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PARLIAMENTARY DEBATES
(HANSARD)

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

Tuesday 23 June 2020

The House met in a Hybrid Sitting.

11 am

A minute's silence was observed in memory of the victims of the attack in Reading.

Prayers—read by the Lord Bishop of Newcastle.

Arrangement of Business

Announcement

11.07 am

The Deputy Speaker (Lord Bates) (Con): 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 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. I ask that those asking supplementary questions to keep them short and confined to two points, and that Ministers' answers are also brief.

Fly-tipping

Question

11.08 am

Asked by ***Lord Trefgarne***

To ask Her Majesty's Government what steps the propose to take to reduce the amount of illegal fly-tipping, particularly in rural areas.

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, fly-tipping is unacceptable and the Government are committed to tackling this crime. We have given local authorities powers to issue fixed-penalty notices, seize vehicles and investigate and prosecute fly-tippers. Fly-tipping has reportedly increased in some areas and decreased in others during the Covid-19 pandemic. We have worked with local authorities and published guidance to support the reopening of household waste and recycling centres, with more than 90% of local authorities now providing some level of service.

Lord Trefgarne (Con): My Lords, I am grateful to my noble friend the Minister for that reply. Is it not the case that, as he said in the Answer, a number of local authority waste disposal facilities have been closed in recent weeks, which has made matters worse? Can he use his influence with local authorities to reopen all the facilities that have been shut?

Lord Goldsmith of Richmond Park [V]: Based on the limited data we have—there is a not a huge amount—there appears to have been an overall increase in reports of fly-tipping, although, as I said, in some areas it has decreased. It does not necessarily mean that fly-tipping has increased across the country. The good news is that, as a consequence of recent changes, more than 90% of local authorities are now providing some level of HWRC services.

The Earl of Shrewsbury (Con) [V]: My Lords, does the Minister agree that it is grossly unjust that landowners should be fined and are also expected to bear the cost of disposal of materials illegally fly-tipped on their property? Illegal fly-tippers must be made to pay for this, not the landowner. It should include the seizure and disposal of their vehicles to help with remuneration.

Lord Goldsmith of Richmond Park [V]: We expect local authorities to investigate fly-tipping incidents on private land, prosecute the fly-tippers wherever they can and recover clearance costs wherever possible. On conviction, a costs order can be made by the court so that a landowner's costs can be recovered from the perpetrator. Making landowners responsible for clearing fly-tipped waste ensures that there is no perverse incentive to dump waste and encourages them to take measures to prevent dumping on their land.

Lord Berkeley of Knighton (CB) [V]: My Lords, are the penalties balanced correctly? On average, somebody is fined £450 for transgressing, but on average it costs the landowner some £800 to get rid of rubbish. Should we not have more council dumps? Would this not alleviate the problem in the first place?

Lord Goldsmith of Richmond Park [V]: The noble Lord makes a good point. However, the Government are very much taking action and, I believe, are on the front foot. The resource and waste strategy commitments include a whole raft of measures to make it easier for waste to be used as a resource and harder for it to drop out of the system illegally. The Environment Bill has several measures to help tackle waste crime generally and to ensure that waste criminals are held to account. We will deliver on our manifesto commitment to continue working with magistrates, the Sentencing Council and the Judicial Office to deliver tougher punishments for people who engage in fly-tipping. In addition, local authorities have enhanced powers to tackle fly-tipping, including powers to search and seize the vehicles of suspected fly-tippers, and fixed-penalty notices—as the noble Lord said—of up to £400.

Baroness Crawley (Lab) [V]: My Lords, following on from the question asked by the noble Lord, Lord Berkeley, does the Minister not agree that the number of recycling centres needs to be increased and that they need to be local and within easy reach of the public to encourage their use? What, then, is the Government's response to

[Baroness Crawley]
the recent warning from Conservative council leaders that, without financial support, such services will have to be reduced on a grand scale?

Lord Goldsmith of Richmond Park [V]: We recognise that, as a consequence of a lot of the initiatives that are coming in on the back of the Environment Bill and the waste strategy, there will be greater pressure on local authorities to recycle. We will therefore require them to have a more consistent approach—for example, with a guaranteed collection of a wide range of recyclable products. Although we recognise that local authorities will need to scale up, we are also committed to ensuring that they will not face an extra cost as a consequence of that legislation. Therefore, whatever the additional cost to them, it will be recouped either from the producers of waste or from central government.

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, since the advent of lockdown, there has been, as others have said, an increase in fly-tipping. Although local authorities are now able to open HWRCs, some have chosen not to, and those that are open will not take garden waste. Will the Minister now put pressure on local authorities to ensure that garden waste is accepted at HWRCs so that it is not dumped in our countryside?

Lord Goldsmith of Richmond Park [V]: As I said earlier, there has been progress in reopening facilities and the vast majority have now reopened. But we recognise that, for a whole host of reasons, local authorities are heavily stretched as a consequence of the impact of Covid-19. That is why the Government have announced £3.2 billion of additional funding to support them in responding to the pandemic, including in the core services that they provide in relation to the collection, processing and removal of waste. In addition, Defra has published guidance for local authorities on the prioritisation of waste collection services and managing household waste recycling centres.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, has there been a quantification of fly-tipping in rural areas since the onset of the pandemic and is there a comparative figure with this time last year?

Lord Goldsmith of Richmond Park [V]: We have limited data on the increase, but it seems to us that in a large number of areas across the country, both urban and rural, fly-tipping has increased. The Government's approach is not to take over the control or management of waste in each local area but to set a clear legal framework, to write the rules and to ensure that, where people transgress, the enforcement powers are there for local authorities.

Lord Lucas (Con) [V]: My Lords, will my noble friend encourage local authorities to use the covert surveillance powers that they have, and will he make an assessment of whether the current level of fines is sufficient to enable local authorities to afford to do that?

Lord Goldsmith of Richmond Park [V]: My noble friend makes a very important point. Of course, it is up to local authorities, often working with the local police, to determine whether and where CCTV cameras, for example, should be placed. Defra is of the view that CCTV has an important role to play. We are also encouraging private landowners to consider installing appropriate deterrent signage, as well as CCTV cameras.

The Earl of Erroll (CB) [V]: Does not the high cost of the landfill tax and the complexity of waste regulations make fly-tipping the easy, and therefore the chosen, option? Some desirable activities such as building cannot avoid producing waste. Can we reduce the costs for small businesses and individuals by simplifying the regulations? Do people not respond better to incentives than to penalties?

Lord Goldsmith of Richmond Park [V]: I do not think that it is possible to avoid the perverse incentive for some to engage in fly-tipping while, at the same time, ramping up our ambitions in relation to the elimination of unnecessary waste across the system. The Environment Bill takes us much further in that direction, putting a huge onus on producers to take responsibility for the waste that they generate, abandoning all kinds of unnecessary single-use plastic items, introducing deposit return schemes and managing the export of plastic waste to countries that simply cannot cope with it. Alongside that, there will of course be some incentive for criminal activity, and that is why we are providing local authorities with the powers and tools that they need to eliminate, or at least minimise, that risk.

Baroness Jones of Whitchurch (Lab) [V]: My Lords, does the Minister accept that many fly-tippers are repeat offenders and often operate as part of a criminal gang? What discussions have taken place with the Home Office to ensure that policing in rural areas is increased and that rural crime is at last taken seriously?

Lord Goldsmith of Richmond Park [V]: In addition to providing more powers for local authorities to tackle fly-tipping, including, as I said earlier, the power to search and seize the vehicles of suspected fly-tippers, and fixed penalties and so on, we have launched the Joint Unit for Waste Crime. Its purpose is not to deal with mundane or small levels of fly-tipping but to take on serious and organised criminality in the waste sector. That means bringing all the relevant agencies together and effectively stamping out the organised component of waste crime.

Baroness Thornhill (LD) [V]: In my experience, local authorities feel that an exceptionally high burden of proof is required to gain a prosecution. Since 2014, only two cases in the magistrates' court have attracted the maximum fine of £50,000. Therefore, does the Minister agree that it is perhaps time to review the sentencing guidelines?

Lord Goldsmith of Richmond Park [V]: There has been an increase in the number of people who have been brought to justice on the back of fly-tipping, and

that increase has happened year on year, so I think that we are heading in the right direction. In 2018-19, local authorities in England dealt with over 1 million fly-tipping incidents—an increase of 8% from the year before. Nearly two-thirds of that involved household waste but a very small component, around 3%, involved industrial-scale disposal of waste—of tipper lorry-load size or larger. Therefore, I think that the legal framework has been strengthened and it seems to be taking us in the right direction.

The Deputy Speaker (Lord Bates) (Con): My Lords, I am afraid that the time allowed for this Question has now elapsed. We come to the second Oral Question, in the name of the noble Lord, Lord Collins of Highbury.

Rwanda

Question

11.20 am

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

To ask Her Majesty's Government what recent discussions they have had with the government of Rwanda and the Commonwealth Secretariat on (1) progress on implementing the action points since the Commonwealth Heads of Government Meeting held in London in April 2018, and (2) arrangements for exchanges with Commonwealth Heads of Government as a consequence of the postponement of the June 2020 meeting.

The Minister of State, Foreign and Commonwealth Office and Department for International Development (Lord Ahmad of Wimbledon) (Con): My Lords, as Chair-in-Office for the Commonwealth, we have worked diligently with the Commonwealth family to deliver the heads' 2018 commitments and regularly update Members on this progress. We are also in close contact with the Government of Rwanda and the Commonwealth Secretariat on rescheduling CHOGM. Commonwealth member states have responded to Covid-19 collaboratively. Commonwealth Health Ministers met virtually on 14 May to discuss the pandemic, and on 28 May I briefed Commonwealth high commissioners on the UK's international response.

Lord Collins of Highbury (Lab): I thank the Minister for that response. Sadly, since Jeremy Hunt left office, we have had little debate or reporting on the Commonwealth. I hope that, through the usual channels, the Minister can put that right. As he said, as Chair-in-Office—and, actually, as Equal Rights Coalition co-chair—we are in a leadership position to ensure delivery on the Commonwealth commitments, especially on human rights. So when will the Government release the urgently needed resources for civil society to help LGBT people survive the Covid-19 crisis and continue to advance LGBT and human rights internationally?

Lord Ahmad of Wimbledon: The noble Lord is right to raise the importance of the most vulnerable, particularly in the Covid-19 crisis. I assure him that the UK-funded Equality & Justice Alliance has already helped six Commonwealth Governments repeal or reform outdated legislation that discriminates against or fails to protect women, girls and LGBT people. We have a wide range of deliverables; I will, of course, update the noble Lord on the specifics of what we have achieved since 2018. This includes delivery on sustainability and prosperity, with more than 3,000 women-owned businesses having now been set up through British funding. On security, we have supported the completion of seven national cybersecurity reviews. On whether this remains a priority, we are proud of our role as Chair-in-Office; the Commonwealth is very much a priority within the existing department and, indeed, will remain so in the new department—the Commonwealth remains a key priority for Her Majesty's Government.

Lord Desai (Lab) [V]: My Lords, this CHOGM will be the first that His Royal Highness Prince Charles will be presiding over. Would it not be a good idea to rethink the location of CHOGM to save any embarrassment to His Royal Highness, given the appalling human rights record of the Government of Rwanda?

Lord Ahmad of Wimbledon: My Lords, the decision has already been made on where the CHOGM will be held. We work across the Commonwealth to ensure that the issue of human rights is brought under focus. We look forward, as do all member states, to the rescheduled Commonwealth Heads of Government meeting in Kigali, next year.

Baroness Falkner of Margravine (Non-Afl) [V]: My Lords, I declare an interest as a former employee of the Commonwealth and as someone in receipt of a Commonwealth Secretariat pension. The Commonwealth has never been in greater need of stability. Its funding, staff morale and governance are at an all-time low in the secretariat. As Chair-in-Office, the UK needs to announce a quick decision. Does the Minister agree that the current Secretary-General should be appointed until CHOGM next year, where Heads of Government can meet and retreat and arrive at a decision about the future appointment of the Secretary-General? The news media is full of speculation; we cannot avoid saying something about this.

Lord Ahmad of Wimbledon: My Lords, the Government are very much committed to reforms within the Commonwealth. As the noble Baroness will know, we led a reform package in 2019. I presided over the Foreign Ministers' meeting which agreed this across the Commonwealth 53—now 54. On the appointment, or reappointment, of the Secretary-General, that is very much a matter for the Heads of Government; it will be looked at in Kigali next year.

Lord Moynihan (Con) [V]: My Lords, the communiqué refers to the role that sport can contribute to the 2030 agenda. Does my noble friend the Minister agree that the work done by the 2022 Birmingham Commonwealth Games Organising Committee and the Commonwealth Games Federation on human rights, the accessibility strategy and the Games-wide sustainability plan is

[LORD MOYNIHAN]
world-leading, showcases what can be done when we organise major international sports along these lines, and should be supported by the Government?

Lord Ahmad of Wimbledon: My Lords, I am happy to agree with my noble friend; I also pay tribute to his leadership over many years in this area.

Lord Chidgey (LD) [V]: My Lords, tomorrow, the Institute of Commonwealth Studies is holding a Zoom conference across the Commonwealth, in what should have been Rwanda CHOGM week. There will be six thematic panels on subjects including Commonwealth responses to Covid-19, democratic government, media freedom, LBGT rights, and colonial reparations. What will be the UK Government's representation at this virtual conference, to report progress since the London CHOGM and to put the UK position on Commonwealth issues, particularly in the context of the Black Lives Matter campaign?

Lord Ahmad of Wimbledon: My Lords, I understand that there is a meeting taking place, but it does not hold any formal status within the context of replacing the Heads of Government meeting; that will take place in Kigali as it is rescheduled by the Rwandan Government. As regards our attendance, we have continued to liaise with the secretariat, and we will certainly be looking forward to the attendance of the Commonwealth envoy and distinguished diplomat Philip Parham, if the meeting mentioned by the noble Lord does go ahead.

Lord Howell of Guildford (Con) [V]: My Lords, I declare an interest as in the register. Does my noble friend the Minister recognise that the modern Commonwealth is about a lot more than Governments and officials? It is, of course, not even treaty-based, so even if the Heads of Government meeting is postponed, as it has been, a vast web of non-governmental Commonwealth activity continues and grows. Some would say that this is perhaps a greater and more important part of the Commonwealth network. Will the Government, while we are still in the chair, make an extra effort to support and encourage the mass of civil society grass-roots programmes and projects that make up today's and tomorrow's Commonwealth family, of which we are fortunate enough to be a member?

Lord Ahmad of Wimbledon: My Lords, I am, of course, happy to confirm that arrangement with my noble friend—I work with him across these institutions. I also share with him that, notwithstanding the postponement of CHOGM, different Ministers, including Health Ministers and Trade Ministers, continue to meet, albeit, in the current climate, virtually.

Baroness Prashar (CB) [V]: My Lords, one of the priorities of the Government, along with others, was to drive the reform of the Commonwealth Secretariat. Can the Minister tell the House what progress has been made towards that end and how they will sustain the momentum going forward?

Lord Ahmad of Wimbledon: My Lords, I have already alluded to the fact that Ministers adopted a package of reforms, which come into effect once endorsed by the Heads of Government; that will take place at the rescheduled CHOGM.

Lord McConnell of Glenscorrodale (Lab): My Lords, I congratulate the Minister on the launch last Friday of the Murad code to help victims of sexual violence in conflict, which is named after Nadia Murad, the inspirational Yazidi survivor. Given the history of Rwanda regarding sexual violence in conflict, will the Government ensure that the Murad code is on the agenda for the Kigali CHOGM next year? Can he also update your Lordships' House on progress towards prosecuting the ISIS individuals who were responsible for the capture and slavery of so many Yazidi women and girls?

Lord Ahmad of Wimbledon: My Lords, in the interest of time, I will write to the noble Lord on his second question, but progress is being made there. On the agenda, I thank the noble Lord for his kind remarks on PSVI. As we did previously in London, I am hoping that we will be able to convene a side meeting of leading nations during the Heads of Government meeting when it is rescheduled in Kigali.

Lord Campbell of Pittenweem (LD) [V]: My Lords, when black rights matter, should not black and gay rights matter equally throughout the Commonwealth?

Lord Ahmad of Wimbledon: My Lords, I agree with the noble Lord. All rights matter: black rights, gay rights, religious rights—all rights matter for the Commonwealth; that is what the Commonwealth is all about.

Lord Alton of Liverpool (CB) [V]: My Lords, I have a keen interest as a patron of Hong Kong Watch and as vice-chairman of the all-party parliamentary group. Following the call of 155 Members of both Houses for the UK to initiate a Commonwealth programme giving the beleaguered people of Hong Kong the opportunity of second citizenship and place of abode in a Commonwealth country, and with the continuing erosion of the Basic Law, what are we doing to secure Commonwealth backing for such an international lifeboat policy?

Lord Ahmad of Wimbledon: My Lords, my right honourable friend the Foreign Secretary has already made a comprehensive announcement around BNO. We are obviously looking at the outcome of current Chinese policy on this issue and we will update the House accordingly.

Lord Polak (Con): My Lords, for many reasons CHOGM 2020 was important to Rwanda, and now CHOGM 2021 will be possibly even more important. RwandAir has made serious efforts in recent years to cement UK-Rwanda relations by flying directly between Kigali and London Gatwick. Will my noble friend support the request by Rwanda Air for landing spots at Heathrow?

Lord Ahmad of Wimbledon: My Lords, I should declare an interest as I was Aviation Minister when we gave landing rights at Gatwick to RwandAir, and I pay tribute to my noble friend Lord Popat as trade envoy. The issue of slots at Heathrow is very much a matter for Heathrow Airport Holdings Ltd, but we regard our relationship with Rwanda as a strong one; indeed, only yesterday I spoke to the Foreign Minister of Rwanda about preparations for CHOGM 2021.

The Deputy Speaker (Lord Bates) (Con): My Lords, all supplementary questions have been asked and we now come to the third Oral Question, in the name of the noble Lord, Lord Balfe.

House of Lords: Size

Question

11.31 am

Asked by ***Lord Balfe***

To ask the Senior Deputy Speaker what consideration has been given by the Procedure Committee to bringing before the House a resolution to amend Standing Orders to provide that the House should reduce the number of introductions of new Peers annually to the number recommended in the report of the Lord Speaker's Committee on the Size of the House.

The Senior Deputy Speaker (Lord McFall of Alcluith) [V]: My Lords, under the Life Peerages Act 1958, Her Majesty has the power to confer a peerage for life, and that peerage entitles the holder

"to receive writs of summons to attend the House of Lords and sit and vote therein accordingly".

The House is therefore restricted in what it can do to limit introductions without undermining that Act of Parliament. It is the Government and the party groups who are best able to ensure that we continue to reduce the size of the House by accepting the recommendations in the reports from the Lord Speaker's Committee on the Size of the House.

Lord Balfe (Con) [V]: I thank the Senior Deputy Speaker for his response, but if this House is to get back its reputation and remove the odour of disrespect from Downing Street, it has to put its own house in order and not wait for others to do so. Will he therefore support bringing before the House, for a vote in the near future, a resolution along the lines outlined in my Question?

The Senior Deputy Speaker [V]: That is a matter for the Procedure Committee. I made reference to our possibly undermining the Act of Parliament. However, I will refer the noble Lord's question to the Procedure Committee when we meet.

Lord Truscott (Ind Lab) [V]: My Lords, is it not the case that the Bill from the noble Lord, Lord Grocott, which would abolish hereditary by-elections, would help to achieve a gradual reduction in the size of the House? I understand that this is a matter for the usual channels, but will the House authorities try to ensure that there is sufficient time to debate and pass this important Bill—perhaps third time lucky?

The Senior Deputy Speaker [V]: The noble Lord, Lord Grocott, has a question, and I presume that will add to what the noble Lord, Lord Truscott, has said. Again, the Burns report was set to ensure that we achieved change without legislation. That is a difficult issue, but the Procedure Committee will be looking at it and other issues.

Lord Norton of Louth (Con) [V]: My Lords, to implement the "two out, one in" principle, there have to be two out in the first place. Will the Senior Deputy Speaker commit to the Procedure Committee revisiting the whole of the Burns committee report to see what can be implemented through the rules of the House rather than relying on good will, to give effect to the recommendation to reduce the existing number of Members and achieve what the committee termed an accelerated "two out, one in" programme?

The Senior Deputy Speaker [V]: I inform the noble Lord that the Burns committee is still sitting. If it had not been for the lockdown, the committee would have been producing its fourth report. I am sure that will come shortly, so I await the comments of Burns regarding peerages in light of the new Government.

Baroness Deech (CB) [V]: Will the Senior Deputy Speaker join me in congratulating the House of Lords Appointments Commission on maintaining the highest standards in approving appointments, and in the hope that I express that it will extend its remit to considering the ability of appointees to contribute to the House? In relation to the suggestion by the noble Lord, Lord Balfe, will the Minister note that to do anything like that would open the appointments system to judicial review all the way to the Supreme Court, and would drag the Crown in as those appointments are made by the Crown?

The Senior Deputy Speaker [V]: That is a very perceptive point on this issue, and it feeds into the point I made about the limits on the House and the Procedure Committee. The Appointments Commission has done an excellent job on that issue, and I am sure that any further suggestions or initiatives it produces will be looked at seriously.

Lord Grocott (Lab) [V]: My Lords, since 23 March, when the House resolved to suspend any by-elections for hereditary Peers until 8 September, three further vacancies have arisen. Does the Senior Deputy Speaker agree that we cannot be serious about reducing the size of the House if we are to have a clutch of by-elections for new hereditary Peers in the autumn? Will he ask the Procedure Committee to recommend at least postponing these wretched elections or, better still, getting rid of them altogether?

The Senior Deputy Speaker [V]: The noble Lord has been both determined and courteous in his approach to this. I will certainly bring up this issue. Standing Order 10 was suspended for three months, and it has to be looked at again. I will include the noble Lord's questions and suggestions on that.

Lord Tyler (LD) [V]: My Lords, does the Senior Deputy Speaker agree that the central problem lies not in our House but in No. 10? Has any notification been received from Messrs Johnson and Cummings that they are prepared to stick with the promise made by the previous Prime Minister to abide by the suggestions and recommendations of the Burns committee, which were approved by the House?

The Senior Deputy Speaker [V]: The previous Prime Minister, Theresa May, most certainly showed restraint in her letter and her engagement with the Lord Speaker on that issue but, as the first Burns report stated, the proposal would work only if the Prime Minister undertook to appoint no more Members than there were vacancies. I look forward to the fourth Burns report looking at this issue and giving us its reflections.

Lord Young of Cookham (Con) [V]: My Lords, last July the Burns committee produced its third report with benchmarks for year 3, indicating by how much each group should reduce its numbers if we were to hit the target by 2027. Year 3 ended on 7 June. Does the noble Lord agree that when the Burns committee reconvenes, it would be helpful if it then set targets for the remainder of this Parliament, taking account of the recent election?

The Senior Deputy Speaker [V]: The suggestion of benchmarks is very sensible. The outline for the appointments was from 2017 to 2022. I am sure that the Burns committee will look at that issue when it reconvenes and reports, and we will certainly ensure that those comments are relayed to the committee.

Lord Singh of Wimbledon (CB) [V]: My Lords, does the Senior Deputy Speaker agree that the continuing misuse of the appointments system to reward those who, through financial donations or in similar ways, support political hierarchies brings the whole House and Parliament itself into disrepute?

The Senior Deputy Speaker [V]: We have mentioned the House of Lords Appointments Commission, and it is doing an excellent job. I am sure it will have keen views and reflections on that issue as we go forward.

Baroness Smith of Basildon (Lab) [V]: My Lords, is there not a huge irony here? Here we are, Members of your Lordships' House from all the different political parties and none, and we are the ones calling for reform as soon as possible, while the only reason that we have not got it is because the Government will not do it. The Burns report made a very modest and sensible proposal but, as the noble Lord, Lord Young, said, it has now been overtaken by events. Should we not be pressing the Government to say that this really cannot wait? We are more effective and useful if we are a smaller House. With rumours of a huge government appointment list coming, is there not some urgency to this situation now for both the Government and your Lordships' House?

The Senior Deputy Speaker [V]: The House endorsed the Burns report. There is a keenness to ensure that we reduce the size of the House. Pressure or further lobbying on this issue can be made, whether in the Chamber of the House or in the Procedure Committee. As she is a member of the Procedure Committee, I have no doubt that the noble Baroness will be raising that at a future meeting.

Lord Hayward (Con) [V]: My Lords, the message has been quite clear in all the questions put that there is a general desire across the House that we keep numbers of new Members to a minimum, and thereby reduce membership levels. Can we have an urgent debate on the subject, so that we can clearly indicate the mood of the House and how the matter might be resolved?

The Senior Deputy Speaker [V]: That issue is outwith my remit, but the Government's business managers are listening to this. Again, I will convey that to the business managers to reflect the strength of feeling in the House overall, and particularly on the Question today.

Lord Rennard (LD) [V]: My Lords, the problems with the size of the House are exacerbated by continuing the by-elections of hereditary Peers. By-elections and elections to local authorities have been postponed for a year, so will Parliament be given a say as to whether by-elections of hereditary Peers will resume in September? How can the opinion of this House be tested on this issue before then?

The Senior Deputy Speaker [V]: Standing Order 10(6) will have to be looked at again in September. I am sure that there will be an opportunity for the House to make comments to the Leader on that issue.

The Deputy Speaker (Lord Bates) (Con): My Lords, I thank noble Lords. All supplementary questions have again been asked, and we now move to the fourth Oral Question. I call the noble Lord, Lord Randall of Uxbridge.

Schools: Return of Students

Question

11.41 am

Asked by ***Lord Randall of Uxbridge***

To ask Her Majesty's Government what consultations they have had with (1) education, and (2) health, professionals about plans to facilitate the safe return of students to schools as soon as possible.

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, the Government's ambition is for all education settings to open fully in September. Our approach and decisions continue to be based on the best scientific and medical advice. We have been working with Public Health England and the education sector, including the unions, and have provided guidance to support the sector in opening more widely. We will keep engaging closely and regularly with the sector as it plans to welcome back all learners.

Lord Randall of Uxbridge (Con) [V]: I thank my noble friend for her Answer. What provision will be made for the year 11 and year 13 classes leaving next year, and will there be thorough consultations with head teachers about that provision?

Baroness Berridge: My Lords, the Government have recently updated the guidance and, where schools have capacity, we have encouraged them to have face-to-face contact with all students, particularly those in years 11 and 13. In relation to the particularly vulnerable in year 11 who are in alternative provision, there has been a £7 million fund because we recognise the risks of those young people not being in education or training.

Lord Triesman (Lab) [V]: My Lords, can the Minister tell us how frequently she is meeting the organisations to which she referred in her—[*Inaudible.*]

The Deputy Speaker (Lord Bates) (Con): We are having difficulty hearing the noble Lord, Lord Triesman, so we will move on to the noble Lord, Lord Storey, and come back to him if there is time to sort out the technical problems.

Lord Storey (LD) [V]: My Lords, it is good news that all schools are reopening in September and that all children and young people will be back in school, but God forbid that there was a localised outbreak. Who would make the decision to close schools, and what level would have to occur before that action took place?

Baroness Berridge: My Lords, if a school has an outbreak where a number have tested positive for the virus, that is a matter for Public Health England, at regional and local level, to evaluate the situation on the ground. We have made "test and trace" available for all students and staff, and members of their household, so as to be able to deal with a situation like that.

The Deputy Speaker: I call the noble Lord, Lord Caine.

I am afraid that we cannot hear the noble Lord, so we will go to the noble Lord, Lord Laming.

Lord Laming (CB) [V] : My Lords, I am sure that it will be very good news if all our schools are fully open in September. I have a growing concern for those young people who just will not appear in September. What steps will be taken to make contact with these young people? Some of them may be extremely vulnerable, and we must not let them be lost in the system.

Baroness Berridge: My Lords, the noble Lord is correct that it is not just about vulnerable children. There are those who head teachers will be aware have become vulnerable during this period; we have therefore always made school places open to those whom we call the otherwise vulnerable, which gives head teachers the discretion to offer school places. We have also funded Barnardo's with £7 million to run a service called "See, Hear, Respond", which is specifically aimed at reaching out to those children who are not in contact with statutory agencies but who we believe may need support at this time.

Lord Watson of Invergowrie (Lab) [V]: My Lords, last week schools and colleges in England were able to readmit students safely in their first year of studying for GCSEs and A-levels. Labour welcomes that, but we believe that the Government should have been much more ambitious. In Wales, every child will have some time in school before the summer holidays, allowing teachers to assess how their pupils have fared during school closures. Without that key information, valuable time would be lost when the new school year starts, as we all hope that it will in September. The Minister has just said that she is encouraging schools to have face-to-face time with their pupils. Why should parents in England have to accept lower expectations than those in Wales?

Baroness Berridge: My Lords, it was of course the Government's ambition for all primary-age children to be back in school before the summer, but that was not possible on the current medical and scientific evidence. The updated guidance allows schools to bring back students in all years and have some face-to-face contact, as long as they do that within the guidelines. For instance, at secondary school there should be no more than 25% of students on the premises at any one time. We agree with the noble Lord: we recognise that it is essential for pupils to have some contact with their teachers before the school holidays.

Lord Addington (LD) [V]: My Lords, will the Minister give some thought to implementing a better policy for online teaching just in case there is another call for a lockdown, either localised or national? We have learned that, where it is successfully done, people learn better. This must be part of the policy.

Baroness Berridge: My Lords, of the £1 billion catch-up premium, £350 million has been devoted to a national tutoring service for disadvantaged students. That will be face to face, as well as online, and we hope that the evidence base for it supports the idea that it is a key way for disadvantaged children to catch up. We hope that it will be a legacy for the system so that, going forward, it can be one way in which schools will use their pupil premium to support those students beyond the catch-up year.

Baroness Blower (Lab) [V]: My Lords, the Minister has in part addressed this, but can she say what discussions have been held with education unions to ensure that planning is in place for the academic year

[Baroness Blower]
2020-21 to cope with any second spike in the virus? How frequently are meetings taking place between the Government and education unions to discuss the detail of curriculum coverage and assessment for all young people from September?

Baroness Berridge: My Lords, the Secretary of State meets the education unions weekly, and officials and other Ministers are in touch regularly with the unions. We have worked closely with them, particularly on developing the guidance. In the next two weeks, guidance will be issued to make it clear what is expected of schools regarding curriculum and attendance in September, so that they will have time to plan before the end of the summer term.

Lord Dobbs (Con) [V]: My Lords, six children have, sadly, died with Covid, yet nearly 2,000 children are killed or seriously injured every year in traffic accidents, which suggests that children suffer more harm from being driven to school than being in school. Does my noble friend agree that the scare stories circulated by some, including teaching unions, about the dangers of returning to school are as dangerous as the anti-vaccine lobby? Does she also agree that much more long-term harm will be inflicted on children from not going back to school than there could possibly ever be from them receiving their education?

Baroness Berridge: Indeed, my Lords. Away from the flurry of the headlines and speaking to academy trust leaders, I know that they do not just want their children back in school but are desperate for them to be back in school, because they know that it is the best place for them to be educated. They also know that it is best for their mental well-being to be in a school environment. They have been working tirelessly, many through the school holidays, to ensure that young children are in school. They are particularly concerned about vulnerable children who have not been in education. I agree with my noble friend: we want and look forward to welcoming all our children back to their education settings in September.

Lord Kilclooney (CB): My Lords, a good education is fundamental to equal opportunities in later life. It is good to hear that all schools will open in September after the summer break. However, it is not sufficient just to open all schools. Will there be sufficient space for all pupils to attend?

Baroness Berridge: I think that the noble Lord is referring to the current situation regarding social distancing. As noble Lords will be aware, the Prime Minister has asked for a review of that and we will have the results within the next few days, but, of course, that influences greatly the capacity of schools to welcome students back.

Lord Mann (Non-Afl) [V]: Will all secondary schools be required in September to provide details of which pupils have disappeared from their rolls? Will those figures be provided to government?

Baroness Berridge: My Lords, schools would normally liaise with their local authority in relation to their rolls. As noble Lords will be aware, Ofsted is not currently carrying out routine inspections, but I am sure that pupil attendance and any off-rolling will be matters for it to address when it resumes inspections.

The Deputy Speaker: I am sorry that due to technical difficulties we are not able to go back to the noble Lords, Lord Triesman and Lord Caine. That completes the time allowed for this Question and it concludes hybrid proceedings on Oral Questions.

11.52 pm

Sitting suspended.

Arrangement of Business

Announcement

12.45 pm

The Deputy Speaker (Baroness Henig) (Lab): My Lords, some Members are here in the Chamber, and others are participating virtually, but all Members will be 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 as we switch between physical and remote participants. The usual rules and courtesies in debate apply. Please ensure that all questions and answers are short.

Reading Terrorist Attack

Statement

The following Statement was made on Monday 22 June in the House of Commons.

"With permission, Mr Speaker, I will make a Statement on the senseless terror attack that took place in Reading on Saturday evening. That appalling attack is now subject to an ongoing police investigation and, as such, there are limits to what I can say. However, I want to share as much detail as I can with the House this afternoon, on behalf of the police, following my conversations with them over the weekend and my visit to Reading this morning.

At around 7 pm on Saturday evening, a 25 year-old male entered Forbury Gardens, in the centre of Reading, and began to viciously attack several groups of people. The outstanding police officers from Thames Valley Police responded with great courage and great speed. The armed suspect was tackled to the ground by an unarmed officer and was immediately arrested at the scene. The suspect remains in custody.

After initial investigations, Counter Terrorism Policing declared the attack a terrorist incident, and is now leading the investigation. The police have confirmed that the threat is contained, but that, sadly, three innocent members of the public were killed, murdered

in a sudden and savage knife attack as they enjoyed a summer evening with friends. Another three victims were injured and received hospital treatment.

My thoughts and prayers are with the family and friends of everyone who was hurt or killed as a result of this sickening attack. The victims of terrorism unit at the Home Office, and family liaison officers, are supporting them, and I know that Members from across the House will join me in sending our heartfelt condolences.

It was truly humbling to visit Thames Valley Police this morning. I had the privilege of meeting the officers who first responded to the incident and who were responsible for apprehending the suspect, as well as for trying to prevent the loss of further life. Those officers—a few of whom were student officers—ran towards danger, to help those in need, without a second thought. A young unarmed police officer took down the suspect without hesitation, while another performed emergency first aid on those who were injured. These officers are heroes. They showed courage, bravery and selflessness way beyond their years. They are the very best of us. I would also like to pay tribute to the response of every emergency service that attended the scene, as well as to members of the public who stepped in to prevent further loss of life.

The United Kingdom has the best security services and police in the world. Since 2017, they have foiled 25 terrorist plots, including eight driven by right-wing ideologies. They serve the country with professionalism and courage, embodying what the British public rightly expect from those on the front line of the battle against violent extremists and terrorists.

The UK's counterterrorism strategy remains one of the most comprehensive approaches to countering terrorism in the world but, over recent decades, we have all too often seen the results of poisonous extremist ideology. The terrorist threat that we face is complex, diverse and rapidly changing. It is clear that the threat posed by lone actors is growing. These terrorists are united by the same vile hate that rejects the values our country holds dear: decency, tolerance and respect.

We are united in our mission to tackle terrorism in all its forms. Since day one, the Government have backed our police and security services, which work around the clock to take down terrorists and violent extremists. On any given day, they make a series of calculated judgments and decisions on how best to protect our citizens and country based upon the intelligence that they gather.

In the light of the many complexities across the security, intelligence and policing communities, in January this year I announced increased resources for counter-terrorism policing, resulting in a £90 million increase this year alone. That has taken counterterrorism policing funding to more than £900 million—the highest ever. That is because we live in a complex world, against a backdrop of evolving and dynamic threats—threats that, when they do materialise, are worse than shocking when, as we have seen again this weekend, they result in the tragic loss of life.

Bolstering our security and policing network and front-line capability is part of our ambitious programme to strengthen the joint working between the police and security services to leave terrorists with no place to hide. It is also why we are committed to developing a new 'protect duty', so that businesses and owners of public places must take into account the threat of terrorism. It is also why, following the shocking attacks at Fishmongers' Hall and in Streatham, we took strong and decisive action.

That action included the introduction of the Terrorist Offenders (Restriction of Early Release) Act 2020, the emergency legislation that retrospectively ended the automatic early release of terrorist offenders serving standard determinate sentences, forcing them to spend a minimum of two-thirds of their time behind bars before being considered for release by the Parole Board. Through our Counter-Terrorism and Sentencing Bill, which goes into Committee in this House this week, we are introducing much tougher penalties for terrorists, to keep the public safe. This is the biggest overhaul of terrorist sentencing and monitoring in decades, strengthening every stage of the process, from introducing a 14-year minimum jail term for the most dangerous offenders to stricter monitoring measures. Jonathan Hall QC is also looking at how different agencies—including the police, probation services and security services—investigate, monitor and manage terrorist offenders.

I totally understand the desire for details and information to enter the public domain, particularly at this time, as people ask what happened and why. However, as you pointed out, Mr Speaker, I would ask everyone, including the media, to be cautious at this stage about reporting on individuals who have not been charged. We must not do anything that could put at risk the victims or their loved ones achieving justice.

The first duty of any Government is to protect the people they serve, so we continue to pursue every option available to tackle the terrorist threat and to take dangerous people off our streets. As the Prime Minister reiterated yesterday, the police and security services will continue in their investigations to better understand the circumstances of this tragic incident, and, if further action is needed, we will not hesitate. Our world-class CT police and security services have my unequivocal backing as they hunt down hate-filled terrorists and extremists. My message today is clear, simple and strong: swift justice will be done; victims will be supported; and, if further action is needed to stop terrorists in their tracks, this Government will not hesitate to act. I commend this Statement to the House."

12.47 pm

Lord Rosser (Lab) [V]: My Lords, I express our sincere condolences to the families of the three victims of the atrocity in Reading on Saturday. Our thoughts are very much with them, at what must be a heartbreaking and mind-numbing time. We send our very best wishes for a speedy recovery to our fellow citizens who were injured in the senseless attack, knowing that they are in the safe and caring hands of our magnificent NHS staff. It is clear that all the emergency services reacted to the sickening events on Saturday evening with speed, professionalism and a lack of regard for their own safety—in that final regard, particularly the unarmed

[LORD ROSSER]
police officer who apprehended the individual now under arrest. I express our appreciation of the courage and concern for others of members of the public at the scene who assisted those who were attacked.

The police have arrested an individual under terrorism powers. There are media reports that those who were murdered were members of the LGBT community and that the individual under arrest had mental health problems and was known to the security agencies. This is, however, an ongoing police investigation, and I appreciate that the Minister is constrained in what she can say, about either the specifics of this awful incident or the individual who is under arrest. But any further factual information she is able to provide would be helpful.

This is not the first violent attack by a lone individual, but rather an addition to what is a succession of recent such horrific incidents of this nature. In November, we had the attack at Fishmongers' Hall, and in February at Streatham; now, in June, it is Reading. The public want answers about these appalling incidents.

We understand that the security services have some 30,000-plus people known to them, and a very much smaller, but nevertheless significant, number of people in whom they have to take a much closer interest on our behalf and in the interests of our safety. We are indebted to our intelligence and security services for the work they do to protect us all, and recognise that many acts of potential or threatened terrorism are thwarted thanks to their diligence and expertise. The murderous attacks that do occur will inevitably, and not surprisingly, always receive much more publicity than the very much larger number of potential or threatened acts of terrorism that are stopped and prevented.

If the investigation into the Reading atrocity, particularly in the light of the other, very recent incidents, reveals that more resources are needed by our counter-terrorism, intelligence and security agencies, I hope the Government will ensure that those additional resources are provided.

The atrocity at Fishmongers' Hall raised issues surrounding the release of people from prison. The individual under arrest under terrorism powers following the Reading attacks had, it has been reported, served a short prison sentence. At some stage, questions will have to be asked about the nature and extent of risk assessments carried out in respect of people leaving prison who are known to the security services; levels of supervision, or otherwise, following release; and the workloads of probation officers, inside and outside prison.

Lessons will need to be learned from Saturday's deeply distressing atrocity. That can only be done following a full investigation, but can the Government say in general terms whether any lessons have been learned and put into practice from either the Fishmongers' Hall or Streatham attacks, and indeed from one recently in a prison, apart from the legislation enacted or being enacted regarding prison sentences, early release and controlled procedures? If any lessons have been learned from those earlier attacks it seems that they will not yet have been shared with the Intelligence and Security Committee, since the Government have not taken the necessary steps since the election at the end of last year to enable it to be reconvened. I hope that does not indicate a lack of the Government's prioritising ensuring parliamentary oversight of security issues and our security agencies, particularly at the present time. When do the Government expect the committee to meet again?

There is also the continuing delay over establishing the review of the Government's Prevent strategy. I believe that the closing date for applications for the post to lead the review was yesterday. We need real progress here too because legislation alone will not be enough. We have to take a thorough look at deradicalisation in our prisons, how people who pose a threat are risk assessed and how different agencies can work together to safeguard against tragedies and horrors of the kind witnessed in Reading on Saturday.

Community policing has been cut, yet the intelligence gathering it does as the eyes and ears of our society is vital. Will the Government commit to now build again the capacity required for law enforcement?

What is the position with the Serious Violence Taskforce, which apparently has not met for a year? Does it still exist? If not, can the Minister at least refresh my memory as to when its demise was announced, and why?

More information will come to light as the police investigation continues and I hope that the Minister can commit to keeping the House updated, including on the lessons that need to be learned. Many issues will need to be considered and addressed in the weeks ahead, but we stand with the wider community in Reading at this desperately difficult time and remember particularly those who tragically lost their lives.

Lord Paddick (LD) [V]: My Lords, this was a dreadful attack on innocent people, and we condemn it. Our thoughts are with the families and friends of those who lost their lives, the injured, and the police officers, ambulance crews and members of the public affected by this terrible incident.

There has been much discussion in recent weeks about policing, in both this country and the United States. This incident, where unarmed officers ran towards, tackled and detained a dangerous and armed suspect, reminds us how police officers put their lives on the line to protect us every single day. It is right to ask probing questions, but it is also right to remember that we rely on the police for our safety. Our thanks should also go to the members of the public who supported the emergency services by administering first aid while waiting for paramedics to arrive.

The matter is under investigation, as the noble Lord, Lord Rosser, said, and I know the Minister will not respond to questions about the suspect. So, despite any reservations I may have, I will continue on the basis that this was a terrorist attack, rather than it being the result of mental illness or motivated by prejudice.

We have the best police and security services in the world. I was part of the Metropolitan Police Service for over 30 years and I was awestruck by the capabilities of the security services when I was briefed on the Investigatory Powers Bill by representatives of MI5, MI6 and GCHQ. We have also seen numerous pieces of legislation over the years to extend the powers of

the police and security services, and the powers of the courts to sentence those convicted of terrorism offences and to prevent their early release. Indeed, there is legislation before the other place as we speak. Yet lone wolf terrorist attacks appear to be increasing. As my right honourable friend Alistair Carmichael said in the debate on the Statement in the other place,

"if the answer to this problem were to be found in a formulation of the law, we would have found it by now."—[*Official Report*, Commons, 22/6/20; col. 1089.]

The problem is this. Too many people—some traumatised by their experiences in war-torn parts of the world, but many British-born young men—are being radicalised, either in prison or online, and there is not enough collaborative work with communities to address the problem. It is neither possible nor proportionate to keep all of the thousands of people who may be of concern to MI5 under surveillance, and the overwhelming majority will do no harm. The tiny minority who decide to carry out so-called "lone wolf" attacks can change from "harmless" to "dangerous" overnight, and almost always only close friends, relatives or community members who are around them will notice that change.

In the same way that policing by consent relies on the public being the eyes and ears of the police so that we do not need a police officer on every street corner watching for criminal activity, so communities, friends and relatives need to be the eyes and ears of counter-terrorism. In the same way that policing by consent relies on the public having trust and confidence in the police, communities, friends and relatives must have confidence in the Government's counterterrorism strategy generally and the Prevent programme in particular.

I have referred to him before and I do so again: my friend and the former head of the anti-terrorist branch, John Grieve, said that the police and security services cannot effectively tackle terrorism alone; they need the help of the public. As the current head of counterterrorism policing said today:

"If you see any suspicious activity, don't hesitate to ACT—report it."

Trust and confidence in the police and security services comes from genuine and comprehensive community policing, as the noble Lord, Lord Rosser, said, whereby concerned communities, friends and relatives feel safe in passing on their concerns to officers they trust. Trust and confidence in the police and security services comes from communities, friends and relatives feeling it is safe to pass on their concerns to the Prevent programme.

My two questions to the Minister are these. When will the Government reintroduce the genuine community policing that they have decimated over the past decade not just with drastic cuts in the number of police officers, which they are going some way to addressing, but with the devastation of police community support officers, so that there can be a dialogue of equals between the police and the communities they are supposed to serve, rather than the police simply explaining the policing they are imposing on those communities? When will the Government appoint an independent lead for the review of the Prevent programme, in whom communities have trust and confidence, to produce a programme that communities can feel safe passing their concerns to? Unless the police, community services and communities work together, these lone-wolf attacks will continue to be very difficult to stop.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): I join both noble Lords in expressing condolences to the families of those killed and in wishing a speedy recovery to those injured. I also join them in praising our emergency services, who ran towards danger to help those people whose lives were in danger, in particular the unarmed policeman who went to help. The noble Lords are both right to point out that I am very constrained in what I can say, and I thank them for understanding that constraint. The noble Lord, Lord Paddick, made the point that we have the best police and security services in the world. I wholeheartedly agree, as I do on policing by consent.

Both noble Lords pointed out that this was yet another lone attack. There have been 25 terrorist attacks thwarted since 2017, which is a tribute to the police involved.

The noble Lord, Lord Rosser, asked about more resources. He will have heard my right honourable friend the Home Secretary say yesterday that an additional £90 million will be in place this year for CT policing, because we need the resources in place for police to be able to respond to these dreadful events. As for other types of policing, 20,000 additional police officers are due to be recruited over the next few years. On community policing, it is the PCC who decides on the type of policing required for a particular area; it is a decision at local level, and that is absolutely right.

The noble Lord, Lord Rosser, also asked about lessons learned from Fishmongers' Hall and cited the Counter-Terrorism and Sentencing Bill; that is one thing. In February this year the Security Minister announced plans to introduce the legislative Protect duty. The proposals would require certain operators of public venues and organisations to consider their preparedness for and protection from a terrorist attack.

The noble Lord, Lord Paddick, mentioned on a couple of occasions the need for community engagement, and I could not agree more. This problem cannot be solved by any one agency or by government. As the noble Lord said, it is not just about legislation; we need interventions at all levels of society, including public vigilance and confidence in reporting to the police.

The noble Lord, Lord Rosser, asked about the Serious Violence Taskforce. In the last few months it was replaced by the National Policing Board, which is an excellent forum for these sorts of things—the interventions we can make for our communities—to be not just discussed but actioned.

The noble Lord, Lord Paddick, asked when the Government will appoint an independent reviewer of Prevent. The process is under way and we aim for that review to be complete in September next year.

1.03 pm

The Deputy Speaker (Baroness Henig) (Lab): We now come to the 20 minutes allotted for Back-Bench questions. I ask that questions and answers be brief so that I can call the maximum number of speakers.

Lord Caine (Con) [V]: My Lords, in the aftermath of every terrorist incident there is inevitably speculation about whether more could have been done to prevent it. Does my noble friend agree that, by its very nature, intelligence is not an exact science, but rather requires many—often very difficult—assessments? Will she reiterate this Government's fullest possible support for the police and the intelligence agencies? Overall, they do such a fantastic job in seeking to keep us safe from the ongoing terrorist threat.

Baroness Williams of Trafford: I wholeheartedly agree with my noble friend. He is right: intelligence is not an easy science at all. If we think about the 25 terrorist attacks thwarted, we can imagine what things would be like if the intelligence services had got it wrong. That is a staggering figure—25 terrorist attacks thwarted in just three years. As my noble friend and the noble Lord, Lord Paddick, say, our police and intelligence services are the best in the world.

Lord Green of Deddington (CB) [V]: My Lords, this is the first time the Government have so publicly revealed the sheer scale of the terrorist threat. The perpetrator seems to have been one of 40,000 on a Security Service B-list; another 3,000 are on an A-list. This is a massive threat to our society, mainly but not solely from Islamic extremists. Surely it is now time for a further step change in the resources devoted to this matter. It takes years to recruit, train and engage new members. Does the Minister agree that now is the time to take in hand this work?

Baroness Williams of Trafford: I am sure that the noble Lord will realise that I cannot talk about any details of this case. On the terrorist threat, the noble Lord, Lord Rosser, asked about additional money for counterterrorism policing, and I pointed out that there is an additional £90 million this year and that we intend to recruit 20,000 more police officers over the next few years. Of course, it is about how that resource is deployed. As my noble friend Lord Caine said, intelligence is a very difficult science. I pay tribute to our intelligence services which, despite some of these attacks, have kept us safe from 25 terrorist attacks over the last three years.

The Lord Bishop of St Albans [V]: The Minister has referred to the extra £90 million for counterterrorism. Is this ring-fenced and will it be continued in future years? Secondly, what reassurances and protections are being given to minority communities, which will be feeling very vulnerable at this point?

Baroness Williams of Trafford: The answer to the first question is yes; the CT budget is always ring-fenced. I do not know whether the right reverend Prelate saw last night on the television the solidarity with which different faith communities in Reading came together immediately. It seems to be really crucial that different faiths come together in the immediate aftermath of things like that, to stand together against terror.

Baroness Ramsay of Cartvale (Lab) [V]: My Lords, this is another tragic loss of life apparently by the hand of a person recently in prison. Is the Minister confident that the Prison Service has the resources to recognise potential danger in those who pass through its hands? When I was on the ISC, that was the kind of issue we discussed with the heads of the intelligence and security services. My noble friend Lord Rosser raised the question of why the ISC has not been formed again since the last election. Can the Minister please give some reason as to why it has not been formed? When will it be? Is it not a disgrace that in these dangerous times we have no parliamentary Intelligence and Security Committee, amid reports in the media that one of the reasons for the delay is that the Government Whips are playing political games with who they are going to nominate from their own party?

Baroness Williams of Trafford: My Lords, as the noble Baroness will know, I cannot make any comment on the individual from Sunday's tragic events. She is absolutely right that enough resource must be given to prisons to put in place programmes—often multiagency programmes—to rehabilitate individuals and provide theological teachings to correct some of the more warped teachings they may have learned. On the ISC, I do not know the answer to that, so I will not pretend to know. I do not know when it is next due to meet, but I can certainly take that back.

Baroness Ludford (LD) [V]: My Lords, the Home Secretary said yesterday in the other place:

> "There is always more work to do, and I am sure there is more that can be done in the future."—[*Official Report*, Commons, 22/6/20; col. 1087.]

I think we all take the point made by my noble friend Lord Paddick that it is neither possible nor proportionate to keep everyone of concern to MI5 under surveillance. When the Intelligence and Security Committee is up and running, which I too hope is very soon, can the noble Baroness and her ministerial colleagues encourage it to assess whether there need to be changes in the resourcing, operations or focus of the security and intelligence services and counterterrorist police to enable them better to keep track of people already on their radar?

Baroness Williams of Trafford: My Lords, I have already gone through the figures for CT policing and for policing in general. I am sure the noble Baroness will have heard them. I am confident that our security and intelligence services have the resources they need. I concur with what the noble Lord, Lord Paddick, said about keeping people under surveillance. Not everything can be solved by legislation, but intelligence-led information is incredibly important. It will be at the heart of how we go forward so that people who are a danger to themselves and to others do not slip through the net.

Baroness Warsi (Con) [V]: My Lords, I endorse the comments of all the Front-Benchers and particularly those of the noble Lord, Lord Paddick. The challenge of the lone wolf attack was addressed recently by Met Assistant Commissioner Neil Basu. It is a real and growing threat. How can the Government seek the support of a community that it needs to deal with these challenges when it simply refuses to work with

that community? My noble friend is aware from her own connections with the community that this is an issue, especially when this refusal of the Government to engage is ideological and political and neither factual nor practical. To tackle terrorism we need to work together. When and how is the Government's policy of disengagement going to change?

Baroness Williams of Trafford: The Government have been very clear that we will engage with people and communities that share our common values and wish to see a society that is safe for everybody. The Government keep decisions about disengagement under regular review, but it is very difficult to engage with those who wish to do us harm or do not share the common values of the wider society in which we live.

Lord Singh of Wimbledon (CB) [V]: My Lords, does the Minister agree that religious leaders have a responsibility to explain that claims of God-sanctioned religious superiority and the denigration of others embedded in religious texts fuel terrorist activity and are not relevant in today's times?

Baroness Williams of Trafford: The noble Lord is right. It is very easy to take a piece of religious text and twist it so that it has a different meaning or to wind people up by saying that God wants something from them which is not the case. He has talked a lot about religious literacy and ensuring that those who preach whatever religion do so not in a biased or twisted fashion that takes away from the original text.

Lord West of Spithead (Lab) [V]: My Lords, I share the concerns of my noble friends Lord Rosser and Lady Ramsay that the ISC has not met recently. It is too important to be messed up by internal party-political shenanigans. Having been deputy chairman of the Joint Intelligence Committee for some three years, I have no doubt about the competence and dedication of the men and women in the agencies. They are in danger of being overwhelmed by the sheer numbers of potential threat suspects, whether additions from abroad or whatever. Is there not a need to further enable technology to assist us? This could include the greater use of CCTV and other electronic items, enabled by 5G; the use of artificial intelligence; utilising big data, and so on. Clearly, there are risks and we must not become a surveillance society. The Investigative Powers Act may need amending. Are these avenues being reviewed with some urgency, bearing in mind the numbers involved?

Baroness Williams of Trafford: The noble Lord makes a valid point. Technology has its place in keeping us safe. We need to advance that technology in a way that strikes a balance between privacy and protection. Sometimes by breaching people's privacy, you give them their freedom. There is so much advanced technology available to help keep us safe and it is important that we use it.

Lord Purvis of Tweed (LD): I will not ask the Minister to comment on the ongoing investigation because I know that she will not. There have been reports that the detained person had been accessing mental health services. Will she assure the House that, if lessons are to be learned from this tragic incident, the availability of mental health services in the community beyond those in the criminal justice system will also be considered? Even before this crisis, the Government's record on providing mental health services for those seeking them has been very poor. Can we be assured that mental health services, specifically for young people and for those coming out of a criminal justice or prison situation, will be included as part of her stocktaking exercise?

Baroness Williams of Trafford: The noble Lord is right to point out that I will not comment on this individual case. There has been a lot of emphasis on mental health services in the last year or two. It is absolutely right that, if someone comes out from a prison—or indeed a hospital—with mental health needs, the wraparound service is there to protect them as they recover from it.

Baroness Uddin (Non-Afl) [V]: My Lords, as the mother of three grown-up sons, my heart goes out to the families of James Furlong, Joe Ritchie-Bennett and David Wails, to the Holt School and to all those who were injured. Searching questions arise about the integrity of the Prevent strategy, which has been seen to demonise and alienate large swathes of Muslim communities. The same is true of the leadership of the counterterrorism strategies, which has thus far allowed only the voices of the disconnected and discredited within the majority of the communities to be heard. Will the Minister consider setting up a cross-party task force to reach out to the community? This should include women, as well as the Arab community—which must now include Libyan people—with a view to addressing socioeconomic as well as health, housing, employment, education and mental health service inequalities. It could perhaps be led by the Minister, with the support of the noble Baroness, Lady Warsi.

Baroness Williams of Trafford: I join the noble Baroness in offering condolences to the families and those who have lost loved ones. She talked about an issue which crosses society, religion and all sorts of boundaries. It is a multi-government effort to ensure that our communities feel included, safe and protected from violence.

Lord Harris of Haringey (Lab) [V]: My Lords, I refer to my interests in the register. I welcome the Minister's reaffirmation of the intention to legislate on a protect duty. Reference has already been made to the bravery of the unarmed police officer who rugby tackled the alleged perpetrator. Can the Minister tell us whether any armed response units were scrambled to the scene and how long it took them to arrive? I am aware from my work on London's preparedness that, in recent incidents in the capital, armed police have been on the scene within a small handful of minutes. London is resourced well in recognition of the higher level of risk. My purpose is not to criticise Thames Valley Police but to establish whether there are sufficient armed police outside London. What are the Government doing about this?

Baroness Williams of Trafford: The noble Lord is right to ask that question. He will have heard my right honourable friend the Home Secretary talking about the events of Sunday. I cannot tell him in exact minutes, but the response was extremely quick. Some of the officers were student officers and ran towards the danger to help those in need.

I think the noble Lord is trying to come back. I cannot hear him; I think he has been muted. This is the beauty of Virtual Proceedings. I cannot speak about the armed response but it does appear that, on Sunday, the response was very quick, very brave and mitigated what could have been a far worse event.

Lord McNally (LD) [V]: My Lords, on 3 May in the other place, Theresa May, an ex-Prime Minister and ex-Home Secretary, expressed concern about the quantity and quality of data that will be available to our security and counterterrorism services from 1 January 2021, when we will have left Europe. She raised specific concerns about the Prüm arrangements covering fingerprints, DNA and car registration, the European criminal record system, the Schengen Information System and data accuracy, yet the response from the Prime Minister was, "It'll be all right on the night", or some such words. Are our security services advising on what will happen on 1 January, and how much assurance can the Minister give that these matters are being treated seriously?

Baroness Williams of Trafford: My Lords, the noble Lord points to a crucial issue: those datasets for law enforcement purposes and national security need to be in place after our departure from the European Union. We have EU and other structures to use, depending on whether a negotiated outcome is agreed or not.

Lord Dubs (Lab) [V]: My Lords, I agree that we saw the police at their very best in Reading a few days ago. I welcome the extra £90 million a year that will be allocated to counterterrorism policing. If I were a member of the intelligence and security services, I would want to find out from MI5 how many of the 30,000 people on a theoretical list it would like to keep under closer scrutiny. In other words, no matter what its resources are, is it in difficulty and does it not have enough resources to watch all those people? Will the Minister also comment on an added difficulty facing the security services? We have seen a resurgence of the threat from far-right terrorists as well, so the resources of the security services must be divided across a very wide spectrum indeed.

Baroness Williams of Trafford: The noble Lord is right to point out that we need the resources to tackle people who are either a danger to others or assessed as possibly being a danger to others. I pointed out earlier, in answer to the question on police officers and CT policing, that both have had a big uplift in their resources, but it is about the deployment of those resources and the intelligence that adds to the mix in ensuring that we can tackle some of the people who pose a real danger to our communities.

1.23 pm

Sitting suspended.

Corporate Insolvency and Governance Bill

Report (and remaining stages)

1.30 pm

Relevant document: 14th Report from the Delegated Powers Committee

The Deputy Speaker (Lord Bates) (Con): My Lords, a limited number of Members are here in the Chamber, respecting social distancing, and if the capacity of the Chamber is exceeded I will immediately adjourn the House. Other Members will participate remotely, but all Members will be treated equally, wherever they are. For Members participating remotely, microphones will unmute shortly before they are due 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 between physical and remote participants. I should remind the House that our normal courtesies in debate still very much apply in this new hybrid way of working.

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 also have lists of Members who have put their names to the amendments or who have expressed an interest in speaking on each group. I will call Members to speak in the order in which they are 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. 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.

The groupings are binding and it will not be possible to degroup an amendment for separate debate. A Member intending to press an amendment already debated to a Division should give notice of that fact in the course of the debate. Leave should also 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. We will now begin.

Clause 1: Moratoriums in Great Britain

Amendment 1

Moved by ***Lord Hope of Craighead***

1: Clause 1, page 3, line 26, at end insert—

"(ca) a list by the directors of all known creditors of the company,"

Member's explanatory statement

This amendment is to assist the monitor in their duty to notify every creditor of the company of whose claim he or she is aware.

Lord Hope of Craighead (CB) [V]: My Lords, Amendment 1 in my name is the first of 32 in this group, but it has no connection with the others.

Fortunately, I need to speak to my amendment only briefly and do not intend to press it, for reasons I will explain.

The amendment, which is in the same terms as one I moved in Committee, proposes an addition to the list of relevant documents that must accompany the director's application for a moratorium. My concern has been that the system that the Bill lays down for informing creditors that a moratorium is in force, and when it will come to an end, is too weak, because the monitor's duty is to notify only those creditors of whose claims he is aware. There is no suggestion in the Bill that he is under a duty to make inquiries. I proposed that, at the outset, the directors should provide a list of all known creditors of the company when making the application.

When the Minister replied, he gave reasons for not accepting the amendment that suggested that he had not understood my point. He said that it had never been the Government's intention that the moratorium should be used to

"'line up the ducks' for a pre-pack administration".—[*Official Report*, 16/6/20; col. 2092.]

He added that, as with all administrations, the likelihood of a substantial return to unsecured creditors was small. I, however, had made no mention of going into administration.

The purpose of the moratorium, as I understand it, is to keep the company alive as a going concern. However, freezing the debts for the period of the moratorium is bound to have consequences for the creditors. They might have to take urgent steps to avoid financial embarrassment until their bills are paid, such as adjusting their cash flow or seeking to extend their overdraft. They need to know what is going on. That is especially the case for creditors—many of them SMEs—whose debts are not secured. Unlike the banks and HMRC, they are likely to have nothing to fall back on if the moratorium does not succeed in rescuing the company.

The issue was too important to be overlooked, so I decided to raise it again on Report, and I wrote to the Minister to explain why. Happily, I have received his reply, which is most useful, and for which I am very grateful. The essence of it, which I want to put on the record, is that the Minister agrees that

"the monitor needs to have contact details for the company's creditors at a very early stage … to enable the monitor to comply with their duty to notify creditors … In order that the proposed monitor can make the statements … that it is likely that a moratorium would result in the rescue of the company as a going concern, they will need to undertake enquiries into the financial position … of the company. … It is envisaged that the proposed monitor would … obtain a list of the company's creditors"

and their relevant details as part of these inquiries.

"Guidance to this effect will be provided to insolvency practitioners … the monitor … will have to evaluate whether the information provided is of a nature they can rely upon, or whether they need to undertake further enquiries … to ensure they have a list of all creditors."

They can also take further measures during the moratorium to obtain any information they require, and this could include information about creditors. Information and feedback on the effectiveness of the measures in the Bill will be monitored, and use could be made, if necessary, of the power in Section A6(4) to add to the list of relevant documents.

In the light of the information that the Minister has given me, I am satisfied that it would place an unnecessary burden on the directors to submit a list of the creditors when applying for a moratorium, as I was proposing. I would, however, ask the Minister to confirm two things: first, that my understanding of the position, as I have narrated it, is correct; and, secondly, that a copy of his letter to me has been placed in the Library. I beg to move.

Lord Leigh of Hurley (Con): My Lords, there are seven amendments in my name and that of my noble friend Lord Trenchard: Amendments 2, 6, 7, 9, 10, 16 and 17. All seven, however, address pretty much the same point, which is to allow the directors of a company, or its monitors—both those in the UK and those overseas—to enter into a moratorium, extend its life or end it, if they believe that, even if there is no hope for the company itself, the business operating within that company is likely to be saved.

I appreciate that the Government have never seen the moratorium as part of the administration legislation—they argue that the rules on administration are adequately covered elsewhere—but it is the job of this House to help the Government by explaining how events actually evolve in the world of business and fervently hope that the Government listen to us.

I am very sorry that so many amendments from Committee did not make it to Report, in particular those from the noble Lord, Lord Stevenson of Balmacara, the noble Baroness, Lady Bowles, the noble Lord, Lord Hodgson, the noble Lord, Lord Palmer, and others. Wonderful real-world experiences were offered during Committee, primarily around the role, conduct and independence of the monitor, all of which have been lost, after being discussed in this House and the other place. That is a shame.

The issues raised in my amendment attracted quite some comment and, if I may so, approval from all sides of the Committee, I think I am right in saying. I remain very grateful to noble Lords from all sides of the House who spoke in support in the Chamber and to me directly subsequently. I am grateful to the Minister and his officials, with whom I have had some very open and helpful conversations in the past few days. I was not graced with a letter as the noble and learned Lord, Lord Hope, was; none the less, we have had a discussion.

There seems to be a fixation with rescuing the company. The company is no more than a vehicle. I think all this stems from the Enterprise Act, where there was confusion in the debate, but I hope there is no confusion now and that we can all agree that we want to arrange matters as best we can so that businesses and jobs, not necessarily companies, survive a liquidity crisis and stay alive. It may well be that sometimes an administration is helpful and a sensible outcome, but the current drafting puts pressure on the monitor to try to save a company where, frankly, there may be no point.

Likewise, the desire to avoid pre-packs is misguided. Yes, there have been some abuses, which have been public and well-documented, but they are small and typically relate to small insolvencies, and the Small Business, Enterprise and Employment Act created the

[LORD LEIGH OF HURLEY]
excellent pre-pack pool, which is now in real danger of collapse as a result of this Bill. I welcome Amendment 45, in a later group, which addresses this point.

There is concern that pre-packs favour one particular purchaser, the existing owners, as they have the advantages of knowing the business and speed, so a moratorium in those circumstances is perfect. The time extension allows the monitor to ensure fair play on information access and for new buyers to be sourced and approached. However, it will be very difficult for a monitor to tell the court that administration is not likely. In fact, it will be the reverse. I spoke to an insolvency practitioner only last week who is working on a particularly troubled business right now, with some 10,000 employees and more than 30 different companies. Not all of them will be saved; at least some will go. However, the rest could be saved and the entire business could be saved, but under these proposals he will not get a moratorium, despite being certain that a solution can be found. He cannot take a group approach because under English law each company is a separate entity. He is beside himself in despair at this proposed legislation. Very few real-world rescues are ever done with existing entities. It is not always a bad result that a business is bought through administrators. If creditors lose out, at least there is a chance to recoup some of those losses through future trade.

I am a little worried by the withdrawal of the Henry VIII powers in government Amendments 3, 8 and 11 in this group, as their removal may restrict the Government from making helpful changes. The Government are clearly more swayed by the appeal of the noble Lord, Lord Stevenson, than by mine. I ask the Minister to think again about whether those amendments achieve what he seeks. I hope he will listen to petitioners, some of whom he has now met with me, and commit at the Dispatch Box to consider a change, as sought in these amendments, if it is clear that business recovery will be impeded without the proposals that my noble friend Lord Trenchard and I seek. If the Bill does not give sufficient time for directors and monitors to find a sensible way out for businesses, there will simply be closures and asset realisations. I look forward to hearing what the Minister will say and very much hope that he will give me some assurances that the Government will find a way to keep an open mind, because I believe that if there were a Division, the House would support these amendments.

1.45 pm

Viscount Trenchard (Con): My Lords, I am also minded to support Amendment 1, moved by the noble and learned Lord, Lord Hope of Craighead, because it should not be too difficult a task for the directors to undertake and would be likely to save time afterwards, once the monitor starts his work. However, given that the noble and learned Lord has expressed satisfaction with what the Minister wrote to him, far be it from me to doubt his learned judgment on that matter.

I speak in support of Amendment 2 and the other amendments tabled by my noble friend Lord Leigh, to which I have added my name. I declare my interests as listed in the register. I know a little about corporate restructurings, having worked in corporate finance and mergers and acquisitions for some 40 years. I thought that the amendments proposed in Committee by my noble friend made obviously good sense, and I have heard nothing from the Minister that causes me to change my mind—at least, so far.

As I mentioned in Committee last week, this question was discussed during the debates on the Enterprise Act 2002. My noble friend Lord Hunt of Wirral said in the debate in Committee that

"the greatest asset of a company is the people whom it employs … I believe that rescuing the company on its own is a pointless objective … the objective of preserving all or part of the company's business would be beneficial to the employees of the business, creditors of the company who may be paid out of the proceeds of the sale of the business or from future profits, and of course it would be beneficial to the economy as a whole".—[*Official Report*, 29/7/02; cols. 764-65.]

My noble friend Lord Hodgson of Astley Abbotts said on Report that

"by inserting … 'and the whole or part of its business'… an administrative receiver or administrator"

would be empowered

"to deal even-handedly with the whole or part of the company's business."—[*Official Report*, 21/10/02; col. 1102.]

Of course, the views of my noble friends in 2002 related to a different Bill from the one before your Lordships' House today, but I nevertheless believe that their comments are equally relevant to the points we are considering now. New Section A6(1)(e) requires a monitor to say that in his view it is likely that a moratorium would result in the rescue of the company as a going concern. Even if the monitor thinks that the company's business, or some part of it, would be rescued if the company could obtain a moratorium, this would not provide sufficient grounds for the court to grant a moratorium.

Under the Enterprise Act 2002, obtaining a moratorium through administration is not as restrictive as proposed under the provisions of the Bill. It is necessary for an administrator to show that there is a reasonable likelihood of achieving one of three statutory objectives: rescuing the company as a going concern; achieving a better result for the creditors as a whole than would be likely on a winding up; and realising property in order to make a distribution to secured or preferential creditors. The second of those objectives is the one most often relied on as it includes the rescue of a business or one or more of several businesses when, as is often the case, it is impossible to show that the company as a whole can be rescued.

Prior to 2002, the position was the same, although the purposes of administration were not precisely the same. They were: the survival of the company and the whole or part of its undertaking as a going concern; the entering into of a creditors' voluntary arrangement; the sanctioning of a scheme under Part 26 of the Companies Act; and a more advantageous realisation of the company's assets than would be effected on a winding-up. Again, the last of those four options was the one relied on where, even though a company was doomed because of the burden of debt, its business or a part of its business could be rescued.

Under the new moratorium procedure, the only type of restructuring proposal that can be advanced is one that involves a company rescue. This means that

the options available in a moratorium are significantly more limited than they would be in an administration. Perhaps the Minister can tell the House whether the Government are deliberately trying to restrict the use of moratoriums and do not want to give the directors that degree of freedom if they are trying to save the business but not the company.

However, very often when a business is successfully rescued the company may also be rescued, although that category of company would not be able to use this new procedure. I understand that the Government believe that if rescuing a company's business were sufficient grounds for a moratorium to be granted, the company would be tempted to use the moratorium to prepare for a pre-pack administration. If this is the case, perhaps my noble friend the Minister could explain to the House why the Government think so.

As my noble friend Lord Leigh has already explained, companies as legal entities are hardly ever saved in an insolvency situation and the connection between widening the grounds for entering a moratorium and the possible abuse of the pre-pack mechanism is, I believe, tenuous at best. Pre-packs have developed as a mechanism for selling a company's business immediately after it goes into administration, so that the administrator—not the directors—is responsible for breach of duty if the business or assets are sold for less than fair value. The moratorium is surely intended to prevent creditor action, but creditor action has never been a check on an abusive pre-pack. It would be a pity if the moratorium were to be limited to cases in which a debt restructuring is the only way forward, rather than other forms of business rescue.

In conclusion, I think that the Minister has shown great wisdom in introducing so many amendments to dispense with Henry VIII powers, which the Government had thought they might wish to include—although I share my noble friend Lord Leigh's reservations about some of them in the event that they may restrict the Minister from providing enough comfort on the points that he and I have raised.

Baroness Drake (Lab) [V]: My Lords, I refer to my entry in the register of interests and shall speak to Amendment 13 in my name. In this group the Government have brought forward helpful amendments to seek to prevent bank debts and other financial lendings that are accelerated during the moratorium from gaining super-priority status. This is a welcome change. However, serious risks remain of gaming to give current or future lenders access to super-priority, avoid pension liabilities and incentivise insolvency over rescue for certain creditors.

Amendment 13 would remove the exemption which payments in respect of pre-moratorium debts arising under a contract or instrument of financial services have from the payment holiday and from super-priority in the event of an insolvency process. Notwithstanding the Government's amendments, real concerns remain that lenders may be able to circumvent their intent by the drafting of their lending agreements; the definition of accelerated debt could be sidestepped so that lenders can continue to bring forward debt and benefit from super-priority. It is unclear, for example, whether on-demand debt that is called during the moratorium would be caught by the definition of accelerated debt and debts accelerated prior to the moratorium would continue to be granted super-priority.

Adding to these concerns is the width of the definition of financial institution debt which would qualify for super-priority, covering intra-company loans, for example. In addition, finance debts due prior to or in the moratorium continue to be exempt from the payment holiday. Debts due to the pension scheme are not, would not be payable and would be outranked in subsequent insolvency. That exemption and the super-priority given to that financial debt, which are permanent provisions within the Bill, will inevitably lead to novel forms of moral hazard when it comes to pension liabilities.

This is a fast-track Bill containing permanent, major changes and scrutiny has consequently been fettered, but government Amendment 80 in this group gives a power enabling the Secretary of State, by regulation, to change the definition of moratorium debt and priority pre-moratorium debt. This is a welcome concession by the Government, because it implicitly recognises the arguments that many noble Lords have made that it allows the Government to respond to actual experience of gaming and perverse behaviours. Will the Minister confirm that the intention of Amendment 80 is to allow the Government to quickly address the risks other noble Lords and I have identified when they emerge and to change the definition of moratorium debt and priority pre-moratorium debt in response? Will the Government commit to monitor closely the impact of the provisions on moratorium debt and priority pre-moratorium debt, and to consult relevant bodies on the real concerns around super-priority status, the definition of accelerated debt and the implications for pension scheme debt?

Baroness Warwick of Undercliffe (Lab) [V]: I added my name to Amendment 13 and I set out in Committee my concerns about the Bill. As I said then, I fully support the intention behind it—that the disruption caused by Covid-19 should not be allowed to trigger the failure of otherwise financially viable companies—but I was anxious, and I remain anxious, that some of the permanent and far-reaching proposals would be damaging to pension funds and to their members in the longer term. I assumed that this damage was unintended and was caused by the speed with which this package of protective measures had had to be introduced, and I am pleased that the Government have gone some way to acknowledging this in the amendments they have brought forward.

Other noble Lords have set out in detail the problems that the Bill would cause as currently drafted. I emphasise just one point in relation to defined benefit pension schemes. The stability and effectiveness of the current system in dealing with insolvency has depended on unsecured pension debts ranking side by side with debts owed to other unsecured lenders. This has underpinned all valuation funding and covenant discussions. The super-priority status granted by the Bill to finance debts in an insolvency following a moratorium undermines that stability and endangers members of affected pension schemes, while preventing the PPF acting effectively as creditor. As I said in Committee, it also undermines the role of the regulator. However, the Government

[Baroness Warwick of Undercliffe]
have clearly made efforts to address these concerns and go some way to addressing the issues raised by me and other noble Lords. I have been convinced that the Government want to make this work and will ensure that the PPF has access to and influence on discussions about recovery plans.

The Secretary of State will have access to considerable Henry VIII powers in the Bill and will be able to intervene swiftly if it seems that restructuring plans and insolvency procedures are being abused, to the detriment of pension scheme members. So in thanking the Minister for the way he has responded to the concerns we in this House have expressed about the Bill, I urge him to stay alert to any attempts to undermine the assurances he has given that the position of pension scheme members will not be weakened, and that their lifeboat—the protective umbrella of the PPF—will not be undermined in any restructuring and insolvency discussions.

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, I draw attention to my interests in the register. I support Amendment 13 and what has been said already about it. I am a signatory to that amendment, but I shall concentrate on Amendment 14. The *Times* this morning reports that Intu, owner of shopping centres, is seeking a standstill on loans from its banks, otherwise it will go into administration. Without commenting on the merits of the case, save to mention that coronavirus has stopped rent payments, the facts are writ large: it is all in the hands of banks.

The idea of a moratorium is as a formal standstill, a breathing space for a company to trade out of its problems, get back on its feet or at least find a way to reorganise without the situation deteriorating due to a feeding frenzy of creditors, each trying to get at the assets before someone else does. For all essential suppliers other than financial institutions the moratorium terms are that they must continue with normal supply, with no demands for up-front payments or elevated prices that would destroy cashflows and undermine the purpose of a moratorium. But not for banks: they have no constraints and are free to demand accelerated payment. So there is a feeding frenzy exclusively reserved for the banks.

2 pm

The government amendments recognise that accelerated payments are unfair on other creditors and strip any that are still unpaid of super-priority in an insolvency. However, the problem is that that does nothing about all the ones that have been paid, thereby hurting the company and making it more likely to fail. The government amendments do not remove the unfairness that exists when accelerated payments suck money out of the company, not only jeopardising the promised breathing space, jobs and business or company survival, but also reducing what will be left for others in an eventual insolvency. In an insolvency, unsecured creditors, pension schemes and small businesses will be hit hardest by the banks' moratorium behaviour.

The Minister said when we met that the Government hope that banks will not behave like that. I am sure that we would all like that, but it is unrealistic. That it can be done creates pressure for them to do just that, looking to their own profit. The fact that it will be in contracts will compel it to happen. It will not be a local, friendly manager exercising discretion; it is not as if we are looking at unknown behaviour, especially where smaller companies are involved. We have seen plenty of it, with restructuring groups like GRG and others, including behaviour that is reprehensible but not, in the end, prohibited or even limited to reasonable amounts. Of course it will happen. That is why there is the ipso facto clause for everyone else, to make sure of normal supply—breathing space. Action during the moratorium is the most effective. Holding off banks during the moratorium saves companies or businesses, and jobs. It is too little, too late to buy insolvency when the money is gone.

Amendment 14 is simple. It stops the unfairness, preventing banks and financial creditors accelerating payment. To coin a phrase: stay the banks; protect business; save jobs. It is fundamental to the moratorium concept, and I intend to press my amendment to a Division.

Baroness Altmann (Con) [V]: My Lords, I support Amendments 13 and 14. I have added my name to the former, as well as to Amendment 75 in this group, which I will briefly speak to.

I echo the words of many noble Lords in this debate, and I stress that I support the aims of the Bill and am very grateful to the Government for introducing so many amendments. It is testament to the power of and wisdom in this House that the Government's amendments have significantly improved the Bill and reduced some of the risks that we highlighted during its earlier stages in our House. I particularly welcome the Minister's amendments on security for pension schemes and the Pension Protection Fund. I declare my interests as set out in the register.

However, I must agree with some of the words of caution that we have heard so far in this debate. Yes, there may be some improvement and it is welcome that, for example, government Amendment 80 would allow Ministers to step in if necessary, should there be gaming of the moratorium and the creditor priority. However, I have to agree with the noble Baroness, Lady Bowles, and other noble Lords, who have explained that there will be gaming—it is not a question of whether. The idea that banks will not behave like that does not reflect what many of us have already witnessed over the years in the real world. As my noble friend Lord Leigh of Hurley rightly said, there is expertise in this House which can inject into the current situation the real-world experience that could be so important in averting some of the problems we alerted the Government to during the Bill's early stages.

Financial creditors, including but not limited to banks, will be needed to potentially rescue a company that is going through the moratorium and to help it avoid insolvency. However, there are other elements such as intra-company loans, and in that case, there could be problems regarding recovery from creditors. I agree with my noble friend Lord Leigh that rescuing a business is not the same as rescuing a company—that is absolutely right, as my noble friend Lord Trenchard also explained. However, in many cases defined benefit pension schemes would not have an opportunity to

recover money in future trading, should assets be stripped away and the creditor status be undermined by the leapfrogging that can occur with financial creditors. We must try to help save businesses and jobs through the liquidity crisis. I have added my name to Amendment 75 because the issue of jobs and a company's workers is so important; they should have a role in this process.

I hope that the Government and the Minister can reassure us of the intention to alert the Pension Protection Fund to risks and to step in should there be gaming. I support the intentions behind the Bill.

Baroness Kramer (LD) [V]: My Lords, my name is added to Amendment 14. I cannot better the speeches from my noble friend Lady Bowles and the noble Baroness, Lady Altmann. However, I ought to add a few words, because I am probably one of a small number of people in this House and the other place who have been a creditor to a company taken through the Chapter 11 process in the United States, as I was when I worked there for a major US bank.

It is not exceptional behaviour but standard practice to seek ways to accelerate payment to get it into the moratorium period. I would have been considered remiss in my responsibilities had I not made sure that, in the various legal contracts in which lending was arranged, clauses existed that would enable me to achieve that acceleration.

As I also know from my own experience, acceleration is not the only issue; there is also the ability to make sure that a bank can take security when a company finds itself entering into financial crisis. That helps to move the financial institution's debts much higher up the food chain. I hope that the language in the various amendments that try to deal with this problem is understood as dealing with the issue of security as a mechanism for acceleration, and not just clauses which very directly achieve acceleration.

Lord Hodgson of Astley Abbotts (Con): My Lords, I put my name to Amendment 14. Before I speak to it, I draw the House's attention to my entry in the register of interests.

I tabled a similar amendment in Committee, looking at how financial institutions and banks might game the system. When I listened to him, my noble friend the Minister seemed to give a positive answer—for which, many thanks—but when one reads col. 2094 of the Committee stage debate on 16 June, the words are not quite as strong as I had hoped. So I support Amendment 14 and want to press my noble friend a little further, for two reasons.

The first is what I might call the Pepper v Hart reason. Courts can go to debates in your Lordships' House and the House of Commons and use Ministerial Statements and replies to discern what Parliament's wish was when legislation was passed. Not a lot was said in the House of Commons, because it all went through in a single day, but the words of the Lords Minister, the noble Lord, Lord Callanan, have been quoted extensively and will be so in future. He will probably have a starring role in a number of law cases in the years ahead. So I hope, as we come to the dénouement of the Bill, that he will be able to lay out the case clearly, cogently and simply.

Insolvency can seem as dry as dust, but it is about people. It is about men and women who have struggled and given months and years of their life to building up a business, only to see it collapse before their eyes. Sometimes it is because of their incompetence, but often it is because of events over which they have absolutely no control, such as the pandemic. We therefore owe it to people like them to have absolute clarity about their position, their rights and their responsibilities.

I will go back to the real-life example I gave in Committee; I ask my noble friend the Minister to boil down his response when he comes to reply. A struggling company; a £10 million term loan; £1 million is in default, and a pre-moratorium demand has been made. The company goes into the moratorium. Of course, the £1 million is a pre-moratorium debt and is therefore covered, but that demand is a default on the whole loan. Therefore, using the financial services cover, the bank says, "I want the £9 million, thank you very much." Has that hole been blocked in what my noble friend is putting before the House today? I thought he said that he was going to, but this is quite complicated. It would be helpful for the House, and indeed for the law courts in future, if he could make it clear that that is the case—that is, that banks cannot game the system and use a pre-moratorium event that is protected under the moratorium to enforce claims under the moratorium because they are financial services.

My second question concerns what I call the "Gulag issue". In real life, in the example I gave, the act of default will mean that the company's loan moves from its normal relationships to what is known as the "workout division". Notwithstanding the sensitivities of the noble Baroness, Lady Kramer, the workout division is not a place for sensitive souls. It is charged, incentivised and tasked with enforcing the rights of the lender: the bank. Banking agreements have a good many pages of closely packed print, with all sorts of terms and conditions. So many times I have heard people say, "I got 1% off my interest rate and did not think about the other terms." If your business is going to be successful because you are paying 1% less, you are in the wrong business. It is the terms and conditions that you need to look out for.

Let me give an example of how that might work. I invite noble Lords to look at their overdraft statement when they go home tonight. It will say something like this: "You will be charged 3.5% or 4% above the bank's base rate for the time being"—what the bank's base rate is is a good question in itself—"but for unauthorised overdrafts you will be charged 19%." Deep in the terms and conditions for the company I am talking about, there will be a similar clause. When you default, your interest rate goes up. Do the maths. That £10 million at 19% less the 4% that you were expecting to pay—making 15%—equals £1.5 million a year, or £30,000 a week. These are the sorts of things, and there are many other ways in which banks can enforce their conditions.

2.15 pm

I go back to the point and repeat the words of the noble Baroness, Lady Bowles. Are the banks a party to the moratorium? Are the banks a party to trying to give these people some time, or can they take advantage

[Lord Hodgson of Astley Abbotts]
of their position under the Bill? It would be helpful if my noble friend could make clear from the Front Bench, above peradventure, what the Government's view is and how Parliament expects banks and financial institutions to behave during these difficult times. We know that it is difficult, but if everybody has to take some pain, surely the banks must not be allowed to ride roughshod over them and work to their own advantage. If we cannot give that assurance to industry and to people going into moratoriums, the whole concept of moratoriums will be largely redundant.

Lord Kerslake (CB) [V]: My Lords, I was pleased to add my name to Amendment 75 and congratulate the noble Lord, Lord Stevenson of Balmacara, on proposing it.

The Bill contains some important benefits for companies that get into difficulties, which will help them, help the economy and protect jobs. Insolvent companies or companies that are likely to become insolvent can obtain a 20 business day moratorium period that will allow viable businesses time to restructure or seek new investment free from creditor action.

A good company—sadly, good companies will be affected by the economic impact of Covid-19—would keep its workforce well informed and consult them as a matter of routine. However, we know that, in a period of duress, the employees are often at the back of the queue in finding out what is happening in their own company, even though they are likely to be significantly at risk—perhaps the most at risk—of redundancy, changes in terms and conditions or changes in pension as a consequence of subsequent restructuring, or indeed closure if no resolution can be found.

In these circumstances, the provision in this amendment will provide an important safeguard and reduce the risk of employees being left out of vital decisions and discussions that will affect their livelihoods. I really hope that the Government can see their way to supporting this amendment, or something very close to it.

Baroness Bryan of Partick (Lab) [V]: My Lords, I too speak in support of Amendment 75. Although it is much weaker than the original amendments, it touches on an important debate that is happening not just in the UK but in most of the developed capitalist countries about the status of employees in a company.

Nearly 30 years ago, two academics wrote a paper entitled "The End of History for Corporate Law". As often happens with such pronouncements, they were premature. The authors assumed that shareholder capitalism was unchallengeable. It is now common to hear senior executives and influential economists extol the importance of moving towards stakeholder capitalism. The chief executive of Black Rock, Larry Fink, wrote recently about climate change but said that sharing data should go

"beyond climate to questions around how each company serves its full set of stakeholders, such as the diversity of its workforce".

The *Financial Times* reported that a business round table of 151 US chief executives has revised its concept of "purpose of corporation". They have renounced shareholder value and would instead lead their companies to the benefit of all stakeholders—customers, suppliers, employees and communities. Mark Carney wrote recently in the *Economist* that companies would be judged on how they treated employees, suppliers and customers, by who shared and who hoarded, and that the corona crisis was

"a test of stakeholder capitalism."

He might have had in mind companies such as easyJet, which has sought state aid after cancelling most of its flights but went ahead with a £174 million dividend payout while asking employees to take unpaid leave and face substantial changes to their terms and conditions.

This amendment should be knocking at an open door. I am sure that noble Lords will want to accept it, and that what it calls for will become common practice before too long. It is a modest proposal that does no more than require a company to consult the representatives of its employees. I am sure that many of us would want to go further than that, and no doubt this is an issue that we will return to over the coming months and years.

Lord Hendy (Lab) [V]: My Lords, I too shall speak to Amendment 75. In precisely one week's time, we will celebrate the 70th anniversary of the ratification by the United Kingdom on 30 June 1950 of Convention No. 98 of the International Labour Organization, one of the two most fundamental conventions in international labour law. It has not only been expressly ratified by 167 nations but is considered part of customary international law. Article 4 reads as follows:

"Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements."

Another anniversary will be commemorated on 11 July, for on that day in 1962, as a member of the Council of Europe, the United Kingdom ratified Article 6 of the 1961 European Social Charter. The article reads:

"With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake … to promote joint consultation between workers and employers … to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements".

This amendment does not seek the fulfilment of the Government's obligation to promote collective bargaining on the consequences for workers in a company that is running into financial difficulties and the measures such as a moratorium to alleviate them, but it does require the fulfilment of the more modest obligation to promote consultation between workers and employers about such consequences. It is difficult to the point of impossibility to see what objection there could be to the imposition on directors of an obligation to hear from their workers—in this case their employees—their perceptions of and suggestions for ameliorating the company's situation. Under the Companies Act, directors already have an obligation to take into account the interests of the employees, so it is really not asking much to require them to ask their employees to express their views.

Given that the biggest impact of the moratoria and other measures relating to a company's financial difficulties will be on the workers whose livelihoods are on the

line, why not hear their voices? They will be the most ardent and innovative in finding ways of keeping the company alive. Certainly, the Minister and his team have offered no objection to the principle or the practicality of this so far. All that has been said is that employees are already protected and that the courts have a duty to ensure that arrangements are fair and equitable.

The first point is hopeless. There is no extant legal obligation to hear the voices of workers, no obligation to bargain collectively, no obligation to consult save where collective redundancy procedures apply, and no requirement to have worker directors on the board. The second point is equally without merit. There is no provision for workers to be parties to, to be represented, or even to be heard in the specific court proceedings to which this Bill relates. Without hearing from representatives of the workers in respect of the measures being proposed, how can the court be satisfied that any measure is fair and equitable to them? I urge the Government to accept the amendment and to fulfil at least partly their international legal obligations.

Lord Hain (Lab) [V]: My Lords, following the excellent speeches of my noble friends Lord Hendy, Lady Bryan and Lord Kerslake, I wish to support Amendment 75.

There was a moment during the response of the Minister, the noble Lord, Lord Callanan, in Committee to various amendments aimed at protecting the interests of a company's workforce in the moratorium process when I was reminded of the Hatton Garden safe deposit robbery in 2015, the biggest burglary in British legal history. The conspirators in that crime called carving up the proceeds "the slaughter". One of the gang nearly missed out on the slaughter. He had bailed out after the first attempt to break in because he did not want to risk returning to the scene of the crime. Some of his co-conspirators felt that he had thereby forfeited any share of the proceeds. Fortunately for him, there was honour among thieves, and they relented and gave him a cut.

The Minister argued that workers are already well protected and that consulting employees or their representatives in the moratorium process is unnecessary because the aim of the Bill is to keep companies in business. In his view, consulting employees would risk publicising a firm's problems before it could be protected from creditor action, leading to more company failures—in short, that the workers should know their place, run along and let their betters deal with the problem. If he had patted them on the head, I would not have been surprised. Surely there should be a less patronising attitude to people who may have invested much of their working lives in a company that is now facing financial distress.

For workers, insolvency puts more than just their jobs in jeopardy. They may have back pay at risk. Their pension rights may be in danger. Their redundancy rights may be under threat and their tax and national insurance responsibilities may be in doubt. Indeed, the company may even have defaulted on payments to HMRC already deducted from their pay. Their employer may be defaulting on its equal pay and equal rights obligations.

Workers have a vital interest in the insolvency process. They deserve a voice in the consultation process and surely the Government cannot deny that; otherwise, they will be left where they are now—on the outside, at the end of a long tail of unsecured creditors, unrecognised, unheard and unwelcome, while the professional insolvency practitioners practise their black arts. Britain's workers deserve better, and that is the purpose of Amendment 75.

The amendment is very modest, simply requiring companies to consult their workforces. It imposes no vetoes by employees on the moratorium process and specifies no hurdles that have to be surmounted; instead, it simply imposes an obligation to consult. Surely the Government must agree to that principle or, alternatively, endorse an attitude that says in effect that company owners' rights matter, creditor and debtor rights matter but employee rights do not. I urge the Minister—and, if not, then your Lordships' House—to support Amendment 75 or, alternatively, as I now understand he might do, at least to give some proper guarantees that employees will not be left in the lurch.

2.30 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, I refer noble Lords to my interests as listed in the register and the published declarations therein.

I want to speak to Amendment 1, proposed by the noble and learned Lord, Lord Hope of Craighead, which relates to the directors supplying a list of creditors to the monitor. I supported this amendment in Committee. I have had the advantage of seeing the letter, shared with me by the noble and learned Lord, Lord Hope, and can see that my noble friend the Minister has gone some considerable way to allaying concerns by setting out proposals about inquiries that the monitor must make and the policing of the whole procedure by the Insolvency Service. I thank him very much for that. I think that that will be effective, and the letter was indeed very helpful. Like the noble and learned Lord, Lord Hope, I hope that it is shared with other noble Lords by placing a copy of it in the Library.

Perhaps I may touch briefly on something else that I spoke about in Committee. I voiced concern at the lack of any express provision in the Bill requiring the monitor to be independent of the company. The monitor is an officer of the court and is required to be a qualified person, defined as an "insolvency practitioner". That is reassuring up to a point but there is no express condition that the monitor should be independent of the directors of the company who appoint the monitor; nor is there any provision in the legislation for challenge of an appointment. Perhaps the Minister can put on the record today, or in a letter subsequently, how he sees the professional bodies policing the independence requirement, in the same helpful way as he wrote to the noble and learned Lord, Lord Hope of Craighead, on the inquiries relating to the requirement for the listing of assets and liabilities.

Subject to that, I very much welcome the moves that the Government have made between Committee and Report. They have gone some considerable way to allaying concerns expressed in Committee.

Lord Palmer of Childs Hill (LD) [V]: My Lords, this Bill, when enacted, will be the guide—even the bible—of the monitor. I agree with Amendment 14 and shall speak on it very briefly. My noble friends Lady Bowles

[Lord Palmer of Childs Hill]
and Lady Kramer have explained in detail the reasons for supporting and promoting the amendment, which, to remind noble Lords, would place a restriction on enforcement and legal proceeding, stating that banks and other financial creditors must not have an advantage.

My concern goes back to the philosopher Thucydides, who said something along the lines of "Words change their meaning". What are "financial creditors"? What is "not having an advantage"? Sometimes the meaning is in the eye of the beholder or in the minute printing of the 240 pages of the Bill.

If Amendment 14 is agreed, as I hope it will be, I shall welcome the Minister's assurance, at least for the record, that HMRC's VAT debt, about which I spoke at least twice in earlier proceedings, will not be viewed as the debt of a financial creditor seeking yet more preferential terms. The Finance Bill 2019-21, which we have put aside and hardly mentioned during these debates, seeks to give preference to HMRC for VAT. This undermines the whole principle of this legislation, which I believe is, as the noble Lord, Lord Hodgson, said, based on the idea that "We are all in it together". If, even unintentionally, the banks or HMRC are given preference in the Finance Bill 2019-21, we will not all be in it together; some will be more equal than others.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I support the sentiments expressed by the noble and learned Lord, Lord Hope, in moving his Amendment 1, and I thank the Minister for his letter, which has been shared with us.

The duty of the monitor to notify creditors extends only to those creditors of whom the monitor is aware. What is welcome about Amendment 1 is the fact that it strengthens that. At the moment, there is no express duty to seek information about creditors from the company, and I feel that there is a very strong need for Amendment 1 to enable the monitor to do their work, given the time constraints regarding the moratorium under which they are working.

I was pleased to support the amendment in Committee. I noticed that in the Minister's reply setting out why, in his view, Amendment 1 is not necessary, he regrets that he did not have time to respond fully to the points made in Committee. That raises a broader point about parliamentary scrutiny. I hope that the normal channels will take note of this and that we allocate sufficient time to ensure full and proper scrutiny of a major piece of company law, albeit that for the most part it is time barred. It takes longer to correct a bad law than to make a good law in the first place.

If we do not adopt Amendment 1 today, I believe that that will make the monitor's position more difficult and that the position of creditors will remain very weak. I support the remarks of my noble friend Lord Bourne. In Committee I made similar points about the desirability of enhancing the independence of the monitor and there is no need to rehearse them today, but I stand by those comments.

Finally, I turn to the Minister's explanatory statement on government Amendment 3. Generally, I welcome the government amendments, which are preferable to the original Henry VIII clauses, although I am mindful of the remarks of my noble friends Lord Leigh and Lord Trenchard in this regard. However, I question the Minister's justification of Amendment 3, which would leave out the definition of "the relevant documents" and replace it with the words

"adding to the list of documents".

The statement says:

"The power could subsequently be re-exercised so as to remove anything added."

That seems slightly peculiar, and I would welcome the Minister explaining it in more detail when he replies to this debate.

Lord Adonis (Lab) [V]: My Lords, after an hour and five minutes of debate, I do not think that there is much more that needs to be said in favour of these amendments. We have heard a succession of powerful speeches. As the noble Lord, Lord Hodgson of Astley Abbotts, said, the speech that matters now is the Minister's. We need to know why he believes that the amendments are not necessary, as I understand he is likely to say in respect of a number of them, and we might then come back on that, either now or at Third Reading.

I strongly support Amendment 75. I do not think that in practice it would make much difference, as it would simply introduce a right to be consulted. As my noble friend Lord Hendy said, it does not have any of the stronger elements of a requirement to negotiate or to take account of views—points that have been debated—although it is obviously a step in the right direction. However, the really powerful amendment is Amendment 14, and we look forward to the Minister's response to it. It would, as many noble Lords have said, make it categorically and explicitly clear that the banks and other financial creditors may not seek to accelerate payment.

The Minister's response here will be crucial. The noble Baroness, Lady Bowles of Berkhamsted, has told us that the Minister said when she met him that the Government expected that banks would behave reasonably and would not seek to enforce repayment requirements unreasonably, whereas a succession of speakers, particularly the noble Lord, Lord Hodgson, and the noble Baroness, Lady Bowles, have made it clear that it is standard practice for them to take every opportunity they can to accelerate payments and that they will do so if the Bill is enacted without Amendment 14.

So the House will want to listen carefully to what the Minister says in response to Amendment 14. If his argument is that it is his expectation that banks will not seek to accelerate payment, what grounds can he offer to the House to support that view when we have been given such strong views to the contrary?

Lord Holmes of Richmond (Non-Afl) [V]: My Lords, I am pleased to address the amendments in this group, not least the seven in the names of the noble Lord, Lord Leigh of Hurley, and the noble Viscount, Lord Trenchard. I have not had the benefit of seeing the now-famous letter, but I look forward to considering that in due course.

As the noble Lord, Lord Hodgson of Astley Abbotts, quite properly put it, this is detailed and technical law, but it is rooted in the purpose of protecting people.

Similarly, the noble Lord, Lord Palmer, rightly highlighted the importance of meaning and how it changes and can be in the eye of the beholder. More significantly, I will say that everything that we have discussed today is to do with businesses which find themselves in the eye of the storm.

I cannot match the 40 years that the noble Viscount, Lord Trenchard, has spent in this field, but I knocked out just over a decade in it and, like the noble Baroness, Lady Kramer, I was involved with a number of chapter 11, US-side insolvencies, as well as a number of pre-packs on this side of the Atlantic. I ask my noble friend the Minister: why the coolness towards pre-packs? Like all vehicles, they have their annoying whines and dodgy brake lines from time to time, but overall they were pretty successful, as conceived in the original legislation.

Does my noble friend agree that a lot of the difficulty around this Bill and the amendments we are discussing in this group seems to come down to an understanding of the fundamental difference between the company and the business? It seems that much of this legislation has been constructed with the approach of a company staying in business rather than the reality that the business does not need to stay within the company. Can my noble friend assure the House that nothing as currently drafted will impact businesses which find themselves, largely as a result of the Covid pandemic, in distressing situations? If he cannot give that assurance, does he agree that it is prudent to consider a number of these amendments in this group and subsequent groups?

Similarly, on furlough finance, which was incredibly speedily and effectively rolled out by the Chancellor, does the Minister agree that, if we fail to get this legislation right and the clauses amended as proposed, we will fail to gain the wider benefits from the furlough finance and employees who have rightly benefited from furloughing will find themselves with no business at the end of that period?

Finally, does my noble friend agree that there is a real, clear and present danger that, if we do not address the amendments, the reality may be that we save the company, lose the business, fail the purpose and miss the point?

2.45 pm

Lord Fox (LD): My Lords, we have heard a number of your Lordships speak with great authority, not least the previous speaker, on this important subject. As the noble and learned Lord, Lord Hope, set out, there is a great number of amendments in this group, and I shall not attempt to speak to all of them. I have sympathy with the spirit of the amendments set out by the noble Lord, Lord Leigh. Like the noble Viscount, Lord Trenchard, I shall listen to the Minister's response to those questions.

I also thank the Minister and the departmental team for listening to what was said in Committee and coming up with the first of a set of government amendments that were sensitive to that debate. However, I shall speak to two amendments in this group that carry my name, Amendments 14 and 75. Amendment 14 has been elegantly spoken to by my noble friends Lady Bowles, Lady Kramer and Lord Palmer and, on the Bench opposite, by the noble Lord, Lord Hodgson, and others. It sets out the overriding issue in this debate: that of tiptoeing around the financial institutions.

My noble friend Lady Bowles set it out with great clarity: where all other groups within the company in a moratorium have to set aside and go into stasis, the banks do not. Even though it may be implied, it is important that the Bill is very clear that we expect a standstill. The noble Lord, Lord Hodgson, said that the Minister may yet star in legal disputes of the Pepper v Hart variety. One way for him to avoid such notoriety would be to accept Amendment 14 and accept that we need a clear undertaking that this behaviour cannot be allowed. As my noble friend Lady Kramer and the noble Lord, Lord Hodgson, set out, if it can happen, it will happen. Teams within banks will be under an obligation to their owners to do it. Therefore, it needs to be set aside.

A number of Peers talked about banks gaming the situation, but this is no game for employees or for creditors. If it were a game, the pawns could well be the employees. That is why Amendment 75, which also carries my name, is important—albeit modest, as the noble Baroness, Lady Bryan, said.

The noble Lord, Lord Hendy, set out in legal terms why some status for employees needs to be established; nothing else in the Bill does that. However, it should be more than workers just being in receipt of communication; they should have a seat at the table and be consulted. Somewhere there is a feeling coming through this that involving the employees is somehow anathema to saving the business. I should declare my interests, one of which is that I am a member of the German-British Forum. In Germany, this discussion would not be needed. Businesses in Germany know that workers have a central role in their strategic future —and what could be more strategic than the sort of things that we are discussing today? So Amendment 75 is a very modest suggestion, and any watering down of it by the Government would be disappointing.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, this has been a very good debate and I thank all those who have contributed. In a sense, the debate around this group of amendments reflects the problem that we have had with the Bill. The Government, rightly, want to progress and to press ahead, but the issues that we are covering are of such substance that they vastly outstrip the time that has been made available for us to do it—hence our needing the Minister to address at the Dispatch Box a wide range of points before many of us can decide how we will deal with our amendments.

The noble and learned Lord, Lord Hope, and the noble Baroness, Lady McIntosh of Pickering, asked about the exchange of letters over the simple question about whether a list of creditors should be provided. The noble Lord, Lord Leigh, and the noble Viscount, Lord Trenchard, asked a justifiable question about whether rescuing a business is the same as rescuing the company, given that in many cases the business is the important issue, particularly when it is linked to the jobs that would be involved. Does the Bill adequately deal with that?

[Lord Stevenson of Balmacara]

My noble friends Lady Drake and Lady Warwick want to know from the Minister directly at the Dispatch Box whether Amendment 80 goes far enough to recognise the gaming and perverse behaviours that will inevitably follow the moratorium arrangements. In addition to that, my noble friend Lady Warwick specifically asked about the issue of super-priority for financial funds in relation to defined-benefit pensions. Will the Government, with their power, stay alert to the dangers? We need to know.

The noble Baroness, Lady Bowles, made a persuasive case about the way in which the breathing space set up by the moratorium would effectively be destroyed by accelerated payments, and the following speaker, the noble Baroness, Lady Kramer, made that point exactly by explaining why gaming is natural, or even appropriate, behaviour for banks and other lenders, which of course have to maximise the return they are likely to get. If that is inevitable, are the measures in the Bill sufficient? Will the Minister do what he can to reassure us about that? And the noble Lord, Lord Hodgson, whose extensive experience and anecdotes flowed through his speech, rightly raised the Pepper v Hart concern and the issues that will come through in future legislation in relation to what has been said today.

I suppose what I am getting at is that it would have been better if we had had proper amendments and time to debate them in individual groups—not all clumped together in different areas—and did not have to rely on the Minister's very difficult task of covering all the points raised in today's hour and a quarter of debate and being convincing about how the words that appear in the Bill, and in the Act when it is published, will be sufficient. However, we are where we are and we need to make progress.

Amendment 75 may be a rather modest issue, as has been said, but it is important in itself as well as for what it might say about the future. I thank the noble Lords, Lord Kerslake and Lord Fox, and the noble Baroness, Lady Altmann, for supporting me in this amendment, and I thank my noble friends Lady Bryan of Partick, Lord Hendy, Lord Hain, Lord Adonis and others for speaking in support. At heart, the amendment seeks to recognise that workers in a company care about its future and, like all other stakeholders, should be informed about what is going on. It supports the view that in a crisis situation all those who work in a company are in it together, and employees may have as much at stake as others who have a financial stake in the company. It also makes the point that those who work in the company in the round, or in the business that the company is carrying out, can and should make a contribution to save it if it is in crisis. Only good can come from a proper process of engagement, information exchange and an exchange of ideas.

I recognise that in a moratorium situation speed may be of the essence. Any arrangements set up that would slow that down also carry the risk that information will be fed out into the public, and that may promote creditor action. We must guard against that but, on the other hand, we should also aim to bring everyone together, not to split off certain groups who, as I hope to argue, could contribute. However, and I wait to hear the Minister deal with this issue when he comes to the Dispatch Box, there may be other ways of dealing with this—measures that could perhaps take into account evidence gained as we go forward. As we discovered in Committee, there may indeed be other issues that need to be wrapped into this first step—the beginnings, perhaps, of a movement to rebalance the relationship between employers and employees and to promote collective bargaining. This may not have been the right amendment or even the right Bill for that approach, but maybe this can be the first step on that journey.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, I thank everyone who has contributed to this excellent debate. The noble Lord, Lord Stevenson, correctly characterised this as a number of different subjects loosely grouped together under the heading of moratorium provisions, and I gladly accept his challenge to try to satisfy the House and deal with all the points that have been raised.

First, to start at the beginning, Amendment 1 was moved by the noble and learned Lord, Lord Hope of Craighead. I thank him for his letter following Committee; as I conveyed in my response to him, I confirm that a copy of that has been placed in the House Library. I agree with him that the monitor needs the details of the company's creditors at an early stage to enable the monitor to comply with their duty to notify the creditors. I also confirm to him that I agree with the explanation that he provided in his speech. We have recently published draft guidance for monitors that would include that the proposed monitor is expected to ascertain the assets, liabilities and ongoing financial commitments of the company when judging its likelihood of rescue, and that would of course include details of creditors.

I turn to the amendments tabled by my noble friends Lord Leigh of Hurley and Lord Trenchard. I thank them for raising these issues and tabling the amendments, which I know derive from their enormous experience in this area. I wrote to my noble friend Lord Leigh on 17 June. I hope he received a copy of that letter; if he did not, I apologise and will gladly give him another copy. The amendments seek to expand the focus of the moratorium from the rescue of the company to the rescue of the company's businesses or parts of that business. I am grateful to them, particularly my noble friend Lord Leigh, for taking the time to meet me and officials to discuss that with his various restructuring experts and for them to highlight their concerns to us. In response to my noble friend Lord Trenchard, the moratorium is intended as a company rescue procedure upstream of a formal insolvency procedure. If a pre-pack is the settled intention of the company and its adviser, the moratorium is clearly not for them.

It has long been the Government's policy that the new moratorium be built around a company in financial difficulty—that is, companies having access to a breathing space before such time as the company itself is beyond rescue. For that reason, the statements made by the monitor on entry to the moratorium and, similarly, the requirements at extension and termination of the moratorium are indeed focused on the rescue of the corporate vehicle. This policy was widely consulted on and received significant support. However, I recognise

the point made by my noble friends that the amendment is supported by some rescue professionals working in that field. Still, I reassure them today by telling them that we will be monitoring the operation of the moratorium closely once the Bill comes into force, and we will not hesitate to take action if that is required.

I turn to Amendments 13 and 14, tabled by the noble Baronesses, Lady Drake and Lady Bowles, which seek to change how financial services debts are treated in a moratorium. This is a complicated area so I hope the House will bear with me. The Government want to avoid lenders exercising their rights to accelerate their pre-moratorium debt, thereby potentially gaming the system through a moratorium. That is why amendments have been tabled in my name, and I will talk more about them later, to exclude financial services' pre-moratorium debts from super-priority or protection from compromise where the debt has been accelerated during the relevant period. The amendments in my name do not prevent a financial services creditor exercising a termination or acceleration clause; nor do they remove the requirement that if the accelerated debt is not paid then the monitor must bring the moratorium to an end. These are important provisions that will encourage lending to companies in difficulty and support the operation and stability of financial markets. The Government want to encourage financial services firms to keep lending to companies in distress. Including debts to these firms in the payment holiday concept could disincentivise them from doing so. That could leave some companies in a moratorium without the finance that they need to recover. In other words, it could jeopardise the very purpose of the moratorium in the first place.

In addition, we have excluded certain financial services contracts from the prohibition of termination clauses. This is vital to ensure that financial markets continue to operate as they do now. To not exclude these contracts could carry wide-reaching, systemic risks to market stability, as market participants could find their transactions suddenly terminated. Legal certainty over how transactions will be treated is vital to the operation of these markets. I appreciate that many noble Lords have raised concerns about this matter, but I hope that the amendments tabled in my name will allay at least some of their concerns. I will talk in a little more detail about those amendments shortly.

3 pm

Amendment 75, in the name of the noble Lords, Lord Stevenson and Lord Fox, the noble Baroness, Lady Altmann, and the noble Lord, Lord Kerslake, seeks to insert a requirement that the company consults employee representatives before it is eligible for a moratorium. The intention of the moratorium is to enable the rescue of the company as a going concern. This will of course produce a better outcome for employees. A requirement to consult with employees' representatives would risk the company's financial problems being publicised before it receives the protection of the moratorium. It could lead to action being taken by creditors, such as looking to take enforcement action before a moratorium prevents them doing so, which could then force the company into early insolvency —the very thing the moratorium is of course intended to avoid.

A company's workforce is essential to its success and it is very important that its interests are protected. The moratorium provisions include strong protections for employees. For example, a company in a moratorium will be required to continue paying wages and salary during the moratorium. If wages and salary are not paid, the monitor is required to bring the moratorium to an end. Additionally, the measures allow employment tribunal proceedings and other proceedings involving a claim between a worker and an employer to proceed during a moratorium. This is in contrast to other types of legal processes that are prevented unless permitted by the court. Should the company fail to pay employees during the moratorium, the employees would receive priority treatment for payment of wages and salary owed to them in a subsequent administration or liquidation commencing within 12 weeks of the moratorium ending.

The guidance for monitors will also be strengthened to include a requirement that the monitor should ensure that the directors of the company have informed employees that a moratorium has come into force, and that the moratorium does not affect their employment rights. That is a very important statement. However, the moratorium is a new procedure and will be subject to a review to ensure that it works as the Government intend. That review will include assessing the impact of the measures on employees. I can tell the House that the Government will bring forward that review from five years from Royal Assent to no more than three years from Royal Assent.

In the event that the review establishes that there has been a negative impact upon employees as a result of the moratorium, I further commit to the House today that the Government will bring forward appropriate proposals to address that. In addition, I say to the noble Lord, Lord Hendy, that a creditor or any other person affected by the moratorium—which would include an employee—may challenge an action or actions of the monitor in court, on the grounds that their interests have been unfairly harmed.

I move on to a number of the amendments tabled in my name. Not all companies that enter a moratorium will be rescued. Due to this risk of failure, it is important to offer some insulation for those who continue to trade with a company during the moratorium. Where a company enters administration or liquidation within 12 weeks of the end of a moratorium, any unpaid debts that relate to obligations entered into by the company during the moratorium will receive priority in the administration or liquidation. Pre-moratorium debts that are excluded from the payment holiday definition—for example, employee wages, rent, goods supplied during the moratorium, and debts under financial services contracts—will receive similar treatment. These debts are also given protection from being compromised in a company voluntary arrangement, scheme of arrangement or restructuring plan proposed by the company within the same period. This super-priority puts these creditors at the top of the payment waterfall. Only debts owed to fixed-charge creditors will rank above them.

As I said when referring to the amendments tabled by noble Lords on this subject, creditors of pre-moratorium debts under contracts involving financial

[Lord Callanan]
services may accelerate their debts for payment. Financial services contracts are excluded from the payment holiday definition to ensure that the new reforms do not affect the operation of financial markets, and that financial market participants have legal certainty to facilitate the efficient functioning of those markets. This will give financial services lenders the incentive to continue lending to companies entering a moratorium.

As many noble Lords pointed out in Committee, where a financial services creditor accelerates its debt, that may lead to worse outcomes for other creditors, including a company's pension scheme, if the moratorium ends and another procedure is entered within 12 weeks, triggering the super-priority protection. This could create an incentive for financial services creditors to exercise their rights to accelerate pre-moratorium debts for payment shortly before or during the moratorium. The Government want to prevent firms gaming the system through a moratorium. These amendments therefore exclude pre-moratorium financial sector debts from super-priority, or protection from compromise, where the financial services debt has been accelerated between the proposed monitor giving their statement on the likelihood of the company's rescue and the end of the moratorium.

These amendments do not prevent a termination or acceleration clause being exercised; nor do they impact on the requirement that the accelerated debt be paid. But the amendments do remove the super-priority or protection for such pre-moratorium debts in a subsequent insolvency or restructuring process. This disincentivises those financial services creditors from seeking to accelerate their pre-moratorium debt solely to benefit from super-priority should the company fail, or to obtain protection from compromise if a restructuring proposal is put to them.

I say in response to the noble Baroness, Lady Drake, that the Government believe that these amendments remove the risk of gaming the system, as I have outlined, but we appreciate that the financial services industry, like other aspects of the economy, changes over time. For this reason, my amendments include a power to make regulations that will allow the Government to change the definitions of moratorium debt and priority pre-moratorium debt as used in these protection provisions. We will of course consider using the powers to amend the definition of pre-moratorium debts, if needed. As these are the debts that receive super-priority or additional protection, the Government will be able to react quickly and decisively to any changes in market behaviour.

I appreciate that many noble Lords have raised concerns over the number of powers in the Bill. I hope, however, that they can appreciate the importance of this new power and the damage that could be caused to creditors, including pension funds, if the Government were not able to act quickly to tackle abuses in this area. Finally, there is also a minor and technical amendment to clarify which pre-moratorium debts will benefit from super-priority or protection in the circumstances outlined above.

I suspect that I have spoken long enough on this group for most noble Lords, but lastly I will answer the question from my noble friend Lord Bourne of Aberystwyth. The monitor must be an authorised insolvency practitioner and abide by professional and ethical standards. The monitor should assess threats to their independence and act accordingly, declining an appointment as a monitor if they are unable to mitigate a threat to an acceptable level.

With all those reassurances, and given the amendments that the Government have been able to table in these areas, I hope that I have been able to satisfy the concerns of noble Lords. I therefore commend these amendments to the House.

The Deputy Speaker (Baroness Henig) (Lab): I have received a request to ask a short question for elucidation from the noble Lord, Lord Fox, so I call on him to ask it.

Lord Fox: In reference to Amendment 75, the Minister talked about the danger of employees leaking the state of the business. In my experience of acquisitions and disposals in continental Europe, where the pre-briefing of employees is legally required, there has never been an issue with employees leaking the information. The leaks have only ever come from advisers, usually banks. What grounds does the Minister have for making that statement?

Lord Callanan: I do not think that I used the word "leaking". We want the moratorium to be a light-touch procedure with the minimum level of bureaucracy. Of course, it goes without saying that any information being disclosed from whatever source of a company's intention to go into this procedure could have serious adverse consequences if certain creditors seek to pre-empt the operation of the moratorium. However, we have built concessions into this part of the Bill. I hope noble Lords will be able to accept them. I take on board the noble Lord's points, although I did not use those words.

Lord Hope of Craighead [V]: I am very grateful to those noble Lords who spoke in support of my Amendment 1. I am grateful to the Minister as well for giving me the two assurances which I sought when I introduced the amendment.

I feel that there was a note of some disappoint from some noble Lords that I would not press the amendment, so I will explain very shortly why I took that decision. The letter that was circulated—I am grateful to those responsible for doing that—sets out in some considerable detail the various points which one needs to bear in mind as background to the wording of the Bill. It does, of course, require one to give rather more weight to the guidance than what one finds in the Bill's wording, which I said was somewhat weak, but I am prepared to accept that guidance and test the matter against the point which the Minister made in Committee that adding a burden on to the directors of the company when a company needs to enter into the procedure as quickly as possible would be undesirable if to do so would be unnecessary.

That really is the essence of the point I asked myself: am I satisfied, in view of what the Minister said in his letter, that the burden would indeed be unnecessary? In the end, the answer to that question was yes.

For these reasons—and I express my gratitude again to the Minister for his helpful letter—I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2

Tabled by ***Lord Leigh of Hurley***

2: Clause 1, page 3, line 31, after "company" insert "or the company's business or part of that business"

Lord Leigh of Hurley: My Lords, I take the assurances from the Perspex-covered Dispatch Box that the Minister will monitor the situation. I take this opportunity to apologise: I did not mean that I had not received a letter; I meant that it was not as satisfactory as the noble and learned Lord, Lord Hope, found it. There were insufficient assurances. I also suggest that the noble Lord, Lord Fox, meant bankers and PR advisers. On the basis of the Minister's categoric assurances that he will monitor the situation and take action as necessary if it is apparent that companies are not able to be saved but businesses can, I will not move the amendment.

Amendment 2 not moved.

The Deputy Speaker: We now come to the group beginning with 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 or any other amendment in this group to a Division should make that clear in debate.

Amendment 3

Moved by ***Earl Howe***

3: Clause 1, page 3, line 44, leave out "changing the definition of "the relevant documents"" and insert "adding to the list of documents"

Member's explanatory statement

This amendment narrows the Secretary of State's power to change a list of documents, so that it is confined to adding to the list. The power could subsequently be re-exercised so as to remove anything added.

Earl Howe (Con): My Lords, in moving Amendment 3 I will also speak to the other government amendments grouped with it. I begin by thanking my noble friend Lord Blencathra and the Delegated Powers and Regulatory Reform Committee, including the ever-helpful clerk team, for their quick work in scrutinising the Bill. As always, they have made important recommendations and the Government have sought to accept as many of them as possible. In last week's debate, my noble friend Lord Callanan stated that we would listen to the concerns expressed and consider them carefully. We have done so.

The amendments tabled by the Government have taken on board the concerns raised by the committee and by noble Lords on the number of Henry VIII powers in Clause 1 on moratoriums. As a result, we have tabled amendments that will remove three of the Henry VIII powers in Clause 1 from the Bill: those in new Sections A10(4), A11(5) and A13(9). We have also tabled amendments that will restrict the power in new Section A6(4) so that it can be used only to add to existing requirements, rather than to amend them.

3.15 pm

In the light of concerns about the breadth of the power under Schedule 1—specifically paragraph 20 of new Schedule ZA1—we have tabled an amendment that will restrict the scope of that power. The amendment means that the power will no longer be able to be used to amend paragraph 2 of new Schedule ZA1, which prevents companies from being eligible for a moratorium if they are or have recently been subject to a moratorium or other insolvency procedure.

We have considered the points rightly raised by the committee and by noble Lords on Clause 18—the general power that enables the Secretary of State to temporarily amend corporate insolvency and governance legislation. The committee recommended that we introduce a restriction on the use of the power in Clause 18 so that the Secretary of State must consider there to be an urgent need to do so. Amendment 47, tabled by the Government, fulfils this recommendation. Amendment 49 will further restrict the power under Clause 18 by amending Clause 22 so that the expiry date for using the power cannot be extended beyond two years after Royal Assent.

Clause 23 enables consequential, incidental, supplementary or transitional provisions or savings to be made in connection with provision made by regulations made under Clause 18. We have tabled amendments to address the DPRRC's recommendation here, so the power will be changed to the "made affirmative" procedure when used to amend primary legislation. This will provide both Houses with the opportunity to fully scrutinise any use of the power, as has been asked for.

In the light of the committee's recommendation and the strong feeling demonstrated by many noble Lords, we have tabled Amendment 109 to change the parliamentary procedure for exercising the majority of regulation-making powers in Schedule 14, on meetings of companies, from the negative to the "made affirmative" procedure. This will provide for greater parliamentary scrutiny of regulations made under those powers.

Amendment 108 retains the negative procedure where regulations are made to shorten the period in respect of which companies and other bodies can make use of temporary easements around meetings in Schedule 14. That period already expires on 30 September and I would not envisage that we will wish to bring that date forward. Should we do so, however, the negative procedure will continue to apply to the necessary regulations. That is consistent with powers to shorten the life of other temporary provisions in the Bill.

Clause 41 originally temporarily changed the resolution procedure from the affirmative procedure to the negative procedure for specified other powers dealing with moratoriums. We have tabled an amendment to change the temporary procedure to the "made affirmative" procedure, as recommended by the committee and asked for by noble Lords.

[Earl Howe]

Finally, we have also tabled amendments that accept the committee's recommendation on the need to add a condition to Clause 39, which contains the power to change the duration of the temporary provisions, to limit its use so that it can be exercised only where an extension is required to deal with the effects of Covid-19.

Where, after careful consideration, a decision was made not to accept the committee's recommendations, it was in general done to ensure that we could provide specific sectors with the certainty they required and to provide confidence to lenders. I hope noble Lords will, on reflection, understand our decision to retain these powers and, in some cases, to keep the resolution procedure as negative where it would have had an adverse effect to do otherwise.

I hope it is clear from the number of amendments tabled by the Government that we have listened carefully to noble Lords' views and that we have responded substantively and appropriately. I beg to move.

Baroness Fookes (Con) [V]: My Lords, before I speak to Amendment 48 in my name, I thank the Minister for taking on board so many of the issues raised by the Delegated Powers Committee and the Constitution Committee about the extensive use of delegated powers. I believe in giving credit where it is due and do so now.

However, I was seeking a little more in Amendment 48. This amends Clause 21, which requires the Secretary of State to keep the regulations made under Clause 18 under "constant review" and, if satisfied that they are no longer needed or proportionate to their purpose, to make new ones amending or revoking. That sounds fine at first, but what does "constant review" really mean? Who is going to do the constant reviewing—a very busy Minister with other things on his mind, or his very busy civil servants? My amendment seeks to keep them on the straight and narrow, so to speak, by suggesting that the Secretary of State should review these amendments every three months and report to Parliament. I hope that my noble friend might take this on board, but I am not holding my breath.

Baroness Taylor of Bolton (Lab) [V]: My Lords, I echo what the noble Baroness, Lady Fookes, said. She and I serve on the Constitution Committee, which raised quite a few concerns about this Bill. I want to say a few words about Clause 22. As the Minister outlined, the Government are now adding a limitation to it so that the expiry date cannot be extended beyond two years after Royal Assent. That amendment is very similar to the one that I moved in Committee. I am very pleased that the Government have acknowledged what the Constitution Committee said about the extent of the power that was being given, and I am glad that this change is being incorporated in the Bill.

Having said that, and having welcomed the changes that the Government have introduced in other areas, there are some very significant general concerns, that I and many others have, that have been highlighted by this Bill and by the extent of the government amendments that have had to come forward following Committee. Committee raised a series of genuine problems, some of which the Government have addressed, but this illustrates some of the dangers of fast-tracking legislation, even when, as the noble Lord, Lord Callanan, said, there have been previous consultations. It certainly illustrates the dangers of using emergency legislation. We all accept that emergency legislation in this area is needed because of Covid-19, but it illustrates the difficulty of using emergency legislation to make permanent changes at the same time in this very rushed way.

I ask the Minister to bear in mind that we will have other legislation coming forward. I hope that Ministers will learn the lessons of this legislation. This is a complex Bill—the previous debate showed that—and this is not really an adequate way of scrutinising such complex issues. Therefore, I hope that when we have other legislation because of Covid-19 or Brexit, the Government are mindful and give time for proper consideration of all aspects of such Bills.

Having said that, I welcome the specific change to Clause 22, and I am very pleased that the noble Lord, Lord Callanan, having said last week that he would look at this again, has produced this government amendment.

Lord Balfe (Con) [V]: My Lords, I want to say a few words in support of Amendment 48, tabled by the noble Baroness, Lady Fookes. I know from experience that when you have a requirement to report on anything without a time limit, there is always the tendency not to do it. There is always something more pressing, and even if the Minister raises it, the civil servant will say, "Well, no one has actually asked for it, Minister, and we have got this or that." The only way to keep a piece of legislation or a policy under review is to have it timetabled. Whether it is every three months, four months or six months, the key point is that you have a timetable and you have a requirement to report at the specific point of that timetable, because then it gets into the system.

I urge the Minister, thinking not of himself but of Ministers in years to come, to accept this amendment or a close variant of it, that, crucially, puts in a time limit. A refusal today could snooker us when trying to get reports in the future, as we end up with parliamentary questions such as, "When is the Minister proposing to review?" and answers saying, "He or she is certainly thinking about it", but not getting the review. I urge the Minister, looking to all our political futures, to accept some sort of time limitation. As such, I am very happy to support the amendment tabled by the noble Baroness.

Lord Wallace of Tankerness (LD) [V]: My Lords, my colleagues on the Constitution Committee, the noble Baronesses, Lady Taylor and Lady Fookes, have made their points very clearly, so I am very happy to rest behind their submissions.

Baroness Northover (LD) [V]: My Lords, I raised in Committee that there were numerous Henry VIII powers in the Bill, as the Delegated Powers Committee flagged in its devastating report. I am very glad that the Government have responded to the criticisms of the Delegated Powers Committee and the Constitution Committee by bringing forward these amendments, even if they are not comprehensive.

I am glad that we have been able to scrutinise the Bill in this House in a way that simply did not happen in the Commons. This Bill is indeed a mixture of emergency and permanent changes. I note particularly that the Government propose affirmative procedures in Amendments 58, 66 and 67, and "made affirmative" procedures in Amendments 68, 69, 72 and 73. The notes say that it is either affirmative or "made affirmative"—although I note what the Minister, said—in Amendment 109. I welcome these amendments. Those serving on the Constitution Committee have tabled Amendments 48 and 50, which bring more precision to this, and I hear what they have to say. Although I welcome what the Government have brought forward, I hope that the Minister can give further assurances.

Baroness Anelay of St Johns (Con) [V]: My Lords, last week in Committee I expressed my concern about the Government's extensive use of Henry VIII powers and I was one voice among many. Today, I welcome the Government's amendments in this group, most of which respond positively to the concerns expressed in Committee. For example, in Clause 1, Amendments 5, 8 and 11, and Amendment 76 to Schedule 1, narrow or remove the Henry VIII power. Another couple of examples of changes can be found in Amendment 69 to Clause 42 and Amendment 72 to Clause 43. They convert the negative procedure for regulations into the "made affirmative" or—as the noble Baroness, Lady Northover, has just said—affirmative procedure.

3.30 pm

When the Delegated Powers and Regulatory Reform Committee, under the chairmanship of my noble friend Lord Blencathra, issued its excoriating report, it made the point in paragraph 22 that

"another procedure exists under which an affirmative instrument may be made and come into force before it is approved by both Houses. This is known as the 'made affirmative' procedure. Under this procedure, the instrument is able to come into force as soon as it is made, but it will automatically cease to have effect if it is not approved by both Houses within a specified period of time."

It is a welcome use of the "made affirmative" procedure that we see today, and I believe that we will see it in regulations laid before the House later this week, on Thursday, from another department.

It is good that the Government have listened to the House and taken action. However, I appreciate from what my noble friend Lady Fookes and the noble Baroness, Lady Taylor of Bolton, said that there is perhaps some need for consideration of time limits. I very much look forward to my noble friend Lord Howe's response to Amendment 48.

I take the opportunity to put on record my thanks to my noble friend Lady Bloomfield, for her letter answering questions I raised during the debate in Committee on the group of amendments to Schedule 14 including my Amendment 143. I had raised concerns about the position regarding charities, with particular reference to those established either by Act of Parliament or by royal charter. The noble Lord, Lord Stevenson, when withdrawing his amendment, which led the group, was kind enough to ask the Government to clarify how the measures in the Bill would apply to charities, and, where relevant, to their trading subsidiaries. It was encouraging to receive the following positive reassurance from the Government by letter, on Friday. I will read it, mainly to put it on the record, and because it meant that I was able to avoid retabling an amendment today:

"many large charities (however structured) operate wholly owned subsidiaries structures as companies to undertake trading activities in order to generate income for their parent charity. I can confirm that such subsidiary companies will benefit from the measures in the Bill."

That was a welcome statement from my noble friend and was welcomed by charities.

The Bill is important for business and I wish it a swift passage from here onwards.

Baroness McIntosh of Pickering [V]: My Lords, I have no substantive remarks to make, other than to congratulate my noble friend Lord Howe on taking on board the comments made by the committee.

Baroness Barker (LD): My Lords, a number of Members of your Lordships' House may wish to claim that it was the force and power of their oratory that caused the Government to think again, but I have a sneaking suspicion that the mere prospect of the noble Baroness, Lady Fookes, leading a band of opposition rebels was enough to concentrate minds—and I am very glad that it did. There was broad consensus around the House that the powers taken within the legislation were far too broad. I am glad that the noble Earl, Lord Howe, has come back and talked in detail about those which have been ceded and those which have not.

Towards the end of his remarks, the noble Earl said that the Government had retained some regulation-making powers to address the needs of different sectors, should it become apparent that regulations need to be made to save businesses in certain sectors. That is the issue to which I draw attention, following on from the remarks of the noble Baroness, Lady Anelay of St Johns. Like me, she has an interest in what happens in the charity and social enterprise sector. Welcome though the letter from the Minister was—exactly as the noble Baroness just said, it talked about charities with wholly owned subsidiary trading companies which give back their profits to the charity—a number of charities have different company forms, and there remains a lack of clarity in the Bill about some of those entities.

I am very pleased that the noble Lord, Lord Callanan, and his officials have talked to me about this. The Bill applies to those charities which are companies limited by guarantee—it is mostly community interest organisations that will fall within this—but it will not apply to charities that are unincorporated, nor to excepted charities and royal charter charities. There is also a big consideration around the extent to which the Bill will apply to community benefit societies, mutuals and co-ops. I am not asking the Minister to reiterate the detail of that today. I merely draw attention to the fact that there may be matters to which it is necessary to return when the Government make regulations under the Bill.

I signalled to the noble Lord, Lord Callanan, one of the issues that has been drawn to my attention by the museum sector. We have a number of independent

[Baroness Barker]
museums—not the large museums set up under an Act of Parliament, nor those associated with local government—and they are typically charitable companies. They have a very big fear. If they are in danger, and a number of them currently think that they may well be, their collections immediately become part of the assets of any insolvency procedure. The big concern is that, if there is no exemption for those assets in regulations, later on this year a large part of Britain's cultural heritage may suddenly come up in a fire sale. That would be extremely damaging, not just to those organisations but to the local economies that they support as part of the tourism sector and so on. All they are asking is that, when it comes to making regulations under the Bill, there be consultation with them and with the charity lawyers, accountants and insolvency practitioners who have expertise within what is, I know, a very niche but important part of company law.

That said, I add my support to the noble Baroness, Lady Fookes, and her Amendment 48. What she is asking for seems entirely reasonable.

Lord Holmes of Richmond [V]: I am pleased to speak in support of Amendment 48 from my noble friend Lady Fookes. As ever, she makes a point that is pertinent and clear, and that is absolutely required at this stage. In doing so, I also congratulate my noble friend Lord Blencathra and the members of the Delegated Powers Committee on all their work in this area. As other noble Lords have said, the Government are in listening mode on this. That can be only a good thing, and it is largely down to the persuasive power of my noble friend.

Baroness Neville-Rolfe (Con) [V]: My Lords, I thank my noble friend the Deputy Leader for his many amendments, designed to moderate the overuse of delegated powers in this important legislation. The legislation is vital to easing the burden of events on businesses, especially smaller or less well-capitalised businesses, of which sadly there are more every day.

I was particularly concerned about the lack of an end date for the use of the emergency powers, but government Amendment 49 appears to meet my concern. I also thank my noble friend Lady Fookes, the noble Baroness, Lady Taylor, and others for their effective scrutiny.

Lord Fox: My Lords, this will be something of a novelty but I am going to be gracious. As is appropriate, I congratulate the Government on bringing forth Amendment 49, as did the noble Baroness, Lady Neville-Rolfe, and on sweeping away as many as possible of the Henry VIII clauses, as they are known. My noble friend Lady Barker set out the challenge for this Bill and the reasons for retaining some powers to change and mutate it as it goes forward. Because of the haste and scale of the Bill, there is a great challenge from non-conventional businesses, so to speak.

The point about museums is a very good example of where it is a question not just of the future of the museum but the future integrity of a collection, which suddenly becomes an asset. While it may not be possible to save a museum, it should be possible to save a collection—but, when very many collections are going up for sale at the same time, clearly the capacity to deal with that is eliminated; that is just one very niche example of the challenge for the Government. In this set of amendments, the Government have shown an ear to the debate and have reacted accordingly.

Lord Stevenson of Balmacara [V]: My Lords, as has already been said, this has been a good debate. While we must await the individual amendments, I think the judgment of the House so far is that the Government have changed their original proposals sufficiently to satisfy the House and, more importantly, the specialist committees that have been looking at particular details; we picked up from my noble friend Lady Taylor the considerable concerns that were around at the time.

The noble Earl, who is also the Deputy Leader of the House, might wish to swap hats when he comes to respond to the debate, as there are perhaps points that need to be taken back and listened to within the usual channels in relation to the dangers of fast-tracking complex legislation of this nature and the need to make sure that we have sufficient time and learn the lessons, as my noble friend Lady Taylor said. It is not something that we often hear in this House, but we do need to listen: this whole process of fast-tracking and then trying to pick up on the run the difficulties that come up is really not an adequate way of scrutinising, as she put it. We hope that that lesson will be learned in a way that will allow us more time and more consideration.

Finally, I thank the noble Baroness, Lady Anelay of St Johns, for picking up the point that we both shared in Committee in relation to charities. Like her, I am pleased that the point has been noted and a response issued. I still think that there are concerns around some of the other bodies with which we as a Parliament and as a society should be concerned: the good work of credit unions, friendly societies, social enterprise companies, community-interest companies and co-ops. These, of course, share the common thread that they are often set up outside the norms of company law, for the reason that they can operate better when they are not part of the overall character of the Companies Act. But, inevitably, there are intersection points and issues, which have been picked up. The point made by the noble Baroness, Lady Barker, that certain independent companies trading as museums might find that the collections on which they depend may be at risk is obviously a worry that the Government will want to take back. I think those are the important points.

Earl Howe: My Lords, I thank my noble friend Lady Fookes and the noble Baroness, Lady Taylor, for the amendments which they have tabled, and I am grateful to all noble Lords who have spoken in this short debate. I will say at the outset that I understand and take on board the concerns expressed by the noble Baroness, Lady Taylor, and the noble Lord, Lord Stevenson, on the use of emergency legislation and the risk that amendments to such Bills will be necessary.

I can assure the House that the Government do our very best to draft legislation accurately and fully before bringing a Bill before the House. However, I feel sure

that noble Lords will understand that there will always be a risk of amendments being required to the Bill as it progresses through Parliament, even with the best will in the world. To the extent that the Government have listened to concerns expressed during the course of the Bill, I am sure that noble Lords would not wish to criticise amendments that have come forward in response to such concerns.

3.45 pm

Amendment 48 raises the matter of accountability for the Secretary of State when the power under Clause 18 is used. First, noble Lords will be aware that any use of this power would be through regulations subject to the "made affirmative" procedure, which means that they must be debated and approved by both Houses. The temporary amendments will last for a maximum of six months, with further debate if they are to last longer than that. As my noble friend Lady Fookes reminded us, the Secretary of State has a continuing duty to review any temporary amendments made using the power. But I suggest to her that a further report every three months would be likely to replicate information being provided to Parliament through other processes.

The Minister's duty is a legal duty. That is not in any way a licence to keep matters conveniently out of the in-tray, so to speak. Having been a Minister myself, I know that officials simply do not allow a Minister to do that. All these temporary measures will, inevitably, be subject to constant attention, both in Parliament and outside, so I would strongly argue that the amendment is unnecessary. As I made clear earlier, amendments have been tabled by the Government to restrict the use of the power in Clause 18, so it can be exercised only if the need for the provision made by the regulations is urgent.

Amendment 50 provides for a sunset provision for the general power in Clause 18. As things stand, the power may not be used after 30 April 2021, but this expiry date may be extended. This would be for a period of no more than a year, although there is no limit to the number of times that the power to extend may be used. Amendment 50 would limit the power to extend the sunset date to one use only, which would mean that the very latest the power in Clause 18 could be used would be 30 April 2022. I do recognise the concern that this House has about the potential for the expiry date to be extended indefinitely. That is why the Government have taken the step of tabling an amendment which would mean that the absolute latest date that the power will expire will be two years after the Bill is given Royal Assent.

I hope that these government amendments, individually and collectively, will provide noble Lords with sufficient reassurance that the power will be used for proper and proportionate purposes and for an appropriately limited time. By the same token, I hope that I will have satisfied my noble friend and the noble Baroness, Lady Taylor, enough to enable them to feel comfortable in not moving their amendments when they are called.

Before I sit down, I would like to make a few points in response to the noble Baroness, Lady Barker, and the noble Lord, Lord Fox, about charities and, in particular, museums. As they know, the measures in the Bill will apply to all charities that are structured as a company; there are over 30,000 of those. In addition, the Bill will apply certain measures to charities that are structured as charitable incorporated organisations; there are over 20,000 of those.

The Department for Digital, Culture, Media and Sport and the Charity Commission have been closely involved in discussions on both the Bill's permanent measures and temporary emergency measures and on how they can be extended to incorporated charities. Most of those discussions have been in the context of preparing this emergency legislation to respond to the Covid-19 pandemic. In the limited time available, it was considered proportionate to focus efforts to extend the Bill's provisions to the largest group of incorporated charities that would require specific provision in the legislation—namely charitable incorporated organisations, of which there are over 22,000 in England and Wales and 4,500 in Scotland.

We do recognise that museums are facing exceptional challenges because of Covid-19, and I can tell the noble Baroness and the noble Lord that we are actively exploring a range of ways to support them at this time. Unfortunately, I cannot be more specific than that, but I hope that they can be reassured to the extent that this is not a matter that will be spoken about today and then conveniently put aside. This is active work in progress and we fully recognise the concerns that have been raised about museum collections.

My noble friend Lord Balfe raised the use of the powers in Clause 18. Perhaps I can give him some further and better particulars on that. Temporary amendments to relevant legislation may be made by statutory instrument using the "made affirmative" procedure, as I mentioned, and so will be subject to debate and approval in both Houses. As I also mentioned, those amendments may last for a maximum of six months, after which they may be extended if they are still needed; again, that would be by statutory instrument using the "made affirmative" procedure, so there would be a further debate and the approval of both Houses would be needed. As my noble friend Lady Fookes drew attention to, there is a continuing requirement on the Secretary of State to keep temporary amendments under review, to revoke them if they are no longer needed or amend them as appropriate, so the parliamentary scrutiny applied to this part of the Bill is very real. I hope that my noble friend is reassured by that.

I hope that I have said enough to enable my noble friend Lady Fookes not to move her amendment when we come to it. In the meantime, I beg to move Amendment 3.

Amendment 3 agreed.

Amendment 4

Moved by ***Lord Callanan***

4: Clause 1, page 4, line 23, at end insert—

"(c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and

(d) in a case where the company is an employer in respect of such a pension scheme that is an eligible

scheme within the meaning given by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund."

Member's explanatory statement

This amendment extends the monitor's duty to give notice that a moratorium has come into force.

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 this or any other amendment in the group to a Division should make that clear in the debate.

Lord Callanan: My Lords, the amendments in my name make provisions relating to pension schemes in the moratorium and the restructuring plan. Although the moratorium is not an opportunity for employers to walk away from their liabilities, it may become the point at which preparations for and discussions about a restructuring proposal begin. Where the pension scheme would be a large unsecured creditor in any insolvency, should the employer ultimately fail, restructurings can have a significant and immediate impact on the expected outcome of the scheme.

There is the possibility that the company may seek to reschedule payments to provide working capital to give time to shore up its operations. This might result in lower payments to the scheme for a period of time. A rescue may also involve certain other creditors, such as new lenders providing rescue finance, taking security over company assets. This would mean that there would be less available for other creditors, including the scheme, in the event that any such rescue ultimately failed.

Some insolvency procedures are designated as "insolvency events" under existing pensions legislation. One effect of such designation is that the Pension Protection Fund has a statutory role to play, acting as a creditor in place of the trustees of eligible schemes. However, the new procedures are different. They are not qualifying insolvency events, as they are focused entirely on giving the company every opportunity to achieve a rescue as a going concern. This would be the best outcome for a pension scheme: moving forward with the support of its newly rescued sponsoring employer.

Nevertheless, there is concern that these procedures could result in the pension scheme being disadvantaged as an unsecured creditor of the company. The PPF, as the provider of protection for members of eligible schemes in specified circumstances, could potentially face a greater loss. An example of this would be if the company subsequently fails and the scheme falls into the PPF with a larger deficit than it originally had.

Consequently, it is agreed that there is a need to build in specific protections. These focus on the interests of the scheme and its members, and the interests of the PPF and its levy payers. This would be by ensuring that the PPF has a seat at the table in any restructuring proposal and that its voice is heard. After all, it is the statutory compensation scheme for members of eligible defined benefit schemes, and ultimately bears the risk for the scheme should the company subsequently fail.

The challenge has therefore been to strike the right balance between the interests of the trustees, the board of the Pension Protection Fund, the company and its creditors. Taken together, these amendments achieve this balance. They provide for both the PPF and the Pensions Regulator to get appropriate information in the case of both a moratorium and a restructuring plan. The regulation-making power will allow the Secretary of State to provide for the board of the PPF to act in the place of the trustees of the scheme as a creditor in certain circumstances. The board of the PPF and the Pensions Regulator will have the right to the same information as creditors, concerning the start and end point of a moratorium and any change in the monitor, in specified circumstances. The board of the PPF will have the same rights as trustees to challenge in court the monitor's or director's actions in specified situations where the interests of the trustees as a creditor are considered to be unfairly harmed by those actions.

Where a restructuring plan is proposed and the company is a sponsoring employer, provision is made for the board of the PPF and the Pensions Regulator to receive the same information sent to creditors, in specified circumstances. This means that they are informed that a proposal has been made and they can then consider what action, if any, to take.

In respect of both the moratorium and the restructuring plan, where the trustees of a PPF-eligible scheme are a creditor of the company concerned, the proposed amendments provide a regulation-making power. This power will give the board of the PPF the ability to exercise the creditor rights of the trustees; again, in appropriate circumstances. These rights include attending the creditors' meeting, voting on the restructuring plan and making representations to the court. The powers are drafted to allow an appropriate balance between the trustees and the Pension Protection Fund's interests by allowing creditor rights to be exercised concurrently where appropriate. Conditions can also be placed on the exercise of any rights given to the board of the PPF.

Restructuring will always involve trade-offs. Employees will be concerned that the rescue ensures that their jobs are secure, but at the same time they will be interested in the impact on the company pension scheme if they are a member. The changes tabled in my name have balanced the interests of employees and scheme members with those of a company and its creditors, giving them all the best chance for survival, in our view. I beg to move.

Baroness Bowles of Berkhamsted [V]: My Lords, I welcome the amendments tabled by the Government to address the position of the Pension Protection Fund and the Pensions Regulator where there is a relevant scheme. The amendments give them the right to be notified of moratorium events and give the Pension Protection Fund rights to challenge the monitor or directors, vote as a creditor and make representations to the court.

An amendment on the issue that remains unaddressed was originally tabled in Committee by the noble Baroness, Lady Altmann; we have tabled one on Report with her support. The noble Baroness, with her great experience in pensions, will speak next.

Amendment 15 concerns the status of pledged assets and whether the court can give permission for their disposal without the Pension Protection Fund's

permission. In the absence of an amendment, those assets are not protected, which unravels the basis on which settlements over funding and deficits are made with trustees.

The effect of that is twofold: the actual disposal of the assets, which may be unfavourable to the pension scheme; and, even without any of that happening, the fact that such a possibility exists raises doubts about the numerous pledges that underpin contribution agreements. It is far from desirable to have to revisit them but, without any assurance, it would seem necessary for trustees to think about that and seek more cash funding. That would be bad at any time, but when companies are facing more difficult times due to the pandemic and its after-effects, it would be particularly unwelcome. That is the reasoning behind the amendment, and I know that other noble Lords are well able to illustrate the problem further.

4 pm

Baroness Altmann [V]: My Lords, I echo the words of the noble Baroness, Lady Bowles. I welcome the recognition by the Government in the amendments laid by the Minister of the importance of ensuring that a company pension scheme is not disadvantaged and that the Pensions Regulator and the Pension Protection Fund are given rights in circumstances where there is a moratorium or negotiations regarding saving the ongoing business.

As the noble Baroness said, Amendment 15 provides the sort of reassurance that not only a pension scheme and its trustees might need but that the entire defined benefit pension system might require should there be the sort of emergency problems that we are passing this legislation to cope with. The assets of a company are sometimes pledged to a pension scheme in order to reduce the amount of cash that the sponsor needs to pay into the scheme. The types of these so-called contingent assets that we are concerned about in this amendment are Type B(ii) and Type B(iii). Type B(ii) are rights over real estate owned by the company and Type B(iii) are securities that have been pledged to the pension scheme. The scheme's funding will have been based on following significant negotiations over the years to fix funding shortfalls.

What has happened recently gives rise to enormous concern. In 2007, schemes in deficit had a total deficit of around £20 billion. By 2008, that had risen to £100 billion or more. In March 2009, it was £220 billion. At the end of last year, it had fallen to around £165 billion, but the latest figures from the Pension Protection Fund show that the total deficits of schemes in deficit have now reached £290 billion. There is a major shortfall across the defined benefit pension scheme universe. After many years of trustees agreeing with sponsors to allow deficit repair payments, I have significant concerns that these contingent assets could be at risk, given the amendments that have been laid. They give the Pension Protection Fund and the regulator the right to be notified and to participate in such negotiations, but if that will require court challenges rather than being ruled out without Pension Protection Fund permission, there is an ongoing risk that such assets could be approved for sale by the court. That would not only materially weaken the pension fund itself but, should the company then fail, the PPF will have many fewer assets than is currently assumed by its levy calculation. The system itself could then be at risk.

Scheme funding has been agreed over many years. In light of the other measures in this Bill, which could see bank lenders and even intracompany loans accelerate ahead of the pension scheme in an insolvency, there is likely to be a material weakening of DB scheme funding and potential recoveries on insolvency. Therefore, I am concerned that all other DB schemes and their members will be at risk and that the PPF lifeboat may not be secure in the way we currently believe that it is. I wonder whether the Minister might be able to confirm that the Pension Protection Fund will have the necessary powers to prevent the courts selling assets, should that be under consideration. Without that power, it may be too late once those assets have been sold. I agree with my noble friend that these measures improve the situation, but just allowing the PPF and the Pensions Regulator to have appropriate information, the same as other creditors, and the ability to challenge in court in certain circumstances leaves a question mark in one's mind about how secure the contingent assets pledged to a pension scheme will be after this Bill, as it is currently worded, passes.

Lord Hain [V]: My Lords, I was very happy to add my name to Amendment 15, which has been spoken to so eloquently and with unrivalled expertise and authority on this matter by the noble Baroness, Lady Altmann. I am very concerned about the threat to the Pension Protection Fund. I am proud to say that it started life under the last Labour Government in 2005, and I was subsequently Secretary of State for Work and Pensions. It is an important lifeboat, but it could be threatened if the consequences of insolvency, particularly with defined benefits, rebound into the PPF.

Although I welcome the concessions and responses that the Minister has made through these amendments, and what he has said as a result of the arguments put by the noble Baronesses, Lady Altmann and Lady Bowles, and others, including my noble friends Lady Drake and Lady Warwick, I still think there is a real risk involved. I hope that today, he will give greater recognition to that fact and that he and the Secretary of State will be vigilant in ensuring that the Government are fully cognisant of their concerns about the future viability of the vital Pension Protection Fund.

Baroness Neville-Rolfe [V]: My Lords, I come to this from a slightly different point of view, and I rise to express some concern at the scale of amendments on pensions in this already finely balanced Bill. They may make life difficult for investors, creditors and the forces of enterprise that we need if our economy is ever going to recover from the dreadful coronavirus crisis. While understanding and accepting the government amendments and agreeing on the need for vigilance—in the words of the noble Lord, Lord Hain—I urge the Minister to go no further and not to accept Amendment 15. It gives too much power to the Pension Protection Fund and could have the perverse consequences of delay, burden and cost to pension funds and to businesses that are in trouble but have a sustainable future.

Lord Balfe [V]: My Lords, I am concerned at the way in which the Pension Protection Fund is currently heading. It has been burdened with more and more liabilities. This is a direct attack on it. We need to remember that the idea of pledged assets came as an alternative to companies having to put real cash into their pension fund deficits. The PPF was prepared to accept pledged assets on the basis that they were literally a pledge that could be redeemed against the deficit. If that is going to be removed, it will mean that any responsible trustee in any company in this country—whether the company has financial problems or not—must, as soon as this legislation comes into being, review those pledges. It does not matter whether the company has any financial problems. The pension trustees will have to say to the company, "Look, this is not worth the paper it is written on. I am sorry, but you have got to turn these pledges into financial support." The Pension Protection Fund—if it is to do its job—will have to back those trustees, because this Bill is saying that the benefit of a pledge is worthless. That is the real problem. It is not about the handful of companies that will go under; it is about the large number of companies that will float, but with trustees who will have a duty to their pensioners to secure the pension no longer being able to place any trust in a pledged asset.

I urge the Minister to accept this. There is, anyway, a grave danger that the pensions' lifeboat is going to sink. You cannot keep on putting the costs of failure on to an ever-decreasing number of schemes. The levy itself is in somewhat of a crisis. I hope that the Minister will step back and look not just at the individual company in trouble but at the impact on the pension scheme itself and on the position of any responsible trustee and of any pensioner who will be saying to their trustees, "If you are to fulfil your legal obligation to us to secure the pension, you must renounce these assets which have been pledged on the basis on which they have been pledged and turn them into real, hard, secure money". If we do not accept this amendment, we are in grave danger of causing ourselves yet more problems. The law of unintended consequences will sweep through the trustee world. Certainly, if I am advising or taking part in any trustee meeting, I shall be saying to trustees, "Do not accept a pledged benefit".

Baroness Drake [V]: My Lords, the Government have tabled a number of helpful amendments in this group to address concerns raised about the impact of this Bill on the position of pension schemes, PPF and the Pensions Regulator, including access to the table, the court and the deployment of creditor rights during any moratorium or subsequent restructuring process. I thank the Minister for that.

However, I remain concerned that a PPF assessment period and a pension scheme Section 75 debt are not triggered during a moratorium or a restructuring plan. In a company voluntary arrangement, they would have been triggered when the proposal was filed with the court. This means that the PPF access to the share of the vote, exercised on behalf of the pension scheme, relates to the scheme's full debt, giving it greater influence. In a restructuring plan, the voting rights to be exercised by the PPF would be set by the court. The Bill makes no provision as to what these should be. Given that the scheme's full debt will not have been triggered, the most likely outcome will be reduced voting rights, reflecting a much smaller allowance for the defining of the debt. This will unquestionably put the PPF as a scheme at a disadvantage compared with other creditors such as loan providers, where the full value of their debt will be recognised, or landlords who will likely have voting rights based on the valuation of their full contract.

4.15 pm

The government amendments mean the PPF can argue the position in court. It can seek to have the full value of the employer's debt to the scheme recognised. However, its voice will be more limited, and its chances of success diminished. Where the full value of that debt is not recognised, it will disadvantage the scheme in the court's consideration of the equitable provision in approving a restructuring plan, and the not worse off than the alternative provision when considering a cross-class cram down. This weakening of the scheme—while strengthening finance debt holders, including parent and intra-group companies during the moratorium or restructuring plan—tilts that balance of interests to which the Minister referred against the scheme. It will inevitably lead to novel forms of moral hazard to avoid pension liabilities.

Interestingly, this Bill sits alongside the Pension Schemes Bill whose Report stage is imminent. That Bill introduces new sanctions which criminalise business activities and exposes third parties, such as banks and advisers, to sanctions where conduct prevents the recovery of the whole or part of any Section 75 debt or detrimentally affects the likelihood of scheme benefits being received. This opens up the possibility that what may be lawful action under the Corporate Insolvency and Governance Bill may invite criminal sanctions under the Pension Schemes Bill. There is a certain irony in giving a breathing space to businesses to assist in their survival, while weakening a creditor—the pensions scheme—which has a strong interest in the company surviving, as the noble Lord, Lord Callanan, acknowledged. Unlike other unsecured creditors, trustees will not be in a position to manage the exposure to the scheme's debt by ceasing to deal with the employer. Their very interest is invested in the survival of that company and its business.

With reference to a comment made by the noble Lord, Lord Balfe, it is important to remind ourselves that, in private sector schemes, there are more than 10 million pensions in payment or due to be paid in the future. We have to balance the interests of a very sizeable group of people, as the Minister recognised. The Secretary of State has extensive powers under this Bill. Given the complex and uncertain impact of these provisions, will the Government continue to monitor closely and consult on the impact of the provisions embraced by these government amendments and commit to responding quickly where perverse behaviours become apparent?

Lord Blunkett (Lab) [V]: My Lords, it had been my intention to speak on the final day of Committee but, because of an administrative blip, my name went in at entirely the wrong time.

I am pleased that the Government have been prepared to move on this area, as they have on other parts of this complex and detailed Bill. Like my noble friend Lord Hain, I was the Pensions Minister for a time, at the time when the Pension Protection Fund was being brought into full operation. It built on the incredible work—unsung and unknown to many people—of my good friend Andrew Smith, the previous Secretary of State for Work and Pensions. The noble Baroness, Lady Altmann, was a lobbyist at the time. I remember the withering nature of her commentary on what we were doing. I cannot ever remember the noble Baroness giving us credit for anything, but now she probably thinks that, 15 years ago, we were doing the right thing. This is why I take seriously what she has said in relation to contingent assets and their likely disposal.

Consequent to what my noble friend Lady Drake said about the Pension Schemes Bill, can the Minister say whether, with regard to the legislation that is being brought forward by the Government to protect our crucial national infrastructure from the sale of assets which would otherwise be detrimental to our economy and to the supply chain, which has arisen from the experience of the last four months, there can be an interrelationship between the different pieces of legislation? That is so that we can be clear not only about the rules that are being applied and the power that would exist for the Pension Protection Fund if this amendment is passed but about how we can ensure that one piece of legislation relates directly to and integrates with another piece of the Government's policy. If we can get them to act together, some of the fears that have been raised can be allayed.

Lord Fox: My Lords, I am grateful to all noble Lords who have spoken in this important debate. I am a signatory to Amendment 15 and I thank my noble friend Lady Bowles, the noble Baroness, Lady Altmann, and the noble Lord, Lord Hain, for co-signing it. I join other Peers in acknowledging that the Government have moved in terms of listening to the previous debate and going forward, but the issue that Amendment 15 seeks to address is a serious one. If this Bill went through without the sorts of assurances that we are looking for from the Minister, or remained unamended, that would create a huge issue for pension trustees all over the country. Never mind the ones that are going into insolvency—as the noble Lord, Lord Balfe, set out so eloquently, every single pension trustee would revisit every single pledged asset and would go back to the management of their sponsoring companies to ask for cash instead. I do not need to remind the Minister that cash flow is one of the biggest challenges facing businesses at the moment; it is actually cash that is the problem. To knowingly put in a measure that will drain profitable businesses of cash would be careless, and I do not think that that is what the Government are doing. I think this is an unknowing consequence of the Bill.

To be clear, this concerns assets that have already been pledged. When the Minister spoke earlier, he seemed to be referring to assets being pledged at the time of insolvency, but these are assets which have been pledged in lieu of cash. Given that, I am a little bemused by the idea put forward by the noble Baroness, Lady Neville-Rolfe, that the Pension Protection Fund would somehow be overreaching itself in seeking to protect these funds for pensioners and that it would be giving the PPF too much power. Rather, it is merely the power to protect assets that have been signed over to the pension fund. If they were not assets such as those set out by the noble Baroness, Lady Altmann—real estate and securities—then it would be money. I do not think that the noble Baroness, Lady Neville-Rolfe, is proposing that the courts should have the power to extract money from pension funds, so why should they not have the power to protect against judges extracting assets that have been put aside in lieu of money?

The noble Baroness, Lady Altmann, put a clear question to the Minister, one that I think is very apposite to this point. Does the PPF have the power to prevent judges extracting pledged assets from pension funds and putting them into the pool of assets for distribution to other creditors? If the Minister is able to stand up and say that clearly and unambiguously—for those Members watching remotely, it does not look like he is—there is no problem. However, if the Bill leaves this House unamended or without that pledge, this issue will become a very serious one not just for the pension funds of distressed companies but for every defined benefit pension fund in the country.

Lord Lennie (Lab) [V]: My Lords, straight off the bat, I too welcome the Government's movement on this specific part of this necessary Bill. There will be a sense of relief for direct benefit pension funds and their trustees, the Pension Protection Fund and the regulator. As has been said, all will now have rights of access to information about the intentions of companies and to voice their opinions about the decisions that are being contemplated; a seat at the table, access to court and so forth. This will be true throughout the UK.

When a company seeks a moratorium or when it considers other actions in a potential redundancy and insolvency circumstance, the monitor will be required to notify the pension scheme, the PPF and the regulator to have due consideration of their views about the proposed action. In the event that a moratorium comes to an end or if the monitor changes, the pension scheme trustees and the PPF must be informed. This will mean in effect that the debts owing to a direct benefit pension scheme do not rank below other finance debts. That would recognise the real status of a pension as deferred earnings and should not allow others to accelerate the debt position at the expense of pension provision, as was feared in the original text. These changes have come about due to the strength of the arguments put by my noble friends Lady Drake and Lady Warwick, the noble Baroness, Lady Bowles, on the Liberal Democrat Benches, and the noble Lord, Lord Balfe, and the noble Baroness, Lady Altmann, on the Conservative side. I congratulate them on achieving this much.

However, can the Minister provide the reassurance being sought about the value of direct benefit schemes being put at risk by the sale of assets, and ultimately the whole working of the PPF? Will he closely monitor and consult on any necessary remedial actions that may arise from his examination of this issue? The Minister can take the credit due to him for his part in

[Lord Lennie]
bringing forward these amendments to the Bill, and they are welcome. But can he confirm that the Government will stay alert and ready to intervene on behalf of pensions and the PPF in the event that the measures in this legislation do not go far enough in protecting them?

Lord Callanan: My Lords, I take this opportunity to thank everyone who has spoken in this important debate, and I am grateful for Amendment 15 because it is a very important provision. I am also grateful to noble Lords for their continuing efforts to ensure that pensions are treated appropriately through this Bill. None the less, I hope that they will agree that we are now seeking to introduce specific and satisfactory provisions to deal with pensions' interests.

I also take this opportunity to assure noble Lords that where charged property is disposed of, it can be done only with the permission of the court and where the court believes that it is necessary to support the rescue. Where the court is satisfied and gives its permission, the net proceeds must go towards satisfying the amounts secured by the charge before they can be used in any other way. From a practical perspective, this amendment is not necessary. If a company in a moratorium was going to court to seek permission to dispose of charged assets, it would at the least have had to have had a conversation with the person to whom those assets are charged. Well before giving clearance to the company to dispose of such assets, the court will of course take account of their views at the hearing.

In response to my noble friend Lady Altmann and the noble Lord, Lord Hain, we have been in detailed discussions with colleagues in the DWP, along with both the Pensions Regulator and the Pension Protection Fund, in the formulation of these amendments. We are seeking to ensure that the PPF is able to play a role in a company's rescue plan where it is appropriate for it to do so. Let me also provide the assurance that the noble Lord, Lord Lennie, was looking for. Of course, we will continue to monitor these arrangements to ensure that they act in the fairest possible way for all the different stakeholders in the process that I referred to earlier.

On that basis, I hope that I have been able to provide sufficient reassurance to noble Lords and that they will feel able to not move their amendments when the time comes. I beg to move.

Amendment 4 agreed.

Amendment 5

Moved by ***Lord Callanan***

5: Clause 1, page 5, line 43, leave out from beginning to end of line 2 on page 6

Member's explanatory statement

This amendment removes a Henry VIII power to change a list of documents.

Amendment 5 agreed.

Amendments 6 and 7 not moved.

4.30 pm

Amendment 8

Moved by ***Lord Callanan***

8: Clause 1, page 6, leave out lines 29 to 32

Member's explanatory statement

This amendment removes a Henry VIII power to change a list of documents.

Amendment 8 agreed.

Amendments 9 and 10 not moved.

Amendments 11 and 12

Moved by ***Lord Callanan***

11: Clause 1, page 8, leave out lines 8 to 11

Member's explanatory statement

This amendment removes a Henry VIII power to change a list of documents.

12: Clause 1, page 10, line 42, at end insert—

"(c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and

(d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund."

Member's explanatory statement

This amendment extends the monitor's duties to give notice where a moratorium is extended or comes to an end.

Amendments 11 and 12 agreed.

Amendment 13 not moved.

Amendment 14

Moved by ***Baroness Bowles of Berkhamsted***

14: Clause 1, page 13, line 48, at end insert—

"(f) banks and other financial creditors may not seek to accelerate payment."

Baroness Bowles of Berkhamsted [V]: I thank noble Lords who signed the amendment and spoke in support. The noble Lords, Lord Hodgson and Lord Holmes, and my noble friend Lady Kramer all spoke from experience about how banks will behave to extract cash. The noble Lord, Lord Adonis, asked what grounds the Government had for thinking banks could be constrained. The noble Baronesses, Lady Drake and Lady Altmann, expressed concerns about gaming. The noble Lord, Lord Stevenson, admitted that the amendment was persuasive. There is consensus that the focus is people.

The Minister's answer is simply that if the banks press for too much, the payment will not happen and the moratorium will end. That does not stop the accelerated payments and death by a thousand cuts. From the cash flows and other information they have about their clients, banks are well able to know how much they can take a company for and to pace their

demands until the money is gone or they have pressurised the business into other lucrative financial arrangements. It is game on.

I am not convinced by the answer about financial stability; the Minister knows this is a subject I know very well. Contracts on market operations do not have to end; it is simply the acceleration of payment on lending that needs restriction. Every pound that is required over and above the general terms existing pre-moratorium is tantamount to reaching through and picking the pocket of employees, pension schemes and small businesses.

The scope given to banks and other lenders to press their advantage during moratorium is too great. It can remove the very breathing space that is the objective of the moratorium. I have not heard any expression of limit to reasonableness other than some kind of banking self-control caused by a moratorium end if the banks get too greedy. As my noble friend Lord Fox said, it is simply tiptoeing around the banks.

To save jobs and businesses and protect pensions, banks must be far more equally in the moratorium. No amount of employee consultation can blunt the banks, and I wish to test the opinion of the House.

4.33 pm

Division conducted remotely on Amendment 14

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Amendment 14 disagreed.

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4.52 pm

Sitting suspended.

5.02 pm

Amendment 15

Moved by ***Lord Fox***

15: Clause 1, page 19, line 7, at end insert—

"( ) However, the court may not give permission for the disposal of any property or asset under subsection (1) which has been pledged to the company's defined benefit pension scheme unless the Pension Protection Fund has given prior permission for its disposal."

Lord Fox: My Lords, we heard what the Minister had to say, and I and others have already spoken at length on this amendment. The principle is that a deal is a deal: the pensioners were granted those assets and the idea that that can retrospectively be prised from the deferred salaries and wages of workers is such that I do not think the Bill should leave this House without it being tested. I therefore wish to test the will of the House.

5.03 pm

Division conducted remotely on Amendment 15

Contents 136; Not-Contents 220.

Amendment 15 disagreed.

Division No. 2

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5.21 pm

Amendments 16 and 17 not moved.

Amendments 18 to 23

Moved by ***Lord Callanan***

18: Clause 1, page 22, line 35, at end insert—

"(c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and

(d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund."

Member's explanatory statement

This amendment extends the duty to give notice that the monitor has changed.

19: Clause 1, page 24, line 39, at end insert—

"**A44A Challenge brought by Board of the Pension Protection Fund**

(1) This section applies where—

(a) a moratorium—

(i) is in force in relation to a company that is an employer in respect of an eligible scheme, or

(ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and

(b) the trustees or managers of the scheme are a creditor of the company.

(2) The Board of the Pension Protection Fund may make any application under section A42(1) or A44(1) that could be made by the trustees or managers as a creditor.

(3) For the purposes of such an application, any reference in section A42(1) or A44(1) to the interests of the applicant is to be read as a reference to the interests of the trustees or managers as a creditor.

(4) In this section "eligible scheme" has the meaning given by section 126 of the Pensions Act 2004."

Member's explanatory statement

This amendment gives the Board of the Pension Protection Fund the same rights to challenge the monitor or the directors as the trustees or managers of certain pensions schemes have.

20: Clause 1, page 30, line 18, at end insert—

"**A49A Power to make provision in connection with pension schemes**

(1) The Secretary of State may by regulations provide that, in a case where—

(a) a moratorium—

(i) is in force in relation to a company that is an employer in respect of an eligible scheme, or

(ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and

(b) the trustees or managers of the scheme are a creditor of the company,

the Board of the Pension Protection Fund may exercise any of the following rights.

(2) The rights are those which are exercisable by the trustees or managers as a creditor of the company under or by virtue of—

(a) section A12, or

(b) a court order under section A44(4)(c).

(3) Regulations under subsection (1) may provide that the Board may exercise any such rights—

(a) to the exclusion of the trustees or managers of the scheme, or

(b) in addition to the exercise of those rights by the trustees or managers of the scheme.

(4) Regulations under subsection (1)—

(a) may specify conditions that must be met before the Board may exercise any such rights;

(b) may provide for any such rights to be exercisable by the Board for a specified period;

(c) may make provision in connection with any such rights ceasing to be so exercisable at the end of such a period.

(5) Regulations under subsection (1) are subject to the affirmative resolution procedure.

(6) In this section "eligible scheme" has the meaning given by section 126 of the Pensions Act 2004."

Member's explanatory statement

This amendment enables the Board of the Pension Protection Fund to be given the power to exercise certain rights of the trustees or managers of a pension scheme.

21: Clause 1, page 31, line 44, at end insert—

""employer", in relation to a pension scheme—

(a) in sections A8(2)(c), A17(8)(c) and A39(8)(c), means an employer within the meaning of section 318(1) of the Pensions Act 2004;

(b) elsewhere in this Part, has the same meaning that it has for the purposes of Part 2 of the Pensions Act 2004 (see section 318(1) and (4) of that Act);"

Member's explanatory statement

This amendment defines "employer" for the purposes of the Minister's other amendments to clause 1 which use that term.

22: Clause 1, page 32, line 5, at end insert—

""money purchase scheme" has the meaning given by section 181(1) of the Pension Schemes Act 1993;"

Member's explanatory statement

This amendment defines "money purchase scheme" for the purposes of the Minister's other amendments to clause 1 which use that term.

23: Clause 1, page 32, line 11, at end insert—

""occupational pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993;

"pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993;"

Member's explanatory statement

This amendment defines "occupational pension scheme" and "pension scheme" for the purposes of the Minister's other amendments to clause 1 which use those terms.

Amendments 18 to 23 agreed.

Clause 4: Moratoriums in Northern Ireland

Amendments 24 to 36

Moved by ***Lord Callanan***

24: Clause 4, page 35, line 33, leave out "changing the definition of "the relevant documents"" and insert "adding to the list of documents"

Member's explanatory statement

This amendment narrows the power to change a list of documents, so that it is confined to adding to the list. The power could subsequently be re-exercised so as to remove anything added.

25: Clause 4, page 36, line 12, at end insert—

"(c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and

(d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund."

Member's explanatory statement

This amendment extends the monitor's duty to give notice that a moratorium has come into force.

26: Clause 4, page 37, leave out lines 34 to 38

Member's explanatory statement

This amendment removes a Henry VIII power to change a list of documents.

27: Clause 4, page 38, leave out lines 20 to 24

Member's explanatory statement

This amendment removes a Henry VIII power to change a list of documents.

28: Clause 4, page 40, leave out lines 4 to 8

Member's explanatory statement

This amendment removes a Henry VIII power to change a list of documents.

29: Clause 4, page 42, line 42, at end insert—

"(c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and

(d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund."

Member's explanatory statement

This amendment extends the monitor's duties to give notice where a moratorium is extended or comes to an end.

30: Clause 4, page 54, line 25, at end insert—

"(c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and

(d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund."

Member's explanatory statement

This amendment extends the duty to give notice that the monitor has changed.

31: Clause 4, page 56, line 31, at end insert—

"**13FC Challenge brought by Board of the Pension Protection Fund**

(1) This Article applies where—

(a) a moratorium—

(i) is in force in relation to a company that is an employer in respect of an eligible scheme, or

(ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and

(b) the trustees or managers of the scheme are a creditor of the company.

(2) The Board of the Pension Protection Fund may make any application under Article 13F(1) or 13FB(1) that could be made by the trustees or managers as a creditor.

(3) For the purposes of such an application, any reference in Article 13F(1) or 13FB(1) to the interests of the applicant is to be read as a reference to the interests of the trustees or managers as a creditor.

(4) In this Article "eligible scheme" has the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005."

Member's explanatory statement

This amendment gives the Board of the Pension Protection Fund the same rights to challenge the monitor or the directors as the trustees or managers of certain pension schemes have.

32: Clause 4, page 61, line 6, leave out from "Assembly" to end of line 10

Member's explanatory statement

This amendment removes the temporary modification to the parliamentary procedure for regulations. See also the proposed new clause in the Minister's name to be inserted after Clause 43.

33: Clause 4, page 61, line 10, at end insert—

"**13HAA Power to make provision in connection with pension schemes**

(1) A Northern Ireland department may by regulations provide that, in a case where—

(a) a moratorium—

(i) is in force in relation to a company that is an employer in respect of an eligible scheme, or

(ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and

(b) the trustees or managers of the scheme are a creditor of the company,

the Board of the Pension Protection Fund may exercise any of the following rights.

(2) The rights are those which are exercisable by the trustees or managers as a creditor of the company under or by virtue of—

(a) Article 13CC, or

(b) a court order under Article 13FB(4)(c).

(3) Regulations under paragraph (1) may provide that the Board may exercise any such rights—

(a) to the exclusion of the trustees or managers of the scheme, or

(b) in addition to the exercise of those rights by the trustees or managers of the scheme.

(4) Regulations under paragraph (1)—

(a) may specify conditions that must be met before the Board may exercise any such rights;

(b) may provide for any such rights to be exercisable by the Board for a specified period;

(c) may make provision in connection with any such rights ceasing to be so exercisable at the end of such a period.

(5) Regulations may not be made under paragraph (1) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(6) In this Article "eligible scheme" has the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005."

Member's explanatory statement

This amendment enables the Board of the Pension Protection Fund to be given the power to exercise certain rights of the trustees or managers of a pension scheme.

34: Clause 4, page 62, line 36, at end insert —

""employer", in relation to a pension scheme—

(a) in Articles 13BE(2)(c), 13CH(8)(c) and 13EE(8)(c), means an employer within the meaning of Article 2(2) of the Pensions (Northern Ireland) Order 2005;

(b) elsewhere in this Part, has the same meaning that it has for the purposes of Part 3 of the Pensions (Northern Ireland) Order 2005 (see Article 2(2) and (5) of that Order);"

Member's explanatory statement

This amendment defines "employer" for the purposes of the Minister's other amendments to Clause 4 which use that term.

35: Clause 4, page 62, line 38, at end insert —

""money purchase scheme" has the meaning given by section 176(1) of the Pension Schemes (Northern Ireland) Act 1993;"

Member's explanatory statement

This amendment defines "money purchase scheme" for the purposes of the Minister's other amendments to Clause 4 which use that term.

36: Clause 4, page 62, line 44, at end insert—

""occupational pension scheme" has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993;

"pension scheme" has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993;"

Member's explanatory statement

This amendment defines "occupational pension scheme" and "pension scheme" for the purposes of the Minister's other amendments to Clause 4 which use those terms.

Amendments 24 to 36 agreed.

Amendment 37

Moved by ***Lord Callanan***

37: After Clause 7, insert the following new Clause—

"Administration in Great Britain: revival of power about sales to connected persons

(1) Paragraph 60A of Schedule B1 to the Insolvency Act 1986 (which expired in May 2020) is revived.

(2) For sub-paragraph (10) of that paragraph substitute—

"(10) This paragraph expires at the end of June 2021 unless the power conferred by it is exercised before then.""

Member's explanatory statement

This amendment revives paragraph 60A of Schedule B1 to the Insolvency Act 1986, which expired in May 2020 by virtue of the sunset provision in sub-paragraph (10) of that paragraph.

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): 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 this or any other amendment in the group to a Division should make that clear in the debate.

Lord Callanan: My Lords, the Government have listened carefully to the concerns raised by noble Lords in Committee and elsewhere.

Where used appropriately, pre-pack sales can perform a useful rescue function. In some instances, sales to connected parties are beneficial. However, we accept that the nature of the transaction and the speed with which it is carried out might also provide some opportunities for mischief. This could particularly be the case during the current crisis. The Government acknowledge that there may be a risk of an increase in the use of pre-pack sales, which could adversely affect businesses already struggling as a result of Covid-19.

The Government therefore propose amendments to revive the power, which expired in May 2020, to regulate sales in administration to connected parties, and to introduce a similar power in Northern Ireland. These government amendments will revive paragraph 60A in Schedule B1 to the Insolvency Act 1986. This will enable the Secretary of State to make regulations to prohibit or impose requirements or conditions in relation to the sale of property of a company by the administrator to a connected person, in circumstances specified in the regulations. This power will expire at the end of June 2021, unless it is previously exercised.

The amendments will also insert a new power in Schedule B1 to the Insolvency (Northern Ireland) Order 1989 to enable similar regulation of sales to a connected person in Northern Ireland. This power will also be time limited until the end of June 2021, unless previously exercised. Regulations made under the power in Northern Ireland must be laid in draft and approved by a resolution of the Northern Ireland Assembly. And we are going further: ahead of using the power, we will publish the Government's review of existing voluntary measures in respect of pre-pack sales this summer to help further inform the public debate on this issue. I beg to move.

Lord Hodgson of Astley Abbotts: My Lords, I have Amendment 45 in this group but, before I speak on it, perhaps I may say that I entirely support the Government's Amendments 37 and 38. They are very sensible and have my unequivocal support.

I turn to Amendment 45, to which the noble Lord, Lord Vaux, the noble Baroness, Lady Bowles, and my noble friend Lady Altmann have added their names. I am most grateful to them and indeed to other noble Lords all across the House who have been in touch with me to say that it seems a sensible way of proceeding. We discussed this matter at length last Wednesday. I shall try to avoid repeating myself, although of course I need to fill in the story for those who have just joined in at this stage.

Like my noble friends Lord Callanan, Lord Leigh and Lord Holmes of Richmond, I recognise that pre-packs have their uses. As I said in the debate last

week, they are a useful spanner in the toolbox of the insolvency practitioner. However, they are open to serious abuse, as my noble friend Lord Callanan admitted a moment ago. Let us quickly run through a real-life example, and here I will slightly repeat what I said last week.

I ask noble Lords to imagine the following. You are a director of a company that is struggling because of past operating losses, which have led to large debts being accumulated; or perhaps it is a very old, established engineering or industrial company that has a long tail of pension liabilities that get increasingly heavy. Insolvency and administration loom over you, but you and your fellow directors feel that somewhere in the business is a really profitable activity. However, the company is worth saving only if you can get rid of all your debts. Therefore, you, as a group of directors—maybe with some associates—find an administrator and say that you would like to make an offer for the bits that you want. That offer might be very substantial but, equally, it might be £1 or £1,000. That is the key to the problem that we are trying to tackle here. Nobody can say that anything is wrong where a fair-value, full-price offer is made.

You make a nominal offer on, say, a Friday, which means that the company is put into administration over the weekend. On Monday, you advertise it in the newspapers and after four days, if the administrator has had no competing offers, he or she can say that they have tested the market and have obtained a fair price. It is of course vanishingly unlikely, although possible, that within four days anybody will be able to come up with an offer de novo, from a standing start. Your group, having paid the money to the administrator, is now the proud owner of a company that is without all its liabilities to suppliers great and small, local and national, as well as to the Pension Protection Fund—but you might be the very people who led the company to the edge of disaster in the first place.

Many in your Lordships' House would ask "How could this possibly be?" It has an awfully superficially attractive political ring to it. A Minister, a councillor or a Member of Parliament can get up and say, "Look, I've just saved 300 jobs." That sounds awfully good, but nobody weighs on the scale what is happening elsewhere. For every debt that you have written off, another company loses money. It might be a small local supplier that might have to make redundancies of its own and might itself, in extremis, go into receivership. There is also the general damage to the local economy, as there is to the Pension Protection Fund. This has always seemed to me, at least, to be a very unfair way of proceeding unless it is properly supervised.

5.30 pm

Some 15 or more years ago, a cross-party group in your Lordships' House began to urge the Government—it was a Labour Government then, then the coalition Government and the Conservative Government now—that this was not a good way to proceed, that there were more ways to check this out and that more analysis was needed. To their credit, the coalition Government accepted the point and Vince Cable set in train a review with Teresa Graham, who, six years ago in 2014, came up with a report that recommended some changes. In particular, it recommended the establishment of what was called the pre-pack pool to bring a measure of regulation to pre-packs.

The pre-pack pool is a group of businessmen who can be approached by groups thinking of undertaking a pre-pack to ask its professional opinion of their proposal. It has three options: it can say that the proposal is reasonable, reasonable if changes are made, or unreasonable. Unusually, and not entirely satisfactorily, the pre-pack pool is a stand-alone limited company self-funded by a levy on those who ask for its opinions. The levy is currently £800 plus VAT, or £960 a pop. However, the Achilles heel from the beginning was that references were entirely optional. Who would want to spend 960 quid when they do not have to? The more ruthless, hard-nosed and one-sided your proposed pre-pack, the less you will want to seek the pool's opinion. The outcome therefore has been entirely predictable: the pool is on the verge of collapse. It has had only 10 referrals this year, according to the *Times*.

Some time ago, the Government recognised the instability of this position and took action in the Small Business, Enterprise and Employment Act 2015 to take powers to improve the regulation of pre-packs. We all say amen to that. It was only a power and it had a sunset clause. As my noble friend said, it was never exercised and unhelpfully expired on 20 May, four and a half weeks ago.

The Government are now reviving these powers in Amendments 37 and 38. As I said, I support them wholeheartedly. However, the Government do not need powers. They had powers for five years and did absolutely nothing. We need action. We need something to happen to deal with the problems of pre-packs, particularly in the fast-moving and difficult situation that will happen as the economy starts to emerge from the pandemic. A wave of pre-packs can be expected. Some say that it is already happening—some good, some less good and some downright unfair or wrong. Over the next few months, these will be seen in all their glory. If the pre-pack pool collapses, the last vestige of regulation of what can be the wild west of the insolvency world will be gone.

My Amendment 45, which I will not read out, would make obtaining a reference from the pool compulsory. If I were the Government, I should grab this, because there will be some horrid cases. If the pre-pack pool is still in existence, they can say, "Nothing to do with me, guv. Go and talk to the pre-pack pool—it authorised it." As it is, without the pre-pack pool, it will land on the Minister's desk and he will have some explaining to do.

If, in due time, the Minister's department can use its powers to bring forward improvements to the situation, no one will be more pleased than me. I do not suggest that the pre-pack pool and the present structure is entirely right but, in the interim, we need the pool to provide an element of regulation to avoid the most egregious examples of misbehaviour. I urge my noble friend the Minister, even at this late stage, to accept Amendment 45. If he cannot, I and a number of other Members of your Lordships' House regard this as so important for the proper integrity of the operation of British business that I reserve the right to test the opinion of the House in due course.

Lord Vaux of Harrowden (CB) [V]: My Lords, I support Amendment 45, in the name of the noble Lord, Lord Hodgson. In Committee, I tabled a similar amendment but am happy to support his more robust version. I remind the House of my interests as a chartered accountant.

It is good to see that the Government have tabled Amendments 37 and 38, which would reinstate for another 15 months the power that the Government already had to improve the regulation of connected party pre-packs but which they allowed to lapse, possibly unintentionally. That amendment is most welcome but it does not address the urgency of the situation: the fact that we are facing a substantial rise in insolvencies very soon. The noble Lord, Lord Hodgson, memorably described it in Committee as a storm that is bound to come.

It is inevitable that we will see many more pre-packs to related parties in the coming months. Another high-profile potential related-party pre-pack is being talked about just today: Go Outdoors, which is owned by JD Sports. As we have heard, many may well be entirely appropriate and even a good thing, However, they lack transparency and we are likely to see many others, such as the Quiz transaction, which the noble Lord, Lord Mendelsohn, so graphically described in Committee, which are nothing less than a rip-off of creditors. We need something to deal with the immediate risk, not just a power to take action which might or might not be used for another year, or even at all.

I confess that I struggle to understand why the Government find it so difficult to accept this amendment, which would introduce at least some independent review and transparency into this murky area of insolvency practice. The main argument put forward by the Minister is that the insolvency profession is highly regulated with strong professional standards, and that we can rely on it to ensure that all transactions are appropriate. But that is self-evidently not the case: there are so many past examples of inappropriate pre-packs that it is clear that we cannot just rely on the industry to police itself. Conflicts of interest are legion. The noble Lord, Lord Hodgson, explained in Committee and has repeated today how insolvency practitioners can, and do, tick the boxes by spurious marketing of the business, thereby covering the administrators' derrière—what used to be known in my accountancy days as CYA.

The Minister explicitly recognised the concerns about connected party pre-packs at Second Reading and has done so again today, which is very welcome. He has also argued that making referral mandatory would be an additional burden on business at a difficult time. But the pre-pack pool aims to give an opinion with just half a day's work and at a cost of just £800 to the connected party—not really a significant burden. He also asked in Committee whether it is right to restrict the required opinion to one source of supply, but that is rather like the old joke: why is there only one monopolies commission?

Why are the Government finding it so difficult to accept this amendment? Perhaps they do not believe that the pre-pack pool is the right answer. Did the Minister disagree with Teresa Graham, who produced the report for the Government that led to the creation of the pool, when she said recently:

"To see the demise of the pre-pack pool would be utter folly"?

The letter that the Minister sent to the pool, and his answers to questions in Committee, were certainly less than fulsome in their support. If that is the case, there is an easy answer for him. The immediate solution is, first, to make referral to the pre-pack pool mandatory now, as this amendment suggests. With one short amendment, at a stroke we will have instantly made independent review compulsory, improved transparency and reduced the risk to the moratorium as well. There would be no new bodies or processes; it would have minimal cost and bureaucracy. It would not in any way inhibit those situations where the proposed pre-pack is appropriate.

Subsequently, if the Government still do not believe that the pre-pack pool is the right long-term solution, they have the power to propose something better at any time within the next 15 months under their Amendment 37. We have the best of both worlds: an instant, simple solution and the luxury of time to create something better. I urge the Minister to accept Amendment 45. If he does not, then I hope that the noble Lord, Lord Hodgson, will test the opinion of the House. We have a clear duty to prevent creditors being ripped off in this coming storm.

Baroness Altmann [V]: My Lords, I will be brief. I very much support the wise words of my noble friend Lord Hodgson of Astley Abbotts and the noble Lord, Lord Vaux. I welcome Amendments 37 and 38, and I cannot quite understand the reluctance of the Government to agree to this amendment; I know that there has been significant discussion on it.

Clearly, any pre-pack can have positive effects, but the transparency and oversight issues, particularly in the current emergency environment, surely require some modicum of independent oversight. We have the pool ready to go and are in a position where we could anticipate problems, rather than trying to deal with them after they have arisen, when it is too late for the small creditors that could be so damaged by the egregious practices that we in this House have all heard about, and many noble Lords have previously explained.

I hope that my noble friend can give sufficient reassurances to the House on this issue. However, I will support Amendment 45, should that not be possible.

Baroness Neville-Rolfe [V]: My Lords, I thank the Minister very warmly for accepting the amendment on pre-packs that I put down in Committee, on which I had the help of the British Property Federation. The amendment was designed to restore the power in the Small Business, Enterprise and Employment Act. Amendments 37 and 38 have been drafted by parliamentary counsel and use a much more elegant formula to amend the original Insolvency Act, but to the same effect and with the same deadline of June 2021. I would like an assurance from my noble friend the Minister that that power will be used and that it will be able to deal with some of the pre-pack issues.

I would like to thank my noble friend Lord Hodgson, who has demonstrated his admirable virtuosity—he is not merely an expert on pubs and demography, as the House knows, but on insolvency, as well as many other things. I also support the thrust of his amendment.

I should add that, without his oratory and argument last week, we would not have made the progress that we have.

Lord Palmer of Childs Hill [V]: My Lords, I support wholeheartedly the amendment from the noble Lord, Lord Hodgson. It seems sensible, and I hope that the Government will accept it. Having heard a previous speaker do so, I must declare my interest as a chartered accountant.

Many speakers in today's debate have drawn a difference between selling or transferring a business and selling a company. The idea of a pool was meant to be a sort of bridge between the two, so that the business can survive—but there is of course a danger that it can be taken advantage of. When Vince Cable set out this principle, on the advice of Teresa Graham, it was to set up a pool. It might perhaps be useful to read into the debate the members of the oversight group, which comprises representatives of the founding parties of the pool: R3, the Association of Business Recovery Professionals; the Association of Chartered Certified Accountants; the British Property Federation; the British Printing Industries Federation; the Chartered Accountants Regulatory Board; the Chartered Institute of Credit Management; and the Institute of Chartered Accountants. It is a long, long list.

To ask that one member of the pre-pack pool should say that the transaction is not unreasonable seems a sensible move to deal with what we believe will be a tsunami of liquidations and business problems, and it shows another way of skinning the cat rather than just using a monitor or going straight into liquidation. So I heartily support the amendment in the name of the noble Lord, Lord Hodgson.

5.45 pm

Lord Fox: My Lords, very briefly, it seems that the solution of the noble Lord, Lord Hodgson, is very elegant, and, like the noble Lord, Lord Vaux, I am struggling to find out why the Government might not accept it. One of the things that has come up on a number of occasions is the need for speed for both the Bill and decision-making: "We do not have time to talk to the workers"; "We do not have time to do this." This is an opportunity to take one moment out and review whether this move—a pre-pack—is in the best interests of all concerned. I cannot see why the Government would not support it, and I expect that the Minister will stand up and wholeheartedly embrace Amendment 45 shortly.

Baroness Bowles of Berkhamsted [V]: My Lords, I supported the pre-pack amendments in Committee and have done so again. The reason for the amendment in the name of the noble Lord, Lord Hodgson, is simple: reference to the pool is not happening, and bad pre-packs are. Like others, I do not consider all pre-packs to be bad, but it is unquestionable that some bad deals are going on.

The Government are reinstating a provision to give themselves powers that have recently lapsed. I do not wish to prevent that but, as the noble Lord, Lord Hodgson, said, that power has already lain for too long—for five years—without regulations being forthcoming. Due to coronavirus, more deals and insolvencies are likely, and there will be horrid cases, as the noble Lord, Lord Hodgson, said. The noble Lord, Lord Vaux, also reminded us again of the storm that is about to come—or the "tsunami", as my noble friend Lord Palmer said. Every day we already hear of more, and some are a rip-off of creditors, as the noble Lord, Lord Mendelsohn, said in Committee and as the noble Lord, Lord Vaux, reminded us. The evidence is that insolvency practitioners can easily tick boxes to cover themselves. It is happening.

This amendment is simple and complete: use the panel that has been set up. In Committee the Minister was critical of the fact that the panel is set up in a light-touch way rather than having a regulatory power, but it is like that because government wanted it that way. If the Government want to come forward with powers for ARGA to take over the job—and to make ARGA happy—I will be there in support. But that is not here now, and nor are other regulations. So let us not hurt the public still further by having the recovery from Covid littered with scandals of cosy and inappropriate pre-packs. This is another feature of how the unfairness built into the moratorium will work, with pressure for restructuring, where the big winners will be the financiers. The least we can do is to have some assurance that the deal meets the standard of reasonableness.

Lord Stevenson of Balmacara [V]: My Lords, my name is on Amendment 46, as I strongly support the noble Baroness, Lady Neville-Rolfe, in her attempt to revive the powers taken in the small business Act 2015. We supported her in 2015 and pressed then for action to be taken against the abuses which were occurring in the pre-pack cases that came to light at the time.

However, as the noble Baroness said, thanks mainly to the rhetoric of the noble Lord, Lord Hodgson, and my noble friend Lord Mendelsohn, the Government have done a U-turn. Therefore, purely on consistency grounds, it is logical and right that we should support Amendments 37 and 38 in the name of the noble Lord, Lord Callanan. When he responds, I hope that he will confirm that he intends to use these powers and to act urgently.

I have been in discussion during the past couple of weeks with the noble Lord, Lord Hodgson of Astley Abbotts, about his Amendment 45. In the absence of government Amendments 37 and 38, I would have backed his proposal. However, I have an old-fashioned view about statutory powers being operated by non-statutory bodies such as the pre-pack pool. Given that the powers sought by Amendment 45 are contained within those to be taken under Amendments 37 and 38 and that, as the noble Lord, Lord Hodgson, admitted, there are some problems with the existing arrangements —the noble Lord, Lord Vaux, called them "murky" and denigrated the standards being achieved—I am minded to support the Government on this issue.

Lord Callanan: I thank my noble friends Lord Hodgson, Lady Altmann and Lady Neville-Rolfe, as well as the noble Lords, Lord Vaux and Lord Stevenson, and the noble Baroness, Lady Bowles, for their amendments, which would regulate pre-pack sales in administration.

[Lord Callanan]

It goes without saying that pre-pack sales have been a contentious subject during debates on this Bill in both Houses and, as some Members have indicated, on previous Bills. There was an impassioned debate about pre-packs in Committee, and I am grateful for the helpful contributions made during that debate by many of the aforementioned noble Lords, as well as the noble Lord, Lord Mendelsohn. I have certainly benefited from speaking to many of them in separate meetings with officials in trying to plot a route forward on this issue.

During that debate, I briefly explained some of the reasons why I did not think that Amendment 45, now brought back on Report, would be suitable. These included that the need for a positive opinion from a member of the pre-pack pool might create a potential conflict with the statutory objective of the administrator, which is to achieve a better result for creditors as a whole than if the company were wound up. There would also be a problem in that the amendment would prevent a sale without an opinion from the pre-pack pool even where the creditors had agreed that it should go ahead.

Moreover, whether a sale went ahead would be entirely dependent on a member of the pool assessing that it was not "unreasonable", but the amendment provides no guidance on what "unreasonable" means in this context. This is likely to create significant uncertainty for businesses as to what is allowed and, of course, a significant risk of legal challenge.

Amendment 45 would capture only pre-pack transactions that had been negotiated with an associate before a company entered administration. The definition of "connected person" in paragraph 60A of Schedule B1 is drawn more widely than the definition of "associate" in Amendment 45, so the scope of the government amendment is in this case broader.

I also mentioned in Committee that there could be a difficulty in restricting supply of opinion to the pre-pack pool. I know that my noble friend Lord Hodgson expressed scepticism about my reasoning, but it is a proper concern that this could raise issues regarding anti-competitiveness.

My noble friend also suggested that pension liability could be removed. I point out to him that the Pension Protection Fund has confirmed that it does not generally see any evidence that pre-pack sales are being used to abandon pensions liabilities. Further, it considers that the Pensions Regulator has sufficient anti-avoidance powers to act as a deterrent against the misuse of pre-pack sales for the purposes of dumping a pension scheme.

I can say in response to a number of noble Lords who asked me questions—for instance, my noble friend Lady Neville-Rolfe, the noble Baroness, Lady Bowles, and the noble Lord, Lord Stevenson—that, if the government amendment is passed, we will publish in the summer a review of the existing voluntary measures to reform pre-pack sales and will set out in that report proposals for when and how we will regulate.

The amendment in the names of my noble friend Lady Neville-Rolfe and the noble Lord, Lord Stevenson, took a different approach—it would partially resurrect a previously lapsed power to regulate sales to connected persons in administration. The amendment does not quite go far enough to be workable but, as I set out earlier, we now have government amendments in that space, which I hope will work well; we have decided to table our own amendments to regulate pre-pack sales.

Having said that, and with the reassurances that I have given to the House, I hope that noble Lords will accept the assurances and information that I have been able to provide and will therefore not move their amendments when the time comes.

Amendment 37 agreed.

Amendment 38

Moved by ***Lord Callanan***

38: After Clause 7, insert the following new Clause—

"Administration in Northern Ireland: power about sales to connected persons

(1) The Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) is amended as follows.

(2) Schedule B1 (administration) is amended in accordance with subsections (3) to (5).

(3) Paragraph 61 (powers of administrator) becomes sub-paragraph (1) of that paragraph.

(4) After that sub-paragraph insert—

"(2) But the power to sell, hire out or otherwise dispose of property is subject to any regulations that may be made under paragraph 61A."

(5) After paragraph 61 insert—

"61 Regulations may make provision for—

(a) prohibiting, or

(b) imposing requirements or conditions in relation to,

the disposal, hiring out or sale of property of a company by the administrator to a connected person in circumstances specified in the regulations.

(2) Regulations under this paragraph may in particular require the approval of, or provide for the imposition of requirements or conditions by—

(a) creditors of the company,

(b) the High Court, or

(c) a person of a description specified in the regulations.

(3) In sub-paragraph (1), "connected person", in relation to a company, means—

(a) a relevant person in relation to the company, or

(b) a company connected with the company.

(4) For the purposes of sub-paragraph (3)—

(a) "relevant person", in relation to a company, means—

(i) a director or other officer, or shadow director, of the company;

(ii) a non-employee associate of such a person;

(iii) a non-employee associate of the company;

(b) a company is connected with another if any relevant person of one is or has been a relevant person of the other.

(5) In sub-paragraph (4), "non-employee associate" of a person means a person who is an associate of that person otherwise than by virtue of employing or being employed by that person.

(6) Paragraph (11) of Article 4 (extended definition of company) applies for the purposes of sub-paragraphs (3) to (5) as it applies for the purposes of that Article.

(7) Regulations under this paragraph may make incidental, consequential, supplemental and transitional provision.

(8) Regulations may not be made under this paragraph unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(9) This paragraph expires at the end of June 2021 unless the power conferred by it is exercised before then."

(6) In Article 2(2), in the definition of "regulations", after the words "and paragraph 16 of Schedule A1"(which are repealed by paragraph 3(b) of Schedule 7 to this Act) insert "and paragraph 61A of Schedule B1"."

Member's explanatory statement

This amendment confers a power to make provision under the law of Northern Ireland about sales to connected persons in the context of an administration. It is similar to the corresponding power in Great Britain (which is revived by one of the Minister's other amendments).

Amendment 38 agreed.

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

Clause 10: Suspension of liability for wrongful trading: Great Britain

Amendment 39

Moved by ***Baroness Bloomfield of Hinton Waldrist***

39: Clause 10, page 64, line 17, leave out from "30" to end of line 18 and insert "September 2020."

Member's explanatory statement

This amendment alters the definition of the "relevant period" that applies for the purposes of Clause 10 so that the period ends with 30 September 2020.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I turn to the amendments in this group tabled by the Government, which extend the temporary insolvency measures in the Bill. Each of these measures delivers relief to those companies affected by the economic impact of Covid-19. The protections for companies from winding-up petitions and statutory demands will help struggling businesses by temporarily removing the threat of winding-up proceedings. The suspension of wrongful trading enables directors to make decisions about whether to carry on trading without the threat of personal liability. Modifications to the new moratorium will extend their benefits to companies that may otherwise not have been sure of accessing this procedure, and the small supplier carve-out from the termination clause provisions will help support small business suppliers.

We have listened to the concerns raised in the House regarding the expiry of the temporary insolvency measures and whether they should be extended. We agree that the period of uncertainty caused by the coronavirus will not have ended by the time these measures are currently due to expire. Therefore, an extension to 30 September 2020 will ensure that the measures continue to provide support to those companies impacted by the current pandemic. For this reason, I commend the government amendments in this group to the House. I beg to move.

The Deputy Speaker (Lord Bates) (Con): I call the noble Baroness, Lady Taylor. No? Then I call the noble Lord, Lord Pannick.

Lord Pannick (CB) [V]: My Lords, I am speaking to Amendments 103 and 106, which are in my name and in the names of three other members of your Lordships' Constitution Committee: our esteemed chairman—the noble Baroness, Lady Taylor of Bolton—the noble Baroness, Lady Fookes, and the noble and learned Lord, Lord Wallace of Tankerness.

These amendments address aspects of the retrospective nature of provisions in the Bill. Paragraph 7 of Schedule 10 and paragraph 7 of Schedule 11 will render void a relevant winding-up order which was made by a court on or after 27 April this year but before the day on which the schedules come into force.

6 pm

In our report on this Bill, HL76, published on 12 June, your Lordships' Constitution Committee reminded the House:

"Retrospective legislation is generally regarded as inconsistent with the rule of law."

It is constitutionally suspect, and it should normally be avoided. That is not least because retrospective legislation breaches the principle that, as at the date of the person's action, he or she should know what the law demands and what it allows. It is not, in general, an answer to this constitutional vice that the Government have announced an intention to change the law retrospectively. Parliament changes the law, not Ministers, although they sometimes fail to recognise the distinction. Individuals are entitled to act on the law as it is, not as the Government propose that it will be, not least because in a constitutional democracy Ministers do not always get their way. Parliament may decline to act on Ministers' proposals or, as often occurs, Ministers change their minds or officials advise them that they have changed their minds when they hear why their proposals are unfair or unwise.

However, like most constitutional rules, the rule against retrospectivity can be subject to exceptions, but an exception must be based on a compelling justification. Does the Minister accept that? That is my first question to her. Secondly, does the Minister accept that the justification needs to be especially compelling where, as here, the legislation will render void a court judgment obtained by a person in accordance with the law applicable as at the date of that judgment? Thirdly, does she accept that a policy announcement having been made by the Government that they are proposing retrospective legislation is not, of itself, a compelling justification for such legislation? Fourthly, does the Minister accept that a compelling justification for retrospective legislation can be provided only where there are no other means to secure a significant and legitimate objective? Those are my questions to the Minister.

When we considered this Bill, the Constitution Committee had seen no justification from the Government for the retrospective provisions. We therefore advised in our report that Ministers should set out the justification. Last Friday, 19 June, the Minister, the noble Lord,

[Lord Pannick]
Lord Callanan, wrote to our chairman, the noble Baroness, Lady Taylor, responding to our report and including a response to our concerns about retrospectivity. Such is the speed with which the Bill is progressing through Parliament that your Lordships' Constitution Committee has not yet had an opportunity to consider the Minister's response. It will, I am sure, assist your Lordships if the Minister, when responding to this group of amendments could explain the need for retrospective cancellation of court judgments in this context and answer the other questions I have posed.

Lord Wallace of Tankerness [V]: My Lords, in Committee I made the point that even during a crisis it is still important that we are vigilant in scrutinising legislation, particularly where basic rule of law issues are at stake. Specifically, I drew attention to the provisions in the Bill that raise the fundamental question of retrospective legislation. The noble Lord, Lord Pannick, one of my fellow members of the Constitution Committee, has just outlined why it is important that we closely scrutinise attempts by government to introduce retrospection in legislation.

I place on record my thanks to the noble Earl, Lord Howe, for his very prompt reply to some of the points I raised in Committee—echoed by the noble Lord, Lord Howarth of Newport, who is also on the Constitution Committee. As the noble Lord, Lord Pannick, indicated, we have now received the Government's response to the Constitution Committee's seventh report on the Bill—although, as he pointed out, the committee has not had a proper opportunity to consider that response.

As we have heard, retrospective legislation prima facie offends the rule of law, although it is recognised that there will be occasions, when there is an urgent or compelling need, when it may be necessary. I will address the retrospection issues in Amendment 40 and its equivalent Northern Ireland provision, Amendment 42. They draw particular attention to the retrospective nature of Clauses 10 and 11, which suspend directors' liability for wrongful trading in Great Britain and Northern Ireland.

Under insolvency legislation, the general rule is that a court may hold directors personally liable for allowing a company to continue trading beyond the point when insolvency appears inevitable. The provisions in Clauses 10 and 11 oblige the courts to assume that a director is not responsible for any worsening of the financial position of the company or its creditors that occurs during the "relevant period", which starts on 1 March and—with reference to the amendment the Government have just moved—would conclude on 30 September this year.

Clearly, if that is the assumption the courts are obliged to make—there is no suggestion in the legislation that it is a rebuttable presumption—no one will go to court to challenge the behaviour of a director. Indeed, the rationale for the policy, set out in the Explanatory Notes and reiterated in the Government's response to the Constitution Committee report, is that the deterrent to a company continuing to trade where there is a threat of insolvency is removed by these clauses. Pandemic-induced insolvencies can thus be avoided.

To use the words of the Explanatory Notes, I fully recognise the merit of helping

"to prevent businesses, which would be viable but for the impact of the pandemic, from closing."

I suspect that most, if not all, of us would generally assent to that. However, I will point out two aspects of the Government's arguments that need further clarification. As pointed out in the Constitution Committee's seventh report, the removal of the so-called deterrent effect cannot credibly be said to have carried any weight in decisions taken by directors between 1 March and the date when the policy to suspend personal liability for wrongful trading was announced, 28 March, allowing almost four weeks of extra retrospective effect. Secondly, as the Government acknowledge in paragraph 225 of the Explanatory Notes:

"There is no requirement to show that the company's worsening financial position was due to the COVID-19 pandemic."

The amendments to which I am speaking seek to maintain the spirit of the concession on wrongful trading and would apply only if the courts are satisfied that on the underlying facts, creditors can discharge the burden of proving that the instance of wrongful trading was not attributable to the financial pressures of the pandemic.

The Constitution Committee's seventh report says that

"measures with retrospective effect are exceptional and undesirable in principle, requiring the strongest possible justification. We do not think the Government has yet made the case for them".

As we heard from the noble Lord, Lord Pannick, the Government have now responded. In fairness, in my reading of that response the Minister seeks to give some justification for the exceptional retrospective effect of these provisions in relation to wrongful trading. I echo the noble Lord, Lord Pannick: it would be helpful if the Government could set out on the record, on the Floor of the House, what these justifications are.

Furthermore, on page 4 of his reply the noble Lord, Lord Callanan, states that

"the temporary suspension of liability for wrongful trading is required to mitigate the effects of the COVID-19 emergency, and is a proportionate measure. There are safeguards against abuse in the form of other, unchanged elements of Company and Insolvency law. As I have also set out above, given the inevitable delay in drawing up legislation, it was essential to give public assurance that these provisions would have retrospective effect in order for them to be able to have their intended effect on directors' confidence in continuing to keep their companies going."

In conclusion, I have two questions for the Minister arising from that response. First, what is the rationale for the retrospection's having effect from 1 March, rather than from a date when the Government were able to give the public assurance referred to by the noble Lord, Lord Callanan, given that ahead of the announcement, there could be no removal of the so-called deterrent effect? Secondly, can the Minister confirm that an announcement by the Government of their intention to change the law is not, by itself, sufficient justification for using retrospective legislation and should not become a regular practice? I look forward with interest to her reply.

The Deputy Speaker: Baroness Fookes? I call Lord Bourne.

Lord Bourne of Aberystwyth [V]: My Lords, I support Amendment 40 in the names of the noble and learned Lord, Lord Wallace of Tankerness, the noble Baroness, Lady Taylor of Bolton, the noble Lord, Lord Pannick, and my noble friend Baroness Fookes. I share the concern about the retrospective nature of some of the amendments. I accept that in extremis, in rare situations, retrospective legislation may be justifiable, but I would welcome the Minister addressing why it is felt to be appropriate here.

At Second Reading I expressed my concern that the offence of wrongful trading is being disregarded in relation to matters that are not Covid-19-related. It is quite reasonable, as the noble and learned Lord, Lord Wallace of Tankerness, has just indicated, that there should be some mitigation of the provisions in relation to Covid-19-related deaths. However, if the insolvency is not due to Covid-19, it is hard to see why the provision should be suspended. This provision, brought in as a result of the recommendations of the Cork committee in the 1980s, was widely welcomed as tackling conduct by directors acting—or in some cases, failing to act—with malfeasance, resulting in companies having substantial debts and doing damage to employees and shareholders. I can see why that may need to be suspended for Covid-19-related deaths, but this goes further. That is why I support this amendment, which would minimise the effect of the suspension of wrongful trading. It would be suspended not in relation to broader activities but only to those concerning Covid-19-related deaths.

However, of greater concern, as we have just heard, is the retrospective nature of this part of the Bill. I would welcome the Minister addressing these points. In any event, the Government have gone further on wrongful trading than they should have. They are seeking to punish creditors who have debts that could well be enforced, as they have nothing to do with the Covid-19 emergency.

Baroness Barker: My Lords, I thank the noble Lord, Lord Callanan, for listening to what was clearly a compelling speech by me in Committee and bringing forward Amendment 39, which extends from 30 June to 30 September the period during which the relaxation of judgment in relation to wrongful trading will apply. I say this not because of any wish to encourage wrongful trading or to see people who trade wrongfully not properly held to account by a court, but because I know from experience of helping companies trying to get through periods of instability—charities, in my case—that they simply may not know at this point whether they will be wrongfully trading next month.

6.15 pm

I absolutely understand the point made by the noble Lord, Lord Pannick—I would not wish to disagree with him—and my noble and learned friend Lord Wallace of Tankerness that a government policy announcement is no substitute for legislation coming into effect. Nevertheless, we are debating these matters today, when the Prime Minister has made an announcement that could have a direct material effect on some businesses, which might, as a result of the changes to physical distancing rules, become viable over the coming months. They will not know whether they will be completely viable until they can see the beginnings of the return of trade and business as a result of the end of lockdown. A business that would be wrongfully trading were it to abide by the 30 June rules might be able to stabilise and get back into a better position by 30 September.

My argument is pragmatic rather than anything else, but I would not wish to detract in any way from the arguments about retrospection made by the noble Lord, Lord Pannick, and my noble and learned friend Lord Wallace of Tankerness. We should not encourage wrongful trading or give any room for company directors who see that they absolutely are heading for insolvency to take anything other than the proper course of action. We will not do that by extending the deadline in the Bill, provided that the Minister answers the questions from the noble Lord, Lord Pannick, the noble Baroness, Lady Fookes, and my noble and learned friend.

Lord Stevenson of Balmacara [V]: Briefly, the amendments on dates tabled in Committee that the noble Baroness, Lady Barker, mentioned were also in my name. I am therefore very grateful that the Government have decided to extend the initial period to September 2020. That does not seem to be contested by anybody.

My major point on the rest of the amendments concerns whether there should be retrospection in the Bill at all, but people seem to have broadly accepted that, with the condition that we expect the Minister to make a very full statement on it. In passing, I have received quite a lot of representations about the Bill in my position as the Labour Front-Bench spokesman, and the vast majority were on this particular aspect. Therefore, there is public sensibility about it and I am grateful that the Minister will deal with it when she responds.

The Deputy Speaker: Just before I call the Minister, I am going to see whether we can try the noble Baroness, Lady Taylor, again. No? I call the Minister.

Baroness Bloomfield of Hinton Waldrist: I thank my noble friend Lady Fookes, the noble Baroness, Lady Taylor of Bolton, the noble and learned Lord, Lord Wallace of Tankerness, and the noble Lord, Lord Pannick, for the issues they raised concerning the suspension of wrongful trading and restrictions on winding-up petitions.

I turn first to Amendments 40 and 42, which seek to remove the suspension of wrongful trading in cases where a company's financial problems are unrelated to the coronavirus. Noble Lords will recall that the purpose of this measure is to remove the potential for wrongful trading liability at a time when many directors have been, and still are, making difficult decisions about the future of their companies. The suspension does not mean that a struggling company could just carry on trading without any regard for the consequences, but that, if it unfortunately enters insolvency, the directors will not face personal liability for using their best endeavours and trading while the pandemic is having such an impact on businesses.

Amendments 40 and 42 would disapply the suspension of wrongful trading if it can be shown that the underlying causes of the problems are unrelated to Covid-19.

[Baroness Bloomfield of Hinton Waldrist]
While this is a laudable aim, I fear that at this uncertain time it would be very difficult for directors to disentangle the various reasons for their company's woes. Asking them to be 100% certain that those difficulties are related exclusively to Covid-19 before continuing to trade may be a test too far. Moreover, they would want to be 100% certain. The threat of personal liability is a very effective deterrent and directors do not want to put themselves in a position where they could lose their house if they took the risk of trying to save a struggling company. The stakes here are high: if there is any doubt—and in most situations there surely will be—directors would be likely to cease trading and the objective of this measure will not be achieved.

We understand noble Lords' concerns about a blanket suspension of liability, but other protections for creditors and the wider business community will continue to apply. For example, directors' duties under the Companies Act 2006 and directors disqualification actions are not affected. For it to be successful in its objective to save otherwise viable businesses, the blanket suspension given by Clauses 10 and 11 is necessary.

The noble and learned Lord, Lord Wallace, and the noble Lord, Lord Pannick, asked why we are suspending trading from 1 March, as indeed did my noble friend Lord Bourne. Wrongful trading does not in itself affect normal business; rather it is the recovery action that may be made retrospectively by an insolvency officeholder against the company's directors after the company enters insolvency proceedings. Suspension of the wrongful trading liability will not interfere with normal relationships between a business and its customers.

I turn next to Amendments 103 and 106, which would remove the retrospective provision in Schedules 10 and 11 regarding the making of winding-up orders. We understand the concerns of noble Lords regarding retrospection. This is not a step to be taken lightly and, if it is misapplied, retrospective legislation could indeed lead to significant injustice. We do not dispute the conclusion of the Constitution Committee that such measures should be based on need rather than on desirability. However, the need for retrospection in the context of this measure has been amply demonstrated, and I believe that there has been an especially compelling justification for these provisions.

Certain creditors have shown that they will pursue their debts despite government requests for pragmatism or forbearance, regardless of whether such action is in the interest of the survival of other businesses and irrespective of the impact on the economy as a whole. It is because the evidence demonstrates that the restraint required in the current circumstances can be guaranteed only through legislation that the Government have brought forward this widely supported measure.

However, its purpose would be wholly undermined if the protection it gives against certain types of undesirable creditor behaviour were to begin only after Royal Assent. That approach could have led only to an immediate rush to court by creditors urgently seeking winding-up orders in order to beat the deadline. That would have defeated the legislation even before it reached this House. It is right that creditors who have obtained winding-up orders specifically to frustrate Parliament's legislative intention should not benefit from that behaviour. That is particularly so when the behaviour has caused potentially significant harm to a company that was the subject of a petition.

The noble Lord, Lord Pannick, and the noble and learned Lord, Lord Wallace, also asked how anyone could tell whether an order made between 27 April and the Bill coming into force is void. It is possible that a small number of creditors may not have acted responsibly and have brought winding-up petitions on the basis of the current law despite the Government's previous announcement that this will not be allowed. The official receiver, or in Scotland the interim liquidator, will be required to bring any such circumstances to the attention of the court so that it can take appropriate measures.

I hope that noble Lords will understand why we are not able to accept Amendments 40, 42, 103 and 106, and that they will agree not to press them.

Amendment 39 agreed.

Amendment 40 not moved.

Clause 11: Suspension of liability for wrongful trading: Northern Ireland

Amendment 41

Moved by ***Lord Callanan***

41: Clause 11, page 65, line 40, leave out from "30" to end of line 41 and insert "September 2020."

Member's explanatory statement

This amendment alters the definition of the "relevant period" that applies for the purposes of Clause 11 so that the period ends with 30 September 2020.

Amendment 41 agreed.

Amendment 42 not moved.

Clause 13: Temporary exclusion for small suppliers: Great Britain

Amendment 43

Moved by ***Lord Callanan***

43: Clause 13, page 70, line 10, leave out from "30" to end of line 11 and insert "September 2020."

Member's explanatory statement

This amendment alters the definition of the "relevant period" that applies for the purposes of subsection (1)(a) of Clause 13 so that the period ends with 30 September 2020.

Amendment 43 agreed.

Clause 17: Temporary exclusion for small suppliers: Northern Ireland

Amendment 44

44: Clause 17, page 77, line 1, leave out from "30" to end of line 2 and insert "September 2020."

Member's explanatory statement

This amendment alters the definition of the "relevant period" that applies for the purposes of subsection (1)(a) of Clause 17 so that the period ends with 30 September 2020.

Amendment 44 agreed.

Amendment 45

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

45: 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

(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 new Clause 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: My Lords, I listened carefully to what my noble friend said a few minutes ago. He will not expect me to be delighted by it—it was very disappointing. Perhaps I may deal with the objections that he raised, as it is worth while to do so briefly.

My noble friend gave three reasons why the pre-pack pool should not be given the powers to control or regulate pre-pack transactions. The first was that, where the creditors wanted to go ahead, a transaction could be frustrated by a pre-pack pool member saying that it could not. His officials should get a life. The creditors are at the bottom of a waterfall and, if they say that they want it to go ahead, it should, although it will probably never happen in that way. Also, my amendment refers to the transaction not being "unreasonable": it sets a very low bar.

Secondly, my noble friend said that the definition of "associate" was faulty. I have no pride in this. If he changed the definition of "associate", I would accept that. He has the definition in his hands and can do with it what he wishes.

Thirdly, why did the Government set up a single pre-pack pool if they wanted only a single source of permissions? It was perfectly simple. It is worth noting that the pool is set up by professional bodies. When, a week ago, I said that there were conflicts of interest in the appointment of monitors, he said to me, "No, we don't need to worry about that because it is run by professional bodies, and they will make sure that they have codes of conduct, which means that there will not be conflicts of interest. Therefore, I should not accept your amendment." That applies just as much to the pre-pack pool, which is the product of a series of highly respected professional bodies.

My noble friend also said—I was delighted to hear this—that those running the Pension Protection Fund have said that there had been no trouble with pre-packs. Long may that last.

My noble friend also said that a review would be available this summer. However, we do not need a review; we need somebody in charge to do something while we come out of a pandemic. That is the whole purpose of my amendment. We are not looking for a review; we are looking for something better than the pre-pack pool to be put in place. To be fair to the Government and to my noble friend, the chances of the Government being able to find the time to produce this important but small reform with everything else that is going on are vanishingly small. Therefore, we will be living with the situation where pre-packs are unregulated post the collapse of the pre-pack pool.

To come to the point, I want to keep the pre-pack pool in existence, and that is what my amendment is about. It is not about politics; it is about good business practice. It is about fairness and about helping the deserving case and stopping the crooked one. It is about protecting firms and suppliers from being ripped off, and it is about assisting the Pension Protection Fund.

I was very sad to hear the noble Lord, Lord Stevenson, whom I have always found to be a man of discerning judgment, speaking on behalf of the Labour Party and saying that he could not support the amendment. Instead, he is creeping away from the sound of the battle and covering himself with the fig-leaf that somehow we should not endow non-statutory bodies with statutory powers. If that is a big constitutional point, we might have heard about it when he spoke about this at earlier stages of the Bill.

In conclusion, those who read their Damon Runyon will be familiar with a character called Harry the Horse, whose catchphrase was, "Put up or shut up". After 15 years on this subject, during which we have had no real action from the Government, the time has come for those of us who believe that fairness is what we should be aiming for to "put up". I beg leave to test the opinion of the House.

6.29 pm

Division conducted remotely on Amendment 45

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Finn, B.
Flight, L.
Fookes, B.
Foulkes of Cumnock, L.
Framlingham, L.
Gadhia, L.
Gale, B.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garnier, L.
Geddes, L.
Giddens, L.
Gilbert of Panteg, L.
Glasman, L.
Glenarthur, L.
Gold, L.
Goldie, B.
Golding, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Goudie, B.
Grabiner, L.
Grantchester, L.
Greenhalgh, L.
Greenway, L.
Griffiths of Burry Port, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hague of Richmond, L.
Hailsham, V.
Hain, L.
Hamilton of Epsom, L.
Hanham, B.
Hanworth, V.
Harding of Winscombe, B.
Harris of Haringey, L.
Haselhurst, L.
Haughey, L.
Haworth, L.
Hayter of Kentish Town, B.
Hayward, L.
Healy of Primrose Hill, B.
Helic, B.
Hendy, L.
Henig, B.
Henley, L.
Hill of Oareford, L.
Hilton of Eggardon, B.
Hogg, B.
Hollick, L.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howarth of Newport, L.
Howe, E.
Howell of Guildford, L.
Hoyle, L.
Hughes of Stretford, B.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.

Jones of Whitchurch, B.
Jopling, L.
Jordan, L.
Judge, L.
Kakkar, L.
Keen of Elie, L.
Kennedy of Southwark, L.
King of Bridgwater, L.
Kirkhope of Harrogate, L.
Knight of Weymouth, L.
Laming, L.
Lang of Monkton, L.
Lansley, L.
Lawrence of Clarendon, B.
Lea of Crondall, L.
Lennie, L.
Liddell of Coatdyke, B.
Lindsay, E.
Lingfield, L.
Lipsey, L.
Lister of Burtersett, B.
Livermore, L.
Liverpool, E.
Livingston of Parkhead, L.
Lothian, M.
Low of Dalston, L.
Lupton, L.
Mackay of Clashfern, L.
Mackenzie of Framwellgate, L.
Mallalieu, B.
Mancroft, L.
Mandelson, L.
Manzoor, B.
Massey of Darwen, B.
Maude of Horsham, L.
Maxton, L.
McAvoy, L.
McColl of Dulwich, L.
McDonagh, B.
McGregor-Smith, B.
McIntosh of Hudnall, B.
McIntosh of Pickering, B.
McKenzie of Luton, L.
McNicol of West Kilbride, L.
Meyer, B.
Mobarik, B.
Mone, B.
Monks, L.
Morgan of Cotes, B.
Morgan of Drefelin, B.
Morris of Aberavon, L.
Morris of Bolton, B.
Moynihan, L.
Murphy of Torfaen, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
Osamor, B.
Pannick, L.
Parkinson of Whitley Bay , L.
Patel, L.
Patten, L.
Penn, B.
Pickles, L.
Pidding, B.
Pitkeathley, B.
Polak, L.
Ponsonby of Shulbrede, L.
Popat, L.
Porter of Spalding, L.
Powell of Bayswater, L.
Price, L.
Primarolo, B.
Prosser, B.
Quin, B.
Ramsay of Cartvale, B.
Rana, L.
Randall of Uxbridge, L.
Rawlings, B.
Reay, L.
Redfern, B.
Reid of Cardowan, L.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Ridley, V.
Risby, L.
Ritchie of Downpatrick, B.
Robathan, L.
Robertson of Port Ellen, L.
Rock, B.
Rogan, L.
Rose of Monewden, L.
Rosser, L.
Rotherwick, L.
Sanderson of Welton, B.
Sassoon, L.
Sater, B.
Sawyer, L.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Sherlock, B.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Simon, V.
Smith of Basildon, B.
Smith of Gilmorehill, B.
Smith of Hindhead, L.
Snape, L.
Soley, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stevenson of Balmacara, L.
Strathclyde, L.
Stroud, B.
Sugg, B.
Suri, L.
Swinfen, L.
Taylor of Bolton, B.
Taylor of Holbeach, L.
Tebbit, L.
Thornton, B.
Touhig, L.
Trenchard, V.
True, L.
Truscott, L.
Tunnicliffe, L.
Turnberg, L.
Uddin, B.
Ullswater, V.
Vere of Norbiton, B.
Verma, B.
Vinson, L.
Wakeham, L.
Waldegrave of North Hill, L.
Warsi, B.
Warwick of Undercliffe, B.
Wasserman, L.
Watson of Invergowrie, L.
Watts, L.
Waverley, V.
Wei, L.
West of Spithead, L.
Wheeler, B.
Whitaker, B.
Whitby, L.
Whitty, L.
Wigley, L.
Wilcox of Newport, B.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Wood of Anfield, L.
Wyld, B.
Young of Cookham, L.
Young of Graffham, L.
Young of Old Scone, B.
Younger of Leckie, V.

6.46 pm

Amendment 46 not moved.

Clause 20: Restrictions

Amendment 47

Moved by ***Lord Callanan***

47: Clause 20, page 79, line 6, at end insert—

"( ) the need for the provision made by the regulations is urgent,"

Member's explanatory statement

This amendment makes urgency a condition of the exercise of the power in Clause 18.

Amendment 47 agreed.

Clause 21: Time-limited effect

Amendment 48 not moved.

Clause 22: Expiry

Amendment 49

Moved by ***Lord Callanan***

49: Clause 22, page 80, line 14, leave out from "which is" to end of line 15 and insert—

"(i) after the period of one year beginning with the date for the time being specified in subsection (1), or

(ii) after the period of two years beginning with the date on which this Act is passed, but"

Member's explanatory statement

This amendment prevents regulations under Clause 18 being made more than two years after Royal Assent.

Amendment 49 agreed.

Amendment 50 not moved.

Clause 24: Procedure for regulations

Amendments 51 to 53

Moved by ***Lord Callanan***

51: Clause 24, page 80, line 29, after "applies," insert "or

(b) regulations made under section 23 which make provision by amending an Act or an Act of the Scottish Parliament,".

Member's explanatory statement

This amendment and the Minister's final amendment to Clause 24 provide for regulations under Clause 23 (consequential provision etc) which amend an Act or an Act of the Scottish Parliament to be subject to the made affirmative procedure.

52: Clause 24, page 80, line 38, at end insert—

"(4A) Where regulations cease to have effect as a result of subsection (3) that does not—

(a) affect anything previously done under or by virtue of the regulations, or

(b) prevent the making of new regulations."

Member's explanatory statement

This amendment clarifies that if regulations under Clause 18 cease to have effect that does not affect anything previously done under or by virtue of the regulations or prevent the making of new regulations.

53: Clause 24, page 81, line 6, after "section 23" insert "which do not make provision by amending an Act or an Act of the Scottish Parliament"

Member's explanatory statement

See the statement for the Minister's first amendment to Clause 24.

Amendments 51 to 53 agreed.

Clause 28: Restrictions

Amendment 54

Moved by ***Lord Callanan***

54: Clause 28, page 83, line 5, at end insert—

"( ) the need for the provision made by the regulations is urgent,"

Member's explanatory statement

This amendment makes urgency a condition of the exercise of the power in Clause 26.

Amendment 54 agreed.

Clause 30: Expiry

Amendment 55

Moved by ***Lord Callanan***

55: Clause 30, page 84, line 11, leave out from "which is" to end of line 12 and insert—

"(i) after the period of one year beginning with the date for the time being specified in subsection (1), or

(ii) after the period of two years beginning with the date on which this Act is passed, but"

Member's explanatory statement

This amendment prevents regulations under Clause 26 being made more than two years after Royal Assent.

Amendment 55 agreed.

Clause 32: Procedure for regulations made by the Department

Amendments 56 to 58

Moved by ***Lord Callanan***

56: Clause 32, page 84, line 28, after "applies," insert "and regulations made under section 31 by the Department which make provision by amending an Act or Northern Ireland legislation,"

Member's explanatory statement

This amendment and the Minister's final amendment to Clause 32 provide for regulations made by the Department for the Economy under Clause 31 (consequential provision etc) which amend an Act or Northern Ireland primary legislation to be subject to the made affirmative procedure in the Northern Ireland Assembly.

57: Clause 32, page 84, line 38, at end insert—

"(4A) Where regulations cease to have effect as a result of subsection (3) that does not—

(a) affect anything previously done under or by virtue of the regulations, or

(b) prevent the making of new regulations."

Member's explanatory statement

This amendment clarifies that if regulations made by the Department for the Economy in Northern Ireland cease to have effect that does not affect anything previously done under or by virtue of the regulations or prevent the making of new regulations.

58: Clause 32, page 85, line 4, after "section 31" insert "which do not make provision by amending an Act or Northern Ireland legislation"

Member's explanatory statement

See the statement for the Minister's first amendment to Clause 32.

Amendments 56 to 58 agreed.

Clause 33: Procedure for regulations made by the Secretary of State

Amendments 59 to 61

Moved by ***Lord Callanan***

59: Clause 33, page 85, line 22, after "applies," insert "or

(b) regulations made under section 31 by the Secretary of State which make provision by amending an Act,"

Member's explanatory statement

This amendment and the Minister's final amendment to Clause 33 provide for regulations made by the Secretary of State under Clause 31 (consequential provision etc) which amend an Act to be subject to the made affirmative procedure.

60: Clause 33, page 85, line 31, at end insert—

"(4A) Where regulations cease to have effect as a result of subsection (3) that does not—

(a) affect anything previously done under or by virtue of the regulations, or

(b) prevent the making of new regulations."

Member's explanatory statement

This amendment clarifies that if regulations made by the Secretary of State cease to have effect that does not affect anything previously done under or by virtue of the regulations or prevent the making of new regulations.

61: Clause 33, page 85, line 43, after "section 31" insert "which do not make provision by amending an Act"

Member's explanatory statement

See the statement for the Minister's first amendment to Clause 33.

Amendments 59 to 61 agreed.

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

Amendments 62 and 63

Moved by ***Lord Callanan***

62: Clause 39, page 88, line 43, at end insert "if the Secretary of State considers it reasonable to do so to mitigate an effect of coronavirus."

Member's explanatory statement

This amendment would mean that the power to make regulations under clause 39(1)(b) could be exercised only if the Secretary of State considered it reasonable to exercise the power to mitigate an effect of coronavirus.

63: Clause 39, page 88, line 44, after "section" insert "—

"coronavirus" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);"

Member's explanatory statement

This amendment is consequential on the first amendment to clause 39 in the name of Lord Callanan.

Amendments 62 and 63 agreed.

Clause 40: Power to change duration of temporary provisions: Northern Ireland

Amendments 64 and 65

Moved by ***Lord Callanan***

64: Clause 40, page 89, line 34, at end insert "if the Department considers it reasonable to do so to mitigate an effect of coronavirus."

Member's explanatory statement

This amendment would mean that the power to make regulations under Clause 40(1)(b) could be exercised only if the Department for the Economy in Northern Ireland considered it reasonable to exercise the power to mitigate an effect of coronavirus.

65: Clause 40, page 89, line 35, after "section" insert "—

"coronavirus" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);"

Member's explanatory statement

This amendment is consequential on the first amendment to Clause 40 in the name of Lord Callanan.

Amendments 64 and 65 agreed.

Clause 41: Modified procedure for regulations of the Secretary of State

Amendments 66 to 68

Moved by ***Lord Callanan***

66: Clause 41, page 90, line 39, leave out "negative resolution" and insert "made affirmative"

Member's explanatory statement

This amendment changes Clause 41 so that provision that could formerly have been made by the negative resolution procedure now has to be made by the made affirmative procedure (or the affirmative procedure).

67: Clause 41, page 90, line 43, at end insert—

"(aa) provision under section A49A(1) of the Insolvency Act 1986 (moratorium: power to make provision in connection with pension schemes);"

Member's explanatory statement

This amendment ensures that, for the first six months, provision made under the power conferred by new section A49A(1) may be made by regulations that are subject to the made affirmative procedure.

68: Clause 41, page 91, line 28, leave out paragraph (b) and insert—

"(b) "regulations that are subject to the made affirmative procedure" means regulations that—

(i) are contained in a statutory instrument that must be laid before Parliament as soon as reasonably practicable after being made, and

(ii) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made, unless during that period the instrument is approved by a resolution of each House of Parliament.

(6) In calculating the period of 40 days mentioned in subsection (5)(b)(ii), no account is to be taken of any time during which—

(a) Parliament is dissolved or prorogued, or

(b) both Houses of Parliament are adjourned for more than 4 days.

(7) Where by virtue of this section the Secretary of State makes regulations that are subject to the made affirmative procedure and the regulations cease to have effect because they are not approved within the period mentioned in subsection (5)(b)(ii), the fact that the regulations cease to have effect does not—

(a) affect anything previously done under or by virtue of the regulations, or

(b) prevent the making of new regulations."

Member's explanatory statement

This amendment defines "made affirmative procedure" for the purposes of the Minister's first amendment to Clause 41.

Amendments 66 to 68 agreed.

Clause 42: Modified procedure for regulations of the Welsh Ministers

Amendments 69 and 70

Moved by ***Lord Callanan***

69: Clause 42, page 91, line 35, leave out "negative resolution" and insert "made affirmative"

Member's explanatory statement

This amendment changes Clause 42 so that provision that could formerly have been made by the negative resolution procedure now has to be made by the made affirmative procedure (or the affirmative procedure).

70: Clause 42, page 92, line 6, leave out paragraph (b) and insert—

"(b) "regulations that are subject to the made affirmative procedure" means regulations that—

(i) are contained in a statutory instrument that must be laid before Senedd Cymru as soon as reasonably practicable after being made, and

(ii) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made, unless during that period the instrument is approved by a resolution of Senedd Cymru.

(5) In calculating the period of 40 days mentioned in subsection (4)(b)(ii), no account is to be taken of any time during which Senedd Cymru is—

(a) dissolved, or

(b) in recess for more than 4 days.

(6) Where by virtue of this section the Welsh Ministers make regulations that are subject to the made affirmative procedure and the regulations cease to have effect because they are not approved within the period mentioned in subsection (4)(b)(ii), the fact that the regulations cease to have effect does not—

(a) affect anything previously done under or by virtue of the regulations, or

(b) prevent the making of new regulations."

Member's explanatory statement

This amendment defines "made affirmative procedure" for the purposes of the Minister's other amendment to Clause 42.

Amendments 69 and 70 agreed.

Clause 43: Modified procedure for regulations of the Scottish Ministers

Amendments 71 to 73

Moved by ***Lord Callanan***

71: Clause 43, page 92, line 12, after "procedure" insert "(see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10))"

Member's explanatory statement

This amendment is needed in light of the Minister's other amendment to Clause 43(1).

72: Clause 43, page 92, line 13, leave out from "the" to end of line 15 and insert "made affirmative procedure"

Member's explanatory statement

This amendment changes clause 43 so that provision that could formerly have been made by the negative procedure now has to be made by the made affirmative procedure (or the affirmative procedure).

73: Clause 43, page 92, line 21, at end insert—

"(3) For the purposes of this section "regulations that are subject to the made affirmative procedure" means regulations that—

(a) must be laid before the Scottish Parliament as soon as reasonably practicable after being made, and

(b) cease to have effect at the end of the period of 40 days beginning with the day on which the regulations are made, unless during that period the regulations are approved by a resolution of the Scottish Parliament.

(4) In calculating the period of 40 days mentioned in subsection (3)(b), no account is to be taken of any time during which the Scottish Parliament is—

(a) dissolved, or

(b) in recess for more than 4 days.

(5) Where by virtue of this section the Scottish Ministers make regulations that are subject to the made affirmative procedure and the regulations cease to have effect because they are not approved within the period mentioned in subsection (3)(b), the fact that the regulations cease to have effect does not—

(a) affect anything previously done under or by virtue of the regulations, or

(b) prevent the making of new regulations.

(6) Section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 does not apply in relation to regulations that are subject to the made affirmative procedure by virtue of this section."

Member's explanatory statement

This amendment defines "made affirmative procedure" for the purposes of the Minister's first amendment to Clause 43.

Amendments 71 to 73 agreed.

Amendment 74

Moved by ***Lord Callanan***

74: After Clause 43, insert the following new Clause—

"Modified procedure for regulations of Northern Ireland departments

(1) During the period of six months beginning with the day on which this section comes into force, any relevant provision that may be made by a Northern Ireland department by regulations that are subject to the affirmative resolution procedure may be made by regulations that are subject to the made affirmative procedure.

(2) In subsection (1)"relevant provision" means—

(a) provision under Article 13HA(1) of the Insolvency (Northern Ireland) Order 1989 (power to modify moratorium provisions in relation to certain companies);

(b) provision under Article 13HAA(1) of that Order (moratorium: power to make provision in connection with pension schemes).

(3) For the purposes of this section—

(a) "regulations that are subject to the affirmative resolution procedure" means regulations that may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly;

(b) "regulations that are subject to the made affirmative procedure" means regulations that—

(i) must be laid before the Assembly as soon as reasonably practicable after being made, and

(ii) cease to have effect at the end of the period of 40 days beginning with the day on which the regulations are made, unless during that period the regulations are approved by a resolution of the Assembly.

(4) In calculating the period of 40 days mentioned in subsection (3)(b)(ii), no account is to be taken of any time during which the Assembly is—

(a) dissolved,

(b) in recess for more than 4 days, or

(c) adjourned for more than 6 days.

(5) Where by virtue of this section a Northern Ireland department makes regulations that are subject to the made affirmative procedure and the regulations cease to have effect because they are not approved within the period mentioned in subsection (3)(b)(ii), the fact that the regulations cease to have effect does not—

(a) affect anything previously done under or by virtue of the regulations, or

(b) prevent the making of new regulations.

(5) In this section "the Assembly" means the Northern Ireland Assembly."

Member's explanatory statement

This amendment modifies the regulation-making procedure for certain regulations for the first six months.

Amendment 74 agreed.

Schedule 1: Moratoriums in Great Britain: eligible companies

Amendment 75

Moved by ***Lord Stevenson of Balmacara***

75: Schedule 1, page 102, line 9, at end insert—

"17A A company is excluded from being eligible unless, before the filing date, it has consulted all the persons who are the appropriate representatives of any of the employees who may be affected by the proposed moratorium or by any reasonably foreseeable consequences of it about those matters."

Lord Stevenson of Balmacara [V]: My Lords, I listened very carefully to the Minister when he spoke at the start of the debate on the first group. I am grateful to him for spelling out the current position for employees in companies in difficulty, including the statutory safeguards on pay and allowances, what would happen in redundancy situation, and the protection for conditions during any moratorium period. I found that very helpful.

But the main thrust of his speech was to add further reassurances from the Dispatch Box on two issues. One was to let us know that the Government had decided that although there would be a statutory review of the new procedures brought in by the moratorium, to be done within five years, this would be brought forward to no more than three years in case there was a question of how employees were being treated. There was a confirmation that should it be discovered in the review that there were some negatives happening or any detriment to the position of employees, the Government would be prepared to bring forward primary legislation to resolve those if that was required. The second was to have consideration

to whether or not—I am sorry, I have lost my notes. But I wish to put on the record that I am very grateful to the Government for their two concessions in this matter. As a result, I wish to withdraw the amendment.

Amendment 75 withdrawn.

Amendment 76

Moved by ***Lord Callanan***

76: Schedule 1, page 103, line 2, after "Schedule" insert ", apart from paragraph 2,"

Member's explanatory statement

This amendment limits the Secretary of State's power to amend new Schedule ZA1 so that it cannot be used to amend paragraph 2 (exclusion from eligibility for companies subject to moratorium or insolvency procedure etc).

Amendment 76 agreed.

Schedule 3: Moratoriums in Great Britain: further amendments

Amendments 77 to 84

Moved by ***Lord Callanan***

77: Schedule 3, page 107, line 24, leave out from "debts" to end of line 27 and insert "(within the meaning given by section 174A);

(b) priority pre-moratorium debts (within the meaning given by section 174A)."

Member's explanatory statement

This amendment reflects the changes made by the Minister's amendments to new section 174A of the Insolvency Act 1986 (on page 109 of the Bill).

78: Schedule 3, page 107, line 30, leave out sub-paragraph (3)

Member's explanatory statement

This amendment leaves out definitions that are no longer needed because of the Minister's other amendment to page 107.

79: Schedule 3, page 109, line 13, leave out from "and" to end of line 15 and insert "priority pre-moratorium debts.

(2A) In subsection (2)(b) "priority pre-moratorium debt" means—

(a) any pre-moratorium debt that is payable in respect of—

(i) the monitor's remuneration or expenses,

(ii) goods or services supplied during the moratorium,

(iii) rent in respect of a period during the moratorium, or

(iv) wages or salary arising under a contract of employment, so far as relating to a period of employment before or during the moratorium,

(b) any pre-moratorium debt that—

(i) consists of a liability to make a redundancy payment, and

(ii) fell due before or during the moratorium, and

(c) any pre-moratorium debt that—

(i) arises under a contract or other instrument involving financial services,

(ii) fell due before or during the moratorium, and

(iii) is not relevant accelerated debt (see subsection (2B)).

(2B) For the purposes of subsection (2A)(c)—

"relevant accelerated debt" means any pre-moratorium debt that fell due during the relevant period by reason of the operation of, or the exercise of rights under, an acceleration or early termination clause in a contract or other instrument involving financial services;

"the relevant period" means the period—

(a) beginning with the day on which the statement under section A6(1)(e) is made, and

(b) ending with the last day of the moratorium."

Member's explanatory statement

This amendment clarifies which pre-moratorium debts get priority for the purposes of new section 174A(2) of the Insolvency Act 1986. Among other things, it excludes certain debts that fall due during the moratorium because they are accelerated (for example, because the creditor exercises a contractual right to require immediate payment in full).

80: Schedule 3, page 109, line 18, at end insert—

"(3A) The Secretary of State may by regulations made by statutory instrument amend this section for the purposes of changing the definition of "moratorium debt" or "priority pre-moratorium debt" in this section.

(3B) Regulations under subsection (3A) may make consequential, supplementary, incidental or transitional provision or savings.

(3C) A statutory instrument containing regulations under subsection (3A) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Member's explanatory statement

This amendment confers power on the Secretary of State to change the definitions of "moratorium debt" and "priority pre-moratorium debt" for the purposes of new section 174A(2) of the Insolvency Act 1986.

81: Schedule 3, page 109, leave out lines 23 and 24 and insert—

"(5) Any rules made under section A18(4) (meaning of supply of goods or services) apply also for the purposes of subsection (2A)(a)(ii) of this section.

(6) In this section—

"acceleration or early termination clause", in relation to a contract or other instrument involving financial services, means a provision of the contract or other instrument—

(a) under which, on the happening of an event—

(i) a debt or other liability falls due earlier than it otherwise would, or

(ii) a debt or other liability is terminated and replaced by another debt or liability, or

(b) which confers on a party a right which, if exercised, will result in —

(i) a debt or other liability falling due earlier than it otherwise would, or

(ii) a debt or other liability being terminated and replaced by another debt or liability;

"contract or other instrument involving financial services" has the same meaning as it has for the purposes of section A18 (see Schedule ZA2);

"monitor's remuneration or expenses" has the meaning given by section A18;

"moratorium debt" has the meaning given by section A51;

"pre-moratorium debt" has the meaning given by section A51;

"redundancy payment" has the meaning given by section A18;

"wages or salary" has the meaning given by section A18."

Member's explanatory statement

This amendment defines expressions used in the Minister's first amendment to page 109.

82: Schedule 3, page 111, line 25, leave out from "debts" to end of line 28 and insert "(within the meaning given by section 174A), and

(b) priority pre-moratorium debts (within the meaning given by section 174A)."

Member's explanatory statement

This amendment reflects the changes made by the Minister's amendments to new section 174A of the Insolvency Act 1986 (on page 109 of the Bill).

83: Schedule 3, page 111, line 37, leave out "pre-moratorium debts mentioned in sub-paragraph (2)" and insert "priority pre-moratorium debts"

Member's explanatory statement

This amendment is consequential on the Minister's first amendment to page 111.

84: Schedule 3, page 111, leave out lines 41 and 42

Member's explanatory statement

This amendment leaves out definitions that are no longer needed because of the Minister's first amendment to page 111.

Amendments 77 to 84 agreed.

Schedule 4: Moratoriums in Great Britain: temporary provision

Amendment 85

Moved by ***Lord Callanan***

85: Schedule 4, page 124, line 26, leave out from "30" to end of line 27 and insert "September 2020."

Member's explanatory statement

This amendment alters the definition of the "relevant period" that applies for the purposes of Schedule 4 so that the period ends with 30 September 2020.

Amendment 85 agreed.

Schedule 5: Moratoriums in Northern Ireland: eligible companies

Amendment 86

Moved by ***Lord Callanan***

86: Schedule 5, page 154, line 7, after "Schedule" insert ", apart from paragraph 2,"

Member's explanatory statement

This amendment limits the Department's power to amend new Schedule ZA1 so that it cannot be used to amend paragraph 2 (exclusion from eligibility for companies subject to moratorium or insolvency procedure etc).

Amendment 86 agreed.

Schedule 7: Moratoriums in Northern Ireland: further amendments

Amendments 87 to 95

Moved by ***Lord Callanan***

87: Schedule 7, page 158, line 17, after ""Part 1A,"" insert "Article 148A(3A),"

Member's explanatory statement

This amendment paves the way for the Minister's amendments to new Article 148A of the Insolvency (Northern Ireland) Order 1989 (on page 160 of the Bill).

88: Schedule 7, page 158, line 40, leave out from "debts" to end of line 3 on page 159 and insert "(within the meaning given by Article 148A);

(b) priority pre-moratorium debts (within the meaning given by Article 148A);"

Member's explanatory statement

This amendment reflects the changes made by the Minister's amendments to new Article 148A of the Insolvency (Northern Ireland) Order 1989 (on page 160 of the Bill).

89: Schedule 7, page 159, line 8, leave out sub-paragraph (4)

Member's explanatory statement

This amendment leaves out definitions that are no longer needed because of the Minister's second amendment to page 158.

90: Schedule 7, page 160, line 31, leave out from "and" to end of line 33 and insert "priority pre-moratorium debts.

(2A) In paragraph (2)(b) "priority pre-moratorium debt" means—

(a) any pre-moratorium debt that is payable in respect of—

(i) the monitor's remuneration or expenses,

(ii) goods or services supplied during the moratorium,

(iii) rent in respect of a period during the moratorium, or

(iv) wages or salary arising under a contract of employment, so far as relating to a period of employment before or during the moratorium,

(b) any pre-moratorium debt that—

(i) consists of a liability to make a redundancy payment, and

(ii) fell due before or during the moratorium, and

(c) any pre-moratorium debt that—

(i) arises under a contract or other instrument involving financial services,

(ii) fell due before or during the moratorium, and

(iii) is not relevant accelerated debt (see paragraph (2B)).

(2B) For the purposes of paragraph (2A)(c)—

"relevant accelerated debt" means any pre-moratorium debt that fell due during the relevant period by reason of the operation of, or the exercise of rights under, an acceleration or early termination clause in a contract or other instrument involving financial services;

"the relevant period" means the period—

(a) beginning with the day on which the statement under Article 13BC(1)(e) is made, and

(b) ending with the last day of the moratorium."

Member's explanatory statement

This amendment clarifies which pre-moratorium debts get priority for the purposes of new Article 148A(2) of the Insolvency (Northern Ireland) Order 1989. Among other things, it excludes certain debts that fall due during the moratorium because they are accelerated (for example, because the creditor exercises a contractual right to require immediate payment in full).

91: Schedule 7, page 160, line 36, at end insert—

"(3A) Regulations may amend this Article for the purposes of changing the definition of "moratorium debt" or "priority pre-moratorium debt" in this Article.

(3B) Regulations under paragraph (3A) may make consequential, supplementary, incidental or transitional provision or savings.

(3C) Regulations may not be made under paragraph (3A) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly."

Member's explanatory statement

This amendment confers power on the Department for the Economy in Northern Ireland to change the definitions of "moratorium debt" and "priority pre-moratorium debt" for the purposes of new Article 148A(2) of the Insolvency (Northern Ireland) Order 1989.

92: Schedule 7, page 160, leave out lines 41 and 42 and insert—

"(5) Any rules made under Article 13D(4) (meaning of supply of goods or services) apply also for the purposes of paragraph (2A)(a)(ii) of this Article.

(6) In this Article—

"acceleration or early termination clause", in relation to a contract or other instrument involving financial services, means a provision of the contract or other instrument—

(a) under which, on the happening of an event—

(i) a debt or other liability falls due earlier than it otherwise would, or

(ii) a debt or other liability is terminated and replaced by another debt or liability, or

(b) which confers on a party a right which, if exercised, will result in —

(i) a debt or other liability falling due earlier than it otherwise would, or

(ii) a debt or other liability being terminated and replaced by another debt or liability;

"contract or other instrument involving financial services" has the same meaning as it has for the purposes of Article 13D (see Schedule ZA2);

"monitor's remuneration or expenses" has the meaning given by Article 13D;

"moratorium debt" has the meaning given by Article 13HC;

"pre-moratorium debt" has the meaning given by Article 13HC;

"redundancy payment" has the meaning given by Article 13D;

"wages or salary" has the meaning given by Article 13D."

Member's explanatory statement

This amendment defines expressions used in the Minister's first amendment to page 160.

93: Schedule 7, page 162, line 7, leave out from "debts" to end of line 10 and insert "(within the meaning given by Article 148A), and

(b) priority pre-moratorium debts (within the meaning given by Article 148A)."

Member's explanatory statement

This amendment reflects the changes made by the Minister's amendments to new Article 148A of the Insolvency (Northern Ireland) Order 1989 (on page 160 of the Bill).

94: Schedule 7, page 162, line 18, leave out "pre-moratorium debts mentioned in sub-paragraph (2)" and insert "priority pre-moratorium debts"

Member's explanatory statement

This amendment is consequential on the Minister's first amendment to page 162.

95: Schedule 7, page 162, leave out lines 22 and 23

Member's explanatory statement

This amendment leaves out definitions that are no longer needed because of the Minister's first amendment to page 162.

Amendments 87 to 95 agreed.

Schedule 8: Moratoriums in Northern Ireland: temporary provision

Amendment 96

Moved by ***Lord Callanan***

96: Schedule 8, page 168, line 11, leave out from "30" to end of line 12 and insert "September 2020."

Member's explanatory statement

This amendment alters the definition of the "relevant period" that applies for the purposes of Schedule 8 so that the period ends with 30 September 2020.

Amendment 96 agreed.

Schedule 9: Arrangements and reconstructions for companies in financial difficulties

Amendments 97 to 101

Moved by ***Lord Callanan***

97: Schedule 9, page 186, line 24, leave out from second "a" to end of line 28 and insert "priority pre-moratorium debt."

Member's explanatory statement

See the explanatory statement for the Minister's second amendment on page 186 of the Bill.

98: Schedule 9, page 186, line 43, leave out from "debt"" to end of line 6 on page 187 and insert "—

(a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;

(b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order;

"priority pre-moratorium debt"—

(a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;

(b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order."

Member's explanatory statement

The Minister's amendments on page 186 of the Bill provide that the creditors to whom new section 901H of the Companies Act 2006 applies are those in respect of "moratorium debts" and "priority pre-moratorium debts" within the meaning of section 174A of the Insolvency Act 1986 or Article 148A of the Insolvency (Northern Ireland) Order 1989 (which provide for those kinds of debt to have priority in a winding-up).

99: Schedule 9, page 187, line 6, at end insert—

"901HA Pension schemes

(1) In a case where the company in respect of which a compromise or arrangement is proposed is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, any notice or other document required to be sent to a creditor of the company must also be sent to the Pensions Regulator.

(2) In a case where the company in respect of which a compromise or arrangement is proposed is an employer in respect of an eligible scheme, any notice or other document required to be sent to a creditor of the company must also be sent to the Board of the Pension Protection Fund ("the Board").

(3) The Secretary of State may by regulations provide that, in a case where—

(a) the company in respect of which a compromise or arrangement is proposed is an employer in respect of an eligible scheme, and

(b) the trustees or managers of the scheme are a creditor of the company,

the Board may exercise any rights, or any rights of a specified description, that are exercisable under this Part by the trustees or managers as a creditor of the company.

(4) Regulations under this section may provide that the Board may exercise any such rights—

(a) to the exclusion of the trustees or managers of the scheme, or

(b) in addition to the exercise of those rights by the trustees or managers of the scheme.

(5) Regulations under this section—

(a) may specify conditions that must be met before the Board may exercise any such rights;

(b) may provide for any such rights to be exercisable by the Board for a specified period;

(c) may make provision in connection with any such rights ceasing to be so exercisable at the end of such a period.

(6) Regulations under this section are subject to affirmative resolution procedure (but see subsection (7)).

(7) During the period of six months beginning with the day on which this section comes into force, regulations under this section are subject to approval after being made (and subsection (6) does not apply).

(8) For the purposes of subsection (7), section 1291 has effect as if any reference in that section to a period of 28 days were to a period of 40 days.

(9) In this section—

"eligible scheme" means any pension scheme that is an eligible scheme for the purposes of section 126 of the Pensions Act 2004 or Article 110 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1));

"employer"—

(a) in subsection (1), means an employer within the meaning of section 318(1) of the Pensions Act 2004 or Article 2(2) of the Pensions (Northern Ireland) Order 2005;

(b) in subsections (2) and (3)—

(i) in the case of a pension scheme that is an eligible scheme for the purposes of section 126 of the Pensions Act 2004, has the same meaning as it has for the purposes of Part 2 of that Act (see section 318(1) and (4) of that Act);

(ii) in the case of a pension scheme that is an eligible scheme for the purposes of Article 110 of the Pensions (Northern Ireland) Order 2005, has the same meaning as it has for the purposes of Part 3 of that Order (see Article 2(2) and (5) of that Order);

"money purchase scheme" means a pension scheme that is a money purchase scheme for the purposes of the Pension Schemes Act 1993 (see section 181(1) of that Act) or the Pension Schemes (Northern Ireland) Act 1993 (see section 176(1) of that Act);

"occupational pension scheme" and "pension scheme" have the meaning given by section 1 of the Pension Schemes Act 1993;

"specified" means specified in regulations under this section."

Member's explanatory statement

This amendment would in certain circumstances require information provided to creditors under Part 26A of the Companies Act 2006 also to be provided to the Pensions Regulator and the Board of the Pension Protection Fund. It also enables the Board to be given the power to exercise rights which could be exercised by the trustees or managers of a pension scheme in proceedings under that Part, such as the right to vote on the proposed compromise or arrangement.

100: Schedule 9, page 198, line 11, leave out from second "a" to end of line 15 and insert "priority pre-moratorium debt."

Member's explanatory statement

See the explanatory statement for the Minister's second amendment on page 198 of the Bill.

101: Schedule 9, page 198, line 30, leave out from "debt"" to end of line 38 and insert "—

(a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;

(b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order;

"priority pre-moratorium debt"—

(a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;

(b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order.""

Member's explanatory statement

The Minister's amendments on page 198 of the Bill provide that the creditors to whom new section 899A of the Companies Act 2006 applies are those in respect of "moratorium debts" and "priority pre-moratorium debts" within the meaning of section 174A of the Insolvency Act 1986 or Article 148A of the Insolvency (Northern Ireland) Order 1989 (which provide for those kinds of debt to have priority in a winding-up).

Amendments 97 to 101 agreed.

Schedule 10: Winding-up petitions: Great Britain

Amendment 102

Moved by ***Lord Callanan***

102: Schedule 10, page 205, line 30, leave out from "30" to end of line 31 and insert "September 2020."

Member's explanatory statement

This amendment alters the definition of the "relevant period" that applies for the purposes of Part 1 of Schedule 10 so that the period ends with 30 September 2020.

Amendment 102 agreed.

Amendment 103 not moved.

Amendment 104

Moved by ***Lord Callanan***

104: Schedule 10, page 212, line 6, leave out from "30" to end of line 7 and insert "September 2020."

Member's explanatory statement

This amendment alters the definition of the "relevant period" that applies for the purposes of Part 2 of Schedule 10 so that the period ends with 30 September 2020.

Amendment 104 agreed.

Schedule 11: Winding-up petitions: Northern Ireland

Amendment 105

Moved by ***Lord Callanan***

105: Schedule 11, page 213, line 16, leave out from "30" to end of line 17 and insert "September 2020."

Member's explanatory statement

This amendment alters the definition of the "relevant period" that applies for the purposes of Part 1 of Schedule 11 so that the period ends with 30 September 2020.

Amendment 105 agreed.

Amendment 106 not moved.

Amendment 107

Moved by ***Lord Callanan***

107: Schedule 11, page 218, line 41, leave out from "30" to end of line 42 and insert "September 2020."

Member's explanatory statement

This amendment alters the definition of the "relevant period" that applies for the purposes of Part 2 of Schedule 11 so that the period ends with 30 September 2020.

Amendment 107 agreed.

Schedule 14: Meetings of companies and other bodies

Amendments 108 and 109

Moved by ***Lord Callanan***

108: Schedule 14, page 236, line 5, leave out "or the Treasury under" and insert "under paragraph 2(2)(a) of"

Member's explanatory statement

This amendment is consequential on the Minister's other amendment to Schedule 14

109: Schedule 14, page 236, line 7, leave out sub-paragraphs (3) to (5) and insert—

"(3) A statutory instrument containing regulations made by the Secretary of State under paragraph 2(2)(b) of this Schedule or containing regulations made by the Secretary of State or the Treasury under paragraph 4 or 6 of this Schedule must be laid before Parliament as soon as reasonably practicable after being made.

(4) Sub-paragraph (3) does not apply if a draft of the statutory instrument has been laid before and approved by a resolution of each House of Parliament.

(5) Regulations contained in a statutory instrument laid before Parliament by virtue of sub-paragraph (3) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made, unless during that period the instrument is approved by a resolution of each House of Parliament.

(6) In calculating the period of 40 days, no account is to be taken of any time during which—

(a) Parliament is dissolved or prorogued, or

(b) both Houses of Parliament are adjourned for more that 4 days.

(7) Where regulations cease to have effect as a result of sub-paragraph (5) that does not—

(a) affect anything previously done under or by virtue of the regulations, or

(b) prevent the making of new regulations.

7A_(1) Regulations made by the Scottish Ministers under paragraph 2(2)(a) of this Schedule are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).

(2) Regulations made by the Scottish Ministers under paragraph 2(2)(b), 4 or 6 of this Schedule must be laid before the Scottish Parliament as soon as reasonably practicable after being made.

(3) Sub-paragraph (2) does not apply if the regulations have been subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).

(4) Regulations laid before the Scottish Parliament by virtue of sub- paragraph (2) cease to have effect at the end of the period of 40 days beginning with the day on which they are made, unless during that period the regulations are approved by a resolution of the Scottish Parliament.

(5) In calculating the period of 40 days, no account is to be taken of any time during which the Scottish Parliament is—

(a) dissolved, or

(b) in recess for more than 4 days.

(6) Where regulations cease to have effect as a result of sub-paragraph (4) that does not—

(a) affect anything previously done under or by virtue of the regulations, or

(b) prevent the making of new regulations.

(7) Section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 does not apply in relation to regulations to which sub-paragraph (2) applies.

7B_(1) Regulations made by the Department for the Economy in Northern Ireland under paragraph 2(2)(a) of this Schedule are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

(2) Regulations made by the Department for the Economy in Northern Ireland under paragraph 2(2)(b), 4 or 6 of this Schedule must be laid before the Assembly as soon as reasonably practicable after being made.

(3) Sub-paragraph (2) does not apply if a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(4) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of sub-paragraph (3) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

(5) Regulations laid before the Assembly by virtue of sub-paragraph (2) cease to have effect at the end of the period of 40 days beginning with the day on which the regulations are made, unless during that period the regulations are approved by a resolution of the Assembly.

(6) In calculating the period of 40 days, no account is to be taken of any time during which the Assembly is—

(a) dissolved,

(b) in recess for more than 4 days, or

(c) adjourned for more than 6 days.

(7) Where regulations cease to have effect as a result of sub-paragraph (5) that does not—

(a) affect anything previously done under or by virtue of the regulations, or

(b) prevent the making of new regulations.

(8) A power of the Department for the Economy in Northern Ireland to make regulations under this Schedule is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

(9) In this paragraph "the Assembly" means the Northern Ireland Assembly."

Member's explanatory statement

This amendment changes Schedule 14 so that regulations under paragraph 2(2)(b), 4 or 6 of the Schedule that could formerly have been made by a negative procedure will be subject to a made affirmative procedure (or an affirmative procedure).

Amendments 108 and 109 agreed.

Corporate Insolvency and Governance Bill

Third Reading

6.50 pm

Motion

Moved by ***Lord Callanan***

That the Bill do now pass.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, first, I thank the House of Lords Public Bill Office and the House clerks for their support and their extremely hard work in ensuring that this emergency Bill could be expedited through the House to support businesses as a matter of urgency in these unprecedented times.

Secondly, I place on record my thanks to the Bill team, Andy Ormerod-Cloke, Muneera Lula, Jess Bradbury and all the team, both in BEIS and in the Insolvency Service, who have worked so hard on the Bill. I am sure Members will appreciate the untold hours that went in on evenings and weekends to assist in the progress of this legislation and to provide help and guidance to me, my noble friends Lady Bloomfield and Lord Howe and many other noble Lords who we have spoken to and consulted over the last couple of weeks on all sides of the House. I am grateful to all

[Lord Callanan]
Members for their contributions. The Bill team and the Insolvency Service did a splendid job operating in, let us not forget, extremely difficult circumstances. They can be proud of their work and they are a credit to the Civil Service.

I also thank my private office team, Marty and Jenny, for ably assisting me in co-ordinating the various bits of government to come together on the Bill. I pay tribute to the Opposition spokesmen: the noble Lords, Lord Stevenson and Lord Fox. This made a pleasant change from my previous job, piloting the Brexit legislation through, where, as Members can imagine, there was no common ground whatever. This has been an historic day: I have actually won three votes in the House, which is the quite amazing pinnacle of my ministerial career. It can only be downhill from here. I am grateful to them for their constructive engagement. They have acted responsibly, recognising that this is emergency legislation, and have worked with us to improve the legislation where that was required. On behalf of the Government, we have been pleased to accept the many constructive contributions. The Bill leaves this House in a much better and improved form than when it entered it. We have been responsible and have acted where necessary, and I hope Members will agree that the Government have responded to their concerns.

I mentioned them earlier but I thank the other members of the ministerial team—my noble friends Lady Bloomfield and Lord Howe—who have assisted me in pushing this measure through. As a result of this legislation, I hope that many otherwise viable companies will no longer face the threat of insolvency. The measures that the Bill introduces will give our businesses the vital support that they need to keep themselves afloat, thereby preserving jobs and maintaining productive capacity, enabling the foundations to be laid for this country's economic recovery.

Once again, I thank noble Lords for their scrutiny of the Bill. It has, as I said, been much improved thanks to the amendments that have been made during its passage. I hope Members will think that the Government played a constructive role in reacting to many of the concerns they have raised. I hope that the other place will promptly accept these amendments so that the Bill can come into force as a matter of urgency. I beg to move.

Lord Fox [LD]: My Lords, the Minister was right that this is an important Bill because it is about people's jobs, livelihoods and future prosperity. I think we all agreed from the outset that that was the objective here, and in many respects we have managed to fulfil it. I join the Minister in thanking the Public Bill Office, which as usual has been extremely helpful when it comes to marshalling our amendments.

I especially pick out the Bill team. Normally when I look at the Box over there, there is a team looking tired, wan and reasonably pleased that their job is reaching the end. They must have had some very long days. I assume that the Bill team are somewhere out there in the ether, so I thank them for their work.

I thank my own team: my colleagues who have sat through this process, on the Benches and virtually, and Sarah Pughe, who has kept us more or less on the straight and narrow. I thank my opposite number the noble Lord, Lord Stevenson, and the ministerial team—the noble Lord, Lord Callanan, the noble Earl, Lord Howe, and the noble Baroness, Lady Bloomfield—for their open and cheerful approach to the Bill. I think we got a glimpse of why the noble Lord was cheerful: this Bill is nowhere near as bad as what he has just been doing.

That is true, but it was still a difficult Bill. It is a big Bill of mixed intent, in that some of it is permanent and some of it is not, and it was an accelerated process. It has not been easy, and of course we leave here wishing that things were different from the way they are. This feels like the end of something but I suspect, given the powers and the intent that the Government have to trim, modify and improve the Bill, it may be a question not of "Farewell" but rather of "See you later".

Lord Stevenson of Balmacara (Lab) [V]: My Lords, I apologise for my complete blankness when coming to the end of my peroration on Amendment 75. For the record, the second very important concession made by the Minister, who was very kind in not picking me up on not being able to remember it, was that the new monitor position will be strengthened in terms of guidance so that directors will have a responsibility for informing employees about the moratorium arrangements and reassuring them about their conditions in future. I thank him for that as well. If there is a way in which *Hansard* can reinsert that into my original statement then I would be more than grateful, but I am sure that is probably not allowed.

I join others in thanking all concerned for getting us through this process. It has been very interesting to do it. We started with a lot of meetings with Ministers, which was very good because the ground was clearly laid out, so we enjoyed that. We were introduced to officials, from whom we have had superb support through the whole process. I join the Minister in saying that they are a credit to the Civil Service, working in extraordinary conditions and coming up with the goods all the time.

I thank the noble Lord, Lord Fox, and his colleagues for their support. It is good to find that people have similar views about issues. It is sometimes hard to find the exact point at which we should work together but we have managed to do so despite the conditions. Thanks should also be said to the House officials for allowing us to operate in a hybrid House in a way that those who have been here for more than a few years would probably have thought impossible, given the difficulties involved and the changes required—but here we are. They have given us three and a half days of work and they have been superb in making sure that we had the service required in order to contribute. I have been doing this remotely throughout while others have been present, and even remotely it has been a satisfying situation.

All Bills are a trial of stamina, this one probably more than most. I think we all share a sense of exhaustion, having reached its final moments. It is interesting that having to do this in an accelerated way has also picked up a lot of issues that will need further work. I hope the various committees and other agencies

in the House who are watching this will learn the lessons that have to be learned about how to do emergency legislation and accelerated legislation, what can be done well and what needs a bit more time spent on it.

Finally, it is a curious feature of the hybrid House that staring for hours into tiny screens and trying to talk to people through electronic devices that constantly let us down seems to build a much stronger working relationship. I have enjoyed this time very much. I have enjoyed working with everyone concerned, including my staff, Dan Harris, my Whip, Chris—my noble friend Lord Lennie—and others who have supported us. I have also enjoyed working with Ministers and others from across the House. Long may it last.

7 pm

Bill passed and returned to the Commons with amendments.

House adjourned at 7.01 pm.

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