation to alter or extend primary legislation is wrong. I thought it was then and I think it is now. If, as he appears to have done, he has changed his mind, I am delighted, but he must know, having been in Governments with majorities of 179, 167 and 157, why Governments with large majorities resort to this device: it is expedient, it is convenient and they can.

There is generally far too much legislation and most of it is inadequately considered in the House of Commons. Bills are closely whipped and programmed and Governments of all stripes—Conservative, Labour and the recent coalition—have used Henry VIII powers allowing Ministers to make law with insufficient parliamentary scrutiny. I make that observation coolly.

I am neither shocked nor surprised that the Bill contains such provisions, nor that the Official Opposition have taken the stance they have on the question, today and in May. I simply point out, as the noble and learned Lord, Lord Falconer, must know, that this is what happens and will continue to happen until Governments with large majorities do less and do it better.

I think I am right in saying that only two of us speaking to this group of amendments—the noble Lord, Lord Hain, and I—were Members of Parliament, and government and shadow Ministers, in the other place before arriving in your Lordships' House. I am quite sure that the noble Lord, Lord Hain, will not agree with me when I say that we have brought with us a degree of realism or cynicism, but as Front and Back-Benchers we served on Bill committees and secondary legislation committees using the affirmative and negative resolution procedures. We know how Governments manage the agenda in the other place.

Therefore, when I see Amendment 20, which would ensure that all regulations made under Clause 2 were subject to a lengthy and protracted super-affirmative resolution procedure, I see a procedure which, if it cannot be killed at birth, will be neutered. I do not wish to be unhelpful, and I readily acknowledge that the noble and learned Lord has said that this is a probing amendment, but I fear that what I see is a cul-de-sac. I confess that I took part in similar debates on Henry VIII powers when in opposition to his Government. His fellow Ministers smiled sweetly and the provision was passed into law exactly as they had drafted it. My noble and learned friend Minister will be less direct than me, but one only has to read the terms of the amendment to realise that, but for the noble and learned Lord's advertised withdrawal of it, it is heading nowhere but the butcher's block, if not in your Lordships' House then when it gets to the other place.

The noble and learned Lord, Lord Falconer of Thoroton, is of course right to highlight the constitutional problem, a problem that he could not see quite so clearly when he was in government. I do not wish to discourage others from arguing against these ministerial powers even if, as I learned when I was in opposition, nothing will come of them today through the Bill. The arguments must be made, but in the context of the

[Lord Garnier]
Bill I do not want the migration of these conventions into UK law delayed by this bigger constitutional question. I thus urge your Lordships to let it through unamended, not because I agree with the overuse of Henry VIII powers but because it is going to happen anyway and today is not the day to reform their use piecemeal. That said, I hope this very necessary reform will soon come about more widely with the agreement of both Houses and all parties.

Lord Bhatia (Non-Afl): My Lords, the Bill is highly technical for a person who is not trained as a lawyer and does not have a degree in international law. I am not one of those legal minds. I have gone through the various features of the Bill and its policy background in some previous debates.

My concern is about divorces. Children often suffer most when a divorce takes place. The Advocate-General for Scotland, the noble and learned Lord, Lord Keen of Elie, said in a debate in March:

"Private international law is viewed by some as a technical and specialist area of law, but it is an essential one. Without private international law agreements, UK businesses, individuals and families would struggle to resolve the challenges they face when dealing with cross-border legal disputes."

He went on to say that

"if a family relationship breaks down and one spouse moves abroad, they make it easier to sort out arrangements in the best interests of their children."—[*Official Report*, 17/3/20; col. 1439.]

These issues become very important when the marriage has taken place in a religious ceremony in a foreign country and one of the spouses is not British and the other is British by nationality. Often the non-British spouse gets the children and goes back to their country of birth. Here I refer to the sub-continent countries such as India and Pakistan. The spouse who is British and lives in the UK finds it difficult to fight a legal battle over the custody of the children when the other spouse is in India or Pakistan. The issue is further compounded because the cost of litigation is high and the British spouse cannot afford it. The other issue is that the legal processes in these countries can take many years to go before a judge because of the calendar of the courts, which have to deal with many cases each day. In many cases the British Embassy tries to lend assistance, but there is a limit to how much it can help.

I do not wish to raise the issue of forced marriages in this debate. I am just raising this issue because I feel that it will raise its head in future. From 1 February this year the UK has regained full competence to enter into international agreements on PIL in its own right. Such agreements with many countries will take a long time and could cause considerable costs and delays to pending court cases. Can the Minister assure the House that special arrangements will be made for such pending cases, particularly where children are involved?

Lord Holmes of Richmond (Con): My Lords, this is a short piece of legislation but an incredibly significant one. That is why I wanted to speak to this group of amendments.

Before going into the detail, I would like to make a general point to my noble and learned friend the Minister. Does he agree that the very nature of English law—how it has developed and how it is seen around the world—gives us huge potential post December as a tremendous export as it is respected and highly used across the globe, and we really should seek to maximise its positive impact to this respect?

I turn to the amendments. We see, as we have heard from other noble Lords, that it is envisaged that these powers would be used only infrequently—infrequently, yes, but with potentially extraordinarily huge impact for the individual. So, building on other noble Lords' comments, my concluding question for my noble and learned friend the Minister is: as currently constructed without these amendments, how does he see the necessary level of scrutiny taking effect? What is his overall view of the coherent use of secondary powers and the coherent and sustainable way to legislate not just on matters such as these but across the piece?

Lord Triesman (Non-Afl): My Lords, I am afraid I must start by disappointing the noble and learned Lord, Lord Garnier: I have not been discouraged from pursuing the point that a number of noble Lords have made in this debate. I strongly support my noble and learned friend Lord Falconer's amendments. I do so for all the reasons that have been given about the need for scrutiny, questioning and elaboration. Because a number of other noble Lords have made those points, I will not make them again, other than to say that they seem to me to have considerable force.

Like the noble Lord, Lord Bhatia, I am not a lawyer, but I share with my noble friend Lord Hain the honour of having been a Foreign Office Minister. One of the things that was in my portfolio was the consular service. I know in practice from the responsibilities that the consular service laid on me that, particularly where there were criminal cases or the kinds of cases that the noble Lord, Lord Bhatia, has mentioned, which touch on people considerably because they have to do with marriage, children and so on, there was a huge expectation on the part of UK citizens that the Foreign Office would be able to offer them competent advice and help through the consular service. Frequently, in order to work out what was needed, we found that we also, although not lawyers, turned to the Lord Chancellor's advisory committee. We tried to make sure that we had a very strong sense of what was and what was not possible, and from that we could work out what sort of help we could—or, sadly, on some occasions could not—provide to British citizens.

The biggest liability for British citizens was of course that, as in many cases in domestic law, they were not absolutely clear about what the law was or what it might imply for them. They could see nothing of considerable relevance to go back to in the debates there had been about it. Indeed, they probably did not even go back to those debates very frequently, but nor could we—the people who were trying to work out what should be provided through the service.

3.30 pm

I think that makes the case for these amendments, probing or not, compelling. In Amendment 20(2)(c) there is provision for other persons or organisations representing various interests that might substantially be affected by the proposals. There is a mechanism for

consulting those bodies. I do not think it is a matter for consultation only among the legal parts of the state but among all those who have to try to make sense of it for British citizens when they find themselves in trouble. You want the maximum guidance possible and therefore maximum visibility of what has been decided. Henry VIII powers do not generally do that so I say, with great respect, to the noble and learned Lord, Lord Garnier, that we may all find ourselves arguing for these things in particular cases but the reality is that it needs to be in a clear, accessible and visible form if we are to really help people who fall into difficulty with these laws. In my view, there is an obligation to help them. Private international law is not much discussed. It does not help them at all. We are duty bound to do so.

Lord Blunkett (Lab): My Lords, at this point in Committee deliberations, I often find that we have had tedious repetition, some of it very necessary in terms of underlying principles. On this occasion, some extremely valuable contributions have brought in extraneous issues that I certainly had not thought of, including those raised by my noble friend Lord Hain.

I speak in support of the points raised by my noble and learned friend Lord Falconer. He and I shared the pleasure of working together when the Home Office had what are now the powers of the justice ministry. We were, of course, faced from time to time with the desire to engage with a plethora of delegated legislation which would ease our burden and make the business of government easier. The noble and learned Lord, Lord Garnier, is correct in identifying that Governments wish to do this and Oppositions seek to check it. That is a perfectly reasonable combination because Governments have the dynamic of seeking to deal with issues that they will return to in an easier form and Oppositions, quite rightly, have to challenge, as is the case this afternoon, the reasons for that and whether they are acceptable.

I take, for instance, my noble and learned friend Lord Thomas of Cwmgiedd's third point about the framework of legislation now, in which we have become accustomed to dealing with underpinning issues. However, when principles relate to the extension of criminal offences and penalties, as my noble and learned friend pointed out at the beginning of this debate, we have to be extremely cautious.

The noble Lord, Lord Thomas of Gresford, in a very entertaining and important diversion, referred to our present situation not just in terms of the underpinning measures that allow people to travel great distances but not to stay overnight, which are perverse in terms of trying to get Parliament up and running, by the way. Measures have applied in history, sometimes by necessity, such as Regulation 18B in 1940, but with consequences that had to be dealt with at length, with the picking up of thousands of people, some of whom should never have been interned in the way they were. Caution is always valuable in these circumstances so that consequential and unforeseen actions are avoided wherever possible. An example is the laying of regulations under both Public Health Acts and the emergency powers that we passed through this House on 25 and 26 March this year, which will be laid in the Commons later this afternoon, in respect of unworkable laws attempting to quarantine people coming from countries with less infection than we have ourselves.

Caution is necessary to make good law, as the noble and learned Lord, Lord Garnier, said. It tries to look down the line at what the consequential outcomes might be. That is why I think this has been a very useful debate and I hope that the noble and learned Lord, Lord Keen, will reflect on this, given that, as the noble and learned Lord, Lord Garnier, said, substantial majority Governments can push through whatever they like but other people have to live with the consequences.

Lord Marks of Henley-on-Thames: My Lords, on these Benches we are firmly with the noble and learned Lord, Lord Falconer, in opposing Clause 2 of the Bill, in line with the virtually unanimous view of those who spoke on 13 May and for all the reasons stated on day one in Committee. We will support the noble and learned Lord in opposing Clause 2 on Report. Therefore, it is with some regret that I find myself disagreeing with the noble and learned Lord, Lord Mackay of Clashfern, in particular in respect of the creation of criminal offences. He seemed to be suggesting that such offences would derive from the provisions of the international treaties themselves, rather than the provisions of the delegated legislation and, for that reason, the power in the Bill should be accepted.

However, that is not inevitably so. Under the Bill as it stands, new criminal offences could be introduced by the regulations giving the force of domestic law to private international law conventions and the implementation of those conventions, not by the treaties themselves. I therefore agree with the noble and learned Lord, Lord Thomas of Cwmgiedd, on that issue and the possibility that he raised of new offences being introduced under the regulations.

These two amendments are, of course, alternatives to the removal of Clause 2, as the noble and learned Lord, Lord Falconer, pointed out. Both amendments would plainly be right if we came to the position, contrary to what we believe should happen, that we were stuck with Clause 2. Amendment 19 on criminal offences raises an important principle. I agree with and endorse everything said by my noble friend Lord Thomas of Gresford, as supported by the noble and learned Lords, Lord Thomas of Cwmgiedd and Lord Hope of Craighead, and the noble Lord, Lord Kennedy of Southwark. In this country we have always had a strong and principled objection to making new criminal offences or otherwise changing the criminal law by secondary legislation. The noble Baroness, Lady Jones of Moulsecoomb, expressed that principle forcefully and eloquently. It is an important principle, which I think we should be very firm about upholding.

Amendment 20 is on the super-affirmative procedure. Of course, it would be better than the affirmative procedure and clearly better than any negative procedure —which is not proposed. However, it is a poor alternative to requiring primary legislation to give international treaties the force of domestic law. Paragraph 31.14 of *Erskine May* says this about the super-affirmative procedure:

"The super-affirmative procedure provides both Houses with opportunities to comment on proposals for secondary legislation and to recommend amendments before orders for affirmative

[Lord Marks of Henley-on-Thames]
approval are brought forward in their final form. (It should be noted that the power to amend the proposed instrument remains with the Minister: the two Houses and their committees can only recommend changes, not make them.)"

That paragraph is accurate in respect of the super-affirmative procedure proposed by the noble and learned Lord's Amendment 20. It follows that Parliament would have no right to amend, and that is why super-affirmative is still a poor alternative. It ultimately leaves legislative power with Ministers and not with Parliament.

It is also a fact that success in changing delegated legislation by the super-affirmative procedure comes very rarely—a point made by the noble and learned Lord, Lord Garnier. We perhaps ought to return to that matter in the future. We should perhaps try to formulate a procedure that goes some way to meet the criticism he made—a procedure that permits Parliament to approve an instrument conditionally on its being amended in a way acceptable to both Houses. That might solve some of the problems that we have with delegated legislation. But I agree that that is for another day. Our position is that we support these amendments if we are stuck with having to use them in place of striking out Clause 2.

Lord Keen of Elie: My Lords, taken together, the amendments relate broadly to either narrowing the scope of the Clause 2 power or increasing parliamentary scrutiny for use of that power, and I recognise the observations made by a number of noble Lords and noble and learned Lords that this is very much secondary to the opposition expressed to Clause 2 itself. I note the observation of the noble and learned Lord, Lord Falconer of Thoroton, that this is essentially a series of probing amendments.

Before I look at the various amendments, I note that the noble and learned Lord, Lord Falconer, and other noble Lords referred to the role of the Lord Chancellor's advisory committee on private international law and the importance of consultation with it, with which I entirely concur. I am now co-chair of that committee, together with the noble and learned Lord, Lord Mance. Its recent meeting was extremely useful. We looked at some technical issues surrounding the application of the Hague conventions of 2005 and 2007 at the end of the transition period. We may hear a little more of that in due course.

Amendment 19 deals with the creation of a criminal offence in the implementation in domestic law of a relevant private international law agreement. The use of the Clause 2 power to create a criminal offence there is very constrained. It is true that private international law agreements do not generally require contracting parties to create criminal offences, and there are no such requirements in the private international agreements that the UK is currently considering joining and implementing under the powers in this Bill. However, it remains a very real possibility that we might negotiate or seek to join a new agreement where a power to create or extend existing criminal penalties will be needed to fully implement the international law obligation. Take an agreement on reciprocal recognition and enforcement of protection measures, for example. In England and Wales, protection measures such as non-molestation orders or injunctions may be made by the courts under the Family Law Act 1996 or the Protection from Harassment Act 1997. Breaches of those orders are punishable by criminal penalties. Any future private international law agreement in this area on reciprocal recognition of such orders, if successfully negotiated, would particularly benefit those who are most vulnerable in our society and reliant on such protection measures, whether they remain within the United Kingdom or travel abroad, where they would wish to retain the protection of such orders.

If we entered into such an agreement, it would seem reasonable and appropriate to exercise the Clause 2 power so that, for example, we could extend criminal penalties for breach of a UK order to also apply to the breach of an order issued by a relevant foreign court. Breach of an order issued by a foreign court would in effect carry the same criminal penalty as that for breach of an equivalent UK order. But that criminal offence-making ability would of course be subject to the limitations within the Clause 2 power itself as currently drafted. Let me be clear: we could not create an offence under this power which would carry a term of imprisonment of more than two years, for example. That is an important safeguard on the exercise of the Clause 2 powers in this area.

3.45 pm

In the absence of being able to use the Clause 2 power in this area, we would need to rely on bespoke primary legislation to implement any private international law agreement whose domestic implementation required the creation of a criminal offence. That in turn could lead to significant delays that could impact particularly on a vulnerable person such as someone who required protection orders. In addition, the Bill contains other safeguards on the exercise of the Clause 2 power to create criminal offences in this very narrow context. It requires that any regulation relating to criminal offences will follow the affirmative procedure. That provides Parliament with the appropriate means of caution and oversight in dealing with these matters.

The Government feel that the proposed use of the super-affirmative procedure as set out in Amendment 20 for all regulations made by the Secretary of State under a Clause 2 power would be both disproportionate and impractical. The bar for the existing use of the super-affirmative scrutiny procedure in Parliament is quite high, and of course it needs to be. It should be required only where an exceptionally high degree of scrutiny is thought appropriate, which is clearly not the case for the implementation of these particular types of agreements in domestic law when in essence the only choice before Parliament is to accept or reject the implementation of an international treaty in its entirety.

To give a flavour of what is already covered by use of the super-affirmative scrutiny procedure, I have two examples. Section 85 of the Northern Ireland Act 1998 provides for super-affirmative scrutiny procedures for Orders in Council that deal with changes in reserved matters. Clearly, that is of key constitutional importance and one can understand why it applies there. Similarly, under the Human Rights Act 1998, there is provision for super-affirmative scrutiny of remedial orders dealing

with legislation that is considered incompatible with the European Convention on Human Rights and needs to be rectified. Again, one can understand why the super-affirmative procedure may be used there. But we should remind ourselves that the terms of private international law agreements are generally very prescriptive and precise, and there is little scope to deviate from the treaty provisions in domestic implementing legislation. In those circumstances, I commend the ordinary affirmative procedure to be a reasonable and indeed appropriate approach to the implementation of these agreements—agreements which at the level of international law will already have been the subject of parliamentary scrutiny under the CRaG procedure.

With great respect—and this reflects a point made by the noble Lord, Lord Marks—I must say that the super-affirmative procedure will arguably not lead to significant amendments to any implementing regulations themselves under the Clause 2 power, and indeed nor should it, because the treaties are set at the level of international law. In these circumstances, it would lead only to unnecessary delays in the implementation of these agreements in domestic law and serve no real useful purpose in that context.

Of course, we acknowledge the importance of engagement with practitioners, legal stakeholders and wider interested parties in considering when and if private international agreements should be entered into in the United Kingdom, and that is provided for by CRaG. Again, there is a need for consultation—wide consultation, potentially—over the procedural details of implementing these agreements in domestic law under the Clause 2 power. Of course the Government would welcome engagement on those issues with the international law committee, the Lord Chancellor's advisory committee on private international law and the EU Select Committee. Indeed, we would wish to continue to engage inside and outside with these useful forums in dealing with this matter. However, to put into statute the type of consultation requirement which is suggested in respect of the Clause 2 power does not, I fear, lead to any practical result. The Lord Chancellor's advisory committee on private international law does not have a statutory footing, so reference to the committee in statute is itself problematic. Its members provide their expertise on a voluntary basis, for which we are of course very grateful. The reference to the House of Lords EU Select Committee would also raise issues, at least of drafting, because after the end of the transition period that committee will suffer either a change of name or a change of constitution. In short, Amendment 20 and its overall approach to consultation is unnecessarily prescriptive in nature and therefore we would not support it.

Finally, Amendment 21 taken on its own would provide the Secretary of State for Justice with the ability to bring forward regulations under Clause 2, subject to the affirmative resolution procedure, even in circumstances not required by the provisions in paragraph (3)(2) of Schedule 6. As the Bill is currently drafted, the affirmative procedure applies only to regulations brought forward under the Clause 2 power in certain circumstances. They are when the regulations are implementing a new agreement or apply between the United Kingdom and a devolved Administration, a Crown dependency or an overseas territory for the first time, where they amend primary legislation or, as I referred to earlier, where they involve the creation of a criminal offence. In other circumstances, the regulations would be subject to the negative procedure. That is appropriate because there may well be considerable numbers of very modest amendments on which it would not be appropriate or proportionate to require an affirmative debate. For example, in a situation where a bilateral agreement with another country referred to a specific court that would hear disputes, if after we had implemented the agreement for the first time that court changed its name or the country established a new court, it would seem disproportionate to use the affirmative power simply to update an out-of-date reference in the original implementing legislation to take account of such a change. In these circumstances, I would not consider that aspect of Amendment 20 to be appropriate.

I shall touch on a number of points raised by noble Lords. My noble and learned friend Lord Mackay of Clashfern pointed out that essentially, prior to the present time, the implementation of international law obligations in domestic law suffered far less scrutiny than we now propose. Since that became an EU competency in many areas, it is entered through Section 2 of the ECA. There are provisions in statute which allow the implementation of such international agreements by Order in Council, where there is essentially even less scrutiny than we propose in the Bill.

The noble Baroness, Lady Kennedy, asked a number of questions. She referred to the low level of scrutiny, but I do not accept that. If we are going to enter into an agreement at the level of international law, Parliament will scrutinise it under the CRaG process and when we draw it down into domestic law it will be subject to the affirmative procedure. It is not going wider than private international law obligations. The whole purpose of the Bill is to draw down the international law obligation into domestic law. I accept that all statutory instruments may be subject to quashing, which is why one approaches their introduction with considerable care and having regard to our ECHR obligations, so I do not see that as a difficulty.

The noble Lord, Lord Adonis, asked whether I am going to reconsider the position before Report. I have to say that the answer is no.

The noble and learned Lord, Lord Hope, asked about introducing criminal offences, but I hope I have explained that the scope within which we will be doing that is in order to implement reciprocal obligations with regard to such things as enforcement orders. The noble Baroness, Lady Jones of Moulescoomb, asked in what circumstances private international law creates a criminal offence. I hope I have explained that where there is a reciprocal obligation to recognise such things as enforcement orders, we would draw that down into domestic law. My noble and learned friend Lord Mackay of Clashfern made the point that essentially the international agreement is going to provide for that offence in one form or another, and we are drawing that down into our domestic law.

The noble Lord, Lord Hain, asked for a series of guarantees and confirmations, but it would not be appropriate for me to advance guarantees of the kind he was seeking at this time.

[Lord Keen of Elie]

The noble Lord, Lord Holmes, made a number of points about the importance of English law and its huge export potential, with which I entirely concur. It is more than just English law; the choice of English jurisdiction is equally important in the context of us having reciprocal enforcement under the provisions of private international law. There will be clear scrutiny by Parliament, by way of CRaG, at the level of international law and by way of the affirmative SI procedure.

Overall, I suggest that these amendments are not appropriate. I recognise that they are probing amendments and that they are secondary to some expressions of opposition to Clause 2, but I respectfully invite the noble and learned Lord to withdraw Amendment 19 and not to press Amendments 20 and 21.

The Deputy Chairman of Committees (Baroness Henig) (Lab): No Member has indicated that they wish to speak after the Minister, so I call Lord Falconer.

Lord Falconer of Thoroton: I am very obliged to all noble Lords who have spoken in this debate, and I am very grateful for the almost universal support I got from the noble Lords, Lord Marks, Lord Bhatia and Lord Holmes, the noble Baroness, Lady Jones, the noble and learned Lord, Lord Garnier, and my noble friends Lord Blunkett, Lord Kennedy, Lord Hain, Lord Triesman and Lady Kennedy. I am dismayed not to be supported by the noble and learned Lord, Lord Mackay of Clashfern, but I disagree with the two propositions he made. The first was that he was happy for the criminal offences to be introduced by secondary legislation under the power of the international private law agreement. As has been made clear, including by the Minister, that is not right. Secondly, I am unfortunately not persuaded by him that it involves a similar degree of scrutiny as that which previously existed in relation to private international law. It most certainly does not. He referred to the Civil Aviation Act 1982. That refers to civil aviation, which was mostly dealt with by the European Union at that time, so it does not support the proposition that he advanced. Indeed, it was not relied on at any stage by the Minister.

I was disappointed in what the Minister said in three respects. First, he said that he was not even going to reconsider the position, even though there was practically universal opposition in the House to the idea of a Section 2 power; secondly, he failed to give any assurance to my noble friend Lord Hain in relation to the devolved Assemblies; and, thirdly, he did not give any assurance in relation to being willing to consult the Lord Chancellor's advisory committee on justice. Of course, I will withdraw the amendment, but we will return to this in seeking to remove Clause 2 on Report.

Amendment 19 withdrawn.

Amendments 20 and 21 not moved.

Schedule 6 agreed.

Bill reported without amendment.

4 pm

Virtual Proceeding suspended.

Arrangement of Business

Announcement

5.31 pm

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

The Deputy Speaker (Baroness Newlove) (Con): 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. Members may now need to accept an on-screen prompt to unmute their microphone. When Members have finished speaking, their microphone will again be set to mute. Please ensure that questions and answers are short.

We now come to the Virtual Proceedings on the Statement. Please note that it has been agreed in the usual channels to dispense with the reading of the Statement itself, and we will proceed immediately to questions from the Opposition Front Bench.

Covid-19: Response

Statement

The following Statement was made on Tuesday 2 June in the House of Commons.

"With permission, I would like to make a Statement on coronavirus.

Thanks to the collective determination and resolve of the nation, we are winning this battle. We have flattened the curve, we have protected the NHS, and together we have come through the peak. Yesterday, I was able to announce that the level of daily deaths is lower than at any time since the lockdown began on 23 March. Today's Office for National Statistics data shows that the level of excess mortality is also lower than at any time since the start of the lockdown, falling on a downward trend. The ONS reports 12,288 all-cause deaths in England and Wales in the week ending 22 May. That is down from 14,573 in the previous week. That latest figure is still above the average for this time of year and we must not relent in our work to drive it down, but it is now broadly in line with what we might typically see during the winter. We never forget that each of those deaths represents a family that will never be the same again. This House mourns each one.

We are moving in the right direction, but this crisis is very far from being over and we are now at a particularly sensitive moment in the course of the pandemic. We must proceed carefully and cautiously as we work to restore freedom in this country, taking small steps forward and monitoring the result, being prepared to pause in our progress if that is what public safety requires. So today I would like to update the House on two important aspects of the action we are taking.

First, NHS Test and Trace is now operational. That means that we have updated our public health advice. Since the start of the crisis, we have said to people that

you must wash your hands, self-isolate if you have symptoms, and follow the social distancing rules. All those remain incredibly important, but there is a new duty—and it is a duty—that we now ask and expect of people. If you have one of these symptoms—that is, a fever, a new, continuous cough or a change in your sense of taste or smell—you must get a test. We have more than enough capacity to provide a test for anyone who needs one and we have more than enough capacity to trace all your contacts. So, to repeat: if you have symptoms, get a test. That is how we locate, isolate and control the virus. By the way, I make no apology for this overcapacity. The fact that we have thousands of NHS contact tracers on standby reflects the fact that transmission of the virus is currently low. If we were in a position where we needed to use all that capacity, it would mean that the virus was running at a higher rate—something that no one wants to see.

Secondly, I want to update the House on the work we are doing to understand the unequal and disproportionate way that this disease targets people, including those who are from black or minority ethnic backgrounds. This is very timely work. People are understandably angry about injustices and, as Health Secretary, I feel a deep responsibility, because this pandemic has exposed huge disparities in the health of our nation. It is very clear that some people are significantly more vulnerable to Covid-19, and that is something I am determined to understand in full and take action to address.

Today, I can announce that Public Health England has completed work on disparities in the risks and outcomes of Covid-19, and we have published its findings. PHE has found the following. First, as we are all aware, age is the biggest risk factor. Among those diagnosed with Covid-19, people who are 80 or older are 70 times more likely to die than those under 40. Being male is also a significant risk factor. Working-age men are twice as likely to die as working-age women. Occupation is a risk factor, with professions that involve dealing with the public in an enclosed space, such as taxi driving, at higher risk. Importantly, the data shows that people working in hospitals are not more likely to catch or die from Covid-19.

Diagnosis rates are higher in deprived or densely populated urban areas, and we know that our great cities have been hardest hit by this virus. This work underlines that being black or from a minority ethnic background is a major risk factor. That racial disparity holds even after accounting for the effects of age, deprivation, region and sex. The PHE ethnicity analysis did not adjust for factors such as comorbidities and obesity, so there is much more work to do to understand the key drivers of these disparities, the relationships between the different risk factors and what we can do to close the gap.

I want to thank Public Health England for this work. I am determined that we continue to develop our understanding and shape our response. I am pleased to announce that my right honourable friend the Equalities Minister will be leading on this work and taking it forward, working with PHE and others to further understand the impacts. We need everyone to play their part by staying alert, following the social distancing rules, isolating and getting a test if you have symptoms. We must not relax our guard but continue to fight this virus together. That is how we will get through this and keep driving the infection down. I commend this Statement to the House."

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

5.32 pm

Baroness Thornton (Lab): Before I ask the questions we need to address, I wish to record the deep sadness felt by me and my colleagues at the death of our friend and comrade, Dr Lord Nic Rea, two days ago. Nic was much loved across the House and gave me unstinting support and health advice over many years.

In March, the medical director for England said that keeping the number of coronavirus deaths below 20,000 would be "a good result" for the UK. Therefore, I start by asking whether the Minister agrees with the Prime Minister when he says that he is proud of our efforts in the UK. They have resulted in an ONS figure of 60,000 excess deaths due to Covid-19, even if at present the Government are admitting to only almost 40,000. The UK has 2% of the world's population and we have had 13% of the deaths from Covid. I suggest to the noble Lord that some humility is required here. We can be as proud as we all are of our NHS, support staff and all key workers but it seems inappropriate to be proud of leading us to where we are today.

I would like to ask about disparities in the risk and outcomes of Covid-19, as covered in the PHE review, which addressed the unequal nature of the risks of this virus. The review reveals that the virus poses a greater risk to those who are older, male and overweight. The risk is also described as "disproportionate" for those of Asian, Caribbean or black ethnicity. It makes no attempt to explain why the risk to BAME groups might be higher.

Yesterday, the Royal College of Nursing released data that supports PHE's findings. The survey found that for nursing staff working in high-risk environments, including those working in intensive and critical care units, fewer than half—43%—of respondents from a BAME background said that they had enough eye and face protection equipment. This is in contrast to two-thirds—66%—of white British nursing staff who were content. Has the Minister read this report, and what is his view of its findings?

An earlier draft of the PHE review seems to have included responses from the 1,000-plus organisations and individuals that suggested that discrimination and poorer life chances were playing a part in the increased risk of Covid-19 to those with BAME backgrounds. Why was that section omitted? Why was the report published a week late? Is it true that the omitted part included recommendations like that from the Muslim Council of Britain, which stated:

> "With high levels of deaths of BAME healthcare workers, and extensive research showing evidence and feelings of structural racism and discrimination in the NHS, PHE should consider exploring this in more detail, and looking into specific measures to put in place to tackle the culture of discrimination and racism"?

Apparently, these words did not survive contact with Matt Hancock's office over the weekend. Is that true? Does the Minister agree with the Muslim council that

[Baroness Thornton]
the clear statement about the need to introduce change would surely give greater meaning to the statement by the Secretary of State that "black lives matter"?

Moving on, the Prime Minister assured us that by 1 June we would have a world-class track and trace system. I assume that he was misinformed, as crucial parts of the system do not exist and will be in place only at the end of June, which is what the noble Baroness, Lady Harding, says. Furthermore, the fragmented mess of using private contractors has been a disaster. Some recognition is finally being given to the role of expertise and knowledge at the local level and in local authorities, yet even these local experts were not consulted about the system and seem to be in the dark about just how it is supposed to work—just ask any department of public health how confident it is that we have a world-class system. Surely such a system should have the capacity to turn around tests in 24 hours, and we are nowhere near that point.

Over two weeks ago, I asked the Minister a series of simple questions. Who would call me if I tested positive? If the call is from a call centre, how will I know that it is genuine and to be trusted? The deputy at Public Health England seems to think that we would know through the expert questions that the tracer will ask. Clearly, she has never been on the receiving end of skilled online or telephone fraudsters. This is an important question. If it takes over 24 hours to get the test results and the tracing does not start within 48 hours, surely the system of protection will have broken down by then? Would the information, which is held centrally for some years, go to my GP? It is unclear where that data will be stored and what rules will apply. Can the Minister please explain?

An analysis published by Cancer Research UK has outlined that as many as 2.4 million people in the UK have been affected by a backlog in cancer care, waiting for screening, further tests or treatment. That can change only if the staff doing the cancer care, treatment and testing are being tested very frequently, even those without symptoms.

It is very concerning that the Government are refusing to publish information about the reproduction rate per region, the viability of home test kits, the number of people tested daily, and the number of people contacted under the new contact tracing system, to list a few examples. Furthermore, the data that the Government have published has been decried as highly misleading by the head of the UK Statistics Authority. Will the Minister commit to urgently publishing these figures to ensure openness, transparency and public confidence in the Government's approach?

Does the Minister share the concerns of scientists, including members of SAGE, and public health leaders that the Government's NHS Test and Trace system was not yet robust enough to quash any resurgence of the virus and should have been "fully working" before lockdown measures were eased? A final comment on "test, track and trace" is that the Cummings saga was bad enough, but we now have the chairman of the UK Statistics Authority making very robust suggestions that government presentation may not be what it seems. Sir David Norgrove has pulled no punches and makes it abundantly clear that he thinks the presentation of testing numbers in England is unacceptable.

On shielding, it is remarkable that the announcement to lift shielding was made during the night at the weekend. There was no notification to GPs, public health officials or those who most recently had been told to shield until the end of June. Can the Minister please tell us what the scientific justification is for that? Apparently, according to my noble friend Lady Armstrong, department officials met many organisations representing patients with long-term conditions last Thursday. There was no mention then that anything would be lifted on Saturday, even though they discussed experiences of lockdown and talked about the way forward. That suggests to me that it was a politically motivated announcement, without any involvement of the relevant clinicians or patient groups. Can the Minister say which clinical groups had supported the announcement on Saturday evening? What preparations were the NHS able to make before the announcement was made? At the beginning of lockdown, shielded people got daily emails from the NHS about how to behave but, since Saturday, I understand that they have received nothing. I think many may feel abandoned—some are our colleagues in the Commons.

We must not make the same mistakes with our shielded citizens as were made with care homes, ignoring the risks to those most vulnerable. The arguments about discharging patients into care homes without them being tested has not abated. What information does the Minister have about current and regular routine testing of care home staff, and even daily tests? There is emerging evidence of higher death rates among those with learning disabilities—yet another emerging tragedy. Does the Minister think that was avoidable? Was a strong shield wrapped around them from the start? I do not think that it was, but maybe the Minister can give us his view.

Finally, we must start thinking about what kind of NHS will emerge after the pandemic is really under control, whenever that might be. How will the system deal with the huge backlogs, such as those for cancer patients and cancelled surgery? I do not expect an answer from the Minister right now, of course, but we need a debate and a discussion. Can we expect a Statement on these matters? If we truly are now going through the worst, can we start planning for the future?

Baroness Brinton (LD): My Lords, I too thank the Minister for the Statement. From these Benches, we send our condolences to the family of Lord Rea; he will be missed. I also repeat the support from the Liberal Democrat Benches for everyone working hard to help contain and reduce Covid-19, from the magnificent front-line staff in the NHS and the care sector to all key workers, whether visible to us or not: we know that you have given your all. We also send our condolences to all those who have seen the death of families and friends over the last four months.

The World Health Organization has insisted repeatedly that no country should start to lift lockdown until Covid-19 is no longer in the community. With the noble Baroness, Lady Harding, confirming that there are still over 8,000 new cases per day, clearly it is still in

the community, and WHO also says that lockdown should not be lifted until a full test, trace and isolate process is in competent operation across the country, which it is not.

Can the Minister explain why Ministers took the decision to start the process of lifting lockdown even though the Chief Medical Officer refused to allow the threat level to reduce from four to three? Unlike other European countries, which started lifting lockdown only when the daily death rates were below 10, today the department reports a total of 359 people died in the UK in the last 24 hours. Why was the shielding advice changed over the weekend, and why was no guidance sent out to GPs, care homes and clinical groups? I can confirm, as someone who is shielding, that I still have had no advice, by text, by letter or by telephone, on what I should be doing now that the advice appears to have changed. What can the Minister do to reassure people who are shielding that this is safe advice?

What steps are the Government taking to prepare for flare-ups of cases in our communities, and, worse, an early second wave? Will the care sector be involved in that preparation, given that they appear to have been left to hang out to dry in order to protect the NHS? I understand that unlike hospitals, the care sector has not been approached at all yet.

In the Statement, the Secretary of State refers to the publication of the Public Health England report on disparities and the risks and outcomes of Covid-19. The Runnymede Trust summarised the problems with the report, saying that there were not

"any recommendations on how to save BAME lives."

What specific guidance is being provided to the NHS and care sectors to protect BAME staff in high-risk Covid-19 areas? Can the Minister comment on the report from the Western General Hospital that BAME locums were disproportionately placed on rotas in coronavirus-intense wards, and that the hospital has experienced a recent and very large spate of cases?

Yesterday, the Office for National Statistics wrote its second letter in four weeks to the Secretary of State, challenging him in the bluntest terms and accusing him of obfuscation and confusion on the number of daily tests carried out. Can the Minister give the House a date when we will be able to see real and consistent data on testing, approved by the ONS, back-dated and adjusted, so that there is no room for any misunderstanding?

I return to the issue I have raised repeatedly with the Minister: the care sector. At the weekly APPG on Adult Social Care update today, we heard again from across the sector that it still faces a number of problems, some of which the noble Baroness, Lady Thornton, outlined. To be clear—before the Minister responds again, saying that this is just anecdotal evidence—we were told that this is happening in a large number of care homes and settings in wide areas right across England. This is not a one-off.

First, a number of CCGs are still pushing care homes to take block-bookings of patients coming out of hospital without having had Covid tests. The Prime Minister and Secretary of State have repeatedly said that this has never happened. It has happened and is still happening. When will it stop?

Secondly, on PPE, the care sector says that the Clipper system is finally starting to be rolled out across the country—a mere eight weeks after your Lordships' House was told that it was only a handful of days away. However, care homes report that deliveries are still only a portion of their original orders, meaning homes still have to make decisions about rationing. Can the Minister provide a date by which the care sector will receive all the PPE it orders and needs?

Thirdly, the Minister told us that all care homes would be offered tests by 6 June. I repeat my question from two weeks ago as to why some homes are excluded from the portal so that they cannot access tests. These are homes for learning-disabled adults and disabled people under 65. Given the worrying comments on the inequalities data in the PHE report, when will this change?

Fourthly and finally, I echo the points made by the noble Baroness, Lady Thornton, about it being essential for all health sector staff to be able to access repeat testing to keep people safe. While it is true that it is happening for NHS staff, it is not true that our care homes or staff working in the community are able to access regular testing. Can the Minister please provide a date by which staff in care settings will have regular testing? This is vital because there are so many asymptomatic cases. They need parity with the NHS.

I recognise that I have asked a large number of specific questions and hope that, even if the Minister cannot answer them now, he will be able to write to me and others taking part in the Statement. Perhaps he could also answer any of the questions from the noble Baroness, Lady Thornton, if he cannot answer them now, in the same way.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, I start by echoing the words of both noble Baronesses and give thanks for the contribution of Lord Rea to the House. I did not know him well but have read the many testaments to his work. He clearly lived a full life and made a massive contribution to the House, for which we should all be thankful.

I echo the noble Baronesses and give a moment of thought to all those who have had deaths in their family and among their friends. I have lost both an aunt and a godfather to Covid in the last few weeks; my family has not been untouched, and I think—

The Deputy Speaker (Baroness Newlove) (Con): My Lords, I think we have lost connection. Is the noble Lord, Lord Bethell, back?

Lord Bethell: Yes, I am back. I apologise for my broadband. I was addressing the question of the Prime Minister's words. I have no doubt that there will be a judgment of history on whether the Government have made every decision correctly and whether every call we have made was right. There will have been mistakes, for which I am happy to put my hand up. But I am proud of the response to Covid, not just from the Government but from everyone involved.

With the leave of the House, I will single out five things. I am proud of the Lighthouse Labs. I am proud of the Nightingale hospitals. I am proud of the fact that the NHS stood up under relentless pressure when

[Lord Bethell]
so many people thought it would fall over. I am proud of the fact that we ducked the worst effects of the epidemic, which many people forecast might lead to deaths of up to 400,000 people; everything that we know about the disease suggests that those forecasts were quite right and utterly realistic. Of course, the death rate is far too high. I have reiterated my thoughts for anyone who has lost someone and I feel very sad about the number of people who have died. And I am very proud of the scientific response, particularly by our vaccine researchers, who are world-leading in all this.

There has been an amazing collaborative effort by all parts of society, from the SAS to returning nurses, from front-line NHS workers to the private sector. It makes me profoundly sad when I hear people talk so negatively and so angrily about the way this country has responded. I totally put my hands up as a member of the Government for any mistakes that we may have made in our decision-making, but I ask noble Lords to speak a little more positively about this incredibly impressive effort and to remember that, when they speak in a negative way about the response to Covid, they are addressing not just the Government and the Government's response. They are addressing everyone from postal workers to shop workers, the NHS and everyone who has been involved in this response. Having worked very much at the centre of things, I feel genuine pride in this effort.

The noble Baroness, Lady Thornton, asked about the PHE report. It is important, but it is preliminary research. It does not answer every single question about the complex issue of the differential rates of infection and mortality from this disease. It remains a mystery why some groups are much more profoundly hit, and it is not clear whether the differences are behavioural, social or genetic.

I say to the noble Baroness, Lady Thornton, that it appears that those areas of the NHS with the highest prevalence of infection are not those involving the front-line workers, where the use of PPE has actually protected workers from the worst effects of Covid. It has been among other parts of the hospital—in the canteens, among the porters and among back-room staff—that the prevalence has been highest. That is because infection has often happened where workers have touched each other or socialised. I mention this just to put paid to the idea that there has in any way been an irresponsible attitude, or that the NHS has in any way inadvertently put those with vulnerabilities in harm's way.

I am not quite sure if I completely understood or heard the precise reference, but I did hear the phrase "structural racism" in the NHS. I react very sceptically towards that phrase and, to be honest, with a profound sense of anger. The NHS is not a racist organisation. This has been raised in previous debates and I reject it wholeheartedly at every level. If I have misunderstood the remarks of the noble Baroness, Lady Thornton, I hope that she will clarify them, but I want to make a clear stand on that point. There is clearly work to be done to understand better why some groups—older people, BAME groups and those who are overweight—have been hit so hard by the disease; that work is ongoing.

The noble Baroness, Lady Thornton, asked about test and trace. I want to be clear about a few things. As my noble friend Lady Harding said at its launch, this is a huge project which has been put together at pace and not every part of it is working immaculately. I admit that there are ragged edges but in essence it is working incredibly well. The people involved are working extremely hard. It is a coherent, thoughtful and, I believe, in many ways a world-beating outfit. I would like to ask anyone who is interested in finding out more about it to let me know and I will be glad to talk them through it or to invite my noble friend Lady Harding to go over the work of the test and trace programme. I genuinely believe that anyone who finds out about its workings cannot help but be impressed by it. I want to make a special testament to the private contractors who have made a contribution to it. I do not agree with people who denigrate those who work in the private sector for doing so—quite the opposite. My experience of working with private contractors who have contributed to the response to Covid has left me extremely proud of them and impressed by the results.

On local engagement, if it was the case that directors of public health, local environmental officers and local infection directors were not engaged, that is no longer true. The joint biosecurity initiative has done a fantastic job of briefing and tying in the local response. Tom Riordan from Leeds, who will be known to many noble Lords, is leading the charge on this. He is doing a fantastic job of working with local groups. Our response to Covid is now more local at every level and, as a result, is much better than it was.

The turnaround time for tests is important and is the focus of the operational priorities of the test and trace programme. Some 85% of the tests carried out through the drive-in centres are now done within 24 hours. The data is shared with GPs, although it is very hard work to tie in the test and trace computer program with the GP computer program, and more work needs to be done on this. I do not hide the fact that we are working extremely hard to bottom out and make more secure the operational arrangements of the test and trace programme. It was a huge infrastructure project which was thrown together very quickly, but I pay my thanks to those who are making extremely rapid progress on it. Perhaps I may share a point with noble Lords. Last weekend, I took a "secret shopper" test. I booked it at 6 pm on Saturday. I took the test at 11 am on Sunday at the Wroughton centre on the edge of Swindon, and I got the result at 6 pm on Monday showing that I had tested negative, of course. It was an extremely easy process. It took me 10 minutes on Saturday and 10 minutes on Sunday. The text I got was very clearly marked as being from the NHS, as it was, and it was a thoroughly professional and easy-to-handle experience. I invite all parties to try to support this important national project rather than denigrating it, because it relies on public trust and we really need the public to believe in it. They will do so only if our leaders support it.

I utterly agree with both noble Baronesses that people need to be able to understand the data—it is a really important project—but perhaps I may share a genuine and honest dilemma. We have sought to publish

data as promptly and in as much quantity as we humanly can. The result of that, though, is that it is not all audited and checked and therefore it is often revised. That creates the kind of problems which David Norgrove has quite rightly identified. We are working extremely closely with David to try to close the gap. We are working closely with the Office for National Statistics to ensure that all future data is fully audited, but it is usual in peacetime to take months to iron out these processes before the publication of official data, and data is not published on a daily basis for exactly the reasons identified by both noble Baronesses. We have real and consistent data published by the ONS which is properly audited. That is completely robust data and we try our hardest to make right the data that goes into the daily updates. However, there is a tension between being prompt and being procedural, and we have sought hard to try to hit the right combination of the two.

The noble Baroness, Lady Thornton, asked about shielding. I reassure her that in no way are these announcements made for politically motivated reasons. We have been asked by many groups to address inconsistencies in the shielding arrangements. It is entirely reasonable for the Government to lift the shielding arrangements; that was done at speed and we are working extremely hard to ensure that those who were shielded are informed properly and that GPs and the NHS are part of that process.

Both noble Baronesses, Lady Thornton and Lady Brinton, asked about care homes. I reassure them both that 60,000 tests are carried out per day, and all those homes with outbreaks are being tested and retested. It is too early to tell exactly, but we are well on the way to hitting our 6 June target, and the amount of testing going on in care homes is extremely high.

As regards the anecdotes concerning CCGs being under pressure, as I understand it, to accept elderly people who are coming from hospitals into care homes, I would be very grateful if the noble Baroness, Lady Brinton, would write to me with those examples, because they are shocking, if they are true, and are completely against government policy and the agreed procedures of the NHS. I would be very happy to take up the case if she could give me chapter and verse.

On the future of the NHS, the noble Baroness, Lady Thornton, quite rightly asked what kinds of lessons we have learned. I will share two. First, one of the good things that has come out of the Covid epidemic is that the social care sector, the NHS and the public health sector have worked much more closely together than they have for a long time. We need to learn the lessons of that and figure out ways to ensure that they work even closer than they do right now. As regards the backlog, the Government completely acknowledge the challenge of catching up with the massive amount of procedures and medical work that will need to be done once Covid is under control. We have already made a full and clear commitment to funding the catch-up in that backlog, and we are putting in place the necessary preparations to staff and facilitate the catch-up process.

The noble Baroness, Lady Brinton, asked about the decision on lifting lockdown. It was the right decision and it was entirely consistent with advice from the CMO. The numerical threat level, which is organised by the CMO, is completely independently arranged, and I regard it as a testimony that it has been held at a high level, which shows the scientific independence of that process.

On preventing future flare-ups, I will flag two very important developments. First, I have already mentioned the joint biosecurity centre, which is currently being organised by Tom Hurd, and which is proving to be a really important development in arranging local responses to local flare-ups. These flare-ups may be anything from a school, a business or even, in the Weston case, a whole hospital. Being able to mobilise both the expertise and the analysis, support and data in order to jump on these flare-ups is an essential part of keeping a lid on the epidemic, and I pay tribute to the work of the biosecurity centre.

Secondly, we are working extremely hard to stockpile the necessary medicines and supplies for the winter. Our focus is very much on preparing for the winter in every possible way to prepare the NHS, social care and our public health response. We are using the summer months to mend the roof and ensure that we are in good shape. We very much hope to avoid a second spike, but we are fully aware of and preparing for the threat.

I remind both noble Baronesses that many European countries had more than 50% of their deaths in the social care sector. In fact, a low proportion of deaths in Britain have been in the social care sector, relative to other European countries. I appreciate completely that that is of no interest or value to those who have lost loved ones in the social care sector; I mention it only so that we have a sense of perspective.

On our response to and actions on the threat to BAME workers in the NHS, clear guidance has been sent from the top of the NHS to trusts, asking them to put in local measures that each trust regards as appropriate to protect BAME staff. This is entirely the right response to encourage and allow local trusts and the social care sector to make their own arrangements in their response. We continue to analyse the numbers to understand this problem more fully.

The Deputy Speaker: We now come to the 30 minutes allocated for Back-Bench questions. I ask that questions and answers be brief so that I can call the maximum number of speakers. I will now pass the chair over to the noble Lord, Lord Haskel.

6.07 pm

Baroness Neville-Rolfe (Con): I thank my noble friend profoundly for all that he and his health colleagues—and so many people everywhere, as he said—are doing to tackle this frightful disease, but I have a concern. I believe that the move to impose quarantine on arrivals from overseas is a real own goal. By all means, quarantine arrivals from countries that pose a particular health risk, but an indiscriminate prohibition will cut the legs off struggling sectors such as aviation, tourism and our itinerant financial and business services. This could contribute to the millions of unemployed people now expected later this year. Can the Minister please urge his colleagues to rethink?

Lord Bethell: My noble friend makes an incredibly valuable point and I completely share her concerns, but I will share two important points, if I may. First, we cannot avoid the fact that this disease has a 14-day incubation period. It is extremely tough to protect our borders from infection by a disease that may not be detectable, even at our borders, during that period. Secondly, while the peak is raging, additional infection from foreign visitors makes only a marginal difference, whereas at this stage, when we have worked so hard to get the prevalence down and reduce infectiousness, the threat of new infection from foreign visitors is higher. That is an irony that the CMO is fully aware of, but it is entirely right that we have brought in these measures. They are constantly under review. The impact on tourism and other industries is hugely regretted, but to rid the country of Covid they are proportionate.

Lord Patel (CB): My Lords, I thank the Minister for repeating the Statement. Before I ask my question, let me say this: with the greatest respect to the Minister, if he thinks that no degree of racism exists in the NHS, I suggest that he speaks to those people from ethnic minorities who work in the NHS and see how they feel. I accept his comment that examination of what has happened hitherto is for another day, but we have to examine the current strategy for suppressing the virus, which we have not done successfully. In this regard, the latest initiative is the Government's test and trace scheme. A great degree of transparency and trust will be required to make this a success. Can I ask the Minister: what matrix will the Government use to demonstrate the success of the project?

Lord Bethell: My Lords, I bow to the experience and wisdom of the noble Lord, Lord Patel, particularly in the matter of racism in the NHS. I would not for a moment suggest that there is no racism at all in the NHS—or any large organisation—and I deeply regret any bad experiences he may have had. The accusation, however, was of structural racism in the NHS, and that is what I push back against. The NHS as an organisation is not racist, and I reject the suggestion that it is.

As for the matrix of success, that is an extremely perceptive question, and a bloody tough one—exactly the kind I would expect from the noble Lord. To summarise, it is to reduce R: if we can get a lid on R0 and stop the index case from spreading the disease to more people, then Test and Trace will have succeeded.

Lord Turnberg (Lab): My Lords, like the Minister I too went to have my Covid test recently. There was hardly anyone there—lots of testing stations but no customers and no queues. I was in and out in five minutes. I was not surprised, therefore, that while 200,000 tests a day are available, many fewer are being taken up. I ask the noble Lord, therefore, whether the Government will open testing to the wider public and not restrict it to those with symptoms. There are many asymptomatic carriers and we need to know who they are and where they are.

I also reiterate the question about how soon test results will be available in hours rather than days. We can do it, but when will it be rolled out?

Lord Bethell: I can reassure the noble Lord, Lord Turnberg, that all people, of all ages, are currently eligible for testing. I accept that communication about this has not got through to everyone, and we are working very hard to communicate the information widely. A very large marketing campaign to make it clear began earlier today—I saw the adverts when I drove in on the M4 this morning.

I can also tell the noble Lord that because the infection and prevalence rates are so low, we have a machine with spare capacity. That is being used for surveillance and to cleanse the social care sector and the NHS sector through asymptomatic testing. The machine is on standby for the winter, and, as we lift lockdown, to protect society from any rise in the infection rate. The turnaround times are already getting much tighter and in many cases are less than 12 hours.

Baroness Hussein-Ece (LD): My Lords, the Minister said that the review of disparities in Covid had revealed what we already knew: that those most at risk include minority communities, particularly BAME people. We also already knew that the guidelines for people with inequalities replicate existing inequalities. I am sure that public health directors up and down the country have known about these inequalities, and have published reports about them, for many years. The Minister says that it is a great mystery, but really the report just touches on the inequalities.

Does the Minister understand that those from BAME communities, who disproportionately work in front-line services and the jobs he mentioned, are being hit? They are extremely worried, and very angry at this response. I understand that there cannot be a huge raft of recommendations, but there needs to be more guidance on protecting people, not just in the health service but more generally for those who employ people from BAME communities.

I will give an example from my own community. The Turkish and Turkish-Cypriot communities in this country are around only half a million. We have lost somewhere in the region of 250 people; we have all been touched by this, myself and my community. In Germany, there are 3.5 million Turks, and they have had about 50 deaths. The figures are stark.

On 19 May, I asked the Minister whether he would consider meeting campaigners and health professionals to put in place a proper Covid race equality strategy, for now and beyond. Will he please take that back and agree to meet us, and others, who are determined that we will have a proper response to this terrible virus that is disproportionately impacting on our BAME communities?

Lord Bethell: The noble Baroness is entirely right. These diseases always hit hardest those who are most vulnerable, and the most vulnerable often include those who are poorest, who have existing morbidities and who are vulnerable in some way. She is right that this is an age-old truth; it is as old as history itself.

I was referring to the scientific links between the disease and the death rate. To clear up the point, if I may, the mystery that we do not understand is the biological explanation of why the disease appears to

hit some people harder than others. That mystery is being unravelled, but I cannot pretend that we fully understand it at the moment.

As to the noble Baroness's invitation to meet groups, I remember it well and would be very glad to take it up. I will ask my private office to be in touch to make those arrangements.

The Deputy Speaker (Lord Haskel) (Lab): The noble Lord, Lord Empey, has withdrawn, so I call the noble Lord, Lord Balfe.

Lord Balfe (Con): My Lords, I want to go back to the testing centres question. I also had a test, but I had to drive to Stansted from Cambridge. Many people in our community do not have cars and do not drive. What is the Minister doing to make it possible for all major towns to have testing facilities that can be reached either by public transport or on foot?

My second point is more doubtful. Many people do not seem to realise when they should be tested, or, for that matter, how often. If you are tested at the beginning of June, when do you need to be tested again, if at all? What does the test prove, apart from the fact that you do not have the virus? It does not prove that you have had it or will not get it. Will the Minister step up the publicity campaign he just mentioned, so that people can be better informed?

Lord Bethell: I deeply regret that my noble friend had to drive from Cambridge to Stansted. We are working hard to address that and are looking at alternatives. We have now put up more than 100 sites, and I hope very much indeed that there would now be a site nearer him. We have also pioneered at-home testing, which we believe will address his key point, and we are trialling walk-in centres for city centres such as Cambridge.

My noble friend's last point is entirely right. You should have a test when you show symptoms, but defining the symptoms of any disease, and in particular this disease, is very difficult. We do miss some people who do not show any symptoms, and some people who think that they have the symptoms actually have the symptoms of something else. It is a real dilemma and part of the battle we face against Covid.

Baroness Hollins (CB): My Lords, the Statement does not address yesterday's report from the CQC showing more than double the expected number of deaths of people with learning disabilities during lockdown—something we were warned to expect by colleagues in Italy. Will the noble Lord explain what is being done to better protect everyone in this group, including those living in residential care, but also people made vulnerable because of visits by support staff, who often visit more than one person living in the community?

Lord Bethell: I thank the noble Baroness for her question, which I think I understood. If I understand correctly, she is asking about those who live in social care and residential care. I commend the work of Helen Whately, the Social Care Minister, who has been an amazing champion for social and residential care. She holds our feet to the flames daily to ensure that more work is being done. Testing is one area where we have made huge progress. The provision of PPE, raised by the noble Baroness, Lady Brinton, is another, despite everything noble Lords might have read. I pay tribute to my noble friend Lord Deighton, who has brought about a huge amount of manufacturing in the UK. There is, however, more that we can do and we are working as hard as we can.

Baroness Healy of Primrose Hill (Lab): Could the Minister explain what changed between 12 May, when I asked him what advice could be given to those shielding and was told that they must remain inside until at least the end of June, and last Saturday evening, 30 May, when the advice suddenly changed with no warning and the clinically extremely vulnerable were told that they could go out?

Lord Bethell: The noble Baroness asks a good question. One thing that changed was that there was a large amount of representation from those being shielded that the mental health consequences of their isolation were having a profound effect. There were very touching and moving stories, and the scientific analysis of that was extremely persuasive. We have sought to be flexible, but the advice remains very clear: those who are clinically vulnerable have to take extremely good care of themselves. Even though the prevalence is lower, they have to be aware of the consequences of this awful disease.

Lord McNally (LD): My Lords, earlier today, a former Prime Minister, Mrs May, intervened at Prime Minister's Questions to ask about the security of data, including medical data, if there was a no-deal Brexit. The Prime Minister's reply was the usual "It'll be all right on the night". Does the Minister agree that it would be an enormous betrayal if proper systems were not put in place well before the deadline for any departure? The medical and other data that we receive from Europe are an integral part of fighting this disease and should not be put at risk for ideological reasons.

Lord Bethell: I completely agree with the noble Lord. The Prime Minister said that it was down to the negotiating table to sort out this important matter. I will leave it to the negotiators.

Baroness Falkner of Margravine (Non-Afl): I understand that we have to wait for the data to come through that addresses what underlying health conditions and comorbidities might impact on BME critical care and death rates from Covid, but, to reassure the community while we are waiting for further information, I wonder whether the Minister's publicity campaign could be very directly targeted at those vulnerable groups to make it very clear that they should avail themselves of the testing capacity available—indeed, that they might even get priority—so that they have some reassurance that, should they have any of the symptoms, they will be seen to as soon as possible?

Lord Bethell: The noble Baroness makes a powerful point. The frustrating truth is that many in the groups and communities of which she speaks take the fewest

[LORD BETHELL]
number of tests. Getting through to these groups is extremely important, so they can seek the clinical help they need if they are suffering from Covid. We have worked extremely hard with our marketing department to ensure that hard-to-reach communities get the marketing messages that will be effective. The noble Baroness provides a really reasonable reminder and I will redouble my efforts to ensure that those marketing messages are focused on the right communities.

Lord Ribeiro (Con): My Lords, I appreciate that "test, trace and isolate" is in its embryonic phase and that we have yet to learn the lessons of the pilot on the Isle of Wight, but at the height of the pandemic Sir Paul Nurse and other academic researchers offered, in the spirit of Dunkirk, to assist the Government with their "little boats". Sadly, this approach failed to find favour, with a central approach then being used. Will my noble friend assure me that, as we head to a national rollout of "test, trace and isolate", the Government will remain open to offers of help from those in the security and medical fields?

In addition, the PHE report identifies worrying outcomes from BAMEs who contracted Covid-19, as others have said, but the analyses did not cover comorbidities such as hypertension, which is common in the Asian and African populations, diabetes or obesity, which was mentioned in 21% of Covid-19 death certificates. Can my noble friend say when these factors will be considered, in order to provide a clearer picture for BAMEs who are at risk of contracting Covid-19 now and when the next wave comes in the winter?

Lord Bethell: My noble friend makes an incredibly perceptive point on the BAME research. He is entirely right that this important aspect of our understanding in relating the ethnic, social and behavioural elements of the response to the disease is essential. The report has not covered all the ground yet: that work is being done at the moment, as I mentioned earlier. Frankly, only when all those elements are linked together will we get a full picture.

Regarding the "little boats", we absolutely celebrate them. In order to get the industrial-level testing numbers up, it was correct to back big laboratories that could do the automation necessary to achieve that. I am a huge admirer of Sir Paul Nurse and have spoken to him often. The role of laboratories such as his is in connection with their local NHS trusts. Many local laboratories are doing extremely good work with local NHS trusts and we are putting measures in place to facilitate and encourage such connections.

Lord Liddle (Lab): My question concerns the "track and trace" system. I declare an interest as a county councillor in Cumbria, where we have had severe outbreaks of the virus. A world-beating system was supposed to be in place on 1 June and we were given, as I understand it, less than two weeks' notice of what the local government involvement in this "track and trace" arrangement would be. Does the Minister think that this has been handled adequately? How does he see the relationship between what is done by local authorities and what is done nationally by the Serco system that is being recruited?

Lord Bethell: I completely understand the noble Lord's frustration, but I remind him that in Covid time, two weeks is ages. We have been moving so quickly to cover the ground that we have had to stand up very big programmes within a fortnight. He speaks with frustration that there seems hardly enough time to get things organised, but that is the pace at which we have had to move. The prevalence rate is down and the infection rate is down—that is not say we are complacent, but now is the moment when we are bedding in our operations.

The noble Lord is entirely right that our focus and our investment of time is in stitching together the local response, which is, as many noble Peers have said in these discussions, an essential part of our response. As I said earlier, the work of the Serco call centres, of the directors of public health, of Tom Riordan, of local authorities—all these need to be stitched together. It is extremely complex, but that is what the team of my noble friend Lady Harding is doing at the moment.

Viscount Waverley (CB): Following a previous response by the Minister that touched on politics, will he clarify an issue that is exercising the country at large? Is the response by government to corona led by science or by taking note of science? If the latter, what are examples of choices by government that differ from that of scientific advice?

Lord Bethell: The noble Viscount asks an incredibly broad question, upon which many a treatise could be written. I can best answer by giving my personal experience, which is of being in meetings where the scientists absolutely lead our thinking, where their clinical judgment takes precedence over any lay opinion and where we have been advised by unbelievably impressive and experienced clinicians, epidemiologists and scientists from different groups. My experience is that those voices have been the ones that prevailed in almost every debate. However, not everything can be answered by scientists and there are political decisions to be made. Ultimately, major decisions such as on lockdown, on the strategy for test and trace and on how to run a vaccine strategy are informed by scientists, but politicians have to make big calls. That is the same in every single major national project. I think we have got the balance right. We have tried to put the science, quite rightly, at the heart of the decision-making, and sometimes we have been led into quite politically awkward situations by the good judgment of our scientists. I pay tribute to them and their judgment. My personal experience is that we have listened to and been led by them wherever necessary.

Lord Scriven (LD): My Lords, I remind the Minister that holding the Government to account for their decisions in no way undermines front-line workers, whose jobs have sometimes been made harder by their decisions. As the Government say that we are moving to local flare-ups, which body has full responsibility and legal powers—now, today—to implement and control a local lockdown?

Lord Bethell: The arrangements for local lockdowns are not fully in place. In fact, the policy around them is in development and a full decision has not been made

on what arrangements we will make for lockdowns. The joint biosecurity centre will be absolutely central to those arrangements. It is the hub into which the intelligence on prevalence and infectiousness comes and which pushes that information out into the local area to help advise directors of public health, local authorities and other local services on local arrangements. I believe that it will develop the expertise and the co-ordination role which the noble Lord asks about.

Baroness Bennett of Manor Castle (GP): My Lords, in answering the question of the noble Lord, Lord Turnberg, the Minister said that a test is available to anyone who wants one, and that this is being advertised on the M4. I am looking right now at the nhs.uk website page headed "Ask for a test to check if you have coronavirus". Highlighted on that page, it says:

"Please help the NHS by only asking for tests for people who have coronavirus symptoms now."

Can the Minister explain that? Also on that page, it lists the three symptoms for which it suggests we should have a test. Yet when I go to the Centers for Disease Control and Prevention website—the US body—it lists 11 lots of symptoms, including: fatigue; muscle ache; headache; sore throat; congestion; nausea or vomiting; and diarrhoea. Have the Government considered expanding the list of symptoms, and if they have not, why not?

Lord Bethell: If I was not clear, I hope the noble Baroness will forgive me. The test is open to anyone in the population. It is not restricted to key workers or those who are over five, as it once was. However, the clinical advice is that you should seek a test only if you show symptoms, partly because the test will not necessarily work if you do not have symptoms. That remains the case.

With regard to expanding the list of symptoms, we changed the symptoms about two weeks ago. We have done a huge amount of work to understand the best way of recommending symptoms. This is an amazingly complicated area. A lay person like me would think it was not too difficult to define symptoms for an important disease, but actually it is an extremely contested area. We have broadened it, we keep it under review, and if what we have done is not working well enough, we will update it again.

Baroness Verma (Con): Does my noble friend not agree that where there are densely populated communities and a greater risk of spreading the coronavirus, testing should take place through booked appointments with their regular GP surgeries? Many of those communities do not know how to access online appointments and come from larger families. They could then also be asked about how they were following the guidelines set down by the Government. My worry is that many communities are not being communicated to and are falling through the gaps. I urge the Minister to take that on board.

Lord Bethell: I agree with my noble friend. It is a grave concern that key communities, particularly those to which she alludes, are not hearing the message and do not have the available resources for booking tests. We are working hard on that. In particular, we are working with GPs to ensure that they have the ability to book tests. They can of course do so on the portal like anyone else, but we are working to create a special prioritised facility for GPs to be able to book tests for their patients. I completely agree with my noble friend's assessment that in many communities GPs play a trusted role. A practical issue is that many GP surgeries are currently closed, but I welcome the fact that many are now reopening.

The Deputy Speaker (Lord Haskel) (Lab): My Lords, the time allotted for the Statement is now up. The day's Virtual Proceedings are now complete and are adjourned.

Virtual Proceeding adjourned at 6.37 pm.

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