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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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In Hybrid sittings, [V] after a Member's name indicates that they contributed by video call.

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

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

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

House of Lords

Wednesday 17 June 2020

The House met in a Hybrid Sitting.

11 am

Prayers—read by the Lord Bishop of Peterborough.

Arrangement of Business

Announcement

11.06 am

The Deputy Speaker (Lord Alderdice) (LD): My Lords, the Hybrid Sitting of the House will now begin. A limited number of Members are here in the Chamber, respecting social distancing. 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. Microphones 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 participants. Oral Questions will now commence.

Food and Drink: Waste Prevention

Question

11.07 am

Asked by ***Baroness Jones of Whitchurch***

To ask Her Majesty's Government what discussions they have had with publicans about the steps they are taking (1) to prevent the waste of, and (2) to find alternative uses for, any food and drink due to expire while the restrictions to address the Covid-19 pandemic are in place.

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, we are working with WRAP and across the supply chain to help get surplus food to those who have a need. Defra has made £5 million available for the Covid-19 emergency surplus food grant fund to help redistribution organisations obtain, store and transport food from the hospitality sector safely and to ensure that valuable food supplies do not go to waste. The Government are in discussions with industry to explore the alternative options for the repurposing of spoiled beer.

Baroness Jones of Whitchurch (Lab) [V]: My Lords, I thank the noble Lord for that reply, but is he concerned that millions of litres of beer had to be poured down the drain when the lockdown was first announced and many pubs continue to seek the approval of water companies to pour beer away when it could be used for other purposes? Further, is he concerned that when pubs eventually reopen, it will be local craft breweries that will have been the hardest hit by the lockdown, putting them at a huge disadvantage to the global brewing companies and affecting our local and national pub culture for many years to come?

Lord Goldsmith of Richmond Park [V]: I too am very concerned. There are 47,000 pubs across the UK and between them they have around 140 million litres of spoiled beer that needs to be cleared from pub cellars to make way for fresh stock. That is the equivalent of around 56 Olympic swimming pools. However, there are enormous difficulties in disposing of spoiled beer. The main obstacle is that beer containers must be removed from pub cellars, around three-quarters of which are subterranean. Most are designed to allow full containers of beer to roll into the cellar using gravity, and given that each one weighs around 70 kilograms, taking them back out is at least a two-person job. In the current conditions, that obviously presents logistical and health and safety challenges. It may be easier for pubs with street-level cellars to send full containers of beer for repurposing elsewhere. Defra and BEIS are engaging with the BBPA to ensure that pubs are being encouraged to do so. We are actively working on finding alternatives to simply disposing of beer down waste systems.

Baroness Wilcox of Newport (Lab) [V]: Since the pandemic began, single-use has increased, with all pubs, restaurants and cafes restricted to takeaway-only. This is being exploited by some companies, which claim that single-use—often single-use plastic—is the safest option. The science does not back that up because the virus can live on single-use surfaces as well as on reusable ones. What is being done to ensure that systems are in place to allow for reuse, recycling or composting and limiting the use of single-use plastic, especially in the light of the pandemic?

Lord Goldsmith of Richmond Park [V]: This is very much a concern for Defra and it is a priority area. As noble Lords will know, since the 5p charge was introduced, we have reduced the annual use of single-use plastic carrier bags by over 7 billion. We have launched the groundbreaking Commonwealth Clean Ocean Alliance. From October, there will be a ban on the sale of plastic straws, cotton buds, stirrers and so on. Further, our landmark Environment Bill is designed to shift the emphasis towards producer responsibility. It includes powers to charge for single-use plastic items, introduce deposit return schemes and manage the export of plastic waste.

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, many publicans shut up shop once the restrictions were announced and are fearful that their businesses will not survive. Others began popular takeaway services and are buying only in limited supplies, including real ale, to meet the weekend demand. Some have taken the opportunity to redecorate their premises—something unthinkable during normal trading. Some wholesalers are offering a scheme whereby they collect out-of-date barrels and offer a replacement once pubs have reopened. Does the Minister agree that allowing pubs with gardens to reopen in July, ready for the summer trade, is vital not only for their well-being but for the mental well-being of the general public, who desperately need to socialise?

Lord Goldsmith of Richmond Park [V]: The Government absolutely share the concerns raised by the noble Baroness in relation not just to the pub sector but to almost all

[Lord Goldsmith of Richmond Park]
sectors of our economy. Clearly, we would like to return to vaguely normal conditions as soon as we safely and possibly can. The difficulty with assessing each and every premises on its own merits is that that prevents us looking at the cumulative effect of opening up seemingly safe premises across the board. The Government as a whole must add the cumulative effect of doing so and determine whether that takes us beyond acceptable safe limits. It is our hope that we will be able to return to normal as soon as possible, but we have to do so in a way that minimises the likelihood of a return to the heights of coronavirus.

Lord Hayward (Con) [V]: My Lords, I first declare that I was formerly the head of the British Beer & Pub Association, to which my noble friend has already referred. I ask him to add pressure to those voices we have already heard on the need to reopen pubs as a key element of providing community support within society. I remind my noble friend that it takes time to brew real ale, so we need not only urgent consideration of the decision to reopen pubs and restaurants but notice, so that those venues can be well prepared.

Lord Goldsmith of Richmond Park [V]: I very much note my noble friend's comments and share his hope that we will be able to return to normal as soon as possible. Neither I nor the Government underestimate the value of the pub sector, not only to our economy but to our communities, for all the reasons the noble Lord has described. When we are likely to relax the lockdown restrictions in all such sectors is under permanent review.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, the whole food industry has obviously been disrupted by the coronavirus—we have seen millions of gallons of milk thrown away, as well as beer—so we have food shortages to look forward to. I note that the Minister said that he is working with WRAP, but how can we reduce food waste? That will be crucial.

Lord Goldsmith of Richmond Park [V]: The noble Baroness raises a hugely important point. In relation to pubs, the focus of this exchange, we in government are trying hard to encourage the repurposing of spoiled beer. There are vast amounts of it, as I have described. Two obvious alternative options for the use of spoiled beer are animal feed—the Food Standards Agency has confirmed that it is safe and can be handled appropriately—and redirecting it to anaerobic digestion plants. Not all the plants are designed to accommodate spoiled beer, but many can. We are working closely with the UK Former Foodstuffs Processors Association, the Anaerobic Digestion and Bioresources Association and other government departments to ensure that this happens. Of course, the same principle applies to food across the board.

Baroness McIntosh of Pickering (Con) [V]: My Lords, will my noble friend congratulate the water companies on working so closely with the British Beer & Pub Association? They have waived their fees and agreed to collective applications, which is very welcome. Surely to goodness a hoist could be in place, particularly for the smaller brewers, to enable the barrels to be removed. As my noble friend so rightly says, there is a willing market for them in anaerobic digestion.

Lord Goldsmith of Richmond Park [V]: I am happy to echo my noble friend's thanks and congratulations to the water sector. Defra was pleased to confirm that it will waive the usual charge to publicans—around £1,000 to £1,500—for disposing of spoiled beer. It is also taking steps to streamline the beer disposal application process and minimise the administrative burden on publicans. Those steps include allowing bulk applications from pubs and redeploying teams from elsewhere in water companies to focus solely on processing applications from pubs. She is right to identify a possible solution to the problem of the weight of these barrels, which are hard to remove by hand, but other options are being explored as well.

Lord German (LD) [V]: My Lords, nearly £1 a litre of duty is being lost through ullage of beer and the problem of recycling is getting up to an industrial scale, so will the Minister use the duty on beer to look at the potential for industrial-scale recycling, particularly for the land-based and energy uses such as microbial fuel or biogas?

Lord Goldsmith of Richmond Park [V]: The noble Lord is absolutely right to identify those as useful alternatives. There are big markets for anaerobic digestion and animal feed, so there is no reason why the repurposing of spoiled beer cannot be managed on an industrial scale. Clearly, this took us by storm almost overnight and is a problem we have not had to deal with in the past. I will absolutely take his suggestion back to my department and the Treasury, which ultimately makes these decisions, and ensure that it is properly looked at.

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

Lord Ashton of Hyde (Con): My Lords, we got through only six supplementary questions on that Question, so I ask all noble Lords and Ministers to be as brief as possible. They can still be relevant and cogent.

China

Question

11.19 am

Asked by ***Baroness Northover***

To ask Her Majesty's Government what assessment they have made of their relationship with the government of China; whether they intend to alter that relationship; and if so, how they intend to do so.

The Minister of State, Foreign and Commonwealth Office and Department for International Development (Lord Ahmad of Wimbledon) (Con): My Lords, our approach to China is rooted in our values and strategic interests. As a leading member of the international

community and as a major economy, China has to be involved in solving global issues. However, when engaging China, we stand up for our principles, including international law, human rights and national security. We want a mature, pragmatic relationship with the Chinese Government, which means collaborating where our interests align, being clear where they do not, and working to resolve our differences.

Baroness Northover (LD) [V]: Given China's economic and political dominance, its threats to Hong Kong and Taiwan, and in the South China Sea, and its eternal suppression of human rights, do the Government still think that there can be a golden age of engagement with China? Given that we cannot do this alone, with which countries are the Government working to achieve this?

Lord Ahmad of Wimbledon: My Lords, as the noble Baroness knows, I am an eternal optimist: there can of course be a new golden age, in every sense. We are working with China on the important issue of Covid-19; indeed, China has helped not just us but others with PPE procurement. Other areas where there is scope for collaboration include issues around trade and the environment, a cause close to the noble Baroness's heart. We are working collaboratively on COP 26, because, without China's participation, COP 26 will not achieve its ambitions. We work constructively in all these areas. As I said earlier, where we have differences, we raise them—privately, at times, but in international fora at other times.

The Lord Bishop of St Albans [V]: My Lords, inevitably, trade and defence issues will play an important part in our relationship with China. Will the Minister assure us that issues of freedom of religion or belief will not be overlooked? Estimates suggest that between 900,000 and 1.8 million Uighurs, Kazakhs, Kyrgyz and other Muslims have been detained in Xinjiang province. What plans have the Government made to join our American allies in sanctioning those responsible for the oppression of Uighurs in Xinjiang?

Lord Ahmad of Wimbledon: The right reverend Prelate raises an important human rights issue, and in particular the situation of the Uighurs in China. He will know that, as Human Rights Minister, I have consistently raised this issue, as has my right honourable friend the Foreign Secretary, both through bilateral engagement with the Chinese authorities and the Chinese Government, and through the Human Rights Council, as we are currently doing—yesterday a statement was made specifically on Hong Kong. We are working with other partners, a point raised by the noble Baroness, Lady Northover, to ensure that there is consistency of message and delivery. Where there are human rights abuses, we will stand up, with our partners, and challenge China, to ensure that the rights of all are guaranteed.

Lord Bowness (Con) [V]: Concern about China's actions in Hong Kong has been expressed in your Lordships' House. Will my noble friend the Minister specifically indicate to the House this morning what steps Her Majesty's Government have taken to establish an international contact group to put pressure on China to respect its legal and moral obligations towards Hong Kong?

Lord Ahmad of Wimbledon: My noble friend raises an important point about the responsibilities that China has. I assure him that we will push on that, not just through the contact group but through bilateral conversations with key partners. He will acknowledge that we remind China that the imposition of the proposed law in Hong Kong is in direct conflict with its international obligations under the joint declaration. As my noble friend knows, that treaty has been agreed by the UK and China, and registered with the United Nations. We will continue to push on that. My right honourable friend the Foreign Secretary has made clear the actions that we will take if China continues to persist in imposing this law.

Lord Craig of Radley (CB) [V]: My Lords, on 2 June, at *Hansard* col. 683, the Foreign Secretary said that the Government would provide BNO citizens in Hong Kong with a "pathway to citizenship" if China enacted its new security legislation. For over four and a half years, the Home Office has been "actively"—to use its word—considering applications for right of abode for veteran members of Her Majesty's Armed Forces living in Hong Kong. Will Her Majesty's Government now honour their obligation to these veterans under the military covenant?

Lord Ahmad of Wimbledon: This is a point that the noble and gallant Lord has raised before and one on which he continues to campaign, and I pay tribute to him. We have made very clear our position on BNOs. I will take back his specific point on those who have served in Her Majesty's Armed Forces and will write to him with an update on the matter. I share his sentiments in this respect.

Baroness Whitaker (Lab) [V]: My Lords, following on from the question from the noble Lord, Lord Bowness, have Her Majesty's Government conveyed to the Government of China that, as the UK is the other party to the joint Sino-British declaration on Hong Kong, which is a treaty, the Chinese are mistaken in claiming that the UK is meddling in its internal affairs?

Lord Ahmad of Wimbledon: As I have said already, the UK Government have made our position absolutely clear to the Chinese authorities, very much along the lines that the noble Baroness has outlined.

Lord Dholakia (LD) [V]: My Lords, the Minister is aware that, according to Amnesty International, more executions are carried out in China than in the rest of the world. Areas of concern identified by human rights groups include the death penalty, the legal status of Tibet, freedom of the press, and a lack of legal recognition of human rights. Is the Minister also aware of the skirmishes that took place, according to breaking news, at the border between India and China? What is being done to make representations, so that peace will prevail in this area? Perhaps the Minister can place a copy of his reply in the Library, so that we can read about what is happening in the areas I have mentioned.

Lord Ahmad of Wimbledon: My Lords, I am aware of the concerning situation on what is one of the largest borders. We call upon both sides to de-escalate. If there are other matters in relation to this on which I need to update the House, I will of course do as the noble Lord suggests.

Viscount Trenchard (Con): My Lords, the Chinese Government will pay more attention to the wishes and interests of the UK if we are seen to be more fully involved in trade and security collaboration in the Asia-Pacific region. Does the Minister agree that an early application for UK accession to the CPTPP both fits well into our post-Brexit trade policy and shows China that we are standing shoulder to shoulder with other countries, such as Japan and Australia, that share our commitment to representative democracy, the rule of law and free trade? Will my noble friend tell the House when he expects that our application letter might be sent?

Lord Ahmad of Wimbledon: I agree with the points that my noble friend has raised. I will write to him on the specific date of the letter. The situation in the South China Sea is well documented, as is the position of Her Majesty's Government.

Lord Kilclooney (CB): My Lords, yesterday, the Chinese killed 20 Commonwealth soldiers and flew military planes over Taiwan, and of course they continue to be involved in the affairs of Hong Kong. Since we in the United Kingdom have a responsibility towards Hong Kong, and since thousands of young people from Hong Kong attend our universities and boarding schools, will the Government give some consideration to easing the means of getting British passports for people from Hong Kong, so that they can attend educational institutions in the United Kingdom?

Lord Ahmad of Wimbledon: My Lords, the noble Lord makes an important point about students—not just Hong Kong students but Chinese students—who study here. That will be very much in the mix in the announcements made on the BNO issue.

Lord Collins of Highbury (Lab): My Lords, it is two years after the sanctions Act, and the noble Lord assured us that we would see secondary legislation on Magnitsky. Two weeks ago, the Foreign Secretary even said that these new powers of targeted sanctions could be used in respect of breaches in Hong Kong, police brutality and other actions. Will the noble Lord assure us that we will use those sanctions and that they will be in force before the Summer Recess, and that we will be able to target those abuses, so that we have action on human rights abuses and not simply words?

Lord Ahmad of Wimbledon: My Lords, I assure the noble Lord that I am cognisant of his continued interest in this respect. To quote the Prime Minister: "Watch this space."

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

Covid-19: Scientific Advice

Question

11.29 am

Asked by ***Lord Scriven***

To ask Her Majesty's Government what specific action they took to address COVID-19 as a result of the meeting of the Scientific Advisory Group for Emergencies on 11 February.

The Minister of State, Cabinet Office (Lord True) (Con) [V]: My Lords, on 11 February, SAGE advised that the reasonable worst-case scenario for the coronavirus pandemic should continue to reflect influenza planning assumptions. In the light of this, the Government continued to prepare for and mitigate the worst excesses of the reasonable worst-case scenario. This included holding a number of COBRA meetings and increasing activity in a number of areas, including excess deaths planning, developing options for a surge of care staff and further developing legislative options.

Lord Scriven (LD) [V]: The SPI-M consensus statement to that meeting says:

"It is a realistic probability that there is already sustained transmission in the UK, or that it will … become established in the coming weeks."

Why did the Government not act on this scientific knowledge? Two weeks later, care homes received government advice stating that

"there is currently no transmission of COVID-19 in the community. It is therefore very unlikely that anyone receiving care in a care home … will become infected."

Lord True [V]: My Lords, it is important to remind the House that at the time of the meeting on 11 February there were only eight confirmed cases in the United Kingdom. The Government have always been guided by the best scientific advice. At every stage, scientists have sought to give us the best information about what was a very novel infection—it still is. Ministers and officials tried to take the right decisions in the public interest. We will come out of this best by holding to the sense of national interest and resolve with which we went into it and holding any inquests when the pandemic is beaten.

Lord Browne of Ladyton (Lab) [V]: My Lords, despite saying in January that diagnosis capacity was good, by 11 February SAGE said that it was not and—erroneously, as it turned out—that it would not be possible for the UK to accelerate coronavirus testing alongside regular flu testing. Rather than focusing on how to boost it, it asked PHE and SPI-M to develop criteria for when contact tracing is no longer worth while and for when it could be stopped. Were the criteria developed and approved by Ministers before contact tracing was stopped, and why were the Government so slow to reverse that flawed decision?

Lord True [V]: My Lords, I could not catch all the details of the noble Lord's question. I apologise on the record to him for not answering fully a previous question he asked. If he does not mind, I will write to him on the subject. I remind the House, having caught enough of his question, that this was an evolving crisis and the

Government have done a great deal to procure and deliver testing—now over 200,000 a day—and provide places in hospital beds.

Baroness Wheatcroft (Non-Afl) [V]: My Lords, a SAGE paper of 11 February made it clear that stopping large gatherings and, more particularly, the closure of pubs, nightclubs and similar venues would slow the spread of the infection. That did not happen for more than another six weeks. Can the noble Lord tell the House whether that advice was not acted on immediately as a result of putting it before focus groups? Can he say how many elements of SAGE advice have been subject to focus groups before being adopted, or not adopted?

Lord True [V]: My Lords, I cannot answer on focus groups; the focus group I care about is Parliament and responding to it. The advice from SPI-M-O on public gatherings was actually rather more equivocal than the noble Baroness suggests. However, the policy evolved and many of those who follow the public press conferences will remember the Deputy Chief Medical Officer talking about a number of the different factors involved. It is important to recall what stage of the crisis we are talking about: 11 February, when there were eight confirmed cases.

Lord Pickles (Con) [V]: My Lords, even after many months we still do not know everything that we should about this virus. Is it not wholly unreasonable to criticise members of the scientific committee for offering advice that was true to the best of their ability at the time? Does this not underline that, ultimately, it is Ministers who will have to make decisions regarding the lifting of various measures, and that while they should take the advice of the scientific community in doing so, it is ultimately their responsibility?

Lord True [V]: I strongly agree with my noble friend, who has great experience as a Minister and a distinguished career. Of course, responsibility ultimately lies with Ministers for taking decisions. Ministers wrestle with those difficult decisions every day. On balance, I believe that Ministers have done their very best to serve the people of this country in this unprecedented crisis. The time for reviews is when the curtain comes down, not when we are still fighting the drama.

Baroness Brinton (LD) [V]: In the week after the SAGE meeting that my noble friend Lord Scriven and the noble Baroness, Lady Wheatcroft, referred to, SAGE met again, on 20 February. The SPI-M report on community transmission, dated 17 February, that was presented at that meeting states at paragraph 16:

"Some believe … that there may already be sustained transmission."

However, government guidance on 25 February for care homes states:

"There is no need to do anything differently in any care setting at present."

Why were care homes still being advised that there was little likelihood of infection?

Lord True [V]: My Lords, with the greatest respect, I am answering a Question about the SAGE meeting on 11 February. If Members wish to ask questions about further stages, I will have to reply to them in writing.

Baroness Blackwood of North Oxford (Con) [V]: My Lords, the Science and Technology Committee, on which I sit, has received a very sensible suggestion in evidence to our Covid-19 inquiry. It proposes establishing a working protocol for SAGE to clarify the relationship between scientific advice and political decisions, and to improve transparency of processes. It is modelled on the already effective protocols of ACMD and the investigatory powers committee. Does the Minister agree that this could be a sensible step forward? Would he meet the distinguished scientist who proposed it?

Lord True [V]: My Lords, my noble friend makes a very valuable suggestion. I will make sure that it is drawn to the attention of my colleagues progressing this matter.

Baroness Meacher (CB) [V]: My Lords, Professor Jeff Sachs, in his powerful analysis of countries' responses to Covid-19, concludes that the Asia-Pacific region has been successful in controlling Covid using low-cost solutions: face masks, physical distancing and test and trace. Germany used test and trace immediately after one case was identified—not eight—and use of face masks shot up in April. Germany has been the great success story of Europe. Can the Minister tell the House whether the SAGE meeting on 11 February discussed the actions being taken in the Asia-Pacific region? I fear not, but can the Minister now assure us that the Government will give proper priority to the availability of face masks in every high street and station so that they become the norm in this country, as in the Asia-Pacific region?

Lord True [V]: My Lords, the SAGE meeting on 11 February certainly asked the Foreign Office to secure information from heads of mission around the world. The Government are committed to continuing to fight this ongoing crisis, but again, the situation is evolving, knowledge is evolving and hindsight is a wonderful thing. I believe that we should focus on the task in hand of defeating the virus, learning the best we can as we go and then evaluating performance in peacetime, not in the middle of the war.

Baroness Hayter of Kentish Town (Lab) [V]: My Lords, I have never before heard a Minister refuse to answer a question that was not specifically based on the actual wording of the Oral Question. I hope we do not hear that again. The Government have acted too slowly, too late and with no exit strategy. For example, planning for a phased return should have started from the day schools closed. From those very first deaths, it was clear that extra precautions should have been taken to protect BAME staff. Will the Government not do what the Minister says and wait until this is all over to admit their mistakes, but look at them now so that they can learn the lessons and take the right decisions in future, rather than pretending that nothing went wrong in the past?

Lord True [V]: My Lords, the noble Baroness does not characterise correctly even what I said in reply to the last question. I said that we must learn as we go. Lessons are being learned. Indeed, yesterday, there was the remarkable news of a drug that would help in therapeutics. That is a piece of learning. Actions are adapted as learning progresses. However, I repeat that any inquiry into past events is best conducted ex post facto, not while the crisis is continuing; learning, yes, recrimination, no.

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

Armed Forces: Racism and Diversity

Question

11.40 am

Asked by ***Lord Touhig***

To ask Her Majesty's Government what steps they are taking (1) to address racism, and (2) to improve diversity, in the Armed Forces.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con) [V]: My Lords, recent events have brought the issues of racism and diversity into sharp relief. While the Ministry of Defence has long recognised that any form of racism or discrimination is absolutely unacceptable and has continued to challenge itself to become more diverse and inclusive, we recognise that the pace of change needs to quicken. Efforts are being redoubled to fulfil the key objectives in the *Defence Diversity and Inclusion Strategy 2018-2030* to eliminate discrimination and improve diversity throughout defence.

Lord Touhig (Lab) [V]: My Lords, last year 12% of service complaints were made by BAME personnel, despite the fact that they make up just 8% of our Armed Forces. A third of those complained of bullying, harassment and discrimination. Clearly there is a problem. The whole House will welcome the announcement of the Chief of the Defence Staff that the defence chiefs will meet regularly to change the "lived experience" of BAME personnel. Can the Minister tell us what that means precisely? How will it make a difference, and will the House receive regular reports on the progress of this initiative?

Baroness Goldie [V]: We owe it to our black, Asian and minority-ethnic personnel to understand these issues from their perspective. We must listen and continue making change happen. I assure the noble Lord that this will be led from the most senior level. I am the Defence Minister responsible for diversity and inclusion. Chiefs of staff, senior management and personnel are all now engaged in addressing the challenges and ensuring that the laudable objectives of the diversity and inclusion strategy are delivered.

Lord Sheikh (Con) [V]: My Lords, I encourage the ethnic minorities to join the Armed Forces. The problem is that very few are promoted above the middle ranks, which causes frustration. Furthermore, ethnic minorities make up only 2.5% of officers, which is very low. For us to improve diversity and assist the mental and spiritual well-being of servicemen, chaplains of all religions need to be full-time officers. Muslim and Sikh chaplains have received full officer training but are part-time reservists. They need to be regular full-time officers with adequate ranks. Can my noble friend the Minister look at this point?

Baroness Goldie [V]: I listened with great interest to the point raised by my noble friend. I have no specific information about the appointment of chaplains or the backgrounds from which they are appointed. I shall investigate and write further to him.

Lord Houghton of Richmond (CB) [V]: My Lords, I have never thought it entirely fair to hold the Armed Forces to account at an individual level for being a mirror image of the society from which they are drawn, with all the imperfections that implies. It is an inevitability. However, I absolutely agree that, in institutional terms, our Armed Forces should strive to be exemplars of the very best that can be achieved in values and standards. Can the Minister therefore inform the House what has been achieved since 2016 in policy terms in the areas of bullying, harassment, discrimination and opportunities for women?

Baroness Goldie [V]: I reassure the noble and gallant Lord that various initiatives and programmes have been deployed within the Armed Forces to cover these very areas of concern. If we want to prevent this unacceptable behaviour, we must create a culture within our civilian and military workforce that represents, includes and celebrates all elements of the society that we defend. Within the MoD, we need to institutionalise anti-racism.

Lord West of Spithead (Lab) [V]: My Lords, the Royal Navy is very conscious of the need to tackle racism and improve diversity, not only because it is right to do so but because it enhances its effectiveness—and, at the end of the day, the Navy's job in extremis is to fight and win. For the last seven years, the Royal Navy has been listed by Stonewall in the top 100 employers. It was recorded in the *Times*'s top 50 employers for women 2019 and in the top 50 employers for social mobility. Sadly, only 4.2% of the total regular service are BAME; a target of 10% intake into the forces has been set for 2020. Where do we stand on the Wigston report on inappropriate behaviours, dated 15 July 2019, what are the timings of the implementation of its recommendations and who is ensuring that they are implemented?

Baroness Goldie [V]: First, I commend the Royal Navy for the fine example that it has been giving. I say to the noble Lord that, in pursuance of the diversity and inclusion strategy, to which I referred, numerous procedures are now afoot to advance awareness, to educate, to audit and to monitor performance. As the Minister with responsibility for this issue, I am certainly very clear that I shall be driving forward these checks, tests and examinations, and progress.

Baroness Smith of Newnham (LD) [V]: My Lords, the Minister rightly said that the culture needs to institutionalise anti-racism, but what can she offer in terms of a more immediate response to service men

and women who are suffering from racism and bullying? At the end of last year, the Services Complaints Ombudsman said that racism was on the rise in the UK's Armed Forces and that incidents of racism were occurring with "increasing and depressing frequency". Changing the culture is necessary, but we need to have results sooner than that might entail.

Baroness Goldie [V]: The noble Baroness is correct to focus on results. I share her interest in doing that and, within my ministerial role, I will endeavour to ensure that that happens. I reassure her by saying that just this week departmental-wide communications have been released by the Permanent Secretary and the Chief Operating Officer. Indeed, the Chief Operating Officer proposed a step-by-step plan to diversify the organisation, starting immediately. On Monday this week, I briefed my Secretary of State and ministerial colleagues on diversity and inclusion, and this very afternoon I shall be part of the MoD all-staff dial-in in respect of diversity and inclusion. I shall certainly reiterate the message of inclusion, try to reassure staff that concerns will be listened to and, in particular, invite the input of staff from minority backgrounds to get involved. I want to hear from them.

Baroness Falkner of Margravine (Non-Afl) [V]: My Lords, the target for female representation at 15%, as set out in the biannual diversity report, seems to me too low. Why are they not being more ambitious, with a higher target? Nearly half the BAME staff are of non-UK nationality. Why are they not succeeding in recruiting people from United Kingdom BAME communities, and what lessons can be learned from the recruitment for Future Forces 2020, which seems to have a much better record with both women and BAME communities?

Baroness Goldie [V]: We are anxious to learn from any source about how we might improve our approach, but it would be wrong to imagine that no good things are happening. A number of very good things are happening and very positive developments are taking place. However, particularly having regard to the events of recent weeks, it is critical that we reassure staff within the MoD that this is not some transient focus of attention. There is now an ongoing serious conversation that will continue. It is being driven by the senior levels of management and personnel and at the ministerial level within the MoD.

Baroness Verma (Con) [V]: Will my noble friend work with her colleagues at the Department for Education to ensure that history lessons reflect the contributions made by service people of colour? Will she provide the House with a copy of guidance that provides the Armed Forces with a clear interpretation of how to ensure genuine access to opportunities in real career progression? Will she meet me to discuss the work that I have done in other sectors on inclusion and diversity?

Baroness Goldie [V]: I might be able to offer my noble friend some reassuring examples of the strategies that are currently being deployed to address the very issues that she referred to. I shall of course be very happy to meet her to discuss her own experiences. As I said in response to an earlier question, if there is anyone or anywhere from whom or from which we can learn, we shall do that.

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

11.51 am

Sitting suspended.

Arrangement of Business

Announcement

Noon

The Deputy Speaker (Lord Alderdice) (LD): My Lords, proceedings will now commence. Some Members are here in the Chamber, others are participating virtually, but all Members are treated equally. For Members participating remotely, microphones will unmute shortly before they are to speak—please accept any on-screen prompt to unmute. Microphones will be muted after each speech. If the capacity of the Chamber is exceeded, I will immediately adjourn the House. I ask noble Lords to be patient if there are any short delays between physical and remote participants. The usual rules and courtesies in debate apply, of course. Please ensure that questions and answers are short.

Covid-19 Summer Food Fund

Private Notice Question

12.02 pm

Asked by ***Lord Storey***

To ask Her Majesty's Government, further to the announcement made on 16 June, whether they will set out the details of the "Covid Summer food fund" for children eligible for free school meals.

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con) [V]: My Lords, the Government remain committed to ensuring that the most disadvantaged children continue to be supported. We know that, due to coronavirus, there is increased pressure on household budgets, and we recognise that families will face particular challenges over the coming months. That is why we are providing additional funding for a Covid summer food fund, which will enable children who are eligible for free school meals to claim vouchers for the six-week summer holiday period.

Lord Storey (LD) [V]: My Lords, I am sure we are all amazingly grateful to Marcus Rashford for highlighting and understanding this issue. Perhaps the Minister will consider in future putting him in charge of the Social Mobility Commission. But free school meals are only one indicator of child poverty, and many children will slip through the net. How can we ensure that those children do not slip through the net and that we provide for them as well?

Baroness Berridge [V]: My Lords, I too pay tribute to Marcus Rashford and hope that his example of participation will inspire many other young people to speak up on the issues that they feel strongly about.

[Baroness Berridge]
Yes, indeed, this is why we are entrusting free school meal voucher administration to schools, which are best placed to register for the vouchers. In addition to the free school meals voucher system, local authorities have £63 million to meet the needs of people who are vulnerable and need food support.

Lord Young of Norwood Green (Lab) [V]: I thank the Minister for her response and congratulate the Government on recognising that "Rashford rules OK!". Protecting children from going hungry is vital. Will the Government ensure a more effective distribution of vouchers, as there was a significant problem during the last period? Will they encourage schools to maximise summer activities during the holidays? Do the Government recognise that nourishing the mind as well as the body is vitally important to children?

Baroness Berridge [V]: My Lords, the voucher system is now operating effectively. In addition to this system, holiday clubs have been run for the last two years. We are building on that with another £9 million. Those clubs take place in disadvantaged areas and, of course, provide healthy meals in addition to educational activities.

Lord Addington (LD): My Lords, does the Minister not agree that, when considerable criticism of the Government's current policy and encouragement to change are ignored from their own Benches over a long period of time, something has gone wrong? A Premiership footballer should be allowed to concentrate on his own sport and career and should not be required to come in and bail out the Government.

Baroness Berridge [V]: My Lords, the Government always keep decisions under review and have listened; that is, as I have outlined, part of a mature democracy. The participation of people such as Marcus Rashford is welcome in the public space and a tribute to the free and fair democracy that we all enjoy.

Lord Randall of Uxbridge (Con) [V]: Welcome as this decision is, can my noble friend tell us what other measures the Government are taking to address food poverty, which has only got worse as a result of the pandemic?

Baroness Berridge [V]: My Lords, we recognise that during the pandemic there have been particular crises in relation to food support. Defra has given £3.5 million to a food charities grant fund, enabling charities to apply for up to £100,000 to provide food. Also, in conjunction with MHCLG, it has distributed over 1 million food parcels; that is in addition to the £63 million that I outlined. There has been considerable support during the crisis for those who have needed food support.

Baroness Watkins of Tavistock (CB): My Lords, I welcome the development as a result of Marcus Rashford's intervention; any mother would be proud to have him as a son. He has made life different for young people this holiday. When will the Government look at long-term food support for children who are vulnerable during holidays and answer the questions raised in the recent social mobility report?

Baroness Berridge [V]: My Lords, 1.3 million children will indeed benefit from the support given over the summer holiday. This is in addition to increases of over £1,000 per household for those who claim working tax credits or universal credit. So support is there and, as I outlined, there will also be holiday activity clubs to provide activity and food for children during the summer.

Lord Watson of Invergowrie (Lab): My Lords, seven days ago at Oral Questions, the Minister rebuffed my call for an extension of the free school meals voucher system to cover the summer holidays, saying:

"There is support out there for those who need provision."—[*Official Report*, 10/6/20; col. 1745.]

A week is indeed a long time in politics. Can the Minister explain what changed in the interim, leading to the Government's welcome about-face yesterday with the announcement of the Covid summer food fund for 1.3 million pupils in England?

Baroness Berridge [V]: My Lords, as I have outlined to other noble Lords, the Government keep decisions under review. We have listened, we recognise the pressures that families will be under this particular summer due to the Covid crisis, and we have responded to that. As I said, 1.3 million children will benefit; at £15, this payment is actually higher than the sums normally given to schools to provide free school meals. Schools are encouraged to make provision if they can during the holidays and to operate their food parcel system. If they cannot, the voucher system is available to children.

Lord Rennard (LD) [V]: The Minister will be familiar with the phrase, "More joy in heaven for one sinner that repents". So the U-turn is welcome. But how are the Government pursuing my suggestion, made to the Minister last week, about asking the big supermarkets involved to contribute to the cost of the scheme—or, better still, to provide additional benefits to those using the vouchers?

Baroness Berridge [V]: My Lords, as requested, I have taken this forward with colleagues in BEIS and will have a reply imminently ready for the noble Lord. In relation to the operation of the scheme, the cost to the taxpayer is the face value of the vouchers. The administration costs of the scheme are borne in the arrangement between Edenred, the supplier, and the supermarkets themselves.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, we should always welcome a U-turn when it points the Government in the right direction, but will they fine-tune the navigation by ensuring that these vouchers can be used in local markets and shops, particularly with many local markets reopening, as here in Sheffield, with its Moor Market? That is the best possible source, and the cheapest, of a healthy diet of fresh fruit and vegetables. Also, small independent businesses that operate in the local community put

money back into the community, rather than pumping even more government money into the hands of a few multinational companies.

Baroness Berridge [V]: My Lords, since last Friday over £150 million has been distributed through the food voucher scheme but, as I outlined, some schools already operate their own voucher schemes. They can claim back from the schools fund if they do not have funds in their existing resources to do that. The Government are not party to every system operating, but we hope that some of those systems operated individually by schools would be available to local suppliers. During the currency of the scheme, we have added two supermarkets to those eligible for it, which have the infrastructure to deliver it across all their stores.

Baroness Altmann (Con) [V]: My Lords, I congratulate the Government on this welcome decision to extend free school meals to children throughout the summer. Does my noble friend share my frustration that so much criticism has been levelled today, rather than a warm welcome of the fact that this extra money will help the 1.3 million children to receive a better meal during this time of crisis, when so many families are struggling?

Baroness Berridge [V]: Yes, my Lords, when the Government have listened and reviewed something it would be welcome if the focus could be on the children and what they will now receive as a result of the six-week food voucher that will be available to them over the summer holidays. We are guiding parents to the "Eat Well" resources that the NHS produces, while making it clear that these vouchers cannot be redeemed against alcohol, cigarettes or lottery tickets.

Baroness D'Souza (CB) [V]: My Lords, I declare my interest as president of the Children First Alliance. Hunger and extreme poverty have disastrous consequences for children, as we know, and several models demonstrate that children's needs can be achieved rapidly and cost-effectively through schools and local authorities. Should not the Government now entrench these models in legislation, together with Cabinet-level representation for children?

Baroness Berridge [V]: My Lords, there are many cross-government meetings and initiatives to ensure that children's situation is in the sight of the Ministers who need to have it. That is why, during the crisis, we have also made £3.2 billion of funding available to local authorities. On the ground, it is often the local authorities that are aware of the acute needs of their communities.

Baroness Lister of Burtersett (Lab) [V]: My Lords, the Secretary of State said yesterday, "We will ensure that no child will go hungry", yet thousands of children subject to the "no recourse to public funds" rule will still go hungry, either because they are not covered by its recent welcome easing or because of confusion of the ground over which children subject to the rule are now eligible for free meals. Can the Minister please undertake to look into this and get back to me?

Baroness Berridge [V]: My Lords, it is correct that the Government have temporarily extended free school meal eligibility to some groups of children where there is no recourse to public funds, particularly the children of Zambrano carers, where the parent may not be a British citizen but the child is. As I understand it, we have issued guidance on what documentation may be used to establish membership of these groups. I will get back to the noble Baroness with any further detail on that, but there has been a welcome easing of those restrictions, bearing in mind the current crisis.

Lord Harries of Pentregarth (CB) [V]: I very much welcome the Government's U-turn on this issue but, as the Minister will recognise, producing seven meals a week on £15 is extremely difficult. I am pretty certain that I could not do it. Is there anything that the Government might do to encourage a competition among families in receipt of vouchers to produce menus that are nourishing, attractive and not too difficult? Perhaps she might also encourage the media to set up a Marcus Rashford prize for the best set of seven menus.

Baroness Berridge [V]: My Lords, as I have outlined, because families cannot buy at the scale that schools can to provide free school meals, the vouchers are at £15 to provide lunches rather than the £11.50 normally allocated to schools. There is an NHS "Eat Well" guide, which we encourage parents to look at; there are also, of course, the school food standards and the Change4Life healthy eating recipes. There are resources out there for parents to look at for a healthy diet. In addition, in 2016 we began the child obesity strategy to ensure that children are eating a healthier diet.

Baroness Wheatcroft (Non-Afl) [V]: My Lords, the Minister says, rightly, that the focus should be on the children. Can she please explain to the House how that was reflected in the decision that the Government took and stood by—until Marcus Rashford intervened—that they would not extend the scheme through the holiday?

Baroness Berridge [V]: My Lords, as noble Lords will be aware, the free school meals system has normally operated only in term time, except for the holiday activity clubs, which, as I outlined, also include food. We are living in unprecedented times for everyone, including hard-pressed families, and I am delighted that the Government have announced this provision. Ordinarily, however, the provision of free school meals is during term time and not the holidays. This is a Covid school food fund.

Greater Manchester Combined Authority (Fire and Rescue Functions) (Amendment) Order 2020

Motion to Approve

12.16 pm

Moved by ***Lord Greenhalgh***

That the draft Order laid before the House on 4 June be approved. *A debate on an identical Order took place on 5 May (HL Deb, cols 414–426).*

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, a previous version of this order was published and laid in both Houses on 9 March 2020. It was debated and approved in both Houses on 5 May 2020. Regrettably, following those debates the order was not made as a ministerial signature was not secured, as the result of an administrative error in the Home Office. The commencement provisions and the italic date information in Article 1 have been amended in this draft order. A free-issue headnote has also been inserted to make it clear to users that this version is being laid to replace the previous order. No other changes to the draft order have been made.

I am keen to resolve the error as quickly as possible and allow the Mayor for Greater Manchester to continue with the formal delegation of these functions. Once again, I apologise for the inconvenience caused. I beg to move.

Motion agreed.

Fisheries Bill [HL]

Order of Consideration Motion

12.18 pm

Moved by ***The Earl of Courtown***

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 8, Schedule 1, Clauses 9 to 13, Schedule 2, Clauses 14 to 18, Schedule 3, Clauses 19 to 22, Schedule 4, Clauses 23 to 27, Schedule 5, Clauses 28 to 33, Schedule 6, Clause 34 , Schedule 7, Clauses 35 to 42, Schedule 8, Clauses 43 and 44, Schedule 9, Clause 45, Schedule 10, Clauses 46 to 51, Title.

The Earl of Courtown (Con): My Lords, on behalf of my noble friend Lord Gardiner of Kimble, I beg to move the Motion standing in his name on the Order Paper.

Motion agreed.

12.19 pm

Sitting suspended.

Corporate Insolvency and Governance Bill

Committee (2nd Day)

12.45 pm

Relevant document: 14th Report from the Delegated Powers Committee

The Deputy Chairman of Committees (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. Microphones 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 participants. I remind the House that our normal courtesies in debate still very much apply in this new hybrid way of working.

I shall begin by setting out how these proceedings will work. A participants' list for today's proceedings has been published and is in my brief, which Members should have received. I will call Members to speak in the order listed. Members' microphones will be muted by the broadcasters except when I call a Member to speak. Interventions during speeches or before the noble Lord sits down are not permitted, and uncalled speakers will not be heard.

During the debate, I will invite Members, including Members in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request and will call the Minister to reply each time. Debate will take place on the lead amendment only. The groupings are binding and it will not be possible to de-group an amendment for separate debate. A Member intending to press an amendment already debated to a Division should give notice in the debate. Leave should be given to withdraw amendments. When putting the Question, I will collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make this clear when speaking on the group.

Amendment 57

Moved by ***Lord Hodgson of Astley Abbotts***

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

"Review of pre-pack transactions

In Schedule B1 to the Insolvency Act 1986, after paragraph 74 insert—

"Review of pre-pack transactions

"74A (1) The assets of a company may not be transferred under the terms of a pre-pack transaction unless the proposed purchaser has obtained an opinion in writing from a member of the Pre-Pack Pool that the transaction is not unreasonable.

(2) In this paragraph, a "pre-pack transaction" means a transaction which is negotiated before a company enters administration, and under which all or a substantial part of the company's assets are sold to an associate on or shortly after the appointment of an administrator.

(3) For the purposes of sub-paragraph (2), "associate" has the meaning given in section 435 of the Insolvency Act 1986.""

Member's explanatory statement

This amendment requires a positive opinion to be obtained from a member of the Pre-Pack Pool before a company enters into a pre-pack transaction. The Pre-Pack Pool is an independent body of experienced business people set up in response to the recommendations of Teresa Graham's report.

Lord Hodgson of Astley Abbotts (Con): My Lords, I thank the Minister for rearranging his diary to enable us to complete Committee stage so quickly, the Whips Office for similarly reorganising things so that we can get on with it and, last but not least, the staff of the House for the work they have undertaken, particularly since we kept them here rather later than should have

been the case yesterday evening. I am very grateful to them all, particularly my noble friend the Minister, who sat patiently and courteously through a very long and quite testing time yesterday.

I ask my noble friend the Minister's help in just one thing, which concerns my blood pressure: could he possibly ask his Bill team, when they prepare his speaking notes, not to say, "The Bill is needed because of the pandemic"? The Bill is not needed because of the pandemic. Half the Bill is needed because of the pandemic, and if we were dealing only with that half, we would have been done and dusted and home in time for tea yesterday. As we unpicked and unpacked the Bill yesterday afternoon, we saw how much consideration still needed to be given to the bit of the Bill that has nothing to do with the pandemic. If he could just make that change to his speaking notes, it would do wonders for my blood pressure and, I suspect, for that of many other Members of your Lordships' House.

Amendment 57 is designed to remedy a gap in the oversight and regulation of pre-packs. I am extremely grateful to the noble Baroness, Lady Bowles, for her support on this amendment. I know that my noble friend Lady Neville-Rolfe, whom we will hear from later, probed in a similar way with Amendment 60, which we touched on yesterday afternoon.

During that debate, my noble friend the Minister said that pre-packs were a valuable tool in the insolvency toolkit. He is right that they are valuable but they are open to abuse, which is why I pressed for the House to have a chance to debate pre-packs in a separate group of amendments. First, the treatment and regulation of pre-packs is a loose end in insolvency law and practice. It has been so for 20 years; indeed, it has been a very loose end for the past six years. Secondly, at the margin, if pre-packs continue to grow unregulated, it will undermine the use of moratoriums, which are a much more carefully controlled and regulated way of dealing with company insolvency. Why go through all that if you can go to a pre-pack and therefore, in that sense, undermine the purposes of this Bill?

For those who have come late to the party, I have a few sentences on how pre-packs work, using an example of how the position can be abused. Directors decide that a company is no longer able to trade solvently and will shortly become insolvent. The probable reason is because the company has taken on a lot of debt from previous bad decisions. There are too many creditors and the bank is owed a great deal of money. However, within the company, there is an operational piece that the directors think can be salvaged, so they decide that they will make an offer for that operational piece, without the debts. They approach an administrator and say, "This is what we'd like to do." They make a nominal offer—maybe only £1 or a similarly trivial sum.

The administrator then takes it on. He or she must decide that this is a fair offer, so it is usually advertised in the paper—usually on a Monday in the *Financial Times*. If noble Lords look at the *Financial Times* on a Monday, they will see businesses for sale; those are mostly pre-pack transactions. If no competing offer has been made by the Thursday, the administrator has tested the market and this is therefore the best available offer. The pre-pack can then be completed and the business rises like a phoenix from the ashes of the old, often being run by the same people who got it into trouble in the first place—but, of course, without all the creditors, who have been sloughed off along the way.

As a concept, pre-packs have considerable political appeal. Governments, local Members of Parliament and councillors can trumpet the fact that their actions have saved, say, 200 jobs. However, no one counts the jobs lost or the financial damage done to suppliers, to other firms locally or, indeed, to the Pension Protection Fund, whose position and role was carefully debated yesterday afternoon in relation to moratoriums. Indeed, the Minister kindly sent us an email this morning indicating that the Pension Protection Fund will have a particular place in moratoriums. So what we have is a superficially attractive mechanism but one that, in many cases, because of counterfactual information that you cannot gather, causes more harm than good.

For a number of years, other Members of your Lordships' House and I pressed Governments of all political persuasions not to be seduced by the attractions of unregulated pre-packs. To their credit, the coalition Government under Vince Cable recognised the problems and set up a review, which was carried out by Teresa Graham and backed by research from the University of Wolverhampton. Six years ago, her 2014 report was accepted by the Government.

Among the report's recommendations was the establishment of what is known as Pre Pack Pool Ltd, a company with access to a pool of experienced businessmen who could give a view on whether a proposed pre-pack was fair. They could reach one of only three conclusions: that a proposed transaction was reasonable; that it would be reasonable if changes were made; or that it was unreasonable. The pre-pack pool was established and remains self-funded through charging £800 for each opinion it gives. However—this is the critical weakness in the edifice—reference to it was optional. The results have therefore been entirely predictable. Who wants to pay £800 if they do not have to? The more ruthless and one-sided your proposed pre-pack is, the less likely it is that you will want to refer it to the pool. This device therefore rewards the good guys and does not catch the bad ones.

Now the Pre pack pool is on the edge of collapse. It had only 10 referrals this year, according to an article in the *Times*. If it collapses, the last vestiges of independent third-party regulation of pre-packs will disappear. Amendment 57 seeks to remedy this problem by making it compulsory to obtain an opinion from the pre-pack pool that a proposed pre-pack is not unreasonable. As my noble friend Lady Neville-Rolfe pointed out in her remarks yesterday, the Government had the power to make referrals mandatory under the Small Business, Enterprise and Employment Act 2015 but that power has now lapsed. I imagine that she will wish to use her Amendment 60 to review that decision and see what else can be done to reinstate that power.

Finally, I referred in my opening remarks to the possible damage to the flagship change in this Bill: the moratorium. No one—but no one—will prefer to undertake a highly regulated mortarium if they can get away with a virtually unregulated pre-pack.

[Lord Hodgson of Astley Abbotts]

The potential abuses of pre-packs have long been identified. They were reported on by an inquiry set up by the Government and solutions from that inquiry were accepted by the Government six years ago, yet still nothing has been done. By contrast, we are now rushing through a series of entirely new, untested and potentially controversial changes to our insolvency laws while leaving this loophole unblocked. My amendment closes the loophole and provides for proper regulation in this area.

My noble friend the Minister has an open goal. I hope that he will put the ball in the back of the net. If not—somehow I suspect that he will not—will he tell the House whether the Government are prepared to see the Pre pack pool collapse? No ifs, no buts; if the Government are to bring forward legislation at some point in the future, as is the hallowed phrase, what will we do about the pool in the meantime? I urge him to give a yes or no answer so that we can have some confidence in the way this matter is being tackled through the department's policies. I beg to move.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): My Lords, we are aware of a technical problem meaning that those Members who are joining us remotely can hear us but not see us. We are working vigorously to bring about a resolution.

1 pm

Lord Vaux of Harrowden (CB) [V]: My Lords, I metaphorically rise to support Amendment 57 in the name of the noble Lord, Lord Hodgson of Astley Abbotts, and to speak to my very similar Amendment 61. Both relate to pre-packs.

The Minister said yesterday that pre-packs are

"a useful tool that allows businesses and jobs to be saved."—[*Official Report*, 16/6/20; col. 2092.]

I do not think that anyone disagrees with that. Equally, few disagree that pre-pack deals with related parties involve clear conflicts of interest and raise serious transparency concerns—speaking of which, I can now see noble Lords, which is a great benefit. Indeed, at Second Reading the Minister directly recognised these concerns.

The 2014 Graham report, as mentioned by the noble Lord, Lord Hodgson, very clearly set out its findings that related party pre-packs often involve limited, if any, marketing and on average achieve worse outcomes for creditors. There is truth in the perception of creditors being dumped while directors sail on unharmed with their phoenix company.

The Pre Pack Pool was created in 2015 to introduce an element of independent review into connected party pre-packs. The hope was that this could be a voluntary process, but, sadly, this has not worked; only around 10% of pre-packs have been referred. I am afraid this confirms my slightly cynical view of how the insolvency industry works in practice. The Government had the power to fix this, as we have heard, under the Small Business, Enterprise and Employment Act 2015, but, as the noble Baroness, Lady Neville-Rolfe, pointed out, this expired two or three weeks ago.

I was initially tempted by her approach, as set out in Amendment 60—which, incidentally, should have been in this group—simply to reinstate the power to regulate. However, the Government did not use that power for five years, so I have limited confidence that they would do so in another year. Anyway, as we debated yesterday, this Bill already has more than enough powers to regulate.

The Minister said at Second Reading that:

"If strengthening of professional standards and the existing regulation do not deliver increased creditor confidence in connected pre-pack sales, the Government will look to bring forward further legislation."—[*Official Report*, 9/6/20; col. 1728.]

That was very welcome, but fixing this issue is more urgent than that, given the current situation, and, frankly, it is already clear that professional standards and existing regulations are not working. Yesterday, the Minister praised the ethical and professional standards of the insolvency industry, saying that we should rely on those for independence and so on. That is touchingly naive—that might be the first time anyone has described the Minister in those terms.

Just last week, there were three high-profile pre-packs to related parties, which attracted a high degree of negative publicity. Only one was referred to the pool. Sadly, there are likely to be many more in coming months. Surely the Minister agrees that we should make sure these happen more transparently? As the noble Lord, Lord Hodgson, has pointed out, we may lose the Pre Pack Pool altogether if we do not take action. It wrote to the Minister to say that it is not sustainable under the current voluntary approach. The industry is also in favour; R3 has said that it would like to see action.

Making referral of connected pre-pack sales to the Pre Pack Pool mandatory in this Bill seems the obvious solution. It is very simple and could start working immediately; no new bodies need to be created and there are no material costs involved. Everything needed already exists. The Pre Pack Pool takes a very light-touch approach and can act quickly, so I strongly urge the Minister to include a clause to this effect in the Bill. It may not be enough in the longer term and we should continue to monitor pre-packs, but making referral mandatory would at least improve transparency with no material cost or complication. It would be very helpful if the Minister could give us his views on the usefulness of the Pre Pack Pool—whether he agrees it is unsustainable on a voluntary basis and whether he thinks it matters if it ceases to exist.

There is one subtle difference between my Amendment 61 and Amendment 57 in the name of the noble Lord, Lord Hodgson; mine says simply that a connected pre-pack deal cannot go ahead until it has been referred and the Pre Pack Pool has reported. The noble Lord's amendment is more robust, saying that the report must also be positive. I would be happy with either approach. We need to improve transparency to prevent creditors being unfairly dumped, however we do it.

Baroness Altmann (Con) [V]: My Lords, I echo the words of previous speakers. I have added my name to Amendment 61 in the name of the noble Lord, Lord Vaux, but I also support the amendment of my noble friend Lord Hodgson of Astley Abbotts. As the noble Lord, Lord Vaux, has said, either approach would at least give a fighting chance of avoiding the sort of gaming

of creditors that we have seen so often in the past. Indeed, when I was first involved in the pensions system in the early 2000s, the insolvency restructuring that pre-packs have sometimes engaged in was widespread as a means of dumping the defined benefit pension liabilities.

I fear that this Bill will pave the way for the same type of activity, to the detriment of the Pension Protection Fund and all employers sponsoring defined benefit pension schemes. Therefore, I urge my noble friend to take these amendments seriously; I plead that he look at the activities of the Pre Pack Pool and move to a mandatory approach, which, as has been so well described, would clearly better protect against the sorts of corporate activity that have so often brought capitalism into disrepute.

Lord Adonis (Lab) [V]: My Lords, I have two specific questions for the Minister. Is it the case, as reported in the *Times* on 26 May, that the Pre Pack Pool's oversight committee has written to the Minister specifically, notifying him that it will be "unsustainable" unless referrals of pre-pack sales are made mandatory? Secondly, could he confirm that Teresa Graham, the accountant who led the review referred to by the noble Lord, Lord Hodgson, is now in favour of mandatory referrals? She is quoted in the *Times* as saying:

"To see the demise of the Pre Pack Pool would be utter folly."

If that is the case, I cannot see how the Government can resist the amendment in the name of the noble Lord, Lord Hodgson, unless they believe that the pool and its whole policy is wrong. If the Minister is not as forthcoming as he expects, I hope the noble Lord, Lord Hodgson, will have the courage of his convictions and bring this back to the House on Report, because this looks otherwise like a classic case of willing the means but not the ends.

Lord Mendelsohn (Lab) [V]: My Lords, I declare my interests as an investor in turnaround and distressed businesses and as a corporate finance professional working in a regulated business.

It is unfortunate to have to return to this issue. I recall that my first duty as a Front-Bencher was to deal with the then Small Business, Enterprise and Employment Bill, where these issues came up. I recall at Second Reading a very powerful consensus over the problems that needed to be addressed, the Graham report recommendations and the feeling that a reserved power was still insufficient to deal with it. It is rather terrifying that we are back in a position of trying to recover a power we never thought good enough in the first place, due to the Government not only never exercising the power to make it mandatory but not really reviewing its performance.

I pay tribute to the noble Lord, Lord Hodgson, who was a strong advocate then and has been a doughty campaigner since. I associate myself with his comments; he summarised the position extremely well. I support Amendment 57 completely. I do so in preference to Amendment 61, but I also praise the noble Lord, Lord Vaux of Harrowden, for his excellent speech and his intention.

There is such a weakness in the system. Pre-packs are everywhere at the moment, and I can see their footprint increasing at some pace. That is not to say that pre-packs are inherently a bad thing. They are a device to try to maintain businesses and jobs. Indeed, this week Oak Furnitureland and its team of administrators were able to use the mechanism in a way that saved the business and brought in an external investor. But far too often they punish staff and small suppliers for management mistakes, and allow poor and improper management conduct to be legalised at the expense of employees and powerless suppliers. There is no fairness or public interest in this.

Nothing better proves the shortcomings of the drafting of the legislation that we are debating, and the Government's unwillingness to provide better assurances that would give some sense of how the new system would work, than the presence—or rather the absence—of anything about pre-packs in the current framing. As the noble Lord, Lord Hodgson, so correctly said, that is likely to undermine the capacity of monitors and other proposals in the Bill to work effectively.

In general, the pre-packs that involve current owners carrying on by being able to write off their debts, rather than a third-party buyer bringing in fresh thinking and funding, have never sat well with me. My experience is that they provide an unchecked process that allows people to make clean that which should never be considered to be so. Far too often, as the noble Lord, Lord Hodgson, said, people hide behind the claim that they are saving jobs. There is more than one way to do that, and very often there are better ways than by using the same people.

We should recognise that it is not always the wrong outcome for existing owners to keep businesses—an example is the recent pre-pack of Everest, which sold the business back to the owner and secured a good long-term future for it. In that case we should give credit to Jon Moulton's Better Capital, which referred the matter to the Pre Pack Pool and undertook a proper process to find an alternative. That is the true value of the Pre Pack Pool.

However, there are ways to game the system that are so clearly unacceptable that we must deal with them. In recent weeks we have witnessed, with both Monsoon and Quiz, two uses of the pre-pack system permitting current owners to cherry-pick parts of their businesses to dispose of, allowing them to avoid their debts and responsibilities and to carry out real abuse of the rules. I directly ask the Minister to comment on the Quiz situation—not to justify that particular action, but to tell us how it is possible to allow the system to remain untouched in current circumstances.

May I remind the noble Lord of the facts, so that he can give a policy interpretation? Quiz raised £103 million when floating in July 2017, and the business was valued at £200 million: £93 million of the proceeds went to the owners and £10.6 million went to the business for its growth. Unsurprisingly, the group unravelled well before the pandemic, with frequent profits alerts, as it was a listed business, and at the start of the year the share price went down to less than 10% of the float. The family still control 49% of the company, and, essentially, all activities of the business.

1.15 pm

This was beautifully described by Alistair Osborne, the excellent business commentator, in the *Times*, when he talked about the design of the pre-pack. The shops were owned by a subsidiary of Quiz, so it did not sell an asset but bought it back for £1.3 million, at a discount from the £39.6 million of gross assets. The result was that £6 million in liabilities owed to the likes of suppliers and landlords were lost. That is what was thrown away. Of course, they claimed that the rest of the business—the 1,600 employees and other areas—were at risk, and that this was the only way to save it. But the owners are still going to keep 90% of the shops open. This was a cheap device. As Alistair Osborne said:

"Even so, ask him if, instead of stiffing other people, he should be putting some of the money that he took out at the float back in."

The owner

"ducks the question. 'We can't go into that at the moment.'"

Yes—but "Heads I win, tails you lose" is not an approach that we should ever make acceptable through an unregulated flaw. That case may be extreme, but it is not alone; such improper practices are widespread. In my own experience in the past few weeks, a prominent case of two companies seeking to offload liabilities by merging, thus dumping their duties to TUPE staff, was undermined only by accident, when someone came along and forced the administrators to allow them to rescue one of the businesses with a major cash injection—even though the two businesses tried hard to rig the process to stop that deal. Unsurprisingly, the other business, which was claiming that the process was necessary because it was on the verge of closing, still continues today, owned by the same shareholder, who miraculously avoided liquidation or collapse.

In the last two weeks, one of my research team looked into tracking companies that went into pre-pack to search for trends or other things that we could be informed about. He found one business that, essentially, has been through 11 pre-packs in six years, marginally changing the name on each occasion, but with no change of directors. Anything that allows such a practice to continue is clearly wrong.

In my experience, the abuses have got worse, not better. What has been the response? The Government have let the powers in the Small Business, Enterprise and Employment Act not just cease to be exercised but lapse, and have left the Pre Pack Pool to wither to the extent that, as others have pointed out, it has written to the Minister about its huge underuse, which means that it is likely to collapse because of its anaemic funding. No doubt its effectiveness is affected by its weak finances. Pre-packs as currently regulated cause too many adverse outcomes, legalise shareholder misconduct and encourage very poor business practices such as extracting too much cash from a business and not planning for sensible levels of working capital.

The Government were dragged, kicking and screaming, to do something about this, and we got a voluntary option. That is a low bar. It is no doubt insufficient, but it is something. Maybe this proposal lacks the support of a prominent footballer, but I hope that the strength of the comments of noble Lords will not be lost on the Minister. I support Amendment 57 and the sentiments of other noble Lords who have spoken in the debate. Citing the Government's broader review is an inadequate response. Just keeping the provision would have been something, but with a measure that involves emergency legislation and temporary measures, to introduce the amendment tabled by the noble Lord, Lord Hodgson, even on a temporary basis, with a review, would also be something.

I strongly urge the Minister to give as full and as expansive an explanation as possible—and in particular, to be clear about whether the Government are truly committed to the Pre Pack Pool's continued existence, and whether they feel it is their responsibility or role to keep it functioning. I certainly urge him to give some indication of what they will do, not just to plug this obvious gap in the long term, but—in the short term, at this critical moment—to ensure that the measure, which should have been exercised previously, is at least available when it is most needed.

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, there is little to add to what has been said. I signed both the amendments, and I agree with what the noble Lords, Lord Hodgson and Lord Vaux, have said, and with what they have proposed both in these and in their other amendments. I also associate myself with the remarks made by the noble Baroness, Lady Altmann, and the noble Lord, Lord Mendelsohn, about pre-packs. Profitable as they may be for some, and right in some instances, they are too frequently a blot on our corporate landscape. They are despised by the public, who recognise them as being too often against the public interest.

It is important to take forward a fulsome operation of the Pre Pack Pool, by mandating its use. As has been explained, there was a provision that could have enabled that, but it expired recently, possibly through unavoidable circumstances. As the noble Lord, Lord Hodgson, also explained, there is a greater need for that provision now, because otherwise even the moratorium, and the good intentions that lie behind it, could be undermined.

Who refers something to the pool could be left open, but it is probably better to specify, as the noble Lord's amendment does. It does not have to be the purchaser; it could be a monitor duty, making the process look more independent.

As the noble Lord, Lord Hodgson, says in his amendment, there should also be some kind of positive response from the panel. He put "not unreasonable". I tend to favour something a bit more positive, possibly that it is "fair and reasonable", which carries an overtone both of an open market or arm's-length value and of being viewed in the round—again, as the noble Lord, Lord Hodgson, explained in his speech. Indeed, he even used the word "fair" in explaining what should happen.

If we compare the two amendments, which I did when I signed up to both, it comes down to where they are placed in the relevant schedule and whether to link them to connected persons rather than to associates, as the noble Lord, Lord Vaux, has done. As "connected persons" was the language used in earlier debates on the Bill, that is the placing that caught my eye, but I would not bet against the noble Lord, Lord Hodgson, having found possibly the better spot. However, now that we are alert to it, an optimal draft could be produced, and I urge the Government to do that.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, we have had a very good debate on this issue today. It is an accident of the way things went yesterday that we have been given this time, and I am grateful to the House authorities for allowing us to spend some time on this important topic.

The noble Lords, Lord Hodgson and Lord Vaux, gave brilliant exposés of why pre-packs are causing more harm than good, as they put it, although both were valiant in suggesting that it remained on the agenda or was a "valuable tool in the toolbox", which was another phrase used, although the noble Lord, Lord Hodgson, said that it has been a very loose end recently. Increasingly, perhaps we need to think hard about how this should go forward.

Like my noble friend Lord Mendelsohn, I have had an interest in pre-packs since we were involved in the quite intensive discussions on the small business Act in 2015. Like him and many people, I regret that the power that was inserted into that Act has lapsed, because that seems a missed opportunity and we should be thinking hard about how that might go. Perhaps when the Minister responds he could explain again why he thinks that the amendment in the name of the noble Baroness, Lady Neville-Rolfe, should not be brought forward again. It seems that it would give him the powers that he might need in the future to take action.

The key issue here is not whether the pre-packs will continue to cause trouble but the damage that they might do to the Bill. I hope that the Minister will recall that, when we had our first meeting on the Bill and we were going through some of the main issues, I raised the question of whether the Bill would have an impact on pre-packs and vice versa. The answer I got was that, in the view of the drafters of the Bill, it would not materially have an effect one way or another. However, the evidence we have heard today suggests that that is not the case. Although the Teresa Graham report of a few years ago and its suggestion of a pre-pack pool has been working reasonably well in practice, it is still a voluntary scheme, as was picked up, and if it is indeed rewarding the good guys but not catching the bad ones, the Government are on notice to do something about that. Additionally, if the Pre Pack Pool itself falls into desuetude, obviously a major issue is looming.

The amendments here are very much autonomous, and it has been a useful debate. Of course, if they were accepted, they would effectively be saving a bad system and not introducing good regulation. As the noble Baroness, Lady Altmann, said, we need to think about a mandatory approach here. When the Minister responds, we will be looking for guidance from him about whether this is the opportunity to do so. Would he be prepared to reconsider his initial view on the amendment proposed by the noble Baroness, Lady Neville-Rolfe, to give powers back to the Government to act if they are required, or will we have to seek another opportunity?

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): I thank and pay tribute to my noble friend Lord Hodgson for ably introducing this grouping and speaking so powerfully on this subject. In fact, such is the power with which he speaks that when he spoke, claps of thunder echoed around the Chamber. We do not have any of our right reverend Prelates here to advise us, but perhaps my noble friend's amendments have support from authorities even higher than those in this House. I am also grateful to the noble Lord, Lord Vaux, for speaking so eloquently on this topic, and grateful to him, my noble friend and the noble Lord, Lord Mendelsohn, for the time that they made available for us to discuss these issues in the last couple of weeks.

At the risk of further increasing my noble friend's blood pressure, I say to him that the measures in the Bill are indeed intended to help companies to maximise their chances of survival during the Covid-19 emergency, to protect jobs and support the recovery of the economy. That is why other measures, which would not necessarily alleviate the impact of the current emergency, have not been included in the Bill.

I will reply also to the points from the noble Lords, Lord Adonis and Lord Mendelsohn. The Pre Pack Pool wrote to me on this subject a few weeks ago, and I responded on 29 May. I understand its concerns; officials will be meeting the pool and the Insolvency Service to take forward the discussions and the concerns that it has rightly raised.

I also see that the Small Business, Enterprise and Employment Act 2015 has provided some inspiration for these amendments, which would require mandatory reference to the aforementioned Pre Pack Pool. Aside from specific considerations as to whether a requirement for a positive opinion from the pool might conflict with the strategy duties of the administrator, I would be concerned that the amendment might impose an additional burden on businesses at this difficult time. Furthermore, as my noble friend Lord Hodgson reminded us, the Pre Pack Pool operates as a limited company, and I ask whether it is right to restrict the required opinions to one source of supply.

There are already legislative and professional regulatory requirements in respect of pre-pack sales. When deciding whether to go ahead with any sale in administration, the administrator is required to take into consideration the statutory objectives of administration, which include rescuing the company as a going concern and achieving a better result for creditors as a whole. The administrator must also send a detailed narrative explanation to creditors, justifying why a pre-pack sale was undertaken. That is sent to the administrators' regulatory body, which monitors it to ensure that administrators comply with the spirit as well as the letter of this requirement. At Second Reading, I explained that we continue to work with regulators and industry stakeholders to discuss the options for strengthening the professional regulatory requirements. I can tell noble Lords that if that fails to give greater assurance to creditors, we will consider bringing forward further legislation.

For the reasons that I have set out, I am therefore unable to accept these amendments and I hope that my noble friend and the noble Lord, Lord Vaux, will therefore be able to withdraw and not press their amendments.

Lord Vaux of Harrowden [V]: In his response, the Minister did not answer the question of whether he believes that the Pre Pack Pool is useful, sustainable on a voluntary basis, and whether it matters if it ceases to exist. Could he answer that now?

Lord Callanan: I do not want to go any further than what I said in my reply. I have been in correspondence with the Pre Pack Pool and we have arranged for officials from my department and from the Insolvency Service to meet with it further to discuss its concerns.

Lord Adonis [V]: Could Members of the Committee see before Report the letter of 29 May sent in reply to the pool, which the Minister mentioned?

Lord Callanan: In principle I have no objection to releasing that; obviously, I would need to speak to officials and to the recipients to check whether they are all happy with that. I do not know whether it was sent on a confidential basis or whether it is available for publication, but I will certainly look at that.

1.30 pm

Lord Hodgson of Astley Abbotts: My Lords, I thank all noble Lords who have spoken in support of this amendment and the amendment in the name of the noble Lord, Lord Vaux, and thank him for his support for the approach that we are taking. I particularly thank the noble Lord, Lord Mendelsohn, who has a lot of experience in this field; his evidence and his views were very persuasive indeed. To the noble Baroness, Lady Bowles, who was a co-signatory, I say that the reason that I chose "not unreasonable" as opposed to "fair and reasonable" was to put the bar as low as possible, so we had the least problem getting the government horse over the jump. But even this, apparently, is not good enough.

I found my noble friend's answer thin—and this describes only half of what I feel. To describe this as imposing an additional requirement at this time seems an extraordinary justification; and to say that it is not right to depend on the Pre pack pool alone—the Pre pack pool was set up as a result of a government review—seems equally dubious logic. He says that we are going to discuss options of a right way forward—but we are about to come out of lockdown. The result of the pandemic will be hundreds of firms in very grave difficulties. Some of them need saving. But they need saving in a way that is fair to the creditors, to the pension fund regulator and all the other people involved. I do not think that discussing options as we go into that storm—which is coming; it is bound to come—is right. I heard what he said, I regret that he cannot take this forward and make at least some compromise suggestions, and I reserve the right to bring this back on Report. In the meantime, I beg leave to withdraw the amendment.

Amendment 57 withdrawn.

Amendments 58 to 64 not moved.

Clauses 18 and 19 agreed.

Clause 20: Restrictions

Amendment 65 not moved.

Clause 20 agreed.

Clause 21: Time-limited effect

Amendments 66 and 67 not moved.

Clause 21 agreed.

Clause 22: Expiry

Amendments 68 to 70 not moved.

Clause 22 agreed.

Clause 23: Consequential provision etc

Amendment 71 not moved.

Clause 23 agreed.

Clause 24: Procedure for regulations

Amendment 72 not moved.

Clause 24 agreed.

Clauses 25 to 28 agreed.

Clause 29: Time-limited effect

Amendment 73 not moved.

Clause 29 agreed.

Clause 30: Expiry

Amendment 74 not moved.

Clause 30 agreed.

Clauses 31 to 34 agreed.

Amendment 75 not moved.

Clauses 35 and 36 agreed.

Clause 37: Temporary power to extend periods for providing information to registrar

Amendments 76 and 77 not moved.

Clause 37 agreed.

Clause 38 agreed.

Amendments 78 to 80 not moved.

Clause 39: Power to change duration of temporary provisions: Great Britain

Amendment 81 not moved.

Clause 39 agreed.

Clauses 40 to 47 agreed.

Schedule 1: Moratoriums in Great Britain: eligible companies

Amendments 82 to 88 not moved.

Schedule 1 agreed.

Schedule 2: Moratoriums in Great Britain: contracts involving financial services

Amendments 89 to 92

Moved by ***Lord Callanan***

89: Schedule 2, page 104, line 15, at end insert ", and

(b) a master agreement for securities financing transactions."

Member's explanatory statement

This amendment provides for a master agreement for securities financing transactions to be a "contract or other instrument involving financial services" for the purposes of new section A18 of the Insolvency Act 1986.

90: Schedule 2, page 104, line 24, leave out from "derivative" to end of line 25 and insert ", and

(b) a master agreement for derivatives.

(2) "Derivative" has the meaning given by Article 2(5) of Regulation (EU) No. 648/2012."

Member's explanatory statement

This amendment provides for a master agreement for derivatives to be a "contract or other instrument involving financial services" for the purposes of new section A18 of the Insolvency Act 1986.

91: Schedule 2, page 104, line 27, at end insert ", and

(b) a master agreement for spot contracts."

Member's explanatory statement

This amendment provides for a master agreement for spot contracts to be a "contract or other instrument involving financial services" for the purposes of new section A18 of the Insolvency Act 1986.

92: Schedule 2, page 104, line 35, leave out from "to" to end of line 36 and insert "an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment.

(2) "Capital market investment" has the meaning given by paragraph 14 of Schedule ZA1."

Member's explanatory statement

This amendment provides for an agreement relating to the issue of capital market investments to be a "contract or other instrument involving financial services" for the purposes of new section A18 of the Insolvency Act 1986.

Amendments 89 to 92 agreed.

Amendment 93 not moved.

Schedule 2, as amended, agreed.

Schedule 3: Moratoriums in Great Britain: further amendments

Amendments 94 and 95 not moved.

Schedule 3 agreed.

Schedule 4: Moratoriums in Great Britain: temporary provision

Amendment 96 not moved.

Amendment 97

Moved by ***Lord Callanan***

97: Schedule 4, page 122, line 39, leave out "Act" and insert "Schedule"

Member's explanatory statement

This amendment changes the definition of the "relevant period" so that the term is defined by reference to the coming into force of the Schedule rather than by reference to the coming into force of the Act as a whole.

Amendment 97 agreed.

Amendments 98 and 99 not moved.

Schedule 4, as amended, agreed.

Schedule 5: Moratoriums in Northern Ireland: eligible companies

Amendment 100 not moved.

Schedule 5 agreed.

Schedule 6: Moratoriums in Northern Ireland: contracts involving financial services

Amendments 101 to 104

Moved by ***Lord Callanan***

101: Schedule 6, page 154, line 10, at end insert ", and

(b) a master agreement for securities financing transactions."

Member's explanatory statement

This amendment provides for a master agreement for securities financing transactions to be a "contract or other instrument involving financial services" for the purposes of new Article 13D of the Insolvency (Northern Ireland) Order 1989.

102: Schedule 6, page 154, line 19, leave out from "derivative" to end of line 20 and insert ", and

(b) a master agreement for derivatives.

(2) "Derivative" has the meaning given by Article 2(5) of Regulation (EU) No. 648/2012."

Member's explanatory statement

This amendment provides for a master agreement for derivatives to be a "contract or other instrument involving financial services" for the purposes of new Article 13D of the Insolvency (Northern Ireland) Order 1989.

103: Schedule 6, page 154, line 22, at end insert ", and

(b) a master agreement for spot contracts."

Member's explanatory statement

This amendment provides for a master agreement for spot contracts to be a "contract or other instrument involving financial services" for the purposes of new Article 13D of the Insolvency (Northern Ireland) Order 1989.

104: Schedule 6, page 154, line 30, leave out from "to" to end of line 31 and insert "an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment.

(2) "Capital market investment" has the meaning given by paragraph 14 of Schedule ZA1."

Member's explanatory statement

This amendment provides for an agreement relating to the issue of capital market investments to be a "contract or other instrument involving financial services" for the purposes of new Article 13D of the Insolvency (Northern Ireland) Order 1989.

Amendments 101 to 104 agreed.

Schedule 6, as amended, agreed.

Schedule 7 agreed.

Schedule 8: Moratoriums in Northern Ireland: temporary provision

Amendment 105 not moved.

Amendment 106

Moved by ***Lord Callanan***

106: Schedule 8, page 166, line 12, leave out "Act" and insert "Schedule"

Member's explanatory statement

This amendment changes the definition of the "relevant period" so that the term is defined by reference to the coming into force of the Schedule rather than by reference to the coming into force of the Act as a whole.

Amendment 106 agreed.

Schedule 8, as amended, agreed.

Schedule 9: Arrangements and reconstructions for companies in financial difficulty

Amendments 107 to 122 not moved.

Amendments 123 to 127

Moved by ***Lord Callanan***

123: Schedule 9, page 189, line 17, leave out "24(1) (insolvency)" and insert "24 (insolvency)—

(a) in sub-paragraph (1)"

Member's explanatory statement

This amendment makes a consequential drafting change as a result of the insertion of a second amendment to paragraph 24 of Schedule 17A to the Financial Services and Markets Act 2000.

124: Schedule 9, page 189, line 19, leave out "section 355A" and insert "sections 355A and 355B"

Member's explanatory statement

This amendment provides that the powers conferred by new section 355B of the Financial Services and Markets Act 2000 will be available to the Bank of England in relation to certain types of institution regulated by the Bank.

125: Schedule 9, page 189, line 20, at end insert—

"(b) in sub-paragraph (2), after "recognised investment exchange" insert "(other than the reference to "an authorised person" in section 355B(2)(a))"."

Member's explanatory statement

This amendment ensures that the application of new section 355B of the Financial Services and Markets Act 2000 in relation to the Bank of England works as intended.

126: Schedule 9, page 190, line 36, at end insert—

"355B Enforcement of requirements imposed by section 355A

(1) For the purpose of enforcing a requirement imposed on a company by section 355A(2) or (3), the appropriate regulator may exercise any of the following powers (so far as it would not otherwise be exercisable)—

(a) the power to publish a statement under section 205 (public censure);

(b) the power to impose a financial penalty under section 206.

(2) Accordingly, sections 205 and 206, and so much of this Act as relates to either of those sections, have effect in relation to a requirement imposed by section 355A(2) or (3) as if—

(a) any reference to an authorised person included (so far as would not otherwise be the case) a reference to a company falling within any of paragraphs (a) to (d) of section 355A(1),

(b) any reference to a relevant requirement included (so far as would not otherwise be the case) a reference to a requirement imposed by section 355A(2) or (3), and

(c) "the appropriate regulator" had the same meaning as in section 355A.

(3) In this section "the appropriate regulator" has the same meaning as in section 355A."

Member's explanatory statement

This amendment provides that the powers of the FCA and PRA to publish a statement about a regulatory breach or to impose a financial penalty are exercisable in relation to a contravention by a company of the requirements imposed by new section 355A(2) and (3) of the Financial Services and Markets Act 2000.

127: Schedule 9, page 202, line 25, at end insert—

"( ) Sections 197, 198 and 202A of the Banking Act 2009, and sections 201 and 202 of that Act, so far as relating to those sections, apply in relation to a failure by an infrastructure company to comply with subsection (2) or (3) above as they apply in relation to a compliance failure within the meaning of Part 5 of that Act."

Member's explanatory statement

This amendment provides that the powers of the Bank of England to publish a statement about a regulatory breach, to impose a financial penalty or to seek an injunction are exercisable in relation to a contravention by an infrastructure company of the requirements imposed by new section 124A(2) and (3) of the Financial Services (Banking Reform) Act 2013.

Amendments 123 to 127 agreed.

Schedule 9, as amended, agreed.

Schedule 10: Winding-up petitions: Great Britain

Amendments 128 to 130 not moved.

Schedule 10 agreed.

Schedule 11: Winding-up petitions: Northern Ireland

Amendments 131 and 132 not moved.

Schedule 11 agreed.

Schedule 12: Protection of supplies of goods and services

Amendments 133 to 137

Moved by ***Lord Callanan***

133: Schedule 12, page 221, line 25, at end insert "and

(b) a master agreement for securities financing transactions"

Member's explanatory statement

This amendment provides for master agreements for securities financing transactions to be excluded from the operation of new section 233B of the Insolvency Act 1986.

134: Schedule 12, page 221, line 34, leave out from "derivative" to end of line 35 and insert "and

(b) a master agreement for derivatives.

(2) "Derivative" has the meaning given by Article 2(5) of Regulation (EU) No. 648/2012."

Member's explanatory statement

This amendment provides for master agreements for derivatives to be excluded from the operation of new section 233B of the Insolvency Act 1986.

135: Schedule 12, page 221, line 37, at end insert "and

(b) a master agreement for spot contracts."

Member's explanatory statement

This amendment provides for master agreements for spot contracts to be excluded from the operation of new section 233B of the Insolvency Act 1986.

136: Schedule 12, page 222, line 2, leave out from "to" to end of line 3 and insert "an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment.

(2) "Capital market investment" has the meaning given by paragraph 14 of Schedule ZA1."

Member's explanatory statement

This amendment provides for agreements relating to the issue of capital market investments to be excluded from the operation of new section 233B of the Insolvency Act 1986.

137: Schedule 12, page 222, line 23, at end insert—

"Aircraft equipment

21_ Nothing in section 233B affects the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (S.I. 2015/912)."

Member's explanatory statement

This amendment clarifies the relationship between the proposed new section 233B of the Insolvency Act 1986 and the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015.

Amendments 133 to 137 agreed.

Schedule 12, as amended, agreed.

Schedule 13: Protection of supplies of goods and services: Northern Ireland

Amendments 138 to 142

Moved by ***Lord Callanan***

138: Schedule 13, page 227, line 35, at end insert "and

(b) a master agreement for securities financing transactions."

Member's explanatory statement

This amendment provides for master agreements for securities financing transactions to be excluded from the operation of new Article 197B of the Insolvency (Northern Ireland) Order 1989.

139: Schedule 13, page 227, line 44, leave out from "derivative" to end of line 45 and insert "and

(b) a master agreement for derivatives.

(2) "Derivative" has the meaning given by Article 2(5) of Regulation (EU) No. 648/2012."

Member's explanatory statement

This amendment provides for master agreements for derivatives to be excluded from the operation of new Article 197B of the Insolvency (Northern Ireland) Order 1989.

140: Schedule 13, page 228, line 2, at end insert "and

(b) a master agreement for spot contracts."

Member's explanatory statement

This amendment provides for master agreements for spot contracts to be excluded from the operation of new Article 197B of the Insolvency (Northern Ireland) Order 1989.

141: Schedule 13, page 228, line 10, leave out from "to" to end of line 11 and insert "an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment.

(2) "Capital market investment" has the meaning given by paragraph 14 of Schedule ZA1."

Member's explanatory statement

This amendment provides for agreements relating to the issue of capital market investments to be excluded from the operation of new Article 197B of the Insolvency (Northern Ireland) Order 1989.

142: Schedule 13, page 228, line 31, at end insert—

"Aircraft equipment

21_ Nothing in Article 197B affects the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (S.I. 2015/912)."

Member's explanatory statement

This amendment clarifies the relationship between the proposed new Article 197B of the Insolvency (Northern Ireland) Order 1989 and the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015.

Amendments 138 to 142 agreed.

Schedule 13, as amended, agreed.

Schedule 14: Meetings of companies and other bodies

Amendments 143 to 146 not moved.

Schedule 14 agreed.

House resumed.

Bill reported with amendments.

1.40 pm

Sitting suspended.

Arrangement of Business

Announcement

1.45 pm

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, proceedings will now commence. Some Members are here in the Chamber and others are participating virtually, but all Members will be treated equally. For noble Lords participating virtually, microphones will unmute shortly before they are due to speak. Please accept any on-screen prompts to unmute. Microphones will be muted after each speech. If the capacity of the Chamber is exceeded—which I doubt—I will immediately adjourn the House. I ask noble Lords to be patient if there are any short delays between physical and remote participants. The usual rules and courtesies in debate apply.

We now come to the Motion in the name of the noble Baroness, Lady Vere of Norbiton. The time limit is one and a half hours.

Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2020

Motion to Approve

1.46 pm

Moved by ***Baroness Vere of Norbiton***

That the draft Regulations laid before the House on 3 March be approved.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con) [V]: My Lords, these draft regulations will be made under the powers conferred by the European Union (Withdrawal) Act 2018.

The regulations amend two EU implementing regulations that relate to safety oversight of air navigation service providers—ANSPs—and network functions respectively. They also revoke one EU implementing regulation that relates to performance and charging, and one EU implementing decision that sets out EU performance targets.

As noble Lords are aware, the Government are committed to ensuring that the UK has a functioning statute book at the end of the transition period, while we continue to work to achieve a positive future relationship with the EU. We have therefore conducted particularly intensive work to ensure that there continues to be a well-functioning legislative and regulatory regime for aviation, including for air traffic management —ATM. This instrument makes changes to the retained EU legislation for ATM, so that the UK retains the regulatory tools to ensure the continued provision and oversight of efficient, safe air navigation services after the UK leaves the EU, as well as to maintain interoperability with the EU after the end of the transition period.

The draft instrument is the second ATM SI relating to EU exit and ensures that the four pieces of EU ATM legislation that have come into force since the first SI was made—the Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019, which I shall refer to as the 2019 regulations—are legally operable. As noble Lords will be aware, these are detailed technical matters, and I will briefly explain what they do.

Implementing regulation 2019/317 and implementing decision 2019/903 both relate to the EU performance and charging scheme for air navigation services for the period 2020-24. Both are being revoked. Implementing regulation 2017/373, which is being amended, sets out requirements for the safe delivery of air navigation services by providers such as NATS, and their oversight. Finally, implementing regulation 2019/123, which is also being amended, deals with the regulation of network-level air navigation services which are provided by the intergovernmental organisation Eurocontrol in co-ordination with operators.

The SI addresses areas of legal interoperability by removing the roles of EU bodies, functions that cannot be performed by the EU after the completion of the transition period, and provisions where there is already satisfactory UK legislation in place. Where possible, roles currently undertaken by the European Commission and EU bodies are being transferred to the Secretary of State for Transport or to the Civil Aviation Authority—CAA—but where they relate to pan-European functions, including air navigation services delivered by more than one state, they are being removed.

This instrument makes changes to the retained EU legislation to ensure appropriate national arrangements for the provision and oversight of air navigation services after the UK leaves the EU. Some EU regulations will not work as domestic legislation after the end of the transition period and so should not been retained.

The approach taken in the first SI, the 2019 regulations, in respect of the EU's previous performance and charging schemes regulations was to revoke them. The scheme is a top-down system for the economic and performance regulation of air navigation services based on reliance on targets set at an EU level. It also contains numerous roles for the European Commission and its performance review body. It is therefore legally inoperable once saved into UK law.

The UK had a domestic system of performance and economic regulation under the Transport Act 2000 prior to EU competence. This legislation is still in force as it is compatible with the EU arrangements and contains other requirements such as the licensing arrangements for the UK's main air navigation service provider, NATS. As a result, the UK will not retain the EU regulations and instead rely on the Transport Act 2000 for the CAA to carry out duties in respect of economic regulation of NATS. These regulations therefore revoke the EU regulations in this area, taking a consistent approach to that taken in the 2019 regulations. The CAA and NATS support this approach.

In February last year, when the 2019 regulations were made, EU implementing regulation 2017/373 was partially applicable in respect of provisions for data service providers and the roles of the European Aviation Safety Agency, or EASA, in respect of oversight of pan-European services. As the EU regulation became fully applicable on 2 January 2020, it is now necessary to make further amendments to it.

Similarly, this instrument amends Commission Implementing Regulation (EU) 2019/123, which deals with the regulation of network-level air navigation services. This entered into force on 1 January 2020 and was therefore not included in the first SI, made in February 2019.

In summary, all the amendments being made in this instrument address areas of legal inoperability by removing roles of EU bodies, functions that cannot be performed by the UK after the end of the transition period and provisions where there is already satisfactory UK legislation. The approach taken is consistent with the 2019 regulations approved by your Lordships' House in February last year.

The instrument makes no changes to the policy intent of the EU's ATM regulations and is consistent with the approach taken in the first SI. The instrument maintains the existing regulatory framework and technical requirements for ATM to ensure continued provision of efficient, safe air navigation services and the effective regulation of the UK ATM system. I commend the instrument to the House.

1.53 pm

Lord Foulkes of Cumnock (Lab Co-op) [V]: My Lords, I thank the Minister for her helpful and detailed introduction, and for her courtesy in asking us in advance whether we had any questions. I am sure that my noble friend Lord Rosser will deal with some of the more detailed, technical aspects of the regulations later on, but perhaps I may first point out that this is one of many—indeed, too many—measures that we are having to deal with because of the damaging decision to leave the European Union. They are taking up an awful lot of time in this House and in the other

place. We shall be discussing another one tomorrow, on civil aviation—and that is just aviation; there are many other areas that we are taking up time discussing.

However, as a Scottish Peer who represented an Ayrshire constituency when I was in the other place, I want to take this opportunity to highlight the important role played by Prestwick air traffic management centre in supporting the smooth running of our airspace. Appropriately, this is the 10th anniversary of the opening of the new centre at Prestwick.

As the Minister will be aware, Prestwick controls air space above Scotland and the north of England, across the North Sea to the east and halfway across the Atlantic towards North America in the west. It is the biggest area of controlled air space in the European Union.

Alongside that, it also has the benefit of the most up-to-date system, iTEC, designed to increase airspace capacity, to improve safety by automatically detecting potential aircraft conflicts ahead of time and to help some aircraft reduce fuel consumption and emissions by giving pilots greater flexibility to fly the best and most direct routes, instead of following the existing network of rigid waypoints and airways, which of course is good from a climate change point of view.

The same system is also deployed at our southern air traffic management centre at Swanwick. Given the capabilities at Prestwick, it is able to take over Swanwick's operational abilities as well as its own in the case of an emergency. What contingency measures do we have in place for any such circumstances, which, sadly, given the events of the past few years, look increasingly possible?

On another matter, the single European sky, or SES, initiative, which is relevant to these regulations, is based on improving how European airspace is managed. Its aim is to modernise Europe's airspace structure and air traffic management technologies to ensure that forecast growth in air traffic can be met safely and sustainably while also reducing costs and improving environmental performance. All this is to ensure that Europe's aviation industry remains globally competitive. With the United Kingdom set, sadly, to be no longer part of the SES, I am keen to understand what arrangements the Government have in place to work with the European Union to improve airspace management, given the vast array of expertise and technologies that are available. The Minister may have covered this in her introduction, but I was not too clear as to whether she did. With this in mind, can she tell the House whether a new agreement between the United Kingdom and the European Union similar to the existing open skies agreement will be established? I look forward to her reply at the end of this debate.

1.57 pm

Lord Bradshaw (LD) [V]: My Lords, I want to build on what the noble Lord, Lord Foulkes, has just said: that we are leaving a system where we had leadership. I worked in Brussels on the single European sky and the modernisation of airspace management in Europe. We had tremendous trouble with the French, who were determined to preserve as much of their airspace as possible for their own use, and we slowly prevailed on them because we showed leadership in wanting to bring things up to date. It seems that we are almost abolishing our leadership; we are throwing it to the wind, and others in Europe will assume our role.

As well as giving up leadership, which is very important and which this Government appear quite happy to relinquish, we are doing the same with aircraft construction. Are we still enthusiastic about our own aircraft construction industry—Airbus is a joint European project—or are we, as with agriculture, apparently slowly sinking into the arms of the United States and abandoning our concern for our own employees and industry? This whole project is unnecessary. It probably tidies up a few legal loopholes, but it certainly does nothing for the prosperity of our airline industry or our aircraft construction industry.

1.59 pm

Lord Naseby (Con) [V]: The Minister may know that I am a former RAF pilot and a civil pilot. I have also been an adviser to an airline.

On the surface, this seems a pretty straightforward SI, which arises out of Brexit, and it is important that it is laid. Inevitably, though, it raises certain questions to which I do not necessarily expect the Minister to respond immediately this afternoon. If she is not able to respond to them now, I would be grateful if she could drop me a line after the debate.

I think it is easiest to go paragraph by paragraph through the Explanatory Memorandum. Paragraph 2.4 on page 1 says:

"This will ensure the continuity of a functioning regulatory framework for the UK's Air Traffic Management".

Are we saying here that the EU agrees with this in toto? That seems absolutely fundamental. I assume that it does, but I would like to have that in writing.

Turning to paragraph 2.5, will we still be involved in the SES ATM Research programme? We have clearly played a major role in the past. In paragraph 2.6, for the reference period 2020-24, how do the costs compare for users in comparison with the previous period?

Paragraph 2.16 refers to "efficient and safe ANS". Have all the interested parties—the CAA, the users and so on—been consulted all the way and, most importantly, are they now comfortable with what has been agreed?

Further on, paragraph 6.4 talks about interoperation with the rest of Europe. Is the UK aviation industry 100% comfortable with that? Paragraph 7.2 refers to EU targets. Clearly, we are leaving the EU, so those targets are no longer necessarily what we want, but are our UK targets already established and are they comparable?

Paragraph 10.1 deals with consultation, which is a very important area. Are there currently any issues arising from this SI where there are ongoing discussions or concerns within the industry, or is it all now virtually signed and sealed once we pass this SI?

Turning to paragraph 11.2, is the UK already compliant or working towards compliance? What is the estimate for when the UK will be 100% compliant?

Paragraph 14 states that

"no review clause is required."

[Lord Naseby]

I spent 12 years of my life on the Public Accounts Committee, and one great issue over the years was that all sorts of SIs went through which alleged that no review was necessary. Lo and behold, before very long, people wondered why there was no review date. I cannot think of anything more dramatic or large than leaving the EU—which I am in favour of. We ought to look at this and put down a date for review. I am open-minded on how far away it should be, but I would have thought it wrong to say that no review provision is required.

Lastly, the Minister may not know it, but I have always taken a passionate interest in drones. The development, flying and control of drones have all been a challenge. Are there any issues on the drones front that are affected by this SI, or that somehow escaped the notice of the Department for Transport?

As I said, I do not expect a detailed answer this afternoon, but I have been through this quite carefully and I would be most grateful if the Minister could ask the department to provide an answer to the points that I have raised.

Lord Parkinson of Whitley Bay (Con): My Lords, I gently remind all noble Lords that this is a time-limited debate. We would be grateful if noble Lords could stick to the four-minute speaking limit.

2.05 pm

Baroness Kennedy of Cradley (Lab) [V]: My Lords, in the short time we have today, I want to make three points. First, I understand that this regulation revokes the EU Single European Sky performance scheme for improving air traffic management. Like the noble Lord, Lord Naseby, I would like the noble Baroness to clarify whether it is the Government's intention to stick to the union-wide performance scheme in the areas of safety, environment, air space capacity and cost efficiency, or to develop a scheme specifically for the UK?

Similarly, my second point concerns the common charging scheme for air navigation services. Going forward, is it envisaged that the UK will remain a member of Eurocontrol and continue to use its centralised system for charges or, again, is it envisaged that the Government will develop their own system for the efficient management of charges?

Finally, these regulations largely give over responsibility for air traffic management to the Secretary of State or the Civil Aviation Authority. It is right that the Government seek to re-establish the majority of laws covering aviation before the end of the transition period. However, a huge amount of extra responsibility now seems to be falling to the CAA. As well as the responsibilities transferred to the CAA today—certification, oversight and enforcement in respect of air traffic management and air navigation service providers—it has also been confirmed by the Government that the UK is withdrawing from the EU's aviation safety regulator, and these responsibilities will now too fall to the CAA. The change and scale of challenge for the CAA therefore seems enormous and will have a dramatic impact on its workload. It will need significantly more staff and budgetary resource to fill the void left by the aviation safety regulator alone.

Can the Minister say what is the Government's plan to resource the CAA so that it can recruit staff, plan and ensure that our air traffic management policies and processes are ready by the end of the year? What guarantee do the Government have that international aviation regulators would accept the CAA's regulatory standards, especially if it chooses to divert from the current safety regulations?

2.07 pm

Lord Chidgey (LD) [V]: My Lords, I begin by acknowledging that, before entering Parliament, I enjoyed a progressive career in the aerospace and related industries, recognised by my becoming a companion of the Royal Aeronautical Society.

I congratulate the Minister on her courteous introduction to this debate by email and her detailed explanation today. It certainly is a detailed, technical matter. The safety, oversight and network functions are clearly explained, but not necessarily understood. The Minister mentioned that, where possible, roles were being transferred to the UK. Can she provide examples when she responds? She also talked about the 2019 regulations relying on the 2000 Transport Act and that the CAA and NATS were supportive. Can she mention any areas in which they were not supportive? It would be helpful to know. I note my colleague, my noble friend Lord Bradshaw's telling point about leaving a system in which we have leadership, which we are now abandoning, along with aircraft production.

Hansard records in volume 788 of 17 January 2018 that I asked the Government for their assessment of warnings from the United States Federal Aviation Administration, should out Government fail to negotiate a continuing role in the European Aviation Safety Authority or set up a British regime before exiting the EU. The response from the then Minister was,

"we … have been working with them since early last year on arrangements to replace the EU-US bilateral … agreement … to ensure that … existing arrangements for the recognition of safety certification between the UK and US continue to apply."—[*Official Report*, 17/1/18; col 635.]

When we debated the impact of leaving the EU on the aviation and aerospace industry in 2018, we noted that its value to our economy was £32 billion a year; it supported 128,000 direct jobs and 153,000 indirect jobs, many highly skilled and cutting-edge in their technology, and an area in which our economy needs to grow and continue to excel in. The Covid-19 catastrophe has already seen thousands, if not tens of thousands, of these types of jobs lost. Therefore, referring back to the comment of the then Minister in January 2018 that we have been working to ensure that

"existing arrangements for the recognition of safety certification … continue to apply",—[*Official Report*, 17/1/18; col. 636]

can the Minister confirm that these arrangements between the UK and US were concluded satisfactorily?

In so far as these traffic management regulations will apply and overlap with technology associated with the air-side and on-board aviation, will these arrangements continue to apply should the UK leave the EU without an agreement—which of course these regulations refer to?

Finally, on 25 February 2019, the Government confirmed that NATS would continue to be,

"the UK's en route air navigation services provider … there will be no difference".—[*Official Report*, 25/2/19; col. 68.]

The Minister may not be aware that NATS is located at Bursledon and Swanwick, in the Eastleigh constituency that I had the good fortune to represent. Any reduction in NATS's role could risk severe implications for local employment. Can the Minister say whether the UK leaving the EU without an agreement would increase that risk?

2.11 pm

Lord Empey (UUP) [V]: My Lords, I thank the Minister for contacting Members about the specific issues they wished to raise today. I understand the rationale for having to ensure that a body of law exists with our departure from the European Union and the replacement within national law of what is currently EU law, but Members will be well aware that an aircraft taking off from Heathrow is barely in the air before it transfers into European airspace. Therefore, the concept of having individual regimes is very difficult. On charges, what will these measures actually cost and how will these additional costs be recovered?

In the Explanatory Memorandum, at paragraph 6.3, reference is made to the devolved Administrations in the United Kingdom and the role that they might play in secondary legislation. Given that aviation is an excepted or reserved matter in the United Kingdom, what role does the Minister envisage these Administrations would play under these circumstances?

We have now got a very complicated arrangement based on different pieces of legislation, including the 2000 Act and incorporating existing EU regulations into UK law. Is her department contemplating bringing together a single piece of legislation with a clear guideline and a clear reference as to what the legal position is, rather than having all these disparate elements, some of which have been absorbed from the EU and others of which have not?

If we are proposing to do something differently—which I have no problem with in principle—can she assure the House that that will not create difficulties for our airline sector, struggling as it is under massive pressure? If there were to be a different regime, would that have implications for cost? Would it have implications for our European colleagues and, indeed, more internationally? Because, just like climate, which is a global issue, aviation is a global issue and there are no red lines in the sky. I would therefore like her to tell the House what the status of the current negotiations with the European Union is and whether she believes we will continue to have free and open access to each other's skies as we move forward in the next few months.

2.14 pm

Lord Balfe (Con) [V]: My Lords, I shall be brief and I start by declaring my interest as president of the British Airline Pilots Association: from that point of view I am pleased to tell the Minister that we have no great difficulties with this SI as a technical document. We recognise that, without it, the arrangements would no longer be interoperable with the rest of Europe, so it is a necessity.

None the less, I have one or two questions. First, to what extent will this be impacted if, as is widely expected in Brussels, we leave without an agreement? Most of the smart money in Brussels is now moving to a position of expecting us to leave without an agreement and then wanting to start again: will it affect this, impact it, and if so, how? Secondly, what extra costs are going to fall because of this way of doing things? In other words, how much more will it cost?

Thirdly, as has been mentioned by the noble Lords, Lord Bradshaw and Lord Chidgey, Britain has had a good leadership role in aviation. We have been regarded as the sensible ones; we have not been regarded as the people forever defending our own territory—an accusation which has been laid a country not that very far away from us to the south. We are recognised as providing common-sense leadership. That is going to go and, as with many other things, there will be a gradual divergence as different European countries move their regulation, jointly, away from where we are. Does the Minister see any difficulties arising in this area, and does she believe that we will be able to play any role at all in giving leadership to European initiatives? In other words, as they develop, will we have any consultative role at all?

I repeat the thanks of others to the Minister. She has been an excellent Minister, very good at taking us into her confidence, and I wish her well with these regulations, which, as I said at the beginning, are more or less a housekeeping measure, contingent on what I still regard as the most unfortunate decision to leave the European Union. However, the British people endorsed that position and, in a democracy, we have to listen to the people as, on occasions, they say things we do not like.

2.18 pm

Baroness Jones of Moulsecoomb (GP) [V]: As with most other EU withdrawal Act statutory instruments, I cannot see any significant changes other than minor textual amendments. There is an exception, which is that in a few places the Government are seeking to change the word "shall", which obviously makes it a requirement, to the words "shall endeavour to", which makes it rather optional. For example, this happens in Regulation 27(3), Regulation 30(3) and multiple times in Regulation 48. What is the reasoning behind this change in wording? It appears to be not simply fitting retained EU law into UK law but changing the nature of the responsibility to a weaker requirement. The appropriate authority will now need only to try, rather than actually achieve, the stated outcomes. Can the Minister explain that dilution?

Slightly at a tangent, the last time the Minister and I exchanged words about aviation she asked me—perhaps rhetorically, because I was not able to answer since it was an Oral Question—whether, if all planes were net zero I would still be against flying. My answer is probably not. Assuming these magic planes do not cause excessive noise over residential areas, or any other harmful environmental effects, can I ask the Minister when these zero-carbon planes will be arriving, when we can phase out the climate-destroying planes and whether we can amend these regulations to help that along?

2.19 pm

Lord Mann (Non-Afl) [V]: My Lords, are there any implications in these regulations for how terrorist attacks—either on the ground, and necessitating assistance from a military power abroad such as France, or in the air—are dealt with? If the Government bring forward

[LORD MANN]
changes in future, in relation both to this matter and others, will they be brought to the Floor of Parliament before being enacted?

What is the relation to environmental standards, particularly noise and airport operating hours? Will any changes automatically be brought in front of Parliament before they are made, or are the Government retaining powers to do that without the automatic consultation of Parliament?

The use of drones appears to be the most likely differentiation in policy between us and the European Union over the next few years. Policy on how drones should be used and the interrelationship between drones and civil aviation is less clearly defined. Can the Minister guarantee that any changes that impact on the use of drones will be brought in front of Parliament? Will we be informed whether our standards are higher or lower than those developed in the European Union?

2.21 pm

Lord Blencathra (Con) [V]: My Lords, I thank my noble friend the Minister for setting out simply what are extraordinarily long and complicated regulations. I tried to understand them and the draft Explanatory Memorandum and even went back to look at the Transport Act 2000, but the regulations seemed to largely implement the status quo. I pay tribute to what the noble Lord, Lord Mann, has just said; I share his views on drones.

I would really like to know from the Minister today the state of CAA readiness when we leave the EU without an agreement on 31 December, which looks increasingly likely in view of the intransigent behaviour of the EU negotiators. The CAA will have to develop new capabilities, some currently done by the EASA. How well advanced is the CAA in developing those capabilities?

For example, will the UK do our own evaluation of that dodgy Boeing 737 MAX and decide whether it is safe to fly—or, if not this aeroplane, any other aeroplanes in future? Will the CAA be able to fulfil all the regulatory functions without having the EASA as a technical agent and without access to EASA and EU-level capabilities? What is the plan if there is no mutual recognition agreement between the EU and the UK for aviation licences, approvals and certificates and if the EU treats UK airlines as third-country operators?

I understand that the CAA has no direct role in the negotiation of air transport agreements, which govern the rights to fly between two countries. These are formal treaties negotiated directly between Governments, but does the CAA advise or have a view? Who advises the Government on this?

I have always admired the CAA. I do not really know why, but I have always thought of it as one of our best British assets and I am so looking forward to it being exclusively in charge of our air navigation systems once again and negotiating for us in international agreements.

I conclude with this warning—I warn the Minister's civil servants too: have you any idea how dirty the EU will play over this if there is no agreement? There will be none of this "we are all European partners" lovey-dovey stuff. The EU has to punish the UK for leaving. We can see that in its attempt to keep taking 80% of our fish, keep us tied to the EU political court and not give us a Canada-style trade deal. The CAA needs to plan now for the EU doing everything in its power to make life difficult or near impossible for UK airlines to operate in Europe. Let us go into negotiations with a clear objective and a nice smile, but with an iron fist and ready to take all emergency action when we do not get a deal.

2.25 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I first thank the Minister for her detailed explanation of the SI and for contacting Members in advance to find out our issues. At that stage I told her that my principal concern was the aviation industry in Northern Ireland. While it is important to have new traffic management and air navigation directions as a result of us leaving the European Union, it is important to have an aviation industry. The noble Lord, Lord Empey, referred to the difficulties and challenges faced by the aviation industry, and I would like the Minister to address that in winding up. Air traffic management regulations will be meaningless if we do not have the aircraft or the industry to sustain all that.

Take the example of Northern Ireland. Aviation is one of our greatest economic strengths, as well as a social and business lifeline, and it now stands on the edge of a crisis. Way back in February, Flybe removed 80% of its routes from Belfast City Airport at a stroke—largely due, we believe, to the impact of Covid.

Not only do we have Belfast City Airport and Belfast International Airport—which are very well equipped and key to our connectivity with the rest of the UK, the European Union and other areas—but we are involved in the construction of aircraft. Bombardier produces wings for the Airbus A220 jet; it is our largest high-tech manufacturer and a jewel in the crown of our local economy. Some 600 jobs there are under threat as a result of a fall in demand due to Covid, and there could be an 11% cut in that workforce. We also manufacture aircraft seats and furnishings. In fact, Thompson Aero Seating—a company making aircraft seats at four locations across Northern Ireland and employing 1,300 people—has already seen 330 job losses this year, with the potential for more. Rockwell Collins, an American company, manufactures aircraft furnishings and seats in my own local area in Kilkeel, as does a local company called Bradfor, in Rostrevor, County Down.

As noble Lords and the Minister will see, aircraft manufacturing and the aerospace and aviation industry are essential to the lifeblood of Northern Ireland. I ask the Minister to address, when summing up, how the Government intend to deal with these challenges and setbacks in the aviation industry as the new regulations on air management and air navigation lines are implemented.

2.29 pm

Baroness Randerson (LD) [V]: I thank the Minister and her officials for their time yesterday to discuss this SI. Effectively, it amends amendments to bring us in

line with EU regulations on the single European sky. It is the latest in a long line of SIs necessitated by the Government's decision to take the hardest of all possible Brexit routes. Once again, there is no plan to change how things operate; they just want to delete ECJ oversight.

The industry itself, in response to the Government's consultation, referred to in paragraph 10.1 of the Explanatory Memorandum, stressed its strong support for continuity. It will now be the role of the CAA effectively to oversee itself, answerable to the Secretary of State. The CAA is an excellent organisation but, along with other Members of your Lordships' House, I am worried about the lack of transparency and rigour in these processes. Can the Minister give us more detail about how the Government will ensure that we remain right up there with the world leaders on aviation safety, and that UK aviation significantly reduces its environmental footprint?

The EU's single European sky project is designed to improve safety, increase capacity and improve efficiency, and hence reduce the environmental impact of aviation. It includes a programme of research designed to develop new operating technology and systems. It is a success story, in which the UK has played a leading role. However, it is not just an EU club. Norway and Switzerland are members, despite not being in the EU. Indeed, soon after the Brexit referendum I was reassured by Ministers that they did not want to leave the single European sky. If Norway and Switzerland feel it is important to be part of it, why not us? What are we gaining by withdrawing, to balance against the undoubted disadvantages of leaving?

This is yet another step in the reduction of our international status. Our large aviation sector has taken an international lead, but we are voluntarily withdrawing from that influential position. The coronavirus pandemic has illustrated the significance of international aviation and its interdependence on what is happening on the other side of the world. It makes a massive contribution to our economy, providing well-paid, highly skilled jobs. The sector simply cannot cope with any unnecessary hurdles. Leaving the single European sky will also make it more difficult for the UK to tackle the environmental challenges of aviation, which are difficult enough without the Government tying one of their hands behind their back.

I have some specific questions for the Minister. Paragraph 12.1 of the EM says that this instrument makes no change to the policy intent of the EU regulations. I therefore understand that there will be no great impact on businesses, but what are the cost implications for the CAA and NATS? Can the Minister tell us how much additional funding they will be allocated and how many new staff they will need to employ? Can she assure us that they will be adequately funded? How do the Government intend to keep in step with changes to EU regulations and procedures, which we need to do to maximise safety and efficiency?

Finally, can the Minister tell us about the implementation of these regulations on the island of Ireland, which has been raised by other noble Lords? In the future, there will be two separate systems on a small land mass. Overlaid on this are the implications of the political agreement made by the Prime Minister relating to the future of Northern Ireland, which will remain part of EU regulations in many respects. Does that agreement impact on the control of aviation—the control of the skies? It has an impact on shipping and ports, so does it affect aviation?

I look forward to the day when we see the end of the legislative contortions that the drafters have had to go through to reinstate the system we had decades ago, while seeking to keep systems operating in a modern manner. The cost of all this at a time of national emergency is less and less defensible.

2.35 pm

Lord Rosser (Lab) [V]: I thank the Minister for the explanation of the provisions and purpose of the regulations, to which we are not opposed. Like the noble Baroness, Lady Randerson, I also thank the Minister and her officials for the virtual meeting yesterday.

The regulations follow an earlier set of air traffic management regulations and are needed to make legally operable, in the light of our departure from the EU, further EU air traffic management legislation that has come into being since the 2019 air traffic management EU exit regulations were made. This is being done, where relevant, by transferring to the Secretary of State for Transport or to the Civil Aviation Authority roles that are currently undertaken by the European Commission and EU bodies.

Could the Government confirm what I believe the Minister has said: these regulations change nothing relating to air traffic management practices, procedures, regulations or standards on the day after the transition period ends, apart from the transfer of roles to which I just referred? Could they also say what the regulations enable us to do that we are likely to want to consider doing after the end of the transition period that we cannot do at present? I ask that in the context that air traffic management, which covers organisations, operations and procedures, is the subject of international agreements as well as EU regulations, for fairly obvious reasons—namely, that it is an international activity or industry where considerable commonality of practices and standards is vital.

The Government's mantra is that we will take back control, so to revisit a point made by my noble friend Lady Kennedy of Cradley, what is it that these regulations enable us to take back control of in practice, not just in theory? What is it that we have been wanting to do but have been unable to do in respect of air traffic management because we have been a member of the European Union? I hope the Government will be able to provide some specific examples, because the Explanatory Memorandum does not appear to address that question.

I will also raise a safety issue, to which the Minister referred in her opening speech. As the Explanatory Memorandum says, the EU's single European sky legislation supports the EU initiative to enhance air traffic safety standards, contribute to the sustainable development of the air traffic management system and improve the efficiency of air navigation services within the European air traffic management system.

When we leave the EU, there will presumably be a more obvious border, air traffic-wise, between France and ourselves, for example—a border with a very high

[Lord Rosser]
density of air traffic crossing it in both directions. If the Secretary of State is to take over the role of the European Commission and other EU bodies for air traffic management, does that not run the risk of potentially compromising the current EU-wide safety arrangements and their oversight? Aircraft might be in the process of climbing or descending at that air border between us and France—for example, if they are starting their descent into the airport for which they are heading. Contact between controllers is crucial, since aircraft collisions at other border points have occurred, including when communications over aircraft movements between controllers are temporarily not as effective as they should be, for one reason or another—perhaps frequency changes. If there was an incident at the air transport border between France and ourselves once we have left the EU, which single body or organisation would be responsible for investigating it, and which single body or organisation would be accountable for ensuring there were safe practices and procedures for aircraft traffic management at that border point?

Finally, on our departure from the EU, work that the European Aviation Safety Agency currently undertakes will, in our case, be transferred to the Civil Aviation Authority. I shall pursue once again a point made by my noble friend Lady Kennedy of Cradley. What impact will that have on the workload of the authority, or is the Government's position on that that it is largely the transfer of a responsibility or a duty rather than a workload?

I hope that the Minister will be able to respond to the points that I have made and to the variety of points made in the course of this debate.

2.41 pm

Baroness Vere of Norbiton [V]: My Lords, I thank all noble Lords who have taken part in this debate on these minor and technical changes to these ATM regulations. Given the allotted time, I fear that I will not be able to go into all the issues that are beyond the scope of these regulations, but I will certainly write, in particular on the future of the aviation sector and the implications of Covid for it, mentioned by the noble Baroness, Lady Ritchie. I will also address her specific point about the impact on Northern Ireland.

I should like first to confirm to the noble Lord, Lord Rosser, that there is no change in policy as a result of these regulations and that, in practical terms, they will have very limited effect. The CAA will continue to play the role it has always in, for example overseeing the work of NATS, with oversight of that work transferring from the European Aviation Safety Agency to the Secretary of State. We do not anticipate that this will have a financial or significant practical impact on the CAA or NATS and both are content with the proposals. The CAA will take on a number of new tasks after the end of the transition period, but that is a direct result of EU transition rather than of this SI. The Government are working closely with the CAA to ensure that it is sufficiently resourced to take on any additional roles. Further, the CAA has been preparing for the possibility of leaving the EASA system since the EU referendum in 2016, which is four years ago now. It has already started recruiting new staff across the organisation, and I reassure noble Lords that it has the funding to do so. I hope that this will also reassure the noble Baronesses, Lady Kennedy and Lady Randerson, as well as my noble friend Lord Blencathra. He was right to say that the CAA is a great British asset. In respect of this SI, the requirements on the CAA and NATS will be the same as they are at present, and the oversight will be transferred somewhere different.

The reference period for performance targets started this year. To meet our obligations, we have produced and submitted an EU-compliant plan that takes us to 2024, so until at least then, all performance targets will remain the same. Beyond that, we envisage looking at the EU targets and using them as a benchmark for our own performance targets. However, we may decide that we want to do better than that, although that decision is for some years hence.

Turning to the charges, the costs of air navigation and its regulation tend to fall on the users of the service. In this case, that is the aviation industry.

A number of our other existing arrangements will stay the same or transfer to the CAA. Noble Lords raised a number of these different arrangements and I shall try to cover some of the most important. The noble Baroness, Lady Kennedy, mentioned Eurocontrol. It is incredibly important and the UK will remain a member of it. It is an intergovernmental organisation of 41 states across Europe that pre-dates the single European sky and is not an EU body. This will ensure our continued co-ordination on air traffic management with other European states. This was brought up by the noble Lord, Lord Bradshaw, and my noble friend Lord Balfe.

Through our membership of Eurocontrol, NATS will be able to co-ordinate with other air navigation service providers on, for example airspace change proposals arising from the UK modernisation programme, and there are established bodies within Eurocontrol that allow that to happen. NATS is also remain a member of the Civil Aviation Navigation Services Organisation, which represents ANSPs covering 90% of the world's airspace. We are plugged in and we do have leadership.

We are also members in our own right of ICAO, an incredibly important organisation in aviation. We will continue as a contracting ICAO state after the end of the transition period. Much European regulation originates in ICAO and the UK already plays a leading role in its structure. Currently, the UK complies with some ICAO standards and recommended practices via the implementation of EU legislation. Following the transition period, the UK will comply with SARPs using domestic legislation. That is all in place and ready to go.

The noble Lord, Lord Rosser, mentioned cross-border arrangements and what will happen at borders. The UK has a number of cross-border agreements with neighbouring countries, such as France and the Benelux nations, in respect of air traffic management, particularly in contiguous airspace where an aircraft is handed over between two different airspaces. I reassure the noble Lord that these arrangements will continue as they are not predicated on EU requirements.

A number of noble Lords mentioned the importance of Ireland. The noble Baroness, Lady Randerson, did so, as did the noble Lord, Lord Empey. This is important because we work very closely with Ireland because both have been delegated responsibility by ICAO for air traffic services over a proportion of the North Atlantic, which as noble Lords will know is a busy route. Again, this is an international agreement. There will be continued co-operation with Ireland to ensure the safe passage of air traffic over the North Atlantic, given that 80% of air traffic entering or leaving the EU flies through UK airspace.

A number of noble Lords mentioned air service agreements and how they have been constructed. The UK was involved in 17 air service agreements by virtue of its membership of the European Union. Over recent months and years, the Department for Transport has undertaken an intensive programme of work in this area, supported by the CAA, which many noble Lords had questions about. We now have new bilateral agreements, or effective mitigations, in place for all 17 non-EU countries where market access is currently provided for by virtue of our EU membership. These arrangements ensure that there will be no disruption going forward. The UK also has agreed bilateral air safety agreements with the US, Canada and Brazil, which will help our aerospace manufacturers.

The UK's future relationship on ATM with the EU will be negotiated as part of a comprehensive air transport agreement, known as CATA. The CATA will include provisions on market access for air services, close co-operation on aviation security, and collaboration on ATM.

A number of areas under the umbrella of the Single European Sky project, mentioned by the noble Lords, Lord Foulkes and Lord Bradshaw, and the noble Baroness, Lady Randerson, are being considered as we look at how we might continue to be involved in that area; for example, through membership of the Single European Sky air traffic management research programme, which was mentioned by my noble friend Lord Naseby. We will of course be bound by various elements of legislation from the Single European Sky project, where it has been retained, and as amended.

The rules for safety assurance are currently set out by EASA, and these will be retained. No divergence is anticipated at the current time, as safety is of course an absolute priority. However, it is also an area which is always developing, and so the UK may need to make changes in the future; for example, to accommodate new technology to suit airline operators, in line with international practice. I hope that this reassures the noble Lord, Lord Rosser, as to what we might want to do in the future.

Noble Lords will have heard it confirmed many times that the UK is not seeking to participate in the EASA system. Our ambition is to agree bilateral aviation safety arrangements with the EU, and the EU's negotiating mandate mirrors this approach. A bilateral aviation safety agreement will facilitate the recognition of aviation safety standards, maintain high safety outcomes, and enable regulatory co-operation between the two areas.

Overall, I reassure all noble Lords that the UK continues to press for reciprocal, liberalised aviation access between and within the EU and the UK. In the event that we do not reach an agreement, the UK previously published a policy statement allowing for EU carriers to operate to the UK, and the EU adopted a continency regulation to provide UK carriers with the rights to operate in the EU. These measures were unilateral and work on the basis of reciprocity. Similar arrangements were put in place with regard to safety, and they too will need to be looked at in the event that there is no deal.

My noble friend Lord Naseby mentioned consultation. There has been extensive consultation on elements relating to aviation, and of course on the UK's exit from the EU. This is ongoing.

The noble Lord, Lord Empey, is right that aviation is reserved. However, as a courtesy, and to understand the issues, we always try to engage with the devolved Administrations on an ongoing basis.

The noble Baroness, Lady Jones, mentioned "shall" changing to "shall endeavour to". I reassure her that that relates to the network management part of the SI, and is about operators taking account of EU documents, which we have no obligation to do.

In closing, I once again thank all noble Lords for contributing to the debate today. These changes are minor and technical, and do not represent a major change in policy. They follow in a similar vein to the SI already approved by your Lordships' House. I beg to move.

Motion agreed.

2.52 pm

Sitting suspended.

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

Report

3.30 pm

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): 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. For Members participating remotely, microphones will unmute shortly before they are to speak; please accept any on-screen prompt to unmute. Microphones will be 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.

I begin by setting out how these proceedings will work. A participants' list for today's proceedings has been published and is in my brief, which Members will have received. I also have lists of Members who have put their names to the amendments in each group, or expressed an interest in speaking on them. I will call Members to speak in the order listed. Members'

[Lord Faulkner of Worcester]
microphones will be muted by the broadcasters except when I call a Member to speak. Interventions during speeches or before a noble Lord sits down are not permitted and uncalled speakers will not be heard. Other than the mover of an amendment or the Minister, Members may speak only once on each group. Short questions of elucidation after the Minister's response are permitted but discouraged; a Member wishing to ask such a question, including Members in the Chamber, must email the clerk.

Debate will take place on the lead amendment in each group only; the groupings are binding and it will not be possible to de-group an amendment for separate debate. A Member intending to press an amendment already debated to a Division should give notice in the debate. Leave should be given to withdraw amendments. When putting the Question, I will collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make this clear when speaking on the group.

Clause 1: Implementation of the 1996, 2005 and 2007 Hague Conventions

Amendment 1

Moved by ***Lord Wallace of Tankerness***

1: Clause 1, page 2, line 6, at end insert—

"3CA The 2000 Hague Convention to have the force of law

The Convention on the International Protection of Adults concluded on 13 January 2000 at The Hague shall have the force of law in England and Wales, and in Northern Ireland."

The Deputy Speaker: I remind noble Lords that Members other than the mover of an amendment and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press an amendment to a Division should make that clear in the debate.

Lord Wallace of Tankerness (LD) [V]: My Lords, the amendment follows on from my contribution at Second Reading on 17 March. I tabled an identical amendment in Committee but withdrew it from the Marshalled List, having been invited to a further meeting with the Minister, the noble and learned Lord, Lord Keen of Elie. At the outset, I express my thanks and appreciation to him, his officials and his Bill team for their constructive—and, I hope, productive—engagement with me since before Second Reading.

Basically, the purpose of the amendment is something akin to jurisdictional catch-up. It seeks to give force of law in England, Wales and Northern Ireland to the provisions of Hague Convention 35 of 13 January 2000 on the International Protection of Adults. Section 85 of and Schedule 3 to the Adults with Incapacity (Scotland) Act 2000, which I had the privilege to sponsor in the earliest days of the Scottish Parliament, paved the way for ratification of the Hague Convention by the UK Government in respect of Scotland in November 2003.

The convention is intended to give support to vulnerable adults who, by reason of impairment or insufficiency of personal faculties, need legal protection, specifically when there are interests in different international jurisdictions. For example, the convention can determine: which court has jurisdiction in relation to protective measures; the law to be applied in particular circumstances; and the establishment of central authorities, which can locate vulnerable adults, give information on the status of vulnerable persons to other authorities and facilitate mutual recognition of relevant orders.

In supporting ratification, the briefing from the Law Society of England and Wales states:

"Due to not being party to the convention, England and Wales does not have a central authority to issue the relevant certificates of authority for powers of attorney to act outside the jurisdiction. This gives rise to unnecessary difficulties in relation to the protection of overseas property and welfare by attorneys and deputies who have been appointed to protect potentially vulnerable people."

I believe that there is a compelling case for ratification in respect of all parts of the United Kingdom. In this way, those resident in Glamorgan, Gloucester or Belfast will be on comparable terms to citizens in Glasgow or Banff in relation to recognition and enforcement of relevant court orders in 2000 convention contracting states. One might say that it would be a good example of levelling up.

Indeed, the primary legislation to give effect to the convention provisions is already in place for England and Wales through Section 63 of and Schedule 3 to the Mental Capacity Act 2005 and, in the case of Northern Ireland, through Section 283 of and Schedule 9 to the Mental Capacity (Northern Ireland) Act 2016. It would be helpful if, in his reply, the Minister could give an indication not only of the Government's intentions but of discussions with the Northern Ireland authorities. Given that the Assembly passed the 2016 legislation, I hope that progress toward ratification for Northern Ireland can also proceed.

The long-overdue ratification of this convention would be beneficial for vulnerable adults and those who support them in England, Wales and Northern Ireland. I commend the amendment to the House and I am hopeful that the case for ratification will commend itself to the Minister. I beg to move.

Lord Marks of Henley-on-Thames (LD) [V]: My Lords, I fully support the amendment moved by my noble and learned friend Lord Wallace of Tankerness. It is plainly an anomaly that the 2000 Hague Convention does not at this stage apply throughout the United Kingdom. The inclusion of the convention in Clause 1 will achieve this. I hope that the Government will accept the amendment to achieve the end that my noble and learned friend seeks.

Lord Falconer of Thoroton (Lab): My Lords, the noble and learned Lord, Lord Wallace of Tankerness, makes a very strong case. It is extraordinary that this has not yet been incorporated into the law of England, Wales and Northern Ireland. I very much hope that the noble and learned Lord, the Minister, will explain why that is not the case and, at the very least, give us a timetable for it becoming part of our domestic law.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I begin by thanking the noble and learned Lord, Lord Wallace of Tankerness, not only for his contribution to the debate but for engaging with my officials and me on this matter.

As noted, the amendment seeks to deal with the ratification of the 2000 Hague Convention on the International Protection of Adults in respect of England, Wales and Northern Ireland. Of course, the United Kingdom has ratified this convention, but the extent of this is limited to Scotland. I am pleased to confirm to the noble and learned Lord that it is our intention to extend the ratification of this convention to England and Wales. Discussions have commenced with officials in Northern Ireland to ascertain whether the Northern Ireland Executive would require the extension to apply to Northern Ireland.

The Mental Capacity Act 2005 largely implements the convention and contains powers to make any additional provision required. Schedule 3 to that Act provides for the recognition and enforcement in England and Wales of protective measures made in respect of vulnerable adults by the courts of other contracting states. Some Schedule 3 provisions are already in force and some will come into force upon ratification, at which point reciprocal recognition of domestic protective measures by other states will also come into effect. There remain some outstanding matters that require further implementation; largely, additional operational arrangements for the location or placement of vulnerable adults as between contracting states.

It is the Government's view that the most appropriate way to implement these remaining matters is to make any additional provision required in or under the 2005 Act, using the powers provided for in that Act for this specific purpose. We will proceed with this as soon as we reasonably can, taking account of the need to take the Northern Ireland Executive with us if it is their wish that the matter be extended to Northern Ireland. In these circumstances, I invite the noble and learned Lord to withdraw this amendment.

Lord Wallace of Tankerness [V]: My Lords, I thank my noble friend and the noble and learned Lords who contributed to this debate for their support for what I seek to achieve by it. I thank the noble and learned Lord the Advocate-General for Scotland for his positive response, and for his clear and unequivocal commitment to ratification. I recognise that there is already in place a substantial body of primary legislation in the 2005 Act, which will allow that to proceed. I very much hope that the engagement with the Northern Ireland Executive will continue, so that when ratification takes place it can apply to the whole of the rest of the United Kingdom. On that basis, I seek leave to withdraw my amendment.

Amendment 1 withdrawn.

The Deputy Speaker: We now come to the group consisting of Amendment 2. I remind noble Lords that Members other than the mover and the Minister may speak only once, and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division should make that clear in debate.

Clause 2: Implementation of other agreements on private international law

Amendment 2

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

2: Clause 2, leave out Clause 2

Lord Falconer of Thoroton: My Lords, this is the main amendment on Report. It seeks to leave out Clause 2, which gives the appropriate Minister, whether in the devolved Administrations or in central government, the power subsequently to introduce changes to domestic law, including changes incidental to international treaties made with foreign countries, on the basis that domestic law should be changed because that has been agreed with a foreign country. In addition, it allows the Executive to introduce by secondary legislation changes to domestic law to give effect to model laws, for example in relation to insolvency. We oppose that extension of executive power. We believe that it represents a very substantial break with past practice, which requires treaties dealing with private international law to be introduced and change our domestic law by primary legislation, and we will press this issue to a Division.

I will set out briefly the way that we put our case in relation to this. Clause 1 gives effect, as part of the domestic law of this country, to three international agreements. The first is the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children. This convention aims to improve the protection of children in cross-border disputes. It is a thoroughly good thing; it makes significant changes, or gives effect to significant powers, in the UK family courts.

The second is the 2005 Hague Convention on Choice of Court Agreements, which aims to ensure the effectiveness of exclusive choice of court agreements between parties to international commercial transactions. These clauses are common, particularly in high-value commercial contracts. Again, this is a good convention; it makes changes to UK domestic law and we support its incorporation.

3.45 pm

The third is the 2007 Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance, which provides for rules for the international recovery of child support and spousal maintenance. Again, it is a good thing and makes significant changes to domestic law. We support the incorporation into our law of these three conventions; it is being done in the normal way, namely by primary legislation.

Clause 2 is intended to apply to all subsequent private international law agreements, whether identified at the moment or not. It is a new clause and a new constitutional power; this has not been done before. From time to time—with, if I may say so, considerable feebleness—the noble and learned Lord the Advocate-General sought to suggest that it was not a change in the law and referred to the 1933 and 1920 Acts on the administration of justice. Those Acts allowed new countries, whether in the Commonwealth or outside it, to be joined to a convention for the enforcement of foreign judgments which had been introduced by primary legislation. He did not make his case at all. If and in so far as the Minister had other material, he could have placed it before the Constitution Committee. It rejected his argument, saying:

> "This is a significant new power that would change the way this type of international agreement is implemented in UK law and how Parliament scrutinises them. It therefore needs careful consideration."

[Lord Falconer of Thoroton]

He has laid no material before the Chamber to suggest that this is not a new means of making domestic law consistent with international agreements. This House should proceed on the basis that it is a new way of doing it.

The Constitution Committee and the Delegated Powers Committee have considered whether this secondary legislating power should be granted, and both are very clear that it should not. The Constitution Committee said:

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

The Constitution Committee goes on in paragraph 25 of its report:

"The clause 2 powers are a matter of significant constitutional concern. It is inappropriate for a whole category of international agreements to be made purely by delegated legislation. Such an approach risks undermining legal certainty."

In saying that, that committee had in mind that if they are introduced by secondary legislation, even though they may have a significant effect on domestic law, those changes to domestic law are nevertheless subject to being set aside by judicial review.

The Constitution Committee also rejected the idea that the Constitutional Reform and Governance Act—CRaG as it called—provided for sufficient debate. It described that power as flawed and inadequate and pointed out that it did not, in any event, apply to model laws. The Delegated Powers and Regulatory Reform Committee reached the same conclusion, saying that

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

In our respectful submission, we should not allow Clause 2 and it should be removed. The only argument the Minister advanced was in relation not to the overall power but to the Lugano convention. I had a conversation with him recently in which I asked whether he would be restricting the power to Lugano. If he had said that he was going to restrict the Clause 2 power to Lugano and otherwise ditch it, the House should have considered that. However, he made it absolutely clear to me that he wanted the full power. In those circumstances, we had no option but to table an amendment deleting Clause 2 altogether. It is constitutionally inappropriate and unnecessary, and it leads to legal uncertainty. It has nothing whatever to recommend it. I beg to move Amendment 2.

Lord Pannick (CB) [V]: My Lords, I agree with the points made so forcefully by the noble and learned Lord, Lord Falconer of Thoroton. My concern about the width of Clause 2 arises from the discussions and conclusions on this Bill in your Lordships' Constitution Committee, of which I am a member. The noble and learned Lord has already mentioned the relevant paragraphs of our report, HL Paper 55, which we published on 4 May, and perhaps I may add very briefly to what he has said.

The Constitution Committee recognised that many of the international agreements to which Clause 2 would apply are technical in nature, and it recognised that the text of an international agreement cannot easily be changed, or be changed at all, after negotiations have concluded—points emphasised at various stages by the Minister. However, we take the view that that is no justification for allowing the law of this country to be changed by statutory instrument in this context without full parliamentary debate. That is because important policy decisions might arise in this context both on whether to implement an international agreement in domestic law and on the manner in which such an agreement is to be implemented.

International agreements often recognise a discretion for signatory states on a variety of matters, some of them of considerable policy interest and concern. Those policy decisions should be the subject of detailed debate and possible amendment of a Bill on the Floor of the House—or whatever the remote equivalent of the Floor of the House is. Those policy decisions should not be for Ministers to decide by unamendable regulations in relation to which there can be only limited debate.

I emphasise that this is not emergency legislation; it is a proposal from the Government for a permanent shift in power to the Executive. In Committee, the Minister did not make out any case for such a change in the law. If the noble and learned Lord, Lord Falconer, divides the House, he will have my support.

Lord Hope of Craighead (CB) [V]: My Lords, the matter has been so fully covered by the speeches already made that I have little to add, other than my full support for what has been said. However, I wish to emphasise three points.

First, the devolution arrangements in this clause have always troubled me. I refer to what I see as a lack of clarity about whether it is the Scottish Ministers or the Secretary of State who will exercise the powers referred to in Clause 2(1) in relation to "implementing" the international agreement on the one hand and "applying" it on the other. This is an indication, surely, that the Bill is seeking to crowd too much into this clause. It would be far better to leave these matters to primary legislation according to the ordinary and well-understood rules as to which legislature is to deal with what, according to what is reserved and what is not.

Secondly, the umbrella phrase "any international agreement"—I stress the word "any"—indicates that it is intended to catch a wide variety of international transactions relating to private international law. At present, leaving aside Lugano, we have no idea of what they might be. It seems likely, however, that they will not be many, but any one of them could be very important and raise issues which should not be left to the exercise of Executive power. The pressure on Parliament if we were to proceed by way of a Public Bill in the ordinary way and not by way of statutory instrument would be quite limited. Therefore, it is hard to see why we have to go down this road at all.

Thirdly, there is no sunset clause in the Bill. I could understand it if it had been intended to deal only with measures that needed to be in force before the end of the implementation period or measures that were otherwise urgent and short term, but, without such a clause, this Bill is entirely open ended. Committing all international

agreements to the statutory instrument procedure at Westminster and in the devolved legislatures as a permanent feature of our law, whatever the political situation might be, seems to be highly undesirable.

Lord Blunkett (Lab) [V]: My Lords, I speak in support of my noble and learned friend. He will recall that in Committee, when we debated this matter briefly, the noble and learned Lord, Lord Garnier, laid down a challenge. He said that those who are in government are in favour of secondary legislation but, when they are in opposition, they are against it. I think that the case has been made this afternoon very clearly that this is an extension of the way in which Governments apply secondary legislation, and the Constitution Committee and Delegated Powers Committee have reinforced that very strongly.

As a politician—I am not a lawyer, although I am in the company of distinguished lawyers—I am reminded of the kinds of proposals that used to be brought before Labour Party conferences in the 1980s. A number of rather sensible measures—my noble and learned friend mentioned the 1996, 2005 and 2007 measures—are completely undermined by something highly controversial and unnecessary which is thrown in.

We are dealing with this matter in our virtual Parliament and seeking to find a way through. I hope that, as this amendment to delete this clause is pushed to a vote, the Government will think again and be prepared to attend to the major issues, rather than push through an extension of delegated power, including to complementary and associated measures and model laws, as has been described. We could then have wholehearted agreement.

Lord Thomas of Cwmgiedd (CB) [V]: I too support this amendment. In the light of what has been said by the noble Lords and noble and learned Lords who have already spoken, I can confine my remarks to a very few sentences.

Essentially, the constitutional position is one of long standing and should not be changed without justification. That justification has to be seen in the context of a significant move towards Bills becoming more of a framework and with more being done by secondary legislation. We should take a firm stand that that should happen only where necessary. No justification has been put forward for it being necessary. For example, most international conventions and model laws are negotiated at a glacial pace. There can rarely be any justification for the need for legislation to be implemented quickly.

I should add that of course there might have been an exception in the case of Lugano but, as the noble and learned Lord, Lord Falconer of Thoroton, has already explained, that could have been dealt with. Of course, it is a convention that many lawyers in the UK want and hope that we shall accede to in the interests of the UK economy and of the position of London, but the Minister has taken the view that the clause cannot be confined to that. In those circumstances, I fully support, and will support in a Division, the amendment put forward by the noble and learned Lord, Lord Falconer.

4 pm

Lord Holmes of Richmond (Non-Afl) [V]: My Lords, I want first to say how privileged I am to be sandwiched in the list between two noble and learned Lord Thomases, emanating as I do from the junior branch of the legal profession. I ask my noble and learned friend the Minister, as I did in Committee, to affirm, in the light of the impending Brexit deal or no deal, his full support for the power of English law internationally and, indeed, for the jurisdiction of the courts of England and Wales. We have a unique gem here, which can not only speak to our international role but, as he knows, can be of such benefit to so many private international deals; this can only be built upon. I urge him to take every opportunity to push the positivity around English law and the jurisdiction of the courts of England and Wales.

Secondly, I ask the Minister, in the most delicate and humble way: if Brexit was all about repatriating powers to Parliament, how does the current Clause 2 sit with that aim?

Lord Thomas of Gresford (LD) [V]: The Government's position appears to be that the incorporation into domestic law of the terms of a treaty, or of an international agreement involving private international law, should not require any detailed scrutiny by Parliament. The Government's reasoning is that the time for stakeholders to make representations is before the international agreement is made. Once the rules have been agreed, they say, a Minister has little or no discretion to exercise in framing the requisite statutory instrument. It is all over and there is no need for any shouting.

This would be all very well if we could have the slightest confidence that the negotiations of that agreement were transparent; but we have seen in the Brexit negotiations a complete lack of transparency. Many times, pleas were made to Ministers to outline our negotiating position. "Oh, we couldn't do that," the Minister would reply, "because that would undermine our bargaining position."

The noble and learned Lord, Lord Keen, in his response of 17 April to the report of the Delegated Powers Committee, said:

> "As the UK develops its wider trading policy with the EU and rest of the world, agreements on private international law will be key to supporting cross-border commerce by providing businesses, investors and consumers with greater confidence that disputes across borders can be resolved in a clear and efficient way."

This surely underlines the importance of the issues that we are discussing today. The question of jurisdiction and the enforcement of judgments is crucial. Just because the word "private" is attached in the title to "international law", it should not be thought that we are concerned merely with family disputes and the enforcement of access to children or maintenance orders in different jurisdictions. Important as those issues undoubtedly are, the significance of these provisions goes very much to the heart of rebuilding our economy and regaining our leading trading position in the world, not least in the provision of financial and legal services. For example, in the current negotiations concerning our leaving the European Union, with or without a trade deal, one stumbling block appears to be the jurisdiction of the European Court of Justice.

[Lord Thomas of Gresford]
For 40 years, we have accepted its jurisdiction and an analysis of its judgments demonstrates the overwhelming success of British lawyers before that court. We have lost very few contested cases and settled others very satisfactorily on agreed terms.

Jurisdiction is important. I cannot see why the Prime Minister thinks that the European Union is likely in these current negotiations to accept the British rejection of the European Court of Justice as a tribunal for resolving disputes, but that it will accept our Supreme Court as the ultimate arbiter. Such an approach seems to me to be in cloud-cuckoo-land.

Where there are critical issues such as jurisdiction to be resolved, obviously it is wholly inadequate to tell business and other stakeholders that they may make their case only before the details of a treaty or agreement emerge into the light of day. As for Parliament, do we have the slightest idea of the detailed negotiating position in these current talks? What possible contribution can parliamentarians make to the rules of our future trade with Europe, which may emerge by the end of October or by Christmas Day?

Government negotiators should have to bear in mind that any agreement or treaty they may enter into will require full analysis and debate in Parliament before being given the full endorsement of incorporation into domestic law. I was disappointed, as was the noble Lord, Lord Blunkett, by the gloomy comments of the noble and learned Lord, Lord Garnier, in Committee. In effect, he said that we all agree in principle to parliamentary accountability, but in government, the reality is that the only consideration is time—getting the business over and done with. It was interesting that the noble and learned Lord, Lord Keen, in his letter to the Committee, used the expression "in a timely manner" no fewer than five times, and with something of a Homeric ring. Come to think of it, the Prime Minister might pin on his wall in No. 10 the Greek motto of the Roman emperor Augustus: "speude bradeos", or "hasten slowly".

Suetonius wrote of Augustus:

"Nihil autem minus perfecto duci quam festinationem temeritatemque convenire arbitrabatur",

meaning, "He thought nothing less becoming in a well-trained leader than haste and rashness." Well, Augustus was a pretty successful politician. He really did rule the whole of the known world.

Lord Mance (CB) [V]: My Lords, I declare my interest in the field of private international law and arbitration. I am also chair of the Lord Chancellor's Advisory Committee on Private International Law, which was not involved in the Bill generally but has, since Second Reading, been asked to advise on the subject of the government amendments to Schedule 5, which we will come to later and which the committee blessed. I have nothing to add on Clause 1, which is admirable and conventional. On Clause 2, I am grateful personally to the noble and learned Lord the Advocate-General for Scotland for engaging with me, but I regret that his response strikes me as a little like that of the Black Knight in the Monty Python sketch; having lost the arms and legs of his argument, he still comes forward with the Bill—particularly Clause 2—between his teeth.

Opinion is almost universally against Clause 2. The two committees that have reported have categorically condemned it. The argument based on the existence of CRaG 2010 has been described by the Constitution Committee as limited and flawed, and I will come back to that. The speeches at Second Reading and in Committee were almost unanimously against Clause 2. One wonders, as the noble Lords, Lord Thomas of Gresford and Lord Holmes of Richmond, have hinted, why this House exists as a revising Chamber at all if such universal adverse opinion is ignored.

It is true that Parliament generally has not had a major role in private international law since we became an EU state but, as noble Lords have pointed out, one thought that the purpose of recent events was to restore UK institutions to a fuller role. There is no real explanation or justification for Clause 2, an indefinite provision without a sunset clause, as my noble and learned friend Lord Hope has just pointed out.

Private international law is important, both to individuals personally, in areas such as divorce and family, and to businesses. It merits direct parliamentary scrutiny. The Government's justification for Clause 2 is simply that it would be very convenient and might speed things up. The same reasoning would justify removing any role for Parliament at all, just leaving it to bless by affirmative order on a yes/no basis any subordinate legislation devised by the Executive.

As my noble friend Lord Pannick pointed out, the prior Acts relied on do not justify this large extension. The 1920 and 1933 Acts were confined in scope to recognise jurisdictions, starting with Her Majesty's overseas jurisdictions and then other comparable foreign jurisdictions, and were limited to recognition and enforcement of judgments only. We are concerned in this Bill with wide-ranging schemes such as those we will lose the benefit of at the end of the implementation period for allocation of jurisdiction, dealing with things such as concurrent proceedings in two states. These are very controversial issues.

Although by itself the Lugano convention may well be the best we can go for in the present state, it merits parliamentary debate. There are defects in the Lugano convention compared with our present state of affairs as a member of the EU. There are very considerable questions whether one might not be better off with other arrangements. Still, while one might have accepted Lugano alone, the wide-ranging nature of Clause 2 means that it applies to anything indefinitely in the future.

The only things actually suggested are Lugano and passing references to the Singapore mediation convention, which is an extremely minor area of the law—it is important when mediation occurs, but there is probably no difficulty in any event enforcing mediation results under present domestic law. There is also the 2019 Hague Convention, which has many merits but is in complete infancy. It has only two signatories: Uruguay and Ukraine. That is a long way down the road. There is no urgency. There are no model laws pointed to, even if it were desirable to give the Government this power in respect of model laws. As my noble and learned friend Lord Thomas of Cwmgiedd said a moment ago, private international law measures proceed at glacial pace.

I revert to the position on CRaG: quite apart from the inadequacy of its procedures, reliance on CRaG is fallacious for two reasons. The Explanatory Notes say that everything will already have been scrutinised by CRaG before domestic legislation takes place; Parliament will already, through CRaG, have agreed that the UK should join. That is not right; it is the wrong way round. Normally—this was practice until today—domestic legislation is enacted before ratification, and CRaG comes into operation only at ratification. There are a number of examples of that; in the case of the Civil Jurisdiction and Judgments Act, the convention was 1978, the domestic Act was 1982 and ratification was one or two years later. There is the same pattern with the Warsaw convention and the CMR convention on the carriage of goods by road. The domestic legislation preceded ratification by six years for the Warsaw convention and two years for the CMR convention, I think. CRaG does not help for that reason.

CRaG also does not help for a different reason: ratification may be subject, like signature, to reservations or declarations which are permitted by the relevant international agreement or are not inconsistent with its object and purpose. That is Article 19 of the Vienna convention of 1969. It is not therefore merely a question of whether to implement or the manner in which to implement domestically, as my noble friend Lord Pannick suggested. There are huge questions at the level of international law about what declarations or reservations to make, or there can be.

4.15 pm

A good example of that is the 2019 Hague Convention itself. That will be a jurisdiction convention, and it will raise questions about in what areas we should agree to accept other countries' judgments. Do we exclude judgments when they affect UK residents on both sides, exclude any other area, or exclude judgments abroad given against UK officers of state? Most importantly of all, which foreign states' judgments do we recognise? Will we accept under the 2019 convention judgments from Russia or from China? Those are big questions, which certainly merit parliamentary debate.

I join the opposition to Clause 2 and simply add that there are ancillary objections to it: its non-exhaustive definition of private international law, its inclusion of a reference to arbitral awards, which has not been satisfactorily explained, and its inclusion of a reference to penal provisions, to which we will come later. The fundamental objection remains to erosion of Parliament's proper realm.

Lord Marks of Henley-on-Thames [V]: My Lords, I have added my name to this amendment, which I support wholeheartedly. I will be relatively brief because I set out my reasons at some length in Committee, and because the noble and learned Lord, Lord Falconer of Thoroton, and all other noble Lords and noble and learned Lords who have spoken have argued the case so persuasively.

To give private international law treaties the force of domestic law is not a trivial rubber-stamping exercise. It may involve significant and complex law in relation to treaty implementation and enforcement provisions. Those were points well made by the noble Lord, Lord Pannick, and the noble and learned Lord, Lord Mance. It is not just the breadth of the possible future treaties that might be affected by this clause but the sheer unpredictability of such treaties that we may consider in future. There is no way that that is defined or limited satisfactorily by the provisions of the Bill.

There is also a strong argument that this clause would open the way to the Executive further usurping the role of Parliament in an extension of what has been widely and rightly criticised as a thoroughly unwelcome trend for Parliament to have its role circumscribed by delegation of powers to the Executive. This type of argument is often dismissed as a "floodgates" or "thin end of the wedge" argument, because it is said to ignore the detail of the particular case under consideration. However, these arguments are real and, given the respect that we rightly pay to precedent in our constitutional discussions and in the context of our having an unwritten constitution, such arguments deserve to be taken seriously. If private international law treaties today, why not other international treaties tomorrow and a still less constrained role for the Executive further down the line?

No matter how often Ministers say that the availability of the affirmative resolution procedure or even the super-affirmative procedure gives Parliament a right to scrutinise and vote down delegated legislation, we all know the reality: that unamendable regulations are extremely difficult in practice to get changed, withdrawn or rejected as a result of parliamentary scrutiny. That is why removing this clause from the Bill is so important.

A particularly pernicious aspect of this clause is the power to create new criminal offences by regulation, even those carrying sentences of imprisonment. One can foresee that enforcement in particular of international treaty obligations may indeed involve criminal sanctions against non-compliant individuals. We may return to this with Amendment 10, if that turns out to be necessary. However, it would be far better for us to get rid of Clause 2 altogether—a change we may just succeed in holding when the Bill goes to the Commons.

I also remind the House of the important point, made in the Constitution Committee's report, that regulations are amenable to judicial review and so could be challenged in the courts. Clause 2 would risk the unattractive position that, having entered into international obligations by treaty and Ministers having passed regulations to give them the force of domestic law and to enable compliance and enforcement, the courts would then be entitled to quash those regulations if they were challenged. That would be seriously unsatisfactory.

The Constitution Committee rested its argument on the valid ground of legal uncertainty. I add that such a position would undermine us internationally, further damaging our reputation for being good for our word and bringing our democratic legal processes into disrepute. This is an important point, but I wind up by saying that it is a subsidiary reason for removing Clause 2. The central point is the point of principle on which I suggest the House has a constitutional duty to vote this clause down.

Lord Keen of Elie: My Lords, we debated Clause 2 at great length at Second Reading and in Committee, and I note the further observations made by noble, and noble and learned, Lords with regard to the issue. As I have explained, the Bill is about implementing in domestic law treaties that we have already determined to join. Parliament will be afforded scrutiny under the Constitutional Reform and Governance Act 2010—CRaG—process prior to ratification. If it is not content, ratification will not occur.

While I acknowledge that there are differing views as to how effective CRaG has been to this point, it is perhaps important to recognise that, as of 28 January this year, Parliament has decided to strengthen its procedures around the CRaG process by agreeing to create a new sub-committee of the European Union Committee to focus on treaties laid under the procedure. This should provide additional opportunities for scrutiny in this area. The Government look forward to engaging with the committee on these matters. I note the point made by the noble and learned Lord, Lord Mance, but I observe that ratification will ultimately be a matter for Parliament before implementation of an international agreement could ever take place.

Furthermore, as with other powers to implement international agreements by way of secondary legislation that exist in the fields of, for example, taxation or social security, we are talking about private international law agreements that are, by their nature, quite technical in their terms. The details of any rules contained in these sorts of agreements will already have been determined at the international level and are usually, by their very nature, clear and precise. The power seeks to allow Ministers to bring forward regulations to effectively implement rules that have been agreed with our international partners and to bring them into domestic law.

It is our view that the level of scrutiny afforded to the implementation of new agreements on private international law is reasonable and proportionate. The implementation of any such agreements would require an affirmative statutory instrument. Noble Lords will be aware that affirmative SI debates in this place are often very thorough, as they should be. There is no reason to suppose that there would be anything other than rigorous debate on the issue of implementation, just as there would be regarding ratification under CRaG.

It was argued in Committee and touched on this afternoon that there was a risk, under our approach, of a statutory instrument made under Clause 2 being struck down as non-compliant with, for example, the Human Rights Act 1998. Of course, that is true of any secondary legislation that the Government bring forward. However, the risk in respect of private international law agreements is not likely to be great. Indeed, I struggle to envisage a situation where the United Kingdom and its international partners would collectively agree a private international law treaty that was not compliant with the European Convention on Human Rights.

It remains the view of the Government that, in spite of the concerns raised, this power is necessary if we are to achieve our objective of building on the United Kingdom's leadership role in private international law in the years to come. The noble Lord, Lord Holmes of Richmond, mentioned the importance of the choice of English law and jurisdiction, and if we are going to maintain that important role, we must ensure that we are in a position to move effectively—and that may mean rapidly—in the implementation of private international law agreements. That would allow us to make the most of the competence that will return to us at the end of the transition period.

As has been noted by noble Lords and noble and learned Lords, in the immediate term we have specific concerns about accession to the Lugano Convention 2007, and there are further issues with regard to other conventions that have been mentioned. We may not know the outcome of the United Kingdom's application to accede to the Lugano Convention for some months, and we cannot implement this convention unless and until the terms of our accession are agreed with the existing contracting parties, including the European Union. So there is a very real concern that there will not be sufficient parliamentary time for bespoke primary legislation to be drafted and taken through Parliament before the end of the transition period. That would mean a delay in our ability to implement the Lugano Convention, with serious adverse effects on United Kingdom businesses, individuals and families with regard to cross-border disputes after the end of the transition period.

Beyond the implementation of Lugano, the power is essential also, in our view, for future private international law agreements. Mention was made of the Singapore Convention on Mediation and the 2019 Hague Convention on Recognition and Enforcement of Foreign Judgements in Civil or Commercial Matters. I acknowledge, as a number of noble and learned Lords observed, that the pace with which such conventions proceed can be relatively slow, but as and when there is the necessary conclusion and ratification, it may be necessary to find appropriate time in which to ensure implementation in domestic law. If that is not possible by way of primary legislation, we are liable to find ourselves at a distinct disadvantage in that respect.

The extension of this to the matter of arbitration was also mentioned, I believe by the noble and learned Lord, Lord Mance. The rules on recognition and enforcement of arbitral awards do of course fall within the definition of private international law. We recognise the success of the New York Convention, and that arbitration more broadly is an important matter approached by reference to that convention. The Government are not planning any change to our approach to arbitration, nor are we aware of any planned updates to the New York Convention, which is the leading international instrument in this area. We acknowledge that arbitration is a sensitive area, and that the current arrangements work well. I reassure noble Lords that, if there were any changes to the current arrangements for arbitration, that would be a matter on which we would consult extensively.

I return to the matter of precedent, which was touched on by the noble and learned Lord, Lord Falconer of Thoroton. It has been argued that taking a delegated power of this sort is unprecedented. However, we do not accept this. Our approach to Clause 2 broadly reflects

the way in which we have implemented private international law agreements in recent years as an EU member state, under Section 2(2) of the European Communities Act 1972. Delegated powers have been taken to implement international agreements on private international law and in other contexts. That has been touched on already.

Of course, there are more recent instances—for example, the noble and learned Lord, Lord Wallace, raised the Mental Capacity Act 2005, which contains extensive and important delegated powers in this area, concerning the ratification of the 2000 Hague Convention on the International Protection of Adults, and the extension and ratification of that for England and Wales.

4.30 pm

The 2005 Act was, of course, passed by a previous Labour Government, and was introduced at Second Reading in this House on 10 January 2005 by the noble and learned Lord, Lord Falconer, in his capacity as Lord Chancellor and Secretary of State for Constitutional Affairs at the time. This is an example of primary legislation that contains powers—Henry VIII powers—to make regulations to give further effect to a private international law agreement, in this instance Hague 2000, as well as other broad general powers to otherwise make regulations. Indeed, as Schedule 3 to the 2005 Act says:

"Regulations may make provision … otherwise about the private international law of England and Wales in relation to the protection of adults"

and

"may … make provision about countries other than Convention countries."

I wish we had thought of such broad powers when we were drafting this Bill.

When, at Report stage of the Bill that became the 2005 Act, the then Government had the opportunity to explain the delegated powers that they required under that Act, they explained their rationale as follows:

"These regulations provide us with flexibility, allowing us to amend the Bill in the light of developments with the Hague Convention on the International Protection of Adults, once the convention has come into force".—[*Official Report*, 17/3/05; col. 1551.]

That echoes observations made in Committee on behalf of this Government with regard to these delegated powers. I appreciate that they are less wide-ranging than those embraced by Schedule 3 to the 2005 Act, but they are nevertheless there to allow flexibility, so that we can keep pace with international developments in areas of law as relevant today as they were in 2005.

I appreciate that it is perhaps not uncommon for some to undergo a damascene conversion on the road from government to opposition but, with respect, it appears to me that a power seen as essential for flexibility in 2005—a power that we now see would be applied consequent on the amendment tabled by the noble and learned Lord, Lord Wallace, to ratify the 2000 convention in England and Wales—is one which we can properly consider appropriate in other contexts.

In summary, while I note the concerns raised about this power, for the reasons that I have sought to set out I do not accept that it is without precedent or, indeed, disproportionate. We consider it necessary and important. It is essential if we are to maintain our position as an appropriate jurisdiction and choice of law. I therefore urge the noble and learned Lord to withdraw his amendment.

Lord Falconer of Thoroton: I am obliged to every noble Lord and noble and learned Lord who has spoken in this debate. I have never been present when every single speaker has been against the Government, though when I heard the speech of the noble and learned Lord, Lord Keen of Elie, it was possible to understand why. He appeared to have failed completely to understand the basis of the objection to Clause 2. The basis of that objection is that the clause is wrong as a matter of principle and constitutes a change in our constitutional practice by allowing significant changes to be made in domestic law simply because we have agreed them with a foreign country.

At no stage did the Minister address that argument. Indeed, he advanced arguments which at some stages he had advanced previously but not with any degree of enthusiasm, in particular the argument that it was "essential" for the Government to have this power to remain a significant force in commercial law and financial and legal services. When one is a law officer, it is obviously okay to put forward entirely implausible political arguments—people can make their own judgment about them. These arguments went very close to the line in relation to the law. When asked to provide some justification for arguing precedent for this measure, the Minister did two things. First, he referred to EU law. It is hard to know what his answer is to the noble Lord, Lord Holmes of Richmond; I thought that the whole point of leaving the EU was to avoid powers of this very sort. He then referred to the 2005 Act bringing into force the convention in relation to vulnerable adults. He appeared not to have spotted that that was primary legislation giving effect to an international convention.

The Minister finally said that the Government would consult; for example, on arbitration. Is there any point in paying respect to that remark, when every single person in the Lords is opposed to Clause 2 and the Government have simply ignored it?

I am disappointed by what the noble and learned Lord has said, but, sadly, not surprised. I beg leave to test the opinion of the House on Amendment 2.

4.36 pm

Division conducted remotely on Amendment 2

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Amendment 2 agreed.

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Colwyn, L.
Cormack, L.
Courtown, E.
Couttie, B.
Cox, B.
Craig of Radley, L.
Cumberlege, B.
Curry of Kirkharle, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Deech, B.
Dobbs, L.
Duncan of Springbank, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Eccles of Moulton, B.
Eccles, V.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Farmer, L.
Fellowes of West Stafford, L.
Fink, L.
Finkelstein, L.
Finn, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Framlingham, L.
Fraser of Corriegarth, L.
Freud, L.
Gadhia, L.
Gardiner of Kimble, L.
Garnier, L.
Geddes, L.
Geidt, L.
Gilbert of Panteg, L.
Glenarthur, L.
Glendonbrook, L.
Gold, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Grade of Yarmouth, L.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hague of Richmond, L.
Hanham, B.
Harding of Winscombe, B.
Haselhurst, L.
Hay of Ballyore, L.
Hayward, L.
Helic, B.
Henley, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hogan-Howe, L.
Home, E.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howell of Guildford, L.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Jopling, L.
Kakkar, L.
Keen of Elie, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lansley, L.
Leigh of Hurley, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lothian, M.
Lucas, L.
Lupton, L.
Mackay of Clashfern, L.
Mancroft, L.
Manzoor, B.
Marland, L.
Marlesford, L.
Maude of Horsham, L.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McGregor-Smith, B.
McInnes of Kilwinning, L.
Meyer, B.
Mobarik, B.
Mone, B.
Montrose, D.
Morgan of Cotes, B.
Morris of Bolton, B.
Morrow, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
O'Shaughnessy, L.
Parkinson of Whitley Bay, L.
Patten of Barnes, L.
Patten, L.
Penn, B.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Rana, L.
Randall of Uxbridge, L.
Ranger, L.
Rawlings, B.
Reay, L.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Ridley, V.
Risby, L.
Robathan, L.
Rock, B.
Rose of Monewden, L.
Rotherwick, L.
Saatchi, L.
Sanderson of Welton, B.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stirrup, L.
Strathclyde, L.
Stroud, B.
Sugg, B.
Suri, L.
Swinfen, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Tebbit, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Tugendhat, L.
Tyrie, L.
Ullswater, V.
Vere of Norbiton, B.
Verma, B.
Vinson, L.
Wakeham, L.
Waldegrave of North Hill, L.
Warsi, B.
Wasserman, L.
Wei, L.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Wyld, B.
Young of Cookham, L.
Young of Graffham, L.
Younger of Leckie, V.

4.55 pm

The Deputy Speaker (Baroness Garden of Frognal) (LD): We now come to the group consisting of Amendment 3. I remind noble Lords that Members other than the mover and the Minister may speak only once, and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division should make that clear in debate.

Clause 4: Extent, commencement and short title

Amendment 3 not moved.

Amendment 4

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

4: Clause 4, page 4, line 18, leave out "Except as provided by subsection (3),"

Member's explanatory statement

This amendment is consequential on another amendment which omits subsection (3).

Lord Keen of Elie: My Lords, Clause 1 implements important Hague private international law conventions, including the 2005 Hague Convention on Choice of Court Agreements and the 2007 Hague convention on the international recovery of child support. These six government amendments aim to provide a clearer and

[Lord Keen of Elie]
simpler approach to the implementation of the transitional provisions in the 2005 and 2007 conventions. In particular, they aim to make further amendments to the 2018 EU exit SIs which were originally made in respect of the 2005 and 2007 conventions in the event of a non-negotiated withdrawal from the EU.

The Government are bringing forward these amendments following correspondence on the Bill from stakeholders and from the noble and learned Lord, Lord Mance. There was concern that the approach set out in Schedule 5 to the Bill was causing uncertainty for stakeholders. The approach involved continuing to rely on the transitional provisions of the EU exit SIs, which themselves relied on the saving of rights and obligations under Section 4 of the EU Withdrawal Act 2018. Concerns were also expressed about inconsistencies between the EU exit SIs and the transitional provisions of the conventions, to which the Bill gives legal effect under Clause 1. Furthermore, it was considered helpful to make it as clear as possible from which dates the conventions should be considered as applying in the United Kingdom.

Government Amendments 7 and 8 concern the savings provisions of the two 2018 EU exit SIs and make more extensive changes to them than originally set out in Paragraphs 3 and 4 of Schedule 5 to the Bill. The amendments revoke the savings provisions in the EU exit SIs in their entirety rather than retaining them in an amended form. Instead, reliance is placed on the transitional provisions in Article 16 of the 2005 Hague convention and Article 56 of the 2007 Hague convention which are given legal force by Clause 1. Amendments 4 and 6 are consequential on these changes to the EU exit SIs.

Amendment 9 makes it clear that the conventions should be interpreted as coming into force for the United Kingdom on the dates when the UK originally became bound by them—that is, upon the EU accession to the conventions—and that when the UK joins the conventions in its own right after the end of the transition period, it should be treated as having been bound by the conventions without interruption. This means in particular that in proceedings that take place after the UK rejoins the 2005 Hague convention in its own right, UK courts will apply the 2005 Hague convention rules to all relevant exclusive choice of court agreements made from 1 October 2015 in favour of the courts of an EU member state or the UK courts.

The content of these amendments was discussed at length at the main meeting of the Lord Chancellor's Advisory Committee on Private International Law and the drafting has also been considered by the noble and learned Lord, Lord Mance, and other members of the committee. They have asked us to make sure that we provide a full explanation of the way in which the amendments are intended to work when we update the Explanatory Notes for the Bill before it passes to the other place, and I am happy to confirm that we will do so. Besides this, they were satisfied that the drafting properly gives effect to the policy intent, and I am very grateful to the noble and learned Lord, Lord Mance, and to the other members of the committee for their expertise in relation to this matter and for the time that they have spent considering these amendments.

I hope that this serves to reassure the House that these are sensible, proportionate and necessary amendments. I consider that they provide a clearer approach to the implementation of the transitional provisions for both Hague 2005 and Hague 2007 at the end of the transition period, and I hope that they will find support across the House. I beg to move.

5 pm

Lord Mance [V]: My Lords, as my noble and learned friend Lord Keen has just said, these amendments were considered by the advisory committee that I chair. We welcome them. They are a wonderful simplification compared with the huge complexity of the previous Schedule 5, which introduced savings on savings on what was already, in Section 4 of the withdrawal Act, a saving. They also correct one important misconception or potential error that had crept into the drafting of some of the previous instruments by making it absolutely clear that, insofar as the Hague 2005 choice of court convention will be relevant—and it will not be very relevant if we join Lugano—it will be relevant in respect of all agreements since October 2015, when the UK was originally signed up to the convention as a member of the EU. That is a point on which the noble and learned Lord and I had personal communication after Second Reading.

I will mention just one further point. That protects, or would protect insofar as it applies, choice of court clauses made after October 2015 that fall within Hague 2005. That means probably only exclusive choice of court clauses. There are two categories that are therefore not potentially covered: first, non-exclusive, asymmetric choice of court clauses, which are very important on the London market and are frequently used in banking documentation; and, secondly, pre-2015 choice of court clauses. At the moment, they are protected under the Brussels regime—the Brussels regulation recast in 2012, of which we are going to lose the benefit.

I know that the Minister has this in mind, but I mention it openly: we should surely, domestically, introduce as much protection for those clauses as we now can. It may not be reciprocal, because we can legislate in this area only domestically unless we can persuade other states to agree with us. But domestically, we should protect clauses, particularly those favouring London, and we should avoid people who rely on such clauses having to go through the formality of seeking leave to serve out of the jurisdiction of the court. At the moment, under the Brussels regime, these clauses are protected, whether they are exclusive or non-exclusive, whenever they were made and we do not have to seek leave to serve out—so I urge the noble and learned Lord to pursue that message, as I know he has it in mind already.

Lord Marks of Henley-on-Thames [V]: My Lords, I will add only this: I urge the Minister to heed what the noble and learned Lord, Lord Mance, has just said in looking at ways in which we can give further protection to choice of court clauses—those that favour London are to our greatest advantage—and that he does so as far as possible after the implementation period ends.

Lord Falconer of Thoroton: My Lords, I support the amendments. I will make two points. First, had the noble and learned Lord had his way in Clause 2, he could

not have made these amendments, which indicates the importance of primary legislation. Secondly, I hope that he heeds what the noble and learned Lord, Lord Mance, said in his closing remarks. They were important. In the future, it would be more sensible to consult the Lord Chancellor's Advisory Committee on Private International Law before producing primary legislation, rather than after.

Lord Keen of Elie: My Lords, I am most obliged, particularly for the contribution from the noble and learned Lord, Lord Mance. As he noted, as co-chair of the Lord Chancellor's Private International Law Advisory Committee, he and I discussed this very point in detail at the May committee. I greatly appreciate not only his contribution but those of the other members of the committee, who have an in-depth understanding and knowledge of how these international agreements work and how the choice of court clauses work.

I am conscious of the issue of choice of jurisdiction and choice of law clauses arising in contracts made before 1 October 2015. I am also conscious of our need to do what we can to simplify the process in regard to that matter and, indeed, the matter of serving out of a jurisdiction, which we would have to look at in the context of the rules. These matters have been raised and I have them in mind at present, so I am most obliged to noble Lords for their contributions.

Amendment 4 agreed.

Amendment 5

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

5: Clause 4, page 4, line 20, leave out subsection (3)

Member's explanatory statement

Subsection (3) provides for certain consequential amendments in Schedule 5 to come into force by regulations. Those consequential amendments are omitted by other amendments. Therefore subsection (3) is no longer needed.

Amendment 5 agreed.

Schedule 5: Consequential provision

Amendments 6 to 9

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

6: Schedule 5, page 66, line 1, leave out sub-paragraph (2)

Member's explanatory statement

This amendment removes the saving provision for rights etc under section 4 of the European Union (Withdrawal) Act 2018 deriving from the 2005 or 2007 Hague Convention. The saving is no longer needed because another amendment ensures that the relevant Convention continues to apply after IP completion day to those cases to which it applies before IP completion day.

7: Schedule 5, page 66, line 14, leave out sub-paragraphs (2) to (6) and insert—

"(2) In Part 1 (introduction), omit regulation 2.

(3) Omit Part 2 (the rights etc deriving from the 2005 Hague Convention).

(4) In Part 3 (modification and amendment of primary and secondary legislation)—

(a) in the heading—

(i) omit "Modification and";

(ii) omit "and Secondary";

(b) omit regulation 7."

Member's explanatory statement

This amendment revokes regulations relating to rights etc under section 4 of the European Union (Withdrawal) Act 2018 deriving from the 2005 Hague Convention. The regulations are no longer needed because paragraph 2 of Schedule 5 to the Bill disapplies section 4 in relation to those rights, and another amendment omits the saving provision for them.

8: Schedule 5, page 66, line 39, leave out sub-paragraphs (2) to (7) and insert—

"(2) In Part 1 (introduction), omit regulation 2.

(3) Omit Part 2 (the rights etc deriving from the 2007 Hague Convention).

(4) Omit Part 3 (modification and amendment of primary and secondary legislation)."

Member's explanatory statement

This amendment revokes regulations relating to rights etc under section 4 of the European Union (Withdrawal) Act 2018. The regulations are no longer needed because paragraph 2 of Schedule 5 to the Bill disapplies section 4 in relation to those rights, and another amendment omits the saving provision for them. Inserted sub-paragraph (4) also revokes a regulation duplicated in other secondary legislation.

9: Schedule 5, page 67, line 43, at end insert—

"PART 2

TRANSITIONAL PROVISION

Interpretation of the 2005 Hague Convention as it has the force of law in the UK

7 For the purposes of Article 16 of the 2005 Hague Convention, as it has the force of law in the United Kingdom by virtue of section 3D(1) of the Civil Jurisdiction and Judgments Act 1982 (as inserted by section 1(2) of this Act), the date on which the 2005 Hague Convention entered into force for the United Kingdom is 1 October 2015, and accordingly references in the Convention to a Contracting State are to be read as including, without interruption from that date, the United Kingdom.

Interpretation of the 2007 Hague Convention as it has the force of law in the UK

8 For the purposes of Article 56 of the 2007 Hague Convention, as it has the force of law in the United Kingdom by virtue of section 3E(1) of the Civil Jurisdiction and Judgments Act 1982 (as inserted by section 1(2) of this Act), the date on which the 2007 Hague Convention entered into force for the United Kingdom is 1 August 2014, and accordingly references in the Convention to a Contracting State are to be read as including, without interruption from that date, the United Kingdom.

Interpretation of Part 2

9 In this Part of this Schedule—

"the 2005 Hague Convention" means the Convention on Choice of Court Agreements concluded on 30 June 2005 at The Hague;

"the 2007 Hague Convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague."

Member's explanatory statement

This amendment ensures that there is no interruption at the end of the transition period to the implementation of the Conventions in the UK.

Amendments 6 to 9 agreed.

Schedule 6: Regulations under section 2

Amendment 10

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

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

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

The Deputy Speaker (Lord Duncan of Springbank) (Con): I remind noble Lords that Members other than the mover of an amendment and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press an amendment to a Division should make that clear in the debate.

Lord Falconer of Thoroton: My Lords, I will speak very briefly because this amendment has little significance now that the House has decided to remove Clause 2.

Schedule 6 deals with detailed regulation-making power under Clause 2. We will put down an amendment at Third Reading to get rid of Schedule 6, so this does not matter. I tabled Amendment 10 simply to illustrate the width of the power that was being given under Clause 2 and, had we lost the argument on Clause 2, to indicate that we would seek to remove this power. The power in Clause 2(1)(b) allows the Executive by statutory instrument to create offences in connection with the introduction of a private international law treaty with a punishment of up to two years. That is wholly inappropriate, and it illustrates the danger of what was being proposed. But I will not press this amendment to a Division because Schedule 6 will go in any event.

Lord Pannick [V]: As the noble and learned Lord, Lord Falconer, said, Amendment 10 is now academic, but it provides an opportunity to mention that one of the concerns of your Lordships' Constitution Committee is that Bills regularly seek to confer on Ministers the power to create criminal offences.

Paragraph 21 of the committee's report on this Bill—HL Paper 55—said that the conferral of delegated powers to create criminal offences, particularly those that are subject to imprisonment, is "constitutionally unacceptable". We made the same point in paragraph 30 of our report of 9 June—HL Paper 71—on the constitutional issues raised by Brexit legislation. There needs to be a strong justification for departing from that general principle. I hope, as I know do the other members of your Lordships' Constitution Committee, that Ministers will take account of these important principles. If they do not and they bring forward similar clauses in other Bills, we will report on them accordingly to the House.

Lord Thomas of Gresford [V]: My Lords, as I said in Committee, it is a matter of important principle that criminal offences must be clearly defined. I pointed to the criminal offences created, without consultation or debate, by way of regulations, in connection with the current lockdown. I pointed to the fact that they had caused confusion between the Prime Minister and his cohorts and virtually the rest of the country. Since I spoke on that matter, these offences are being amended, or new offences are being created, on, it seems, almost a weekly basis.

As my noble friend Lord Marks pointed out in the previous debate, there can be no clarity as to even the topic of a future international agreement, so there is no clear context within which this House can consider the power to create criminal offences in the field of private international law.

Last week, when we came to debate the Agriculture Bill, I was interested to note that precisely this point had been made by the Delegated Powers Committee: that it was against principle for sentences of imprisonment to be imposed by way of regulation. That was part of the original agriculture Bill, which fell at the time of the general election. In the new Agriculture Bill, Defra has withdrawn its position and is no longer asking for the provision of power, by regulation, to create criminal offences punishable by imprisonment. To my mind, this is a very good way of proceeding, and I hope that it spreads to other government departments.

Lord Hope of Craighead [V]: My Lords, it is all too easy to think that a sentence of imprisonment for a term of not more than two years, which is what paragraph 1(1)(b) of Schedule 6 by implication permits, is a relatively light matter. It certainly is not. Any conviction for a criminal offence, whatever the sentence that results from it, can have the most serious consequences for the individual; for example, opportunities for travel, employment and obtaining insurance can all be affected. The issue, therefore, is one of principle. It should not be for Ministers to create criminal offences by statutory instrument.

Lord Thomas of Cwmgiedd [V]: I will be very brief, as this amendment really has no purpose in the light of the result of the Division.

I too agree that, as a matter of principle, it was wrong to seek to include this power in the Bill. Furthermore, it must be recalled that, in relation to most aspects of private international law and the reciprocal enforcement of orders of other courts, the courts have significant powers by way of committal for contempt or injunctions. It cannot be justified to create and impose criminal offences with sentences of imprisonment in the circumstances of this particular Bill.

Lord Mance [V]: I share the view of other noble Lords and noble and learned Lords. This is pre-eminently a matter for Parliament. It has been slipped into Schedule 6 as a qualification to Section 2 powers regarding private international law. I suggest that, if one had read Section 2 by itself, one would not normally have expected it to cover crime at all, and yet this comes in as if it is automatic that it would cover it. It clearly should not.

5.15 pm

What is being done is quite interesting to analyse. The Explanatory Notes suggest that what is in mind is enforcing on a reciprocal basis offences that are offences under English law—non-molestation or breach of injunction in respect of harassment, that sort of thing. Those will already be offences domestically, so what is contemplated is recognising similar foreign offences automatically as part of domestic law, as I understand it. That strikes me as a very novel suggestion. Can the Minister give us any relevant examples in private international law of agreements by international treaty to create a domestic offence out of a foreign conviction? It might be in respect of something that is already an offence under domestic law, but as I understand it the idea here is to convert a foreign conviction into a domestic one. Are there any examples? One notes that the 1920 and 1933 Acts on which he relied are carefully limited to civil proceedings; likewise the Civil Jurisdiction and Judgments Act 1982, as its name says.

I will end with an inquiry. The amendment has been described as academic and so it might seem at the moment, Clause 2 having been removed. May I inquire, more out of ignorance—I am sure others know the answer—if we do not press it to a Division today, what happens if Clause 2 is restored in the other place? Surely, we ought to consider at least ensuring that the amendment succeeds in eliminating the reference to penal offences.

Lord Marks of Henley-on-Thames [V]: My Lords, I addressed this issue in the group on the removal of Clause 2. I agree with everything that has been said so far in the debate on this amendment, which I support. Once again, we have unanimity. Although it might not be directly relevant in the light of the removal of Clause 2, I note the points made by the noble and learned Lord, Lord Mance, as to what will happen should Clause 2 be restored in the other place. I suspect that that would be curable here by passing a similar amendment, but I invite the Minister to consider that position as well.

Lord Keen of Elie: My Lords, clearly, given that Clause 2 is no longer part of the Bill, this amendment would have no effect. However, I understand why the noble and learned Lord moved it—to allow further discussion of the issue. We believe that the inclusion of the provision to which the amendment relates would have been important in allowing the implementation of private international law agreements that necessitate the creation of a criminal offence, particularly in the family law area. I mentioned that in Committee.

In response to the observations of the noble and learned Lord, Lord Mance, I am not aware of any current examples where we have provided for criminal penalties when implementing a private international law agreement. However, that does not mean that it would not be the appropriate step to take in future agreements, for example, on mutual recognition and enforcement of protection measures, where the equivalent domestic orders were enforceable by criminal penalties such as orders under the Family Law Act 1996, or, indeed, injunctions under the Protection from Harassment Act 1997. One is looking to the equivalents of such orders made by a foreign court when it comes to enforcement in the United Kingdom.

I continue to suggest that the safeguards on the power that I outlined in Committee, including use of the affirmative procedure as a matter of course, would be effective and appropriate in this regard. However, since the Clause 2 delegated power is no longer part of the Bill, I invite the noble and learned Lord to withdraw his amendment. In the event that Clause 2 comes back to this House, it appears that there might be scope for him to revisit this issue.

Lord Falconer of Thoroton: The only example that the noble and learned Lord has given of the need for a criminal offence is in relation to family law—for example, making it a criminal offence not to comply with an order made by a foreign court. I think that is a very sensible power to have. What the level of criminality should be, and whether we should recognise those sorts of offences, is plainly a matter on which Parliament should properly take a view in primary legislation. I was extremely struck by the fact that he gave no examples in answer to the question of the noble and learned Lord, Lord Mance.

I am absolutely bewildered as to why the Government are doing this. The amendment does not stop them doing what they want to do in relation to private international law; all it requires is that Parliament gets a say and can amend things, as we have just done in relation to the implementation of the three treaties that we are dealing with today. What is wrong with that? It does not cause problems. It means that you get much higher-quality implementation, as we discovered this afternoon through the amendments being debated.

Is it a knee-jerk reaction on the part of the Government that they want to keep Parliament out of things as much as possible? The Minister gives fatuous justification for this by saying that it is "necessary" and "essential" for the UK to remain in its pre-eminent position. This is obvious tosh, as we have been in a pre-eminent position without this power existing before.

I am not going to press this amendment because, as the noble and learned Lord impliedly accepts, Schedule 6 will drop out at Third Reading, which means that there will be nothing to amend. I am very surprised that he is being a dog in the manger about that—of course that schedule has to come out once Clause 2 has come out. I would be interested to hear whether he accepts that; if he does not accept it, I will think that he is behaving slightly childishly.

I am not sure whether our rules allow the noble and learned Lord to come back at this stage. I see noble Lords indicating that they do, so could he confirm that he will agree that Schedule 6 will come out before the Bill goes to the other place?

Lord Keen of Elie: My Lords, it appears to me that Schedule 6 is quite distinct to Clause 2 as a part of the Bill, but, clearly, it is entirely dependent upon the existence of Clause 2. Beyond that, I do not really comprehend what the noble and learned Lord is talking about.

Lord Falconer of Thoroton: I will explain the question. Does the noble and learned Lord agree that, now that Clause 2 has been deleted, Schedule 6 should also be deleted?

The Deputy Speaker: Does the Minister wish to respond?

Lord Keen of Elie: It may well be that it should be deleted, but it is for the noble and learned Lord to move his amendment if he wishes it to be deleted.

Lord Falconer of Thoroton: As the noble and learned Lord knows, I do not have such an amendment down. Obviously, what I was saying was that I would put down an amendment at Third Reading. Does he agree that that would be agreed to by the Government?

The Deputy Speaker: It helps if I can make the announcement so that people can capture this on camera. Does the Minister wish to respond?

Lord Keen of Elie: No.

Lord Falconer of Thoroton: That is disappointing.

In any event, I think the view of the House is unanimous. This is an inappropriate provision. I will not press my amendment. I take it that the Minister accepts that Schedule 6 is totally dependent on Clause 2. In those circumstances, I will put down an amendment at Third Reading to get rid of Schedule 6. I beg leave to withdraw my amendment.

Amendment 10 withdrawn.

Amendment 11

Moved by ***Lord Hain***

11: Schedule 6, page 68, line 44, at end insert—

"( ) Before laying a draft of an instrument before each House of Parliament under sub-paragraph (2), the Secretary of State must consult—

(a) Scottish Ministers,

(b) Welsh Ministers, and

(c) the Northern Ireland department."

The Deputy Speaker: I remind noble Lords that Members, other than the mover and the Minister, may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this or any other amendment in this group to a Division should make that clear in debate.

Lord Hain (Lab) [V]: My Lords, in moving Amendment 11, I shall also speak to Amendment 12. I am, of course, aware that the position on consultation is different for Northern Ireland and Scotland, which have separate and therefore fully developed legal systems, where Wales does not; therefore, private international law and the implementation of these agreements is devolved in their cases.

At Second Reading, I asked for copper-bottomed assurances from the Minister with regard to devolution—namely that, should the Government identify issues within devolved competence, which would be impacted by existing or future private international law agreements, they would consult the Welsh Government—I emphasise the word "consult". I was arguing not that the Welsh Government or Senedd should be able to veto or prevent the UK Government concluding such international agreements but simply that, in doing so, they should first make sure they understood the perspective of the devolved institutions, which, in many cases, are obliged to implement such agreements, and preferably secure their consent.

Frankly, I was astonished by the cavalier—some might say high-handed or arrogant—dismissal by the Minister, the noble and learned Lord, Lord Keen, of my request. We may be getting used to the way that this Government are determined to sideline and ignore Parliament, but I had not expected this response, because I was advised that the Welsh Government had been given specific verbal assurances on this point. Welsh Ministers were so concerned at his dismissive reply that their Counsel General, a Minister, wrote to the Lord Chancellor protesting about it.

This is not just a debating point. As I made clear at Second Reading, the UK Government have already signed international agreements which directly impact on the rights of the Senedd to determine the franchise—a pretty fundamental point, you may well agree—and a competence that was devolved only in 2017. The truth is that the Government did not consult any of the devolved Governments properly over a series of European Union withdrawal and Brexit-related Bills. Instead, UK Ministers tried to indulge in a series of power grabs, as previously devolved functions were returned from Brussels back to the UK. There were a series of stand-offs with the First Ministers of Wales and Scotland. There were also refusals to grant legislative consent Motions in Wales and Scotland until satisfactory outcomes were belatedly conceded by Her Majesty's Government. I am sure that something similar would have arisen in Northern Ireland had Stormont not been so damagingly self-suspended for three years during this Brexit-dominated period.

I therefore repeat my request for the Minister to give an assurance at the Dispatch Box now on the necessity for full and early consultation, for my amendments are designed to ensure that the devolved institutions are not blindsided by finding out after the event that the UK Government have signed up to obligations on their behalf, without any forewarning.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I support the amendments in the name of my noble friend Lord Hain. I am a signatory to Amendment 11, which quite clearly emphasises—as does Amendment 12—the need for direct consultation with the devolved institutions. I am a former Member of the Northern Ireland Assembly; I was also a Minister in the Executive and had direct responsibility for benefits and for the protection of children through child support. One facet of this Bill deals with those issues to do with absent parents and the protection of children when the absent parent has gone to live in another jurisdiction. I fully understand and appreciate the matter.

My point, in supporting the amendment, is to ensure that the devolved institutions are not blindsided. I carried out some, shall we say, investigation and research on this: we know that the Northern Ireland Assembly's Committee for Justice was contacted by the Minister for Justice on 28 April and that the committee gave approval on 30 April. Then the legislative consent Motion, which gives effect to the UK Government legislation, was approved on 19 May.

However, on further examining that debate in the Northern Ireland Assembly on 19 May, I noticed that some Members, albeit accepting the premise and purposes of the Bill, were concerned that after its approval they would not be consulted as an Assembly. The Minister would simply be advised that certain instruments were to be laid and that this particular legislation would apply, but they as Members of the Assembly would not be able to debate it, change it or give an opinion. In my view, that is undemocratic, hence my support for both amendments in the name of my noble friend Lord Hain.

5.30 pm

Lord McConnell of Glenscorrodale (Lab): My Lords, I too am grateful to my noble friend Lord Hain for the opportunity to raise some issues on Report, not least

because it gives an opportunity to emphasise the different situations in Scotland, Northern Ireland and Wales and, very specifically, the different situation between Scotland and Northern Ireland and Wales, given the legislative competencies that exist in Scotland and Northern Ireland. That was perhaps highlighted earlier today in the amendment tabled by the noble and learned Lord, Lord Wallace of Tankerness, on the Hague convention. He reminded us that the Hague convention was carried into Scots law in 2003, when he was Deputy First Minister and I was First Minister, and it is still outstanding in UK law for England and the rest of the country.

I want to ask where we have reached with the legislative consent Motion for the Bill in the Scottish Parliament. I would be grateful if the Advocate-General would update us on that. I would also be grateful for his consideration of this issue of consultation and engagement with the devolved Governments and Parliaments on international treaties. It is accepted in the Scotland Act and the other Acts of 1998 that there is a reserved responsibility on international treaties, but it has been accepted ever since, most recently perhaps in the concordat on international relations between the UK Government and the devolved Governments, that there are joint interests here in relation to devolved legislative competencies and reserved legislative competencies. We can surely do better, as the Law Society of Scotland and others have argued now for many years, in finding systems for the engagement of devolved Governments and Parliaments in advance of treaties being negotiated and signed, rather than afterwards. It seems to me that we are long overdue a formal structure for the engagement of devolved Ministers and Governments in the agreement of negotiating mandates for treaties, rather than simply information, consultation and then approval afterwards. I would be interested to hear the views of the Advocate-General on that as a way forward.

Lord Thomas of Gresford [V]: My Lords, I support this amendment and I, too, was shocked by the lack of response to the very detailed speech by the noble Lord, Lord Hain, in Committee. It seemed to me that the Minister did not give a proper response to what had been said. I think it underlines the Conservative Party's problem with devolution: either it does not understand it or, if it does, it does not accept it. To give one example, a Conservative Member of Parliament called for the end of devolution to Wales altogether and the scrapping of the Senedd, because his constituents could not, as they normally do at this time of year, go to the Welsh beaches to swim in the sea. That was sufficient to call for the end of devolution in Wales. With that sort of attitude, and with the noble and learned Lord's attitude to the speech by the noble Lord, Lord Hain, it really makes the case that the Conservative Party is at odds with devolution and what it means.

Throughout the legislation going through Parliament at the moment, there is a gap in recognising the need for consultation and if possible agreement with the devolved Administrations. This is so on the Agriculture Bill, as I pointed out last week. The Joint Ministerial Committee is a joke; it has never worked properly and is ignored by English Ministers. These are great gaps that have to be filled if the devolution settlements are to be properly appreciated.

Lord Bhatia (Non-Afl) [V]: My Lords, under Amendment 11

"the Secretary of State must consult … Scottish Ministers … Welsh Ministers, and … the Northern Ireland department."

Can the Minister confirm that this has been done and that the three departments are fully satisfied?

My main concern is about family law. There are family litigations in progress in the courts. A light has been shone on what happens if one of the spouses is resident in the UK and the other is in another EU country and has a different nationality. The question of the children's custody will have to be resolved. As the UK will be out of the EU by the end of 2020, there are bound to be pending cases that will have to be resolved. Ratifying the Hague conventions will also have to be done.

There are other problems when one spouse is British and the other is in the subcontinent with the children. In such cases the children suffer the most, as the questions of their upkeep and final custody remain unresolved. This will be a very complex issue, and solutions will have to be found with diplomacy and patience. It would be useful if the Minister could explain how the above issues of children's maintenance, cost and custody will be dealt with.

Lord Marks of Henley-on-Thames [V]: My Lords, I have nothing to add to what was said by my noble friend Lord Thomas of Gresford on this amendment, which we support.

Lord Falconer of Thoroton: I support the principle of this amendment. It is all of a piece with the way this legislation has been conducted. My noble friend Lord Hain described the attitude of the Minister when this was raised with him in Committee as "high-handed" and "cavalier". Prior to that, as my noble friend said, there had not been proper consultation with the devolved Welsh Administration. The noble Baroness, Lady Ritchie, indicated that the Northern Ireland Assembly did not feel it had been consulted. The noble and learned Lord, Lord Hope of Craighead, said earlier that the devolution aspect of this had not been thought through. As became apparent during the earlier stages of this Bill, the Lord Chancellor's Advisory Committee on Private International Law was not consulted at all before the Bill was laid before Parliament.

This is not the right way to legislate. I very much hope that the Minister will reflect on the failures properly to deal with this Bill and the inadequacies in it as a result, in particular Clause 2 and the need significantly to amend Clause 1. Both Clause 1, which has broad support throughout the House, and the need for its amendment indicated how misjudged Clause 2 is. If the Minister has any respect for this House, he will properly respond to the points raised on this amendment.

Lord Keen of Elie: My Lords, I thank the noble Lord, Lord Hain, for meeting with me after Second Reading, when we discussed what he termed the copper-bottomed guarantee that he had sought in that debate. I explained

[Lord Keen of Elie]
to him the difficulty I had with that demand, given that it conflated the position of the Welsh Government with that of the Northern Ireland and Scottish Governments in circumstances where there was a quite separate and distinct divorce settlement with regard to the latter two, in contrast with the position in Wales. I understood him to appreciate that—indeed he even mentioned amending his amendment. I indicated that I did not think that necessary, because of course we are dealing here with a point of principle, and an important one.

Before I turn to the detail of the amendments, I stress to noble Lords that Ministry of Justice officials are in regular conversation with their counterparts in the devolved Administrations, not only about the matters contained within the Bill but whenever private international law issues arise that touch on areas of their devolved competence more generally. We are very conscious of our responsibilities under the devolution settlements, and our approach in this area is always to seek to engage early and often when any questions arise. It is my view that such an approach of early engagement is the best way to make consultation genuinely meaningful.

The noble and learned Lord, Lord Falconer of Thoroton, referred to an earlier observation by the noble and learned Lord, Lord Hope, with regard to his concern over the devolved aspects of the Bill. I have to say that I am perplexed by the observations of the noble and learned Lord, Lord Hope, and perhaps I should have responded earlier. There are two distinct ways in which these matters can be dealt with in the devolved context of Scotland. One is by the Scottish Ministers and the other is by the Secretary of State with the consent of the Scottish Ministers. The latter avenue is of course there because there are circumstances in which the Scottish Government will say to the UK Government, "We are quite content that you should implement these provisions throughout the United Kingdom without us having to replicate your efforts". I hope that that assists in clarifying that point.

The Government have fully honoured the devolution settlements in this area as we approached the drafting of the Bill, including, I may add, the Clause 2 power itself and how it can be exercised in particular in relation to Northern Ireland and Scotland. It is important to point out at the outset that the devolution settlement is different in distinct parts of the United Kingdom, as I said before, and that difference is reflected in the Bill.

Amendment 11 affects Scotland and Northern Ireland, where private international law is a devolved matter, differently to Wales, where these matters are almost entirely reserved. For Scotland and Northern Ireland, there are already two designated "appropriate national authorities", as I just mentioned, which may exercise the Clause 2 power for those jurisdictions: either the Scottish Ministers or a Northern Ireland department, or alternatively, the Secretary of State acting with the consent of those Ministers or the Northern Ireland department. Either way, the ultimate decision on use of the Clause 2 power in Scotland and Northern Ireland rests with the devolved Administrations, and that is reflected in the Bill.

In principle, I have no objection to consulting before the Secretary of State can make regulations which apply in Scotland and Northern Ireland. Indeed, it is something that would happen, because he can make those regulations only with the consent of the Scottish Government or of the Northern Ireland department. I refer also to Clause 2(7)(b)(i) and (c)(i), which provide that the Secretary of State already needs the consent of the Scottish Ministers or a Northern Ireland department to legislate for those parts of the United Kingdom. I do not see how one would gain such consent without consultation. It goes without saying that if you are to secure consent, you must consult and engage.

The Scottish Government and Northern Ireland Administration have been fully engaged in the drafting of the Bill, including the Clause 2 power, and there is strong support from both devolved Administrations on the Clause 2 power as currently drafted. That is reflected in the fact that a legislative consent Motion has already been granted by the Northern Ireland Assembly, and another has been laid before the Scottish Parliament, with both the Scottish Government and the Scottish Parliament's Justice Committee recommending that consent be granted. There we have a clear picture of what is happening in the devolved Administrations with regard to the Bill, and in particular Clause 2, and their welcome of these developments. They are the product of consultation and of consent.

5.45 pm

I now turn to Wales, where the private international law situation is different. It is almost entirely reserved, but there is an exception for Cafcass, which provides expert child-focused advice and support and safeguards children. I can confirm that at present there are no agreements we wish to join and implement using the Clause 2 power falling within the area of devolved competence in Wales. However, should an intention to join and implement such an agreement arise, we would of course consult the Welsh Government before implementing the agreement—as we do—at the soonest possible opportunity and with the intention of engaging in meaningful consultation and discussion, with a view to reaching agreement over how best to proceed. I trust your Lordships now appreciate the different position of Wales in this context and why I could not simply give the copper-bottom guarantee that merged the position of Wales with Northern Ireland and Scotland.

Amendment 12, also tabled by the noble Lord, Lord Hain, covers similar ground to the previous amendment. It inserts a requirement that, prior to laying a draft of a statutory instrument to implement an agreement before each House of Parliament under paragraph 3(2) of Schedule 6, the Secretary of State must request and obtain the consent, by means of a resolution, of the Scottish Parliament, the Senedd and the Northern Ireland Assembly, as appropriate in so far as the private international law agreement affects matters that are devolved to each of those legislatures.

I have already set out the devolution settlement in this area and the proposed use of the Clause 2 power in that context. The Bill as currently drafted fully adheres to the devolution settlement in this area of law. I also recognise that the position of Wales in this

area is different to that of Scotland and Northern Ireland and have already given assurances on that matter.

I continue to believe that the approach taken by both amendments of introducing a legislative requirement either to consult the devolved Administrations or to get their formal consent on the exercise of the Clause 2 power is unnecessary and confusing given how the Bill is currently framed. The issue of consent is already catered for in the Clause 2 power. On consultation, I continue to believe that any formal provision is unnecessary because one will never secure consent without consultation.

I hope that satisfies the noble Lord, Lord Hain, with regard to our position. We are concerned to consult and have consent in the context of each devolved settlement, remembering that it is for the Scottish Government to implement private international law agreements in Scotland, which is quite distinct from the position in Wales. For these reasons, I invite the noble Lord to withdraw his amendment.

The Deputy Chairman of Committees: I have received no requests to speak after the Minister, so I call the noble Lord, Lord Hain.

Lord Hain [V]: I thank my noble friend Lady Ritchie of Downpatrick for the telling point that she made about Northern Ireland and the confused picture of consultation there. I also thank my noble friend Lord McConnell for the interesting points that he made, including on the long-overdue formal structure for mandates for treaties. It was an interesting point that the Government might want to consider. Whether it is over Europe or international treaties, I have always found the process for forming the mandate for the negotiations in respect of the devolved Administrations, as my noble friend Lord McConnell put it—as a former First Minister of Scotland, he is an authority on these matters—to be a sort of retrospective rather than prior consultation. I thank, too, the noble Lord, Lord Thomas of Gresford, for his important point about getting agreement, if possible, with the devolved Administrations on all the Bills that are descending on us in a great shower as we move to leave the European Union.

The noble Lord, Lord Bhatia, made important points about family law and proper consultation over the complexities of children's rights. My noble and learned friend Lord Falconer made what I thought was the very telling observation that the way that these amendments have been handled and, indeed, the response to my points at Second Reading are all of a piece, to use his phrase, with the way in which the Bill has been conducted.

I thank the Minister for his response. However, I am afraid that I do not accept his interpretation of the way that I approached this matter at Second Reading, and I think that revisiting *Hansard* will confirm that. My points concerned Wales. I asked for a copper-bottomed guarantee on consultation over Wales. I did not get it then and I have only sort of got it, grudgingly, now. I simply say to him that I always found in my role as a Minister that it was better to own up and admit to mistakes if and when you made them. If I may say so as a former Secretary of State for Wales and for Northern Ireland, I think that it is also better to be open and embracing about devolution and the statutory requirements for consultation and agreement on these matters, rather than to be a bit grudging and chippy about them.

I have no idea what the Welsh Government will make of the Minister's reply. He seems to have given a commitment to consult and reach agreement, but we will need to see. Maybe this matter will have to be revisited on Report, especially if the Welsh Government react with a letter to the Lord Chancellor in the way that they did after his response to me last week. Perhaps that will not be necessary—I certainly hope not. I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Amendment 12 not moved.

House adjourned at 5.51 pm.

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