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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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House of Lords

Monday 8 June 2020

The House met in a Hybrid Sitting.

2.30 pm

Prayers—read by the Lord Bishop of Derby.

Arrangement of Business

Announcement

2.34 pm

The Lord Speaker (Lord Fowler): My Lords, welcome to the first ever Hybrid Sitting of the House of Lords. Guidance has been issued by the Procedure Committee, which I trust has been helpful. In the coming days we will also be introducing remote voting, which will ensure that we can adhere to public health guidance and also get on with our role of legislating and holding the Government to account. I hope that this new voting procedure will avoid queues and enable all Members of the House to be able to participate.

There is a limited number of Members here in the Chamber, respecting social distancing, and if the capacity of the Chamber were exceeded, I would be forced immediately to adjourn the House. Other Members will participate remotely, but all Members will be treated equally, wherever they are.

For Members participating remotely, microphones will be unmuted shortly before they are to speak. Please accept any on-screen prompt to unmute. Unmuted Members will be muted again after each speech. I ask noble Lords to be patient if there are any short delays as we switch between physical and remote participation. I should also remind the House that our normal courtesies in debate will very much still apply in this new hybrid way of working.

Royal Assent

2.35 pm

The following Acts were given Royal Assent:

Windrush Compensation Scheme (Expenditure) Act,

Sentencing (Pre-consolidation Amendments) Act.

Covid-19: Planning System

Question

2.36 pm

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what plans they have to make temporary changes to the planning system as a result of the COVID-19 pandemic.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): It is important to keep the planning system moving so that it plays a full part in the coming economic recovery. We have already made significant temporary changes in response to the Covid-19 pandemic—for example, allowing virtual planning committees more flexible working hours on construction sites, alongside giving authorities more flexibility on publicity requirements. We continue to monitor the situation.

Lord Kennedy of Southwark (Lab Co-op) [V]: My Lords, I declare my relevant interest as a vice-president of the Local Government Association. To support the economy and the wider construction sector, the Government should introduce emergency powers to extend planning permissions that are due to expire in the next six months for an additional period of up to one year. This would ensure that projects at risk of losing their permissions can get under way. Does the Minister agree with this approach? If so, how does he intend to take it forward?

Lord Greenhalgh: The noble Lord is absolutely right that construction is an important part of our economic recovery and that the delivery of new homes is vital. The Government have been made aware by both planning authorities and the development industry that delays have been caused by the Covid-19 pandemic. There is a risk of unimplemented planning decisions lapsing and therefore undermining the delivery of projects. We recognise these concerns and are considering whether permissions should be extended.

Baroness Wilcox of Newport (Lab) [V]: I declare my interest as noted in the register. Can the Minister confirm the reports across the weekend media that the Government are intending to take planning decisions away from councils and give them to development corporations? This is extremely concerning after recent developments in Tower Hamlets, which resulted in the developer not having to pay between £30 million and £50 million in the community infrastructure levy?

Lord Greenhalgh: The situation at the moment is that there is a planning commission that has started under my right honourable friend Chris Pincher, the planning Minister. I cannot make any further comments about what the noble Baroness has read in the media.

Baroness Thornhill (LD) [V]: I declare my interest as a vice-president of the Local Government Association. Given that much development is controversial and provokes much local opposition, should the Government not be working more with local authorities to win popular support for major developments and housebuilding, not undermining them by a further removal of planning powers?

Lord Greenhalgh: I am not sure how this relates to the original Question. All the proposals from the Government around making the existing planning system work pragmatically are on a temporary basis. There is certainly no intention to take away planning powers from local authorities within these measures.

Lord Randall of Uxbridge (Con) [V]: Can the Minister confirm that any temporary changes to the planning system will not result in any loosening of environmental policies?

Lord Greenhalgh: I can absolutely make that guarantee. Our temporary changes to the planning system, including the use of virtual planning committees and more flexible publicity arrangements, are all about enabling planning decisions to continue to be able to be made, consistent with social distancing rules. There is absolutely no loosening of environmental standards or protection.

Lord Best (CB) [V]: My Lords, can the Minister confirm that the Government remain committed to Sir Oliver Letwin's recommendations for enhancing, not diminishing, the role of local authorities in planning by requiring a wider mix of homes for people of different incomes and ages and by capturing the big increases in land values created by the granting of planning consents?

Lord Greenhalgh: I am afraid that I did not capture all of that because of the quality of the transmission, but I can certainly say that we will be taking into consideration Oliver Letwin's findings in his report.

Lord Liddle (Lab) [V]: Can the Minister give us a timetable for what the Government intend to do, and when, given that there is an urgent need for action in this area?

Lord Greenhalgh: I am afraid that I cannot give the noble Lord a precise timetable, but we are well aware that many of the emergency measures that we need to reboot the economy, including making the requisite planning changes, need to occur before the Summer Recess.

Baroness Thomas of Winchester (LD) [V]: My Lords, what assurance can the Minister give that homes constructed under permitted development rights will be required to meet all the policy standards, including accessibility, set out in local planning policy?

Lord Greenhalgh: Certainly there is no diminution in the standards required for accessibility in these temporary and pragmatic changes as a result of the Covid-19 pandemic.

Baroness Jones of Moulsecoomb (GP) [V]: I declare an interest as a vice-president of the Local Government Association. Some very big planning decisions being taken at the moment are going to impact on the UK for well over 100 years: for example, Sizewell C. The planning application has been extended for two months so that more people can make their views heard. But, quite honestly, would it not be more sensible to defer these very big applications until after the lockdown, so that local people can engage properly?

Lord Greenhalgh: I note the point about the potential deferral of sizeable planning applications, but at the moment we have introduced measures that are pragmatic and temporary to enable a proper continuation of the planning system, even for major decisions.

Lord Lansley (Con) [V]: My Lords, I declare an interest as chair of the Cambridgeshire Development Forum. Can my noble friend assure the House that the Government are following through on their guidance to local authorities by ensuring that they make a swift and positive response to requests from developers to extend construction working hours, so as to facilitate safe working and social distancing?

Lord Greenhalgh: My noble friend raises an incredibly important point. It is important that we recognise that the extension of construction hours, as provided for in the guidance, is there to enable construction to continue within social distancing guidelines. We will continue to ensure that it is enforced through regular engagement with the construction industry and other interested parties.

Baroness Bowles of Berkhamsted (LD) [V]: Lockdown and working from home have shown the importance of personal space and easy access to outdoor space. Will the Government take that forward in planning guidance, especially for flats and accessible homes, while noting that statistically there is less availability of such spaces for black and ethnic minorities?

Lord Greenhalgh: We note the point that the noble Baroness makes about the importance of access to open spaces. I am sure that it will be taken up by my colleague the Housing and Planning Minister in his planning commission.

Baroness Altmann (Con) [V]: I congratulate my noble friend and the Government on their temporary measures to support greener transport options and promote economic recovery. Can he give the House some idea of the Government's plans to support economic recovery across all our regions, by creating jobs in projects such as onshore wind or community renewable schemes?

Lord Greenhalgh: I thank my noble friend for raising this issue. It is important to recognise that over a period of just two months, £27 billion has been provided in funding for local authorities and local areas—a considerable sum. We will continue to look at all measures required to ensure that we reboot the economy after this wretched pandemic.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked and I congratulate colleagues on that. We now move to the second Oral Question, which is from the noble Lord, Lord Berkeley.

Covid-19: Walking and Cycling

Question

2.46 pm

Asked by ***Lord Berkeley***

To ask Her Majesty's Government what action they are taking (1) to encourage walking and cycling, and (2) to discourage car use, in cities as the restrictions in place due to the COVID-19 pandemic are lifted.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con) [V]: My Lords, on 9 May the Government announced a £2 billion funding package for cycling and walking. This is the largest ever investment in active travel. It includes £250 million to be spent in the current financial year on measures to get people cycling and walking, such as pop-up bike lanes, wider pavements, safer junctions and cycling and bus-only corridors.

Lord Berkeley (Lab) [V]: My Lords, I am grateful to the Minister for that Answer and I congratulate the Government on their commitment to cycling at this time. It is really good. However, although some local authorities are doing very well, there is a big problem with one in Manchester. The Mayor of Greater Manchester and Chris Boardman are launching 200 kilometres of temporary cycle lanes—tomorrow or this week, I believe—which has one big hole in the middle, because Manchester City Council will not co-operate. Can the Minister please encourage Manchester City Council to take part and work with other local authorities to create this potentially fantastic new facility for cyclists?

Baroness Vere of Norbiton [V]: I thank the noble Lord for his warm words of welcome for this funding, which will make a huge difference to cycling. I take what he has said about Manchester City Council. I am in regular contact with the Mayor of Greater Manchester, Andy Burnham, and I will raise it with him next time we speak, to see whether something can be done. The Greater Manchester Combined Authority has initially been allocated £15.8 million, and it would be good to see that money spent wisely.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, there has been much good work on this issue undertaken in the devolved institutions. The Minister for Infrastructure in Northern Ireland has introduced ground-breaking procedures for the reform of infrastructure in relation to cycling and walking lanes. Will the Minister undertake to have discussions with that local Minister, and other devolved institutions, to ensure that there is joint working in this area to reduce our carbon footprint and improve our health and well-being?

Baroness Vere of Norbiton [V]: It is great to hear about the good work being done in Northern Ireland by the Minister for Infrastructure on cycling. I assure the noble Baroness that the department is in regular contact with Ministers across the devolved nations to share information during the Covid-19 pandemic. My officials in the department's walking and cycling team regularly meet with colleagues from Scotland, Wales and Northern Ireland to share best practice, as she suggests, and the lessons learned.

Lord Carrington of Fulham (Con) [V]: My Lords, I am sure that we all agree that those who can cycle should, but many people cannot ride bikes. Does my noble friend agree that cycle lanes are a good thing, but not if they hold up buses, increase pollution by causing traffic jams and displacing traffic to side roads, and, often, require the felling of trees in our cities? Does she further agree that it is not just the safety of cyclists which has to be considered but the safety and transport requirements of those who cannot cycle?

Baroness Vere of Norbiton [V]: I reassure my noble friend that well-designed cycle lanes do not increase congestion. Local authorities are required to follow technical guidance on cycling infrastructure design as well as road space allocation guidance, which ensures that the views of local cyclists and drivers are taken into account.

Baroness Boycott (CB) [V]: My Lords, I too welcome the Government's initiative to encourage us to cycle—it is so important for health and for the environment—but a lot of cycling accidents happen because of speed. Will the Government consider making it mandatory for all urban areas to have a 20 mph speed limit, as many parts of England and some London boroughs already do?

Baroness Vere of Norbiton [V]: My Lords, local authorities already have the power to set 20 mph speed limits on their roads. The department has published guidance designed to make sure that speed limits are appropriately and consistently set. We do not support a blanket introduction of 20 mph speed limits, because they may not be appropriate in certain circumstances or for all roads and in all cities.

Lord Haskel (Lab) [V]: My Lords, cyclists prefer to use minor roads and leave main roads to motor traffic, but they are often discouraged to find that the surfaces on such side roads are broken and uneven through neglect. To overcome this, will the Government encourage local authorities to use the active travel fund to make sure that designated cycle routes and low-traffic areas have good road surfaces? Then, they would be used more.

Baroness Vere of Norbiton [V]: The noble Lord makes an important point about road surfaces, which are important for cycling and other sorts of transport. That is why during the Covid pandemic the Department for Transport has made a great effort to invest in local infrastructure. Indeed, we have managed to put out £1.7 billion to local authorities so that they can invest in their roads and make sure that they are suitable for cycling.

Baroness Randerson (LD) [V]: Lateness and unreliability discourage people from taking the bus, and cycle paths that force cyclists out into heavy traffic discourage people from cycling. An easy measure the Government could take to encourage bus and cycle use would be to implement fully Part 6 of the Traffic Management Act 2004, which strengthens the powers that local authorities have to deal with traffic offences. Do the Government intend to do this and, if not, why not?

Baroness Vere of Norbiton [V]: Local authorities already have a number of responsibilities, one of which is ensuring the expeditious movement of traffic, including cyclists and pedestrians, on highways. There is a range of things that they can do to make this happen. The commencement of Part 6 is one of the things we are considering; we are looking at the evidence and weighing up whether or not it is appropriate to commence it at this time.

Baroness Verma (Con) [V]: My Lords, local businesses in my city of Leicester are desperately trying to revive their lost incomes as lockdown is loosened, but will my noble friend instruct local councils to consult and work with businesses and local communities before they keep creating pop-up cycle and pedestrian lanes that take away parking spaces outside small businesses?

Baroness Vere of Norbiton [V]: The new statutory road space reallocation guidance issued recently by the Department for Transport makes it absolutely clear that local authorities must consider people for whom it is important to be able to use the roads. That includes blue badge holders, those who must make deliveries, and other essential services. I reassure my noble friend that there is much evidence to suggest that improving pedestrianisation outside shops increases footfall in them, which I think is beneficial.

Baroness Finlay of Llandaff (CB) [V]: As GPs are encouraged to recommend cycling to achieve a wide range of health benefits, including decreasing obesity, have the Government set targets for traffic-free safe cycling for those who may be quite wobbly when they start and the wearing of cycling helmets to avoid a spate of injuries that require hospital treatment?

Baroness Vere of Norbiton [V]: There are all sorts of things that we can do to make cycling a better experience for all, particularly those who are starting out on their cycling journey. They include actions by local authorities to make some streets cycling and pedestrian-only. Work can also be done on improving cycling safety.

Lord Rosser (Lab) [V]: Government figures indicate that, nationally, increases in cycling and walking in the light of Covid-19 will result in fewer journeys by public transport and not fewer journeys by car, which people now regard as a safer means of transport. What do the Government intend to do to promote cycling and walking as an alternative to the car, rather than it being an alternative to public transport, as is happening now?

Baroness Vere of Norbiton [V]: This comes down to the actions that can be taken by local authorities. We have provided the guidance that they need to follow. What they put in place within their own areas will be key to reducing localised congestion. That might include speed restrictions, as previously mentioned; traffic light cycles can be changed; there can be car-limited areas; and there could be changes to parking charges.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has now elapsed. We move to the third Oral Question, in the name of the noble Baroness, Lady Andrews.

Covid-19: Pre-school Sector

Question

2.56 pm

Asked by ***Baroness Andrews***

To ask Her Majesty's Government what assessment they have made of the impact of the COVID-19 pandemic on the sustainability of the pre-school sector; and what steps they are planning to take to support that sector.

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, the preschool sector plays a vital role in educating our youngest children. As with all parts of society, the pandemic has greatly affected the sector, limiting the number of children able to attend. Since 1 June, we have asked the sector to welcome back all children. We are working with local authorities and the sector to monitor the impact of the pandemic. Government will continue to provide funding, guidance and support for the sector.

Baroness Andrews (Lab) [V]: My Lords, I am grateful to the Minister for that Answer, but she is surely aware that the sector feels that it has been appallingly let down financially by the Government in terms of the furlough arrangements and much else, so much so that a quarter of providers may not be operating in a year's time and many more will operate at a loss in the next six months. Will she and her ministerial colleagues meet the Early Years Alliance specifically to discuss the need for transitional funding to ensure that the childcare sector survives the pandemic period at least?

Baroness Berridge: My Lords, the Minister for this area has been in close contact with the Early Years Alliance and other sector groups in relation to the support available. We plan to pay the early years entitlements regardless of the uptake of that, which is worth £3.6 billion this year, and have issued specific guidance on how the sector can access the job retention scheme and business interruption loans.

Baroness Blower (Lab) [V]: My Lords, I refer to my interests in the register. A large amount of private provision has indeed closed during the pandemic. Maintained nursery schools have taken in additional children and become hubs for vulnerable children and the children of key workers. The 2019 supplementary funding of £60 million was welcome, but it leaves maintained nursery schools with real-terms cash equivalent only to that of 2015. What steps are the Government taking to ensure that maintained nursery schools are adequately funded both now and in future?

Baroness Berridge: My Lords, the Government recognise the commitment of the 391 remaining maintained nursery schools, which often operate in areas of disadvantage. The noble Baroness is right that £60 million of funding is still received by that sector regardless of the uptake. In addition to that, there is a £300 per child per year early years pupil premium. We remain committed to the maintained nursery sector.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, given the reduced risk of coronavirus transmission and the health and well-being benefits of outdoor education—everything from understanding of risk to resilience—will the Government encourage and support preschool education to shift towards outdoor models, either partially or fully? Given that lots of parents might struggle to afford the appropriate clothing, will the Government assist in ensuring that it is available?

Baroness Berridge: My Lords, the Government's guidance on the reopening of schools specifically refers to the fact that using outdoor space, where possible and depending on the weather, is to be encouraged. We leave equipping children for the proper use of outdoor space to schools.

Lord Polak (Con) [V]: My Lords, one of my granddaughters, Carla, attended her nursery, Little Bicks in Mill Hill, this morning for the first time in three months. I pay tribute to the staff and management who have provided online activities throughout—my thanks especially for the very enjoyable weekly Zoom singalong with grandparents. Like so many, these important businesses have it very tough. Can my noble friend confirm that private childcare settings are eligible for a business rate holiday of one year, giving them much-needed support at this time?

Baroness Berridge: My Lords, I can confirm that if you are an early years foundation stage provider registered with Ofsted and qualify for the small business rate relief or, in appropriate circumstances, the rural rate relief, that enables you to access the £10,000 small business grant. Since last month we have been obtaining up-to-date statistics from local authorities to make sure that we have appropriate information about the resilience of this sector.

Baroness Garden of Frognal (LD): My Lords, there are disturbing reports of vulnerable small children going missing or being open to abuse during lockdown. Many nurseries and childminders, who are already low paid, as we have heard, will have had to close. What importance do the Government attach to ensuring that there are places of safety for vulnerable preschool children in these times of pandemic?

Baroness Berridge: I am grateful to the noble Baroness for her question. Throughout this period, these settings have been open for vulnerable children. The presumption has been that, subject to health risks, those who have been in contact with a social worker should be attending. We have also started, as of last month, the "See, Hear, Respond" service with a £7 million grant to a coalition of charities for vulnerable children, led by Barnardo's. We are particularly concerned about the safeguarding issues for young children that have arisen as a result of lockdown.

Baroness Rawlings (Con) [V]: My Lords, the preschool sector is important. Will the Government therefore continue with test, track and—just as vital—treat? Why has "treat" been dropped for "isolate"?

Baroness Berridge: My Lords, in relation to "test, track and trace" in this sector, all staff, children and their households are entitled to a test if they exhibit symptoms. As of the end of last month, that includes those aged under five. We realise that this is an essential part of being able to safely reopen schools.

Baroness Prashar (CB) [V]: Does the Minister agree that as crucial as supporting the preschool sector at this stage is investment in under-fives provision, as severe lifelong impacts can result from deprivation of care, stimulation and learning? Evidence shows that the literacy skills gap starts at the age of five. This deficit takes years to recover from and impacts on social mobility.

Baroness Berridge: The noble Baroness is correct that it is vital we ensure that disadvantaged children get the best start at this stage in early years so that they can fully access the curriculum when they enter mainstream school. We have invested £60 million over the last two years in specific initiatives to help the language and literacy development of young children, exemplified by the department's Hungry Little Minds campaign, which saw over 180,000 new users at the start of lockdown.

Lord Watson of Invergowrie (Lab) [V]: My Lords, the Minister will be aware of reports last week of a survey carried out with the National Day Nurseries Association showing the stark reality of how Covid-19 will continue to impact on nurseries across England, even as they start to open their doors to more children. Three-quarters of nurseries have said that they expect to operate at a loss over the next three months. Without significant financial support, many will be unable to survive. Faced with the reality that millions of childcare places could be lost in this crisis, the National Day Nurseries Association has called on the Government to act now by introducing a recovery and transformation fund to help providers survive in this extremely challenging period. Labour supports that call. Does the Minister?

Baroness Berridge: My Lords, as I have outlined, the £3 billion of planned entitlements will be paid this year. The sector has been able to access a number of the schemes outlined by the Chancellor to support small businesses, which is what this sector mainly comprises. We continue to monitor the sustainability of the sector on the basis of data from local authorities.

Lord Storey (LD) [V]: I hear what the Minister says about the support given to the childcare sector, but, following on from the points of the noble Lord, Lord Watson, research has shown that up to 10,000 childcare providers will have folded or gone out of business by the time this pandemic is over. What plans do the Government have to ensure that that provision is not completely lost?

Baroness Berridge: My Lords, 35% of providers were open just before the half-term holiday. As I say, we are monitoring the sector and have provided the entitlements that I have outlined. We will work with sector groups to ensure the sustainability of the sector, which we know is vital for childhood development and for parents who need to work.

Baroness Bull (CB): My Lords, research shows that high-quality birth-to-age-five programmes for disadvantaged children yield a 13% return on investment per child per annum, through better education, economic, health and social outcomes. Does the Minister agree that investing in early childhood education is a cost-effective strategy for promoting economic growth? If so, will she press this point with Treasury colleagues?

Baroness Berridge: My Lords, I agree with the noble Baroness that this is a great investment. At the end of last year, we announced an increase in the hourly rate that the sector receives. I am pleased to say that 96% of these providers are "good" and "outstanding", up from 74% a few years ago, and that the quality of provision in areas of disadvantage is improving.

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

Press Freedom

Question

3.07 pm

Asked by ***Lord Black of Brentwood***

To ask Her Majesty's Government what action they are taking to promote press freedom and the safety of journalists globally.

Lord Black of Brentwood (Con) [V]: My Lords, I beg leave to ask the Question standing in my name on the Order Paper, declaring my interest as deputy chair of the Telegraph Media Group and my other interests listed in the register.

The Minister of State, Foreign and Commonwealth Office and Department for International Development (Lord Ahmad of Wimbledon) (Con): My Lords, media freedom is vital to open societies. Journalists must be able to investigate and report without undue interference. The United Kingdom has taken a number of steps to promote press freedom and the safety of journalists globally. We are monitoring individual cases of concern around the world and working with international partners on how best to support media freedom despite the challenges and restrictions of Covid-19.

Lord Black of Brentwood [V]: My Lords, I thank my noble friend for that Answer, but across the world—from Mexico to Hungary to Beijing—attacks on journalists and publishers are reaching unprecedented levels. In many cases these are inspired by the disgraceful actions of the White House, which have led to attacks on journalists in the US. Some 64 other countries, according to Reporters Without Borders, are using Covid-19 to chill free speech and bully journalists, often using criminal sanctions. Does my noble friend agree that it is now urgent that there is co-ordinated international action to ensure that journalists have proper legal protection, including an end to impunity, and for the Media Freedom Coalition, which the UK Government helped to establish and now seems to be missing in action, to act forcefully and without delay, including with the publication of a national action plan?

Lord Ahmad of Wimbledon: My Lords, while paying tribute to my noble friend's work on the Media Freedom Coalition, I do not agree with the premise that it is missing in action. It has been quite active; indeed, my right honourable friend the Foreign Secretary had discussions on world media freedom on 3 May with German, French and Dutch counterparts. We continue to work very closely with our key partner, Canada, on that initiative. My noble friend will also be aware of the vital work of the independent High-level Panel of Legal Experts on Media Freedom, which is convened by special envoy Amal Clooney and the noble and learned Lord, Lord Neuberger. They are doing very important work and produced a first report on this issue on 13 February.

Baroness Stroud (Con) [V]: My Lords, the Courage in Journalism award is awarded each year to a journalist who has died getting important stories out of dangerous places. Outside of a war zone, Mexico is the most dangerous place in the world to be a journalist. Since 2000, 150 journalists in Mexico have been murdered and many more have simply disappeared, assumed dead. What action are Her Majesty's Government taking to bring pressure to bear to increase protection from violence for journalists in countries such as Mexico?

Lord Ahmad of Wimbledon: My noble friend raises an important point about the protection of journalists. She will be aware of UNESCO's annual reporting. In 2019, 57 journalists and media workers were killed, and while this is a decline on previous year, it is 57 too many. She raises the important issue of ensuring that we raise media freedom and the protection of journalists in particular, and I assure her that we do this in all our interactions and that it remains a key priority for the Foreign and Commonwealth Office.

The Earl of Sandwich (CB) [V]: My Lords, would the Minister agree that the recent arrest in Egypt of prominent author Ahdaf Soueif, the imprisonment of members of her family, and the continued detention of poet Galal El-Behairy and many others are events of international concern? Will the FCO draw more attention to these human rights violations and the poor treatment of writers, editors and journalists in and outside Egyptian prisons?

Lord Ahmad of Wimbledon: My Lords, the noble Earl raises an important issue. I assure all noble Lords that we raise the importance of media freedom in all our interactions with Egypt. I recall my last visit to Egypt in my capacity as Human Rights Minister, and that was high up the agenda. Most recently, my right honourable friend the Minister for the Middle East raised it in ministerial dialogue in March, including the specific cases the noble Earl highlighted.

Baroness Goudie (Lab) [V]: My Lords, we are used to autocracies suppressing freedom of expression, and we expect democracies to support freedom of expression. It is a matter of great sadness when a country with a great democratic tradition and a great history of freedom of the press such as the United States goes the way of autocracies and physically attacks journalists who are doing their job.

Lord Ahmad of Wimbledon: My Lords, I assure the noble Baroness that we raise this issue of media freedom in bilateral conversations as well as through multilateral fora, and we will continue to do so. If you are a democracy, of course, the responsibility becomes ever greater. The freedom of the press and protection of the media is a fundamental pillar of good governance and democracy.

Baroness Northover (LD) [V]: When did the Government last raise the harassment of BBC Persian staff with Iran or on the international stage?

Lord Ahmad of Wimbledon: My Lords, I assure the noble Baroness that this is very high on our agenda in our direct bilateral conversations with Iran, and we have also had that discussion at various levels within the Human Rights Council. Iran is very much a state that suppresses media freedom and indeed other human rights, and it continues to be a country of concern in the human rights report that we issue every year.

Lord Howell of Guildford (Con) [V]: My Lords, will my noble friend acknowledge the excellent work of the Commonwealth Journalists Association in this field? I acknowledge my interest as president of the Royal Commonwealth Society. He will be well aware that some of the most dreadful attacks on journalists, and indeed murders, have occurred in Commonwealth countries. As we are now, I presume, still in the chair of the Commonwealth, will my noble friend undertake with his colleagues to put maximum pressure on Commonwealth organisations and the Commonwealth Secretariat to encourage and support the work of the Commonwealth Journalists Association?

Lord Ahmad of Wimbledon: My Lords, I assure my noble friend that we will continue in our capacity as chair-in-office until and when the Kigali CHOGM takes place, and that has been confirmed. On the importance of Commonwealth countries standing up for press and media freedom, I agree with him and assure him that, both within the context of the Commonwealth and in our bilateral exchanges with Commonwealth countries, media freedom is very much a key issue.

Baroness Coussins (CB) [V]: My Lords, is the Minister aware of recent reports from Colombia that the army has been illegally compiling secret files on journalists, containing personal information on their contacts, homes, families and other private information? This undermines the peace process and I hope that the Minister will condemn it. Will he also tell the House what progress has been made since January this year, when, in the context of another question on journalists' safety, I asked him whether equivalent protection could be negotiated for interpreters who work with journalists, especially in conflict zones? He said then that discussions were taking place on the proposal for a Security Council resolution, and I would be grateful if he could update the House.

Lord Ahmad of Wimbledon: My Lords, on the noble Baroness's second question, obviously, given the focus on Covid-19, we have not been able to make progress on that Security Council resolution to the extent that I would have liked, as Minister for the UN. However, I assure her that our work in this respect will continue, and I will shortly have a discussion with our acting representative in New York on how we can make further progress. I will write to her regarding the question she raised concerning Colombia.

Lord Collins of Highbury (Lab) [V]: My Lords, UNESCO and the Netherlands have set a new date in October for hosting the World Press Freedom Conference. Will the UK participate with a high-level delegation, and what consideration has been given to the International Federation of Journalists' draft UN convention on the safety and independence of journalists and other media professionals?

Lord Ahmad of Wimbledon: My Lords, I can confirm that we will look to participate in the next media freedom conference—with Canada and other key partners—and to have high-level representation in that respect. On the resolution that has been passed, we certainly look to that and indeed other representations we receive on strengthening collaboration and collective action in order to protect journalists and ensure media freedom around the world.

Baroness Bonham-Carter of Yarnbury (LD) [V]: I know that the Minister agrees that the ability of journalists to do their job unhindered by threats of or the actual experience of violence is a vital part of our democracy. The UK embassy in Washington has raised concerns about the conduct of US police officers. Is there not a greater concern: the conduct of a US President who describes journalists as enemies of the people? Does the Minister agree that those in positions of power should support journalists, not undermine them?

Lord Ahmad of Wimbledon: My Lords, I cannot speak for the US Administration or the US President; however, I can speak for Her Majesty's Government. Our support for the global media coalition and the work we are doing in this respect, as a key priority within a human rights context, underlines our commitment. On the noble Baroness's latter remarks, of course I agree with her. As a democracy, we are proud of our support for journalists and media freedom, and that will continue to be the case under the current Government.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed; I thank all noble Lords. That concludes the first ever Oral Questions Hybrid Sitting.

3.18 pm

Sitting suspended.

Arrangement of Business

Announcement

3.30 pm

The Deputy Speaker (Lord Bates) (Con): My Lords, a limited number of Members are here in the Chamber, respecting social distancing. If the capacity of the Chamber is exceeded, I will immediately adjourn the House. Other Members will participate remotely, but all Members will be treated equally, wherever they are. Microphones of Members participating remotely will unmute shortly before they are to speak—please accept any on-screen prompt to unmute—and muted after each speech. I ask noble Lords to be patient if there are any short delays as we switch from physical to remote participants. I remind the House that our normal courtesies in debate still very much apply in this new, hybrid way of working.

The Private Notice Question will now commence. Please ensure that questions and answers are short.

Black Lives Matter

Private Notice Question

3.31 pm

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

To ask Her Majesty's Government what representations they have made to the government of the USA regarding their response to the ongoing protests in support of the Black Lives Matter movement, following the death of George Floyd, and what are they doing to address racism, discrimination and injustice experienced by those here in the UK.

The Parliamentary Under-Secretary of State, Foreign and Commonwealth Office and Department for International Development (Baroness Sugg) (Con) [V]: My Lords, as one of America's closest allies, we join the American people in their grief. We condemn George Floyd's death and trust that justice will be done. The violence we have seen is very alarming; the right to peaceful protest is an essential part of any free society. The protests are a reminder that, despite decades of progress, we must listen and learn from communities that face discrimination and work together to put an end to such injustices.

Lord Collins of Highbury (Lab) [V]: I thank the Minister and agree with her that, irrespective of the actions of a small minority, we must defend the fundamental democratic right of peaceful protest. George Floyd's murder has rightly triggered international condemnation. The voices we have seen on the streets in the US, here and globally need to be not only heard but acted upon. For too many people, racism and discrimination are an everyday experience in work, health and public life. What is the United Kingdom doing to ensure that the call of the United Nations Human Rights Council on systematic racism is acted upon not only by the US but by all nations, including us?

Baroness Sugg [V]: My Lords, I agree that there is injustice that needs to be tackled. We are tolerant and open, but more can always be done to help people realise their potential. There is a lot to what the marchers are saying; action is needed across the board as part of the levelling-up agenda. That starts with education and job opportunities, but there are also health disparities that need to be addressed, as Covid has shown.

Lord Robathan (Con) [V]: My Lords, the appalling death of George Floyd in Minneapolis, at the hands of a policeman who has now been charged with murder, cannot be used as an excuse for illegal and violent behaviour here in the UK. Nor can understandable strong feelings about racism and discrimination in America—or indeed in Asia, Africa, Europe and the UK—be any excuse. Will my noble friend the Minister ensure that the small number of anarchists and irresponsible yobs who attacked and injured brave and blameless police officers doing their duty in London, painted graffiti on Churchill's statue and others or committed other illegal acts in Bristol or elsewhere are identified and prosecuted?

Baroness Sugg [V]: My Lords, the Government fully support peaceful protest. As I said, it is a vital part of our democratic society, but violence and criminal behaviour are never acceptable—particularly against the police, who are working in very difficult circumstances. I recognise the strength of feeling, but protests should be peaceful so as not to undermine the cause the protesters are marching for. It is absolutely essential that those who perpetrate criminal acts face justice.

Baroness Lawrence of Clarendon (Lab) [V]: My Lords, I thank my noble friend Lord Collins for bringing this important PNQ. No one needs to tell me that black lives matter. This is an everyday occurrence and part of our lives. What will Her Majesty's Government do to make sure that "black lives matter" is in policies in the UK?

Baroness Sugg [V]: My Lords, I thank the noble Baroness for her question and pay tribute to her work. She has been a passionate and effective campaigner for a fairer society for all. The work of the Stephen Lawrence Charitable Trust has benefited many young people from disadvantaged backgrounds. I agree with her that across all our policy we must make sure we reflect that black lives matter. We are absolutely committed to tackling racism and levelling up. That means unleashing potential and creating opportunity for all. We have set up the Government's Race Disparity Unit, a world first, for publishing data on ethnicity. It is working across Whitehall and with local authorities to ensure that all our interventions are properly considered and that "black lives matter" is in everything we do.

Baroness Benjamin (LD) [V]: My Lords, 50 years ago I was stopped in my car and aggressively questioned by the police. My three brothers have all been stopped and searched aggressively. Twenty years ago my 16 year-old nephew was stopped and brutally beaten up in the back of a police van, then falsely charged. Shockingly, in 2020 during lockdown we saw excessive force used when a black man was tasered in front of his toddler. Today's protests have shown that we are at a tipping point. What action do the Government plan, especially through education, to reassure the black community, including children, that their lives matter?

Baroness Sugg [V]: I thank the noble Baroness for her question and pay tribute to all the work she has done on supporting the Windrush generation. The Government are clear that no one should be stopped and searched based on their race or ethnicity. We are working with the College of Policing to update guidance on community engagement and scrutiny over the use of stop and search powers and are ensuring that the law requires detailed records and scrutiny.

Lord Lucas (Con) [V]: My Lords, people like me like to comfort themselves that we are doing a great deal better than we used to and that we do not see much discrimination now. When we took the trouble to ask the staff in this House whether they were suffering harassment or bullying, we were all shocked to find out what was really going on. Might we not do the same thing with people at large and take advantage of

the 2021 census to gather some information on what people experience in this country, and perhaps shock ourselves into taking proper action?

Baroness Sugg [V]: I thank my noble friend for that question. I agree with him; he is absolutely right that we need to understand what these issues are, so that we are able to act on them accordingly. I will take back his suggestion on the census to the relevant department.

Lord Boateng (Lab) [V]: My Lords, systemic racism is a fact of life in the US, the UK and the world over. Combating it requires not just words but concrete actions. In seeking re-election to the UN Human Rights Council this year, will the UK support an investigation by the special rapporteur into systemic racism and deaths in police custody, with recommendations for action and the promotion of best practice? If not, why not?

Baroness Sugg [V]: My Lords, I apologise but I do not have that information, so I will have to come back to the noble Lord in writing.

Baroness Hussein-Ece (LD) [V]: My Lords, the brutal killing of George Floyd resonated with millions in the UK and around the world. Do the Government understand that black, Asian and minority-ethnic people dying disproportionately during the Covid pandemic has laid bare the gross inequalities that exist in this country? Does the Minister agree that we need a clear, strong, consistent message, and leadership from this Government, that recognises that racism exists? It is no use pretending it does not exist—it does. What action will they take to eradicate racism and build a fair, equal, democratic society, where everyone is valued?

Baroness Sugg [V]: My Lords, we want to build a fully democratic society where everybody is properly valued. The noble Baroness refers to Covid-19, and we fully recognise that some people have been disproportionately impacted by the virus. We have committed Public Health England to examine those disparities and we have appointed our Equalities Minister, Kemi Badenoch, to take forward the findings of the review, so that we can better understand the key drivers and shape our response to the virus.

Baroness Kidron (CB) [V]: My Lords, like thousands of others, this weekend, I joined an online protest organised by Black Lives Matter. I was struck by the youth of the speakers who eloquently articulated very practical demands about our education system, the job market, housing, health, political representation and, above all, the justice system. These young people are yet again having to protest the indignities and injustices suffered by their parents and grandparents that remain unaddressed, which represents an abject failure for the rest of us. What plans do the Government have to engage with BAME leaders and their allies to take action to implement the radical, practical and urgent change that they demand, and, in doing so, put a chasm between the UK response and the wholly divisive response of the US President?

Baroness Sugg [V]: I agree with the noble Baroness that we must take action across the board: on education, as she mentioned, on employment and work, and in particular on crime and justice. We welcomed David Lammy's 2017 review, which shone an essential light on the disparity in the treatment of, and outcomes for, ethnic-minority individuals, and that remains a priority. In February 2020, we published an update on our broad programme to address race inequalities. I also agree it is important that we have conversations with those affected. Minister Alex Chalk will meet stakeholders during the next Lammy round table in the coming weeks.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I was going to ask a question about deaths in custody, but as the Minister is from the Foreign and Commonwealth Office, I shall instead suggest that the UK should immediately suspend exports of riot gear, tear gas, rubber bullets and small arms to the United States. Will the Minister take that suggestion back to her department?

Baroness Sugg [V]: I thank the noble Baroness for that question. We have a ministerial board on deaths in custody to ensure that we are driving forward the recommendations of Dame Elish Angiolini. On exports to the US, the UK has issued licences that permit the export of crowd control equipment to the US, but we continue to monitor closely developments there, and we consider all export applications within a strict risk assessment framework. We keep all licences under careful and continual review.

Lord Davies of Gower (Con) [V]: My Lords, the British response following the death of George Floyd in America has rightly been to condemn the excessive use of force which led to his tragic death. In reflecting on this dreadful occurrence, does my noble friend the Minister agree that British policing represents everything that is great about our law enforcement, particularly with regard to policing communities? Does she agree that representations should be made to America that policing by consent is, by far, the preferred method of delivery, as opposed to policing by force?

Baroness Sugg [V]: I agree with my noble friend. As he says, we police by consent in this country. Our world -class police officers continue to put their own lives on the line to protect the public during the protests, despite coming under attack. We ask our police officers to do the most difficult of jobs, and they are respected around the world for the excellent work they do.

Baroness Crawley (Lab) [V]: My Lords, following last week's PHE report, are the Government now in a position to say how successful NHS trusts have been in risk-assessing and reassigning those staff most at risk, given that, in many hospitals, front-line NHS staff are predominantly black, Asian and minority ethnic? I understand that the noble Baroness is from the Foreign Office, so I will be happy with a written answer.

Baroness Sugg [V]: My Lords, all NHS organisations will continue to make appropriate arrangements to support their black, Asian and minority-ethnic staff. On 28 May, NHS Employers published guidance for employers on risk assessment, advising them to consider

[Baroness Sugg]
issues such as ethnicity. The PHE Covid-19 report on disparity is the first step—it is certainly not the end; there is lots more work to do.

Baroness Falkner of Margravine (Non-Afl) [V]: My Lords, I accept what the Minister says about the strength of feeling in this country and what the Government are trying to do, but will she accept the premise of the original Question and tell us whether they have made representations to the American Government? Has the US ambassador been called in? Has any member of the Government spoken out clearly, palpably addressing non-white people—BAME people—in this country, to say how we feel their hurt?

Baroness Sugg [V]: I thank the noble Baroness for that question. At senior levels, our embassy in Washington has raised concerns with the State Department. We have also seen statements from the US ambassador here in the UK. The Prime Minister and the Foreign Secretary, both in the other place and via the media, have been very clear in their stance on this issue.

The Deputy Speaker (Lord Bates) (Con): My Lords, as there are no more supplementary questions, the House will now adjourn until a convenient point after 4 pm, for the Motion in the name of the noble Lord, Lord Goldsmith of Richmond Park.

3.47 pm

Sitting suspended.

Arrangement of Business

Announcement

4 pm

The Deputy Speaker (Lord Bates) (Con): My Lords, a limited number of Members are here in the Chamber, respecting social distancing, and if the capacity of the Chamber is exceeded, I will immediately adjourn the House. Other Members will participate remotely, but all Members will be treated equally wherever they are. For Members participating remotely, microphones will unmute shortly before they are to speak—please accept any on-screen prompt to unmute—and will be muted after each speech. I ask noble Lords to be patient if there are short delays as we switch between physical and remote participants. I should remind the House that our normal courtesies in debate still very much apply in this new hybrid way of working.

We now come to the Motion in the name of the noble Lord, Lord Goldsmith of Richmond Park. The time limit is one and a half hours.

Water Industry (Specified Infrastructure Projects) (English Undertakers) (Amendment) Regulations 2020

Motion to Approve

4.01 pm

Moved by ***Lord Goldsmith of Richmond Park***

That the draft Regulations laid before the House on 28 April be approved.

The Minister of State, Department for the Environment, Food and Rural Affairs, Foreign and Commonwealth Office and Department for International Development (Lord Goldsmith of Richmond Park) (Con) [V]: My Lords, the instrument before you is a simple amendment to the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 to remove their sunsetting provision. This would allow the 2013 regulations to continue in force and be available as part of the regulatory framework of the water industry. Without this SI, the 2013 regulations would expire on 27 June 2020. As such, before I talk a little further about the Government's reasons for bringing forward this amending SI, I will outline the purpose of the 2013 regulations.

As noble Lords will know, water and sewerage services in England are provided by companies also known as undertakers. The 2013 regulations were designed to help contain and minimise the risks associated with large or complex water or sewerage infrastructure projects, therefore helping to protect undertakers, their customers and UK taxpayers. Containing and minimising risks is likely to reduce the overall cost of borrowing for a given water undertaker and so ensure better value for money for that undertaker's customers. It also makes sure that delivery of such infrastructure projects will not adversely impact on the existing water or sewerage services provided by undertakers.

The 2013 regulations enable the Secretary of State or Ofwat to specify by notice an infrastructure project where either is satisfied that two conditions have been met: first, that the infrastructure project is of a size or complexity that threatens an undertaker's ability to provide services to its customers; and, secondly, that specifying the project would likely result in better value for money than if the project was not so specified, taking into account charges to customers and any government financial assistance.

Once specified, an undertaker is required to put the infrastructure project out to tender and a separate Ofwat-regulated infrastructure provider is then designated to finance and deliver the project. Such infrastructure projects raise many complex issues, particularly around determining the cost of their financing, coupled with a construction risk that is far greater than that normally associated with an undertaker's typical capital investment. Requiring an undertaker to tender competitively for an infrastructure provider for a large or complex project provides an objective means of testing whether the financing costs of such a project are appropriate and reasonable. Without that tendering process, competitively determining the cost of capital for this type of infrastructure project would not be possible. The ability to create Ofwat-regulated infrastructure providers also helps to ring-fence their associated higher risks and should result in more effective risk management for these projects. Creating designated infrastructure providers in this way ensures that a large or complex infrastructure project will not affect the ability of an undertaker to provide its day-to-day services for customers and avoids any resultant extra costs that would ultimately be borne by those customers.

The amending SI was laid in Parliament following a post-implementation review of the 2013 regulations carried out in 2018. Eight key stakeholders were consulted,

five of which—Ofwat, Thames Water, Bazalgette Tunnel Ltd, Bazalgette Tunnel Ltd investors and the Consumer Council for Water—submitted responses. The review found that the 2013 regulations had successfully fulfilled their policy objectives. Accordingly, the review recommended that the 2013 regulations' sunsetting provision be removed.

In March 2020 we undertook a further, targeted consultation on our proposal to remove the sunsetting provision. Views were sought from Ofwat, Water UK, Thames Water, Bazalgette Tunnel Ltd, the Environment Agency, the Drinking Water Inspectorate and the Consumer Council for Water. Water companies were consulted via Water UK, and Bazalgette Tunnel Ltd was given the option to consult its investors. Four written responses were received from Ofwat, the Environment Agency, Thames Water and Affinity Water. All indicated that they were in favour of the amendment.

Currently the only project regulated under the 2013 regulations is the Thames tideway tunnel. However, Ofwat has identified four large or complex water infrastructure projects currently in development that may benefit from being specified in accordance with the 2013 regulations over the next 10 years. These are the south-east strategic reservoir at Abingdon, a joint project proposed by Thames Water and Affinity Water; the London effluent reuse scheme, a project proposed by Thames Water; south Lincolnshire reservoir, a joint project proposed by Anglian Water and Affinity Water; and the River Severn to River Thames transfer, a joint project proposed by Thames Water, Severn Trent Water and United Utilities. A decision would be made on a case-by-case basis at an appropriate time when schemes are brought forward as to whether the infrastructure projects could come within scope of the 2013 regulations.

The Government are committed to improving water supply resilience, as set out in our strategic policy statement to Ofwat and our 25-year environment plan. This ambition is made more challenging because of a growing population, increased water demand from agriculture and industry, and climate change. We also want to ensure that there is sufficient water left for the natural environment. Without any action, many areas of England will face water shortages by 2050.

The starting point for action is to reduce water use by reducing leakage from the water distribution networks and reducing our personal consumption. However, even if leaks and personal consumption are reduced, we will continue to need new water resource infrastructure. In our *Water Conservation Report*, published in December 2018, we set out our progress to promote water conservation from 2015 onwards. We endorsed the industry's existing commitment to a 50% reduction in leakage by 2050 and announced a consultation to enable us to set an ambitious target for personal water consumption. We consulted on measures to reduce personal water consumption, including supporting measures on amending building regulations, water efficiency labelling and smart metering. Most of these measures can be taken forward without the need for new primary legislation. We will publish a government position in late 2020. As I have said, alongside reducing leakage and reducing personal water consumption, new water resources infrastructure, including reservoirs and water transfers, is needed to provide a secure supply of water for future generations. In the current price review period, Ofwat has made £469 million available to nine water companies, to investigate and develop integrated strategic regional water resource solutions in order to be construction-ready by 2025. This work will be supported by the Environment Agency's national framework for water resources, which was published in March 2020.

In summary, the instrument before noble Lords enables the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 to continue in force so that they can continue to be used in the future delivery of large or complex water or sewerage infrastructure projects. Such projects play an essential role in strengthening the future resilience of water resources in England. Retaining the 2013 regulations will help to reduce the associated financial risks of such projects and ensure that water undertakers can continue to deliver their existing water or sewerage services to customers and provide greater value for money. I beg to move.

4.10 pm

Lord Adonis (Lab): My Lords, this is my first opportunity in the House to congratulate the Minister on his appointment and I do so very warmly. I welcome these regulations, but I will ask two questions and raise one wider concern about them. First, as the Minister said, the Thames tideway tunnel—which predates these regulations—is the model on which the new system is based. Will the Minister update the House on what is happening with the tunnel? The record of the structuring and letting of the contract for it was a success. It got a lower cost of capital because it was a self-contained project with the risks clearly enumerated, separating it from Thames Water.

My second question is about the Abingdon reservoir, to which the Minister referred. As noble Lords will be aware, this not only is the first reservoir that has been proposed in the last generation but has a long history of great controversy. In particular, when it was last proposed 20 years ago, Ofwat essentially—if I can mix my metaphors—pulled the plug on it by ruling that it did not meet its own planning requirements for water supply. All the work that had gone in to preparing the case for the reservoir therefore came to naught. What is Ofwat's attitude to the new proposal for the Abingdon reservoir? Is it likely to go ahead?

Speaking as a former chairman of the National Infrastructure Commission, which did a lot of work on water resilience, I have one broader comment to make. The Minister did not refer to the commission's 2018 report, *Preparing for a Drier Future*, which set out the background to these wider plans. It called on the Government to put in place additional supply and demand reduction measures, equivalent to at least 4,000 million litres a day, and to have plans in place by the end of 2019—last year—for at least 1,300 million litres a day provided through a national natural water network and additional supply infrastructure, as well as measures to halve leakages and progressing further with compulsory metering, to which the Minister referred. How far have the Government gone towards meeting

[Lord Adonis]
the target of at least 1,300 million litres a day of additional supply being commissioned through a natural water network and additional supply infrastructure? If we have not yet got those proposals sufficiently in place, what measures will the Government take to meet that target, over and above the ones that the Minister has just announced?

4.13 pm

Baroness Scott of Needham Market (LD) [V]: My Lords, it is a mark of the new arrangements that in recent weeks I have spoken in debates on food security, the charity sector and heritage and had between one and two minutes in which to do so. With the luxury of five, I will start with the usual courtesy of thanking the Minister for his comprehensive and useful introduction, and his officials for producing an extremely readable and useful set of accompanying documents.

Although narrow in its scope, this SI gives us a very useful chance to carry out some post-legislative scrutiny. I am not clear why a sunset clause was introduced in the first place. It might be because it was only ever envisaged for one project, but it would be useful to understand that better. I would rather know precisely what it was intended to do and what the risks are in removing it. The regulations as they stand have certainly done an extremely good job for the Thames tideway tunnel project. It will remain to be seen whether it is suitable for projects going forward. I am interested in the Minister's thoughts about why this might not be a suitable framework for the four projects which he outlined, because it seems to have been successful.

It would also be helpful if he could give a bit more detail on the timetable for the proposed major new projects, as I did not quite hear what it was. In recent years, the emphasis seems to have been on improvements —particularly environmental improvements—to existing assets, and I welcome that. I am old enough to remember the 1970s, when the UK was known as "the dirty man of Europe". UK standards have played a huge part in driving improvements in water quality across the piece. I am sure that all noble Lords would welcome an assurance that the UK will not, in any way, be slipping back once it is removed from EU standards.

Managing those assets, getting better value and using water more efficiently is an interesting challenge for the industry. Can the Minister say a little more about the limits? How much more water efficiency can we get out of existing infrastructure before we have to start thinking about new infrastructure, especially given the combination of climate change, increased population and differences in the way we lead our lives? It is good to hear that this model has worked so well for Tideway. It has suggested that the regulatory and contractual arrangements have given it a framework which has incentivised delivery on time and on budget—I would like to hear an update on that—as well as lower expected costs of capital.

The Consumer Council for Water has observed that customer handling in this project was not effectively done, because it was not sufficiently financed. Is that inherent in the regulatory structure or just an oversight that we can learn from and change next time? I look forward to the Minister's reply.

4.17 pm

Lord Moynihan (Con): My Lords, I also welcome the Minister to this hybrid House, and I welcome these regulations. I had the good fortune to be one of the Ministers responsible for water privatisation in the Department of the Environment, working with my noble friend Lord Howard of Lympne, back in the late 1980s when the water authorities finally concluded their annual struggles to make forlorn cases in Whitehall for much-needed capital investment for large infrastructure projects. After privatisation, they moved into a world where they could access market-driven capital investment regimes. That long-term access to capital markets was critical to funding the much-needed investment programmes that have subsequently served the country well.

In answer to the noble Baroness, Lady Scott of Needham Market, I recall that, prior to privatisation, the annual battles in Whitehall were depressing times, as Ministers and officials from the Department of the Environment sought to make the case to the Treasury to fund water and sewerage treatment works in the face of competing cases being made to the Chancellor for better roads, hospitals and other politically popular priorities. It was a very difficult task.

The 2013 regulations, which the Government are rightly seeking to extend through a release of the sunset clause, relate back to those days and the implementation of Part 2A of the Water Industry Act 1991 in relation to water and sewerage undertakers in England. Now, with the water industry in the private sector, it is right that the Secretary of State should seek and gain support from Parliament to continue the 2013 regulations, ensuring that infrastructure providers work within the proven framework that now exists. The delivery of large, complex projects under the current arrangements needs to work well, and it does. The infrastructure provider is well regulated by Ofwat to finance and deliver such contracts.

In the case of London, we have the first: we have the pioneering and far-sighted genius of Sir Joseph Bazalgette back in the 19th century to thank. His foresight enabled London, with a population confronted by reeking, unhealthy open sewers, to be transformed by a remarkable civil engineering project which projected scale into his design work on the diameter of the sewers. He worked on the basis of the densest population and what has best been described as,

"the most generous allowance of per capita sewage production",

before coming up with the diameter of pipe needed. Apocryphally, and probably literally, he added:

"Well, we are only going to do this once and there is always the unforeseen"—

and he doubled the diameter to be used. His genius allowed London to cater for the subsequent increase in population density, with the introduction of office tower blocks, when with the original, smaller pipe diameter would have overflowed in the 1960s, rather than coping until the present day.

However, investment is now needed and has come in the form of the only project currently to meet the criteria of the 2013 regulations: the Thames tideway tunnel. My noble friend the Minister has made it clear

that the regulations have created a parallel regulatory regime to help financially de-risk the Thames tideway tunnel project. This is a project of which Bazalgette would have been proud. It will capture, store and convey almost all the raw sewage and rainwater that currently overflow into the River Thames. The Thames and London will be the cleaner for it. Bazalgette Tunnel Limited, which carries his name, is the infrastructure provider. On completion, there will be a 16 mile-long tunnel running mostly under the tidal section of the River Thames.

Does my noble friend the Minister know what effect the Covid-19 pandemic has had on the project's timing and construction costs, which were nearly £5 billion? In recognising that this is the only project which is covered by the regulations, I congratulate Defra officials on delivering a framework which has kept the cost of procuring the tunnel as low as possible, with remarkably little evidence to date of the cost escalation so common in other infrastructure projects. In doing so, the department has also provided a dispute resolution framework and shown a sensitivity to community disturbance in a usually overcrowded city which to date has been commendable.

4.21 pm

The Earl of Caithness (Con) [V]: My Lords, I, too, congratulate my noble friend Lord Goldsmith on his position and his promotion to the upper House. This is the first time I have been able to take part in a debate which he has been answering. Like my noble friend Lord Moynihan, I declare an interest as I, too, was heavily involved in water privatisation as Minister for Water back in the 1980s when it happened. I congratulate my noble friend on introducing this SI. He covered it very comprehensively, which will save a lot of questions. It is interesting to note that the post-implementation review was very clear that this statutory instrument should not have a sunset clause but should continue, so I am glad that my noble friend has not reinstituted a sunset clause for seven years' time but has got rid of it altogether.

My noble friend talked about future projects. Before I come on to them, I want to ask about leaks. Does he really think that a 50% reduction in leaks by 2050 is good enough? My noble friend Lord Moynihan and I recall that leaks were a problem back in the 1980s; they are a problem now and it will be nearly 70 years before the water authorities get a grip on this problem. Is there nothing that can be done to speed up that part of their work?

I turn to future projects. My noble friend the Minister mentioned two reservoirs in particular. When I was a land agent, I was very involved in the Severn Trent water scheme in the Midlands close to Lichfield. I was struck then that more could have been done for nature, and I have thought about that a lot since, particularly with the recent focus on biodiversity, nature and the environment. Is there anything that Ofwat or my noble friend can do to ensure that when these reservoirs are built, if they are built, more account is taken of nature, with the schemes being adapted so there is more natural use of water and sewage disposal rather than using infrastructure? It would be much kinder for the environment and better for nature. There are great opportunities for un-straightening bits of river that were straightened some time ago, building water meadows and flood plains, and planting trees by riverbanks. If those things could be included in the schemes, even though the water authorities might not want them, it would be very beneficial for the environment and for the cost-benefit of the schemes.

4.24 pm

The Earl of Erroll (CB) [V]: My Lords, there are various points I thought I would make, but other speakers have already made them much more competently that I would, so all I want to say is that I think the same way as the noble Baroness, Lady Scott of Needham Market, does about why there is no new sunset clause. I can see that the original regulations are probably so workable that I now understand that there is probably no need for one. My gut feeling is usually that if Parliament has decided that a sunset clause is needed, one should continue it.

I notice that a lot of the thoughts around the original regulations were about resilience and the need for conservation projects. It is essential to use water more efficiently. Smart metering keeps being mentioned. Looking at the experience of the electricity industry, I wonder whether smart meters have the desired effect. Meters do because you can see the overall consumption, particularly when bills hit people, but rather than spending an awful lot of money on technology, such as smart meters which are likely to go wrong or be outdated, we would do better to spend the money on upgrading our broadband provision so that you can hook anything into it.

The Thames tideway tunnel is a wonderful example of how to do things right, how to think ahead and how to carry forward the prescient thinking of Bazalgette all those years ago. I now entirely agree with these regulations.

4.26 pm

Lord Blencathra (Con) [V]: My Lords, I, too, thank my noble friend the Minister for his detailed but concise and eloquent introduction to these regulations and congratulate him on his excellent promotion to this House, where he is advancing our green and biodiversity agenda, which is very important to all of us.

I am not opposed to this these regulations. However, I have a couple of queries. First, the post-implementation review states that the regulations

"were introduced to help the delivery of necessary, large or complex water or sewerage infrastructure projects within England. They were designed to help contain, minimise and isolate the risks associated with the delivery of these projects from customers, undertakers and UK taxpayers, while also providing value for money and keeping customer bills as low as possible."

So far, so good, but only one project has been approved: the Thames tideway tunnel. My noble friend the Minister said that four others may be in the pipeline, but what is the timescale for them? If they happen, I strongly support my noble friend Lord Caithness, who urged that these reservoirs must do a great deal for nature.

The post-implementation review states:

"This legislation has facilitated one infrastructure project to date which is due for completion in 2023. As such evidence of outcomes remains limited."

[Lord Blencathra]
In the absence of real evidence, the Government asked stakeholders for their opinion. Is the that the right way to do it? Everyone agrees that this legislation should be changed, but should we be changing legislation based not on solid evidence but on the opinion of stakeholders?

My second point may be more controversial and I understand if my noble friend the Minister cannot or does not want to respond to it. Thames Water is now owned by a holding group called Kemble Water Holdings, consisting mainly of Macquarie bank and eight other private equity holders. They have done the usual private equity thing. They have loaded the business with £10 billion of debt so that they pay no UK corporation tax; have ripped off water payers by taking out £1.2 billion in dividends over the past few years; and have had to pay record fines for leakage. Okay, there is a temporary freeze on dividend payouts at the moment, but that is no big deal considering the way they have plundered the business over the past 14 years. One justification in the PIR is that the Thames tideway tunnel has been able to borrow at very low interest rates, but any fool has been able to do that for the past few years. Despite the lower than expected costs, the users of Thames Water will still have to pay for this big sewerage pipeline. Does my noble friend the Minister think that that is fair considering the amount of profits Macquarie and others have taken out of the company?

My final point is this. If the first Bazalgette were starting out now, he would certainly separate sewage from rainwater run-off, but that is difficult to re-engineer entirely now, so the tideway tunnel is the solution. However, does my noble friend agree that all new buildings and car parks must not put rainwater into the sewerage system but use seepage systems instead? Does he agree that we need more permeable surfaces, underground soakaways, rain gardens, attenuation cells and all the other technologies that let rainwater soak into the soil rather than flood the sewerage system?

4.31 pm

Lord Naseby (Con) [V]: My Lords, I too welcome the Minister to the Dispatch Box. In my judgment, this is a very important subject. I happened to sit on the Joint Committee on Statutory Instruments and I noticed, on reading the regulations and the material behind them, that it was thought that, while a vital instrument, there was no need for it to be looked at it in any detail by the Joint Committee, shared by the Commons and the Lords. I am a little surprised at that, considering the scale of what we have been talking about this afternoon, but I shall move on.

Secondly, the point was made that there may be instances of border challenges, specifically with Severn Trent in relation to Wales. I notice that the Minister did not say anything about the project involving the River Severn. I am not sure where it rises. Nevertheless, can we be reassured that, although it might not be seen by the water companies or Ofwat as important to consult our neighbours, there has been, and will always be, consultation with the devolved Parliaments?

Frankly, I am not in favour of removing sunset clauses. I had the privilege of sitting on the Public Accounts Committee for 12 years. It seems to me that when it comes to public expenditure, it is very important to have a point in time to review a situation. I am not suggesting that seven years is adequate for the scale of the infrastructure projects we have noted this afternoon. Nevertheless, I believe, and a number of my colleagues who have sat on the Public Accounts Committee would agree, that the normal time to review is quite often after 10 years. Maybe 12 years would be more appropriate —that is a matter of judgment. But I am very surprised that there is not a sunset clause and, while the tideway project is going brilliantly, there may be one that goes, or seems to go, badly wrong. A looming sunset clause is a wonderful means of focusing people's attention.

I have two particular observations, one on reservoirs. I live in Bedfordshire, and I was a little involved in Grafham Water. My former constituency was Northampton, and I was particularly involved there with the Rutland reservoir. I am sorry to say to my colleagues who believe that the water companies do not appear to be taking nature seriously that I think the job done at Rutland was first class. Certainly, the only one I can comment on in detail is Rutland Water, and there is a huge amount being done there in relation to the impact on nature. I believe that is unjustified in relation to that project, and I support the new reservoir in Lincolnshire that is coming along.

Secondly, I question metering. I have had a water meter for years, simply because I believe it is a better way of controlling my expenditure, rather than having it done on the rateable value. Could the Minister bring noble Lords up to date on what percentage of households currently have a water meter?

Finally, for this Minister in particular, I am slightly surprised that there was no mention of the impact of climate change. All of us who are in the countryside at the moment have had incredible weather in May, and it looks as if it will return in June. We all expect climate change to have an impact, particularly on water consumption, so I am a little surprised that there has been no comment on that yet.

Nevertheless, I wish this renewal all speed, and hope very much that we might have a few answers on the questions raised, if not this afternoon then in writing afterwards.

4.35 pm

Lord Mann (Non-Afl): My Lords, I too welcome the noble Lord, Lord Goldsmith, to his position. Having been in another place for the last seven years, he cannot be held to account for anything that has gone wrong. But I am surprised that there appear to be no value-for-money reports on the one project that has come forward to demonstrate that these regulations have been successful. That appears rather lacking, or certainly not visible. I trust that there is one, and that it could be made more publicly available.

The consultation and debate around the 2013 regulations seem to concentrate an awful lot on the powers and the potential for Ofwat to refer disputes over price determinations to the Competition and Markets Authority. The Minister did not mention any such referrals—have there been any? That appeared a key facet of the argument for bringing in these regulations. My biggest concern is whether they are doing the job they are meant to be doing.

The Palace of Westminster is a good example of a building underneath which sits a sewerage system that is defunct, not fit for purpose and extraordinarily expensive to put right. One could take London, Manchester and many other big cities, particularly those that expanded rapidly in the Victorian era, underneath which we have sewerage systems not fit for purpose. Yet no proposals at all have come forward for projects impacting this critical issue. That is not a reason to reject the Minister's proposals, but it seems to me that it is not succeeding in terms of those major projects. The finance is not coming forward, so a rethink about where it will come from is a top priority. Does the Minister not agree with me, that he should tease this out from officials, from industry and from wherever else he is capable of doing so?

Every time it floods, one sees how the seepage of the system implodes into devastation for communities. Old systems, built 100 or 150 years ago, were added to by new developments—major tower blocks and new estates—all over the country. These were tacked on because nobody at any level, not least in local government, was at all concerned about what was underground and could not be seen—until it flooded and until the sewage, rainwater and surface water combined, causing devastating damage. This has to be a top priority.

These regulations relate to major projects—for example, in Manchester and London, where underground work will be extensive—and to more modest projects in towns or villages, where expansion has taken place. In some places, the underground sewerage systems are not fit for purpose but more consumers have been tapped into them, often willy-nilly. I hope that, in responding, the Minister can say a word about his wider vision of his remit, perhaps going beyond this measure. On that basis, I have no objection to his proposal.

The Deputy Speaker (Lord Alderdice) (LD): I call the next speaker on the list, the noble Baroness, Lady McIntosh of Pickering. There is a problem with the noble Baroness unmuting her microphone. I am afraid that we are not hearing her, so we will have to move on to the next speaker on the list. I call the noble Baroness, Lady Altmann. We cannot hear her either, so I call the next speaker, the noble Baroness, Lady Bakewell. We are unable to hear her either.

4.42 pm

Baroness Bakewell of Hardington Mandeville (LD) [V]: I am here. Can noble Lords hear me?

The Deputy Speaker: Please continue.

Baroness Bakewell of Hardington Mandeville [V]: Thank you. My Lords, I too am grateful to the Minister for his extensive introduction to this statutory instrument. It is a great pity that we have not been able to hear from the noble Baronesses, Lady McIntosh and Lady Altmann.

I feel certain that in 2013, when this instrument was first introduced and approved, it was envisaged that all relevant infrastructure projects would have been completed by the time we reached the sunset clause date. However, as we all know, an awful lot has gone on in the intervening years and infrastructure projects are not the fastest to be delivered.

Like my noble friend Lady Scott of Needham Market and the noble Earl, Lord Erroll, I would like to know why the sunset clause was introduced in the first place. As the Minister said, the SI introduced in 2013 was due to expire after seven years, on 27 June this year, with a five-year review period. It was to operate across the English/Welsh border, with customers in Wales being provided for by an English undertaker. I accept entirely that the devolved Administrations are able to deal with their own water infrastructure projects, but that was not always the case. There are large reservoirs in Wales—Lake Vyrnwy for one—which provide water to English authorities, and I know that Birmingham is grateful to Wales for providing its water.

In 2013, large and complex water projects were overseen by Ofwat, and that will be the case be in the future. I note that in future there will be no sunset clause, and I ask the Minister whether that is wise. As others have said, during the period since 2013, only one large and complex high-risk water or sewerage infrastructure project has been delivered—the Thames tideway tunnel project, referred to by the noble Lord, Lord Adonis—and this has not been without its problems.

As the Minister stated, during the five-year review in 2018, eight stakeholders were consulted and five responded: Ofwat, Thames Water, Bazalgette Tunnel Limited, BTL investors and the Consumer Council for Water. As a result of their positive responses, Defra decided to extend the 2013 regulations. The five-year review found that the legislation was effective and should continue. The protection of the capital investment of the undertakers has been seen to be effective and has reduced risk and costs, as mentioned by the noble Lord, Lord Moynihan.

The March 2020 consultation again included Ofwat, Thomas Water, BTL and the Consumer Council for Water, and, in addition, Water UK, the Environment Agency and the Drinking Water Inspectorate, plus sewerage and water companies informed via Water UK. This time, four responded: Ofwat, the Environment Agency, Thames Water and Affinity Water.

Future decisions will be made on a case-by-case basis. I am grateful to the Minister for listing the locations of the four major schemes likely to be considered in the coming years under this SI. That is extremely helpful, but it would also be helpful to know the timeframe for each scheme. Is he able to give us that information?

Water conservation is extremely important and reducing leakages is key to it. Like the noble Earl, Lord Caithness, I am not sure that a 50% target for leakages is sufficiently ambitious. Likewise, I am unclear whether water meters help to save water. I am not convinced that the one I have does that for me. I agree with the noble Lord, Lord Blencathra, that in future schemes rainwater run-off should be separated from sewerage and that better use should be made of this valuable resource. Avoiding some of the unpleasant aspects of the horrendous flooding that many areas have experienced is absolutely key.

Given that the last five-year review took place in 2018, when will the next review be? Will it be in 2023 or will it be five years from today's date? Given that the SI consists of two lines, I congratulate the Minister

[Baroness Bakewell of Hardington Mandeville] and all speakers on their comments in this debate—I have been impressed by the level of detail. I am happy to support the removal of the sunset clause and to support this SI. I look forward to the Minister's comments.

4.47 pm

Baroness Jones of Whitchurch (Lab) [V]: My Lords, I thank the Minister for his introduction to these amended regulations, and I thank all noble Lords who have spoken.

As the Minister said, this is a fairly straightforward change, removing the sunset clause from the original regulations agreed in 2013. We should welcome the approach taken back then, as it seems a model of good government, and the inclusion of the sunset clause has given us the opportunity to debate the issues today. At the time, it was an innovative approach to funding large infrastructure projects. It provided for a timely review and an end date, which would force us to consider whether the approach was working. That is exactly what we are doing today, and we should not take this responsibility lightly. I agree with noble Lords who queried whether a further sunset clause might be appropriate. I shall be interested to hear the answer to the question from the noble Baroness, Lady Bakewell, about whether there will be further reviews. We do not want the response to this to be open-ended when the sunset clause comes to an end.

Clearly, the fact that other funding options were considered at the time is an indication that the Government saw this as an experimental approach which might not be successful. However, the one model that we have before us today—the Thames tideway tunnel project—seems to have made a success of the powers enabled by the regulations. As noble Lords have said, this is a huge and impressive engineering project. It has generated thousands of jobs and is bringing significant environmental benefits by protecting the Thames from sewage overflows. Like many noble Lords, I have had a chance to visit the construction site along the Thames and have been hugely impressed by it. I am very pleased to report that it appears to be on target for completion by 2024 and largely on budget.

In this case, the creation of an infrastructure provider separate from Thames Water, which was allocated to Bazalgette Tunnel Ltd after a competitive process, seems to have worked well. Of course, there continue to be risks with both the funding and timescale. Can the Minister explain what continued monitoring and regulation of the project will be in place to ensure that customers will be protected from footing the bill if the private funding falls short in future? He will be all too aware that the privatised water industry does not have a good record of putting customers' interests first. Recently, we have seen customers left without water for days and trillions of litres of water lost through leakages, while those at the very top have been rewarding themselves with huge bonuses. It remains important that we have robust oversight of multi-million-pound projects such as this.

In addition, the post-implementation review, which took place in 2018, mainly received responses from stakeholders with a financial interest in the project. Not surprisingly, they said that everything was going really well. However, as noble Lords have pointed out, the Consumer Council for Water's response was more circumspect. It said that the arrangements for

"the handling of customer complaints and queries presented greater challenges … a significant amount of proactive communications was required to educate and inform customers … This activity … was not originally accurately priced".

Meanwhile, Ofwat reported that the "initial delivery" of the regulatory

"framework was significantly more complex and time consuming than originally anticipated".

What steps have now been put in place to ensure that these concerns are addressed and not replicated in future projects that would operate under these regulations?

Finally, the removal of the sunset clause opens the door to other complex water infrastructure projects to be funded via this route. So far, it has applied only to Thames tideway, but the Explanatory Notes make reference to a number of new high-risk infrastructure projects that might benefit from these regulations in future. I am grateful to the Minister for his outlining the four projects being considered under that reference. How will the Government ensure that this funding model is appropriate for each of those four new projects? How will they ensure that lessons are learned from the Thames tideway experience so that a more responsive and accountable system of oversight and delivery is applied in future?

I look forward to the Minister's response to my noble friend Lord Adonis's question on whether a future national natural water network is being considered. That certainly seems a hugely sensible option for a country that suffers both flooding and drought. I also agree very much with the point made by the noble Lord, Lord Blencathra, about separating rainwater from sewerage. Again, I would be grateful if the Minister could address that point. Other than that, I welcome the proposals and look forward to his response.

The Deputy Speaker: Unfortunately, the noble Baroness, Lady McIntosh of Pickering, ran into a technical problem earlier. I think that we have time so I would like to see whether we can bring her in now.

4.54 pm

Baroness McIntosh of Pickering (Con) [V]: My Lords, I am most grateful. I welcome the regulations and congratulate my noble friend the Minister both on introducing them and on the wide and full consultation on their implementation.

I will focus my brief remarks on my noble friend's references to new reservoirs and water transfer. In particular, I draw his attention to the work and investment of Yorkshire Water. It set up and invested heavily in a regional grid, enabling water to be transferred into one of the largest areas of water supply, and from areas of plenty to areas that are under more stress. Perhaps that could be rolled out across regions in future. I also draw his attention to the Slowing the Flow at Pickering project, which includes not just a reservoir but other soft natural water defences and which could also be used as a pilot scheme elsewhere.

I was particularly taken by my noble friend's remarks referring to building regulations and labelling, which do not require primary legislation. I firmly support

him in that regard—that is, being able to roll out more, with a particular ability to make houses more resilient to floods, encourage more water metering and reduce leakage.

I also draw my noble friend's attention to the Government's current review. The current Defra and Environment Agency guidance refers to reservoir owner and operator requirements, which were updated on 15 April this year. It states:

"You must meet certain requirements if you own or operate a reservoir, or intend to build one."

Currently, there are different requirements for large reservoirs above ground level of more than 25,000 cubic metres and those holding less. Further, in a letter from Parliamentary Under-Secretary Rebecca Pow in response to a colleague on 1 May, the Government asked the expert Professor Balmforth to lead a second-stage review with a wider assessment of reservoirs, including their safety legislation and its implementation. This begs the question—I hope that my noble friend will be able to answer it this afternoon as I gave him prior notice of it—of how water storage will be regulated under the environmental land management scheme, which pays and rewards farmers and landowners for possibly storing water on their land. Currently, the Flood and Water Management Act 2010 allows for this monitoring and control to be reduced to reservoirs of 10,000 cubic metres or more. I urge my noble friend not to implement that part of the Act for the moment to ensure that more small-scale reservoirs can be built—that is, reservoirs not on the scale of the Thames tideway tunnel before the House today but smaller-scale ones that will prevent downstream communities flooding.

I, for one, welcome the fact that the sunset clause is being removed in the instrument before us. I wish my noble friend's Motion speedy passage.

4.57 pm

Lord Goldsmith of Richmond Park [V]: I thank noble Lords for their points. They made a lot of them; I will try my hardest to answer all the key questions. I apologise in advance if I am not able to do so.

The noble Lord, Lord Adonis, made a number of points. He asked for an update on the Thames tideway tunnel. It is on track. It is currently in construction and will be operational in 2023, and the project as a whole is due for completion in 2024. He also asked about a number of other issues, which were echoed by other noble Lords, including the impact of Covid-19 on the tunnel. I am afraid that the only answer I can provide at the moment is that we are still assessing any possible impact; I cannot go further at this point.

The noble Lord asked about the reservoir at Abingdon. The Government recognise the need for more water resources in the south-east, but at this stage we are not able and it would not be appropriate for us to support a specific recommendation. We are waiting for further evidence on the most appropriate and best solution to be drawn together by Thames Water, Affinity Water and the wider water resources in the south-east group. We will come to that shortly.

The noble Lord also asked why reference was not made to the National Infrastructure Commission's 2018 report, *Preparing for a Drier Future*. I apologise if I did not mention it. The report outlined clearly the need for new water supply infrastructure. It estimates that a combination of changing rainfall patterns, brought about by climate change, and an increased population—while leaving enough water to protect and sustain the environment—will require an additional 4,000 megalitres a day for longer-term drought resilience. It says that, without action, many parts of England will face water shortages by 2050, especially in the drier south and east. We as a Government are committed to a dual approach of reducing demand and increasing supply. However, even if we are successful in reducing demand significantly, some new infrastructure will still be needed.

The noble Baroness, Lady Scott, asked why the sunset clause was introduced, and the same question was asked by my noble friend Lord Naseby. The answer is simply that it coincided with a moment of government where there was a renewed effort to cut unnecessary regulations and try to prevent the pile-up of future unnecessary regulations. A number of sunset clauses was used at the time for that reason.

The noble Baroness also asked what happens to water quality standards once EU legislation no longer applies. We are committed to future environmental standards that either equal or improve on those of the EU. The European Union (Withdrawal) Act 2018 ensures that the body of existing EU law, including the water framework directive regulations, continue to take effect in English law after the transition period.

A number of noble Lords put questions to me about timescales. The evidence in the case of the four projects that I mentioned in my introductory remarks is still being worked up by the water companies in the RAPID framework established by Ofwat and decisions on details will be taken over the next few years, so I am not in a position to set out a complete timetable. However, further details can be found in water companies' water resource management plans.

The noble Earl, Lord Erroll, raised the issue of smart metering, which was also raised by the noble Baroness, Lady Bakewell of Hardington Mandeville. Smart metering has the advantage of being able to detect leaks, which is hugely important, as a number of noble Lords said. It also has the advantages of energy reduction, demand forecasting, enhanced awareness campaigns, the promotion of efficient appliances and performance indicators. Thames Water announced last week that smart metering helped to achieve a 15% reduction in leaks last year.

My noble friend Lord Caithness also raised the issue of leaks, as did a number of other noble Lords. The Government are completely committed to reducing demand for water; we know that we have to do that. We have challenged the water companies to halve leaks from distribution systems by 2015. He asked whether that is ambitious enough, and I can only say that I hope we will be able to go much further.

There is no doubt that we need to use less water, in addition to dealing with leaks. We undertook a consultation on measures to reduce personal water consumption, including measures such as amended building regulations, water efficiency labelling and metering. As part of the latest price review, PR19, Ofwat is incentivising all water companies to help customers to reduce their personal consumption.

[Lord Goldsmith of Richmond Park]

A number of noble Lords raised the issue of nature-based solutions to the problems that we are discussing. That is high up in the Government's and my own agenda. We already expect water companies to consider them when evaluating a range of solutions to meet their water resource needs. Nature-based solutions can be enormously effective in reducing run-off and increasing infiltration. They can slow the flow of surface water in the wet season and help to prevent flooding, and can help to reduce the impacts of flooding. They can also improve the ability of land to hold on to water for use during the drier seasons. That is why the Government are keen to support tree planting along watercourses where appropriate. Tree planting helps to regulate water flow and reduce flood risk as well as stabilising river banks and reducing pollutants that might otherwise drain into watercourses. This is a big part of the Government's flood strategy, and noble Lords will be hearing more about that as the Government publish it in due course.

My noble friend Lord Blencathra raised a number of issues. He asked whether, given that only one project has been ascribed to this regulation, that means the evidence is limited. He is of course right: on the basis of one project, the evidence is limited. However, we sought the views of those already operating under the regulations, including the regulator, who are best placed to advise whether, and the extent to which, the 2013 regulations have achieved their aims. The view across the board was that there are many tangible benefits, including contributing to lower water bills for customers.

My noble friend claimed that Thames Water is now owned by a holding group called Kemble Water Holdings, consisting of mainly Macquarie Bank and eight other private equity holders. I want to put on the record that Macquarie sold its stake in 2017. The largest shareholder owner now is OMERS, a pension fund for local government employees in Canada.

My noble friend also raised the hugely important point about building regulations, particularly around new buildings and car parks, and the issue of rainwater rushing off into sewerage systems. I strongly agree with him about the importance of sustainable drainage systems; as well as reducing the risk of surface water flooding, such systems can deliver water quality, biodiversity and amenity benefits. So we have plenty of benefits from such a scheme, and planning policy makes sure that they are provided in all new major developments unless there is very clear evidence that that would be inappropriate.

I am conscious that I may run out of time so I shall try to speed up a bit—apologies. My noble friend Lord Naseby referred to the devolved Administrations. Water is a devolved matter and these regulations will not change that. It is possible that some of the water projects that I have described and which will be specified under these regulations might impact on Wales, but we are told that any impact is likely to be very limited and obviously the Welsh Government will be consulted as appropriate. There is a very good relationship between the UK and Welsh Governments on this issue, and that is underpinned by a memorandum of understanding between Ministers.

Briefly, in response to the noble Lord, Lord Mann, the Thames tideway tunnel has not been referred to the CMA. However, in the current price review four companies have appealed to the CMA, showing Ofwat's push to ensure value for money.

My noble friend Lady McIntosh raised a number of issues. The first related to rewarding farmers for public good. That is the very heart and essence of the Government's environmental land management scheme, which will replace the common agricultural policy. It will specifically pay farmers, foresters and other land managers public money for providing public goods through the management of land and water.

A number of other issues were raised. The noble Baroness, Lady Jones of Whitchurch, referred to privatisation. The Government's view, although no doubt she and I will disagree, continues to be that we believe that the privatisation model, so long as it is underpinned by strong independent economic regulation, provides multiple benefits. Today privatisation has unlocked around £150 billion of investment, the equivalent to around £5 billion annually—investment that is almost double the pre-privatisation level. Privatisation has delivered a range of benefits to customers and the environment, including the fact that the UK now has world-class drinking water and consumers are five times less likely to suffer from interruptions to their supply, eight times less likely to suffer from sewer flooding and 100 times less likely to have low pressure. Two-thirds of our beaches are classed as excellent compared to just one-third pre-privatisation. Customer satisfaction levels have risen to around 90%.

There is of course much more to be done, and this Government remain absolutely committed to doing so. I apologise to noble Lords if I have not answered all their questions but I will do so in follow-up letters as appropriate.

Motion agreed.

5.08 pm

Sitting suspended.

Arrangement of Business

Announcement

5.45 pm

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, a limited number of Members are here in the Chamber, respecting social distancing, and if the capacity of the Chamber is exceeded, I will immediately adjourn the House. Other Members will participate remotely, but all Members will be treated equally, wherever they are. For Members participating remotely, microphones will unmute shortly before they are to speak—please accept any on-screen prompt to unmute—and muted after each speech. I ask noble Lords to be patient if there are any short delays as we switch between physical and remote participants. I remind the House that our normal courtesies in debate still very much apply in this new hybrid way of working.

We now come to the first Motion in the name of the noble and learned Lord, Lord Keen of Elie. The time limit is one and a half hours.

Crown Court (Recording and Broadcasting) Order 2020

Motion to Approve

5.46 pm

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

That the draft Order laid before the House on 16 January be approved.

Relevant document: 3rd Report from the Secondary Legislation Scrutiny Committee

The Advocate-General for Scotland (Lord Keen of Elie) (Con) [V]: My Lords, these draft orders would remove current prohibitions on the recording and broadcasting of certain court proceedings. In the Crown Court, this would enable the broadcast of judges' sentencing remarks and in the Court of Appeal would make permissible the broadcast of judgments and advocates' arguments in selected family proceedings. Currently, the recording and broadcasting of court proceedings in England and Wales is prohibited by Section 41 of the Criminal Justice Act 1925 and Section 9 of the Contempt of Court Act 1981.

Section 32 of the Crime and Courts Act 2013 enables the Lord Chancellor, with the agreement of the Lord Chief Justice, to make an order specifying circumstances in which the prohibitions on recording and broadcasting may be lifted. This has been done to allow recording and broadcasting of proceedings in the Civil and Criminal Divisions of the Court of Appeal, which has proceeded successfully since 2013. Section 32 does not apply to proceedings in the Supreme Court, which has its own provision allowing for broadcasting of its proceedings.

The two draft orders vary in effect and scope but share the common intent of increasing transparency, public engagement and understanding about what happens in courts. Very few people have the time or opportunity to attend and observe this in person. Increasingly, people rely on television and the internet for access to news and current affairs. It is right to respond to these changes in technology and society and allow cameras into our courts. There is evidence to suggest that the more informed people are about the justice system, the more confidence they will have in it.

I will briefly summarise the intended purpose and impact of the two orders before your Lordships today. The Crown Court (Recording and Broadcasting) Order will lift current restrictions to the extent necessary to enable recordings to be made where remarks made in passing sentence are delivered in the Crown Court by a High Court judge or a senior circuit judge. Recordings will be made by broadcasters only with written permission to do so from the Lord Chancellor.

Parliament first considered the proposal to extend broadcasting to the Crown Court in 2016 during debates on the Crown Court (Recording and Broadcasting) Order, which lifted the prohibition on recording, to enable a not-for-broadcast test in eight Crown Courts across England and Wales. This test gave us the opportunity to consider the practical implications of filming in Crown Courts. We have taken into account the concerns raised by both Houses when considering the results of that test. Our learning from this, and from some years filming in the Court of Appeal, has informed the drafting of the current order and the safeguards contained within it.

We have listened to concerns regarding the potential impact of court broadcasting on victims and witnesses, and indeed on the dignity and integrity of our courts. The welfare of victims and witnesses is of paramount importance, and the order does not permit the filming of victims or witnesses, or of any other person present in court, including staff, defendants, jurors and advocates.

Broadcasters must make an application to film a case, and the trial judge has full discretion to allow or deny the application. Filming will not be permitted if a case is considered unsuitable for broadcast—for example, if it is particularly sensitive in some way—and it will not be possible to appeal a judge's decision to allow or refuse filming. Existing reporting restrictions will continue to apply, and the court will be able to stop or suspend filming in the interests of justice, or to prevent prejudice to any person. Any breach of the terms of the order could amount to contempt of court.

We have given much consideration to concerns that filming might impact on the dignity of the courts and the integrity of the trial process. The decision to limit filming to sentencing remarks has been done with this in mind, and we have introduced a number of other safeguards in the order.

Only those media parties granted permission in writing from the Lord Chancellor will be able to record proceedings, and the Government will retain copyright of the film footage. The order makes clear that the contents of any broadcast must present sentencing remarks in a fair and accurate way. The complete footage of any broadcast will be easily accessible to the public online, so that they can see and hear the judge's remarks in full and in context.

There will be only one camera, and one experienced cameraman, present in the court, to minimise disruption. In most cases, sentencing remarks will be filmed and the edited footage broadcast later the same day. Live broadcasts are likely to be very limited and only in cases of significant public interest. There will be a time delay on live broadcasts, to ensure that all necessary edits can be made to the footage before it is released to the public. The trial judge will have the power to refuse an application to broadcast live, if he or she considers that this would be inappropriate.

The second draft order before noble Lords today amends the Court of Appeal (Recording and Broadcasting) Order 2013, which sets out the conditions under which the visual and sound recording, and broadcasting, of proceedings in the Court of Appeal may take place. The 2013 order specifically prohibited the recording and broadcasting of Court of Appeal proceedings where the appeal followed from a decision in family proceedings. The draft amending order repeals that prohibition, with the specific purpose of bringing family proceedings within the scope of the current project to test the live streaming of selected Court of Appeal civil proceedings.

[Lord Keen of Elie]

Family proceedings have long faced criticism in Parliament, and indeed in the media, for being insufficiently transparent. Historically, family proceedings have been more closed than those in the criminal and civil justice systems, with cases usually being heard in private. However, both the Government and the judiciary recognise the need for greater transparency, while at the same time protecting the privacy of often very vulnerable children and families. A careful balance must continue to be struck. Steps have been taken, and continue to be taken, to make family proceedings more open. This instrument should be seen in this wider context, as well as that of making the Court of Appeal, and the courts in general, more accessible to the public.

Repealing the prohibition on the recording and broadcasting of family proceedings of the Court of Appeal will allow selected cases to be included within the existing live streaming of judgments and advocates' arguments in appeal cases. This pilot, initiated by the Master of the Rolls and launched in November 2018, has so far tested the live streaming of selected civil proceedings in the Court of Appeal. These have been broadcast through a dedicated YouTube channel, with a link placed on the judiciary website.

The pilot has provided a successful test for the broadcasting of appeal proceedings. No technical issues have been identified with the live feed to date, and no objections have been raised by the parties involved in the hearings selected for live streaming. The pilot includes a delay mechanism and enables the judge to cut the live stream immediately to prevent the inappropriate broadcast of sensitive matters. To date, judges have not needed to use this facility.

There is currently no intention to broadcast family proceedings in the Court of Appeal, other than as part of the ongoing live streaming pilot. However, it is anticipated that if the pilot has a successful outcome, it should become standard practice for selected family proceedings in the Court of Appeal.

The confidentiality and sensitivity with which family proceedings are dealt with remains of paramount importance. It is important to note that family proceedings in the Court of Appeal are already open to the public, who can attend in person, unless the court itself decides otherwise.

The Crime and Courts Act 2013 allows discretion for the judge in any case to prevent broadcasting to protect the interests of justice and prevent undue prejudice to anyone involved. The broadcast of individual appeals will require the agreement of a judge. Judges are always able to stop live streaming at any time, either before or during the hearing, should they consider it necessary. Parties are also given the opportunity to object to having the hearing broadcast. These safeguards will apply to family proceedings, as they do to other proceedings already within the scope of the 2013 order.

This instrument will only allow the broadcasting of judgments and advocates' arguments in family cases in the Court of Appeal. Appeal cases do not commonly involve family members or other witnesses giving evidence in person, except when they are representing themselves, and safeguards are in place to protect their interests. These have been found to work well already in the broadcasting of civil proceedings.

The Government are committed to ensuring that the justice system is open and transparent. Public understanding of how the courts work, and how judicial decisions are made, is important if we are to maintain confidence in the system. I believe that both orders before the House today will further these aims. They will give the public access to and insight into court decisions, while continuing to protect the integrity of the court and the rights of victims and defendants. I commend these instruments to the House and beg to move.

5.57 pm

Lord Morris of Aberavon (Lab) [V]: My Lords, I am grateful to the noble and learned Lord for his explanation of the orders. I have to wrestle with two competing influences in dealing with issues of this kind: on the one hand, the need for justice to be seen to be done, and, on the other, the danger of outside influences such as sensationalism influencing court proceedings. I regret that I first opposed, and then supported, the broadcasting of the House of Commons. Time has proved that I was right the second time round.

Other than when I was a Minister—under three Prime Ministers—I have spent all my professional life practising in the criminal courts. I venture to think that I have met near as many alleged murders, rapists and fraudsters as most in your Lordships' House. The first order is very limited, applying only to senior judges in the Crown Court, and would not have applied to a part-time recorder like myself sitting as a Crown Court judge. So we are only putting our toes in the water, so far as the criminal courts, and I commend this approach.

Sentencing remarks can unexpectedly become very sensational. I suspect that a consequence of the order will be that judges will in future exercise extra care in their sentencing remarks. That would be for the good. The only publicity I had, in many years sitting as a judge, was around my sentencing remarks in a rare triple bigamy case. The offences had taken place many years before, but the accused was fairly young. The years had gone by, and he was now happily married, with a wife and children. Every tabloid splashed my sentencing remarks, "Judge tells bigamist: You get on with it". What I meant was that, given the passing of so many years, he should now get on with his settled life. I was much more careful in my other cases after that.

I particularly welcome that the broadcast should not be in breach of any applicable restriction order, which could be of fundamental importance in, I surmise, a small number of cases. The results of a breach of such a restriction can have appalling and costly consequences. On the basis that this is not the thin edge of the wedge, I welcome the order. I suggest, if I may, that, in perhaps two or three years, the Lord Chancellor should report to Parliament on its operation. What should be paramount in our consideration is ensuring that there is no infringement of the right to a fair trial. I am content with the second order.

6 pm

Lord Thomas of Gresford (LD) [V]: My Lords, this significant development is being introduced by statutory instrument without any up-to-date consultation. As the Explanatory Memorandum shows, the Government

rely on a consultation from 2005—15 years ago—to justify its introduction in 2020. That is not proper consultation. Broadcasting has changed since 2005, as have the courts. At a practical level what control will be exercised over the broadcast of sentencing remarks on the internet, and on social media, which was not at all obvious in 2005? Article 10 imposes restrictions on use, but are they enforceable in the current age?

The Explanatory Memorandum makes it clear, as the Minister did a moment ago, that the policy behind this provision is

"to increase transparency in the justice system and public engagement with, and understanding of, what happens in courts."

To confine the broadcasting proceedings to the judge's sentencing remarks seems to do little to achieve those objectives. In a straightforward case, the sentencing remarks may be only very brief. Even in a serious case, they may reflect little of the issues played out in the trial process. In R v Chin-Charles last year, the Lord Chief Justice made it clear that sentencing remarks should be merely a brief explanation of the reasons for sentencing; the issues in the trial should not be rehearsed. The noble and learned Baroness, Lady Hallett, was a party to that judgment. I cannot imagine the public waiting anxiously to be educated at their television sets, or at their laptops and iPads, at the precise moment the judge comes into court to deliver his sentence. Surely providing clips for news programmes must be low on the priorities of a court service desperately requiring money for repairs and refurbishing.

On the issue of cost, in the Court of Appeal project the broadcasters agreed to bear the cost of installing and operating the cameras. Have they agreed to bear the cost of these provisions, both for now and stretching into the future? If not, what is the projected cost? In any event, the time and money spent even in the training of court staff cannot be justified for the limited purpose of "educating the public" or upholding the dignity of the court. There is a lengthy waiting list for trials in the Crown Court and the focus should be on speeding up the trial process.

It used to be said that the pace of a trial was linked to the judge's pen. Today it is more likely to be dictated by his or her ability on the keyboard, but it remains the judge's responsibility to take a full note of the proceedings to assist him in his rulings and to remind the jury in his summing up of the evidence that has been given. If courts are to be fitted up with cameras, why should they not be used for wider purposes—let us get into this century—to record the evidence and demeanour of witnesses, should the jury wish to refresh their memories; to assist counsel in the preparation of argument before the jury; or to take the pressure of note-taking away from the judge? Their use will always be regulated by the judge in the interests of justice.

We have seen in this House, with the detailed and indexed recordings of proceedings on parliamentlive.tv, how quickly the record can be accessed. Like some elderly Members of this House, jurors can be trained to use the system. The coming generations, I fear, will of course require no such training. I remember a time when some jurors were illiterate and could not read the oath. I have to say that the defence rarely objected to their serving on the jury. A *Daily Telegraph* in a prospective juror's pocket was enough to have him off. But today's jurors are frequently faced with documents and photographs online and they deal with them. They are capable of dealing with them. They could deal equally with a filmed record of the proceedings.

My remarks apply equally to the inclusion of family proceedings in the current Court of Appeal arrangements. I suggest that the Minister withdraws these SIs and has a proper consultation in today's terms to consider where they should go, and to encourage broader use of recordings in Crown Court proceedings.

6.05 pm

Lord Garnier (Con) [V]: My Lords, I wholeheartedly support the implementation of these two orders. It is essential that proceedings in our courts should be as open to the public as possible, subject to any overriding public interests, such as the interests of justice generally and in a particular case before the court. While I bear in mind the more cautious and charmingly self-deprecating contributions of the noble and learned Lord, Lord Morris of Aberavon, and the noble Lord, Lord Thomas of Gresford, the restrictions outlined by my noble and learned friend the Advocate-General are, in my mind, proportionate and sensible.

My noble and learned friend and I have appeared as advocates in the Supreme Court, where, as he said, proceedings are recorded and live-streamed—I hope he will agree, to the public benefit. Although not every case is necessarily interesting to the public and some are, frankly, pretty dry, that they can be seen and heard live, or later by people who cannot get to Parliament Square, helps demystify the Supreme Court's procedures and the work of those who take part in appeals as justices, advocates or litigants. It also helps the wider understanding of the law and its development through decisions of the court. I am sure that is true of broadcasts of the Court of Appeal, even if they are not routine.

I have some questions about the Crown Court order, which I sent to my noble and learned friend earlier this afternoon. Regarding that order, can he tell us how long the general permission to record sentencing remarks given by the Lord Chancellor lasts? Will there be a list of people or organisations, or only one designated recording organisation, permitted to record by the Lord Chancellor under the order, whereas those who wish to broadcast what has been recorded will need to apply to the sentencing judge on each occasion? Is the judge's permission to broadcast limited to the particular case in which he or she is the sentencing judge, or can a High Court judge or a resident judge give permission to broadcast the sentencing remarks of another judge sitting at the same Crown Court?

Who may ask for permission to record and broadcast sentencing remarks? Will they have to apply in open court, or can it be done administratively and in writing? Will the broadcaster have to pay either to apply for permission or to broadcast the recorded material? Is broadcasting limited to traditional television or radio broadcasters such as the BBC, ITN or Sky, or may individuals and organisations outside the traditional media—for example, bloggers or people who post on social media—be given permission? Who, if dissatisfied by a decision to give or to refuse permission for a

[LORD GARNIER]
recording to be broadcast, has the right to appeal that decision? Who decides whether a broadcast was fair and accurate, and what is the consequence for the broadcaster if it is not?

Finally, is there a statutory or relevant definition of the phrases "light entertainment" and "satire" in Article 10(2)(c) and (d)? These are terms often easier to recognise than to define, but how will the judge know, when asked for permission to broadcast his or her sentencing remarks, whether they are to be edited in such a way as to invite contempt, ridicule or gentle amusement, or as to encourage academic legal interest or intellectual curiosity?

6.09 pm

Lord Thomas of Cwmgiedd (CB) [V]: I too warmly welcome the proposed orders. They are an important yet incremental step in ensuring that justice is as open as possible. Courts have always sought to do this using modern methods of communication. That is because it is always essential that justice is seen to be done openly, in the interests of not only the defendant but society as a whole, so that everyone can see that justice is being done.

For some time, the judiciary has made available transcripts or notes of sentencing remarks to ensure that they are reported accurately. This has proved very successful in ensuring that what a judge says is accurately reported in the press, but it is right that we now go further than this.

The experience the courts had in the Court of Appeal —both the Criminal Division and the Civil Division—and the Supreme Court has shown that broadcasting is a very important part of open justice. To allay some of the fears expressed by the noble Lord, Lord Thomas of Gresford, and my noble and learned friend Lord Morris of Aberavon, there have been few problems. There have been no real problems with matters being repeated on the internet or social media. The courts have always tried to take into account the views of the parties. Particularly in hearing criminal appeals, they have been anxious to protect the position of the victims, or the family if the victim is deceased.

It is a tribute to our broadcasters that they have shown very real responsibility. The cameraman who used to sit in court and record what happened was always acutely sensitive to what was being said and transmitted. Therefore, bearing in mind the way this is being taken forward, we can be reasonably sure that the problems have been looked into.

It is important that the broadcasting will be restricted to the most important cases. It will therefore be possible for the public to see and hear from the judge's own words what has been said. That is much better than the prosecutor, for example, appearing on the steps and explaining what the judge has said.

I have three more observations about this order. First, it is and has been a very complex process; it had to be piloted to check it works properly. Secondly, there has been consultation. This process has been going on for a considerable period of time at the Bar and among solicitors, the judiciary and the broadcasters. Thirdly, a number of safeguards are in place to try to ensure that everything is done properly and that the system is not abused. It seems we can safely proceed with this incremental step in accordance with the orders.

I will briefly add a word in respect of the Court of Appeal order. I too welcome it, as it extends transparency to family court proceedings. That is always something the judiciary has welcomed when appropriate and suitable.

6.13 pm

Lord Reid of Cardowan (Lab) [V]: My Lords, I confess that—unlike, I think, all the previous speakers—I am afraid I do not fall into the "noble and learned" category, since I have neither legal qualifications nor the experience of serving in court proceedings that was so evident from the previous contributions. I am not sure that my service as Home Secretary compensates for that absence or necessarily endears me to those who are entitled to be referred to as noble and learned Lords. Nevertheless, perhaps I could make a few short layman's points about the proposals before us. If I repeat some elements of the opening contribution by the noble and learned Lord, Lord Keen of Elie, it is because I cannot remember any occasion when I have agreed more with him than today.

It seems obvious that increasing the transparency of our court proceedings is an important step forward for our legal system. It may not be a major step—as my noble and learned friend Lord Morris said, we are dipping our toe another little bit into the water here—but it is a step in the right direction. As several noble Lords have pointed out, it is a truism that justice should not only be done but be seen to be done. The fact is that, although theoretically our courts are accessible to the public, we all know that in practice there is severely limited access to the average person, for reasons that are self-evident. This proposal increases that accessibility and transparency, even if in a somewhat limited fashion.

Secondly, it seems likely to increase understanding of how the courts actually work. It is a system that is still largely shrouded in mystery and misunderstanding for the ordinary member of the public. Thirdly, I would like to believe that in turn this will engender more widespread confidence in our justice system—although, unlike my noble and learned friend Lord Morris, I do not think it self-evident that televised parliamentary proceedings engender increased respect or understanding, so perhaps I am expressing a rather overoptimistic view. Nevertheless, it is possible that it will do this and, if so, it is to be welcomed.

In any case, it is obvious to us all that we live in what is called the information age, in which there appears to be an unquenchable thirst for information—very often gained through media and social media, as has been pointed out, and sadly not all reliable or accurate. So it seems wise to at least allow direct access, however partial, to legal judgments, rather than only to second-hand and sometimes anonymous reportage of them.

I welcome the fact that, in this move forward, victims, staff and legal professionals will be protected from exposure under the order. However, that is not the case for judges. It would be interesting to know

what assessment the Minister and Government have made of any potential adverse consequences of this and what measures, if any, they intend to put in place to mitigate those consequences.

As I mentioned, the proposal is partial. Only the judge's sentencing remarks are to be broadcast in the Crown Court. This may include a summation of the main points of the prosecution and defence cases. However accurate, this obviously cannot be comprehensive. I wonder whether the Government could not have gone a little further; perhaps the Minister could explain that. Despite these minor reservations, I welcome and support the proposal and look forward to the Minister's response.

6.18 pm

Baroness Anelay of St Johns (Con) [V]: My Lords, I support the making of both orders but shall speak only to the Crown Court order. My only reservation is that it may be too limited in its scope to meet effectively the stated objective of increasing transparency in our judicial system and public engagement with, and understanding of, what happens in our courts.

It has taken a long time to reach this modest stage. I well remember the consultation carried out by the Labour Government in 2005. At that stage I had been a magistrate and was the Opposition spokesperson on home affairs and, from time to time, matters covered by the Department for Constitutional Affairs.

The Crown Court order will authorise only certain judges sitting in the Crown Court to permit the recording and broadcasting of their sentencing remarks. The judges will be High Court judges, senior circuit judges who are also the resident judge of a Crown Court centre, or a senior circuit judge whose base court is the Central Criminal Court. All circuit judges have a base court but may sit at other courts. The permanent judges based at the Central Criminal Court are senior circuit judges, but other non-senior circuit judges may be requested to sit there from time to time. Those other judges will be excluded from the provisions of this order.

High Court judges and senior circuit judges preside over trials of class 1 offences, which include murder, attempted murder, rape and other serious sexual offences, but other circuit judges may be authorised to try some of these offences too. On occasion, Crown Court judges are criticised by the police—sorry, by the public—and the press for the perceived inadequacy of their sentences. Perhaps my slip of the tongue may be true as well, judging by the source of some criticism. Sentences in certain types of offence, in particular, often attract a public outcry or criticism: for example, not only those given for serious sexual offences such as rape but for other sexual offences too. Some serious sexual offences are tried before non-senior circuit judges or, indeed, as mentioned earlier today, before recorders. Sentences in such cases will be excluded from the provisions of this order. For clarity, I do not refer to the honorary recorders of major city Crown Courts who are senior circuit judges—for example, Liverpool, Manchester and Leeds, to name but a few.

Other sentences that attract a lot of public attention, and sometimes a strong emotional response leading to open criticism, are those for causing death by dangerous or careless driving. These offences are frequently tried before non-senior circuit judges or, again, on occasion before recorders. These sentences, too, would be excluded under the provisions of this order. There would be considerable benefit to the judiciary and the public if the reasons for such sentences could be recorded and broadcast. It would promote even better transparency and enable the public to have a better understanding of the judge's reasoning and all the factors taken into consideration.

Accordingly, while I welcome the Crown Court order, I hope that my noble and learned friend the Minister may be able to reassure me that the provisions of this order are just a first step—more than just the putting of the tip of a toe in the water; I want to see the whole foot and more in there—and that these measures may be extended in due course to the decisions of a wider category of judges.

6.23 pm

Lord Harris of Haringey (Lab) [V]: My Lords, I am grateful to the noble and learned Lord for his usual thorough and precise introduction. I will confine my remarks to the order that relates to Crown Courts, and I say at the outset that I welcome it as an initial step. However, I share, almost word for word, the views and reservations just expressed by the noble Baroness, Lady Anelay.

I chair National Trading Standards, which is responsible, on behalf of BEIS, for delivering national and regional consumer protection enforcement activities in England and Wales. Scotland has similar but distinct arrangements. The teams we fund are located within local authorities and use local authority trading standards powers to investigate and bring prosecutions against organised crime groups, which perpetrate consumer scams targeting often vulnerable consumers, and which, as a side-effect, thereby undermine legitimate businesses and traders. Clearly, the objective is to bring the perpetrators to court. A typical example would be Allan John Coutts, a rogue trader who ran a tarmac repair business across England and Wales, operating under several trading names to avoid detection. He used a lorry specifically designed to resemble an official vehicle to cold-call customers to obtain driveway repair work. The work itself was often of very poor quality; sometimes he simply dumped loose chippings on existing driveways with no solution to hold them in place. He demanded cash for this work, often accompanying people to their banks to "help" them withdraw the cash. Very rapidly, the customers would then discover that the five-year guarantee that he offered was worthless, and Coutts and their money had vanished. When it came to court, Anthony Rees from the NTS investigation team received a judge's commendation for his work on bringing Coutts to justice, and Coutts himself received a prison sentence of five and a half years. That was a good outcome, but justice needs to be seen to be done.

It used to be the case that the staple content of local news media was the court reporter, who would take down a shorthand note of the remarks of a judge in passing sentence. However, local news media are in decline, and, even if they have reporters, often can no longer send them to the Crown Court to cover the end of anything but the most high-profile trials. However,

[Lord Harris of Haringey]
it is important that not only such cases as the one I described but all of them are reported. First, the outcome of a case may provide some sense of relief and closure to those who have been exploited and victimised by the criminals. Secondly, the sentences handed down may be a deterrent to other potential scammers. Thirdly, the cases act as a warning to those who may be taken in by scammers such as Coutts, and they serve as a reminder that an offer which sounds too good to be true is almost certainly too good to be true. That is why I welcome the order introduced by the noble and learned Lord. However, I would like confirmation of three points from him.

First, will all such sentencing remarks in Crown Courts be recorded and broadcast in this way? Obviously, there will be an exception for those where the judge feels that it would not be in the public interest to report it. However, I am concerned that part-time recorders may not have their sentencing remarks broadcast in this way. If that is the case, can the noble and learned Lord tell us why, and when will it be extended to all criminal sentencing in Crown Courts? I hope that the presumption will be that this will soon apply to virtually all cases. Secondly, will the remarks be broadcast on the internet in a timely fashion on the day that they are made? Timeliness is important if the sentencing remarks are to be picked up by the news media. Finally, will judges be encouraged to provide enough of a summary of the case and the impact on the victims for the public who are listening to have a clear understanding of the offence committed, its seriousness and the reasons for the sentence passed? I look forward to the noble and learned Lord's reply.

6.27 pm

Lord Wei (Con) [V]: My Lords, I declare my interests as in the Lords register and thank my noble and learned friend Lord Keen for his eloquent introduction.

I welcome this move towards recording sentencing, whether online or for broadcast, especially in these times. It is wise, whether by accident or design, that this is being trialled quite extensively. It is true that we, as a people and as a nation, need to understand the law better, and the reasons decisions are made need to be explained more transparently. Although I have not worked in the judiciary, I had the experience of sitting on a jury in the Old Bailey just a few years ago, and I came away from it incredibly enlightened about and respectful of our system, which is one of the best, if not the best, in the world. I also came away with a much clearer understanding of the challenges faced by the police in particular. Apart from in court, they do not often get to explain their side of the story as regards the work they have to do to collect evidence and the hurdles that are sometimes there when it comes to prosecuting, based on lack of evidence or of the right kind of evidence; in that case it related to digital evidence.

Many citizens are expressing a sense of powerlessness, even in the last few days. That will only increase, and people may take matters into their own hands more often if they do not understand our system and cannot understand and see that justice has been done. A measure such as this one can help people to understand that there are processes for enabling the law to be put into action. By the way, delays in cases do not help. If you have to wait two years to see justice done, there may often be the temptation to take matters into your own hands.

I see this as all part of bringing into the internet age the legal system but also bringing about a better understanding of our ancient common law, which I admire greatly. It has been a great sadness to me to see in recent decades our system of common law, not just in the legal environment but in other, extra-legal areas, supplanted by what we might call a caricature of Roman law, whereby decisions are not always subject to jury, innocence is not always assumed before guilt and so on. Much of the technology world that I come from works on the principles of Roman law rather than common law. When the algorithm tells you that you cannot have a mortgage or cannot have a job, it does not always give you the reasons behind that decision and you are certainly always presumed guilty before innocent. If the computer says no, then it is generally a no. Educating people, including our tech entrepreneurs, about common law and natural justice is therefore important. I hope that this can be a way to ensure that our culture, our quangos and our code are defined in a way that is not Roman but based more on common law.

Like other speakers, I urge the Government to move faster and not just to use technology introduced in the past 20 or 30 years but to start to look ahead. I take note, for example, of the use of virtual reality. In Manchester, there is a collaboration between the University of Salford and the Manchester civil court to familiarise families and children with how the court process works using virtual reality so that it is not so scary for them when they enter court. I wonder whether this can be done by those who view sentencing, so that they can understand that a judge's final decision is part of a long process that we should all be more familiar with than we are now.

I have a number of questions to ask and caveats to add. I worry about the risk of grandstanding by judges, especially in high-profile cases, and ask what guidance will be given to avoid that. If certain cases are not to be televised, how transparent will the decision be as to why a case was chosen to be televised or not? I am keen to understand whether we can learn in this House and the other House from the changes in the law that are required. Will judges be allowed to say, as they sometimes do, "The law needs to change in this area because it has tied my hands"? The link that used to be there when judges sat in the Lords previously needs to be re-established. Can it be created again through this process?

Finally, what measures are being taken to provide extra security to judges in case protesters leap into their place and incapacitate them to prevent them shutting down a broadcast? There may be a need to review this.

The Deputy Speaker (Lord Russell of Liverpool) (CB): I now call the next speaker on the list, the noble Baroness, Lady Jones of Moulsecoomb.

6.32 pm

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, it always delights me to hear my name mispronounced in so many different ways.

As a lay person, the broadcasting of sentencing remarks seems to me a welcome step forward in modernising the English courts system and increasing public awareness of justice issues. It is also important that the public be given the right information about why a particular sentence has been given to an offender. Too many cases are sensationalised in the media, giving an impression that sentences might be too short or too lenient, with no information given about the reasoning behind them. I agreed strongly with the dangerous radical on the Conservative Benches, the noble Baroness, Lady Anelay, and want much bigger steps to be taken in the future.

I have two questions. First, how will the Government work with the media and civil society to improve public understanding of justice issues, so that these newly broadcast sentencing remarks can be more fully understood by the public? The orders contain restrictions relating to the misuse of broadcasts, but can the Minister make clear how the Government will ensure they are not misused on social media—for example, by far-right groups, who increasingly doctor and selectively edit such broadcasts to create a dangerously warped world view among their followers?

On the Court of Appeal broadcasting order, I welcome the extension. It is very timely.

I want to make some points on open justice in the age of Covid-19, because there are some areas where we are losing transparency and openness. For example, many court cases are taking place remotely at the moment. That represents a rapid modernisation in our justice system, which tends like the House of Lords to move and develop at a fairly glacial pace. However, unlike with physical proceedings, where members of the public can just turn up at a court and watch them, it has become much harder to join, whether virtually or in person. Many people have been trying to access remote proceedings as observers but have found it impossible. For example, some court websites direct members of the public to contact a judge's clerk but provide no contact details, and instructions on how to contact the said clerk are also missing. What will the Minister do with Her Majesty's Courts & Tribunals Service to uphold the principles of open justice and ensure that members of the public are able quickly and easily to observe remote proceedings?

6.35 pm

Baroness Kennedy of Cradley (Lab) [V]: My Lords, I welcome measures that seek to open up our criminal justice system. I believe that the public want transparency and accountability; people should know how and why justice decisions are made. As many noble Lords have said, more accurate information in the public domain leads to greater understanding and, in turn, to increased confidence and trust in the system.

As noted by the noble and learned Lord, Lord Keen of Elie, in his opening remarks, public research for England and Wales carried out by the Sentencing Council last August showed how important it is to put in place measures to build public trust. It found that confidence in the criminal justice system was mixed and that only slightly more of the public were confident in the effectiveness and fairness of the system than were not. When asked about their views in general of sentencing, a minority said that sentences were about right, whereas most were likely to say that they were too lenient. Interestingly, the same research showed that, overall, the public get their information from the news and their engagement was high, with the majority of those getting their daily news from watching broadcast media news and current affairs programmes. These research findings therefore provide a supportive context for the orders before us today. It is evidence that more understanding of sentencing is needed to build confidence in the system, and that using broadcast as a way to achieve it is an appropriate response.

Allowing the public to hear judges' sentencing remarks in Crown Courts, where they set out the full picture of the facts, the background to their decision and any mitigating or aggravating factors that framed their thinking, should help increase understanding of the sentence passed. Of course, even after hearing the judge's remarks, there may be those who disagree with the conclusions drawn, but at least they are able easily to hear in full the rationale for the decision. I hope, too, that broadcasting rights will lead to fuller reporting of sentencing decisions and therefore more generally help to reduce uninformed or inaccurate comment.

As many have noted, judges may of course come under more scrutiny due to these measures and they will potentially be put in the public eye like never before. What measures or guidance will be in place to deal with personal and any unwarranted behaviour towards judges?

In the interim, I support judges having discretion to withhold consent for broadcasting, but I hope that permission to broadcast will become the default position. I am sure that cases will arise where this discretion is necessary, but will guidance be drawn up for its use and will the Government consider a review of the discretionary power after an appropriate time has passed?

Before closing, I want to make a broader point about the use of technology in our criminal justice system. At the start of the year, it would have been hard to imagine that our justice system could continue virtually, but it has. Weeks later, we have seen some cases where reporters have been able to join court proceedings via Skype or telephone, have instant message chats with clerks and receive documents digitally. Great leaps forward in the use of technology have been made at break-neck speed. Although the technology has not been without its problems, there are many examples of remote proceedings running smoothly.

At an appropriate point after this pandemic, will the Government review how technology has been used to keep our justice system turning over the past few months? Were the right technological solutions developed for different court settings? What worked well and what did not work at all? Essentially, will the Government assess whether the case has been proven during the lockdown that technology can be used to deal with cases faster, improve people's access to justice and increase the reliability of data about the justice process and its outcomes? If so, how can we retain the best

[Baroness Kennedy of Cradley]
technological advances from the last few months to improve public transparency and accountability for the future?

I support these orders as measures to give our justice system greater transparency and accountability. They are long overdue and I agree with the noble Baroness, Lady Anelay of St Johns, that they are a modest step forward but a step forward none the less. They will help build public confidence and trust in our system.

6.41 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, I thank my noble and learned friend Lord Keen for presenting these orders so ably. Like other speakers, I support them strongly and, like some other speakers, I hope they lead to a further extension of transparency and provision of information, which would be very welcome. However, I agree with the noble Lord, Lord Thomas of Gresford, that the last consultation was some time ago, so it is all the more important that we subject the orders to appropriate scrutiny.

I therefore have some questions for my noble and learned friend. First, to what extent has his department consulted with the DfE about the importance of these orders educationally for universities and their appropriate use as we see more tuition online? No doubt we will see an extension of that in the post-Covid world. Secondly, I share some of the budgetary concerns—that there may be costs for courts in introducing this—and I would particularly welcome some reassurance that, if there are costs, they will be minimal. Thirdly, who will be able to take up these rights? The BBC, ITN and Sky certainly look as if they can, but how much wider will it go? I hope it will go more widely. Could my noble and learned friend explain how that will be brought about?

Like the noble Lord, Lord Reid, my noble friend Lord Wei and the noble Baroness, Lady Kennedy, I am a bit concerned about the potential security implications for judges. This would clearly involve costs and risks, so could my noble and learned friend say something on that as well? Linked with that, I am slightly concerned about the potential for celebrity judges. One great strength of our system in England and Wales, and in Scotland and in Northern Ireland too, is that our judges are anonymous. Long may that continue. We do not want a sort of Disneyland legal forum such as in the USA. What are we doing to ensure as we go forward with these proposals and the greater transparency, which I welcome, that we do not run the risk of celebrity judges—or, if we run the risk, that we counter it?

My noble and learned friend spoke about the pilots run in eight Crown Courts. Could he say a bit more about them? I have tried in vain to find out more about how those pilots have run and what we have learned from them.

In his introduction, my noble and learned friend talked about the fact that the judge's decision as to whether proceedings could be broadcast was not appealable. I see a slight danger in that. Is that the case in every circumstance? There may be circumstances in which an appeal cannot be ruled out.

Most of what I have said applies in both the Crown Court and the Court of Appeal in relation to family law matters. I have two further points on that. First, in relation to the family law extension, the Explanatory Memorandum says that the parties may object to the summing up—the concluding remarks—being broadcast. What happens if they do? Does that conclude the matter such that they cannot then be broadcast, or is that just a consideration? Secondly, is there not a danger that some litigants would be put off proceedings by the thought of them being broadcast, even in a perhaps rather minor way in terms of exposure? If there is a danger of that, how do we counter it? I am sure that some thought has been given to this but would appreciate my noble and learned friend's thoughts on it.

Subject to those concerns, to which I am sure my noble and learned friend has answers—to those that he does not as yet I would appreciate a response in writing—I am strongly in support.

6.45 pm

Lord Foulkes of Cumnock (Lab Co-op) [V]: My Lords, I join in the thanks to the Minister for the way in which he introduced these orders, which I welcome. I agree that awareness of what goes on behind the courtroom door is pretty low in Britain as a whole. For many, it is influenced by what we see in courtroom scenes in film or on television. My favourite is "Judge John Deed", which I think, or at least hope, is untypical of what really goes on behind the courtroom door.

As the Minister rightly said, these orders' intention is to create greater transparency and openness in our criminal justice system. I welcome that. Broadcasting judges' remarks on high-profile cases can offer an opportunity, albeit limited, to improve public understanding. As a Scottish Peer, I say to the noble Lord, Lord Thomas of Gresford, and others from outwith Scotland that the option to broadcast sentencing in Scotland has been available for some time, as the Minister knows better than anyone. Scottish judges have allowed cameras in courts several times in the past 20 years, since it was first allowed in 1992—mainly for documentaries, with footage heavily vetted.

An early example was in 1996, when Lord Ross allowed cameras to watch the sentencing of two armed robbers, which was a very good way of getting the message over, as my noble friend Lord Harris said. Another example is the 2012 retrial of the infamous Nat Fraser for the murder of his wife Arlene in 1998. It was filmed by Channel 4 and shown as "The Murder Trial" documentary in 2013. In 2012, legal history was made in Edinburgh High Court when David Gilroy became the first person convicted of murder to have his sentencing filmed for TV. This was the first time in a UK court that a sentencing was filmed for broadcast on the same day. As my noble friend Lord Harris said, that is important.

While broadcasting judges' sentencing opens the courtroom to the public, there is a question of whether these orders go far enough to provide real transparency, as a number of noble Lords have said, as the showing of a judge passing a sentence is not fully representative of what takes place in a trial. While these orders are useful, I am sceptical that they will advance public understanding and knowledge on their own, as these

remarks are likely to be taken completely out of context without the knowledge of what evidence has been presented in the trial for the judge to reach their decision.

That raises the question of how much we should open courts to the public and what the impact of such a move could be. I am not suggesting that we go as far as the United States, where live broadcasting transmission has presented some trials as something of a spectacle. A recent Netflix documentary, "Trial by Media", demonstrated its influence in the United States in the past and the negative impact of the trials that are broadcast in full for everyone to see. It hampers the fair judicial process. Many cases have received so much media attention that they have been described as soap opera trials. This is highlighting extreme examples, but it shows what must be avoided when examining a broadcast system for judicial trials.

As I mentioned, Scotland has allowed sentencing to be broadcast for some time. Since then, work has been under way to implement the recommendations of a review that took place in 2015 into the broadcasting experience in Scottish courts. Key elements include the relaxation of the rules, including the broadcasting of civil and criminal appeals, and allowing the filming of some criminal trials for documentary purposes. Of course, as others have said, trials of a sensitive nature involving children or sexual offences are understandably excluded.

Since this review, an entire trial has been filmed—albeit with necessary edits to protect those involved—as part of a documentary called "Murder Trial: the Disappearance of Margaret Fleming", which was aired in April this year. Importantly, this represents the first accurate and holistic depiction of a trial process, offering even greater transparency and openness.

With all that in mind, given the desire to create greater transparency and openness within our judicial system, are the Government planning to consider further options beyond this order for broadcasting in courts in England and Wales, as other noble Lords have asked? Specifically, will the Minister consider a similar review to that undertaken in Scotland? Having said that, I repeat that I support these orders.

6.51 pm

Lord Marks of Henley-on-Thames (LD) [V]: My Lords, I have long argued for more broadcasting of court proceedings on the simple ground that open justice is generally better justice—a point endorsed by the noble and learned Lords, Lord Morris of Aberavon and Lord Thomas of Cwmgiedd. The noble Lords, Lord Reid, Lord Wei, Lord Foulkes and others have also eloquently emphasised the importance of the public understanding of the justice system.

We have long seen open justice as central to the rule of law and to our liberties, but, until recently, public access to proceedings was limited to the admission of the public to open court hearings and to their fair and accurate press reporting. In principle, I see little distinction between admitting the public to open court proceedings and permitting press reporting, and allowing broadcasting of those proceedings. I accept that there should be limits to broadcasting in the interests of justice, particularly to protect jurors and witnesses, including vulnerable witnesses in sensitive cases, from being inhibited or frightened. Nevertheless, I would argue that we can move, incrementally certainly, towards a more open system. These two orders take small but significant steps along the road to more open justice, and I support them.

On broadcasting judges' sentencing remarks, we have all seen how, too often, public perception of sentencing is distorted by sensationalist coverage in the printed media. Broadcasting would increase awareness of the reasoning behind sentencing in particular cases—a welcome benefit. But I agree with the noble Baroness, Lady Anelay, and the noble Lords, Lord Harris and Lord Bourne, that we should go further, with pilot schemes and further consultation, as appropriate, in the future.

I agree with lifting the exception to broadcasting family appeals to the Court of Appeal. That is in line with the general recognition that family proceedings have been too secretive in the past and should be more widely understood.

Perhaps I may make a few further general points. First, the broadcasting of Supreme Court proceedings has clearly been a great success. In many cases, members of the public follow the argument in detail and with care. We have heard today from the noble and learned Lords, Lord Keen and Lord Garnier, who appeared in the Miller and Cherry cases on the unlawful prorogation of Parliament last year. Many who would have missed it without broadcasting will remember the decisive contribution that the noble and learned Lord, Lord Garnier, made to the argument in that case on behalf of Sir John Major.

For my part, I do not believe that the current blanket bar on broadcasting evidence in trials is supportable. It is permitted in a number of common-law jurisdictions to a greater or lesser extent: not only in the United States, where it is widely permitted, but—subject to limitations—in New Zealand, Australia and Canada. While I accept that there are risks in the unlimited broadcasting of lay witness evidence, I am unconvinced that expert evidence needs or ought to be similarly protected. There may be an important public interest in more scrutiny of expert witness evidence in securing genuinely impartial evidence that is less likely to be skewed in favour of their clients in a case.

More controversially perhaps, I also believe that the public have a right to witness first-hand the conduct of parties' advocates and the reaction of judges to their conduct of litigation. When broadcasting cases was first mooted, there was much talk of a fear of counsel grandstanding for the camera. But we have seen little evidence of that in the Supreme Court and other appellate courts.

Finally, I would mention a little-noticed but significant effect of the coronavirus lockdown; this point was mentioned by the noble Baroness, Lady Jones of Moulsecoomb, and others including the noble Baroness, Lady Kennedy. Civil trials have gone ahead virtually, in accordance with paragraphs 8 and 22 of the *Protocol Regarding Remote Hearings* published on 26 March by the senior judiciary. Paragraph 8 says that

"remote hearings should, so far as possible, still be public hearings. This can be achieved in a number of ways:"

[LORD MARKS OF HENLEY-ON-THAMES]

The third of those ways is

"live streaming of the hearing over the internet, where broadcasting hearings is authorised in legislation (such as the new s85A recently inserted into the Courts Act 2003)."

That section authorises video broadcast of proceedings, where the court agrees.

The protocol goes on:

"The principles of open justice remain paramount."

I agree with that. During lockdown, I have conducted a High Court trial with a significant number of witnesses in accordance with that protocol. The trial worked well, although I agree with the noble Baroness, Lady Jones of Moulsecoomb, that such trials must not be difficult to access. Private evidence in that trial was kept private; the principle of open justice was maintained. I endorse it and suggest that it could be extended when we get back to normality.

6.58 pm

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, I too open by thanking the noble and learned Lord, Lord Keen, who introduced these draft orders in his customarily thorough way. The first draft Crown Court order would essentially update the proceedings of the Supreme Court, which have been broadcast since 2009; some TV broadcast of the Court of Appeal has been possible since 2013. This order extends broadcasting to the Crown Court, where sentencing remarks may be broadcast by specified judges. It will be tightly controlled to protect the interests of victims and witnesses. The second draft order before us will enable the recording and broadcasting of appeals from decisions in family proceedings, which is currently not permitted by the 2013 order.

I support the two draft orders. They are a step in opening up justice to the general public, so that they can see the full explanation of the sentences given and the judgments made. They build on the positive experiences in Scotland and the pilot test, which we have heard about, in locations in England and Wales. It is right to give the public access to a broadcast of judges' remarks, because it means that they will hear the whole of the remarks, unmediated by the interpretation of journalists or truncated because of a lack of time. It is likely that the cases broadcast will be of public interest. A full exploration of the aggravating and mitigating factors that led the judge to his or her final sentence, or whatever the order may be in a family case, is surely in the courts' interests as well as the public's.

However, I have some concerns about the vulnerable people who are very often involved in the court process. They may be victims, witnesses or children; they may be people with particular mental health concerns. It is important to protect their interests and privacy. I remind the House that I sit as a magistrate in adult, youth and family courts in London. Youth and family courts are of course not open to the public.

I remember a discussion with a BBC TV producer who sat in on one of my family court sessions. She attended that session with a view to assessing whether it would be possible to make a series about the work of the family court. This producer was very candid; she explained to me that it would be difficult to make such a TV series because she would be unable to broadcast anything that led to the identity of the children being revealed. She said—very candidly, as I say—that abstract points of law are of much less interest to the public than real-life human dilemmas and problems. I do not know whether the series was made, even though the BBC producer said that she could see how interesting and important the process was to the families concerned. So a balance needs to be struck between publicising the work of our courts and protecting the interests of those who find themselves caught up in the court process.

I think all noble Lords who spoke did so in support of the orders. For some, this is, in the words of the noble and learned Lord, Lord Thomas, just a "toe in the water". A number of noble Lords, including my noble friends Lord Harris and Lady Kennedy, were hoping for a greater opening up of the process, which I support as well. My noble friend Lady Kennedy made an interesting point about reviewing the technologies being used at the moment. I have taken part in a number of remote hearings over recent weeks, in both criminal and family courts. A lot of issues are raised; it is very interesting. I hope that the Government are reviewing the use of technology; I know that the judiciary is. Some of it is an improvement in the process; some leaves questions to be answered.

I support these orders. I hope that, in his reply, the Minister will address the issues which have been raised constructively.

7.01 pm

Lord Keen of Elie [V]: My Lords, I thank noble Lords for their contributions to this debate. The noble and learned Lord, Lord Morris of Aberavon, was quite prescient when he described these moves as a "toe in the water". That point was supported, or commented on, by a number of noble Lords. We are proceeding here very carefully. On that point, I will address some of the observations of the noble Lord, Lord Thomas of Gresford. He talked about there having been no consultation since 2005, and the need for this. With great respect—this point was made by the noble and learned Lord, Lord Thomas of Cwmgiedd—we have been informed in the development of these orders by the work that has been ongoing since 2013, with the introduction of the means of live streaming into the Court of Appeal, and 2018, with the pilot. It is not as if we have approached this cold. Regarding the matter of costs which the noble Lord raised, these will be borne by the broadcaster who seeks to broadcast the relevant sentencing provisions under the Crown Court order. We have already established a live stream of non-family business in the Court of Appeal on a YouTube channel. There will be a process by which broadcasters can seek permission to broadcast from that.

My noble and learned friend Lord Garnier raised a number of points, with particular reference to the provisions in the Crown Court order. There will be a list of permitted broadcasters, approved by the Lord Chancellor. The BBC, ITV, Sky and the Press Association will receive permission. It could be withdrawn at some point in the future, but I do not understand there to be

any time limit to it. Thereafter, it will be for the judge sitting in any one case to determine whether he will permit broadcasting of his sentencing remarks. He will not do that on behalf of any other judge or court. His determination will not be liable to appeal; it will be a final determination. Making an application will be an administrative process that the broadcaster will carry through by way of a written application, for which there is no charge. There will then be a decision on a case-by-case basis.

The noble and learned Lord, Lord Thomas of Cwmgiedd, outlined that it is already the practice for written sentencing guidelines to be available, and they have greatly assisted in the sentencing work of the criminal courts. He made three observations: that this is a complex area, and I agree; that there has been consultation, and, again, I agree; and that a number of safeguards have been developed in the light of our experience, particularly since 2013, to guide us with respect to both the Crown Court and family cases in the Court of Appeal.

The noble Lord, Lord Reid, and a number of other noble Lords raised the question of potential adverse consequences for judges from this process. That has been considered, and the view of both the Government and the senior judiciary is that there will not be any significant increase in such consequences. Of course, judges can already come in for criticism of their sentencing decisions. They are well able to deal with that and they have broad shoulders, but we do not consider that there will be any significant adverse effects as a result of this process.

My noble friend Lady Anelay of St Johns was one of the speakers who felt that the reach of the orders was perhaps too limited. We have developed them in the light of experience, particularly since 2013. We are moving carefully in this area and at present we do not have any intention to extend these provisions beyond the current orders. The decision with regard to the Crown Court order that permission should be available only from a High Court or senior circuit judge was arrived at after consultation and discussion with the senior judiciary, who felt that this was the appropriate way forward at this time.

The noble Lord, Lord Harris of Haringey, encouraged the idea of providing more than just the sentencing guidelines when broadcasting and mentioned the need for immediate attention to what is going on. Where a broadcaster seeks to broadcast in the Crown Court, I cannot say that that will be done live. There might be exceptional cases where it occurs, but I suspect that they will be unusual. One cannot anticipate the speed with which a recording of such a sentencing event would be broadcast, although one would have thought that it would have limited public impact if delayed for long.

My noble friend Lord Wei raised a number of points, the first being the risk of grandstanding by judges. I cannot imagine that any such thing could ever happen, and I do not believe that we need to guard against that in the present context. He also raised the question of security. There is a 60-second delay in the live stream so that it can be shut down if there is an extraordinary or outrageous event in the court. That has never been required but it has been tested on a number of occasions and has been found to work.

The noble Baroness, Lady Jones, asked how we can improve public awareness. I agree that that is important, but I suggest that these are small steps in the right direction. She also asked how one regulates against misuse of the material. Of course, the contempt-of-court process is there for that purpose, and we can police the use of this material in just the same way as when it is recorded in the written press.

The noble Baroness, Lady Kennedy, raised the question of guidance on the behaviour of judges. There are sentencing guidelines that the judiciary is obliged to follow when applying these matters. Over and above those, there have from time to time been cases—they were mentioned during the debate—where the Lord Chief Justice and the Court of Appeal have indicated how these matters should be approached by the judiciary.

My noble friend Lord Bourne raised a number of questions, and I shall touch upon them briefly. I am not aware of any consultation with the Department for Education, although I note that there may be a point to be considered there. As regards costs, they are essentially minimal because the broadcaster will provide the cameraman and the camera, and there will be only a single camera for this purpose. As to who will take up the rights to broadcast, I think I mentioned who the permitted parties are going to be. My noble friend also mentioned security, which I hope I have touched upon, and the need for guidelines for judges. There are sentencing guidelines. I emphasise that the decision of the trial judge to allow or not to allow broadcasting will not be appealable.

My noble friend raised two points on the extension of Court of Appeal broadcasting to family cases. Parties may object, but that objection will be a consideration, not a determination of any application. He raised the question of whether litigants might be put off by the prospect of broadcasting. That is something that we have considered and we do not consider that that would be a material issue. Of course, any litigant's case that would go to the Court of Appeal would be heard in public, and we do not believe that the element of broadcasting that is being extended here will give rise to any real difficulty.

The noble Lord, Lord Foulkes of Cumnock, pointed to the experience in Scotland, which has been instructive. He asked whether we would consider further broadcast options. I have to emphasise that that is not our present intention. I note that the noble Lord, Lord Marks, would like to see us go much further so far as remote hearings are concerned. That is not something that we intend to pursue at the moment.

I will take up one or two further points about vulnerable persons. This is clearly a material consideration. Witnesses' and victims' concerns have to be taken into account in approaching this matter, and we have sought to ensure that there are appropriate safeguards in place for the fairly limited steps we are taking in these two orders.

I hope that that largely covers the points that were raised by noble Lords and noble and learned Lords in the debate. I hope noble Lords will agree that these instruments are an important, necessary and, I would say, sensible and proportionate next step in ensuring that our courts are open and transparent. I observe

[Lord Keen of Elie]
that we are learning from the Covid experience of carrying on court processes remotely while ensuring that there is public access to those processes. We will continue to learn from the steps that are being taken. In the circumstances, I commend these draft instruments to the House.

Motion agreed.

Court of Appeal (Recording and Broadcasting) (Amendment) Order 2020

Motion to Approve

7.13 pm

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

That the draft Order laid before the House on 12 March be approved.

Motion agreed.

7.15 pm

Sitting suspended.

Arrangement of Business

Announcement

7.31 pm

The Deputy Speaker (Lord Alderdice) (LD): My Lords, a limited number of Members are here in the Chamber, respecting social distancing, and if the capacity of the Chamber is exceeded, I will immediately adjourn the House. Other Members will participate remotely, but all Members will be treated equally, wherever they are. For Members participating remotely, microphones will unmute shortly before they are to speak—please accept any on-screen prompt to unmute—and muted after each speech. I ask noble Lords to be patient if there are any short delays as we switch between physical and remote participants. I remind the House that our normal courtesies in debate still very much apply in this new hybrid way of working.

The regret Motion in the name of the noble Lord, Lord Hunt of Kings Heath, will now commence. The time limit is one and a half hours.

National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2020

Motion to Regret

7.32 pm

Moved by ***Lord Hunt of Kings Heath***

That this House regrets the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2020 (SI 2020/469) and the lack of a long-term plan to ensure the financial sustainability of care homes.

Relevant document: 14th Report from the Secondary Legislation Scrutiny Committee

Lord Hunt of Kings Heath (Lab) [V]: My Lords, the care sector has never been more in the eye of the storm than during the Covid-19 pandemic. I pay tribute to all in the sector for the care they have given to so many people, under huge pressure and at no little risk to the workforce. As my mother is in a care home, my tribute is personal and based on first-hand experience.

There is no denying that care homes have been dealt a poor hand during the crisis, which unfortunately is consistent with the long-standing neglect of the sector. We must do better and ensure that as we come out of the crisis, we bring long-term sustainability to care homes and peace of mind to those who live in them. This SI does not aim to do that. None the less, I welcome the proposed increase in the rate that the NHS pays to care homes to cover the cost of services carried out by a registered nurse.

The new rate follows a Supreme Court judgment in Wales, with implications for England. It has also been influenced by a challenge to the 2019-20 rate and the 3.1% efficiency gain assumed within that rate. The 2019-20 rate was subsequently revised and the rate for 2020-21 is built on that revision. Can the Minister explain what efficiency rate had been built into the new rate and whether it is realistic to expect care homes to meet those efficiency savings at this time, when their costs are going well above the inflation rate?

This is borne out by many in the sector. As Richard Adams, the chief executive officer of Sears Healthcare, a small group of care homes, reported to me:

"We are seeing people coming into our nursing homes much later in their life course. Their health care needs are multiple and complex and require very specialised nursing care in order for them to be able to continue to live and to die well."

Unfortunately, there is very little recognition of this in the contract arrangements in place with clinical commissioning groups. Will the Minister review these contracts and ensure that care homes are adequately recompensed to provide this type of care?

Of course, care homes were already under significant pressure when the pandemic hit us. Covid-infected patients were moved from NHS beds with no consideration of whether the care homes they were sent to would be able to cope. The care sector was clearly a long way down the chain of command, as illustrated by the lack of priority given to it in relation to PPE, testing and the recording of deaths. The absence of reliable figures for deaths in care homes for many weeks was indeed telling.

At times the care sector felt deserted by the Government. The Association of Directors of Adult Social Services has said that the national handling of protective equipment for care workers was "shambolic", with early drops of equipment "paltry" and more recent deliveries "haphazard". Martin Green, the CEO of Care England, put it even more explicitly:

"From the start the NHS was prioritised … PPE was redirected away from care homes ... There was a clear instruction to empty hospitals in March to send people to care homes despite no testing for infection."

When it comes to funding, £3.2 billion has been made available for local authorities to help respond to the Covid-19 pressures across all services, including adult social care, but a report from Care Providers

suggests that funds are not making it to the front line in some areas, with learning disability services facing particular problems. As Care England has documented, overheads are rising as occupancy falls, with serious cash-flow implications. There is a risk that providers may become insolvent and collapse, or alternatively raise fees considerably. Over the weekend Age UK reported that some residents were paying a Covid-19 surcharge of up to £150 per week to cover extra costs. Does the Minister agree that this is a massive hike, and that it is unfair as self-funders are in effect subsidising council-funded places?

Richard Adams of Sears Healthcare has stated

"Future funding agreements for social and nursing care must include provision increased costs associated with … Purchasing additional PPE … health surveillance activities … Increased costs incurred by the need to flex staff in order meet the requirements of any self-isolation … Increased training costs in relation to infection prevention and control, correct use of PPE and outbreak management."

Does the Minister accept this?

I am afraid that the experience of care homes in the last few months reflects the neglect that the sector has long experienced, and it is a damning indictment of this country's failure to provide a solution to the funding of long-term care. We are in a vicious cycle: after decades of reviews and failed reforms, the level of unmet need in our care system increases, the pressures on unpaid carers grow stronger, the supply of care providers diminishes and the strain on the care workforce continues—and that is before the new immigration controls are imposed on so-called low-skilled workers at the end of the year. I want the Minister to say tonight whether the Government will soon publish their proposals to deal with the long-term challenge.

I thought Philip Collins put it very well in the *Times* on 14 May when he wrote:

"There are three ways to fund social care. We can wrap it into the NHS and fund it through general taxation, or perhaps a hypothecated levy. We can ask the individual to pay, drawing on savings which might be mandated through a social care auto-enrolment scheme or equity released from the family home. Or we could do some combination of those two options, which is what Dilnot suggested all the way back in 2011—the individual pays"

up to a certain level

"subject to means, and then the state steps in."

Are the Government prepared to come forward with a concrete proposal? I certainly hope so. Fudge it, delay it, and we will continue to fail to deal with the fact of ageing and consign millions of people to a worrying and often miserable old age. We can and surely must do better than that. I beg to move.

7.40 pm

Baroness Altmann (Con) [V]: My Lords, I welcome the opportunity to debate the social care sector, and I welcome the increase in rates that the NHS and CCG commissioning authorities will pay for nursing care. I congratulate the noble Lord, Lord Hunt, and echo some of his comments about the sector. What assessment have the Government made of the financial stability of firms promising to house the most vulnerable elderly citizens of our country for the rest of their lives? Is the department looking into the financial strength of care providers, with a view perhaps to reforming how they are funded?

The Centre for Health and the Public Interest's 2019 study of 830 adult care homes found that 18 of the 26 biggest providers had corporate structures that separate the firm running the home from the ownership of the buildings, representing an estimated £1.5 billion of leakage in fees to pay interest, profit or rent. For the biggest five private equity-owned providers, the cost of debt per bed represented 16% of the weekly fee.

These operators are highly geared with expensive debt, following a number of corporate transactions that would not be permitted in many other areas. If you promise to pay somebody an annuity for the rest of their life, there are strict financial reserving requirements to back that, but it seems that when operating a care home, there are no such financial requirements. Indeed, there is a precarious position, particularly after the recent crisis, because care home operators were not paid enough to cover the costs of keeping people in their care home by local authorities, and therefore private payers—self-funders—had to cover the underpayments.

Is my noble friend aware of the recent study which showed that councils were paying private providers less than £500 per week, but that in the same local authority commissioning groups were paying £720 per week for a home run by councils? Therefore, there are significant differences in the amount that councils will pay for the same type of care. The regulator is supposed to ensure that council commissioning offers fair rates to care providers, but they are now struggling to make ends meet, particularly with the extra costs of PPE and so on forced on them by this crisis. Could my noble friend comment on this situation?

7.43 pm

Baroness Barker (LD) [V]: My Lords, these fees are a perfect encapsulation of the disparity between health and social care. Prior to the emergence of Covid, the social care sector was in crisis. Since 2010, local government finance has reduced by 50%, but statutory responsibilities have not. Local authorities have had staff reductions, to the point where there are senior directors, front-line staff and very few people in between.

On 25 February, the Department of Health and Social Care guidance told local authorities:

"It remains very unlikely that people receiving care in a care home or the community will become infected … There is no need to do anything differently in any care setting at present."

On 14 May, the Health Secretary, Matt Hancock, stated that

"right from the start we have tried to throw a protective ring around our care homes."

The public response was incredulity, because by that time there had been 10,000 deaths in care homes in England and Wales, according to the ONS—a quarter of all deaths. I repeat the statement from Martin Green, chief executive of Care England, who asked to

"see the evidence of what exactly the protective ring consists… and when exactly they instituted this protective ring",

asked why

"we had our PPE distribution networks disrupted to send things to the NHS"

and

"why we had our primary care support withdrawn from many care homes?"

Why are they still waiting for it?

[Baroness Barker]

On 18 May, in their Covid recovery strategy, *Our Plan to Rebuild*, the Government pulled another fast trick. On clinical support, the strategy states that

"the Government is accelerating the introduction of a new service of enhanced health support in care homes from GPs and community health services, including making sure every care home has a named clinician to support the clinical needs of their residents by 15 May."

But that should have been happening already under various pieces of legislation. In truth, the NHS abandoned care homes at their point of greatest need. Nevertheless, I ask the Minister: what progress has there been towards that 15 May deadline?

It is time for the Government to stop announcing new responsibilities for local government and start listening to local authorities about what they need central government and the NHS to do, so that there can be a joint strategy to manage Covid and its lasting impact on communities. Inadequate testing, little tracking and no isolation means that care homes will not be ready to withstand a second spike. They simply will not be able to provide what these older people desperately need.

7.46 pm

Baroness Watkins of Tavistock (CB) [V]: My Lords, it is a pleasure to contribute to this debate in the name of the noble Lord, Lord Hunt of Kings Heath, on amendments to the NHS commissioning rates for the provision of NHS-funded nursing care to eligible residents in nursing homes. I declare my interests as outlined in the register, in particular as a registered nurse myself.

Prior to October 2007, there were three rates for NHS-funded nursing care, which were replaced with a single band for all newly eligible residents. The small number of residents who had been in receipt of the former higher band, prior to September 2007, have been protected and will continue to receive the higher band, unless their needs reduce. Therefore, the statutory nursing care funding for the majority of those entitled has increased to £183.92. This came into force on 20 May and will be backdated to 1 April. This is welcome.

The increase reflects the recommendations of an independent study produced by LaingBuisson into the 2019-20 rate. However, the research was conducted between November 2018 and February 2019, before Covid. Therefore, the report does not appear to take into account the increased cost of PPE equipment and the nursing time associated with its use in nursing homes. However, PPE is essential to prevent the transfer of Covid-19 in nursing homes; as we know, their residents are particularly vulnerable to severe problems when infected with the virus, including in many cases, sadly, loss of life.

I understand that the proposed uplift will be dealt with by NHS England and NHS Improvement. Will the Minister clarify whether additional funds will be made available to CCGs to fund the increase in nursing care payments, or will it have to be funded from this year's allocations to CCGs? Will the Minister also explain whether there are any plans to fund CCGs to make additional payments to nursing and care homes for the additional costs of PPE equipment and staff time associated with both the changing and using of PPE for nursing and personal care work undertaken by staff for residents—for example, to include the changing of urinary catheters and stoma bags?

I welcome the uplift in the rates for nursing care, but, in the absence of a long-term plan for funding care provision in residential homes, ask whether Her Majesty's Government should make further extra financial provision, for at least the next year, to ensure the safe and effective use of PPE to protect residents in the light of the number of deaths in care and nursing homes attributable to Covid-19.

7.49 pm

Baroness Healy of Primrose Hill (Lab) [V]: I thank my noble friend Lord Hunt for securing this timely debate. I absolutely agree that the long-term sustainability of care homes must be a priority for the Government both now and in the future. When will the long-promised Green Paper be published?

The pandemic has shone a fierce light on the lives of those dependent on social care. The public now understand the heroic work done by care staff, who must be rewarded with decent pay, security of employment and proper protection, with adequate PPE and access to regular testing. Can the Minister confirm that every care home has now received adequate testing kits, as promised by the Government, and can he assure me that these will be provided on a regular basis for all, with a guaranteed 24-hour turnaround time for results? Martin Green, chief executive of Care England, is clear:

"As the lockdown starts to ease … You're going to have to have testing on a very regular basis. You might be having to test once a week in care homes."

The Economic Affairs Committee's radical report, *Social Care Funding: Time to End a National Scandal*, is still awaiting a government response. It calls for an additional £8 billion for adult social care immediately just to return it to the 2009-10 standards. Published before the pandemic, the report proved prescient by calling for proper investment in the care workforce, with a career structure which better reflects the skills required to be a good care worker and the social importance of the sector. Investment is essential now before a second surge. The Government must learn lessons from earlier mistakes and ensure that the social care sector can better protect its residents. Age UK says that residents are being charged to pay for PPE, as other noble Lords mentioned. Can the Minister confirm this?

The Health Secretary's claim that he threw a "protective ring" around care homes already lacks credibility when research by LSE estimates that 22,000 "extra" deaths have occurred in care homes during this pandemic period. Many senior care industry figures have pointed to the decision to move some hospital patients back into care homes in mid-March, when testing was not available to them. Figures released by NHS England show that 25,000 patients were moved from hospitals to care homes between 17 March and mid-April, when the guidance formally changed to ensure that testing took place. Can the Minister confirm that, in future, no patient will be returned from hospital to a care home without being tested first?

Covid-19 has taught us important lessons about what matters and who we should value: not only our own families but those who care for them so bravely.

7.52 pm

Baroness Tyler of Enfield (LD) [V]: My Lords, I too support the long-overdue pay increase for nurses working in the social care sector. I also strongly support the regret Motion tabled by the noble Lord, Lord Hunt, who is right to draw attention to the financial instability of this deeply fragmented sector.

There are approximately 15,000 care homes in the UK, with more than 400,000 beds, run by approximately 8,000 providers. Some are very small; others provide a large network of homes. It is a mixed economy: 84% of homes are owned by the private sector, including some that are owned by private equity firms, both British and offshore; 13% are owned by not-for-profit organisations; and 3% are owned by local authorities. Funding comes from a mix of private funders, local authorities and the NHS. Despite this funding mix, care homes have been hit by a decade of cuts in social care funding. An *FT* investigation last summer revealed:

"Britain's four largest privately owned care home operators have racked up debts of £40,000 a bed, meaning their annual interest charges alone absorb eight weeks of average fees paid by local authorities on behalf of residents."

Many have argued that this debt-laden model is completely inappropriate for social care, as is one that involves paying large dividends to investors.

Many homes are already running close to bankruptcy and have expressed grave concerns about the spiralling costs of PPE and extra agency staff, as well as lost income from empty beds. It has been estimated that when bed occupancy rates slip below 87%—as many have now—operating surpluses are such that many smaller care homes quickly become unviable, particularly those with greater reliance on state-funded residents.

This virus has brutally exposed systemic weaknesses in our social care sector. The latest official figures show more than 12,000 Covid-related deaths of care home residents in England and Wales, but it has been estimated that the true figure, calculated by looking at excess deaths of care home residents in the period, could be double that. According to a recent poll, one-third of people say that they are less likely to seek residential social care for their relatives or as a future option for themselves. This brings into very sharp relief the respective responsibilities of central and local government if care home owners go under financially or simply decide to shut up shop and hand back the keys. Simply put, who is the provider of last resort?

Tellingly, that poll also revealed that the vast majority of respondents want care workers to be paid above the minimum wage. If this pandemic has revealed one thing, it is that we can no longer kick the can down the road but must take advantage of the growing public and political consensus that social care should be free at the point of need, funded largely out of taxation. There are, of course, a number of ways of doing this: general taxation, hypothecated tax, or some form of social insurance. This needs to be at the nub of both the political debate and a grown-up national conversation.

7.55 pm

Lord Sheikh (Con) [V]: My Lords, I will talk about the financial aspects of the care home industry, and what needs to be done after the pandemic to ensure its sustainability.

There are more than 420,000 people in care homes; there are more than 22,000 care homes; and the industry generates an annual income of about £15 billion. I pay tribute to the industry, as it has performed well under the circumstances during the pandemic. We need the sector to be stable, as we have an ageing population and some people have health issues. Care homes are of varied sizes. The smaller companies are normally well managed, particularly if there is involvement by the owners. My suggestion to them would be to curtail their borrowings, be cost effective and, importantly, have adequate reserves. In my business, I have always had adequate reserves. My concern is with the larger companies, which are making over £1.5 billion in profits, with considerable amounts going to hedge funds. There may be complex intercompany structures. It is estimated that a high percentage of the care home industry's £15 billion income is leaked and goes towards the payment of rent, dividends, loans and directors' fees, not towards front-line care. The situation is opaque and there is reluctance to inject money into the sector, as there may be structural complexities.

Despite the high income generated by the industry, the staff are among the lowest-paid workers, with a high turnover. It is hoped that the more money that goes to front-line care the better paid the staff will be. In the last 10 years, Southern Cross and Four Seasons have failed. I worry that there may be other problems post pandemic. The care home sector's revenue comes from local authorities, the residents and the Government. The weekly amount payable per resident is normally between £600 and £800, and the NHS will pay £183.92 or £253.02 per week for nursing care in eligible cases. As there is a contribution from the state, there needs to be transparency and accountability and we must ensure financial stability. We should, therefore, perhaps consider some form of legislation to achieve this.

Finally, my own business—insurance—is properly controlled and regulated. Would my noble friend the Minister like to comment on the issues I have raised?

7.59 pm

Baroness Jolly (LD) [V]: I too support this Motion and thank the noble Lord, Lord Hunt, for tabling it. Will the Minister explain how the 11% increase to nursing rates was determined? What consultation was held with the care sector and the NHS to determine the increase?

This SI is very straightforward and limited but, pandemic aside, it is tabled at a time of huge turmoil and instability in the sector. We all know about the issue in some care homes of private patients subsidising those supported by their local authority, either in total or in part. We know this is not fair. As my noble friend Lady Barker said, local authority funding should be adequate.

The real scandal laid bare by the Covid-19 epidemic is the delay of the care Green Paper and the lack of certainty for the sector, which was struggling financially

[Baroness Jolly]
before the pandemic. The financial model is broken. Can the Minister tell the House when this paper will be published? Its working group members are England's experts on the subject, there have been cross-party talks about it and Prime Ministers Theresa May and Boris Johnson promised it, so when will it be published? The delay is a scandal. I feel sure the Minister will tell the House that the answer is "later". That is always the answer.

For weeks we applauded NHS and care workers every Thursday evening to say thank you, and no one can be in any doubt about their commitment and the lengths to which many go to ensure care for those in their charge. Not many workers paid only the basic minimum wage would move into their workplace for weeks to guarantee the safety of those in their care. The professionalism shown by care workers from the UK, the EU, the Commonwealth and elsewhere is exemplary.

How would the Minister fill the places left by departing EU staff if the door to their entry were closed by the Home Office setting a salary requirement of over £30,000? The Home Secretary has suggested that we could recruit by appointing British workers, yet for the last year or so unemployment has been hovering down around the 4% mark and supermarkets pay the same sort of rate for less worry and 5% off grocery bills.

Care workers should have recognition as a profession in England. In Wales and Scotland they are regulated and professionally acknowledged. In Scotland they were given a pay rise of 3% for their work during the Covid-19 pandemic. I am sure the Minister would at least wish for parity for English care workers, as well as their recognition as professionals with their own professional body. Can he outline the Government's thinking on care worker regulation?

8.02 pm

Lord Holmes of Richmond (Non-Afl) [V]: My Lords, I thank the noble Lord, Lord Hunt of Kings Heath, for tabling this Motion. Covid is a callous killer for which we currently have no cure. I take a moment to offer condolences to the families and friends of all those cruelly taken from us before their time and offer a large salute and enduring debt of gratitude to all our care and front-line workers in health, supermarkets and across the piece. We owe them an enduring debt of gratitude.

Has the Covid crisis revealed the issues there are with the current CCG structure? Does my noble friend the Minister believe it is time to review the whole nature of CCGs and commissioning within health and social care, with everything possible for review laid out on the table? Does he agree that our right honourable friend Jeremy Hunt did a great service to the nation in bringing health and social care together in one department? Does he also agree that it is a pity our right honourable friend Jeremy Hunt ran out of time in getting that resource to deliver some sense of parity for social care, alongside health?

In 2017 the former Prime Minister, Theresa May, laid out in the Conservative manifesto a plan for social care. It was roundly rejected by the electorate. Was she politically naive? I do not think so—she was clear, upfront and honest. The fact of that rejection should be considered by everybody, because it leaves us in the situation we are still in, as has been said by previous speakers, years after the Dilnot review. When is the Green Paper likely to be published? How do we get to a position in which we can have that parity between health and social care across the country?

8.05 pm

Lord Mann (Non-Afl): My Lords, the Government have a great opportunity because the public mood, as I judge it, is that the time for some coherent change is now. I think that the public would be prepared to pay that bit more to underwrite the changes that would guarantee the system.

There seems to be a growing consensus across parties that a significant amount of extra money will be needed. I am sure that there are plenty of arguments about where precisely that will come from, but I want to address where it goes. Nothing has frustrated me more over the last 20 years than seeing this disparity between the NHS and local authorities. Care for the elderly, as defined by care homes, has to be the provenance of the NHS. It is absurd that someone having to be released into a care home by a hospital, because they are not capable of living in their own property—whether owned or rented—and require additional support, is a health decision.

We are missing some obvious tricks. Where I live, housing is dealt with by the district council, social care by a county council. Our CCG is coterminous with the district council. What ought to happen is agreement on funding so that the district council builds housing for what I have in the past termed intermediate care. It must be housing that is fit for purpose so that people significantly delay going into a care home. It is supported living.

What is undeniably the case where I live is that old-style council bungalows—two bedrooms, very simple, very small, with a tiny garden, semi-detached or in blocks of four—are the most popular. Why? It is because they are the cheapest to live in and heat, and the easiest to clean, maintain and grow old in. If they were all fully adapted, people would be able to live in them for even longer. Families can and would want to give that support in the vast majority of cases. That is a form of care home, but I have seen so many people put into institutions when they would have thrived far more with a level of independence, if the system had allowed it.

8.08 pm

Baroness Pinnock (LD) [V]: I support the increase in pay for nurses working in the nursing sectors of care homes and, indeed, the Motion tabled by the noble Lord, Lord Hunt. Care home staff also need an increase in pay. There is a significant annual turnover in care home staff and a consequent reliance on agency staff. Many homes depend on staff from EU countries, who are less likely to be available from 2021. Both these factors point to a need for better pay for care home staff. The focus on care homes and the amazing commitment of care staff during Covid-19 has shown us all how much the country depends on them.

Care homes are under enormous financial pressure, whether they are run by charities or for profit. A report released last week by the Directors of Adult Social Services, the Care Provider Alliance and the Local Government Association estimated that care homes need an additional £6.6 billion to meet the costs of Covid-19 by September. Further, the tragically high number of deaths in care homes as a result of discharging patients from hospitals back to their care homes without being tested for Covid-19 has resulted in residential places remaining vacant. The Government have given councils £3.2 billion to fund the additional services needed, including, but not exclusively, for increasing care home fees. Using this funding, councils have indeed increased the standard rate for care homes where they fund residential places, but clearly it is nowhere near enough to bridge the gap. Can the Minister confirm that additional funding will be made available to local authorities to underpin care home finances and prevent many of them closing their doors?

There is a desperate need to resolve how residential care is funded. The consequence of constantly kicking this difficult issue into the long grass is the crisis now unfolding. For too long the care of vulnerable adults has been in the shadows. Covid-19 has thrown a spotlight on how we as a society absolutely rely on care homes for the care provided. Too many care staff and residents have died unnecessarily. Perhaps we will all now recognise that care home lives matter too.

8.12 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I thank the noble Lord, Lord Hunt of Kings Heath, for his Motion and express the Green group's strong support for it. "Regret" is the right word to use when we are talking about policy around care homes and funding. Indeed, it is rather like the rotten onion that you find neglected at the bottom of the sack. When you peel it, the centre is rotten and the tears are flowing. This is a great gaping hole of unmet needs and human suffering.

I am picking up on points made earlier by the noble Baroness, Lady Tyler of Enfield, and the noble Lord, Lord Sheikh, about the 84% of care homes which are privately owned and what you find when you peel back the layers of that. I first got interested in these issues in 2016 when I read a brilliant report by the Centre for Research on Socio-Cultural Change called *Where Does the Money Go? Financialised Chains and the Crisis in Residential Care*. It exposed for the first time to full public view the way in which large numbers of care homes are owned by offshore-based companies with complex financial structures which extract 12% or even more annually in effective profit, however it is structured, while ensuring that little or no tax is paid and loading companies up with debt. All that provides care of a sort for our most vulnerable and often frail citizens while the work is done by lowly paid and often insecurely employed staff, treated with scant respect.

It is worth peeling into the onion and looking back to where this started in the 1980s. Until then, the UK had been a world leader in the provision of care, particularly for older people, but the NHS started to withdraw from that, leaving it to charitable and then for-profit providers. Some of the move had good intentions to allow people to live in the community, but the effect was a massive privatisation. The number of private residential homes rose from 44,000 in 1982 to 164,000 in 1994, almost quadrupling in little more than a decade. This shifted the costs of ill health and frailty on to individuals.

Now we have coronavirus, and again we have care home owners saying that they cannot afford to pay the costs. Is the Minister looking into what is happening and where the money is going now? Is 12% still being taken out? Are the Government looking for an entirely new, different, non-privatised, non-financialised structure?

David Lloyd George said:

"How we treat our old people is a crucial test of our national quality."

We are failing the Lloyd George test for our elders and many other vulnerable citizens very badly.

8.15 pm

Baroness Wilcox of Newport (Lab) [V]: My Lords, as my noble friend Lord Hunt said, if nothing else comes out of the current crisis, we must have a plan to bring long-term sustainability to care homes and peace of mind to those who live in them.

In February, I noted in my maiden speech to this House that the Prime Minister had announced last August that he intended to,

"fix the crisis in social care once and for all, and with a clear plan we have prepared to give every older person the dignity and security they deserve."

This bold assertion was shortly followed by a slightly less-than-firm assurance, as he appeared to back-track on this plan—as indeed he has back-tracked on so many important matters in recent weeks and months during this public health crisis.

In August 2017, when I led the WLGA, Welsh councils won a legal dispute over who paid for nurses delivering social care in residential homes in Wales, as the Supreme Court ruled in our favour. At the heart of this decision was a grey area where, in the absence of a definitive legal position, two different systems had attempted to come forward with their own distinct interpretation of the law, and the Supreme Court ruling had wide-reaching effects across the UK. However successful we were at the time in securing health funding for healthcare in our care system, this pandemic has served only to exacerbate several underlying problems with the system as a whole, and none so important as sustainable funding for social care, now and in the future.

Wales cannot wait for the UK Government's proposals on social care. Social care is under pressure from a squeeze on funding, an ageing population and a high staff turnover. The state spends about £1.2 billion on adult social care every year in Wales. In a statement three months ago in the Senedd, the Health Minister said that the cost is predicted to grow between £30 million and £300 million by 2023—and that is before the costs of the implications and aftermath of the pandemic are included.

A consultation on possible reforms to social care is due to start this summer, and the Welsh Government will call for honesty and a grown-up debate on increasing care costs. I recommend to the Minister that the UK Government incorporate a similar honest debate on the long-term financial sustainability of care homes.

[Baroness Wilcox of Newport]

Finally, I am very pleased to support the First Minister's initiative that, in Wales, care home staff will get a £500 bonus as a recognition of the incredible work that they have done during this crisis. Mark Drakeford said that this payment recognises the tremendous dedication of the tens of thousands of social care workers throughout Wales—including ancillary staff, such as cooks and cleaners, as well as nursing staff—who are caring for some of the most vulnerable in our communities.

I recommend to the UK Prime Minister that he follows Mr Drakeford's lead in showing a practical, tangible response to those workers who do so much, yet are so fiscally under-rewarded. An immediate decision that the UK Government could implement is to make this payment tax-free and reward the social care workforce in full. I believe the current position is that the UK Government have, disappointingly, turned down the Welsh Government's request for recipients of this bonus not to be taxed. They should be able to keep every penny.

8.18 pm

Baroness Wheatcroft (Non-Afl) [V]: My Lords, I thank the noble Lord, Lord Hunt, for securing this timely debate. The noble Baroness, Lady Wilcox, just referred to the fact that, in his first speech as Prime Minister, Boris Johnson promised that he would "fix" the social care issue "once and for all". That is an admirable promise, but of course not one that a single political party can fulfil. This is a huge issue that has built up over many years. What we need is total cross-party agreement on a way forward. Unless we have that co-operation, this sore will not be dealt with.

Many of the problems have been highlighted by earlier speakers, in particular the privatisation of social care in many cases, and the private equity need to take money out on a grand scale. Clearly, that is not a recipe to secure our care homes and their residents for the long term.

However, there is one thing that I believe we could do immediately to improve the lot of those who are resident in care homes. I was appalled to see that the personal allowance that residents are allowed to hang on to when they are living in a care home is the princely sum of £24.90 a week. That is not enough to allow those elderly people to indulge in the few small treats that might make their life rather better. Will the Minister consider increasing that allowance immediately so that their quality of life can be improved? It need not be a huge amount, but anything on top of that meagre allowance would clearly make a difference.

Finally, I want to put forward just one small thought—a means by which, when we are in a post-Covid era, we might improve the funding of social care homes and the lot of those who live in them. There have been several experiments in Holland in which nursery schools are run on the same sites as care homes. It works. It benefits both the children and the elderly residents. Their quality of life improves by leaps and bounds—and, of course, the nursery schools make a contribution in terms of rent. Will the Minister give serious thought to that consideration and to how it might be put into practice?

8.21 pm

Lord Purvis of Tweed (LD): My Lords, it is a pleasure to follow the noble Baroness and I support her very powerful plea. I also support the Motion, and I am grateful to the noble Lord, Lord Hunt, for bringing it forward.

Before I address the Motion, I want to make a remark about participating physically in the Chamber. I have no inherited wealth, nor do I come from a political family. I do not live on a pension and I am not a salaried Member. I live in Scotland. I and others with a similar background continue to receive no support for staying in London if we participate physically in the Chamber. Meanwhile, salaried Ministers, the Lord Speaker, the Senior Deputy Speaker, the Labour Leader and the Chief Whip have continued to receive support for living in London since 21 April, when it was stopped for all other Members. This House should not just be for the rich, the retired or those who live in London. The Deputy Speaker said that in this debate all Members were equal. Well, the system adopted by the House administration and the commission should afford us equality, too.

I support the call for a long-term plan, for the very powerful reasons given by my noble friend Lady Jolly. The way in which our country has not supported our care home sector during this crisis has been shocking—north and south of the border. In Scotland, on 31 May the chairman and founder of the Balhousie Care Group, which operates 26 homes with 940 residents, wrote in the *Herald* that there had been:

"Three months of mixed messages, mismanagement and missed opportunities"

—that is, north of the border. On 21 May, the Health Secretary, Jeane Freeman, said that more than 900 patients had been released from hospitals into Scotland's care homes. That was three times the number that the Scottish Government had said was the reality only weeks before. They were sent to care homes with no testing but only a risk assessment, and, depending on that assessment, with only seven days' isolation. By then, 1,749 people in Scotland's care homes had lost their lives to Covid-19.

In England, I read with a breaking heart the soul-destroying evidence to the Commons Health and Social Care Committee in which a comparison was made of how England and Wales and Germany had approached the issue. Isabell Halletz, chief executive of the German care homes employers' association, gave the stark comparison of 12,500 deaths in England and Wales and 3,000 deaths in Germany, with patients in Germany not being able to go into a care home unless they had tested negative or had gone into isolation or quarantine for 14 days in separate institutions. She also gave a figure which should always be borne in mind when we clap what we term our "heroes working". She said that Germany has nearly 1.1 million people working in the long-term care sector. Of those, how many have tragically died? The answer is just 42, which compares starkly with the record in England and Wales.

If we are to learn serious lessons about this crisis, we have to make sure that we do not forget that other countries have performed better. We should learn from them how they have handled this crisis.

8.24 pm

Baroness Uddin (Non-Afl) [V]: My Lords, I express my deepest gratitude to all care workers on the front line, and my deepest sympathy to all those who have lost their loved ones. Care homes remain at the front line of our struggles to overcome this dangerous disease yet continue to experience financial disparities and low pay. I support my noble friend Lord Hunt of Kings Heath in this Motion.

I have spoken to a number of care providers operating in Cambridge, Essex, Tower Hamlets and Milton Keynes, and they acknowledge the significant support, including some PPE in the form of masks and gloves, that they have received, with some notable exceptions. Current changes proposed to payments by local authorities and government will have a significant impact on the cost of care provision. One concern is that government will cease to support businesses with over 250 employees. Will the Government reconsider this policy and the cap? Also, regarding funding support, the Government and local authorities are proposing belated infection-control training for front-line staff when there are massive issues of payment and equipment shortage. The question arises: who will pay for these front-line staff to attend training? Will the Government consider providing vouchers to staff attending training?

Care providers are rightly concerned, as many have continued to fund themselves for essential PPE, including masks and gloves. Can the Minister say what progress has been made to ensure that the care sector is fully furnished with the necessary PPE, masks and storage facilities for testing, and what the timeframe is for this?

Furlough schemes have put additional stress on carers and front-line nurses, many of whom are from BAME communities, who have not been considered for additional financial incentives. I agree completely with all noble Lords who have asked that they are rewarded with increased payment and salaries, which of course should not be taxed.

In the light of the disproportionate number of deaths and impact on minority communities, what advice and support is being given to care providers and front-line, potentially vulnerable workers, to ensure that they continue their service to our NHS in safety and protection?

8.28 pm

Baroness Sheehan (LD) [V]: My Lords, I add my thanks to the noble Lord, Lord Hunt of Kings Heath, for tabling this regret Motion. It gives me an opportunity to give heartfelt thanks to staff in care homes, who have gone above and beyond the call of duty to care for the vulnerable elderly, often at risk to their own lives, and many of them are from BAME communities.

I will confine my remarks to the role of the private sector since the 1980s, when the responsibility for social care was moved from local authorities to private providers and others. Money was then readily available from banks for a business model that had government money behind it, and a growing clientele from an ageing population. Unsurprisingly, global private equity, sovereign wealth and hedge funds piled into the sector. However, what role has this corporate debt business model played in the growing social care crisis over the last three decades, the tragic culmination of which we see today, with the unacceptably high death toll in care homes? Is this a suitable model for businesses with huge social responsibilities? Does it lend itself to putting a protective ring around vulnerable people when they need it? I suggest not. Does the Minister agree that servicing debt from taxpayers' money and from people funding their own care is not a good look, especially when the people who suffer when things go wrong are the elderly and infirm?

This pandemic has shown that, given that public money is contributing to public care, we need better scrutiny of the industry's finances, as well as public accountability of private equity-owned care homes. Looking at the example of the Four Seasons debacle, in 2016, even as it hurtled towards insolvency, its directors were paid a total of £2.71 million, of which the highest paid received over £1.5 million. In 2019, the firm went into receivership. Who asks the questions when something like this happens in the care sector? Who are the individuals profiting, who take the money and run—leaving it to taxpayers to pick up the tab—and how do we do identify them when they hide behind complex financial structures, many of which are listed offshore? Does the Minister agree that a Government bailout for such businesses would be unacceptable?

The sector desperately needs urgent reform, and I hope that the Government will do what they have promised: bring forward a plan—this time with proper public oversight—based on open and good governance, one that really does provide care from the cradle to the grave.

8.31 pm

Baroness Brinton (LD) [V]: I thank the noble Lord, Lord Hunt, for tabling this Motion. Along with other colleagues, I agree completely with the principles behind regretting these regulations.

I start by praising the care sector—all the homes and ancillary care staff, whether professional or family carers, who during the last two and a half months have done all that they could to care for the most vulnerable in our society, against all the odds. It is important this week, as Carers Week begins, to recognise the unpaid carers, especially the young ones, who have often provided support. I recognise that this is slightly off the topic of the statutory instrument, but it is important to understand the structural problems in our care systems at the moment.

Other noble Lords have outlined how the structural problems started 40 years ago. In 1979, two-thirds of care homes were run by local authorities or were not for profit—now, 84% are run for profit. The noble Baroness, Lady Bennett, outlined how in the mid-1980s things started to change. I can remember as a Cambridgeshire county councillor in the 1990s and early 2000s how the standards changed in care homes at very short notice. Many local authorities, which were not permitted to borrow any capital costs at all, had very regretfully to close down their care homes. That was when the surge started, in about 1995-96, and it continued through the next decade.

We moved as a country towards having a privatised system, but we did not fund it properly. Money for care homes certainly needs to be upgraded. One of the difficulties we face is that, even though we are approving

[Baroness Brinton]
a weekly rate—I know this from experience of my mother's two and a half years in a care home—the CCG started from a position of arguing, either with the individual and their family or with the local authority, about what the amount should be. Almost standing over my mother's bed, we had to try and fight back against the CCG representative who did not want to pay anything at all after her second stroke. We need to understand the pressure on families, particularly regarding the way this allowance is used, and recognise that it is not the true picture.

We need also to look at the extra costs that care homes are facing at the moment. Other noble Lords have mentioned that PPE costs have increased. They have not doubled—care homes are now paying five times the amount they were paying in February. We heard that PPE was diverted, and the noble Lord knows, as I have challenged him long enough about this, of concerns about whether Clipper Logistics were going to come on board. Can the Minister confirm the report in the *Health Service Journal* that the Clipper system is now to be used only for emergencies and is not to be the resource that the care home sector was led to believe it would be? If it is not, where on earth will individual care homes be able to access PPE at the price they used to pay before the pandemic?

Testing has also been a problem over the last few weeks. In order to keep people safe, it was important that everybody, in all care homes, was tested right from the start.

My noble friend Lady Barker and others have talked about that month between mid-March and mid-April, before the Secretary of State announced that care homes could have tests. We heard that last Friday was the date by which everyone in a care home for the elderly would have access to testing. It is good that today, the Government announced that those who have learning or other disabilities can now finally access testing, but care homes for the elderly still desperately need assurances that, as with the NHS, their staff and patients can access regular testing. Can the Minister confirm that this will now happen? Otherwise, there may be a local flare-up which, before we know it, is running rife through certain care homes again.

Many noble Lords have talked today about the importance of treating our care staff well. We know that they have gone way above and beyond the call of duty. Those who have given up life with their families and moved into care homes deserve special credit. I like the idea outlined by the noble Baroness, Lady Wilcox: the Welsh proposal to award £500 to care workers as a bonus for their considerable effort. For them, many of whom are on the absolute minimum wage, it is a significant amount, although it still will not reward them for everything they have done.

At the end of this, we must return to the long overdue Green Paper. I completely agree with all noble Lords who said that it must be cross-party. Dilnot was certainly a good starting point, but the problem with Theresa May's proposals was that they were Dilnot upside down. I gently remind the Government that it was not the Liberal Democrats or the Labour Party that walked away from the last cross-party arrangements. My party is keen and eager to become involved, whatever we decide for the future. The Green Paper is very much overdue; it must come along quickly. We need to look at everything structural. This should not be just about who pays what for a bed. We need to review the entire system.

8.37 pm

Baroness Thornton (Lab) [V]: My Lords, I thank all noble Lords who have participated in this debate, and my noble friend Lord Hunt for allowing this small but important statutory instrument to receive full scrutiny. There has been intense scrutiny and there are many questions to be addressed by the Minister. I join other noble Lords in paying tribute to those who work in the care sector for their dedication and courage over recent times. I ask for the indulgence of the House to mark national Carers Week and to pay tribute to and recognise the essential role of family carers, who have received precious little attention so far during this pandemic. Support has been desperately hard to access, and many families feel overwhelmed and pushed to breaking point.

Several noble Lords have said that this sector was in crisis before the pandemic and has been cruelly and badly served by the Government from the outset. As the noble Baroness, Lady Barker, mentioned, some of us were waving warning flags about the need to protect this sector from Covid-19 early in the outbreak. We were told that care homes would not be affected. It took a major campaign and pressure—by the media, by my honourable friend Liz Kendall MP, the shadow Minister for Care and Older People, many organisations such as Age UK, local government, MPs from all parties and your Lordships' House—for the Government to start recognising the terrible toll and neglect in our care homes.

The notion, repeated by the Secretary of State, that a protective ring was put around our care homes is rather insulting, given the number of deaths and the time and chaos involved in providing PPE and testing. The Minister might advise his right honourable friend the Secretary of State to stop using expressions that are patently wrong and that only serve to deepen the anger and sadness of those families who have lost, and continue to lose, relatives in our care homes.

At some point, there will be an examination of the reasons for the mortality among those in care homes, those with dementia, those with learning disabilities and those in our mental health institutions. What we have to work for is seeing that the transparency and honesty of that examination, and of the price paid, will lead to real reform in our care sector.

The statutory instrument that we are discussing concerns the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 and makes provision for, among other things, NHS-funded nursing care. Several noble Lords have explained what all this means. These regulations amend Regulation 20 of the 2012 regulations and increase the rates for NHS-funded nursing care payment by the NHS Commissioning Board or a clinical commissioning group. Like my noble friend Lord Hunt, I welcome the proposed increase in the FNC rate that the NHS pays

to care homes to cover the costs of services that must be carried out by a registered nurse. I repeat his question and echo many of the contributions today in asking: what contribution will this upgrade make to the long-term sustainability of the sector? I commend my noble friend Lady Wilcox on her strong support for reform in the sector.

According to a House of Lords Economic Affairs Committee report, as my noble friend Lady Healy said, 1.4 million older people in England had unmet care needs in 2018. The number of older people and working-age adults requiring care is increasing rapidly, while public funding declined in real terms by 13% between 2009 and 2016. When will the Government respond to that report? When will we see a new proposal for a new model of social care, as mentioned by so many noble Lords tonight? Specifically, given that this SI reached us before the pandemic, what plans do the Government have to put this somewhat battered sector on to a more secure footing in the short and long term? What assessment have they made of the impact that increased care costs resulting from the Covid-19 pandemic has had on the care home fees paid by those who are self-funding or partially self-funding?

Last month, the Health Secretary promised that by 6 June, all residents and care home staff would be tested; today, he said that care homes would only have their tests delivered. This is not good enough. The Government have been too slow to act. Care home residents and staff need to be regularly tested if we are to come to grips with this virus. We need to move swiftly to regular testing of family members, too, so that they can safely visit their loved ones. Ministers should now implement a comprehensive strategy for regularly testing more in care homes, including among the under-65s, and give social care services the priority and resources that they deserve. When will they do so?

8.43 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con) [V]: My Lords, as expected, this has been a moving debate. Who could not be moved by the powerful testimony from the noble Lord, Lord Hunt of Kings Heath, in moving his Motion and by the many noble Lords who have given such clear accounts from the front line of our social care? I have stood at this Dispatch Box—this virtual Dispatch Box—and heard the fears of noble Lords that the social care sector is in some way overlooked. I want to reassure noble Lords that this is not the case.

The country was put on hold three months ago to protect the most vulnerable, at huge cost to future generations. The protection of care homes remains an important consideration in the ongoing lockdown. I welcome the appointment today of David Pearson, who will be known to many noble Lords, as the chair of the Covid-19 social care support task force. Finally, in planning the future of our healthcare, we will be informed by the experience of the last five months—a time when the social care system was the focus of our attention and the whole of government got to know the sector much better. I do not hide from the fact that the last few months have been tough. We may not have had the social care meltdown that other countries did, but there have been difficult times. As such, I am sure that noble Lords will join me in expressing our gratitude to the hard-working staff across the social care sector, local authorities, charities and the NHS.

We all recognise that many of the lowest paid, many of them BAME, put themselves in harm's way to look after the most vulnerable. The noble Lord, Lord Sheikh, and the noble Baronesses, Lady Pinnock, Lady Uddin, Lady Sheehan and Lady Jolly, made these points very well. For this sacrifice the country is enormously grateful. In particular, since this is Carers Week, I give special thanks and appreciation to our nation's carers. The noble Baroness, Lady Brinton, rightly referred to the 6.5 million people in the UK who, as the noble Baroness, Lady Thornton, rightly reminded us, are looking after a family member or friend who has a disability or a mental or physical illness, or who needs extra help as they grow older. These are heroes as much as others on the front line, and we give our thanks.

It was instructive to hear from the noble Baronesses, Lady Pinnock and Lady Jolly, about their thoughts on the potential risks around EU exit and its impact on the recruitment of social care staff. The social care sector is vital to the UK, and our future immigration system will ensure that we have access to the skills and talents that we need after the UK leaves the EU. We are continuing to support employers in their promotion of the EU settlement scheme. EU nationals have until 30 June 2021 to make an application to the settlement scheme, and I strongly encourage them to do so.

The noble Lord, Lord Hunt, introduced this debate by bringing to our attention the recently laid National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2020, which I will outline for the benefit of the House. The FNC exists so that individuals or local authorities do not pay for nursing care that is the responsibility of the NHS. My right honourable friend the Secretary of State for Health and Social Care set a national rate in legislation, and he considers it annually.

Following many representations, including in this House by the noble Baronesses, Lady Thornton and Lady Jolly, and a formal review, we increased the FNC flat rate for 2019-20 to £180.31 per person per week, an increase of £14.75. The higher rate has been increased to £248.06 per person per week, an increase of £20.29. This is an overall uplift of 9% on the rate previously set for the financial year. This is a substantial raise that adds an additional £62.4 million of funding into the sector per year, and I am grateful for the welcome from the noble Lord, Lord Hunt, and the noble Baronesses, Lady Watkins and Lady Pinnock, for this development.

The Government have also uplifted the 2020-21 FNC rate by a further 2%. The regulations being discussed today therefore amend the rates set out in the standing rules to £183.92 per person per week for the flat payment. They also increase the higher payment to £253.02 per person per week.

The noble Lord, Lord Hunt, raised the important issue of efficiency challenges. I confirm that an efficiency rate has not been built into the uplifted rate for 2019-20, nor for the 2020-21 rate; the rate was designed to reflect the average cost of nursing care.

[Lord Bethell]

However, we are not here today just to discuss that important but relatively small part of social care funding. I shall spell out a few basic points. The long-term financial stability of social care is an imperative for this Government. We have already acted to ensure that the social care sector is properly funded through the epidemic, with major rounds of finance announced earlier this year. Looking ahead, I reassure the noble Lord, Lord Hunt, that we are committed to reform. The manifesto made that clear and the Secretary of State has invited cross-party talks to resolve the complex issues faced, which is the right place to start the process. I reassure the noble Baroness, Lady Wilcox, whose thoughtful and moving maiden speech on this subject is well remembered on all Benches, that these will take place at the earliest opportunity, given the current circumstances. In answer to the noble Lord, Lord Hunt, and the noble Baroness, Lady Healy, that is when the Government will begin to bring forward a plan for social care for the longer term.

The Government have acted to ensure that adult social care is properly funded. At the last spending review, we announced that an extra £1.5 billion would be made available to local government for adult and children's social care in 2020-21. This came on top of maintaining £2.5 billion of existing social care grants.

The noble Baronesses, Lady Tyler and Lady Bennett, and the noble Lords, Lord Sheikh and Lord Mann, asked about the significant extra funding that the Government had provided. I confirm that the Government expect local authorities to get the funding that they have received to the front line quickly. Local authorities should take steps to protect providers' cash flows, including making payments on plan in advance and monitoring the ongoing costs of care. I assure my noble friend Lady Altmann and the noble Baronesses, Lady Pinnock, Lady Brinton and Lady Sheehan, that the future of funding in social care will be set out in the next spending review.

My noble friend Lady Altmann raised the financial stability of care homes. We recognise that Covid-19 is imposing significant pressures on the social care sector. We have now made £3.2 billion available to local authorities so that they can address pressures on local services caused by the pandemic, including in adult social care. In addition, in April we brought forward planned social care grants worth £850 million to further support adult and children's social care.

The Covid epidemic targeted the old and vulnerable; it had the social care sector in its sights. The noble Baronesses, Lady Barker, Lady Watkins, Lady Sheehan and Lady Healy, raised the question of the protective shield announced by the Secretary of State. I reassure noble Lords that the care home support package published on 15 May and the £600 million adult social care infection-control fund represent the next phase of our response for care homes, using the latest domestic and international evidence brought together by Public Health England and drawing on the insights of care providers. This includes making 1 million tests available for residents and workers in care homes, providing a named clinical lead for every care home, infection-control training, the PPE portal as a temporary emergency top-up route and ensuring that every local authority is carrying out a daily review of data on its care homes. Our help to care homes has meant that most of England's care homes have had no outbreak at all.

The measures we have brought in have created a tsunami of regulations and guidance as we address this horrible disease, and we have responded to requests for clarification from the front line. We have introduced dozens of new ways of doing things. The 16,000 care homes, which range from the big to the small and are supported by half a dozen business models, face their own HR challenges.

We have sought to move quickly and thoughtfully to bring rapid support to a disparate and decentralised care system and have brought in new resources, technologies, supply chains and even the Special Air Service. I have no doubt that, from the point of view of a care home director, it has felt like a confusing set of measures. Under difficult circumstances, there may be things that could have been done better, but I assure the Chamber that we could not have moved faster or with more commitment. The strength of our social care system is the local routes and the tailored offering of thousands of different homes—I acknowledge the persuasive arguments of my noble friend Lady Wheatcroft—but this diversity makes it challenging to implement novel solutions at pace from the centre. I thank those in central and local government who did their best under difficult conditions.

There can be no doubt that the nation's health and social care is a major priority for this Government. This extends from the fair funding of NHS-funded nursing care and social care more broadly to comprehensive support during the pandemic and, in time, an ambitious plan for reform. We will work with all interested parties—I thank Age UK and the National Care Forum for their briefings before this debate—to make it the most secure and effective service it has ever been. I conclude by thanking once again those working in the social care sector and other front-line services in these challenging times.

8.54 pm

Lord Hunt of Kings Heath [V]: My Lords, I thank all noble Lords, and the Minister for his considered response. The debate has shown the very serious situation facing many of our care homes. I heard what the Minister said about support for the social care system. However, far from experiencing a protective shield, many care homes felt abandoned by the Government and the NHS in March. They remain very vulnerable financially, and the workforce crisis in the offing because overseas recruitment will effectively come to an end at the end of this year cannot be wished away.

The Minister has reconfirmed the Government's commitment on the long-term future. This is welcome. I also agree with the noble Baroness, Lady Wheatcroft, about the desirability of cross-party consensus. Looking back, it was a great pity when Andy Burnham's plan was labelled a death tax by David Cameron in 2010. That has made cross-party consensus that much harder.

One thing is for sure: we owe a huge debt to care workers and carers for the fantastic work they have done over the last few months. They have responded

magnificently to this huge and unprecedented challenge. We thank them all. I beg leave to withdraw my Motion.

Motion withdrawn.

8.56 pm

Sitting suspended.

Arrangement of Business

Announcement

9.16 pm

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): My Lords, I remind the House that our normal courtesies in debate still very much apply in this new hybrid way of working.

Public Health England Review: Covid-19 Disparities

Commons Urgent Question

The following Answer to an Urgent Question was given on Thursday 4 June in the House of Commons.

"With your permission, Mr Speaker, I will make a Statement.

As a black woman and the Equalities Minister, it would be odd if I did not comment on the recent events in the US and protests in London yesterday. Like all right-minded people, regardless of their race, I was profoundly disturbed by the brutal murder of George Floyd at the hands of the police. During these moments of heightened racial tension, we must not pander to anyone who seeks to inflame those tensions. Instead, we must work together to improve the lives of people from black and minority ethnic communities. It is in that spirit that we approach the assessment of the impact of Covid-19 on ethnic minorities. If we want to resolve the disparities identified in the PHE report, it is critical that we accurately understand the causes, based on empirical analysis of the facts and not preconceived positions.

On Tuesday, my right honourable friend the Secretary of State for Health and Social Care confirmed to the House that Public Health England has now completed its review of disparities in the risks and outcomes of Covid-19. The review confirms that Covid-19 has replicated, and in some cases increased, existing health inequalities related to risk factors including age, gender, ethnicity and geography, with higher diagnosis rates in deprived, densely populated urban areas. The review also confirmed that being black or from a minority ethnic background is a risk factor. That racial disparity has been shown to hold even after accounting for the effects of age, deprivation, region and sex.

I thank Public Health England for undertaking this important work so quickly. I know that its findings will be a cause for concern across the House, as they are for individuals and families across the country. The Government share that concern, which is why they are now reviewing the impact and effectiveness of their actions to lessen disparities in infection and death rates of Covid-19, and to determine what further measures are necessary.

It is also clear that more needs to be done to understand the key drivers of those disparities and the relationships between different risk factors. The Government will commission further data research and analytical work by the Equalities Hub to clarify the reasons for the gaps in evidence highlighted by the report. Taking action without taking the necessary time and effort to understand the root causes of those disparities only risks worsening the situation. That is why I am taking this work forward with the Race Disparity Unit in the Cabinet Office, and the Department of Health and Social Care, and I will keep the House updated."

9.16 pm

Baroness Hayter of Kentish Town (Lab) [V]: My Lords, my criticism of the Government's Answer is that even after the PHE review of disparities and risks and outcomes related to Covid-19 failed to include recommendations, the reply again talks about trying to understand the causes of disparities. Let us be clear: coronavirus thrives on inequality, and inequality thrives on inaction. Let us have no delay for research on causes but real action now to protect BAME people at risk from the virus. Will the Minister tell the House what actions the Government are taking to mitigate the very real risks BAME communities face right now?

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con) [V]: My Lords, it is important that we understand the various drivers of the disparities and the relationship between different risk factors. It has been accepted that the report has some limitations; for example, the ethnicity analysis does not adjust for comorbidities such as the underlying health conditions of hypertension and obesity. It is imperative that we do the next stage of looking at the data and the connections to ensure that we fill in the gaps of understanding and developing new policies so that we act on a proper and scientific basis; otherwise, we risk making matters worse, which no one would want us to do.

Lord Scriven (LD) [V]: New research today shows that more than half of pregnant women in hospital in the UK with coronavirus complications are from a black, Asian or minority ethnic background. Will the Minister commit to an urgent investigation into this?

Baroness Berridge [V]: My Lords, all aspects that are affecting black and minority ethnic people will be looked into by the Minister for Equalities. The Equalities Hub is now the central point to look at these matters. Action has been taken in relation to making sure that employers are risk assessing, including when employees are pregnant and could be at higher risk from the virus.

Baroness Pidding (Con) [V]: My Lords, the Public Health England report makes it clear that deprived communities are being disproportionately affected by Covid-19. Does the Minister agree that it is imperative that the Government redouble their efforts to reduce health inequalities between the richest and the poorest in society, fulfilling the Prime Minister's levelling-up agenda? How might that be achieved?

Baroness Berridge [V]: My Lords, the PHE review indeed makes it clear that those who are in the most deprived neighbourhoods are more likely to die as a result of Covid-19 than those who are in more affluent areas. The Minister for Health outlined on 4 March that the Government are committed to levelling up and to looking at health inequalities, particularly in deprived neighbourhoods where we see early-onset diseases and avoidable mortality at their highest rates. The Government are committed to getting to the bottom of that and to acting upon it.

Baroness Quin (Lab) [V]: My Lords, Table 2.1 in the review shows that in the north-east a greater proportion of the excess deaths were due directly to Covid-19 than elsewhere. It also seems that our least well-off communities were the worst affected. I echo the calls of my noble friend Lady Hayter and the noble Baroness, Lady Pidding, for action to be taken on the basis of not just this report but all the other work that has been done on health inequalities, particularly by Professor Marmot and his review.

Baroness Berridge [V]: I assure noble Lords that the excellent work of Professor Sir Michael Marmot over the last 10 years or so will be reviewed and worked on by the Minister for Equalities, looking at all the different impacts and inequalities the virus has exposed in our communities.

Lord Dobbs (Con) [V]: My Lords, to judge the risks on both sides of this very difficult question we need precise information. I hope my noble friend will correct me if I am wrong, but I believe the statistics show that the 40,000 Covid deaths cover not only those who died from Covid as a primary cause but those who died with Covid as a secondary cause—in the same way that many men will die with prostate cancer but not necessarily from it. The distinction is crucial. Can my noble friend give a clear breakdown distinguishing between primary and secondary Covid deaths and say how many of those deaths would have been expected to occur within the next two years even without Covid? If she does not have that information, would she be kind enough to place it in the Library at the first possible opportunity?

Baroness Berridge [V]: My Lords, the Office for National Statistics has analysed the death certificates: on the death certificates where Covid is mentioned as a cause of death, over 95% had it as a primary or underlying cause. That does not exclude other underlying conditions; in March and April this year, over 90% of deaths from Covid had one other underlying health condition mentioned on the death certificate.

Lord Blunkett (Lab) [V]: My Lords, it is very clear that we all agree that gross inequality and major deprivation are the underlying causes of the disparity. That must be dealt with societally in the long term. In the short term, does the Minister agree that we probably need targeted health campaigns, not blaming individuals but trying to at least do something in the short term about this division? That can be achieved not by daily press conferences but by very targeted help.

Baroness Berridge [V]: I am grateful to the noble Lord. Alongside this report there has been increased stakeholder engagement—particularly with the black and minority ethnic community—with faith leaders and representatives. As the Government are trying to ensure that the communication of the necessary public health information regarding hygiene and handwashing has been fully promoted within those communities, we are translating much of that advice into additional languages to ensure that that community has heard the messages it needs to hear now.

Lord Bilimoria (CB) [V]: My Lords, black men and women are more than four times as likely to die a coronavirus-related death than white people. It is sad that of the 29 British doctors who have died of coronavirus during the pandemic, 27 were from ethnic-minority backgrounds. Research this week has revealed that 40% of BAME doctors surveyed said that risk assessments to prevent Covid deaths recommended by the NHS nationwide five weeks earlier have still not been carried out. Can the Minister explain why? Even Dr Chaand Nagpaul, the BMA Council chair, is calling on the Government to take urgent action to protect our BAME colleagues. Yet now, where care homes are concerned, the Government have just announced a new social care task force. Can the Minister explain why there are still care homes where staff and patients have not been tested—let alone on a regular basis—as the Government assured us they would be?

Baroness Berridge [V]: My Lords, the department wrote to all NHS trusts and clinical commissioning groups outlining that there should be risk assessments of their staff and that they should take into account whether they have black and minority-ethnic or other staff who were at particular risk so that additional precautions could be taken. That was included also in the NHS Employers guidance to ensure that protected characteristics were taken into account. We are aware that HR directors in various places are taking those actions and even redeploying staff. The advice and guidance have been clear that this is a factor to take into account along with other factors, as I have outlined, such as being pregnant.

Lord Triesman (Non-Afl) [V]: My Lords, those of us throughout the world who have seen the savage murder of George Floyd will recognise the systemic evil of racism in society. Although I do not say that we are in the same position as the United States, we are far from guiltless in this country and we need to think about the systemic problems that the stain of racism places on us. Does the Minister agree that collecting figures on BAME deaths from Covid-19 without collecting the remaining epidemiological data on those citizens is a very poor piece of epidemiological work? It did not look at poverty, at overcrowded households or at employment in high-risk and low-paid jobs, and it reflects a systemic failure to grasp the weight of racism which impacts those communities. Is it not for the same reason a worry to the Minister that very few BAME senior scientists have been asked to serve on SAGE? I believe that they would have spotted these data gaps and tried to act on them.

Baroness Berridge [V]: My Lords, I join the noble Lord in expressing horror at the death of George Floyd. I can only agree with him about the evil of the

systemic racism that we have seen in relation to the behaviour in that video. We are working at pace. The Race Disparity Unit has been collecting data. On the PHE review, we have accepted that there are not recommendations; there are conclusions. There are still gaps in the data and in the analysis that needs to be done. We are determined to get to the bottom of this, but we must do it on the basis of proper scientific evidence. I will take back to the Minister for Equalities the noble Lord's representations about the inclusion of scientists from BAME backgrounds.

9.28 pm

Sitting suspended.

Arrangement of Business

Announcement

9.40 pm

The Deputy Speaker (Lord Russell of Liverpool) (CB): I remind the House that our normal courtesies in debates still very much apply in this new hybrid way of working.

Abortion Regulations: Northern Ireland

Commons Urgent Question

The following Answer to an Urgent Question was given on Thursday 4 June in the House of Commons.

"The Government originally laid the Abortion (Northern Ireland) Regulations 2020 in Parliament on 25 March on the provision of abortion services in Northern Ireland. The regulations came into force on 31 March 2020 and became law on access to abortion services in Northern Ireland. The regulations were originally required to be debated by 17 May to remain in force as law. However, the unprecedented situation created by Covid-19 has impacted on parliamentary processes, and virtual voting systems were not yet fully implemented in time for the regulations to be debated in both Houses. Therefore, the Abortion (Northern Ireland) (No. 2) Regulations 2020 were laid and came into force on 14 May, revoking the earlier regulations. That gives Parliament an extra 28 days to consider and scrutinise the regulations properly, given the nature of this policy.

This approach has ensured that the law on abortion in Northern Ireland itself, a requirement specified by the House in the Northern Ireland (Executive Formation etc) Act 2019, continues to apply with no risk, gap or legal uncertainty, and services can continue on the same basis in Northern Ireland as they are currently operating. The regulations are due to be debated in the House in a Delegated Legislation Committee on Monday 8 June and in the Lords after that. I understand that a committee has been empanelled to consider the regulations. I welcome the fact that the right honourable Gentleman's party will be represented on that committee so that its voice can be heard. That will be the appropriate time for a full debate on the regulations."

9.40 pm

Baroness Smith of Basildon (Lab) [V]: My Lords, as a result of the Northern Ireland (Executive Formation etc) Act 2019, this House will debate the regulations on abortion next week. Any discussion about abortion evokes strong emotions and deeply held views. When we passed the legislation, we had detailed and thoughtful consideration of these provisions. Today, the Commons committee debated and passed the regulations by 15 votes to two. If there was a vote of all MPs, we should expect a similar result. So, first, can the Minister confirm that the change in the law to decriminalise abortion in Northern Ireland has already taken effect and that these regulations are about the framework for service provision? Secondly, can he confirm that the regulations fulfil a statutory duty, are essential to ensure that the UK Government fulfil their human rights obligations, and therefore must be considered by your Lordships' House?

Viscount Younger of Leckie (Con) [V]: My Lords, I totally agree with the noble Baroness that this is a very emotional subject. There have been debates in Parliament over the last few months, if not years. As the noble Baroness said, the regulations are being brought forward and there was a vote in the Commons today. The Government were placed under a statutory duty to deliver abortion law for Northern Ireland by implementing the recommendations of the CEDAW report.

Baroness Barker (LD) [V]: My Lords, looking forward, not backwards, will the Minister commit to working with the Department of Health in Northern Ireland to ensure the full implementation of services, as set out in the legal framework, to fulfil the UK's international human rights obligations?

Viscount Younger of Leckie [V]: Indeed, the noble Baroness is correct. Although health is devolved, the UK Government are giving every help they can to the health service in Northern Ireland. Once the regulations are passed by this House next Monday, as I hope that they will be, there is a lot of work to do to make sure that there is a full service operational for those women and girls who wish to have abortions.

Baroness Eaton (Con) [V]: My Lords, will my noble friend the Minister say why Regulation 3, unlike the Abortion Act 1967, makes abortion on the basis of sex lawful in the first 12 weeks of pregnancy? Given that it is now possible to know the sex of the foetus between seven and 10 weeks, and that the CEDAW report expressly condemned sex-selective abortion, why does that regulation make it lawful? What meetings have the Government had with the organisation Stop Gendercide in considering how to define these regulations?

Viscount Younger of Leckie [V]: I make it clear to my noble friend that the abortion regulations do not allow abortions on the grounds of sex selection. My noble friend may be aware that the UK Government publish an annual analysis of the male to female birth ratio in England and Wales to check for any evidence—for example, if there are more girls than boys aborted. The last one was in October 2019 and there was no evidence to show.

Lord Dubs (Lab) [V]: My Lords, I should first declare an interest in that I am an active member of the British-Irish Parliamentary Assembly. I chair one of its committees and we did a report a couple of years ago on abortion. We covered both Northern Ireland and the Republic.

[Lord Dubs]

I will ask two questions. First, does the Minister agree that it is disappointing that for women in Northern Ireland there is still a state of uncertainty as to where they stand legally as regards their right to abortion? There are doubts about how it should work and differences in different parts of Northern Ireland, depending on which trust areas they live in. Secondly, will he further confirm that the Northern Ireland Human Rights Commission has a key role to play in all this? It has responsibility for the rights of women. Has he been in touch with the Northern Ireland Human Rights Commission to see how it is developing and taking this issue further?

Viscount Younger of Leckie [V]: The noble Lord is right that once the law is fully passed and the regulations come fully into law—I hope next Monday—it will give clarity and support not only to those at the front end of health in Northern Ireland, who have to supervise the abortions that take place, but in particular to the women and girls involved. I will need to write to the noble Lord about the Northern Ireland Human Rights Commission.

Baroness O'Loan (CB) [V]: Is the Minister aware that while there is an obligation to produce regulations under the Act, there is no obligation on the Government to table these particular regulations, which, as the noble Baroness, Lady Eaton, pointed out, permit the abortion of foetuses on the grounds of sex? There is no restriction on the grounds upon which a baby may be aborted in the Northern Ireland regulations; therefore, it is possible to abort on the grounds of sex. Is he also aware that some of the regulations have been said by the Attorney-General for Northern Ireland to be ultra vires? Can the Minister tell us why the regulations go so very far beyond what was required by the CEDAW report, which underpins these regulations, particular insofar as the fact that they discriminate against babies with a disability, who can be aborted to birth, and medical practitioners and pharmacists who are not protected in terms of their freedom of conscience unless they are actively engaged in the act of abortion? Why is he promoting regulations that are not consistent with Section 6(2) of the Northern Ireland Act and the obligations not to discriminate on the grounds of disability and to protect freedom of conscience?

Viscount Younger of Leckie [V]: There were several questions there, but I will answer two of them. First, the Attorney-General for Northern Ireland reports to the Northern Ireland Executive, not to the UK Government, but I am well aware of the views there. Secondly, to put the noble Baroness right, there was a vote in the UK Parliament on this. So, as I said, the Government are under a statutory duty to deliver abortion law for Northern Ireland and to make the changes.

Lord Mackay of Clashfern (Con) [V]: My Lords, the essence of this proposal was rejected by the Northern Ireland Executive. Why seek to overrule the Executive when they are now happily active again?

Viscount Younger of Leckie [V]: I am well aware of the vote last week, but I take my noble and learned friend back to October 2019, when the Assembly was not up and running. The UK Government were obliged to act in line with Section 9 of the Northern Ireland (Executive Formation etc) Act. The fact that the Assembly is up and running now is of course extremely good news, but it does not mean that we revert to the status quo ante.

Lord Hain (Lab) [V]: My Lords, will the Minister agree that, because abortion is now legal in Northern Ireland, women there are entitled to the same rights and, above all, services as women in all other parts of the United Kingdom, and that we have to implement these regulations setting out the legal framework that will bring Northern Ireland into line with the rest of UK and meet the requirements of Article 8 of the European Convention on Human Rights?

Viscount Younger of Leckie [V]: The noble Lord is absolutely right. It is also consistent with the Abortion Act 1967 and compliant with CEDAW, the Convention on the Elimination of All Forms of Discrimination against Women.

Lord Kilclooney (CB): My Lords, as has been said, abortion is a divisive and sensitive issue anywhere. In Northern Ireland, the problem today is whether British parliamentarians—especially English parliamentarians—have the right to impose their standards on a devolved legislature. This issue has had a positive result in Northern Ireland, creating cross-community politics: cross-community opposition to the regulations and cross-community support for the regulations. But as has been mentioned, the Northern Ireland Assembly, by 78 votes out of a total membership of 90, united against the regulations. Will the Minister say whether the Northern Ireland Assembly has the right to amend the regulations? If the Minister of Health in Northern Ireland, with a mandate to oppose the regulations, takes no action, will Her Majesty's Government abolish devolution in Northern Ireland?

Viscount Younger of Leckie [V]: I totally agree that people have strongly held views on this matter. I reassure the noble Lord that the regulations can be amended in Northern Ireland, should that be wished in the future.

The Deputy Speaker (Lord Russell of Liverpool) (CB): Lord McCrea of Magherafelt and Cookstown? No? I therefore call the noble Baroness, Lady Stroud.

Baroness Stroud (Con) [V]: My Lords, one of the concerns with these regulations is that they make provision for abortion for non-fatal disability up to birth—something that, as we have just heard, 78 Members of the Assembly voted against this week. There are so many ways in which these regulations are concerning but, given all that we have been focused on in the last few months around protecting lives equally, it is extraordinary to me that the Government should present such a discriminatory provision, which is in direct violation of paragraph 85 of the CEDAW report. Will my noble friend the Minister explain how he will ensure that these regulations will not enable abortion on the basis of non-fatal disability to birth, and, as importantly, that they do not perpetuate a stereotype?

Viscount Younger of Leckie [V]: This question very much focuses on the issue: the grounds for abortion. We must remember that what we are talking about is respecting and protecting the rights of women and girls. When we talk about severe foetal impairment and fatal foetal abnormalities, this is very much consistent with the Abortion Act 1967, and brings Northern Ireland law in line with that of the rest of the UK.

9.53 pm

Sitting suspended.

Arrangement of Business

Announcement

10.01 pm

The Deputy Speaker (Lord Russell of Liverpool) (CB): My Lords, I remind the House that our normal courtesies in debate still very much apply in this new, hybrid way of working.

Victims of the Troubles: Payment Scheme

Commons Urgent Question

The following Answer to an Urgent Question was given on Thursday 4 June in the House of Commons.

"The Secretary of State has asked me to pass on his apologies for not being able to answer this Urgent Question in person, as he is currently in Northern Ireland engaging in discussion on these and other matters and was unable to return to the House in time for it. I hope that the House will not mind, therefore, if I answer on his behalf. He has written to the honourable Lady, my honourable friend the Member for North Dorset (Simon Hoare), the chair of the Northern Ireland Affairs Committee, and the Victims' Commissioner on this matter today.

Last summer, the House agreed that in the continuing absence of an Executive, the Government should make regulations establishing a Troubles victims payment scheme. There was cross-party support for establishing the scheme, which was intended to provide much needed acknowledgement and a measure of additional financial support to those most seriously injured during the Troubles. We made regulations establishing a victims payment scheme in January and did so, yes, to fulfil our legal obligation under the Northern Ireland (Executive Formation etc) Act 2019, but also because we are committed to doing what we can to progress a scheme that has been too long delayed by political disagreements. Having spoken personally to a number of victims' groups and the Victims' Commissioner in recent weeks, I am very aware of how long many people have waited for an acknowledgement of the physical distress and emotional trauma caused by injuries to themselves or loved ones during the troubles.

Much has been made in the media of the suggestion that funding is holding up the establishment of this scheme, but that is not the case. Funding is not preventing the Executive from being able to take the vital steps to unlock implementation; rather, the key step to unblocking the process is the designation of a Northern Ireland Executive department to provide administrative support to the Victims' Payments Board. I am afraid to say that, despite this decision being the subject of discussion by Executive Ministers for some time and one on which the Secretary of State is currently engaging them in Northern Ireland, they have not yet designated a department to lead on the implementation of this scheme. The Justice Minister is prepared to lead on the scheme, but Sinn Féin has been clear that it wants to reopen the criteria by which eligibility for the scheme will be determined. That is already set in legislation and provides a fair basis for helping those who suffered most throughout the Troubles. It is therefore imperative that Sinn Féin, along with all the parties, enables the scheme to move forward, as the time for delay is gone.

The Government take this matter very seriously, and we are extremely disappointed by the current delay. It is because of the high priority we place on this issue that the Secretary of State has written to and had meetings with the First Minister and Deputy First Minister. We have been offering and providing all appropriate support to help progress the implementation of this scheme. I assure all right honourable and honourable Members that the UK Government are committed to seeing this matter progress; victims have waited too long for these payments. The Northern Ireland Executive committed to finding a way forward on this issue in 2014. The UK Government have provided that way forward, through the regulations made in January, following public consultation. The Executive must now set aside their political differences and deliver for victims."

10.01 pm

Lord Murphy of Torfaen (Lab) [V]: My Lords, all of us are deeply disappointed at the delay in compensating victims of the Troubles. Will the Government therefore now urge the Northern Ireland parties to agree to give compensation immediately to the vast majority of victims, many of whom are old and sick, and separately to resolve the problems regarding that small number of people about whom there is disagreement? Also, will the noble Viscount accept that the United Kingdom Government should take their part in sharing the funding of this vital scheme?

Viscount Younger of Leckie (Con) [V]: The noble Lord is right: we must put the victims of the Troubles at the forefront of what we are trying to do. However, I reiterate that it is up to the Northern Ireland Executive to take matters forward. I also reassure the noble Lord that, since we spoke about this subject last week, further urgent talks have been taking place between the Secretary of State, the First Minister and the Deputy First Minister, and all parties. All parties, including Sinn Féin, must work closely together to take the payment processing forward.

Lord Bruce of Bennachie (LD) [V]: The Government say that funding is not the issue, so can the Minister identify what part of the block grant was identified for victims' compensation? If he is unable to do so, can he urge the Secretary of State to engage constructively with the Northern Ireland Executive to break the deadlock? Given that the scheme applies to victims across the UK, should he not use his authority to ensure that the scheme is started without any further delay or debate about the definition, for which guidance has already been provided, and given that Naomi Long the Justice Minister has indicated that her department is ready to put it into operation?

Viscount Younger of Leckie [V]: I agree with the noble Lord that huge efforts must continue to be made to get this on track. I reassure him that funding is not the issue—it is not delaying this—and the UK Government have been very generous in terms of the financial contributions connected to *New Decade, New Approach*; he will know that £2 billion has been set aside. So the UK Government have done their part, and it is now up to the Northern Ireland Executive, including Sinn Féin, to take the matter forward.

Lord Caine (Con) [V]: My Lords, as one of the negotiators of the Stormont House agreement, I share the widespread dismay over these delays to victims' payments. Is this not entirely down to one party seeking to reopen the eligibility criteria for such payments by basing them on the badly flawed definition of a victim in the 2006 order? Does it remain the Government's view that it would be just wrong for anybody who injured themselves while carrying out an act of terrorism, or who served a prison sentence for a terrorist offence, to receive a single penny of taxpayers' money?

Viscount Younger of Leckie [V]: My noble friend is right, and that is set down in the regulations. We know that Sinn Féin has said that it wants to look at redefining "victim". However, it will know, and we know, that it is already set out in the legislation. Therefore we urge Sinn Féin to put aside its differences and move forward quickly on this matter.

Lord Hain (Lab) [V]: My Lords, since some Sinn Féin politicians either do not understand or are deliberately misrepresenting the victims payments scheme, will the Minister agree that the only category of people specifically excluded are those whose actions caused the incident in which others were severely injured? Surely only in a parallel universe could anybody seriously argue against that. The refusal of the First and Deputy First Ministers to agree on implementing the scheme, as they are legally obliged to do, is re-traumatising some of the most vulnerable victims and survivors just when, at long last, they thought justice was coming. Surely the only recourse now is for a severely injured victim and survivor to take the Executive Office to court for breaking the law under the 2019 Act?

Viscount Younger of Leckie [V]: The noble Lord is right to point out matters on the definition. Of course, it is up to the independent board—it will and must be formed as soon as a department has been designated for it—to take the definitions forward, and it will be up to it to decide the eligibility of those who apply for payments.

Lord Empey (UUP) [V]: Will my noble friend accept that this is a standard Sinn Féin negotiating tactic? Will he give an undertaking on behalf of the Government that nobody who was injured by their own hand will benefit from this scheme and, if the stalemate continues in Belfast, will his department step in and administer the scheme themselves? These people have been subject to the most outrageous abuse and delay.

Viscount Younger of Leckie [V]: The noble Lord is right in so many ways, but neither the Northern Ireland Office nor the UK Government will step in, because this is the responsibility of the Northern Ireland Executive. That is why these urgent talks, led by the Secretary of State and including all parties, are being conducted to take this matter forward.

Baroness Altmann (Con) [V]: My Lords, I recall the sense of relief when the Government legislated for the compensation scheme for those severely disabled, physically or psychologically, in Troubles-related incidents, and I know that my noble friend and the Government are eager for these payments to start. Are there any other avenues for those who desperately need the money to pursue at this time, especially those for whom there is no doubt that they are entitled to this compensation?

Viscount Younger of Leckie [V]: I have every sympathy with what my noble friend has said. We are urgently waiting for the victims who apply for payments to have a so-called acknowledgment payment, which is likely to be decided on a sliding scale relating to the severity of their injuries. To answer my noble friend's question, some may already have received criminal injuries compensation or money through the Victims & Survivors Service, but we urgently need this acknowledgment payment.

Lord Browne of Ladyton (Lab) [V]: My Lords, post-conflict legacy issues seldom, if ever, allow solutions that satisfy everyone, and this scheme—the joint responsibility of government both in Northern Ireland and in Westminster—is no exception. In matters of legacy, I am afraid I can think of no example where executive politicians in Northern Ireland set aside politics, and I regret that there is no reason to expect them to do so in this case. Other than exhorting them to do so, which this Statement does, do the Government have an alternative plan for payment, to fulfil their responsibility to the victims who, in their own words,

"have waited too long for these payments"?

Viscount Younger of Leckie [V]: We urge all parties, where there are any, to set aside their political differences, and one party has been mentioned in this respect. We are quite clear that this is a matter for the Northern Ireland Executive to take forward, and that is because the UK Government have taken forward legislation and done as much as we can, and rightly so, to meet our obligations. It is now up to the Executive.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, will the Minister confirm whether the discussions that the Secretary of State is having with the political parties of Northern Ireland are nearing completion and the possibility of a result? Will he also confirm that it is Sinn Féin that is blocking the statement?

Viscount Younger of Leckie [V]: I cannot tell the noble Baroness how close we are to agreement; in fact I have no information to give the noble Baroness on this. I can only reiterate that the Secretary of State is well exercised over this issue and is working as hard as possible to knock heads together and take the matter forward.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I share the expressions of dismay and disappointment of many others that the victims have not received their compensation. Will the Government, acknowledging the plurality of Northern Ireland politics, consult with other parties there that are not members of the Executive as well as with civil society? That would help to ensure that people were informed and aware of what was happening, and that kind of transparency could be useful.

Viscount Younger of Leckie [V]: The noble Baroness is right. I am sure there is strong communication about what is going on at the moment; it is very much in the news anyway. It is important that communication comes from the UK Government but also from the Northern Ireland Executive because this is a very important matter and it must be moved quickly forward.

House adjourned at 10.12 pm.

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