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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 following abbreviations are used to show a Member's 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

Thursday 29 October 2020

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Bristol.

Introduction: Lord Johnson of Marylebone

12.08 pm

The right honourable Joseph Edmund Johnson, having been created Lord Johnson of Marylebone, of Marylebone in the City of Westminster, was introduced and took the oath, supported by Lord Desai and Lord Risby, and signed an undertaking to abide by the Code of Conduct.

Introduction: Lord Davies of Brixton

12.13 pm

Brinley Howard Davies, having been created Lord Davies of Brixton, of Brixton in the London Borough of Lambeth, was introduced and made the solemn affirmation, supported by Baroness Osamor and Baroness Blower, and signed an undertaking to abide by the Code of Conduct.

Arrangement of Business

Announcement

12.18 pm

The Lord Speaker (Lord Fowler): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, respecting social distancing; others are participating remotely, but all Members will be treated equally.

Retirement of a Member: Lord Elton

Announcement

12.18 pm

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

Oral Questions will now commence. Please can those asking supplementary questions keep them short and confined to two points? I ask that Ministers' answers are also brief.

Covid-19: Small Businesses

Question

12.19 pm

Asked by ***Lord Cotter***

To ask Her Majesty's Government what steps they are taking to support small businesses during the Covid-19 pandemic.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the Government have introduced an unprecedented and comprehensive package of financial support, with a total fiscal response of close to £200 billion. The measures introduced, including government-backed loan guarantee schemes, grant funding and the Coronavirus Job Retention Scheme have been designed to be accessible to most businesses and sectors across the UK. We continue to keep this support under review, with further measures announced by the Chancellor that build on the significant support already available.

Lord Cotter (LD): Coming from a small business background as I do, I thank the Minister for the Answer. I shall quote my local paper's warning from local stores:

"Use us or lose us".

Business rates are a real burden these days, as before. May I urge the Minister to look at these issues with renewed emphasis?

Lord Callanan (Con): I totally agree with the noble Lord's sentiments. As he is probably aware, we have launched a fundamental review of business rates, which will build on the changes that we are making to the system, worth more than £23 billion to businesses over the next five years.

Lord Haskel (Lab) [V]: My Lords, I welcome the job support schemes mentioned by the Minister but they are short-term solutions. They load many companies with debt, which limits their ability to invest in the skills, digitalisation, resilience and restructuring essential for our longer-term recovery. Will the Government set up a system that allows debt for equity, perhaps with progressive undertakings regarding corporate governance? Several schemes to do that have been put forward. Will the Government run with one?

Lord Callanan (Con): The noble Lord is right to say that these schemes are essentially short-term but we are doing an awful lot to kick-start the economy. The Prime Minister has referred to the need to build back better and we are investing substantial sums. However, we of course keep these matters under constant review.

Lord Flight (Con): What support are the Government considering providing to businesses set to face lower demand during the winter because of Covid-19 restrictions?

Lord Callanan (Con): Our winter economy plan builds on the significant support available, with the extension of the coronavirus loan guarantee scheme until 30 November, the introduction of the job support scheme from November and the extension of the self-employment income support scheme.

Baroness Bowles of Berkhamsted (LD) [V]: One-third of the self-employed, including sole directors of limited companies and the newly self-employed, are still completely excluded from the self-employed income

[Baroness Bowles of Berkhamsted]
support scheme. Why can the Government not devise help for them, especially the smallest, who are not in the tax-dodging territory of payment by dividends?

Lord Callanan (Con): The noble Baroness makes an important point, but we have paid out more than £11 billion to more than 900,000 small businesses, and some small businesses that are ineligible for the SEISS grant extension may still be eligible for other elements of the scheme.

Baroness Verma (Con): My Lords, will my noble friend look at councils that rent their properties out to small businesses, so that those businesses do not receive demands to pay their rent at this very difficult time? Leicester has been in a second lockdown since June, and small businesses are struggling. Will my noble friend also look at not re-adding VAT to PPE? I refer noble Lords to my interests as set out in the register.

Lord Callanan (Con): My noble friend makes an important point, and I hope that councils, in particular, being part of the public sector, will be sympathetic to the plight of many small businesses at this time. I am sure that my noble friend will understand, however, that I cannot predict what the Chancellor might have to say, on VAT or any other matters, in his future Budgets.

Lord Bird (CB): My Lords, I declare my interests as set out in the register. I am the recipient of a very generous bounce-back loan: thank you very much indeed. It is very useful for a social business in difficult times, and I would like to see more of that coming down the line. But what concerns me is that the only way to help small businessmen is to get control of Covid—and what alarms me, and a lot of people in the country, is that there does not seem to be unity in Parliament. Is it too early or too late—or too wrong—to call for some kind of national Government to bring us together, so that we can dismantle the biggest crisis we have ever faced in the history of our country?

Lord Callanan (Con): I am pleased that the noble Lord has been able to take advantage of one of our loan schemes. He made an interesting suggestion about a national Government—but I hope he will accept that that is way above my pay grade.

Baroness Wheatcroft (Non-Afl) [V]: My Lords, in the time of Covid, small businesses are having to rely increasingly on internet platforms such as Amazon and Google to market their products. The digital services tax, which was supposed to ensure that these platforms pay their fair share, is being passed on to those small businesses, which cannot afford to pay the extra 2% they are being asked for. So will the Minister revisit the digital services tax, which is clearly not working as it was supposed to?

Lord Callanan (Con): Again, the noble Baroness is tempting me to enter the territory of the Chancellor. We have been clear that the digital services tax is temporary, and businesses are liable to it only when they have worldwide revenues of more than £500 million, and more than £25 million of those revenues is derived from UK users. So it applies only to the very largest businesses.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, the AAT reports that during the pandemic more than 50% of businesses have seen an increase in late payments, and nearly one-third admit to delaying payments that are contractually due. The Government have taken emergency powers, so this is a matter for BEIS, and these powers do help businesses. The FSB says that sorting the scourge of late payments would be a huge boost in these difficult times, and would aid the recovery when it comes. Will the Government act?

Lord Callanan (Con): I totally accept the noble Lord's point; he raises an important issue. But accepted payment terms vary from sector to sector, and a one-size-fits-all approach is not, in our view, the best way to deliver a culture change. Government would be restricting businesses' ability to negotiate terms, which could have a negative effect on the UK economy by making business more difficult to do.

Lord Roberts of Llandudno (LD) [V]: Many of the small businesses in my area of course are linked with the holiday trade: Llandudno and the Conwy valley are well known for that. After the pandemic eases, people will not be able to travel very far into the European continent, so home holidays will become more attractive, but the holiday industry—cafés, hotels and venues—need help to tide them over the interim period. Can the Government think of any way—say, with tax, or helping with other things such as rents and rates—to make it easier for those who are desperately struggling to survive in the tourist industry to come through this epidemic?

Lord Callanan (Con): The noble Lord highlights an important issue. Of course we want to encourage as many people as possible to take advantage of our excellent local tourist industry—an important industry, including in Wales, to which the noble Lord referred. There have been a number of schemes to help small businesses: we have introduced business rate holidays, plus all the various grant schemes to try to keep those businesses afloat.

Baroness Blackwood of North Oxford (Con) [V]: My Lords, UK life sciences is not only one of our most innovative and productive sectors, it also benefits the whole country, with two-thirds of its jobs outside the south-east. Its thriving is crucial not only to our exit from Covid but to our economic recovery. However, life sciences SMEs say that they struggle to access data responsibly, that clinical research remains too slow, and that scale-up investment can be a challenge. In the upcoming CSR, will the Minister not only deliver on the £200 million life sciences investment programme but also invest in health data infrastructure and accelerating clinical research set-up?

Lord Callanan (Con): The noble Baroness is a powerful advocate for the life sciences sector, so of course we will look at many of the suggestions that she has put forward.

Lord Browne of Ladyton (Lab) [V]: My Lords, since lockdown I have raised with Ministers the issue of the market failure of pandemic risk insurance five times. Each time I have been told that in due course the Government strategy on it will be revealed. For many businesses, the unavailability of business interruption insurance for pandemic risk is an issue for now, and it soon could be decisive in whether a large number of businesses will be able to trade. This is an issue of transparency and accountability. What, precisely, is the Government's plan for this market failure?

Lord Callanan (Con): The noble Lord highlights an important problem. This is a difficult issue, but insurance contracts are a matter of commercial negotiations in the market, and it is hard for the Government to interfere in what is, essentially, a commercial decision between the person issuing the insurance and the person taking it out. But we are certainly aware of the problem, and we are looking to see whether there is anything we can do in this field.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked. We now move to the next Question.

Charities: Funding

Question

12.30 pm

Asked by ***Lord Wallace of Saltaire***

To ask Her Majesty's Government what assessment they have made of requiring greater transparency in sources of funding for charities based in the United Kingdom.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, the Government understand that there is a tension between transparency and donor anonymity. We encourage greater transparency across the charity sector as a matter of good practice. However, it is our assessment that the current level of legal transparency regarding sources of funding for charities is appropriate.

Lord Wallace of Saltaire (LD) [V]: Charities are there to serve the public benefit, and I would have thought that that would require a duty of transparency, not simply one that the Government might politely ask. Should the public not know where a charity's major donations—over £5,000 or £10,000, say—come from, whether from foreign Governments or state-owned companies; sometimes hostile states; religious foundations of different faiths; sponsors of extreme positions on the margins of democratic politics; or from wherever? Is that not something the public should be informed about?

Baroness Barran (Con): It is right that charities are not legally required to disclose publicly the identity of individual donors, because donor anonymity can be an important factor which gives people the confidence to donate to charities. However, the anonymity does not in any way absolve charity trustees from their responsibilities, which are very clearly set out in terms of due diligence, the "know your donor" guidance and the serious incident reporting.

Baroness Altmann (Con): My Lords, I agree it is important to ensure transparency which could benefit, for example, from signing up to the Fundraising Regulator to improve fundraising standards and build public trust. Does my noble friend agree that all our charities need to be committed to upholding basic principles, including a rejection of all forms of racism, which would also cover adopting the full IHRA definition of anti-Semitism?

Baroness Barran (Con): My noble friend raises interesting and important issues. I stress, and I hope she agrees, that the vast majority of charities strive to go beyond the minimum in terms of transparency and are responsible, both in terms of fundraising and human rights issues. Their responsibilities are clear in law, but we believe the Fundraising Regulator has been very effective in addressing some issues of poor practice in the past.

Baroness Deech (CB) [V]: The Charity Commission has recently investigated charities that glorify terrorists and acts of terror, promote extremist ideologies and incite hatred against minority communities in the United Kingdom, although with little resulting action. Can the Minister tell the House what the Government are going to do to ensure that the Charity Commission has adequate power and resources at its disposal to ensure that UK charities are not being used to incubate extremism and promote hate?

Baroness Barran (Con): I think, as the noble Baroness understands far better than I, the issues of extremism and incubating hate go way beyond any powers the Charity Commission could have. What the noble Baroness refers to are clearly illegal issues, and trustees are under a specific legal duty to report any suspicions that a donation may be related to terrorist financing or money laundering.

Baroness Goudie (Lab) [V]: My Lords, charities receive revenue, and revenue in kind, from a number of sources. All of this must be disclosed if the public are to have faith in those charities. Further, the chair and trustees of charities should sign a form of contract between them, the charity and the Charity Commission, not only on the funding and where it comes from, but on reporting; otherwise, we will have no faith in charities, coming out of the Covid situation.

Baroness Barran (Con): I have to disagree a little with the noble Baroness about the public trust in charities. We have seen enormous generosity and support for charities, which I think is underpinned by a high

[Baroness Barran]
level of public trust. Again, we should not confuse perhaps some of the major household name charities which have caused concern in the past with the small local ones.

Baroness Barker (LD): Does the Minister agree that there is a particular problem with some think tanks which consistently refuse to make known the sources of their income, and the frequency with which members of staff of those organisations then go on to become advisers in government? This is a really big problem at the heart of our system—does she agree that it needs to be addressed as a matter of urgency?

Baroness Barran (Con): On one level, think tanks are no different from any other charities, in the sense that their charitable status means they must follow charity law and not participate in party-political activity or support a political party or candidate. They can undertake political activity if it is pursuit of their primary charitable purposes, but it must not be an end in itself.

Baroness Hayter of Kentish Town (Lab) [V]: My Lords, the real issue facing most charities at the moment—just when they have never been more needed—is that their funding from events, charity shops and, indeed, the philanthropic arms of business has never been lower. Will the Minister agree to press the Treasury for appropriate support for charities active in providing services or funding medical research, and consider whether gift aid might be fast-tracked to provide urgent support for those whose funding is most affected and where there is increased demand from their beneficiaries?

Baroness Barran (Con): I understand the noble Baroness's concern, but the Government have already focused on prioritising charities. The £750 million support package that we announced in the spring was the first sector-specific support package that the Government announced. Since then, billions have gone to charities and social enterprises, principally through the Coronavirus Job Retention Scheme. We have also been active, working with philanthropists, raising an extra £85 million recently for charities across the board.

Lord McColl of Dulwich (Con) [V]: My Lords, does the Minister agree—and in her answers so far it would seem she does—that there are many honest, law-abiding citizens who wish their donations to charity to remain secret for perfectly legitimate reasons, not least of which is their wish to avoid boasting about their generosity?

Baroness Barran (Con): I absolutely agree with my noble friend.

Lord Taylor of Warwick (Non-Afl) [V]: My Lords, charity deserves parity. There are about 10,000 BAME charities and community groups in the United Kingdom; 65% of them have incomes of less than £10,000 per annum. Bearing in mind that Covid-19 has affected the lives and livelihoods of BAME communities more than those of their white counterparts, how will the Government factor in this issue of racial disparity in the future funding of BAME charities?

Baroness Barran (Con): The noble Lord is right, and we have worked closely with the National Lottery Community Fund and other funding partners—Comic Relief and Children in Need in particular—to make sure that charities working with BME communities and led by BME individuals receive the right level of support to reflect the importance of their work.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, following on from the question of my noble friend Lady Hayter, while transparency is important, does the Minister not agree that even more important is the difficulties that charities face raising funds during the Covid epidemic? While the Government have given them some moneys—she mentioned the £750 million—some organisations such as Age UK, and at this time of year, the Royal British Legion, which is doing fantastic work, are facing great difficulties as to whether they can continue to exist. Will the Minister talk to these organisations and try to find some further support to make sure that none of them stop doing their vital work?

Baroness Barran (Con): I absolutely agree with the noble Lord that these organisations do vital work. To be clear, there was a £750 million grant package, billions through the job retention scheme and other significant pots of money. I talk to these organisations literally daily, and my genuine understanding is that a lot of funds have been distributed for this year and we are working with them to understand their challenges in the years ahead.

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

Civil Servants: Public Procurement

Question

12.40 pm

Asked by ***Baroness Browning***

To ask Her Majesty's Government what plans they have to ensure that civil servants engaged in public procurement declare any conflict of interest in an accessible public register.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, there are currently no plans for an accessible public register centralising conflict of interest declarations of civil servants engaged in public procurement. Government departments are required to take appropriate measures to prevent, identify and remedy conflicts of interest in procurement procedures. This includes identifying and addressing situations where civil servants have financial or other interests that might be perceived to compromise their impartiality and independence in the procurement process.

Baroness Browning (Con) [V]: My noble friend will no doubt be aware of the concerns expressed by the National Audit Office about the lack of transparency in the recent procurement of Covid-19 contracts. I hope that he will agree that good governance means good transparency. While I hear what he has said about the current situation, I hope that he shares my concern that public confidence both in the Government and the way government works would benefit more if a register that was openly available to the public was made a matter of urgency.

Lord True (Con): My Lords, of course I have listened to what my noble friend said. Like her, I have spent a lifetime in public service in different guises and I attach the highest importance to probity in every place and at every level. As she says, the NAO is undertaking an investigation to examine government procurement during the pandemic covering the period up to July 2020. The report is expected to be published in December.

Lord Clark of Windermere (Lab) [V]: What a disappointing reply from the Minister. Does he not realise the deep concerns over the relationship between HMG and various companies in recent months? Have any formal reservations or qualifications been lodged under their code of conduct by senior civil servants on Ministers' proposals? Whatever, will he confirm that eventually, there will be an inquiry into these activities?

Lord True (Con): My Lords, I have already referred to the ongoing NAO investigation. So far as the Civil Service Code is concerned, Section 4.1.3c is absolutely specific that

"civil servants must not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others … Where a conflict of interest arises, civil servants must declare their interest to senior management."

Every civil servant will be expected to abide by that.

Lord Scriven (LD): My Lords, the Good Law Project has today published official government procurement documents which show that VIPs and Cabinet Office contacts have been awarded lucrative contracts for PPE above normal market rates and outside the usual procurement processes. As a matter of transparency, will the Minister set out what the total value of the contracts awarded in this way is and which companies that have links with Conservative Ministers, MPs or Peers were awarded business via this route?

Lord True (Con): My Lords, the Government's policy is to adopt and encourage greater transparency in commercial activity. Central government buyers must publish all tender documents and contracts with a contract value of over £10,000 on the Contracts Finder site. I am not commenting on press allegations. The Government are certain that the proper procedures have been and are being followed.

Baroness McIntosh of Pickering (Con) [V]: My Lords, in the absence of a register, can my noble friend explain who checks that appropriate measures have been taken, in particular if it is a close friend or family member who may have benefited from such a contract? Also, what is the sanction if a breach is found to have occurred?

Lord True (Con): My Lords, any breach of the Civil Service Code will be dealt with by the appropriate procedures within the Civil Service. Every department is expected to develop and set up its approach under the central framework. Each department is responsible for defining the standards of conduct it requires and for ensuring that those are carried out. Internal guidance and procedures must be followed in all cases.

Viscount Waverley (CB) [V]: My Lords, the Minister has clarified some concerns. However, a response to my Question for Written Answer some time back stated, "It is a matter for each council to put in place whatever arrangement it considers appropriate for the recording and disclosure of officers' interests." I was surprised by that and I find it odd that there is no national standard. I will ask again whether the Government intend to instruct local authorities to maintain a public register of the disclosable pecuniary interests of officers to whom delegated authority has been granted by elected members to ensure that local government officials maintain transparency and compliance with the Nolan principles?

Lord True (Con): My Lords, the noble Viscount is referring to local government, but I shall repeat what I said at the start. I believe that we need probity at every level of the public service. He has raised an interesting point about necessity. The current position is obviously that normally, departments require staff to complete a declaration of interest form prior to working on any new procurement and to provide details of any new interest which arises during the course of a procurement. Departments should have appropriate safeguards in place to ensure conflicts are properly managed throughout the procurement. That is good practice and ought to be followed.

Baroness Smith of Basildon (Lab) [V]: My Lords, I have listened to the answers given by the noble Lord, Lord True, but I am not sure that he has really understood the depth of concern about this matter. There are two issues. One is that these contracts on Covid-19 for test and trace and PPE were vital to public safety and remain so, and the second is that millions and millions of pounds are involved. The noble Lord says that he is not going to refer to press speculation following the investigation by the Good Law Project, but I would say that it is a little more serious than that. I think he has to be clear that we need complete and total transparency on all of these contracts from the National Audit Office report, which we will see. Is there not a case for a public inquiry or a Select Committee inquiry on this issue as well?

Lord True (Con): My Lords, one of the delights of the United Kingdom is that the Government are not responsible for the actions of the Select Committees of either House of Parliament. So far as the NAO is concerned, I have already reminded the House that an inquiry is in progress.

Lord Tyler (LD) [V]: My Lords, in the light of the report from the Good Law Project on procurement referred to by my noble friend Lord Scriven and the noble Baroness just now, can the Minister confirm that there is comparable transparency where the personal and political interests of Ministers and special advisers are in question? I cite the specific example of the £276 million PPE contracts, to which I have drawn Ministers' attention.

Lord True (Con): My Lords, Ministers are bound by the Ministerial Code and civil servants are bound by the Civil Service Management Code, from which I have quoted. Special advisers are also required to conduct themselves in accordance with the code of conduct for special advisers and the Civil Service Code.

Lord Wigley (PC) [V]: My Lords, the Minister accepts that the public procurement system has to be whiter than white, I am sure, but does he accept that the registration of interests is as much to protect public servants as it is to protect the wider public interest in the objective and open placement of any public contracts?

Lord True (Con): My Lords, these issues are important; in my initial reply, I tried to convey the importance that I attach to probity. I recognise the role of transparency therein. I have told the House about the current good practice inside government. I personally believe that it is efficacious but obviously I listen to everything said by noble Lords.

Lord Singh of Wimbledon (CB) [V]: Every day, the House starts its proceedings with Prayers, reminding us to set aside factional interests and private prejudices in the work we do, yet, with some notable exceptions, we frequently make appointments to the House as rewards for political loyalty or cash donations. Does the Minister agree that our concern about conflict of interest and civil servants would carry greater weight if we were true to the biblical injunction of looking to the defect in our own vision before criticising the lesser defect in our brothers?

Lord True (Con): My Lords, as I said in my first Answer, humility, respect for proper conduct and ethics are the best guide for any person at any level or in any place in public service. To that extent, I agree with the noble Lord.

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

Covid-19: Transport for London

Question

12.52 pm

Asked by ***Lord Young of Cookham***

To ask Her Majesty's Government what discussions they have had with Transport for London about the impact of the Covid-19 pandemic on its revenue and funding.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, we are currently in discussions with TfL and the mayor on a further extraordinary funding agreement. My noble friend will agree that the mayor has choices to make to balance the books of TfL. When he has made those choices, they will become conditions attached to support from the UK taxpayer. My noble friend will understand that it would be inappropriate to discuss the details of ongoing discussions at this time.

Lord Young of Cookham (Con): I am grateful to my noble friend. With the other place in recess and government support for Transport for London running out tomorrow, this is Parliament's last opportunity to find out what is going on. Does my noble friend agree that, if giving more powers to mayors and metro mayors is to work, both sides should moderate their language during negotiations and avoid wild accusations; that any support for Transport for London should take us beyond next May's mayoral elections; and that any government support for Transport for London should be fair to the national taxpayer and proportionate to other parts of the country while leaving the decisions as to how it should be funded to the Mayor of London?

Baroness Vere of Norbiton (Con): I agree with my noble friend that negotiations between the Government and the Mayor of London—indeed, all mayors—should be based on mutual respect and professionalism. I am pleased to report that, for example, our conversations with the mayor and his team yesterday were very cordial and constructive. The details of the current settlement are still under discussion and we are making good progress. I am pleased to confirm that the Government are committed to the principle that any government funding must be fair to UK taxpayers.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, it is obvious that TfL needs some immediate investment, along the lines of the sort that the Government have given to the train operating companies, but also needs time to work out some long-term resilience. An 18-month deal is probably best for it. One way of financing it would be to put in smart road pricing. This idea has been around for decades, but have the Government thought about it or even worked up an idea for it?

Baroness Vere of Norbiton (Con): The noble Baroness will know that transport in London is devolved to the Mayor of London. Therefore, any considerations of smart road pricing would be for him to take forward.

Lord Haselhurst (Con) [V]: Can my noble friend indicate whether these discussions should consider how far the overall health risk to front-line workers in mass transportation systems could be reduced by the spread of automation?

Baroness Vere of Norbiton (Con): The health of our key workers and transport workers is at the forefront of everything we are doing at the moment, which is why the Government support running full services across public transport to enable social distancing.

Automation, for example contactless payment, is one of the things that can reduce the spread of the virus. Automation of driverless trains, for example, would again be a matter for the mayor but we would support looking into it.

Lord Craig of Radley (CB) [V]: My Lords, before Covid struck, Crossrail's full operation had been delayed by four years until 2022 and estimated costs increased by almost a third from the 2009 figure. What further delay and cost increases, due to Covid working restrictions, have been calculated and reported so far? Will all these additional costs have to be financed by TfL and the London authority?

Baroness Vere of Norbiton (Con): The noble and gallant Lord will be pleased to hear that there was an update from Crossrail recently about the schedule and total costs. The project is now completely under the control of TfL. It is its responsibility to finish it. We are in discussions with TfL about further financial support for Crossrail, but we are very clear that Londoners must also foot the bill.

Lord Desai (Lab): My Lords, does the noble Baroness not agree that the UK taxpayer would be harmed if Transport for London became dysfunctional? It would affect the London economy, as well as the health of London's citizens. Would it not be better to take the larger interest into account and give Transport for London the help that it badly needs?

Baroness Vere of Norbiton (Con): I assure the noble Lord that we want—as much as anybody else wants—London to have a safe, sustainable and reliable network. Obviously, there are issues to consider. In the short term, London's revenues have been significantly impacted by the decline in passenger numbers. We have to make sure that, as we look to longer-term financial sustainability, not just UK taxpayers but Londoners support TfL.

Baroness Randerson (LD) [V]: The Government continue to warn the public to avoid public transport and work from home. Tube journeys, for instance, are down to about a third of their usual numbers. When the train operating companies were bailed out to the tune of £3.5 billion, similar terms to those that have been imposed on Londoners were not imposed on them. Can the Minister explain why Londoners, whether travelling by car or public transport, are subject to financial penalties not imposed elsewhere?

Baroness Vere of Norbiton (Con): My Lords, train operating companies are not the same as TfL and a devolved public transport authority. Equivalent conditions or discussions cannot therefore be made because the two are not comparable. However, I assure the noble Baroness that the Government's messaging has been to use public transport safely and has been that for quite some time.

Lord Caine (Con): My Lords, is it not the case that the primary responsibility for this funding crisis rests with the utterly incompetent Mayor of London and the monolithic Transport for London? Does my noble friend agree that, whatever the solution to this crisis is, it is not to clobber London's much-beleaguered road users, many of them small businesses, with more taxes, such as increases in or extensions of the congestion charge?

Baroness Vere of Norbiton (Con): The congestion charge is a matter for the mayor. He will make decisions in that regard.

Lord Rosser (Lab) [V]: Prior to the coronavirus pandemic, the Major of London had reduced the TfL operating deficit by 70% and increased its cash balance by 13%, while maintaining fares income over the past four years—a much healthier situation than that left by his predecessor. It is also worth bearing in mind, in the light of what has been said, that London's net contribution to the Treasury last year was £38.8 billion.

I return to the question raised by noble Baroness, Lady Randerson, which did not get much of an answer. Why are the Government playing awkward over funding for publicly owned TfL? They are providing all the money private train operators in London require through 18-month funding deals with a surplus element built in and few questions asked. Meanwhile, they are seeking to force the Mayor of London to make punitive policy changes affecting Londoners—who have done and continue to do the right thing on Covid-19—as the price for their necessary further financial support. It is not sufficient to say they are different cases; they are very similar.

Baroness Vere of Norbiton (Con): The noble Lord mischaracterises the discussions under way concerning the train operating companies and TfL. Various conditions apply to the new train operating company deals—ERMAs—relating to punctuality, management fees and all sorts of things. Of course, that is just one step on the way to further reform. The Government will step in and support TfL to address the decrease in revenues resulting from the pandemic. However, there are elements available to people in London and to TfL staff that are simply not available to the rest of the country. It is not up to the UK taxpayer to pay for those things.

Baroness Meacher (CB) [V]: [*Inaudible*]—indeed, spent a fortune on cycle lanes. This is of course very welcome, but it has without question created new risks. During recent times, I have been driving to the House and have witnessed the most extraordinarily dangerous behaviour by cyclists, veering across lines of traffic and so on. Will the Government consider assessing a policy of requiring every bicycle to have a name plate? Will they at least try to introduce some discipline and respect for the Highway Code?

Baroness Vere of Norbiton (Con): I recognise that on occasion, cyclists do not pay full regard to the rules. As we encourage more people to cycle—we have put in place cycle lanes, which are very welcome—we must ensure that cyclists behave according to the written law and the spirit of it.

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

1.03 pm

Sitting suspended.

Asylum Seekers

Private Notice Question

1.10 pm

Asked by ***Lord McConnell of Glenscorrodale***

To ask Her Majesty's Government, following the deaths of at least four people in the English Channel, what steps they are taking to protect asylum seekers and victims of human trafficking who are fleeing persecution and seeking refuge in the UK.

Lord Parkinson of Whitley Bay (Con): My Lords, this tragic event highlights the grave dangers of channel crossings and the pressing need to stop the callous criminals who are exploiting vulnerable people. The UK has a proud history of granting protection to those who need it, but it is an established principle that people should claim asylum in the first safe country that they enter. We continue to work closely with our neighbours to discourage people from making these dangerous and unnecessary journeys.

Lord McConnell of Glenscorrodale (Lab): My Lords, I have four grandchildren under the age of 10, and I cannot imagine being so scared of what might happen to them on land that I put them in an unsafe boat to cross the English Channel. Yet this week, Rasoul Iran-Nejad and Shiva Mohammad Panahi put their three children, Anita, aged nine, Armin, aged six, and 15 month-old Artin, in a boat. Two of the children are dead, along with their parents, and one is still missing. Surely in this day and age, France and the UK, the fifth and seventh-largest economies in the world, with some of the most professional armed forces and diplomatic services in the world and a history of public service administration, can find a way of coming together with the International Organization for Migration and the UNHCR to find a safe route for families fleeing persecution to come to France and this country, and to have their applications determined in a safe and legal manner?

Lord Parkinson of Whitley Bay (Con): The noble Lord will appreciate that because there is an ongoing investigation, I am unable to go into much detail on the names, identities and ages of the people that he mentioned, but I have seen the reports, as I am sure we all have, and the details are heart-wrenching. This tragic case underlines the importance of breaking the criminal business model, which is exploiting the desperation of vulnerable people who, as he says, are in fear. We are working very closely with the French. Our National Crime Agency is assisting the French authorities in their investigation. The Home Secretary has appointed a former Royal Marine, Dan O'Mahoney, as the clandestine channel threat commander, to tackle the problem there. However, the noble Lord is also right that we must have safe methods for people to claim asylum without making that journey, which is why our vulnerable persons resettlement scheme works with the organisations that he mentions, to ensure that people do not undertake these perilous journeys.

Lord Dubs (Lab) [V]: As an agreement with the EU on family reunion is unlikely to be reached by the end of December, will the Government, as a matter of urgency, seek the co-operation of the French authorities to identify people, especially children, who are eligible for family reunion or who have other connections with the UK, in order to expedite their safe passage to this country and avoid another tragedy?

Lord Parkinson of Whitley Bay (Con): The noble Lord is a respected and tenacious campaigner on these issues. I know that he has an amendment to the Immigration Bill which the other place will have the opportunity of examining next week. Tragically, this incident has happened while we still have the Dublin convention, so it is important to make a distinction between those regulations and the actions that we must all undertake to deter people from making these dangerous journeys. Nobody should be crossing the channel in this dangerous way.

Lord Paddick (LD): My Lords, if there is a so-called pull factor that is resulting in desperate families dying in the channel, it is that many of those who make the crossing are given asylum in the UK because they are genuine asylum seekers, yet the only way that they can find out if their claim will be accepted once they are on the European mainland is by making the crossing. Why do the Government not allow applications from those on the European mainland, and, if they do not qualify, tell them unequivocally that they will be deported if they make the crossing? Surely letting them know what will happen before they make the perilous crossing is the decent and humane thing to do.

Lord Parkinson of Whitley Bay (Con): My Lords, we want to deter people from undertaking dangerous journeys at every stage, whether that is across the channel or further upstream. We have seen terrible cases in the Mediterranean too. That is why our vulnerable persons resettlement scheme is working directly in affected areas so that people do not need to travel across the world putting themselves and their families in danger, but instead can apply. We can then give people the protection that they need directly from source, rather than after they have endangered themselves.

The Lord Bishop of Bristol [V]: My Lords, as we have already heard, the death of anyone trying to reach the UK in search of safety is tragic, and the tragedy is multiplied when it is the death of a family. Save the Children is right to say that the English Channel must not become a graveyard for children. With that in mind, can the Minister update the House on the resumption of the refugee resettlement programme which was suspended in March?

Lord Parkinson of Whitley Bay (Con): The right reverend Prelate is right that this is a particularly heart-wrenching case. As she says, the resettlement scheme was paused in March because of the Covid pandemic, but as per their statement in June, the International Organization for Migration and the UNHCR are beginning to resume some of their functions, although with limited capacity. The UK's visa application centres are also beginning to resume some of their functions, again with limited capacity. The same applies for the Home Office teams who are processing applications. We hope to help people as swiftly as possible.

Lord Green of Deddington (CB) [V]: My Lords, does the Minister agree that any attempt to process asylum applications abroad would be rapidly overwhelmed by a huge number of claimants? Failed applicants might well head for Calais, thus making a very bad situation even worse. Have the Government considered joint maritime border controls with powers to return migrants to their point of departure?

Lord Parkinson of Whitley Bay (Con): I agree that we want to deter people from making dangerous journeys to the European continent, whether by land or sea. Dan O' Mahoney is today in France meeting the French authorities and continuing the deep engagement that we have with them to tackle this problem in the channel.

Lord Rosser (Lab) [V]: My Lords, last week the Government voted against both free school meals for hungry children in the UK and a legal route to safety for refugee children. Why is it that vulnerable children are paying the price for this Government's policies? Two days ago, the Home Secretary was quoted as saying:

"I will do everything I can to stop callous criminals exploiting vulnerable people."

If next week the Home Secretary votes again to slam shut the only safe and legal route for vulnerable children to reach the UK, how can she possibly make that claim?

Lord Parkinson of Whitley Bay (Con): I am sorry to hear some of the noble Lord's points. The Government want to create safe and legal routes so that vulnerable people, including vulnerable children, are not put at risk by making dangerous channel crossings. That is why our vulnerable persons resettlement scheme has helped nearly 20,000 people over the past five years, including children. We have seen over 29,000 family reunion visas issued in the last five years as well, so we are doing what we can to help vulnerable children.

Lord Dholakia (LD): My Lords, the shocking event at Dunkirk must shame us all, particularly those who fail to accept that the pressure of migration has been with us for a very long time. It applies to rich as well as poor countries. We need a safe and secure method, as the Minister has described. What is the status of Dublin III in the discussions and negotiations that we are having with the European countries? What happens to countries, including Britain, that fail to take a quota of migrants?

Lord Parkinson of Whitley Bay (Con): The noble Lord will understand that I cannot comment on the ongoing negotiations with the EU, but as I said to the noble Lord, Lord Dubs, this tragic event happened with Dublin III in place. The problem is the criminal gangs taking people's life savings and sending them out to sea in unseaworthy vessels without a care for what happens to them. Those are the people whom we must focus on relentlessly.

Lord Marlesford (Con) [V]: My Lords, although HMG must retain the right to allow—indeed, facilitate—the entry of any individual into the UK, following the point made by the noble Lord, Lord Green, can my noble friend confirm that the Government will not seek to move out of the UK the process for assessing the asylum claims of those who have not yet entered the UK? To do so, even if it started only in France, would rapidly result in an unmanageable number of claimants from all over the world.

Lord Parkinson of Whitley Bay (Con): I agree with my noble friend that to do so would increase the risks and encourage more people to make dangerous journeys. That is why our efforts are focused on schemes such as the vulnerable persons resettlement scheme, which takes people directly from affected areas and gives protection to those who need it most.

Lord Kerr of Kinlochard (CB) [V]: The Minister keeps referring to the vulnerable persons resettlement scheme, but the fact is that we have no official resettlement scheme currently open. It is the absence of a safe official route that drives these poor people into these terrible dangers. Will the Minister please give a straight answer to the question asked by the right reverend Prelate? When will our resettlement schemes reopen? Others have reopened theirs. Will the Government ask the French and Belgian authorities to permit UK staff to process family reunion cases and asylum applications in the ports and camps where these poor people currently are?

Lord Parkinson of Whitley Bay (Con): My Lords, I am afraid that I cannot give a simple answer to that question because, as I am sure the noble Lord appreciates, it depends on the Covid-19 pandemic. However, as I said to the right reverend Prelate, some of the functions are beginning again, as far as that is possible in the light of the pandemic. That is the best way to help vulnerable people without encouraging them to make dangerous journeys and fall prey to the sorts of callous criminal gangs that are behind so many of the deaths in the channel.

Lord Empey (UUP) [V]: Will my noble friend explain to the House how these blackguards or people smugglers are allowed to ply their evil trade in broad daylight on French soil and in French waters? Can he assure the

[LORD EMPEY]
House that there is not a political dimension to this crisis by allowing this trade to continue on French soil and in French waters?

Lord Parkinson of Whitley Bay (Con): My Lords, we are working very closely with the French Government and the French authorities to tackle these callous criminals. I can tell the noble Lord that, last year, there were 418 arrests and 203 convictions, which resulted in combined sentences of more than 430 years. So we and the French take this problem very seriously and are determined to pursue the criminals who endanger the lives of vulnerable people.

Lord West of Spithead (Lab): My Lords, the desperation of these people is palpable, as shown by the Nigerians who took over a tanker in the channel very recently. One should say that the operation to recover the vessel was well executed—a textbook case. I was surprised that there was no Statement in the House, as we were taking over a foreign ship in international waters, but clearly that is what we do now—we do not worry about it. Having been a seaman for 50 years, I can tell the House that people will die in the channel if they keep coming in these little inflatables. What worries me is that people will have seen that the takeover of a merchant ship or ferry is not difficult. I hope that we are looking carefully at this. I could certainly take over a ferry in Calais with five people with no problem at all; that is a real worry. Is this being looked at? Are we taking precautions to make sure that it does not happen? The risks would be huge if that sort of thing happened.

Lord Parkinson of Whitley Bay (Con): The noble Lord gives me the opportunity to thank the police and the Armed Forces for their quick and decisive action at the weekend, which was important. He is right to raise the fact that, as the weather worsens over the autumn and winter, these crossings, which are already dangerous, will get only more perilous. The Home Office is working with the French authorities to look at all the different routes that people pursue—through the Channel Tunnel, on ferries and by other means. These are not safe. All these routes are dangerous to pursue and we do not want to see anybody risk their life in this way.

Baroness Butler-Sloss (CB) [V]: I declare my interests in the register. Following the question from the noble Lord, Lord Dubs, I ask the Home Office to take practical steps to identify and bring to England—under Dublin III, on the right to join families—the unaccompanied minors in Calais and Dunkirk to save them taking perilous journeys.

Lord Parkinson of Whitley Bay (Con): I am afraid that I did not quite catch the end of the noble and learned Baroness's question. If she will forgive me, I will consult *Hansard* and write to her if I have missed anything. However, on the Dublin regulation, over the last four years, the UK has consistently reunited the second-largest number of family-linked cases after Germany, so we take our responsibilities seriously.

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

Covid-19: Intensive Care Treatment

Private Notice Question

1.26 pm

Asked by ***Baroness Falkner of Margravine***

To ask Her Majesty's Government whether any part of the NHS has operated under policy guidelines described as a "triage tool" which determine intensive care treatment for patients with Covid-19, and whether such guidelines will be used in the future.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, claims that frail and elderly patients were denied care in wave one of the coronavirus pandemic, in part because of the triage tool developed by the NHS in case it was overwhelmed, are categorically untrue. The Government are ultimately responsible for national policy on public access to NHS services. However, decisions on who will benefit from care are made as part of normal clinical decision-making by clinicians. Guidance to help clinicians make rational evidence-based decisions in the event of ICUs being overwhelmed was commissioned but was halted when it became clear that the NHS would not be overwhelmed.

Baroness Falkner of Margravine (CB): My Lords, I think that the whole House will be grateful to the Minister for his unequivocal rebuttal of that extremely concerning story. Let me be clear that this Question is not intended to criticise the NHS, for which we all have the highest regard. However, according to that *Sunday Times* story, under conditions of extreme stress, consideration was given to guidance that could have amounted to age discrimination. Does he agree that there is a need for the NHS to uphold its public sector equality duty? Will he provide reassurance that these triage tools should not be used to prioritise patients on any basis other than clinical need either this winter or going forward as routine?

Lord Bethell (Con): My Lords, I am grateful for the opportunity offered by the noble Baroness to reinforce the point. Age discrimination is absolutely forbidden by the NHS constitution. The CMO wrote to NHS trusts on three occasions to reiterate that point. I quote a letter published on 7 April:

> "The key principle is that each person is an individual whose needs and preferences must be taken account of individually. By contrast blanket policies are inappropriate whether due to medical condition, disability, or age."

Baroness Andrews (Lab) [V]: My Lords, the Minister's response is indeed very reassuring. Does he agree that many elderly people will have been very worried by the *Sunday Times* report? They will welcome the assurances that have just been given by the NHS and the professional bodies that triage was never intended or used as a strategy for implementation. However, we have to be

mindful of the fact that, as the pandemic is accelerating, fears are rising. Therefore, it is vital to get this message out as loudly as possible, just as the NHS did in April, when it said at the start of the epidemic that, far from rationing ICU care:

"All patients should be treated respectfully and equally and should receive the best available care."

Can the Minister say now what the Government will do to support the NHS in reassuring every potential patient, irrespective of their age?

Lord Bethell (Con): We go into the second wave in much better shape in relation to coronavirus because we know so much more about the virus. In terms of medicines, the therapeutics, the practices, the training, the configuration of our wards and the building of the Nightingales, there is a huge amount of skill, learning and capacity in the NHS to ensure that everyone has the opportunity to receive the best possible care. I remind noble Lords that these claims not only worry patients, they are deeply offensive to NHS doctors, nurses and therapists who have cared for more than 100,000 Covid patients to date in hospital settings and are committed to providing the best possible care in a second wave.

Baroness Barker (LD): My Lords, triage is a necessary part of emergency medicine, and it will continue to be. Can the Minister say what has been learned in emergency departments in areas that have been in lockdown, such as Leicester, Bolton and Oldham? What learning has there been in those areas that can be sent to other areas to inform what will continue to be a necessary practice and part of good medicine?

Lord Bethell (Con): Our learning has come a long way. Practices within ICU units have changed as a result of what we have learned in relation to the way that oxygen is administered, the range of drugs available and the turning of patients. To date, triage has not been necessary because the NHS is so good at load management that patients can be dispersed and deployed through the system, which has not been placed under pressure. We expect to be in good shape for the second wave. The principle remains as the national medical director, Stephen Powis, stated in his letter of 7 April:

"The key principle is that each person is an individual whose needs and preferences must be taken account of individually."

That remains our principle.

Lord Lansley (Con) [V]: My Lords, on precisely the point that my noble friend the Minister has just made, I know he will be aware of the revised version of ReSPECT—the Recommended Summary Plan for Emergency Care and Treatment—which was published in September by the Resuscitation Council UK. It is in wide, but rather variable, use. Will my noble friend encourage NHS England to make its use a best-practice requirement in relation to Covid-19 patients entering high-dependency or intensive care in the months ahead?

Lord Bethell (Con): My Lords, we are extremely grateful to the Resuscitation Council for its work on this important tool. It gives an opportunity for patients to express their preference and for clinical judgment to be used at moments of acute intervention. It is being used in some places but, as the noble Lord rightly points out, its use is variable. I would be glad to take this back to the department to see what can be done to encourage its use more thoroughly.

Lord Bilimoria (CB) [V]: My Lords, I am the chancellor of the University of Birmingham, and the professors at the university hospital there said that there was no way that any triage tool was used. If anything, better intensive care treatment was given during the crisis, so I am glad that the Minister very categorically said that. The *Sunday Times* article was trying to insinuate that people were not getting the intensive care that they needed. Can he reassure the House that in the second wave, the Nightingale hospitals that were built at such brilliant speed will be used if needed and are ready for use?

Lord Bethell (Con): My Lords, I completely agree with those at the University of Birmingham who confirmed that triage tools were not used. They were not necessary, and everyone had absolutely the best care that could have possibly been given to them. The Nightingale hospitals are on standby where necessary; they will be deployed if needed, but it is my hope that they will not come into play.

Lord Collins of Highbury (Lab): My Lords, it is vital to sustain the trust of older people. Does the Minister agree, therefore, that it is now vital for the NHS to follow through on the commitments it made to improve services for older people living at home or in care homes, set out in last year's *NHS Long Term Plan*? What are the Government doing to make sure that that happens?

Lord Bethell (Con): My Lords, the implementation of the long-term plan is under way, despite Covid. We have put the care of the elderly—and, in fact, all those who are vulnerable and in need of social care, half of whom are under 60—at the centre of our efforts. Returning to the point of the question and the article, I remind noble Lords that two-thirds of our Covid in-patients were over 65. Each got the support and treatment that they deserved and needed, and that will remain our commitment during any second wave.

Lord Scriven (LD): My Lords, in April NHS England issued the *Reference Guide for Emergency Medicine*. Non-conveyance guidelines for ambulance services stated that any care home resident should not be taken to hospital until it was discussed with a clinical advisor. Why, therefore, was a resident in a care home not given equal treatment of access to hospital as an equivalent person outside the care home setting, and has that instruction been withdrawn?

Lord Bethell (Con): My Lords, I do not know whether that specific instruction has been withdrawn; I will be glad to write to the noble Lord on that. I reassure him that, during an epidemic of a highly contagious disease, a hospital might not be the safest

[Lord Bethell]
place for someone who is ill in a care home; nor would it necessarily be the safest place for someone who has gone to their GP and is sitting in the GP's surgery. It is therefore absolutely essential that clinical risk management and advice is sought before referral to a hospital. There is no prejudice or unfairness here: it is simply good clinical practice.

Lord Balfe (Con): My Lords, the *Sunday Times* has form on inaccurate stories, as does the *Telegraph.* Indeed, I asked the Minister a Question on 21 September about a *Telegraph* story about age restrictions, and he assured me that there were none. I asked him

"will he agree to place a copy of all the circulars from DHSC in the Library so that we can see what is going out?"

In reply, he said

"I will inquire as to what we can possibly share, so that these decisions are as transparent as my noble friend wishes".—[*Official Report*, 21/9/20; col. 1596.]

I think it would help keep the papers on the right track if more was put into the Library. Will the Minister tell me how he is getting on with his endeavours to get this information into the public domain?

Lord Bethell (Con): My noble friend is entirely right to chase me in this matter. I remember the commitment very well and I will endeavour to find out from my colleagues at the department how they are doing in getting those important papers into the Library.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, the Minister was very forthright today in rejecting the *Sunday Times* story. A month ago, he was very forthright in an answer to the noble Lord, Lord Balfe, about blanket DNR notices. Picking up on the question today from the noble Lord, Lord Balfe, does he think that there might be an issue of communication where staff are working on the front line, where impressions are given that are not in accord with official government policy? In the light of all this, has he given some thought to the way in which communications with NHS staff might be improved in order to deal with these very troubling issues?

Lord Bethell (Con): I am not sure that I agree with the implication of the noble Lord's question—that somehow there is a prejudice on the front line against older people and that staff take it into their own hands to make decisions that are in themselves inherently unfair. That is not my experience. Where the noble Lord absolutely has a point is that people are extremely sensitive about these kinds of issues, and, quite rightly, are deeply concerned that they are going to get the treatment and care that they deserve and will not be subject to any form of unfairness. It is imperative that the NHS builds trusts and conveys a strong communication on these issues. To push back against the noble Lord, it is not my impression that the staff at the NHS have lost sight of this important principle.

Baroness Uddin (Non-Afl): My Lords, I declare an interest in that many of my family and friends work on the front line of the NHS, which I love and respect, as all other Members do. At the height of the pandemic, I watched a programme on Italian and American doctors using algorithms for vital decisions on treatment, with one being highlighted where triage tools had indicated nil chance of a patient surviving. However, their family pleaded with the doctors and convinced them to give them a few more days to see if "a miracle could happen". In April, my close friend's death was predicted from the use of some kind of early triage process. Sadly, my friend lost his battle. However, the miracle occurred: against all the odds, because of one decision by one team of doctors, the Italian patient survived. Given the fiasco of the use of algorithms, although I welcome the Minister's absolute assurance, what analysis or serious case review has been undertaken of the number of treatment decisions based on early triage tools, given that extreme pressures on doctors have returned? Where deaths have occurred, can the Minister say what proportion were individuals of Bangladeshi heritage? Can any lessons be learned to improve their survival chances in the current emergency?

Lord Bethell (Con): My Lords, I share my sympathies with the noble Baroness for the loss of her friend, for which we are all very sad. However, I take exception to her implication of a fiasco in the use of algorithms. I do not accept the implication that it is regular practice for clinicians somehow to give up on patients who stand a chance simply because their reading of an algorithm says that they should move on to someone else. That is not how we run the NHS; it is not how we had to run it during the first wave and it is not how we intend to run it during the second.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked and both Private Notice Questions have finished.

Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2020

Motion to Approve

1.42 pm

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

That the Regulations laid before the House on 24 September be approved.

Relevant document: 29th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 27 October.

Motion agreed.

Greenhouse Gas Emissions Trading Scheme Order 2020

Infrastructure Planning (Electricity Storage Facilities) Order 2020

Motions to Approve

1.42 pm

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

That the draft Orders laid before the House on 13 and14 July be approved.

Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument). Considered in Grand Committee on 27 October.

Motions agreed.

Adjacent Waters Boundaries (Northern Ireland) (Amendment) Order 2020

Motion to Approve

1.42 pm

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

That the draft Order laid before the House on 7 September be approved.

Considered in Grand Committee on 27 October.

Motion agreed.

Sanctions (EU Exit) (Consequential Provisions) (Amendment) Regulations 2020

Motion to Approve

1.43 pm

Moved by ***Lord Ahmad of Wimbledon***

That the draft Regulations laid before the House on 16 September be approved.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, before I introduce this SI debate, I want to express on behalf of my right honourable friend the Foreign Secretary his response to the horrific events in France today. He issued the following statement:

"The United Kingdom stands with France today in sorrow, shock and solidarity at the horrifying events in Nice. Our thoughts are with the victims and their families, and we offer every support to the French people in pursuing those responsible for this appalling attack."

I am sure those sentiments resonate with everyone in your Lordships' House.

I turn to the instrument before us. It was laid on 16 September under the powers provided by the Sanctions and Anti-Money Laundering Act 2018. It will aid the investigation and prevention of terrorist financing; prevent designated persons acting as charity trustees and managing or operating sensitive financial enterprises; and enable the effective implementation of legal, operational and regulatory measures for combating terrorist financing.

We have also laid alongside this draft instrument a Section 46 report. The report is required when new regulations are made under Section 45 of the sanctions Act to amend sanctions regulations made for a discretionary purpose under Section 1 of the sanctions Act. The report details why I consider that the relevant conditions, set out in Section 45 for the use of this power to make amending regulations, are met.

The purpose of the instrument is to add new provisions to three existing 2019 regulations relating to counterterrorism sanctions. These new provisions in the 2019 regulations will in turn make amendments to several other pieces of primary and secondary legislation to replace and update references to counterterrorism sanctions legislation. That needs to be done to ensure that the new counterterrorism sanctions framework established by the 2019 sanctions regulations delivers substantially the same policy effects as the existing sanctions regimes after the end of the transition period.

The three regulations amended by this instrument, collectively known as the 2019 regulations, are the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019, made on 5 March 2019; the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019, made on 14 March 2019; and the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019, also made on 14 March 2019. The provisions of primary legislation that will ultimately be amended by the 2019 regulations as a result of the amendments made by this instrument are Section 49(3) of the sanctions Act and Section 178 of the Charities Act 2011.

I shall provide further details: Section 49 of the sanctions Act confers a power on the appropriate Minister to make regulations for the purpose of enabling or facilitating the detection, investigation, or prevention of terrorist financing. This will, for example, enable the Government to amend or update the existing Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, which currently include measures to tackle terrorist financing.

Section 49(3) defines "terrorist financing" by references to other pieces of legislation. The amendments made by this instrument will remove references to offences under regulations being revoked by the 2019 regulations and add references to new offences under the 2019 regulations. That will ensure that the definition of "terrorist financing" is up to date and can be used in reference to current legislation. It also means that Her Majesty's Government can use the power in Section 49 of the sanctions Act to facilitate the prevention, detection or investigation of terrorist financing, following the revocation of a number of the current offences by the 2019 regulations.

Appallingly, there are occasions when charities are abused for the purpose of financing terror. To reduce the risk of such abuse occurring, Section 178 of the Charities Act 2011 disqualifies individuals who present a known risk from serving as a charity trustee or a charity senior manager—that is, the chief executive, finance director or their equivalent. The amendments made by this instrument will remove references to persons designated under regulations being revoked and add references to persons designated under any of the 2019 regulations.

I am sure many noble Lords will agree that this is a technical update to ensure that legislation on charities and financial services can continue to deliver the same policy effects after the end of the transition period. It will prevent those designated under these sanctions regulations being able to act as charity trustees or charity senior managers.

The amendments to the Electronic Money Regulations 2011 and Payment Services Regulations 2017 prevent the registration of a small electronic money institution or a small payment institution where any of the individuals responsible for the management or operation of the business have been convicted of an offence under the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019. This prevents persons convicted of terrorist financing offences managing or operating these sensitive enterprises.

[Lord Ahmad of Wimbledon]

The consequential amendment to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 provides that the definition of "terrorist financing" used in those regulations refers to the new offences in the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019. This amendment will ensure that the Government are able to continue to promote the effective implementation of legal, operational and regulatory measures for combating terrorist financing once the 2019 regulations are in force. The instrument represents the first use of the powers under Section 54(3) and (4) of the sanctions Act to amend the definition of "terrorist financing" in Section 49(3) of the sanctions Act. It will not come into force until a later date or dates to be appointed separately.

This instrument thus forms a necessary part of the programme of work being undertaken by the Foreign, Commonwealth & Development Office in conjunction with other Whitehall departments to construct an effective and robust UK sanctions framework under the Sanctions and Anti-Money Laundering Act 2018. The counterterrorism sanctions framework includes financial, trade and immigration sanctions. It is a key element of the UK's counterterrorist financing strategy and remains a major disruptive and preventive tool in the global fight against terrorism. We will continue to work closely with our Five Eyes and other international partners to help combat threats to the international financial system and the charity sector.

The United Kingdom, let me assure noble Lords, is working closely with the Financial Action Task Force, the G20, G7 and EU partners to disrupt terrorist financing. There is a particular focus on: reducing domestic terrorist fundraising; the movement of terrorist finance across borders; and the fundraising and movement of terrorist finance overseas. International counterterrorism sanctions regimes are an essential, practical weapon in disrupting terrorism. They also demonstrate international resolve.

The UK has a strong reputation for tackling terrorism, supported by our robust legislative framework. We will of course continue to strengthen our approach to countering terrorism by ensuring we have the correct range of disruptive tools and capabilities at our disposal, including our sanctions and counterterrorist financing frameworks. This instrument will ensure that these remain functional and effective. I beg to move.

1.51 pm

Lord Hain (Lab): My Lords, I thank the Minister for the expert and diligent way in which he explained these regulations. I welcome them and I take the opportunity to welcome the noble Baroness, Lady Hoey, to this House. I am sure her voice will be heard regularly. Our paths have diverged considerably since we worked together as young Labour parliamentary candidates 40 years ago, but I am sure she will make a big contribution.

Will the Government impose sanctions on the former South African business brothers Ajay, Atul and Rajesh Gupta, who were responsible for looting from South African taxpayers around 7 billion rand, or around £350 million sterling, which was laundered abroad through British-based banks such as HSBC, Standard Chartered and the Bank of Baroda? The Minister may say that the current Magnitsky-type sanctions in our legislation focus upon human rights rather than financial crime, but in this case the two are indelibly interconnected. For example, looting from a government-funded project for poor farmers in the Orange Free State in South Africa left them penniless and unemployed, with massive damage to their rights and freedom simply to live—and London's financial system was complicit.

Human rights are not just constitutional and civil but social and economic, especially when they are attacked by financial crime, as in this case. I have raised this repeatedly before and have still had no formal reply on the Financial Conduct Authority investigation into HSBC, triggered by my letters to the Chancellor in September and October 2017. I introduced a whistleblower to the Financial Conduct Authority but still have no idea what the outcome was. If the Minister is not able to respond in detail this afternoon, can he please write to me answering the points I have made?

1.54 pm

Lord Bradshaw (LD) [V]: I too thank the Minister for his very thorough introduction. My question is very simple. We are still in negotiation with the European Union about the continuation of agreements between us and it after Brexit. Can the Minister give us an assurance, as I hope he will be able to, that the regulations we are about to approve will function properly if we withdraw from any co-operation agreements we have with the European Union about criminality in general, as opposed to money laundering and terrorism? Unless they do, I cannot see the reach of these new regulations extending worldwide, as I believe it must, since terrorism is a worldwide disease and not confined to the United Kingdom.

1.55 pm

Baroness McIntosh of Pickering (Con) [V]: My Lords, I thank my noble friend for introducing these sanctions and for making the statement in regard to the atrocities today in France. I also take this opportunity to welcome the noble Baroness, Lady Hoey, to this House and wish her many happy years of service in this place. I look forward very much to hearing her maiden speech.

My noble friend the Minister will be aware that terrorism knows no borders. My question is not dissimilar to that from the noble Lord, Lord Bradshaw. Is my noble friend absolutely convinced that the regulations we are approving today will, in and of themselves, provide him with all the tools at the disposal of the Foreign Office and the other departments to which he has referred? They will need them. The most effective action in controlling the financing of terrorism, which we have traditionally followed, has been through the UN; much more recently, in the last 40 or 50 years, it has of course been through the European Union. Will he assure me this afternoon that, even though we have left the European Union, we will work completely at one and closely with its members, in addition to the Five Eyes?

The atrocities in France, today and recently, have taught us that we must be ever vigilant for terrorist attacks, while recognising that perpetrators may travel freely across borders. I believe it is incumbent on us to work closely with our nearest neighbours in that regard.

I am sure this is kept under constant review. However, in addition to the regulations before us today, will my noble friend repeat the assurance that we will keep these regulations—and others flowing from the 2018 and 2019 measures—under constant review? I have one particular concern: to try to close down the channels of communication used by what appear to be sole perpetrators, such as in the recent attacks in France. Can my noble friend and his department address the possibility of cutting down these channels of communication, to make it less likely that these sole perpetrators will be in a position to act?

1.58 pm

Baroness Hoey (Non-Afl) (Maiden Speech): My Lords, it is a pleasure and an honour to make my short maiden speech today. Having spent 30 years in the House of Commons, I am well aware of the differences between the two Houses. I shall try very hard not to bring any of the worst practices from that House into your Lordships' House. Many things have changed here in the past few months but one thing that has certainly not changed is the great welcome given to all new Peers. I thank all of your Lordships for your friendship, kindness and help over the past few weeks. The staff have been absolutely wonderful. I particularly thank the staff who are working here: the cleaners, the catering staff, the attendants and the doorkeepers. I am sure I have left some out but all the people who are actually here make such a difference to our lives, and I thank them.

I obviously want to thank the supporters of my introduction, the noble Baroness, Lady Mallalieu, who I worked with closely in her capacity as president of the Countryside Alliance, and the noble Lord, Lord Elton, who I worked closely with on Zimbabwean issues. Of course, today he announced his retirement after 47 years in your Lordships' House. I was very honoured that his last appearance was to introduce me to your Lordships' House. I am sure we all wish him and Lady Elton the very happiest of retirements after 47 years.

I am very proud of my Northern Ireland upbringing on a small farm in County Antrim, which is why I have Lylehill and Rathlin as territorial designations. Lylehill Primary School, a two-teacher country school, was where I had a wonderful start to my education, and the Presbyterian church, the oldest one in Northern Ireland, was where my parents were married and I sung in the choir and first worshipped. Rathlin Island, the only inhabited island off the coast of Northern Ireland, with 120 full-time residents, thousands of seabirds and a lot of peace and tranquillity, is probably best known to your Lordships as the place where one islander, my late and great friend Tommy Cecil, rescued Richard Branson when his balloon came down after crossing the Atlantic.

This is clearly a very important instrument; it is technical, as the Minister has said, but, undoubtedly, without it, we would not have a fully functioning set of terrorism sanction regimes. I support it fully. I have a particular interest in this issue, coming from Northern Ireland. We have to do all we can to make the life of any terrorist as difficult as possible. Northern Ireland suffered so much from years of terrorism, and so much of it was funded by money laundering and organised crime. Added to that was the Libyan-sponsored IRA terrorism, which resulted in atrocities such as the Enniskillen Remembrance Sunday bomb, the Harrods bomb on the mainland and many others.

When we talk about any terrorist outrage, we must remember the victims—some dead, sadly, but many wounded, disabled and deeply traumatised. That is why I support the attempt to win justice from the frozen assets of the Libyan Government in London—some £12 billion, from which the taxes alone bring in around £5 million a year to the Treasury. William Shawcross has done a report on all of this, and I hope it can be released soon, because the victims deserve transparency. It is also right that to counter terrorism, we give the Treasury the power to impose financial sanctions on designated persons involved in terrorism, and that should apply equally to Northern Ireland.

The victims of terror have waited a long time for justice, and we need to have a morally sound, consistent approach to all terrorism, whether it is related to Northern Ireland, Al-Qaeda or anything else. All innocent victims should matter and not be equated in law with those who injure themselves trying to murder others, as is the law in Northern Ireland. That must change.

Finally, does the Minister agree that all in this House should view it as a considerable achievement on the part of everyone in his department and the officials that on 31 December at 11 pm, all the European Union sanctions measures will become UK sanctions measures, and we will regain control over this vital foreign policy tool?

I look forward to participating further in your Lordships' House and particularly to finding ways in which your Lordships' House can prepare to mark the centenary, in 2021, of Northern Ireland—or, as the wonderful supporters of the Northern Ireland football team I am so proud to support call it, our wee country.

2.03 pm

Lord Balfe (Con): My Lords, it is a great pleasure to follow the maiden speech of my distinguished friend of almost 40 years. Kate and I go back to the early 80s; I knew her as a parliamentary candidate in Dulwich, I knew her as the MP for Vauxhall, elected on European election day in 1989, and I have known her as a friend all the way through, despite the fact that for at least half that time, I have been a member of the Conservative Party. Before that, I was in the same party that she used to belong to. So, we both moved, you might say.

I recall that when Kate was a candidate, the slogan we had was that she would "hit the ground running," because sport has always been an important part of her life. Indeed, she was the first woman to be Minister for Sport in this country, and she has always championed sport. She had a career with Tottenham Hotspur youth and helping young people to appreciate sport, and for eight years she was adviser to the Mayor of London—a long and distinguished career.

[Lord Balfe]

She has also been unafraid to embrace controversial issues. I remember agreeing with her that the foxes around the dustbins of Vauxhall were of more concern than those being chased around the fields of Kent. I still happen to feel that way, and I was pleased to go on the Countryside Alliance marches years ago. She has a long record of being prepared to stand up for what she believes in; Vauxhall was very lucky to be represented by her.

Europe is the one area where Kate and I have never agreed, but we have come nearer to agreement now. In the run-up to the last election, I consistently queried the referendum result and said that I thought the circumstances of the referendum were dubious. I asked for another referendum, or an election to sort out the matter. We had an election, and it is quite clear that I lost. In a democracy, on occasion, you have to accept that you lose. I am not going to oppose the Government. I welcome the Government's work and the Minister's; he has had to do a lot of detailed work to do transposing all these European regulations into UK law, and I wish him well with that.

I endorse strongly the point that my noble friend Lady Hoey made about victims of terror. We have tended too much to conflate the victims of terror with the perpetrators. The victims had no choice: they were gunned down, blown up and lost their lives. The perpetrators of terror, whatever else can be said, knew what they were doing. There is a big difference.

2.06 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: It is a pleasure to follow the noble Lord, Lord Balfe, in this important debate. I would also like to take the opportunity to welcome the noble Baroness, Lady Hoey, to your Lordships' House. Both of us are from Northern Ireland. We have divergent views on Northern Ireland and on Europe. Notwithstanding that, I welcome her, as I knew her in the other place.

I would also like to thank the Minister for his explanation of these regulations, which will be robust sanctions to prevent money laundering and terrorism. Coming from Northern Ireland, I am only too well aware of the role of money laundering in terrorism, how pernicious it has been and how invasive that level of terrorism has been. Today, we saw evidence of probable international terrorism at work in the brutal murder of three people in the south of France, in Nice—a lady at prayer practically beheaded. Such terrorist acts require immediate action from government.

I have some questions I would like to ask the Minister. The noble Baroness, Lady McIntosh of Pickering, and the noble Lord, Lord Bradshaw, asked if these measures would be effective when dealing with our colleagues in the European Union. Would they still afford the same levels of co-operation and work, and would they be as effective as the original regulations under the EU regime?

What will be the relationship with the EU countries in working to address the money laundering and terrorism activities that impact on liberal democracies such as France and Britain? What level of co-operation will continue to exist? The Minister said that there would be ongoing work with the G20, the G7 and the EU. Notwithstanding the need to preserve confidentiality, can he define that work and the extent to which police forces throughout the UK, the EU and the wider world will liaise to gather intelligence in order to combat money laundering and terrorist actions?

I disagree with the idea of charities being used to launder money for terrorism purposes, because, in many instances, those who work for and contribute to charities are not aware of such actions.

2.10 pm

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Ritchie of Downpatrick; I look forward to hearing the Minister answer her questions. I also welcome the noble Baroness, Lady Hoey. Her speech was very good, especially when she mentioned not bringing bad habits from the other place—we do occasionally see those, and it is great that she is not going to do that.

I have three queries for the Minister. Will he set out how the Government will apply sanctions to illegitimate regimes where the ruler refuses to leave office after being defeated in a democratic election? Secondly, I am sure that the Government have paid attention to Donald Trump's consistent refusal to commit to a peaceful transfer of power if he loses next week's election. Have the Government made plans for what they will do, diplomatically and economically, if Donald Trump loses and refuses to leave office? Thirdly, in that situation, will the Government stand up for democracy and the rule of law by applying sanctions to Donald Trump, the Trump family and The Trump Organization? They could, of course, freeze the Trump assets in the UK, such as the Turnberry golf course, until the President peacefully transfers power.

2.11 pm

Baroness Gardner of Parkes (Con) [V]: My Lords, I read in the Explanatory Notes that an impact assessment has not been made

"as no, or no significant, impact on the private, voluntary or public sectors is foreseen."

That is good, but it is also important for us to appreciate that that is the situation. Section 49 of the sanctions Act covers the investigation of terrorist financing. That is just technical wording but it has been mentioned as being so important—I think it certainly is—that we should do everything to prevent money laundering and the awful crimes and abuses associated with it. I strongly support these regulations.

2.12 pm

Baroness Northover (LD): My Lords, we on these Benches associate ourselves with the statement made by the Minister in relation to the horrendous events in France. I thank him for introducing these statutory instruments, which we support. I congratulate the noble Baroness, Lady Hoey, on her maiden speech. I share with her an upbringing on a small farm, in my case on the South Downs: it is there in my title, which is "of Cissbury". The amount of mud that we probably ingested as children will, I hope, stand us in good stead at this time of pandemic.

We are obviously glad that the sanctions keep us aligned with the EU, but I want to probe the implications, raised by my noble friend Lord Bradshaw and the noble Baroness, Lady McIntosh, of sharing security information, which is clearly critical if we are to have a proper understanding of terrorism and the threats to us. On our alignment with the EU, what discussions are we having with the EU about the Magnitsky sanctions? Are we now looking at China in that regard? We are waiting to hear what is going to happen in terms of financial affairs and whether they will be applied here. When should we expect to see proposals in this area? What systematic arrangements will the Government put in place so that the proposals for sanctions can be properly and independently assessed?

The new sanctions impose asset freezes and travel bans on individuals and organisations involved in human rights abuses. It is, as the noble Lord says, appalling when charities are used for terrorist purposes, but what system is in place to review these and also sanctions in general? I realise that he cannot comment on specific individuals but can he say whether investigations that may lead to us wanting to implement further sanctions are under way? I realise that this is somewhat outside the scope of these regulations, but the noble Lord, Lord Hain, and, most ingenuously, the noble Baroness, Lady Jones—I really look forward to the Minister's response in regard to the United States—have both taken the sanctions wider, and I want to flag something. I do not expect a response, but I hope that he will feed in whether consideration is now being given to those who may have been responsible for the recent atrocities in Cameroon.

Can the Minister also update us on whether we are getting support in the region for the actions we are taking here, where many of these operatives are? Have we found ways, which we found challenging before, of ensuring that money can, for example, go to Syrian humanitarian organisations, so that they are not caught up in the sanctions challenges? As we deal with sanctions going forward, we need to make sure that they are carefully and independently evaluated so that immediate political priorities do not push them away in relation to certain countries, with undue focus elsewhere. I look forward to hearing the Minister's response.

2.16 pm

Lord Collins of Highbury (Lab): My Lords, I, too, begin by echoing the comments of the Minister in relation to the terrible events in Nice. Our hearts go out to the victims and their families, and, of course, to the nation of France as a whole.

We welcome the Government's attempts to maintain counterterrorism sanctions after the transition period, and we welcome this statutory instrument. Sanctions are a central tool to keep the UK safe and the Government must ensure that the necessary framework is watertight. Of course, the Government have a lot more to do to make our sanctions regime more effective, including the extension of the Magnitsky powers.

I want to make a small point: these regulations deal entirely with supplementing the 2019 regulations that stem from the Act that we took through this House together. Can the Minister explain why the provisions in these regulations were not in the 2019 regulations? Why have we had to revisit this matter twice? I am not having a pop at the Minister; I would just like an explanation.

I want to pick up on a point made by my noble friend Lord Hain. The Minister will recall that we have pushed him on many occasions in this House about the extension of the Magnitsky powers to apply to corruption. We have heard commitments from the Government that this is on their agenda and that there is a timetable—or not a timetable but a hope—for something to happen in future. I hope that the Minister can today be a little more explicit that we will commit to the extension of the Magnitsky powers to corruption and that there is a definite timetable.

I am sure that all noble Lords appreciate that sanctions can really be effective only when they are taken in concert with others. There is no point in having independent sanctions, in terms of making them effective, if no other country joins us. I pick up on the point made by the noble Lord, Lord Bradshaw, and the noble Baronesses, Lady McIntosh of Pickering and Lady Northover, that we need to understand better from the Government just how, at the end of the transition period, we will work in concert with our EU partners and neighbours. How will we ensure that our sanctions regime remains robust and has integrity? I hope that the Minister can give some indication that this matter will be properly dealt with when we hear the final terms of any potential agreement.

The report also notes that sanctions are only a part of a broader strategy in the fight against terrorism. This includes supporting UN resolutions and the UN's special rapporteur on terrorism. Can the Minister give a bit more detail about the Government's priorities for the UK's representatives at the United Nations in combating terrorism? Are we looking at new mechanisms?

Finally, I congratulate the noble Baroness, Lady Hoey, on her excellent maiden speech. As she rightly said, it is not her first in the Palace of Westminster, and I am sure we shall hear more from her in future.

2.21 pm

Lord Ahmad of Wimbledon (Con): My Lords, I thank all noble Lords for their contributions and for their support for these regulations. I join with other noble Lords in warmly welcoming the noble Baroness, Lady Hoey, and in congratulating her on her excellent speech. We learned from my noble friend Lord Balfe of her connections with Tottenham Hotspur. I am sure we shall have animated debates, as I am a Liverpool fan—the accent is a bit of a giveaway. She will be an incredibly powerful contributor to our debates. Her speech today showed important insights into the detail of the subject matter being discussed. I often describe your Lordships' House as a place of wit and wisdom. Knowing the noble Baroness, I am sure she will make high-quality contributions on both these fronts.

I also welcome the contributions and support of other noble Lords in this important debate. I totally concur with the noble Baroness, Lady Northover, and the noble Lord, Lord Collins; it will be no surprise if I repeat something that I have said to them both within and outside the Chamber. I agree that sanctions and their application—whether in the context of

[Lord Ahmad of Wimbledon]
counterterrorism or any other area—work effectively only when they are taken in lock-step with other key partners.

I want to pick up specifically on some of the key points raised by the noble Lord, Lord Bradshaw, my noble friend Lady McIntosh of Pickering and the noble Baroness, Lady Ritchie. Existing regulations will continue to operate and apply to the UK during the remaining part of the transition period. We continue to work with the EU and member states to ensure that all EU sanctions are implemented and enforced. The noble Lord, Lord Collins, also raised these issues. We are working closely with our European partners, not just on sanctions but in other areas as well. Specifically, on sanctions, I am in constant touch with my opposite numbers within the European Commission. We also have discussions with leaders and representatives of other Governments within the EU. As recent alignment has shown, we work closely on matters of international co-operation, particularly through the E3 mechanism.

The noble Lord, Lord Collins, asked about the United Nations and our priorities there. He will know that there is a particular Under-Secretary-General responsible for counterterrorism. I am in discussions with our representatives in New York to see how we can further strengthen the UK's broad interests. I will take into account the noble Lord's suggestions on how we move forward in this area. The sad events in France once again indicate the vulnerability of dealing with such acts. My noble friend Lady McIntosh made the point about people who operate using new channels of communication. I agree with her—we need to be one step ahead. The terrorist mindset is always looking at new and innovative ways to challenge and defeat those who unite against extremism and terrorism. As events have shown, this remains a live issue. We send our condolences to the families of those attacked in France today. We have learned that the attack happened in a church—a place of worship. Any terrorist attack is appalling, but this compounds the impact.

I am grateful to my noble friend Lord Balfe and welcome his support and that of the noble Baroness, Lady Ritchie, for these regulations. I can assure them again that we shall work closely with EU counterparts. On UN sanctions, we work internationally. I pre-empted a question from the noble Baroness, Lady Northover, when I mentioned international partners, by alluding specifically to the European Union. Now that we have left the European Union, it will be important for us to continue to align ourselves with liberal democracies across Europe. That sends a powerful message on sanctions and other areas of work.

I was not surprised by a couple of the references from the noble Lord, Lord Hain—I somewhat expected them. The noble Lord, Lord Collins also asked about corruption, particularly in the context of the Magnitsky sanctions. I can assure both noble Lords and the House that we are considering how a corruption regime can be added to our current armoury of legal weapons. The Magnitsky global human rights sanctions are an obvious one. I can also assure the noble Lord, Lord Collins, that we are looking specifically at the framework of the UN Convention against Corruption and I have had meetings to this effect. We are also looking at other jurisdictions such as the United States and Canada which already apply these sanctions. As details emerge, I will share them with your Lordships' House.

The noble Baroness, Lady Jones of Moulescoomb, in her customary way, raised a number of questions about illegitimate regimes which may seek not to take on board the sanctions being applied. It depends on the situation as to whether sanctions are likely to be effective in achieving our foreign policy aims. The global human rights sanctions are a good example in that they specifically target movement and financing. These are powerful tools, even if an individual or an existing regime somewhere in the world does not accept them. Acting first and foremost as the UK but also in partnership with other countries adds to the strength and application of such tools.

The noble Baroness also referred to the US elections. The United States is a strong friend and ally—it is also a robust democracy. We await the outcome of their elections. The systems in the United States are robust enough to provide an outcome which is both acceptable and legitimate. The strength of a democracy lies in its own operation. It is not for me to comment on the outcome of those elections, but I believe the US is and will remain a vibrant and strong democracy, underpinned by the rule of law.

I thank my noble friend Lady Gardner for her support. She referred to Section 49 as an important part of the Government's approach in laying these regulations.

The noble Baroness, Lady Hoey, asked about Libya. We are working to have the Libya regime and accompanying guidance ready for the end of the transition period and will provide details of it. I also take on board her important references to the communities in Northern Ireland who have had to endure challenges of their own. We stand in solidarity with all those who have been victims of any kinds of atrocities.

I wish to thank all noble Lords again for their important and supportive contributions. It is not often that I can stand at the Dispatch Box and universally thank every single contributor for their strong support of the Government's approach. On this occasion it is most welcome. This instrument underlines our common objective to support and protect the United Kingdom and the international financial system, as well as the charity sector to which the noble Baroness, Lady Northover, referred. I can assure her that we work closely with the Charity Commission. Charity law disqualifies certain individuals from being a charity trustee, as set out in the Charities Act 2011. These regulations tie these important pieces of legislation together. I assure her that we look very closely at the work of the Charity Commission, particularly with regard to those NGOs operating in the international sphere.

These regulations will also ensure that the range of disruptive tools and capabilities at our disposal, including our sanctions and counterterrorism financing framework, remain effective. It will aid our global fight against terrorism and contribute to the UK being an even stronger force for good in the world.

Finally, in her maiden speech, the noble Baroness, Lady Hoey, talked of the celebrations in Northern Ireland in 2021. I am sure I speak for all noble Lords here,

and beyond, when I say that we look forward to joining with her and other noble Lords in those celebrations. The noble Baroness described it as a "wee country"; I am sure we all regard it as an important country which defines the modern United Kingdom. I beg to move.

Motion agreed.

The Deputy Speaker (Lord Bates) (Con): We will now take a short break of a few moments to allow the Front Bench teams to change over safely.

Arrangement of Business

Announcement

2.32 pm

The Deputy Speaker (Lord Bates) (Con): My Lords, hybrid proceedings will now continue. Some Members are here in the Chamber, respecting social distancing, others are participating remotely, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

We come to Committee on the Fire Safety Bill. I will call Members to speak in the order in which they are listed in the annexe to today's list. Members are not permitted to intervene spontaneously; the Chair calls each speaker. Interventions during speeches or "before the noble Lord sits down" are not permitted. During the debate on each group I will invite Members, including those in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request and will call the Minister to reply each time.

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 during the course of the debate. Leave should be given to withdraw amendments. When putting the Question, I will collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make that clear when speaking on the group.

Fire Safety Bill

Committee

2.33 pm

Clause 1: Premises to which the Fire Safety Order applies

Amendment 1

Moved by ***Lord Bourne of Aberystwyth***

1: Clause 1, page 1, line 16, at end insert—

"(1C) Where a building contains two or more sets of domestic premises, the things to which this order applies include electrical appliances.

(1D) The reference to electrical appliances means any appliances specified by regulations made by the relevant authority.

(1E) Schedule (Electrical Appliances) to the Fire Safety Act 2020 applies to paragraphs (1C) and (1D)."

Member's explanatory statement

This amendment would clarify that the Fire Safety Order applies to electrical appliances where a building contains two or more sets of domestic premises.

Lord Bourne of Aberystwyth (Con) [V]: My Lords, this amendment is also in the names of my noble friend Lord Randall of Uxbridge and the noble Lords, Lord Tope and Lord Whitty. I am delighted that Peers of such distinguished service and experience are able to support these amendments and I look forward to their contributions. I thank the Minister for his engagement and commitment on this issue. I know that he has given a briefing on this; I have apologised to him that I was unable to attend that briefing as I was engaged in a debate in Grand Committee at the time.

I welcome the Bill, and these amendments are intended to be proactive and to help prevent fires caused by electrical ignition. Similar amendments were tabled in the Commons by my honourable friend Sir David Amess.

I thank Electrical Safety First, a charity that is dedicated to electrical safety and which has helped in the presentation of this case.

These amendments are intended to build upon the Government's new regulation for the private rented sector, the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, which as the date suggests are obviously of a very recent vintage and which provide for mandatory checks every five years. I commend those regulations and believe that this legislation presents an opportunity to build on them.

As I said, this is an attempt to be proactive and to prevent fires happening in the first place. I accept that the Government are giving some consideration to this issue and I am grateful for that. My amendments are designed to ensure that electrical appliances are registered with the responsible person for high-rise domestic dwellings and to introduce mandatory checks for all residents, whatever the tenure of their home.

One anomaly of the present position is that some flats—those that are privately let—will have mandatory five-year checks. Some currently will not: the social tenants and the owner-occupied. I do not believe that that difference can be easily justified. It could be that one flat is having checks while the one next door is not.

According to Electrical Safety First, electrical faults cause more than 14,000 fires a year—almost half of all accidental house fires. There are around 4,000 tower blocks in the country, containing over 480,000 individual flats. Unless every unit in a high-rise building is subject to the same safety regime, the whole building is at risk from a fire emanating from one single flat, as we have seen.

New analysis of government data by Electrical Safety First reveals that nearly a quarter of accidental electric fires that occurred in high-rise buildings over the last five years in England were the result of faulty appliances and leads, as well as faulty fuel supplies, which can include electrical wiring in a property. These amendments would see a responsible person record the presence of white goods to minimise the risk that faulty goods can pose in densely populated buildings. Keeping a record of the appliances in use would also mean that faulty recalled appliances could be removed or repaired. Mandatory five-yearly electrical safety checks in tower blocks, regardless of tenure, are included in the amendment.

[Lord Bourne of Aberystwyth]

As I said, current regulations that we passed recently mean that privately rented flats are required to have these electrical safety checks but other tenures are not, which has in effect created a tenure lottery in buildings, which often include owner-occupied, privately rented and social housing properties.

These provisions for checking electrical safety would be undertaken by competent registered electricians. I am aware of the concerns and interest of the Fire Brigades Union and I welcome its engagement. I assure the union that there is no intention through these amendments that fire officers would undertake this work. They have other, very important jobs to do, which they are doing very well.

More worrying analysis shows that over the past three years, accidental electrical fires in high-rise buildings have risen consistently year on year. High-profile tower block fires have been previously linked to electrical sources, including the Lakanal House fire, where an electrical fault with a television caused a fire that claimed the lives of six people, and Shepherd's Court, where a faulty tumble dryer led to extensive damage to an 18-storey building. While other factors certainly accelerated the Grenfell Tower fire, it must be highlighted that its primary immediate cause was of course an electrical source of ignition, subsequently confirmed by the Grenfell inquiry phase 1 documentation.

It is important to note that some fires are caused not by appliances themselves but by misuse of them. That is why, despite these amendments, education is certainly important, and why the Home Office in conjunction with Electrical Safety First runs a week of educational awareness-raising with the public through the Fire Kills campaign on the proper use of electricity and electrical appliances. I certainly welcome that, and it is a necessary thing to do, but it is not in itself sufficient.

Recent tragic events have demonstrated the fatal risk that electrical accidents and incidents pose to people in their homes, particularly in high-density housing such as tower blocks. The work of Electrical Safety First and others has helped ensure that tenants living in the private rented sector are now protected by mandatory five-yearly electrical safety checks in their properties. That law was recently brought into effect. Such measures are crucial in bringing down the number of electrical accidents and incidents, and saving lives. We believe that the time is right to include individual dwellings in tower blocks in this regime, regardless of their tenure.

I appreciate that this is a short Bill to amend the Regulatory Reform (Fire Safety) Order 2005, which focuses on non-domestic measures, to cover domestic homes. This means that homes within high-rise blocks are affected by the proposed legislation. This offers an excellent and straightforward opportunity to ensure that all who live in such buildings are brought under the same safety regime. Given this, the newly created role of a "responsible person" for any high-rise building should be given the task of compiling a register of every white good in the building. This ensures that when a recall occurs, anyone with an affected appliance can be quickly alerted and the safety risk resolved. Relying on consumers to register and respond to recalls in those buildings, when the potential risk is so high, must be considered wholly inadequate.

The Government can therefore improve the Bill through a number of measures that seek to improve electrical safety in homes. Amending the Bill provides an opportunity to make immediate differences to the safety of people who live in multi-occupied high-rise buildings. Electricity causes fires and the Government need to consider seriously the electrical sources of ignition. I am pleased that these amendments enjoy broad-based support. This is a time for all of us to come together to provide a safer environment for high-rise buildings by the introduction of mandatory safety checks. I hope that the Committee will support these amendments. I beg to move.

Lord Randall of Uxbridge (Con) [V]: My Lords, I will speak in favour of the amendment in the name of my noble friend, Lord Bourne of Aberystwyth, to which I have added my name, as have the noble Lords, Lord Tope and Lord Whitty. I should have also added my name to my noble friend's Amendment 24, which I fully support.

As I mentioned at Second Reading, the issue of electrical appliances and their safety, especially as a potential cause of household fires, should be a major concern. We should do whatever we can to try to reduce those fires caused by electrical faults. The two amendments, introduced so eloquently by my noble friend, would be a valuable tool in trying to achieve that.

Hand in hand with measures for mandatory checks, we should also do what we can to educate the public on electrical safety. My noble friend mentioned that. I pay tribute to a scheme that used to run—I am not sure that it still does—in the London Borough of Hillingdon when I was the Member of Parliament for Uxbridge. Primary school children went into a series of locations or rooms, perhaps a kitchen or bathroom, to identify potential hazards and dangers. I remember saying at the time that the scheme should be not just for primary school children but for adults, too. Sometimes people are not aware of the problems that can be caused by all sorts of household appliances. We should all be aware that the labour-saving devices that we take for granted can also be potentially dangerous. We should therefore do whatever we can to try to eliminate the possibility of electrical fires because we know the devastation that they can cause.

2.45 pm

Lord Whitty (Lab) [V]: My Lords, I strongly support these amendments and the requirement for a regular mandatory check on electrical appliances, broadly for the reasons that the noble Lord, Lord Bourne, explained to the Committee. I pay tribute to the campaign group Electrical Safety First, which has given me some information on the issue. As the noble Lord has said, the fires at Lakanal House in Camberwell, Shepherd's Court and Grenfell were all triggered by faulty electrical appliances. Whether it was dangerous cladding, compromised firewalling or poor evacuation procedures that led to multiple deaths, electrical appliances triggered

the fires in the first place. Indeed, more than half of the fires in dwellings in this country are related to electrical appliances.

These amendments would require regular checking of the standards and appropriate use of white goods in all multi-occupied properties. There are already mandatory gas checks on most such buildings for gas supply and the correct use of gas appliances. That is largely because people and regulators have long recognised that gas is dangerous. Yet, these days, electricity is the greater hazard. In multi-occupied multi-storey buildings, if there is a problem in one flat or unit, that is a potentially lethal problem for everyone in that structure.

We should explain that the amendment to regulations would in no way reduce the central responsibility and liability of the manufacturers to ensure the safety of their products; nor should any responsibility be taken away from users to follow instructions and not use equipment irresponsibly or inappropriately. However, the continued use of recalled products, dangerous wiring arrangements, damaged circuits and inappropriate placement of white goods requires regular inspection. There is also a requirement on landlords, tenants and leaseholders to have knowledge of that inspection to help reduce hazards. Failure on their part to facilitate inspection or to take action in the light of that inspection will rest primarily with the owner and manager of the building. That is how it should be. I strongly support these amendments.

Lord Shipley (LD) [V]: My Lords, first, I remind the Committee that I am a vice-president of the Local Government Association. I support both amendments in this group. My noble friend Lord Tope, who is a signatory to Amendment 1, is unable to take part today but I know that he is looking forward to debating the issues raised in both amendments when we reach Report.

As we have heard, evidence from Electrical Safety First tells us that electrical faults cause more than 14,000 home fires a year. That is almost half of all accidental house fires. Logically, therefore, the more electrical appliances are checked, the lower the risk will be of a fire breaking out and then spreading to other people's properties. This is not just a matter of building safety but about preventing fires breaking out in the first place.

I suggest that the general public have a right to expect that Governments of all persuasions should be willing to legislate to ensure high standards of regulation to improve public safety. Those who live in blocks of flats have a right to expect that they are living in a safe environment and that the owner of their block has undertaken the necessary safety checks within it, in this case to electrical appliances within that block.

The proposal in this group of amendments is for checks at least every five years. That is justified. If I drive a car that is over three years old, I have to prove every year that it is roadworthy by having an MOT check. This is to protect other road users, not just me and my vehicle. The same principle should apply in shared buildings where electrical appliances that are a fire risk could cause damage to other properties and to their occupants in that shared building.

I therefore conclude that the fire safety order should apply to electrical appliances where a building contains two or more sets of domestic premises. That seems reasonable. For high-rise residential buildings, in particular, it is important that a responsible person should keep a register of white goods in the building for which they are responsible, that they ensure that white goods are registered with the manufacturer for recall, should that be necessary, and that safety checks are conducted at least every five years.

Any privately rented home in a block of flats of mixed tenure will now be subject to electrical safety checks. It seems odd that in a high-rise block of mixed tenure, only the privately rented properties will be subject to the 2020 regulations. I would be grateful for the Minister's explanation as to why that is, and to know whether the Government will act now to address that anomaly.

Baroness Eaton (Con) [V]: My Lords, I, too, declare my interest as a vice-president of the Local Government Association. We all share the object of improving the safety of residents and protecting them from the hazards of fire. The Bill is a most welcome contribution to this aim, and provides much-needed clarity about the responsibilities and duties of building owners.

My noble friend's amendment has been tabled with the best of intentions. On Second Reading I mentioned my concern about the potential for fire hazards from white goods, as did others. I therefore looked with great interest at my noble friend's amendment. Although I share the concern behind the two amendments regarding fire hazard posed by faulty electrical appliances, this amendment would transfer the responsibility for that issue away from the manufacturers and owners of such appliances, to the responsible person and the fire and rescue service.

The requirement for the responsible person to keep a register of electrical appliances and to check whether they are subject to a recall notice would be completely impractical, particularly in social housing, where the responsibility of the local authority or housing association has significant implications, especially in relation to keeping a register of all electrical appliances.

Surely the responsibility for the safety of electrical goods should sit with the manufacturers. Recent legislation created a national regulator, the Office for Product Safety and Standards, to lead and co-ordinate the product safety system, and respond to safety incidents and recalls. The Electrical Equipment (Safety) Regulations 2016 place strict legal obligations on manufacturers to ensure that electrical equipment is safe before it enters the marketplace. An added concern was gaining the co-operation of occupiers and to private properties. There are potential problems of access rights, and ECHR issues.

Clause 86 of the draft building safety Bill imposes duties on residents regarding maintenance of electrical equipment, and I feel it would be better if the aims of the amendment were seen in relation to general electrical safety checks, and were part of that Bill's safety case provision.

Fire statistics show that 34% of accidental dwelling fires in 2019-20 were caused by misuse of equipment or appliances, with a further 15% due to faulty leads.

[Baroness Eaton]
However, faulty electrical goods, although unacceptable, are not the primary source of fire fatalities: 23% of fire fatalities are linked to smokers. However, even if it were possible to fulfil all the obligations created by my noble friend's amendment, we would always need to recognise that fires often start in kitchens—and Amendments 1 and 24 will not negate fire danger in kitchens.

Lord Best (CB) [V]: My Lords, this important Bill commands extensive cross-party support. The amendment, with leadership from the noble lord, Lord Bourne, also has backing from all parties, and I can now add support from the Cross Benches. I think we have all been helped by input from the Electrical Safety First charity, from whose excellent briefing I note that the failure of electrical appliances is the underlying cause of some 57% of the fires in homes, as with the Grenfell Tower tragedy, in which a fridge-freezer caused the fire.

Although electrical product companies endeavour to alert customers when they need to recall appliances—as with the more than 500,000 white goods subject to recalls from Hotpoint and Indesit alone—there are many reasons why the message does not get through: people move and take appliances with them; recall notices get lost; people buy second-hand goods, and so on. There are a lot of electrical products out there with the potential to start new fires at any time.

Amendment 1, in combination with the proposed new schedule, provides two levels of assurance, both of which seem eminently suitable and practical for high-rise buildings in particular. These involve, as explained by the noble Lord, Lord Bourne, keeping a register of electrical appliances and having a five-yearly electrical safety inspection of all flats, not just those that are privately rented.

We need to consider possible criticisms, and I shall take up one or two of the points made by the noble Baroness, Lady Eaton. Would these measures, however necessary, be expensive to administer? Would they be costly for residents? Would they be intrusive into people's private space? Adding the task of maintaining a register of residents' appliances would increase the workload of the responsible person with fire safety duties, but the increased workload should be modest, and a tiny supplement to service charges should cover this.

I stress that the amendment would not add to the duties or responsibilities of the fire and rescue service; rather, it would assist the service by reducing fires. Local authorities would have oversight of the requirement for inspections, but they already have enforcement duties in respect of privately rented flats. Moreover, the work involved should not be onerous, as the apartment block's managers, and the responsible person, in particular, will want to retain oversight of the building's electrical safety.

As for the quinquennial inspection, I gather from managing agents in the private rented sector, who are already dealing with electrical safety inspections, that costs can be much lower than the £200 we have heard about for a five-year certification. There will be economies of scale in covering flats in a tower block, compared with costs for a check-up and certificate for a one-off private property. The inspection requires a qualified electrician but not a fully fledged surveyor or electrical engineer. I think £50 per unit, equivalent to £10 per annum, could be achieved in due course. Such a payment may be more than helpful in alerting the occupier to any potential hazards and providing peace of mind derived from the knowledge that one's neighbours are much less likely, unwittingly, to cause a disastrous fire.

Some have argued that applying this obligation to home owners is a step too far. There is little objection to social landlords being required to meet standards demanded of private landlords, and the Regulator of Social Housing will not only insist on comparable standards but will ensure they are enforced. But there are sensitivities about placing the same obligations on home owners—leaseholders and shared owners—in these apartment blocks. However, this represents a free checking service for the resident to ensure that they are not harbouring an unsafe appliance that was the subject of a recall. The key point is that the actions of each resident, whether a tenant or an owner, affect all the other occupiers in the same building. While I am a firm supporter of mixed tenure development, as I know the Minister also is—it seems essential that these safety measures cover all apartments in a mixed block, irrespective of the tenure of the residents therein.

In conclusion, I strongly support the amendment—and I am delighted that we have a Minister responsible for the Bill who has the knowledge and the skills to take this forward, noting its support from all parts of your Lordships' House.

Baroness Couttie (Con) [V]: My Lords, I want to speak against this amendment. I remind the House of my interest as a vice-president of the Local Government Association. I know that everyone in this Chamber is concerned about fire safety and united in their desire to ensure that tenants are safe in their homes. As other noble Lords have said, the terrible tragedy at Grenfell Tower and other significant fires in multi-occupied blocks were caused by faults with electrical devices. Naturally, we all want to make sure that such disasters can never happen again.

As the ex-leader of Westminster City Council, I know at first hand that local authorities and the housing associations they work with are entirely at one with us on this goal. However, I also know at first hand what practical and financial challenges the amendment proposed by my noble friend Lord Bourne would have. I agree with the comments made by my noble friend Lady Eaton.

3 pm

Westminster City Council is responsible for more than 22,000 properties on its estates and we are far from the largest local authority landowner. Under this amendment, local authorities and housing associations would regularly need to visit and certify multiple electrical devices in each dwelling they own, thus requiring tens of thousands of home visits in each local authority area annually. The financial burden of this is prohibitive and, given the measures that have already been introduced by government, will not improve the fire safety of domestic dwellings.

A further concern is that this amendment would have the effect of transferring responsibility for this issue from manufacturers to the responsible person, which includes local authorities and housing associations. Furthermore, local authorities and housing associations will need to keep a register of the hundreds of thousands of electrical appliances in the homes they let and check if they are subject to recall notices. This would be impractical and create a significant enforcement challenge. It is far better for manufacturers to take more responsibility for the products they sell.

Current legislation introduced in recent years already deals with the issues that this amendment seeks to solve. In 2018, a new national regulator, the Office for Product Safety and Standards, was created to lead and co-ordinate the product safety system, including responding to safety incidents and recalls. The Electrical Equipment (Safety) Regulations 2016 place strict legal obligations on manufacturers to ensure that electrical equipment is safe before it is placed on the market. The combination of these existing regulations ensures fire safety for tenants. The amendment proposed by my noble friend does not, in my view, add significantly to fire safety and just will not be practical to implement. I therefore will not be supporting it.

Baroness Pinnock (LD) [V]: My Lords, I remind the House of my interests, as recorded in the register, as a councillor in Kirklees and a vice-president of the Local Government Association. I thank the noble Lord, Lord Bourne, for tabling these amendments to include provision for improving the safety of electrical appliances in the Bill. I thank my noble friend Lord Tope, who has campaigned on this issue for many years and, unfortunately, is unable to speak in this debate. Electrical Safety First has provided an excellent briefing, with important evidence on the need to include this issue in the Bill.

To those of us who are not familiar with all the facts, it came as something of a surprise that over half of all accidental fires are caused by faulty electrical appliances. As we now know, the tragic fire at Grenfell was caused by a faulty appliance. Of course, there are stringent requirements for manufacturers to build in safety features and for landlords in the private rented sector to do safety checks. However, many people are obliged to buy second-hand refurbished appliances, which may be safe at the time of purchase but have a greater probability of failing within the five years specified for checks.

My noble friend Lord Shipley, speaking on behalf of my noble friend Lord Tope, explained that checks on appliances will, logically, reduce the number of fires caused in this way. He used a good analogy: cars need MoTs to ensure the safety of their owners and other road users, and therefore so should white goods. The noble Baroness, Lady Eaton, made a strong argument for putting the onus for the safety of electrical appliances on manufacturers, and the noble Lord, Lord Best, further pointed out the risks in manufacturers' recall of faulty appliances. All this shows that this is a complicated matter, but complexity should not be used to prevent the problem being addressed. The amendments of the noble Lord, Lord Bourne, would extend and clarify the existing safety check requirements. I urge the Government to consider accepting them.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I draw the attention of the House to my relevant registered interests as a vice-president of the Local Government Association, chair of the Heart of Medway Housing Association and a non-executive director of mhs homes. Amendment 1, moved by the noble Lord, Lord Bourne of Aberystwyth, with cross-party support, and Amendment 24, also in the name of the noble Lord, seeks to put improvements and protections for people living in high-rise residential buildings in the Bill.

As we have heard in this short debate, electricity causes more than 14,000 fires each year—almost half all accidental house fires. The amendments seek to provide practical protection for residents living in high-rise buildings, which total more than 1 million people. We are all sadly aware of the tragic and sometimes fatal consequences of people caught in fires in their own homes. As we have heard, these amendments would build on the regulations that the noble Lord, Lord Bourne, worked so hard to introduce. It took some time for them to come into effect; the noble Lord was always committed to them and I always pushed him to bring them in sooner, but we are grateful to him for this work. I also join him in paying tribute to Electrical Safety First, which is a great charity that highlights the problems we have with electrical fires and how we need to ensure that electricity is made as safe as possible for us all.

These regulations go further and extend the protections in the regulations introduced by the noble Lord, Lord Bourne, so that tenants living in high-rise buildings will benefit from mandatory electrical safety checks every five years, with records kept by the responsible person and made available to the fire services, local authorities and, importantly, the residents association if one is in place.

In introducing the amendment, the noble Lord made a powerful point, in that those who live in a high-rise block of flats include social tenants and owner-occupiers, neither of whom need electrical safety tenants, but private tenants would now need checks. If you are not checking the whole building, it is not safe at all. That is an important and powerful point, so I hope that the noble Lord, Lord Greenhalgh, addresses it in his response.

Secondly, these amendments would require the responsible person to keep a register of white goods in the high-rise buildings for which they are responsible. I am supportive of these proposals, as we need high standards to keep people safe from the risk of fire started by electrical ignition. We have already mentioned the tragic incidents in recent years—not only Grenfell but Lakanal House and Shepherd's Court—but equally I accept that there can be issues with getting access to flats and keeping the register of these goods up to date, which can provide a logistical challenge for people. There is also the question of new and second-hand goods.

I entirely accept that the product recall system is not working well. The London Fire Brigade had its Total Recalls campaign, which highlighted the problems with the recall system. We need something better than we have now because, as I said, keeping track of white goods is a huge challenge. Whether we accept these amendments or not, what we have at present cannot continue. We have to do something else.

[Lord Kennedy of Southwark]

I hope that, when the Minister responds to the debate, he sets us on that path. I suggest that he facilitates a meeting between Electrical Safety First, his officials and Members of this House who want to discuss how we can find a practical solution to the serious point made by the noble Lord, Lord Bourne. I also suggest that the London Fire Brigade in particular is involved in those discussions because of its campaigning work. I look forward to the Minister's response to this debate and his delivery of that meeting.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, I would say first that we do need to look at the effective Berlin Wall between social housing and private housing, and in mixed sustainable communities where there are different tenures, we need to look at how we can ensure consistency and thus the safety of all residents. I am of course prepared to meet the noble Lord, Lord Kennedy of Southwark, Electrical Safety First and other groups as soon as possible.

I thank my noble friends Lord Bourne of Aberystwyth and Lord Randall of Uxbridge and the noble Lords, Lord Tope and Lord Whitty, for the amendment. This is clearly an important issue. Faulty electrical appliances are often the causes of fires in high-rise residential buildings, a point that has been made clear. However, before turning to the amendment, I would like to explain the work being done across government to improve electrical safety in residential buildings.

As my noble friend Lady Eaton pointed out, in 2018 a new national regulator, the Office for Product Safety and Standards, was created to lead and co-ordinate the product safety system including responding to safety incidents and recalls. The Electrical Equipment (Safety) Regulations 2016 place strict legal obligations on manufacturers to ensure that electrical equipment is safe before it is placed on the market and to ensure that manufacturers monitor products already on the market where appropriate and undertake sample testing of equipment. There are criminal sanctions for those who do not comply. Importantly, the draft building safety Bill proposes an obligation on residents to keep electrical installations and appliances that they are responsible for in their property in working order. There is also a provision for the accountable person for a building to take action where they or a competent person have reasonable grounds for believing that a resident or their landlord is failing to meet this obligation. In addition to this, the Home Office's "Fire Kills" campaign plays an incredibly important part in promoting electrical fire safety messages, as pointed out by my noble friend Lord Bourne.

The new Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 are now in force for new tenancies and will apply to existing tenancies from 1April 2021. These regulations require that electrical installations must be inspected and tested by a qualified and competent person at least every five years, as highlighted by noble Lords, and that an electrical installation condition report be provided to tenants and local housing authorities on request.

In response to the noble Lord, Lord Shipley, on why mandatory checks apply only to private housing and not to public housing, the situation is that social landlords are expected to comply with the Decent Homes standard from the Regulator of Social Housing. This includes homes being free of hazards, including electrical hazards, as set out under the housing health and safety rating system. In the social housing Green Paper, we asked if new safety measures in the private rented sector should be extended to the social sector, including electrical safety checks. We will bring forward a social housing White Paper soon. I will however take the issue away for further consideration, I have already offered to hold a meeting, and I will provide an update on Report.

My noble friend Lady Couttie raised the practicalities of the implementation of such a system by registered social landlords and local councils with a large amount of council stock. I want to reassure your Lordships that we will continue to work across government to identify any further gaps in the electrical safety regime.

I now want to explain some of my concerns with this amendment. In particular, it does not achieve its intended effect. For example, there is doubt that the amendment would result in electrical appliances in private dwellings being brought within scope of the fire safety order. I suspect that this was not the intention. In any case, my noble friend will be aware that domestic premises are specifically excluded under the fire safety order, so this amendment intends to significantly broaden the scope of the legislation. I am also concerned that it proposes to require occupiers to provide access to the responsible person to enter the private dwellings. This would result in a significant level of intrusion and the implications of this need to be carefully thought through before any decision is made to legislate on the issue.

The proposed new schedule also intends for the responsible person to keep a register of electrical appliances for their building. This proposed duty will have a significant impact on the responsible person. For local authorities, and indeed all responsible persons, I do not want to create this additional burden. It is unrealistic to expect responsible persons to have an up-to-date register of electrical appliances for their building. This will also have a significant impact on fire and rescue services, who will need to check whether the electrical appliances register is accurate, which could involve inspecting all homes in a block of flats.

Given the assurances that I have provided, coupled with my commitment to provide an update on the next steps with regard to the social housing White Paper, along with my commitment to the meeting requested by the noble Lord, Lord Kennedy of Southwark, I would ask my noble friend to withdraw his amendment.

3.15 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, I thank all noble Lords who have participated in the discussion of these two amendments in the first group. I think that there is a genuine desire across the Committee, even in those who have raised difficulties in doing something. Unless I am wrong, there is a recognition that we should be doing something to reduce fire deaths and to provide for safety with regard to electrical goods.

Some very clear facts have come across. High-rise blocks of flats are increasing, notwithstanding the presence of the person overseeing the safety of goods. Legislation has been introduced to help to protect private tenants—it does not extend to social tenants—and owner-occupiers. I do not believe that we should be in a position where we are protecting private tenants and owner-occupiers but not social tenants. I note the points made by my noble friend about social tenants, but if there is a genuine desire to do something, this legislation will provide that opportunity.

Let us take a look at the legitimate concerns that have been brought forward, which I recognise, and see how we can overcome them. That, to me, is the right way of moving. I do not think that there is a real threat of intrusion because this is about providing safety for everyone in our country, which is very desirable. I welcome my noble friend's acceptance of the suggestion of a meeting and I would be pleased to take part in it. We can look at doing something genuinely to ensure that we do not face the horrific fire incidents that we have seen in the past. We can find a way of providing some safety and security.

I listened particularly to the points made by the noble Lord, Lord Best, who certainly knows what he is talking about; as is commonly known throughout the House, he really does understand this area. At this stage, I will withdraw the amendment, but I will certainly come back to it on Report to look for some movement on how we can provide genuine security from electrical fires for all those living in high-rise blocks.

Amendment 1 withdrawn.

Clause 1 agreed.

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): We now come to the group beginning with Amendment 2. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in the group to a Division should make that clear in the debate.

Clause 2: Power to change premises to which the Fire Safety Order applies

Amendment 2

Moved by ***Baroness Neville-Rolfe***

2: Clause 2, page 2, line 7, at end insert—

"( ) Regulations under subsection (1) may not amend the Regulatory Reform (Fire Safety) Order 2005 to apply the Order to domestic premises in buildings under five storeys in height."

Member's explanatory statement

This is a probing amendment to enable the House to discuss fire safety measures that apply to low-rise domestic buildings, which have a lesser fire risk, and how the powers under Clause 2 may be used to implement Grenfell inquiry recommendations.

Baroness Neville-Rolfe (Con): My Lords, I am sorry that I was not able to speak at Second Reading. However, I am glad to rise to move Amendment 2, which is probing in nature but very serious. It reflects one of the problems that has arisen from actions taken following the Grenfell tragedy. One consequence of Grenfell is that cladding on many dwellings, especially high-rise flats, will have to be treated and/or removed if their safety is to be assured. Initially, statements by government Ministers implied that cladding on buildings of over 18 metres was in question, but subsequent remarks have implied that buildings of lower height could also be affected. The proposed order, of course, goes beyond cladding. It covers balconies and windows and the entrance doors to individual flats. These are often made of wood, as they have been since virtually the dawn of time, and the advice from consultants and so on is that they need to be replaced or fireproofed under the new regime.

All of this will be a very expensive process. Rough estimates reveal that the cost per dwelling can easily reach tens of thousands of pounds. In many cases, it is not clear from where the money for the changes needed will come. Freeholders, leaseholders and government look on in horror at the implications. As a consequence, a substantial part of the housing market is effectively frozen. Buyers will not purchase unless they can be assured that they will not be caught by these extra costs, or at least until any costs can be reliably quantified. Many people simply cannot move because their dwellings cannot be sold until the impasse is resolved.

The problem is aggravated by the use of the now-infamous external fire wall review form developed by the RICS, no doubt in an effort to be helpful. The perverse effect of this was debated in the other place. There is a shortage of people qualified to undertake such surveys and the delay leads to the collapse of house sales. So the young who want to move somewhere bigger, for example when they have a baby, the old who want to trade down and release capital, and the unemployed who want to move to get work elsewhere, are all frozen. Mortgage providers are unwilling to lend on what are now seen as distressed assets.

This is a nightmare. We, the Conservatives, are the party that believes in home ownership and has made promises on housing, which I stand behind 100%. I do not like to attack the Government, but this problem does not have negotiating ramifications. It is straightforward and domestic. The Government have a clear duty to minimise the problem and map a way forward out of the morass. Indeed, though they were made for the best of reasons, their statements created the problem in the first place.

My Amendment 2 deals with only a small part of the problem but Rome was not built in a day. Reducing the scope of a problem is worth while; we could do that in this Bill with my noble friend the Minister's agreement. My thought is that the risk posed by cladding and balconies in low-rise buildings is much less than in high-rise ones. To be blunt, it is easier and quicker to get out if there is a fire, and it seems disproportionate to apply such onerous requirements to low-rise buildings. If we can make clear that buildings below a certain height—with fewer than five storeys, say—will not be covered by future requirements for removal or changes to cladding, that part of the market will be unfrozen, which would be a major step forward. I am open as to how this can be achieved, though limiting the height of buildings to which the new rules will apply is one obvious possibility.

[Baroness Neville-Rolfe]

I will also speak to Amendments 20 and 21 on an impact assessment. The Home Office produced an impact assessment as part of the consultation on the proposed new fire safety order, but regrettably not for the Bill itself. It does not touch on the troublesome dynamics that I have raised. It covers familiarisation costs for responsible persons, businesses and the public sector, ongoing assessments and audits by competent individuals and some remedial costs, although my impression is that these are underestimated. The impact assessment quotes a total of more than £2 billion, partly because of the huge number of premises involved, but it is striking that, of the 1.7 million premises on the central estimate, 1.596 million are below 11 metres and 87,000 are below 18 metres—hence my proposal.

When I headed up the deregulation unit—which we named the better regulation unit under its Labour chairman, the noble Lord, Lord Haskins—we were always worried about getting the detail wrong and imposing huge and needless burdens in response to disasters. This, I fear, is a living example; with the distractions of Covid, this could be a prime example of this deplorable tendency.

Further, we all care about fire safety; that is what this Bill is about. My late father-in-law was a fire officer, including during the Blitz. I am a well- known supporter on these Benches of health and safety; I have campaigned on the problem of faulty Whirlpool tumble dryers and worked with the then BEIS Minister responsible to tackle it. Now we must find an urgent way of coping with the terrible problem of the freezing of part of the housing market because of the Government's statements. This might even be done through an amendment to this popular Bill.

We must find a way through. In pursuit of that, I have three detailed questions for my noble friend the Minister, broadly suggested to me by the National Residential Landlords Association. First, how do the Government propose that risk assessments for buildings of five storeys or fewer be undertaken? Secondly, do the Government agree that for properties with a lower risk, for example smaller properties in multiple occupation, there is scope for the responsible person to be defined as competent to undertake a fire risk assessment? Thirdly, there have been issues regarding the availability of qualified and appropriately insured fire engineers who are able to undertake safety reviews. What assessment has been made about the need to ensure that there are sufficient trained assessors and that professionals have access to insurance so that they can undertake the necessary assessment without concerns for their personal liability?

I very much look forward to the Minister's comments and the debate. I beg to move.

Lord Shipley (LD) [V]: My Lords, I am grateful for these probing amendments in the name of the noble Baroness, Lady Neville-Rolfe. I understand her point: they are clearly important and they help our further consideration of the Bill. In particular, her identification of the need for trained assessors seems extremely important; I think that we will deal with that a little later this afternoon.

Amendment 2 relates to low-rise domestic buildings—that is, those of four storeys or fewer. I am not clear why, because they are lower than a high-risk block, they should be deemed a lower risk. Surely we are trying to stop fires breaking out; that is not related directly to the height of a building. Added to that is the fact that, sometimes, building height is quoted at different levels for different purposes. Sometimes it is done on the basis of height; sometimes it is done on the basis of the number of floors. I would appreciate some greater standardisation so that we do not face discussions on 18 metres or 11 metres, the number of floors and so on.

The noble Baroness, Lady Neville-Rolfe, said—this is important—that the Government must map a way forward. I hope that the Minister will bring some clarity on this in his response. As the noble Baroness said, it is terribly important not to get the detail wrong. In our consideration of this amendment—as we know, it is a probing amendment—it would be helpful to consider it as part and parcel of our intention to get the detail much better than it has been in the past.

Lord Shinkwin (Con): My Lords, I apologise for not being in the Chamber when my noble friend Lady Neville-Rolfe opened her remarks. I rise to speak in support of Amendment 2 but I will focus my remarks on Amendments 20 and 21 in particular, which deal with the need for impact assessments.

I thank my noble friend Lady Neville-Rolfe for setting out so clearly the rationale behind her amendments. I begin by explaining why this issue is so important to me personally—in short, there but for the grace of God go I. Contrary to the damaging impression given by the Lords Commission's inept decision to cut the attendance allowance and reduce significantly the eligibility to claim it—just at the time when the Chancellor introduced the furlough scheme to reduce stress—many noble Lords are not millionaires and have given up well-paid jobs to serve their country in your Lordships' House. I have never earned a huge amount of money, so as a former leaseholder in the shared ownership part of a new-build development, I do not know how I could possibly have coped with the uncertainty, stress and immense costs currently faced by leaseholders.

3.30 pm

Amendments 20 and 21 call for impact assessments. Perhaps it might help your Lordships' House if I shared the findings of an impact assessment that has already been carried out by the residents association of a new-build block—incorporating both low-level blocks of below 18 metres and taller buildings—in Colindale in north London. The findings relate to the mental health impact of the current situation on leaseholders: they are stark and shocking. Nine out of 10 residents reported that their mental health had deteriorated because of the current situation regarding the fire regulations; 100% of residents stated that their biggest concern was about Notting Hill Genesis—their housing association—passing on remediation costs to leaseholders. Fourteen per cent of residents have experienced thoughts of self-harm and 10% have experienced suicidal thoughts.

Why are the residents so concerned? Might it have anything to do with the £411,000 bill—£5,708 per flat—for the waking watch? Unbelievably, the housing association, Notting Hill Genesis, implemented a five-person waking watch, who are on site 24 hours a day, with associated costs, without consultation. Perhaps it has something to do with the £84,000—£1,166 per flat—for an upgraded fire alarm system in line with the change from "stay put" to "get out", which requires a new L5 wireless fire alarm in every flat. Or maybe it is because a leaseholder cannot get their flat insured or sell their home, and therefore cannot move, for example if they need to because of coronavirus-related unemployment, or indeed the need to move for a new job.

Perhaps the most salient finding of this assessment, which was unspoken, was that the impact is now. This is not in the future tense. This is in the present tense. So the need for an urgent solution to protect residents is also now. On 14 October in the other place, the Prime Minister assured Matthew Offord, the MP for Hendon, that he would look into how to respond to the concerns that he had raised consistently on behalf of constituents. I am not asking the Minister necessarily to answer all the questions and concerns that I have raised in his response to these amendments today, but, before completion of the Bill, perhaps he could come to the House with a solution that answers the concerns of residents. Otherwise, I fear, our precious mantle as the party of home ownership—hard fought for and won over many years—is very much at risk.

Baroness Pinnock (LD) [V]: My Lords, I am keen to ensure, as many noble Lords will be, that the recommendations of the Grenfell inquiry can be implemented speedily. A key element of the amendments tabled by the noble Baroness, Lady Neville-Rolfe, seeks to clarify whether the powers in Clause 2 can be used to introduce regulations via the affirmative procedure. This seems an eminently sensible proposal for a route to be used to act on some of the many recommendations from the Grenfell inquiry when it is published. I hope the Minister will be able to agree that this amendment as a way forward for the Grenfell inquiry is one that the Government are willing to use.

Although the Government have responded to some of the consequences of the Grenfell tragedy, there is much more to be done. Three years is a long time to wait for those directly affected and for those trying to live with the considerable financial and emotional consequences: for instance, those living in modern high-rise blocks in my part of the country in Leeds, who are paying considerable sums each month for a waking watch. I agree with my noble friend Lord Shipley that building height and number of storeys do not, on the face of it, affect fire risk. I hope the Minister will be able to clarify the difference in height or number of storeys when he responds to these questions.

Other amendments later today explore several of the issues in the noble Baroness's amendments, which demonstrates to me that many of us consider that fire safety risks for existing buildings need to be fully debated. The Government need to come forward with a proposal. I look forward, with hope, to the government response to this interesting amendment.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendments 2, 20 and 21, all in the name of the noble Baroness, Lady Neville-Rolfe, have enabled us to debate the issues that pertain to low-rise domestic premises under five storeys, and how people are kept safe. Although these buildings are not high-rise, they can still present significant challenges for the residents. We need to make sure that they are safe.

It is a fact that fires often occur on the lower levels of premises. That is obviously quite logical. In most cases, the kitchen and living room, where you have the electrical equipment, are on the ground floor. You usually go upstairs to the bedrooms, where there is less equipment. If fires occur in these smaller blocks of flats—modern blocks, for example, or conversions of large houses—the risk and the issues are still relevant. I remember on a visit to the London Fire Brigade headquarters a couple of years ago, we were given a briefing on the problems of four or five-storey modern blocks, where there had been serious fires, huge damage to property, risk to life and limb and risk of serious injury.

In her amendment, the noble Baroness, Lady Neville-Rolfe, raised the problem of people trapped in properties covered in cladding and other materials about which serious concerns have been raised. They cannot sell their properties and they cannot get a mortgage if they want to buy them. These are very serious problems for those people, and we need a solution. The solution, for me, is that we have to get the material off. One of the problems we have, certainly in more modern properties, is that when properties are built, the builders give guarantees, and insurance policies are taken out based on the quality of construction. We now have the problem—this has been discussed many times before—that guarantees are not being honoured and insurance policies are being disputed and not paid out. That creates a huge problem for people who have bought a property or built a property as an organisation. We must deal with that issue. If you have given out a guarantee or issued insurance, it is unacceptable that you can walk away and say, "Sorry, we're not paying this out, we're not going to deal with this".

I hope the Minister can tell the House what discussions he and his department are going to have with the insurance industry and the people who give construction guarantees. That is what we have to get right. If you guarantee that these properties have been built properly, I would assume that proper due diligence has been done and you have ensured that they have indeed been built properly, and if there are problems, you should pay out. We need to get these things sorted.

Amendments 20 and 21 would require that proper consultation take place, and ask the Secretary of State and the relevant Welsh Minister to report back to Parliament and the Senedd Cymru respectively. That is very sensible. A theme running through today's debates is that consultation is really important to get these things right.

I thank the noble Baroness for tabling these amendments. She has raised an important issue and I hope the noble Lord, Lord Parkinson, will respond to the questions asked.

Lord Parkinson of Whitley Bay (Con): I thank my noble friend Lady Neville-Rolfe for raising these important issues and facilitating this useful debate. I thank all noble Lords who have taken part in it.

On Amendment 2, regarding the exclusion of low-rise buildings from the fire safety order, the order places duties on the responsible person to protect those lawfully on the premises from the risk of fire. These duties include carrying out and maintaining an up-to-date fire risk assessment that is specific to their premises, and ensuring that they have taken suitable and sufficient measures to mitigate the potential risk of fire. That is a continuous process whereby emerging fire risks need to be kept under review as part of the fire risk assessment process. These duties apply to buildings within scope of the order. That includes all premises apart from those that are expressly excluded; domestic premises are one such category. The Bill clarifies that the fire safety order applies to the structure, external walls and flat entrance doors in multi-occupied residential buildings.

While I understand the intention behind my noble friend's amendment, I am afraid I do not think it has quite the effect she intends. Domestic premises are already excluded from the scope of the order, so an amendment ensuring that they be excluded is not necessary. The buildings within which such premises sit are not excluded, in order to ensure that people living in such buildings have the protection they need to keep them safe. To exclude a category of buildings such as those less than five storeys high would remove that necessary protection.

Furthermore, it would be wrong to assume that the height of a building is the key determinant in its risk of fire, as has been noted. Certainly, it is a factor, but the potential risk is determined by many other factors that are nuanced and unique to each building. In that respect, I would like to refer to some of the fires we have witnessed since the tragic events at Grenfell Tower. In July 2018 a fire started on an external balcony on the third floor of the Orwell Building in West Hampstead, a six-storey block of flats. In September last year a fire destroyed a four-storey timber-framed block of flats in Worcester Park. Just a few months later, a fire spread via the high-pressure laminate coating on The Cube, a student accommodation block in Bolton. Mercifully, none of these fires resulted in casualties or fatalities, but clearly, they present lessons that need to be learned.

I am happy to put on record that the Government have no intention of excluding multi-occupied residential buildings of any height, including those that are low-rise, from the scope of the fire safety order. We will deliver on our commitment to strengthen the order as a proportionate legislative response to the risks of fire in high-rise residential buildings. However, we must also ensure that we do not discount the potential risk of fires in low-rise buildings. We must ensure that the responsible person continues to take a thorough approach when conducting their fire risk assessment.

Our fire safety consultation included proposals for implementing the legislative recommendations made by the Grenfell Tower inquiry's phase one report. Most of these recommendations concerned creating prescriptive new duties for those responsible for high-rise residential buildings, and in some instances, we have actually gone further than the inquiry's recommendations. For example, we proposed in our consultation that responsible persons should provide information to their local fire and rescue services on the level of risk in the design and materials of the external wall structure and mitigating steps they have taken, which goes further than the inquiry recommended.

Noble Lords will be aware that the Government published the draft building safety Bill on 20 July. The proposed scope of the new regime in that Bill will apply to higher-risk buildings. On day one of that new regime, it will cover all multi-occupied residential buildings of 18 metres or more in height, or more than six storeys, whichever is reached first. The building safety Bill will allow a flexible legislative response to building safety risks as it will provide for the Secretary of State's modifying the scope of the legislation and even changing the height threshold for multi-occupied residential buildings in order to bring them into the scope of the new regime as higher-risk buildings. For residential buildings outside the scope of the building safety Bill, the Housing Act 2004 will remain the primary means by which standards are enforced.

3.45 pm

I should also draw attention to the Building Safety Fund, through which the Government have made £1 billion available to fund the removal of unsafe non-aluminium composite material cladding. That is in addition to the £600 million we have already made available to ensure the remediation of unsafe ACM cladding. In developing the fund, the Government considered the view of experts, including Dame Judith Hackitt, who support its focus on buildings of 18 metres and above. Those experts recommended that we focus further public funding on remediating unsafe non-ACM cladding from high-rise residential buildings. Higher-rise buildings are the least likely to be evacuated safely in the event of a fire spreading via external cladding. There will be a small degree of flexibility in the fund to allow it to cover buildings that have been built just under the 18-metre threshold and which have similar fire safety strategies to those taller than 18 metres.

However, we do not expect that government funding to be the only means of remediating high-rise residential buildings with unsafe cladding systems. We expect a significant proportion of the remediation of unsafe non-ACM cladding on these buildings to be funded by those responsible for the original work, as the noble Lord, Lord Kennedy of Southwark, alluded to, through warranties or by building owners who are able to pay for remediation without passing on costs to leaseholders.

My noble friends Lady Neville-Rolfe and Lord Shinkwin raised powerful concerns about the impact that EWS1 forms are having on people selling their homes and those looking to buy homes. The Government share their concerns and are working with the industry to address this matter. The EWS1 form is not a governmental or regulatory requirement, nor is it a building safety certificate. It was developed as the industry's preferred solution to support the valuation process for high-rise buildings above 18 metres, and that is all it was ever intended for. Not all lenders require an EWS1 form but the Government are aware

that other lenders are requesting such forms for lower-rise properties too. We do not support that blanket approach and are working with lenders to encourage a more proportionate approach and to reduce demands for them.

We are also working with professional bodies to see how we can increase capacity to carry out assessments where they are genuinely needed. In future, the building assurance certificate—provided for in the building safety Bill, not this Bill—and/or an up-to-date fire risk assessment following the clarification in this Bill should provide the reassurance that lenders are looking for in the EWS1 form.

I turn to my noble friend's Amendments 20 and 21, concerning an impact assessment. The Government have published an impact assessment for this Bill; it can be found on the pages of the parliamentary website relating to the Bill, but if my noble friend would find it useful, I would be happy to share that directly with her. We worked closely with the National Fire Chiefs Council, the Ministry of Housing, Communities and Local Government and other interested parties in preparing that assessment. We have also published an impact assessment for the fire safety order consultation and will conduct a final impact assessment before laying secondary legislation to bring about any changes to the order.

Government analysts used the most accurate data and assumptions available to them at the time to assess the potential impacts of the Fire Safety Bill. While I understand my noble friend's desire to undertake further assessment, government analysts are already committed to a final impact assessment for the regulations before laying them before your Lordships' House and the other place. Each of these assessments is informed by further engagement with those directly affected, and improved data and assumptions.

I turn to the aspect of the amendment which seeks for the Government to produce an impact assessment if changes are made to the fire safety order with regard to the premises to which it applies in future. The Bill already creates a duty on the Government to consult relevant parties should changes need to be made to the fire safety order relating to the premises to which it applies—that is in Clause 2(5). As part of this consultation —indeed, as part of the policy-making process—there is an expectation on the Government to carry out an impact assessment. Therefore, we do not think that it would be practical or necessary for that to be enshrined in law.

Finally, I turn to the aspect of the amendment that would require Welsh Ministers to produce an impact assessment under these circumstances. Although the Welsh Government and the Senedd fully support the Bill—indeed, they approved it unanimously—fire safety is, as noble Lords know, a devolved matter. It is possible for Parliament to legislate for Wales on a devolved matter only if the Senedd Cymru consents. It would also be inappropriate for your Lordships' House to seek to instruct Welsh Ministers on how to exercise their functions. That is properly a matter for the Senedd.

My noble friend asked me three questions. I have alluded to some already and we will touch on others in later amendments. However, on the three points that she raised, all buildings should be assessed when this Bill becomes, as we hope, an Act of Parliament. We are proposing the use of a risk operating model developed by the sector to target the buildings that should be prioritised. Height is not the only factor in that model; it looks at a range of risks.

On her second question, the task and finish group recommended a risk-based prioritisation of buildings, which generally means that high-rise buildings will be the first up, but low rise is not always low risk, as the recent fires to which I have alluded prove. The responsible person can undertake the risk assessment if they have the skills and competence, but for complex buildings they should seek professional advice.

On my noble friend's third question, one reason for the risk-based prioritisation is that we are mindful that, as she notes, there are not enough fire engineers, and we want them to focus on higher-risk buildings. The Government are working with the industry in a number of ways and have a number of workstreams in train that are actively seeking to address these issues. For instance, we have been working with the fire risk assessment sector to develop a clear plan to increase its capacity and capability. In addition, we are funding the British Standards Institution to develop technical guidance to support professionals to make an assessment of the fire risk posed by external wall systems. This guidance will support the industry to increase the skills of more professionals to take on this work and improve the quality and consistency of the assessments.

I hope I have reassured my noble friend that the Government will ensure that suitable and appropriate fire safety measures are in place for low-rise buildings. I also hope that I have reassured her of our position regarding impact assessments and why we consider these amendments unnecessary. If I have, I hope that she will see fit to withdraw her amendment.

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): I have received a request from the noble Lord, Lord Kennedy of Southwark, to speak after the Minister.

Lord Kennedy of Southwark (Lab Co-op): My Lords, warranties, guarantees and insurance should, in many cases, be the way forward in resolving these problems, but, sadly, some construction companies, warranty providers and insurance companies are seeking to get out of their obligation to provide what people have paid for. That is not acceptable, and I hope that the noble Lord can tell the Committee what he is going to do about it. At a minimum, he should say that he will get the Association of British Insurers and warranty providers in and make it clear to them that, if they are providing insurance and guarantees for buildings that have been constructed, the Government expect them to face up to their obligations in providing the things that people have paid for, and that walking away is unacceptable.

Lord Parkinson of Whitley Bay (Con): I thank the noble Lord for his further point. I hope I can reassure him that my noble friend the Minister and the Housing Minister will be meeting the NHBC to discuss those very points.

Baroness Neville-Rolfe (Con): My Lords, first, I thank all noble Lords who have participated in this debate, and I am especially grateful to my noble friend Lord Shinkwin for his very moving example. I also express my thanks to the noble Lord, Lord Kennedy, and the noble Baroness, Lady Pinnock, for their support.

The Minister has confirmed that discussions are ongoing on insurance, warranties and other issues, which are important, but I point out that those relate largely to the future rather than the past. We have a past problem in this area—I describe it as "frozen"—which is obviously the reason for my probing amendment.

This afternoon, there has been a recognition that there is a problem here. Perhaps I could go backwards, thanking the Minister for his answers. I particularly thank him for his answers on the impact assessment, which were very satisfactory. On the website, you come up first with the impact assessment for the fire safety order, but that is the main impact assessment anyway. I was quoting extensively from it and I think that he will find it very useful, but it shows the volume of premises that we are talking about—those under 18 metres or 11 metres—so we have a problem.

The Government are rightly focusing a lot of attention on high-rise flats. The money that has been made available —I think that well over £1 billion was mentioned—is obviously welcome, and that has been focused on trying to get the cladding sorted as far as possible, because it is a great area of tragedy. However, the point about Committee is that you need to look at the detail of the regulations and make sure that you do not cause problems in other areas. Obviously, fires tend to start at the bottom of buildings—I very much understand that—but I think that you need to look at the risk, and my questions were specifically linked to that. It is a case of trying to make the system as sensible as possible so that, for example, responsible officers can, in appropriate circumstances, carry out risk assessments. At the moment, that does not seem to be happening. It seems that they are not doing it because they are worried and are trying to get in a consultant, and that leads to the "frozen" problem that I described.

I would be very happy to talk further about some of those points and the workstreams that the Government are looking at. I felt that the Minister was saying, "We are going to be very fierce on fire safety and I care about fire safety", but if a lot of people suffer perverse effects as a result, you have to think about how you are going to help them too, and how you are going to deal with that.

That is why I was slightly disappointed in the response to the amendment. It is only a probing amendment, so the fact that it does not quite work is not surprising. I am not an expert in this area. However, I am an expert in trying to balance consumer and business interests to get sensible regulation through this Chamber by looking at the detail. I would be very happy to help in any way I can to try to make sure that we solve some of these difficulties, either through later amendments or by coming up with something particular here. I emphasise that this issue is urgent; it is not something that can be left for another year.

Amendment 2 withdrawn.

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): We now come to the group beginning with Amendment 3. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anybody wishing to press this or any other amendment in the group to a Division should make that clear in the debate.

Amendment 3

Moved by ***Lord Stunell***

3: Clause 2, page 2, line 10, leave out subsection (5) and insert—

"(5) Before making regulations under subsection (1) the relevant authority must—

(a) consult anyone that appears to the relevant authority to be appropriate;

(b) carry out an assessment of the impact of the amendment on the required number of fire safety assessors and whether that requirement is met;

(c) carry out an assessment of the cost implications of the amendment, and who will be responsible for those costs; and

(d) lay before Parliament a report outlining how the requirements in paragraphs (a) to (c) have been met."

Member's explanatory statement

This amendment is intended to monitor capacity for effective implementation of the Bill, and places additional requirements on the appropriate authority such as an assessment of associated costs and required personnel, before regulations under subsection (1) can be made.

Lord Stunell (LD) [V]: [*Inaudible*.]

Lord Parkinson of Whitley Bay (Con): I think that the noble Lord might need to unmute or increase the volume, or perhaps position himself more closely to his microphone.

Lord Stunell (LD) [V]: Perhaps the noble Lord can tell me whether the situation has improved. Is he able to hear me?

Lord Parkinson of Whitley Bay (Con): Yes.

Lord Stunell (LD) [V]: My Lords, Amendment 3 is in my name and that of my noble friend Lady Pinnock. The Bill was of course discussed at Second Reading and is a long-overdue framework Bill, with a potential reach far wider than the high-rise residential blocks at the centre of the Grenfell Tower Inquiry. I thank the Minister for the very open-handed way in which he has talked to Members on all sides of your Lordships' House about the Bill and its intention.

We know that every multi-occupied home is in scope, from terrace houses to high-rise executive duplexes. It will impose significant duties on a scarce group of professionals—fire safety engineers. It will also impose significant duties on building owners of many different levels of professional competence and probity, and potentially it would impose significant costs on the occupiers of homes—renters, leaseholders and owner-occupiers—as commented on in the previous discussion by the noble Lord, Lord Shinkwin, and the noble Baroness, Lady Neville-Rolfe.

In other discussions today, we shall be looking at the functions and duties in more detail, but the intention behind Amendment 3 is to probe whether the Government have understood nearly clearly enough how much work they have to do before the Bill can become operational.

4 pm

The current evidence is that there is nothing like enough capacity to deliver a regime that covers all the accommodation in scope. There are not enough professional fire engineers to make assessments, and there are not enough fire safety officers in the fire and rescue services to check and inspect all the premises. Indeed, according to Home Office figures, the numbers of these have actually fallen over the last 10 years; and we will probably need to double the number of fire officers with those competences in the fire and rescue services. I detect a little bit of teeming and lading with the numbers of those two vital groups. The Government seem to see more assessors being recruited from the fire and rescue services, and, at the same time, more fire safety officers being recruited from the fire engineering profession to boost the fire and rescue services. Where will the new people who are going to be needed come from, and how soon can their training and professional experience be brought up to a suitable level?

The making of fire assessments, the checking of those assessments and their monitoring will be a very big task, and it will be front-loaded: the biggest surge in these assessments is going to be when the regulations come into force, when hundreds, or perhaps thousands, of assessments become mandated for the first time. There are not enough "responsible persons" either, with the requisite skills and information to do a decent job of overseeing and maintaining a good level of safety in each set of premises. That in itself is a massive challenge for landlords and managing agents and the staff they employ.

Further down the track, there will be a surge of remedial work to carry out the necessary alterations. One estimate supplied to me and probably other noble Lords by the British Woodworking Federation—I thank Mr Murray Stuart of the BWF for these figures—is based on the fire door inspection published in June. It said that only 24% out of a sample of 100,000 currently installed fire doors proved to have third-party certification and were installed and maintained correctly. That is 75,000 fire doors for a start that may not pass muster under the new regime. There are, of course, millions more doors than that in total, and if three-quarters of them also prove unfit for purpose, we can predict that the installers and tradespersons with the right skills will be in very short supply as well. The new recruits and the new skills cannot be materialised overnight. Beyond that, the supply chains themselves may well be stretched. I note in passing that none of those things is going to get any easier with the closing of routes for employment via the European Union. Amendment 3 places a duty on the Government to consult on all these matters and to make a proper assessment of them, and to report on them to Parliament as a preliminary to the new regime coming into force.

Perhaps today, or in a letter to follow up, the Minister could tell us the Government's current assessment of the capacity of the fire and rescue service, the fire engineering profession and the construction industry to deliver on the workload that the Bill will impose. Can he tell us how he intends to boost recruitment and training, and phase in the introduction of the scheme so that those at highest risk are covered first? Will half-baked and gimcrack assessments be weeded out thoroughly, and urgent work prioritised? How much does his department expect it all to cost, and who will be paying for it?

I understand that the Minister might be reluctant to accept Amendment 3 today, but I am expecting him to assure your Lordships that everything is in hand and that various steps are being taken, et cetera. However, for those of us—I think that is everyone in the Committee—who wish success to this Bill, there is an uneasy feeling that, in fact, the Government have not yet got everything in hand, and that they are at risk of a severe overreach that would bring the regime into disrepute. More seriously, it could fail to achieve its key objective of making people's homes safer, leaving us with a framework Bill that proves to be more of a hole than substance—more red tape than safety net—and still leaving us a long way from tackling, let alone solving, the problems that the Grenfell inquiry and Dame Judith Hackitt have identified. I beg to move.

Baroness Warwick of Undercliffe (Lab): My Lords, I declare an interest as chair of the National Housing Federation, the representative body for housing associations in England. I thank the Minister for his briefing on the Bill, although, sadly, because of my technological ineptitude, I was able to access only a part of it, but it was very good of him to do that and it was very helpful.

The fire at Grenfell Tower has had a profound impact, certainly on our sector. Ensuring the safety of residents is the number one priority for housing associations. They are taking urgent and comprehensive action to inspect buildings with safety concerns and to remediate them as a priority in line with Dame Judith Hackitt's recommendations. I therefore welcome the Bill and its aims of ensuring the safety of residents in multi-occupied buildings.

I will say a few words about points raised in other amendments, but I particularly support Amendment 4, in the name of my noble friend Lord Kennedy, because it seeks to ensure maximum consultation with all interested parties. Housing associations are committed to working with government and all other partners to achieve our shared aim of keeping residents safe and ensuring that a tragedy such as the fire at Grenfell Tower never happens again.

None the less, as others have said, there are challenges in implementing the Bill's proposals. There is severely limited capacity to effectively inspect and remediate external wall systems, not just in our sector but in sectors such as inspection and construction, as the noble Baroness, Lady Neville-Rolfe, and the noble Lord, Lord Stunell, emphasised. The scale of this work cannot be overestimated.

It is important at this point to emphasise potential challenges in both capacity and resource if everyone is to work with government towards a risk-based approach in transitioning to the new requirements. In order to ensure a just and deliverable transition, would the Minister consider staggering implementation, using

[Baroness Warwick of Undercliffe]
risk as the determining factor to prioritise when the buildings move to adopt the new regulations in the Fire Safety Bill and in the draft building safety Bill? Does the Minister accept that it is critical that the Government co-ordinate limited resources and capacity for remedial works to ensure that these are directed first at buildings that need them most? Does he accept that only the Government can fulfil this role?

Proposals in other amendments to update and strengthen the fire safety order would be welcome, as would proposals to clarify responsibilities, improve the competence of fire risk assessors and clearly define higher -risk workplaces. The new regulatory system must strengthen building safety standards for multi-occupied residential buildings covered by the FSO but outside the draft building safety Bill's more stringent regulatory regime.

Finally, the Bill seeks to clarify duty-holders' responsibilities for inspecting flat entrance doors. Right of access to uphold this duty is imperative. Unfortunately, in a small minority of instances, access is repeatedly denied and the duty-holder must seek a court injunction to gain the necessary access. The court process is lengthy and, as we know from recent reports, subject to ever-lengthening delays. There are then additional safety risks for everyone in the building as a result of how long it takes to gain access through the courts. Does the Minister agree that there needs to be a strengthened process to take account of the urgency of the safety inspections and works required under the regulatory changes that will come from the Bill?

The Bill needs support, but it also needs improvement. I hope that the Minister will address the need for inspection of all buildings to be based on a prioritisation of risk and that he will consider other amendments tabled by noble Lords; for example, on the need for fire risk assessors to be properly accredited and on the need to clarify the definition of a responsible person. It is clear that we on these Benches, and the Government, seek the same goal: to put right the flaws in the building and fire safety regimes and to give residents confidence that they live in a secure environment. I wish this Bill fair wind: it is needed urgently.

Baroness Pinnock (LD) [V]: My Lords, my noble friend Lord Stunell has made a characteristically well argued and factually detailed contribution in moving Amendment 3. The basis is this: that the practical implementation of new legislation is as important as the legislation itself. Fine words butter no parsnips, as the saying goes.

The Grenfell tragedy taught us, I hope, that the concerns of tenants and residents must be listened to. At Grenfell, concerns were ignored, with horrific consequences. The noble Lord, Lord Kennedy, in his amendment, seeks to list potential consultees. There is always a risk in this that some valuable contributions may not be heard because they were not included in the list. Constructors should be among those who are consulted, and I thank the British Woodworking Federation for its detailed briefing, as referenced by my noble friend when proposing the amendment. Hence I prefer the more general statement in our Amendment 3, which is much more open-ended.

Experts are invaluable, fire safety assessors never more so. In the debate in the House of Commons, the Minister stated:

"I share honourable Members' alarm at the existence of unqualified fire risk assessors".—[*Official Report*, Commons, 25/6/20; col. 51.]

The fact that vital fire risk assessments are being carried out by people not qualified to do so is something that we should be taking very seriously. Later amendments seek to close any possibility of unqualified assessors by creating a public register of those certified to undertake the varying demands of the role. As my noble friend has pointed out, there is always a cost attached to improving safety regulation. The question then is: who will be required to meet that cost?

It is surprising that those who have constructed buildings in the last decade are not currently being required to meet the majority of the costs of putting right their errors. Perhaps the Minister can say whether the construction firms are seen as being a significant part of the solution to those leaseholders now facing potential costs in the tens of thousands to make their homes safe.

In response to the last group of amendments, the noble Lord, Lord Parkinson, stated that construction firms and insurance companies are expected to contribute towards these significant costs—which is good news. Perhaps the Minister will be able to explain how quickly this will occur and what actions the Government are taking to ensure that decisions will not be long drawn out, as, for many, three years with no light at the end with the tunnel is already far too long. How much can these leaseholders expect to be paid from the government funding?

I look forward to the Minister's response to these important questions.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I very much support Amendment 3, proposed by the noble Lord, Lord Stunell. My own amendment in this group is very specific. It is about ensuring that relevant organisations are properly consulted and that, after consultation, a report on the findings is laid before Parliament. I hope that the Minister will be specific about consultation on changes made by the Bill to the fire safety order, because we must go much further than the National Fire Chiefs Council. I am looking for commitments to consult local authorities, trade unions, including the FBU, and representatives of tenants and residents.

I noted the point made by the noble Baroness, Lady Pinnock, in respect of my amendment, and refer her to (e), which adds

"any other bodies deemed relevant".

The point of my amendment was to highlight that certain organisations must be consulted, along with any others that the Secretary of State is minded to.

The amendment tabled by the noble Lord, Lord Stunell, is particularly appealing in respect of the requirements set out his proposed new subsection (5)(b) and (c). As the noble Lord set out, the potential implications of the amended fire order for individuals and organisations are huge.

We obviously support the intentions of this Bill very much, but one of our concerns is the question of who will be doing all this work. What will be the

qualification requirements and levels? There is no quick fix to that. I am sure that I and other noble Lords do not wish to see a race to the bottom, with people who have very limited skills being authorised to undertake assessments and inspections, because that is a route to disaster and no lessons will have been learned. We need properly skilled, properly qualified people undertaking this work. There will be new obligations, and there must be a process, a route to achieving them, without cutting corners. Proposed subsection (5)(b) in the noble Lord's amendment sets us off in the right direction.

4.15 pm

Equally important is proposed subsection (5)(c) in the amendment. We must understand the cost implications and who will be responsible for those costs. As I have said many times, far too often the Government place additional obligations on local authorities but then provide inadequate resources for them to deliver. This problem is potentially very acute here, because undoubtedly huge financial pressures are now biting, incomes have been reduced and pressures have increased. We must understand the costs. The point on consultation here is most welcome; my own amendment was more specific.

My noble friend Lady Warwick of Undercliffe highlighted the work being done by housing associations to keep residents safe. We should pay tribute to the work of the National Housing Federation and all housing associations. In my own work as chair of the Heart of Medway housing association, we are all clear that the safety of our residents is paramount and is the focus of all our work, ensuring that buildings are safe and that the required checks are carried out. I have been particularly proud to be the chair of the association during the pandemic, because of how staff have worked to make sure that people are safe.

I look forward to the Minister's response to these amendments, as they both raise important issues which the Government must address.

Lord Greenhalgh (Con): I thank the noble Lord, Lord Stunell, and the noble Baroness, Lady Pinnock, for their amendment on the consultation required when introducing any changes to premises to which the fire safety order applies. I agree that it is important that we get the implementation right when introducing any changes to the types of premises falling within the scope of the order. It is sensible that we make sure that there is capacity to assess any new premises type, and that the cost of any changes is identified before using the provision to introduce this.

The importance of costs was also raised by the noble Lord, Lord Kennedy of Southwark. Of the additional £30 million funding for fire and rescue services to implement the findings of the Grenfell inquiry, £20 million goes towards fire protection. We will look very carefully at the recommendations of the competence steering group on the level of competence required by fire safety officers to carry out fire risk assessments. However, I will also write to the noble Lord, Lord Stunell, on this matter, before Report. There will be an opportunity for parliamentary scrutiny of these matters as part of the passage of the secondary legislation that would be required to effect any changes to premises types within the scope of the order.

I agree with the principle of consulting relevant persons before enacting any changes or clarifications to the order in respect of the premises that it applies to. Clause 2 of the Fire Safety Bill provides a broad requirement to consult with appropriate persons. I agree about the importance of consulting with many of the organisations that the noble Lord, Lord Kennedy of Southwark, has pointed out. It is important that we consult broadly with local authorities and trade unions, the National Housing Federation, representing social landlords, the NRLA, and the ORPM, which represents managing agents. The noble Lord raises an interesting point, and I accept that he is seeking reassurance on that wide-ranging consultation. We will take it on board as we move to Report.

As it stands, the wording of Clause 2(5) contains a broad consultation requirement. This will include the stakeholders that both I and the noble Lord, Lord Kennedy, mentioned, and others that are deemed appropriate. The specified list in the amendment identifies certain groups whose identities, or the way in which they are formally referred to, could change over time. This would risk rendering the legislation out of date, creating a need for future primary legislative changes. The current approach in the Bill is future-proof and will ensure that relevant groups are not omitted. If the need arises to use this clause, we will consider who is appropriate and whether a full public consultation would be the most suitable approach to make sure all interested and potentially affected groups have the opportunity to comment. We just need to find the right legislative way to ensure the objectives of noble Lords. With that, I ask the noble Lord to withdraw the amendment.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I have received no requests to speak after the Minister, so I call the noble Lord, Lord Stunell.

Lord Stunell (LD) [V]: My Lords, I thank all those who have participated in the debate for their support for the general idea that we ought to know what we are doing before we do it. I do not think that that is a particularly extreme requirement and I was extremely pleased to hear the Minister indicate that he very much wants to follow that course. I think we have highlighted some of the big-picture issues and some of those we shall come to in the next group of amendments, so I will not rehearse them at this point.

I am pleased that the right atmosphere has been created for us to look really seriously at how this scheme is going to work. It is essential that we do not launch a dud: it has to work, and that means a lot of deliberate thinking has to be done rapidly and we have to deliver a massive skills, development, training and recruitment effort in order to make it happen. That is, perhaps, only one out of three things that are missing at the moment and that need to be done. So, I thank noble Lords, particularly my colleague and noble friend Lady Pinnock for her strong support, and the noble Baroness, Lady Warwick. I thank the noble Lord, Lord Kennedy, for some very useful cross-fire. I appreciate that and I look forward to working right across the House to see the Bill developed better—and quickly. With that, I beg leave to withdraw the amendment.

[LORD STUNELL]
Amendment 3 withdrawn.

Amendment 4 not moved.

Clause 2 agreed.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, we now come to the group beginning with Amendment 5. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this, or anything else in the group, to a Division should make that clear in the debate.

Amendment 5

Moved by ***Lord Kennedy of Southwark***

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

"Duties of owner or manager

The relevant authority must by regulations amend the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541) to require an owner or a manager of any building which contains two or more sets of domestic premises to—

(a) share information with their local Fire and Rescue Service in respect of each building for which an owner or manager is responsible about the design of its external walls and details of the materials of which those external walls are constructed;

(b) in respect of any building for which an owner or manager is responsible which contains separate flats, undertake annual inspections of individual flat entrance doors;

(c) in respect of any building for which an owner or manager is responsible which contains separate flats, undertake monthly inspections of lifts and report the results to their local Fire and Rescue Service if the results include a fault; and

(d) share evacuation and fire safety instructions with residents of the building."

Member's explanatory statement

This new Clause would place various requirements on building owners or managers of buildings containing two or more sets of domestic premises, and would implement recommendations made in the Grenfell Tower Inquiry Phase 1 Report.

Lord Kennedy of Southwark (Lab Co-op): My Lords, we come to a substantial group containing Amendments 5, 6, 7 and 9 in my name, and Amendments 15, 16 and 17 in the name of the noble Baroness, Lady Pinnock.

Amendment 5 seeks to make progress in respect of the recommendations of the first phase of the Grenfell Tower inquiry. It is disappointing that progress has been so slow, frankly, on all these matters following the tragedy at Grenfell Tower on 14 June 2017, some 40 months ago. We have on record pledges from Ministers to implement in full the recommendations in the report of the first phase of the inquiry, but the Bill before us today does not include any of the provisions or measures called for in the inquiry to be implemented. When the Bill was before the other place, the Government did not take the opportunity afforded to them to correct this. They opposed moving forward and instead said that they would launch a consultation. The consultation was launched in July and ends this month, a full year after they pledged to implement the recommendations of the inquiry.

I hope the Minister can set out for the House the timescale the Government are working to, as people have waited far too long for legislative action. Will he say why the Government are not even prepared to include the simplest of the recommendations the inquiry called for in this Bill—recommendations such as the inspection of fire doors and the testing of lifts? There is an urgent need for these recommendations to be implemented and the Government need to act with much more speed.

Amendment 6 returns to points I made previously today and at Second Reading. The fire safety Order requires regular fire risk assessments in buildings, but there is no legal requirement for those conducting these assessments to have any form of training or accreditation for this work. Although this service can be commissioned from council-run building control services, numerous private providers compete for the work and their numbers have rapidly expanded since the fire at Grenfell Tower. Numerous experts have criticised the poor quality of the work in building control and fire safety. As I have said before, we do not want a race to the bottom, where anybody can set up and say they are an inspector with very little training to do the work.

I want to hear from the Minister today that we will ensure that when fire assessments are done, we will have people who are properly accredited and able to do the work. Although I accept that there are some voluntary accreditation schemes, it is sadly the case that the use of unregistered fire inspectors is commonplace. The lack of training and accreditation in this important area of work is, frankly, unacceptable. The Government should be using this Bill to legislate for higher standards and greater public accountability in fire inspections.

Amendment 7 requires the schedule for inspecting buildings containing two or more sets of domestic premises to be based on a prioritisation of risk. At present, there is no guarantee that the schedule for inspections will be based on any sort of risk analysis rather than an arbitrary distinction between types of buildings. This was raised in the Commons by my honourable friend the Member for Croydon Central, who said that many experts and stakeholders have "significant concerns" over how the Bill would be implemented. She drew attention to reference by the Minister in Committee to:

"The building risk review programme, which will … ensure that local resources are targeted at those buildings most at risk".—[*Official Report*, Commons, Fire Safety Bill Committee, 25/6/20; col. 62.]

I agree, but it should also be pointed out that local fire and rescue services know their area well, and know the buildings where there is greatest risk. It should be they who decide the priority list.

Amendment 9 would require the UK Government, for England, and the Welsh Government, for Wales, to specify when a waking watch must be in place for buildings that contain two or more sets of domestic premises and have fire safety failures. There are still major issues around removal of flammable ACM cladding from tower blocks. A significant number of buildings remain covered, more than three years after the Grenfell

Tower fire, and other types of dangerous cladding have also been identified and not yet removed from buildings.

I accept that coronavirus caused many contractors to stop work on cladding sites, while others have not even begun work because of legal disputes, including, as I mentioned in a previous debate, disputes over guarantees and insurance payments. These delays mean that residents are in buildings that are unsafe, which cannot be right, or face extortionate fees for removal. Guidance from the National Fire Chiefs Council suggests waking watches should be a temporary measure, yet some residents have been forced to pay for waking watches for years, with some put in place immediately after the fire at Grenfell Tower, more than 40 months ago. They can cost up to £10,000 a week.

Amendments 15, 16 and 17 have considerable merit. I am happy to offer my support to the noble Baroness, Lady Pinnock, and will listen carefully to her when she speaks to them. I hope the Minister will give a full response to all the amendments and I beg to move.

Lord Stunell (LD): My Lords, I shall speak to Amendments 15, 16 and 17, variously in the names of myself and my noble friends Lady Pinnock and Lord Shipley. Again, I thank the noble Lord, Lord Kennedy, for his helpful remarks and support: as his amendments show, we have similar views.

Our debate on Amendment 3 prefigured many of the matters covered by our three amendments here. Our intention in tabling them is to get into the Bill some of what I expect we will be told by the Minister are the good intentions of the Government in the first place, and to make them real and concrete. This is a new policy area for the Government, and a new direction of travel—more regulation not less. It is both very necessary and very welcome, and we on the Lib Dem Benches are not just willing but eager and keen to help the Government produce the best Bill possible.

4.30 pm

Amendment 15 would mandate a national, published fire risk assessment register. The picture which emerges with devastating force from the evidence given to the Grenfell Tower Inquiry is that when those with power and authority find out bad things—about high risks that are there yet do not affect them, but put the vulnerable and weak at risk—their natural reaction is to keep the news to themselves, to avoid trouble and expense and to hope for the best. When it comes to fire safety, we have to end decisively that hoarding of bad news by the informed and powerful, and empower the vulnerable who carry the risks and sometimes pay the ultimate price: of life itself.

Those assessments must therefore be in the public domain and at least as public and accessible as an energy performance certificate is for every home in the country—and I hope it would give a rather more realistic picture than the average EPC does. It is quite unacceptable for landlords and building owners to hoard assessments to the detriment of those to whom they rent and lease their property, and whose lives are in their hands. Grenfell Tower residents' legitimate and specific fears about weaknesses they could see with their own eyes were swept away by those in authority. No one knew whether any assessments had been made, what they said or what should be done about it, or who should rectify the faults disclosed. Only an open public register can safeguard residents. I hope to hear from the Minister that he fully accepts that case and will give us an assurance on that crucial point.

Amendment 16 would mandate an open register of fire risk assessors. We have already heard some cautionary words from noble Lords in the previous debate. Here, the risk is linked to the likely shortage of fully competent professional assessors, and the very big risk that people would be attracted to pass themselves off as suitable and qualified when actually they are not. More positively, when landlords are recruiting assessors a public register will make that task a much simpler prospect. We should remember that there are many semi-professional landlords with a modest property portfolio, perhaps only one or two properties, and with no great professional competence themselves. They will be dependent on word-of-mouth recruitment, possibly via small ads or a local website. Making sure they have a safe route to recruiting a qualified and competent assessor is vital to the integrity of the new regime. Again, I hope to hear from the Minister that he entirely agrees, and will take on board the need to ensure there will be an open register of fire risk assessors.

Amendment 17 is on an entirely different point: who pays for the work that is going to be needed? This subject has already raised its head in the debate and I heard something from the noble Lord, Lord Parkinson, in response. I am hoping that the noble Lord, Lord Greenhalgh, may be able to improve on his offer. Amendment 17 could hardly be simpler or clearer: the innocent occupiers—the renters and leaseholders of millions of homes across the country—should not be held to ransom by building owners and forced to pay for making their home safe, when it should have been safe from the start. I know that the Government have begun to face up to the excessive costs facing leaseholders but I think the Minister, along with me, believes that far more remains to be done. I will not rehearse some of the hard luck stories that we are all familiar with. Instead, I will make a simple case that may appeal to Treasury bean-counters.

The longer this issue of payment hangs in the air, the more risk there is that yet another terrible tragedy will occur; the costs of that would quickly overwhelm any budget it may cost to help lubricate the repair and restoration process. The Bill, as we have discussed, extends the reach of the assessment regime much more widely, so the likelihood of problems similar to those we have heard about—of leaseholders and renters being stuck with huge bills—is likely to grow, not shrink, with its passage. Again, I hope that the Minister can give us, and millions of leaseholders, some words of comfort and support.

Lord Whitty (Lab) [V]: My Lords, I have added my name to most of the amendments in the name of my noble friend Lord Kennedy. He has explained the objectives of the proposed new clauses extremely well, so I will not add much to that. I particularly emphasise the need for the accreditation and professionalisation of fire assessors to instil some degree of confidence in the advice which owners, tenants and leaseholders receive.

[LORD WHITTY]
On the definition of responsible persons, this takes us some way forward to adopting my noble friend's amendment. It is also important that the Government ensure that the terminology used here is the same as that in the draft building safety Bill, and in existing regulations, so that we avoid any confusion or ambiguity over who is responsible for what.

I did not sign up to Amendment 9 in the name of my noble friend Lord Kennedy. That is not because I disagree with the wording on the Marshalled List. I support that but it could be misinterpreted. My noble friend has already referred to the concerns in this respect, and the noble Lord, Lord Shinkwin, referred to them in an earlier debate. This amendment deals with waking watch and the whole concept is that if a building has been designated as a fire risk, we need constant checking on the safety of that building. But many tenants and leaseholders find that the waking watch arrangements are used as a reason to delay improving the basic physical safety of the building. Moreover, they are faced with substantial costs on the operation of a waking watch. I do not intend to undermine my noble friend's Amendment 9. However, it needs to be put in a context where the cost does not fall on the tenants and leaseholders but on those who are genuinely responsible for the lack of safety in the building. Waking watch is not an alternative to the amelioration of that physical condition.

Lord Shipley (LD) [V]: My Lords, I strongly support all the amendments in this group because they would help improve standards immensely. My name is attached to Amendments 15 and 17.

The purpose of Amendment 15, which is also in the name of my noble friend Lady Pinnock, is to secure an up-to-date public register of fire risk assessments, to be kept and made available on request. I see this proposal as a matter of significant public interest and of vital concern to those who live in a shared accommodation block, particularly one which is high-rise. As my noble friend Lord Stunell pointed out, they have a right to know that their building is safe. I raised this problem previously when I discovered that such publication can be excluded under freedom of information legislation. Surely all those who live in tower blocks have a right to know about the fire safety of their block, so I wonder what further assessment the Government may have made of the rights of those who live in such blocks to further information.

On Amendment 17, there is a clear case for a prohibition on freeholders of a building passing remediation costs for their building on to leaseholders or tenants. We know that following Grenfell, as we have heard, so many leaseholders have found themselves being asked to meet huge remediation costs. In addition, many owners cannot sell their homes because they have not got—and cannot get—the right certification on the construction of their building. Preventing the provisions of the Bill, when it becomes an Act, leading to further costs for leaseholders or tenants must be an absolute priority for government.

Baroness Eaton (Con) [V]: My Lords, I wish to speak against Amendment 17. The purpose of this clause is to prevent freeholders passing on remediation costs to leaseholders and tenants through demands for one-off payments or increasing service or other charges. This issue is of understandable concern to leaseholders, who are not to blame for the situation. The problems arise from the behaviour of product suppliers, the building industry and the failure of the regulatory system over many years.

The Building Safety Bill, which has already been referred to this afternoon, makes provision for a building safety charge. That Bill will need to make provision for leaseholders to be protected from unaffordable costs, as the Minister recognised in his evidence to the Housing, Communities and Local Government Select Committee's pre-legislative scrutiny of the Bill.

Amendment 17 does not make provision for freeholders to recoup the cost of work, so it will not help leaseholders who collectively own the freehold of their block—nor will it help councils, housing associations or other freeholders who, equally, are not to blame for the failings of the construction industry and successive Governments of all political colours. I cannot support this amendment.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): We can see the noble Lord, Lord Bhatia, but unfortunately we cannot hear him. I am going to call one more time, then move on. Lord Bhatia? No. Clearly there are difficulties there. I call the next speaker, the noble Baroness, Lady Pinnock.

Baroness Pinnock (LD) [V]: My Lords, I look forward to the Minister's response to these amendments, which all seek to add detail carefully so that the positive purpose of this Bill is not marred by the inadequacy of its implementation.

The biggest investment people make in their lives is in a home. All sorts of checks are currently required or advised prior to purchase and a mortgage offer. One of these is not readily available. It should, and will, be; the question is whether it will come via a legislative requirement or pressure from home buyers. As my noble friend Lord Stunell said, it is much better for the Government to demonstrate their commitment to fire safety by enabling a public register of the fire status of buildings for accuracy and ease of access.

When the Government's own Minister in the Commons has decried the existence of unqualified fire risk assessors, why is there an apparent reluctance by the Government to address the issue face on? I do not understand why the issue that was acknowledged by the Government during the Commons debate has not been addressed. I hope that the amendment in the names of the noble Lord, Lord Stunell, and myself will provide the Government with the way forward. I hope that the Minister will agree to a meeting prior to Report to discuss these important practical concerns about a Bill that has our wholehearted support.

The third of these amendments, regarding costs—I have signed it alongside my noble friend Lord Shipley—may not have been in the purview of the Bill when first constructed, but where, if not here, will the issue of who pays for fire risk remediation work be settled? Leaseholders in newly constructed blocks of high-rise flats in Leeds and across the country in despair. They currently pay significant sums of several hundred pounds

each month toward the cost of a waking watch, while the costs of remediation—the removal of flammable cladding materials—will run into tens of thousands of pounds per householder. Meanwhile, their homes are worthless. They are not able to move and are in despair. This is through no fault of their own. Where the fault lies is for the Government and, no doubt, the courts to determine. However, the Government have some responsibility in seeking a fair and just remedy that will not bankrupt innocent leaseholders and will assess the responsibility of construction companies.

4.45 pm

The noble Baroness, Lady Eaton, pointed to some potential deficiencies in our Amendment 17. Nevertheless, the basic issue is right. We cannot expect leaseholders to bear the enormous costs of remediation work, which is from no fault of their own; they did the right checks before they purchased, a mortgage was granted to them on that basis, and now they find themselves, potentially, in a bankruptcy situation. That cannot be right. There have been excellent contributions to this debate and many questions asked; I trust that the Minister will be able to answer them.

Lord Greenhalgh (Con): First, I draw attention to my commercial and residential property interests as set out in the register. I should have done that some time ago, so I apologise to noble Lords.

I thank the noble Lord, Lord Kennedy, for his amendment on the duties of an owner. However, before turning to the points made, I want to put a few comments on the record. The Grenfell Tower fire was a national tragedy. For nearly six years, I was the leader of the neighbouring borough of Hammersmith and Fulham, so I was affected personally by it. In fact, our town hall served to help people in the community and give them shelter on the night of that event. I point out that it was the greatest loss of life in a residential fire since the Second World War. From the outset, I want to make it clear to this House, as I did in my all-Peers letter, that the Government are, and have always been, committed to implementing and, where appropriate, legislating for the inquiry's recommendations. An unequivocal commitment to doing that was set out in our manifesto.

In some areas, we are going further than the inquiry's recommendations, for instance on the information about cladding, building plans, lift checks and smoke control systems. In other areas, we are seeking to implement the recommendations in the most proportionate, pragmatic and effective way. The vote in the other place in no way signals that this Government have altered this commitment in any way. I will set out our approach on this issue.

It is right that we consult before we act with legislation on the Grenfell recommendations. This is not just because we have a statutory duty to do so. It reflects Sir Martin Moore-Bick's own view on the need to ensure broad support for his recommendations and an understanding of the practical issues associated with implementing them. In his report, Sir Martin noted that it was important that his recommendations

"command the support of those who have experience of the matters to which they relate."

Our 12-week consultation did just that. It gave all those affected—residents, responsible persons, including building owners and managers, the fire sector and enforcing authorities—the opportunity to make their voices heard. I am pleased to say that they responded, with more than 250 responses received.

This amendment is not necessary and will not speed up the legislative process; it would simply require us to make regulations on the specified areas in the amendment relating to the sharing of information, flat entrance doors, lifts and personal and emergency evacuation plans. We already plan to lay regulations on these areas; we do not need further primary legislation to do that. Subject to the outcomes of the consultation, we intend, where possible, to use secondary legislation under Article 24 of the fire safety order to implement the recommendations. Our intention is to introduce these regulations as soon as possible after the Bill has commenced.

I hope that this explanation of the Government's plan to implement the recommendations of the Grenfell Tower inquiry's phase 1 report has gone some way to satisfying honourable Members in the other place and noble Lords. I hope that, on that basis, the noble Lord will be content to withdraw his amendment.

On the other amendments in this group, I agree there is a clear need for reform in relation to fire risk assessors. Other amendments focus more on capacity issues, whereas these rightly shine a light on competence. As was set out in the other place, a lot of work is already in hand, and industry has largely been leading the way. The industry-led Competence Steering Group is looking at ways to increase competence and capacity in the sector. I am very pleased that the group recently published its final report, which includes proposals on creating a register of fire risk assessors, third-party accreditation and a competence framework for fire risk assessors. The Government are carefully considering the detail of this report and its recommendations.

The Government are also working with the National Fire Chiefs Council and the wider fire sector to take forward plans for addressing both the short-term and long-term capability issues within the sector.

I want to share the Government's views on this amendment. First, it is important we establish a basic principle of competence so that everyone carrying out an assessment should be appropriately qualified. This is regardless of whether they are a fire risk assessor or other fire safety professional, such as an engineer. We put forward a proposal on this in the fire safety consultation, which closed on 12 October. Considering the merits of accreditation will be a more detailed process. For example, assessing external wall systems with cladding will sometimes require significantly greater expertise than is likely to be that of a specialist fire engineer. It is our view that we should implement a competence requirement first and then look at the best way to increase professionalism across the sector.

Secondly, this amendment, understandably, would have the effect of applying an accreditation requirement to individuals undertaking fire risk assessments only in buildings with

"two or more sets of domestic premises"—

[Lord Greenhalgh]
for example, in multi-occupied residential buildings. It would not cover all other premises within scope of the fire safety order, including, for example, care homes and hospitals. The risk is that if this amendment is passed, it will create a two-tier system whereby such premises would require an assessment from an accredited fire risk assessor but all other premises covered under the fire safety order would not. This would mean we would have to legislate further to ensure parity. I do not believe that that was the noble Lord's intention in tabling this amendment. I can assure the House that work is already in hand to address competency issues, and we will take forward our proposal in the consultation to strengthen the competence requirements within the fire safety order.

I thank the noble Lord, Lord Kennedy of Southwark, for raising the important issue of prioritising enforcement action in respect of the risk of buildings and targeting of resources, which I also covered earlier in the debate on amendments relating to commencement. The task and finish group has told us to start in one go and then use a risk-based system, so I hope that will reassure the noble Lord, Lord Kennedy. I note that this amendment was raised in the other place; our position on this, which I will set out in a moment, remains unchanged.

The amendment is unnecessary in the context of established operational practice, which ensures that enforcement authorities target their resources appropriately and according to risk. The fire and rescue national framework for England requires fire and rescue authorities to have

"a locally determined risk-based inspection programme in place for enforcing compliance with the"

fire safety order. The framework also sets out the expectation that fire and rescue authorities will target their resources on individuals or households who are at greatest risk from fire in the home and on non-domestic premises where the life safety risk is greatest. The national framework for Wales includes similar provisions.

Enforcers are obliged to have regard to similar requirements in the Regulators' Code, which states that all regulators should base their regulatory activities on risk and use an evidence-based approach when determining the priority risks in their area of responsibility. In addition, the building risk review programme, which will see all high-rise residential buildings reviewed or inspected by fire and rescue authorities by the end of 2021, is a key part of this work. The programme will enable building fire risks to be reviewed and data to be collected to ensure that local resources are targeted at buildings most at risk.

The Government have provided £10 million in funding to support fire and rescue services to deliver the Government's commitment to review all high-rise residential buildings over 18 metres—or six floors and above—by the end of December 2021. This funding will also strengthen the NFCC's central strategic function to drive improvements in fire protection and is in addition to a further £10 million grant to bolster fire protection capacity and capability within local fire and rescue services.

I reiterate that we are aware of the capacity issues. Our approach to commencement has been informed, as I said, by the recommendations of the task and finish group, co-chaired by the National Fire Chiefs Council and the Fire Sector Federation, which brought together fire safety experts, building managers and representatives of the wider fire sector, who considered capacity and risk in the context of commencement of the Bill.

I have set out the Government's position on this issue and why we consider this amendment unnecessary. For the reasons set out above, I ask that the amendments in this group not be pressed.

I thank the noble Lord, Lord Kennedy of Southwark, for raising the issue of waking watches, which has a profound impact on the lives of many people. The amendment places a duty on the relevant authority to specify whether a waking watch is necessary in event of "fire safety failings". It is unclear how this would work or what it would mean. One interpretation is that the relevant authority would have to try to specify a list in regulations of all the potential circumstances where there had been a fire safety failing and then establish whether each of those individual failings would require a waking watch to be put in place.

Such a duty on the relevant authority would be disproportionate and onerous without necessarily being effective. It would largely remove or reduce the ability of a responsible person to consider the specific circumstances of the premises and other fire protection measures in place, all of which can vary considerably from building to building. The other risk of this wording is that such a list could be prescriptive. What if there are specific individual circumstances, or a combination of various failings, that do not fall within the list? The common-sense view may be that a waking watch should be put in place but such a decision could be inhibited by legislation. Restricting the responsible person's discretion to assess exactly what is required in each situation would not be right. A decision on the use of waking watch should be taken on the basis of the individual circumstances of each case.

I can provide reassurance that we are taking forward work on waking watches in conjunction with the National Fire Chiefs Council, which I will briefly outline. The National Fire Chiefs Council revised its guidance relating to waking watches, a copy of which I have here, on 1 October. It now provides very clear advice which supports the fire and rescue services and its implementation on the ground by the responsible persons. The updated guidance now advises responsible persons to explore cost-benefit options with leaseholders and residents. It also encourages the installation of common fire alarm systems, which means reducing the dependency on waking watch wherever possible. The guidance also emphasises that residents can carry out waking watch activities when fully trained, if necessary. However, we assume that in many cases a common fire alarm system will suffice.

On 16 October, we published data on the costs of waking watches which provides transparency on the range of costs, allowing comparisons to be clearly made. It also highlights the importance of identifying at what point waking watch costs exceed the cost of an alarm system, in an attempt to help reduce interim costs for leaseholders and residents. The calculations show that having a common alarm system pays back within seven weeks, compared with paying for the average cost of a waking watch.

Our aim must ultimately be to reduce the need for waking watches and the costs that they bring. A key plank of this is to progress remediation. It is the pace of remediation that matters, and despite having a global pandemic, I am pleased that, with the help of the mayors of our city regions and local authorities, we have seen the pace of remediation increase in removing the most dangerous type of cladding—aluminium composite material. The projection is that over 90% of buildings will be on site or will have remediated the cladding in question, which is great progress, with over 100 starts over the course of this year so far. As a Minister with joint responsibility for fire and building safety, obviously, I attach the highest priority to ensuring that all buildings with unsafe cladding are remediated.

On Amendments 15 and 16, I thank the noble Baroness, Lady Pinnock, for raising important issues regarding establishing public registers of fire risk assessments and fire risk assessors. I will address fire risk assessments first. The fire safety order sets a self-compliance regime. There is currently no requirement for responsible persons to record their completed fire risk assessments, save for limited provision in respect of employers. If they fall within that category, they are required to record the significant findings of the assessment and any group of persons identified by the assessment as being especially at risk.

The creation of a fire risk assessment register will place upon responsible persons a new level of regulation that could be seen as going against the core principles of the order, notably its self-regulatory and non-prescriptive approach. There is also the question of ownership, maintenance and where the cost of a register such as this would lie. A delicate balance needs to be struck. There are improvements to be made here but we need to ensure that they are proportionate.

5 pm

The Government acknowledge that work remains to be done to ensure that residents have access to vital fire safety information in order to be safe and feel safe in their homes. They need to be assured that a suitable and sufficient fire risk assessment has been completed and that all appropriate general precautions have or will be taken. For potential buyers of leasehold flats, I should also say that any good conveyancing solicitor would ask for sight of the fire risk assessment from the responsible person—the freeholder—as part of their pre-contract enquiries. If it was not forthcoming, one would expect a solicitor to advise their clients accordingly and make all due inferences.

The fire safety consultation brought forward proposals in relation to the recording of the fire risk assessment and the provision of vital fire safety information to residents. Therefore, we are considering what information residents need to be safe and feel safe in their home, and how this information could be made available. We are also considering whether a requirement should be placed on all responsible persons to record their completed fire risk assessments, thereby providing a level of assurance that their duty to complete a suitable and sufficient fire risk assessment has been fulfilled. The consultation closed on 12 October and responses are currently being considered. We will publish the response to this consultation at the earliest opportunity.

I now turn to Amendment 16, which seeks to create a public register of fire risk assessors. I agree that to improve standards there is a clear need for reform concerning fire risk assessors. I understand that this is a probing amendment and it may be helpful to outline ongoing work in the area of fire risk assessor capacity and capability. Some Members will be aware of the industry-led Competence Steering Group and its subgroup working on fire risk assessors. It published a report on 5 October, including proposals in relation to third-party accreditation, a competence framework for fire risk assessors and creating a register of fire risk assessors. The working group recommends that the register is compiled from the existing registers and would be easy to use, with open public access to records of individuals and organisations. The Ministry of Housing, Communities and Local Government, the HSE and the Home Office are considering the recommendations of the report in detail.

The Government have been working with the fire risk assessment sector to develop a clear plan to increase its capacity and capability. We are funding the British Standards Institution to develop technical guidance to support professionals to make an assessment of the fire risk posed by external wall systems. This guidance will support the industry to upskill more professionals to take on this work and will increase the quality and consistency of the assessments. Again, the responses to the consultation proposals will inform the approach on issues relating to competence.

To summarise, the right approach is for the Government to consider first the Competence Steering Group and its subgroup's proposals in relation to a register of fire risk assessors. Our position is that this work should continue to be led and progressed by industry. I am happy to state on the record that we will work with the industry to develop this. I suggest that any future statutory requirements on fire risk assessors might be achieved through secondary legislation, which will offer greater flexibility to add to or amend in future.

I now turn to Amendment 17 in the names of the noble Baroness, Lady Pinnock, and the noble Lord, Lord Shipley, and thank the noble Baroness for tabling it. The proposed new clause would stop all remediation costs from being passed on to leaseholders, regardless of the terms in individual leases. The person responsible for funding remediation will vary from case to case, depending on what is set out in the lease. A freehold owner—who may have significant funds or none to meet these requirements—may be legally responsible for carrying out the remedial works, but leaseholders may also be responsible through a right to manage company or resident's management company. It is important that the current flexibility is kept in place to ensure that the costs of remedial work fall on the most appropriate entities. However, I agree with the intent to reduce the financial burden on leaseholders. That is why this Government have already committed £1.6 billion to fund the removal and replacement of unsafe cladding on high-rise residential buildings where the building owner has refused to pay or the work is not covered by warranties. That money includes the £600 million that we have made available to ensure the remediation of the highest risk and most dangerous aluminium composite material cladding of the type that was in place on

[Lord Greenhalgh]
Grenfell Tower. The £1 billion Building Safety Fund will support the remediation of unsafe non-aluminium composite material cladding, such as unsafe high-pressure laminate cladding, on high-rise residential buildings.

The funding does not absolve industry from taking responsibility for any failures that led to unsafe cladding materials being put on these buildings in the first place. We expect developers, investors and building owners —and the construction industry—who have the means to pay, to take responsibility and cover the costs of remediation themselves, without passing on the costs to leaseholders. The draft building safety Bill sets out a comprehensive list of enforcement measures that will be available to local authorities and the new regulator to enforce against building work that does not comply with building regulations for up to 10 years from completion. The new regime in this Bill is being introduced to prevent such safety defects occurring in the first place for new builds, and to address systematically the defects in existing buildings.

Moreover, as part of any funding agreement with Government, we expect building owners to pursue warranty claims and appropriate action against those responsible for putting unsafe cladding on these buildings. By doing this, we are not only ensuring that buildings are made safe and that residents feel and are safe, but we are also ensuring that the taxpayer is not paying for work that those responsible should be funding or can afford to fund.

The noble Baroness, Lady Pinnock, wanted to know about the vehicle by which we shall address this, in the event that it falls on leaseholders. I ask her to be patient—it will be addressed within the forthcoming building safety Bill which has just passed its pre-legislative scrutiny. I appreciate the intent of the noble Baroness's amendment, which aims to protect those poor leaseholders who, through no fault of their own, are facing—in some cases—astronomically high remediation costs. The Secretary of State has asked Michael Wade, the former Crown insurer, and a senior adviser to MHCLG, to work with industry and our officials to come up with a solution to ensure that, in no instance, do the costs of historic remediation become unaffordable for leaseholders. He is working to find out what funding structures would be most appropriate to achieve this objective. Leaseholders should not have to face unmanageable and unaffordable costs. My right honourable friend the Secretary of State for Housing, Communities and Local Government has committed to updating our position when the building safety Bill comes before Parliament.

I ask Members to recognise the complexity of this policy area, which cannot be solved through this amendment. This new clause would make owners, who in some cases will include leaseholders, responsible for funding any and all remediation work. For example, service and maintenance charges would at present meet the cost of safety work required as a result of routine wear and tear, such as worn fire door closers. These costs would now fall to building owners. I hope that noble Lords agree that there are more effective ways of achieving this important policy. We have the same aim, but we have to find different ways of achieving it. For these reasons, I ask the noble Lord, Lord Kennedy, to withdraw his amendment.

The Chairman of Committees (Lord Faulkner of Worcester) (Lab): I have had a request to speak from the noble Baroness, Lady Neville-Rolfe.

Baroness Neville-Rolfe (Con): My Lords, I do not disagree that the amendment should be withdrawn. The noble Lord, Lord Shipley, my noble friend Lady Eaton and the noble Baroness, Lady Pinnock, have drawn attention to the problem that I raised earlier about leaseholders caught by the Government's Grenfell-related changes being unable to afford repairs or waking watches and/or unable to sell their properties. In some cases, the leaseholders are joint owners, as my noble friend Minister has just said.

Will my noble friend agree to a meeting to map the way forward before Report? This could look at the options to see whether primary legislation—which I think he is reluctant to pursue—secondary legislation, fire brigade or health and safety guidance or changes to the regulatory codes would work. There has to be a risk assessment and we need to make sure that this is possible.

I have some experience of dealing with these fire difficulties. As noble Lords will recall, this used to be the responsibility of the fire brigade and then it was all changed. I oversaw that transition. I also know from experience in China how wrong you can get things, particularly if you do not consult. I remember that China did not consult on changes to fire safety laws. They were not aware that most modern premises had sprinklers. As someone has already said, sprinklers limit what you have to do with fire safety measures. It is a modern approach.

I should find a meeting helpful, perhaps to limit the number of amendments that it might otherwise be necessary for us to put forward on Report.

Lord Greenhalgh (Con): I thank my noble friend for making those points and representing the deep issues faced by consumers. Essentially, there are three. Thousands of leaseholders are facing the terrible situation that their property is valued at nothing. They have put in their life's savings to buy a property, and they cannot remortgage or move. The pace of remediation has now slowed because of an inability to get assessments carried out by the relevant person or because they do not feel that they have insurance cover to do it. That is another issue. At the same time, because the pace of remediation has been affected, they face interim costs. I pointed out that they could be dramatically reduced, in most instances, by putting in an alarm system.

My noble friend is quite right—I have had these discussions with the insurance industry—that there are great measures, such as sprinklers, that reduce risk and ensure that a building is safer. That is why the Government legislated to put in sprinklers in all new builds above 11 metres. I am happy to meet my noble friend and any other noble Lords on these important issues, because we all share the objective of finding the right approach to deal with these great issues that face many hundreds of thousands of leaseholders in high-rise residential buildings up and down the country.

Lord Kennedy of Southwark (Lab Co-op): My Lords, it was good to hear the opening remarks of the noble Lord, Lord Greenhalgh, in responding to this debate.

I have no doubt of his sincerity in wanting to address the issues raised by the first phase of the Grenfell Tower inquiry, but my view, held with equal sincerity, is that we have not moved as quickly as we should have. The Government have moved too slowly. They need more urgency in dealing with the issues that arose from the fire at Grenfell Tower, which took place on 14 June 2017—some 40 months ago.

Capacity to deliver the requirements is an issue, which has been raised in a number of groups of amendments, as is the qualification level of the people undertaking this work. We must have professionally qualified experts undertaking such important work. If unqualified people are approved to do work arising from the Bill, it would show me that the Government have not learned the lessons. This is a slippery slope to further failures in the future. If one more life is lost, it will be one life too many. It is really important to get this right.

The noble Baroness, Lady Neville-Rolfe, mentioned sprinklers; she is absolutely right. Sprinklers have been in new homes, flats and halls of residence in Wales since 2011. It was the Labour Member Ann Jones who passed the legislation through the Welsh Assembly, some nine years ago. That is one case where the Government could learn from what has happened in another institution in our United Kingdom.

I thank all noble Lords who have spoken in this debate. As in other debates, we have highlighted significant outstanding issues. The Government should take this opportunity to reflect on the issues that have been raised in Committee; I hope that they will agree to come back on Report and actually move on some of them. Although we all want to make progress, speed is the issue for us and we want to move forward where we can. As I said before, it is 40 months since the tragedy of Grenfell Tower.

I will come back to this and many other issues on Report. I will make it clear to the noble Lord now: if we do not see some progress, we will divide the House many times on Report. I beg leave to withdraw my amendment.

Amendment 5 withdrawn.

Amendments 6 and 7 not moved.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): We now come to the group beginning with Amendment 8. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in this group to a Division should make that clear in the debate.

Amendment 8

Moved by ***Lord Kennedy of Southwark***

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

"Meaning of responsible person

The relevant authority must by regulations amend the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541) so that in article 3 of that Order (meaning of responsible person) it is specified that where a building contains two or more sets of domestic premises, a leaseholder shall not be considered a responsible person unless they are also the owner or part owner of the freehold."

Member's explanatory statement

This new Clause aims to clarify the definition of "responsible person" to ensure that, where a building contains two or more sets of domestic premises, leaseholders are not considered a responsible person unless they are also the owner or part owner of the freehold.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 8 in my name seeks to clarify the definition of a "responsible person" to ensure that, where a building pertains more to a set of domestic premises, leaseholders are not considered a responsible person unless they are also the owner or part owner of the freehold.

The fire safety order requires building owners and other responsible persons to undertake regular fire risk assessments. These changes mean that the safety of elements such as cladding will need to be considered in any fire risk assessment. As I said, my amendment aims to clarify "responsible person" to ensure that leaseholders are not considered a responsible person unless they are also the owner or part owner of the freehold.

5.15 pm

We need absolute clarity on this point. That is what the amendment is about: having an effect. I am sure that the Government, and other Members, want to achieve that. This is not a Bill for fuzzy, unclear opaqueness. What we need is crystal-clear clarity, with no room for any doubt about who is responsible for what.

My noble friend Lord Berkeley, in his Amendment 18, seeks to update the definition of firefighting equipment in premises where a building contains two or more sets of domestic premises to include fire sprinklers and water mists, in order to draw attention to their effectiveness.

The National Fire Chiefs Council has reported that people are 22% less likely to require hospital treatment if they are in a fire in a building that is controlled by a sprinkler system. As was said in the previous debate, in Wales, since 2011 many new-build properties have had to have fire sprinklers installed. I think the case for those is made, and I look forward to the Minister responding at the end of the debate.

Lord Berkeley (Lab) [V]: My Lords, I am grateful to my noble friend for introducing this group of amendments. I have listened carefully to the debate so far; some excellent arguments have been made in favour of going even faster than the Bill does. I support it, but, as I shall try to outline, there is an argument for going faster.

My interest in the Bill is in fire detection and suppression. I worked on the Channel Tunnel, and after the Notre Dame fire we had some interesting debates in your Lordships' House about how to detect fires in the roofs of old buildings and how to extinguish them. I was disappointed to be told, "Well, we're putting fire detectors in the roof, but there's no access to extinguish a fire." I still worry about that because, as we all know, the biggest risk to old buildings from fire is when the contractors are in.

The Bill is about the domestic environment; I welcome it. My amendment is a probing amendment about including sprinklers and mists in the definition of firefighting equipment. Mists are very effective and useful, and would be a comparatively low-cost installation

[LORD BERKELEY]
for anything between the Houses of Parliament and the buildings that the Bill covers.

I am impressed by mists, even compared with sprinklers. I am aware that many experts on old buildings say that they should not have sprinklers in them because they destroy the contents of the building. That is true—but at least they enable the building to survive. Mists do not destroy the contents, but preserve them to a much greater degree. They are good with electrical fires—which is what we are talking about here—and also with fuel and chip pan fires. I am told that one nozzle, with a small pipe, will cover 16 square metres of building.

I look at a building, whether it is a big one or someone's property, and I think, "If you can put in a water mist system using a small pipe, it is not that different from installing a ring main for electricity." Perhaps we should look at making water mist installations a requirement in all habitable buildings in the same way as we require electricity to be put in them—most of the time, anyway.

I know that there is a downside and that it will not happen through this Bill or indeed for many years, but the costs are low and the damage caused is much less than that caused by a fire or by sprinklers. In his response, I would like the Minister at least to say that he will look at this, particularly for domestic rented, leased and privately owned properties, as well as considering the options for new build along with existing ones. I think that we should start the process now because, as we heard at the beginning of this debate, some 14,000 electrical fires are started every year. Many of them could have been and could be avoided if a water mist system were installed.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): I call the noble Lord, Lord Stunell. He is not responding, so we will come back to him. I call the noble Lord, Lord Whitty.

Lord Whitty (Lab) [V]: My Lords, I have added my name to the amendment tabled in the name of the noble Lord, Lord Kennedy, in relation to the responsibilities of leaseholders. It is important that this is reflected in the terms of the Bill. Leaseholders are not the responsible person unless they happen to be co-owners or co-freeholders, and as we heard in the debates on earlier amendments, leaseholders are being faced with quite substantial costs. It would be wrong if the legislation allowed an interpretation whereby in certain circumstances they were the responsible person. They are not. The owners or their agents are the responsible person and we should make that quite clear.

I also strongly support the principles of the amendment tabled in the name of my noble friend Lord Berkeley. Like him, I am astonished that at the moment, the regulations relating to domestic dwellings and indeed other buildings do not include a requirement on new build and major refurbishments for the installation of sprinklers.

Perhaps I may divert slightly from the question of high-rise domestic buildings. When I was at primary school in the 1950s, the school burned down. The fire actually started in my classroom. The report on that fire suggested that a simple sprinkler system would have quickly suppressed the fire and saved the building. As a result, when we returned to school, we were accommodated in temporary huts. Those temporary huts, in 1952, were required to have a rather crude sprinkler system. I was astounded to find out that in the year 2020, there is no such requirement for school buildings and no such requirement for high-rise buildings and premises in multiple occupation. That is something that should be addressed, if not in this Bill, at least in the batch of measures being brought forward by the Government in the wake of the Grenfell tragedy.

I am grateful to my noble friend for raising this issue because it needs to form part of the Government's thinking in relation to the overall response to fire safety problems. I hope that at some point the Minister can indicate where that proposition will end up. I would strongly support such an addition.

Baroness Finlay of Llandaff (CB) [V]: My Lords, I apologise that I could not participate at Second Reading. I had wanted to raise carbon monoxide detection—a silent killer production of combustion—with fire detection, but I understand it is outside the scope of this Bill. I would like to speak to Amendment 8, to which I have added my name. Let me explain why.

I remain haunted by seeing the blazing Grenfell Tower from my daughter's window, and I have every sympathy with those whose flats all over the UK find their leasehold purchases are now valueless and are still paying out their mortgage and charges. Back in the 1970s, we financially squeezed ourselves to buy our first flat, only later to find it was built with high alumina cement and, until deemed safe, completely worthless. That is why I feel a commitment to others caught in this plight. This amendment would bring further clarity to the meaning of a "responsible person", and ensure that leaseholders who are not also freeholders are not made liable or responsible for any remediation work needed as a result of poor building and development decisions on flats which they believed, and were told on checks, comply with building regulations. I want to read the Minister's response to the previous amendment very carefully, as I hope that it allays some of my concerns, but I note that the noble Baroness, Lady Neville-Rolfe, has raised some ongoing questions.

The huge costs of fire safety checks, materials testing, removal and replacement of dangerous materials, and the retrofitting of sprinklers and other fire safety equipment, all currently fall to leaseholders. Let me illustrate this with information from one such leaseholder. For residents of three blocks of flats in Baltic Avenue, Brentford—which probably should never have been signed off—fire safety checks have been quoted between £15,000 and £24,000, the mock testing of current cladding and insulation will cost £50,000, and rectifying all identified issues has been initially quoted to be at least £6 million. The previous group of amendments highlighted the huge burden on leaseholders, so who is responsible? This is surely the responsibility of developers and their team of architects, builders, et cetera, and the freeholders—and what about the banks that earn an income from the loans?

As the Minister has pointed out, he is well aware of the crippling costs, and he is clearly committed to doing something about the many leaseholders living in flats that are currently valueless, that cannot be sold or

re-mortgaged. Many leaseholders are already financially stretched and bought their flats using the Help to Buy scheme, but if they cannot afford to pay for the fire safety checks they need to obtain an ESW1 form, Homes England will not value any properties bought under the scheme. Despite living in flats that are valued at zero, many leaseholders still find themselves having to cover interest payments on a loan that was given on the basis that if it fell in value you paid less. If the flats are worth zero, have all these loans been reset to zero, and are we sure that that has happened?

Even more seriously, these leaseholders are now suffering real mental health problems, not only from the financial burdens but because they know they are stuck in flats tonight that could go up in flames at any moment. The removal of cladding and other dangerous materials really is a matter of life and death. All this means that insurance costs will be sky high for buildings that are still considered to pose such a high risk. Can the Government give us some evidence of really speedy action?

In July, the housing Minister agreed that all costs should not have to be met by leaseholders and should be met by the developers or building owners. Many leaseholders believe the Government have changed their position, saying that leaseholders would still have to foot some of the bill, but they just do not have the money to do it. This amendment rectifies this by being absolutely clear about who is responsible for what, and that is why I support it.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): My Lords, I am going to try to call the noble Lord, Lord Stunell, again.

5.30 pm

Lord Stunell (LD) [V]: I am here. I apologise for not joining the Committee earlier but we had some kind of IT glitch.

I want to look at another important aspect of who the responsible person can or should be. The problem that I want to guard against is the absentee responsible person: the anonymous set of initials from a remote managing agency with a non-responding website and no phone lines, or the international property holder registered in the Cayman Islands or Bermuda. I want to press the Minister to commit to ensuring that every responsible person is a real person, not a company or a corporate body, and that that person has a functioning terrestrial address and a phone number based in the UK—in short, that they can always be held accountable, can be assessed and if necessary trained to deliver their statutory obligations, and has the skill and intention of communicating effectively with residents in the properties for which they take responsibility. We do not want to add absentee responsible persons to all the existing problems of absentee landlords. I look forward to the Minister's response.

Baroness Pinnock (LD) [V]: My Lords, the "responsible person" definition has a key duty in this legislation, which is why I support the amendment in the name of the noble Lord, Lord Kennedy, which seeks to clarify it. I apologise to the Committee that a lack-of-sound issue has meant that I was not able to hear the contributions by the noble Lords, Lord Berkeley or Lord Whitty, or the noble Baroness, Lady Finlay, so my remarks are going to be quite basic as a consequence.

I agree with the amendment of the noble Lord, Lord Kennedy, that it is not just or practical to expect a tenant or leaseholder, unless they are owners or part-owners of the freehold, to fulfil the responsibility of being the so-called responsible person. I agree completely that it is important to have no room for uncertainty as to who is indeed the responsible person.

My noble friend Lord Stunell has just raised the very important issue that the responsible person has to actually be a person, not an entity—someone with an address and a telephone contact within the UK. I cannot imagine how awful it would be if the responsible person were some distant corporation based in the Cayman Islands, a fire arose and there was no obvious route to seeking a practical or legislative remedy for that disaster.

I have heard a little about the importance of water sprinklers and water misting in high-rise blocks, and of course I know that in 2009, Wales introduced a requirement for that. I look forward to learning what others have said about this important issue when I read *Hansard*, because I understand that it has been a priority of the fire and rescue services for a long time. I look forward to the Minister's response.

Lord Greenhalgh (Con): I thank the noble Lord, Lord Kennedy, for this amendment, which seeks to amend Article 3 of the fire safety order. It seeks to remove leaseholders from being a responsible person unless they are also owner or part-owner of the freehold for the premises in question. It is important to remember that the fire safety order places the onus on the responsible person to identify and mitigate fire risks. In multi-occupied residential buildings, the leaseholder of a flat is unlikely to be the responsible person for the non-domestic premises. The exceptions to that would be where they own or share ownership of the freehold, which is acknowledged in the amendment. However, a leaseholder can be a duty holder under Article 5 of the fire safety order, which provides that the responsible person can be determined by the circumstances in any particular case.

Depending on the terms of a lease or tenancy agreement, the responsibility for flat entrance doors could rest with the building owner, having retained ownership of the doors, or the tenant/leaseholder as a duty holder. The lease can also be silent. Accepting this amendment would undermine the principles of the order and could have the unintended consequence of leaving a vacuum in terms of responsibilities under it. That, in turn, could compromise fire safety.

We will look at the responses to our fire safety consultation, which contained specific proposals to support the identification of responsible persons, with a view to ensuring that they are not the entities described by the noble Baroness, Lady Pinnock. It also contained proposals to support greater co-operation and co-ordination between multiple responsible persons within a single premise. The Government are also committed to providing guidance on this issue. That, alongside our legislative proposals in the consultation, will support all those with responsibilities under the order in understanding and complying with their duties.

[Lord Greenhalgh]

I thank the noble Lord, Lord Berkeley, for tabling Amendment 18. Water-based systems can be an effective and appropriate fire-fighting tool in the event of a fire, and they command broad support across the fire and rescue service and the broader fire sector. However, a water-based system is just one of many measures that can be adopted to counter the spread of fire within a building.

The amendment seeks to ensure that responsible persons for multi-occupied residential buildings consider the installation of sprinklers or water-mist systems as "appropriate fire-fighting equipment" options. On the retro-fitting of sprinklers or water-mist systems, it is up to the responsible person to decide whether those are appropriate mitigating measures.

Noble Lords may be aware that earlier this year the Government amended approved document B to require the provision of sprinkler systems in new blocks of flats over 11 metres in height. This amendment will come into effect next month to ensure that this is the new standard for buildings of that height in the future.

For existing buildings, the fire safety order requires the responsible person to maintain and keep in an efficient state and working order fire-fighting equipment, which may include water-based systems. In blocks of flats where these are not present, retro-fitting water-based systems may not always be a cost-effective solution, if they are desired at all by residents. Existing guidance suggests considering alternative fire safety measures, taking into account the absence of sprinklers.

The Government do not support using the fire safety order to promote one form of equipment over other measures which, depending on the building, might be more effective. The fire safety order rightly places the onus on the responsible person to have regard to the specific characteristics of their building in determining which fire-fighting equipment and mitigating measures are appropriate to ensure the safety of relevant persons.

It is important that the legislation leave open the range of options available to responsible persons, who, with the support of competent professionals and government guidance, which we are reviewing, are best placed to make those decisions based on local need. Some building owners may decide to install sprinklers as part of their overall fire strategy, while others might choose alternative measures, provided that they are effective. Nevertheless, the Government will review our fire safety order guidance for responsible persons, including references to fire-fighting equipment and other fire safety measures available to them.

I hope that I have provided sufficient reassurance and that the noble Lord is content to withdraw his amendment.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank everybody who has spoken in this debate, which has been very useful. In particular, I thank the noble Lord for his response.

I agree very much with the comments of the noble Baroness, Lady Finlay, about the need for swift action. As we have discussed on previous amendments, there is the whole issue of building owners, insurance, guarantees and warranties, and we need to get to the bottom of that. I know that in the weeks ahead the noble Lord will be meeting people who are concerned about that, and that is very good.

I also agree with the noble Lord, Lord Stunell, that the responsible person must actually be a person. It cannot be a company or some entity, particularly one based on the other side of the world. It must be a real person in the UK, and we must have their name, address, phone number and email address so that we know exactly how to get hold of them. That is really important.

My noble friend Lord Berkeley spoke about the importance of sprinklers. The Government have made some progress on that, which is good, but they should look carefully at what has happened in Wales. Since 2011, no new home has been built without sprinklers. That measure was brought forward by the Labour Member, Ann Jones, following a Private Members' ballot and it has been a really good thing. The Government should look at the initiatives of other institutions in the United Kingdom to see how these things work; that is one they could learn from.

With that, I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Amendment 9 not moved.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): My Lords, we now come to the group beginning with Amendment 10. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in this group to a Division should make that clear in the debate.

Amendment 10

Moved by ***Lord Kennedy of Southwark***

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

"Review of Scottish and Northern Irish legislation covering similar matters

Within 24 months of the day on which this Act is passed, but no less than 12 months after the day on which this Act is passed, the Secretary of State must lay before Parliament a review of legislation covering similar matters to this Act enacted by the Scottish Government and the Northern Ireland Executive."

Member's explanatory statement

This new Clause would ensure that the Government considers legislation covering similar matters to this Act enacted by the Scottish Government and the Northern Ireland Executive.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendments 10, 11 and 12 in this group are in my name. Amendment 10 requires the Government to consider legislation covering similar matters to those in the Bill that has been enacted by the Scottish Government and the Northern Ireland Executive. The Bill covers England and Wales only, since Scotland and Northern Ireland both have separate legislation in place under their legislative competences. The Government should work with the devolved Governments to share best practice and consider which legislation works best, and what should be in place where they alone have legislative competence.

Amendment 11 requires the Government to consider the Bill's impact on local authority finances. The LGA and local authorities are concerned about the impact of the Bill on their finances, as we have raised in previous debates. An analysis by the Institute for Fiscal Studies, commissioned by the LGA, found that councils in England are facing a funding gap of more than £5 billion by 2024 to maintain services at current levels. This figure could double amid the huge economic and societal uncertainty caused by the Covid-19 pandemic. This is a serious situation. It is therefore vital that councils are fully compensated for new requirements and burdens resulting from the Bill. As I have said before, the Government too often place extra burdens on local government, without a commensurate level of resources to deliver them. That is certainly not acceptable when looking at something as important as the Fire Safety Bill. It needs to be properly addressed when we consider matters of such importance.

Amendment 13 requires the Government to consider whether there is a skills shortage in the United Kingdom, in relation to the requirements of the Bill. Skills have been discussed in relation to many amendments. The lack of qualified professionals has already been raised today, along with the fear that, to get around it, we will have a race to the bottom, allowing unskilled people, who are not professionals, to undertake the work required of the Bill.

Britain has a skills shortage, particularly in higher technical skills, due to a number of reasons, including cuts to further education. The CBI said that two-thirds of businesses worry that they will not have the skilled posts to fill the work that needs to be done. The Government should make it clear whether they believe there is a sufficient skills base in the UK for the purposes of fire safety. If they do not believe that there is—and that may well be the logical conclusion—they need to set out what they will do to ensure we have the right skills base. I look forward to the Minister answering those points in his response. I beg to move.

Lord Stunell (LD) [V]: My Lords, I offer my support to Amendment 12, proposed by the noble Lord, Lord Kennedy of Southwark, which looks to have a UK-wide, or at least England-wide, skills audit. There is clear evidence, particularly for matters relating to infrastructure, construction and this topic specifically, that there is a serious deficit in skills and training, and in the attractiveness of the industry to new entrants. There are many reasons for that but discussing them would be a different debate.

Clearly, if the Bill is to be a success, not just in its initial moments but in the ensuing years, there needs to be a steady stream of well-trained and fully experienced professionals—not just in the white-collar sense, but professionals who can deliver and install changes to buildings on a very big scale. It matches the parallel demands being placed on the construction industry from the move to improve the energy performance of homes and buildings in general. Again, a massive programme of investment is in train and planned by the Government.

This skills audit is urgently needed. I dare say the Minister will talk about the Construction Leadership Council and the various work being done on that front, but it needs a level of intensity and urgency that cannot be held by just one trade association or government advisory body. It must be a central driving initiative of the Government themselves. Although we all sincerely hope the current economic circumstances will turn and improve dramatically next year, they strongly suggest that there will be opportunities to recruit and upskill people who have to make career changes. The Government can and should seize this moment to make sure upgrading skills and recruiting new entrants is taken as a serious opportunity, consequent upon the passage of the Bill. I strongly support what is set out in Amendment 12.

5.45 pm

Baroness Pinnock (LD) [V]: My Lords, mindful of my interests as declared at the opening of Committee, I support Amendment 11 in the name of the noble Lord, Lord Kennedy, although an additional cost must not be imposed on local authorities as a consequence of the requirements of the Bill. It is well documented that many local authorities are already facing very challenging circumstances as a result of the costs of dealing with the local impact of the pandemic. This is on top of years of deep cuts in government funding.

The new burdens agreement between central and local government is supposed to ensure that the costs of new duties required by the Government are met by the equivalence of the costs. This amendment seeks to underline this commitment and to ensure that sufficient additional finances are made available. The consequence of failing to do so would undermine the purposes of the Bill, for which there is unanimous support.

There has already been an extensive debate on skills shortages and the definition of competences during consideration of other amendments. Many noble Lords have expressed their concerns. I wish to underline the importance of this issue, which has been expressed throughout Committee.

Amendment 10 seeks to ensure that the Scottish Government consider similar legislation. It highlights how Governments across the UK are slowly beginning to mirror a federal system. I find this fascinating. I look forward to the Minister's reply.

Lord Greenhalgh (Con): My Lords, Amendment 10 seeks to introduce a review of Scotland and Northern Ireland, to take place no later than 24 months after Royal Assent on the Fire Safety Bill, which would subsequently be laid before Parliament.

From the outset, I remind the Committee that the Fire Safety Bill applies only to England and Wales. Fire safety is a devolved matter. The amendment proposed by the noble Lord, Lord Kennedy of Southwark, does not consider the vastly different fire safety regimes in place in Northern Ireland and Scotland. It is unlikely that the Scottish Parliament or Northern Ireland Assembly could make an equivalent legislative provision to reflect the fire safety legislation in England and Wales. In any event, the review proposed would not have any legal effect in either Scotland or Northern Ireland as the Bill extends and applies to England and Wales only. Such a review would be to no purpose.

[Lord Greenhalgh]

I accept that noble Lords have an interest in fire safety in Scotland, Northern Ireland and Wales. However, these matters are the responsibility of the respective devolved Governments, who are best placed to provide an update.

The fire safety regimes in Scotland and Northern Ireland are significantly different from that of England and Wales. There is no direct equivalent of the fire safety order in Scotland and Northern Ireland. Existing fire safety legislation does not have the same features as in England and Wales. This includes a review of the fire safety regime for high-rise domestic buildings in Scotland and delivery of the recommendations from that review. A single source of fire safety guidance for those responsible for these buildings is now available online and fire safety information has been delivered to residents in all high-rise buildings in Scotland. I have been in close dialogue with Kevin Stewart, my opposite number in the Scottish Parliament, about the issues we have been debating in Committee.

I am pleased to inform the noble Lord, Lord Kennedy, that the Scottish Government have today published a formal response to the Grenfell phase 1 report. I look forward to reading it. It is an important step in advancing fire safety in Scotland.

In Northern Ireland, a cross-body building safety programme group has been established and is sponsored by the Department of Finance. The group will consider what actions are necessary in Northern Ireland to improve and develop building safety and how best to incorporate relevant recommendations arising from the Grenfell public inquiry phase 1 report. The group is in the earliest stage of development, identifying relevant representative group nominations to centrally co-ordinate the Northern Ireland response from an operational, regulatory and legislative perspective.

I turn to Amendment 11 and thank the noble Lord, Lord Kennedy, for raising the issue of the Bill's potential impact on local authorities. Obviously, we should mention not just local authorities but fire and rescue services. On a point of principle, we are very clear on the purpose of the Fire Safety Bill, which is to clarify that the structure, external walls and flat entrance doors in multi-occupied residential buildings are within scope of the fire safety order. However, this should not prevent local authorities from acting under their existing powers to address safety risks in multi-occupied residential buildings. They have a duty under the Housing Act 2004 to review areas of risk relating to social housing for which they are responsible, which we would expect to include issues relating to both fire and building safety. With regard to the private rented sector, local authorities also have a duty to take enforcement action if they consider that a serious category 1 hazard, including fire, exists on any residential premises.

We expect that the initial impact on local authorities and fire and rescue services under the Bill to be limited, with the focus being on responsible persons updating fire risk assessments on high-risk buildings, as considered under the risk operating model. I will address this in more detail when responding to amendments on commencement. The costs of the Bill have been set out in the published economic impact assessment. This shows that the costs are shared across all responsible persons for high-rise residential buildings, the majority of which are privately owned rather than social housing. We will keep the impact on local authorities under consideration in future spending reviews as work progresses on fire and building safety in their capacity as both landlords and enforcing authorities. I will also give an undertaking that we will consider the impact on local authorities of the Bill and consultation in line with the new-burdens principles. I should also inform noble Lords of the additional funding support being provided. We have invested £20 million in funding fire safety protection and a further £10 million for the fire risk review programme.

As regards the draft Building Safety Bill, we are planning measures to strengthen the fire safety order, and the impact of these on fire and rescue services and local authorities will be considered. I should warn noble Lords that the Bill will have about 140 clauses, whereas this Bill has three clauses, which we seem to have spent several hours debating in some detail.

Amendment 12 calls for a review of fire skills 12 months after the passing of the Bill. Significant work has been undertaken by the industry-led Competence Steering Group and its subgroup on fire risk assessors and fire engineers, to look at ways in which to increase competence and capacity in these professions. This includes proposing recommendations in relation to introducing a register of fire risk assessors, a competence framework and a system of third-party accreditation for fire risk assessors. The final report from the CSG was published on the Construction Industry Council's website on 5 October and the MHCLG, the HSE and the Home Office are considering the recommendations of the report in detail.

The noble Lord, Lord Kennedy, will be aware that we recognise the concerns raised by the fire risk assessor sector on its capacity and competency to undertake and update fire risk assessments for the buildings in scope of this Bill. We want to ensure that we will take a proportionate approach to commencing the Bill that limits any potential impact on the fire risk assessor sector. The noble Lord has raised a very important issue with this amendment. The Government have been working with the fire risk assessor sector to develop a clear plan to increase its capacity and capability. The Home Office and the MHCLG are jointly funding the British Standards Institution to develop technical guidance to support professionals to assess the fire risk posed by external wall systems. This guidance will support industry to upskill more professionals to take on this work and will increase the quality and consistency of these assessments.

Although this amendment is in line with our plans to develop the capacity and capability of the sector, I do not think that this work needs to be enshrined in legislation. I also think that a slightly longer timeframe for such a review of 18 to 24 months would be more appropriate, as such a period would allow for more meaningful change, given the need to recruit against the background of the Covid-19 pandemic.

Finally, I emphasise that understanding the skills shortage and having a plan to address that, as raised by the noble Lords, Lord Kennedy and Lord Stunell,

must be a driving mission of this Government. Therefore, I would be happy to meet with the noble Lords in relation to Amendment 12 before Report to discuss the ongoing work that I have outlined. In the meantime, I ask noble Lords not to press their amendments.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank everybody who has spoken in this short debate and thank the Minister for his response. All the issues that have been highlighted here are important; I will look carefully at what the noble Lord has said, particularly on skills. We need to ensure that in this new regime we have properly skilled, competent professionals doing this work. As many of us have said before, there should be no race to the bottom, and it is really important that we do not have unqualified people doing this work. On the issue of funding the fire service and local government, there are issues about the capacity of local authorities and the fire and rescue services to do the work, so funding is important. We need to see that done well.

On the noble Lord's comments in respect of learning from institutions in other parts of the United Kingdom, there are many examples where one particular part of the United Kingdom might do something a different way, and that sometimes might be better than the way we do it here. It is good that we learn from those, whether it is sprinklers in Wales or what they do on modern slavery in Northern Ireland or in Scotland, or the way we do things here in England. We need to ensure that we all learn from each other. If the Minister is meeting ministerial colleagues in other institutions, that is a very welcome and a good thing to know. At this stage, I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Amendments 11 and 12 not moved.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): We now come to the group consisting of Amendment 13. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this amendment to a Division should make that clear in the debate.

Amendment 13

Moved by ***Lord Kennedy of Southwark***

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

"Application of the Fire Safety Order to short-term lettings premises

(1) The relevant authority must, by regulations under section 2, amend article 2 of the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541) (interpretation) as follows.

(2) In the definition of "domestic premises", after "one such dwelling);" insert—

"but does not include any premises let to persons for gain as holiday or short-term accommodation during the occupancy of the premises by such persons.""

Member's explanatory statement

The amendment will clarify that the Regulatory Reform (Fire Safety) Order 2005 applies to holiday lets.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 13 in my name sets out to highlight what may be a gap in the protection afforded by the fire safety order. The fire safety order does not apply to domestic premises, other than bedsit properties or houses in multiple occupation, so hitherto the protection afforded by the order did not extend to houses in respect of residential blocks. It effectively stopped at the flat's front door. The order applied only to the common parts and the planning and arrangements for escape through those common parts of the building.

It appears to be the position of the Government—and I stand to be corrected if I am wrong—that they have always assumed that where someone lets their property for a period of time through Airbnb or some other website, which they otherwise use as their residence, or do so for part of the year, then during the time that the flat is let through Airbnb or some similar organisation, the flat is subject to the protections of the order. However, I doubt that this can be a correct interpretation of the order as it currently stands: domestic premises are defined in the order as all those premises, and parts of premises, occupied as a private dwelling which are not used in common by the occupants of more than one such dwelling.

If a person lets out his private dwelling for part of a year, or just a room in that private dwelling, it is difficult to see why or how the premises ceases to be a private dwelling; with a room let out through Airbnb it certainly does not mean that that room or the whole premises are being used in common by the occupants of more than one dwelling. If we look at the terms of service provided by Airbnb, there is talk of "guests" and the statement:

"You understand that a confirmed booking of an Accommodation ("Accommodation Booking") is a limited licence granted to you by the Host to enter, occupy and use the Accommodation for the duration of your stay, during which time the Host (only where and to the extent permitted by law) retains the right to re-enter the accommodation according to the agreement with the Host."

Having guests in your private dwelling where you retain the right to re-enter is not a typical situation that the law treats as your property ceasing to be a private dwelling because you have let it out.

6 pm

The government guidance is confusing in respect of the letting of rooms in dwellings. *Letting Rooms in Your Home: A Guide for Resident Landlords* identifies that properties classed as bedsits or shared accommodation—HMOs—must be licensed and comply with various regulations, including the fire safety order. However, it goes on to state that

"if the property is a House in Multiple Occupation fire safety could be an important consideration … But as for any other home, it is generally a good idea to ensure that the occupier 'knows their way round' the house, to help prevention and escape from fire. Smoke alarms are strongly advised: ideally one should be fitted on each floor of the property. It is also highly recommended to keep at least a fire blanket in the kitchen; and depending whether, for example, several people are likely to be cooking and/or smoking, having a fire extinguisher could be a sensible precaution."

If Airbnb and the like automatically create a type of rented accommodation that takes premises from being domestic premises occupied as a private dwelling and makes them subject to the fire safety order, one would expect the guidance to say that—but of course it does not. Article 26 of the fire safety order states:

"Every enforcing authority must enforce the provisions of this Order … in relation to premises for which it is the enforcing authority".

[Lord Kennedy of Southwark]

Enforcement of the order involves an assessment by the fire authority of what in its patch comes under the fire safety order, as well as some kind of inspection regime. Some fire authorities in centres may attract many tourists—such as central London or any other big city—for whom there are plenty of flats that are offered through Airbnb or similar sites. The remainder of the time, they are used as private dwellings. It must be a matter of serious doubt whether the fire authority has the capacity to handle all these properties, or even know how many such properties are out there; it is even more doubtful that the owner of such a property has been advised or read the guidance that spells out that the premises may be suddenly subject to the fire safety order while they are being used for guests through Airbnb or a similar site.

Freedom of information inquiries have revealed that no fire authority has ever done a risk assessment on an Airbnb property and that authorities are unaware of how many there are in their areas. If the Government are correct that the order does not require this amendment to bring Airbnb properties within the protection of the order, no harm will be done by spelling it out in the way that this amendment does. The Bill provides a reminder of an issue for the Government: people renting premises temporarily should be protected by the appropriate fire prevention measures being in place for the property. It should have been assessed and the information should have been properly conveyed to them by their host; this should be an obligation under law. At the moment, the law is silent in that respect, which is the point of this amendment.

I repeat and emphasise the point that in people's homes there will be a single staircase to get out of the building. Have people been told what the arrangements are to get to the corridors? We need to look at this carefully. Many homes are being used on a temporary basis effectively as hotels or a place to stay. What work has been done by the company or the owner to ensure that the guests are properly aware of the risks and how to get out of a building safely? I do not believe that we are there yet; this raises an important issue. I hope that the noble Lord, Lord Parkinson, can see the point that I am trying to make and that he will address it when he responds to the debate. I beg to move.

Lord Mendelsohn (Lab)[V]: My Lords, I am grateful to the noble Lord, Lord Kennedy, for proposing this amendment and for giving us an opportunity to raise a serious if unintended deficiency in what fire safety law covers through the 2005 fire safety order. Far too often, attention is drawn to these matters only when they have terrible consequences, when it is essentially too late. I give great credit to the noble Lord, Lord Kennedy, for raising the issue in a timely fashion. To the best of my knowledge, it would be in time to save lives rather than deal with the consequences.

I am keen that the Minister should reflect very carefully on the excellent speech made by my noble friend Lord Kennedy, and that, if he cannot provide a comprehensive assurance from the Dispatch Box, he should tell the House that the matter will be taken back to the department and full consideration given to it. I hope that the Government will either accept this amendment or introduce their own amendment.

Identifying the cause of the absence of any agency doing any oversight investigation, regulation or consideration of online rental accommodation led to a clear view from the relevant agencies that they were not required to do so. In investigating why the amendment was so necessary, and why I am so keen to support it, the answer became evident in the compelling legal opinion written by the outstanding leading counsel Richard Matthews QC, who is rightly acknowledged in all independent legal guides as not just in the top band of legal silks on health and safety, but by some as the very best legal mind in the country on those matters. He has not just been counsel for the Health and Safety Executive but has acted for the Crown in many fire-related prosecutions.

I say this just to emphasise the strength and merits of the legal arguments that my noble friend Lord Kennedy presented, and the fact that the Minister needs to ensure that his legal talking points have the right level of force and expertise to provide assurance to the House.

Richard Matthews' opinion is that the fire safety order does not apply to domestic premises except those specifically defined in the order. The crucial question with regard to short-let holiday, business or other accommodation available through a variety of online or digital accommodation services—commonly known as Airbnb-type accommodation —is whether it falls within scope or ceases to be a domestic premises.

Mr Matthews' advice could not be clearer. He states:

"I am firmly of the opinion that a house or flat that is let on the specific terms of the licence through Airbnb or similar accommodation for a short period of time does not necessarily by operation of the law thereby cease to be a domestic premises occupied as a private dwelling. Furthermore, I am very firmly of the opinion that a room or space in a house or flat that is let on the specific terms of the licence through Airbnb for a short period of time, whether the remainder continues to be occupied by the host as a residence, does not thereby cease to be a domestic premises occupied as a private dwelling, nor that it thereby becomes premises used in common by the occupants of more than one such dwelling. In addition, I am further of the opinion that both the Government's written parliamentary response and its *Do you have paying guests?* guide are both inaccurate in this regard, and an apparent assertion that whenever anyone pays to stay in a property other than to live there as a permanent home, then the property is not a domestic premises occupied by someone, not necessarily a paying guest, as a private dwelling, is wrong as a matter of law.

Nothing demonstrates that his interpretation of the law is incorrect, which explains the fact that there has been no enforcement.

There is a clear, though unintended, gap, and it should be plugged as soon as possible. The onus must be on Airbnb hosts, and similar types of host, to have made the assessment or, where necessary, sought professional advice, to protect their paying guests. In addition, fire authorities should have some knowledge of where these properties are, or at least consider whether there is a need for inspection if a particular block or premises is being used within these terms. I strongly support the correction of the anomaly in the Bill that the amendment provides, to clarify the roles

and responsibilities of temporary landlords in respect of fire prevention measures in their properties.

Finally, there is one other significant matter, which Mr Matthews' extensive legal research and experience also uncovered, that should be addressed. It is that the 2015 smoke and carbon monoxide alarm regulations, which were brought into force at a time when the service provided by Airbnb and other such companies was well established and well known, for Airbnb premises to be within the ambit of the smoke and carbon monoxide regulations by reason solely of a licence obtained by Airbnb, such a licence would have to amount to a tenancy granting the right to occupy the premises as the guest's only or main residence. An Airbnb will not have the effect of putting premises outside the ambit of the smoke and carbon monoxide regulations within that protection. I would be grateful for the Minister's assurance that this too—which is surely another unintended lacuna—will be remedied, as well as the one addressed by the main amendment.

Baroness Pinnock (LD) [V]: My Lords, the phrase "unintended consequences" comes to mind in Amendment 13. This short amendment seeks to ensure that there is clarity in connection with short holiday lets that use either part or the whole of a building, and it is one that we support. I am no legal expert, but the issues just raised by the noble Lord, Lord Mendelsohn, must be considered and a definitive answer provided by the Government.

I thank the noble Lord, Lord Kennedy, for seeing that there is an omission in the Bill and a possible unintended consequence, and for tabling the amendment so that we can have this discussion. I hope the Minister is able to respond positively.

Lord Parkinson of Whitley Bay (Con): I thank the noble Lord, Lord Kennedy, for raising the important issue of the treatment of short-term accommodation and holiday lettings under the fire safety order, and I am grateful to all noble Lords who have taken part in this brief but important debate. The noble Lord is absolutely right to draw attention to the constantly changing models and companies through which people might rent out their accommodation, particularly in this year of staycations when, I am sure, people have been staying in many more domestic properties in the UK.

As the noble Lord noted, domestic premises are expressly excluded from falling within the fire safety order. Article 2 of the order provides a definition of domestic premises which states that, to be considered as such, it must be occupied as a private dwelling. That is the key bit: the fire safety order applies at any time when the property is being leased or rented because it is not being occupied as a private dwelling. In effect, the property becomes a non-domestic premise when rented out and falls within the scope of the safety order. That is the Government's view of the legal position. Under the fire safety order, owners of these types of premises have a duty as the responsible persons to undertake a fire risk assessment and put in place fire precautions that are adequate and appropriate to manage the risk of fire, and the fire and rescue services are the enforcing authorities for the order in such accommodation.

Anyone who provides accommodation for paying guests can also find helpful information on the GOV.UK website, which the noble Lords, Lord Kennedy and Lord Mendelsohn, mentioned. The noble Lord mentioned by name the *Do You Have Paying Guests?* guidance, which is for people who are responsible for small and short-term accommodation. I can tell noble Lords that the guidance has recently been updated and that the new version will be called *Making Your Sleeping Premises Safe from Fire*, which will be a short guide for sleeping premises, small businesses and small blocks of flats. That is the part of the tranche 2 FSO guidance review, which will be published alongside the laying of secondary legislation. I hope that when the noble Lord sees that, it will assuage some of his concerns.

We do not agree with the legal position of Mr Matthews that the noble Lord, Lord Mendelsohn, read out; if a property is rented out through Airbnb and so on then it falls within the scope of the fire safety order. I hope that reassures the noble Lord that the fire safety order already applies in the scenario that he outlines in his amendment, and that he will therefore be content to withdraw it. We will certainly be happy to continue discussing this point as we approach Report.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I have had no requests to speak after the Minister, so I call the noble Lord, Lord Kennedy.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank everyone who has spoken in this short debate. The Minister has confirmed that the Government's view is that the fire safety order applies when the property is used for a paying guest. The question that therefore arises is: does the person providing the property know the obligation that they have created for themselves? Do the sites that let these properties out for them understand that? Do they know their responsibilities? Have they made adequate provision to ensure that when the property is being let, it is safe? Are people aware of the ways in and out of the property, what the fire precautions are and so on?

There is another point here. How does a fire authority know that all these properties in its area are being let and used, and how can they do inspections? Just think how many properties must be let in London. How will the London fire brigade or the local authority ever know which properties they are? How can they ever do any inspections? How can anyone ever be responsible? If no one is responsible, either the order is wrong or we have not created the conditions for the order to be effective.

Those are really serious issues, so I hope the Minister will look at them between now and Report. It is not just an anomaly; it is potentially a disaster waiting to happen, and we need to do much more than we are now. At this stage, I am happy to withdraw the amendment, but I will bring it back on Report. I beg leave to withdraw the amendment.

Amendment 13 withdrawn.

[Lord Kennedy of Southwark]
6.15 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, we now come the group beginning with Amendment 14. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this, or any other amendment in the group, to a Division should make that clear in the debate. This amendment was to be moved by the noble Lord, Lord Porter of Spalding, but he is not able to join us today, so I call the noble Lord, Lord Kennedy of Southwark.

Amendment 14

Moved by ***Lord Kennedy of Southwark***

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

"Fire Safety Code of Practice

(1) The relevant authority must by regulations amend the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541) as follows.

(2) In Article 26(2) (Enforcement of Order), at the end insert "and any Code of Practice made pursuant to Article 50".

(3) In Article 50 (Guidance)—

(a) in the title, at the beginning insert "Code of Practice and";

(b) after Article 50(3) insert—

"(4) The Secretary of State must issue a Code of Practice with the aim of securing that—

(a) all fire risk assessments of higher-risk residential buildings necessary to comply with this Order are carried out as soon as practicable and before those which are lower-risk, and

(b) privately-owned and publicly-owned buildings are equally able to access the resources available to carry out such work.

(5) Before issuing a code under this Article the Secretary of State shall—

(a) publish proposals, and

(b) consult such persons as he or she thinks appropriate.

(6) Before issuing a code under this Article the Secretary of State shall lay a draft of the code before Parliament.

(7) Where a draft is laid before Parliament under Article 50(6), if it is approved by both Houses of Parliament—

(a) the Secretary of State may issue the code in the form of the draft, and

(b) it shall come into force in accordance with provision made by the Secretary of State by order.

(8) A failure to comply with a provision of a code shall not of itself make a person liable to criminal or civil proceedings; but a code—

(a) shall be admissible in evidence in criminal or civil proceedings, and

(b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

(9) The Secretary of State may amend any code of practice issued pursuant to this Article by publishing proposals for the amendment of the code and consulting on those proposals and seeking the approval of Parliament in the same way as for the first code, but a code issued under this Article shall continue in force until it is amended.""

Member's explanatory statement

This amendment, and the others in Lord Porter's name, would require the Government to introduce guidance in the form of an approved code of practice, before commencing the Bill. The approved code of practice must seek to ensure that the limited resources available to carry out the reviews of fire risk assessments required by the Bill are allocated between buildings on the basis of risk.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I am very happy to move this amendment on behalf of the noble Lord, Lord Porter of Spalding. I shall speak to Amendments 14, 19 and 23, in the name of the noble Lord, Lord Porter, and also to Amendment 22, in my name, in this group.

For many years, the Local Government Association has been calling for councils and fire services to be given effective powers and meaningful sanctions to ensure that residents are safe, and feel safe, in their homes. This is an absolute priority for councils. The introduction of the Fire Safety Bill is welcome, and I hope it is an important step in the right direction. But there is concern about some of the practicalities of the Bill, which has led to the noble Lord, Lord Porter, tabling Amendments 14, 19 and 23.

Many building owners, including councils, will need to review the fire risk assessments on their properties as a result of this Bill. It is right that they do so, because where cladding systems are on residential buildings, we must be sure that they are safe and that appropriate measures are in place if they pose a risk. It also takes forward one of the recommendations of the review of the Grenfell Tower inquiry. To make sure that this new duty can be delivered, we need to ensure that there are enough specialists to review the cladding systems. It has become clear that there is likely to be a significant shortage of assessors to carry out these reviews. Indeed, many of those qualified to conduct normal fire risk assessments do not have the specialist skills necessary to include external wall systems in a risk assessment. Insurers are also reluctant to provide professional indemnity cover for this sort of work. This leads to several potential problems. First, responsible persons, including the councils, may be unable to fulfil their obligations under the Bill. Secondly, there is a risk that a demand/supply imbalance drives up the cost of assessments, adding to the burdens on the housing revenue account or the taxpayer. Thirdly, if owners with sufficient resources pay the higher cost to get all their buildings assessed, irrespective of the risk to residents, high-risk buildings with less well-off owners will be left at the back of the queue—and that queue could last for some years. Finally, delays in some buildings obtaining fire risk assessments could compound the problems caused by the inability of residents to obtain EWS1 forms and the consequent effects of this on mortgage applications, even in buildings that have safe cladding systems.

The amendments of the noble Lord, Lord Porter, seek to ensure two outcomes: that responsible persons are protected in law, where they are genuinely unable to review their fire risk assessments, and that higher-risk premises are assessed before lower-risk premises. The precise method of doing this will be set out in the code of practice. It will rely on risk assessment tools which

take account of the various factors that increase the risks fire poses in a block of flats—for example the height, if they have sprinklers, and the number of escape routes. This is being developed, as we know, by the National Fire Chiefs Council and the Fire Industry Association.

This tool should allow buildings to be placed in various categories of risk, with each category to be given a different level of priority and a different deadline to complete its assessment. In order to get these effective deadlines, the Government need to undertake research to establish a clearer picture of the number of buildings likely to be affected in different categories and the number of assessors available. This is unlikely to happen before the Bill commences, so either the Bill needs to be delayed or deadlines need to be capable of being changed relatively quickly.

A balance will have to be struck between commencing the Bill as soon as possible, so that the fire service can use its powers, and assessing the disparity between the number of fire risk assessments that will need be reviewed and the capacity of the fire risk assessment industry to do so. Parliament needs to make this judgment, and the amendment in the name of the noble Lord, Lord Porter, includes a requirement for the approved code of practice to be laid before both Houses for scrutiny.

The tragedy that unfolded at Grenfell Tower must never be allowed to happen again. We need a building safety system that works. The amendments in the name of the noble Lord, Lord Porter, seek to ensure that, on the issue of fire risk assessments, we have a practical set of proposals agreed by this House. I hope that the Minister will respond positively and I am very happy to move the amendment on behalf of the noble Lord. I beg to move.

Lord Shipley (LD) [V]: My Lords, I support the amendments in this group and I acknowledge the sterling work done by the noble Lord, Lord Porter, over the past three and a half years to improve building safety following the Grenfell fire. The central aim of the amendments is to ensure that resources are used to best effect in reviewing the fire risk assessments required by the Bill. The criteria for prioritisation must be based on anticipated levels of risk, so the process and the code of practice outlined by the noble Lord, Lord Porter, seem appropriate to meet this objective. That said, I hope the Minister has understood the concern of many speaking today that improving fire safety needs faster outcomes, and that nothing in this group should mean longer delays for assessments that are felt to be less urgent.

Finally, Amendment 22 is obviously key to the delivery of the intentions behind this group, because it requires sufficient fire safety inspectors to be available, as the noble Lord, Lord Kennedy, has emphasised. It is a clear duty of government to ensure that enough qualified inspectors are available, and I very much hope the Minister will shortly confirm that this is indeed the Government's intention.

Baroness Pinnock (LD) [V]: My Lords, it is a pity that the noble Lord, Lord Porter, is not able to move his amendment today, as his is a good idea. A fire safety code of practice would draw together many of the issues raised elsewhere in the debate into one place. I am confident that there will be, of course, prioritisation of buildings at risk, but this amendment would ensure that this is set out and therefore legitimised. Sharing the costs of fire risk assessments according to assessed risks is another important element of fairness that has to be acknowledged, and putting it in the Bill, as this amendment does, is wholly positive.

Throughout today's debate, it is clear that there is full support for the Bill and its purposes. All the amendments seek to do is to improve it for the benefit both of fire safety and for residents' peace of mind. I look forward, therefore, to the Minister's response.

Lord Greenhalgh (Con): My Lords, I thank my noble friend Lord Porter for his sterling efforts regarding building and fire safety, and for his leadership over many years in local government and as a former chairman of the Local Government Association. I thank him for tabling amendments on a proposed improved code of practice to support the commencement of the Bill. I thank the noble Lord, Lord Kennedy, for stepping up in his stead, and for his amendment, which would ensure that the Bill is not commenced until the Government have completed a full review of the capacity of fire safety inspectors to undertake the duties set out in the Bill.

I will respond to the amendments relating to commencement guidance. As noble Lords are aware, the Home Office established a task and finish group, chaired jointly by the National Fire Chiefs Council and the Fire Sector Federation, whose role was to recommend the optimal way to commence the Bill. Members of the group were drawn from local authorities, housing associations, private sector developers, the fire sector and selected fire and rescue services. My noble friend is aware that the Local Government Association was represented—as I said, he served as chairman until July last year.

The Home Office received the group's recommendations on 28 September. It advised that the Bill should be commenced at once for all buildings in scope on a single date, subject to prior conditions being met: first, that responsible persons should use a risk-based tool to develop an effective strategy to prioritise their buildings for an updated fire risk assessment—a tool is currently being developed by a sub-group of the task and finish group; and, secondly, that the Government issue statutory guidance to ensure that this tool is used by responsible persons.

I thank the task and finish group for providing its expert views to the Home Office. I understand the intention behind this amendment: that guidance—whether or not it is defined as a code of practice—needs to have the appropriate legal status to ensure effective use of the risk-based tool by responsible persons. I am aware my noble friend also has concerns that fire engineers and competent professionals might increase their fees, making it difficult for social sector landlords to get expert advice on buildings that may be high-risk.

This Government want to ensure that the resources of fire engineers and other competent professionals are targeted to buildings based on risk. Equally, this Government want to ensure that there are no delays to commencing the Bill. I am sure this is a view we all

[Lord Greenhalgh]
share. The Government are concerned that this amendment will delay the commencement of the Bill; for example, it would place a statutory duty on the Government to undertake a public consultation on a draft code of practice and to lay the final code before Parliament before the Bill and the code come into effect by order. This process will delay the Bill's commencement until at least summer 2021.

I do not consider that guidance alone will resolve my noble friend's concerns about how fire engineers and other competent professionals prioritise their resources. The right building blocks need to be put in place to create system change. That is why we are working with the fire risk assessor sector to develop a clear plan to increase its capacity and capability. The Home Office and MHCLG are jointly funding the British Standards Institution to develop technical guidance to support professionals to assess the fire risk posed by external wall systems. This guidance will support industry to upskill more professionals to take on this work and increase the quality and consistency of these assessments.

We continue to work closely with the joint chairs of the task and finish group, as well as the LGA, to ensure that the Government provide a proportionate response to their advice.

The amendment tabled by the noble Lord, Lord Kennedy of Southwark, aims to ensure that the Bill is not commenced until the Government have completed a full review of the capacity of fire safety inspectors to undertake the duties set out by the Bill. The Bill clarifies the role of fire and rescue services in enforcement against responsible persons who have not adequately assessed the fire safety risks of a building's structure, external walls or flat entrance doors in multi-occupied residential buildings and, where appropriate, put in place general fire precautions. The amendment aims to ensure that before the Bill is commenced the Government undertake a review of the fire and rescue services' capacity to carry out inspections and, where appropriate, take enforcement action in line with the clarification the Bill provides.

Fire and rescue services have the resources they need to do their important work. Decisions on how resources are best deployed to meet their core functions are a matter for each fire and rescue authority. This includes deciding on the number of fire safety officers needed to deliver their fire safety enforcement duties under the fire safety order.

The amendment is unnecessary as the Government issued an impact assessment for the Bill, which considered the impact on fire and rescue services. The impact assessment sets out that additional work for fire safety inspectors arising from the Bill will cover reading and reviewing of relevant parts of the updated fire risk assessment and, where appropriate, undertake a visual inspection of the external walls and flat entrance doors. Our central estimate of the additional cost to fire and rescue services is £5.9 million over the 10-year period assessed.

Overall, fire and rescue authorities will receive around £2.3 billion in 2020-21. Stand-alone fire and rescue authorities will see an increase in core spending power of 3.2% in cash terms in 2020-21 compared with 2019-20. The Government have invested a further £30 million of funding in fire and rescue services and the National Fire Chiefs Council this year. This includes: £10 million allocated to fire and rescue authorities to improve protection capability and undertake more audits of high-risk premises; £7 million to allow fire and rescue authorities to respond effectively to the findings of the Grenfell Tower Inquiry; £3 million to bolster the NFCC's Grenfell improvement capacity and capability and to drive strategic change from the centre; and £10 million to deliver the Government's building risk review programme and to form a central protection hub within the NFCC.

The National Fire Chiefs Council published a revised competence framework document earlier this year for business fire safety regulators to assist fire and rescue services in assuring the competence of their fire safety staff. This work will support common competence standards across fire and rescue services' protection staff.

6.30 pm

I also remind the noble Lord about the comments made in the other place by his Front Bench in wanting the Bill to be commenced as early as possible. That is exactly what this Government want; this amendment has the potential to delay the commencement of the Bill.

I would be happy to meet my noble friend Lord Porter between now and Report regarding Amendments 14, 19 and 23, but I hope that he is reassured that the Government are listening to his concerns. In the meantime, I ask the noble Lord to withdraw the amendment.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I have received no requests to speak after the Minister so I call the noble Lord, Lord Kennedy of Southwark.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I was very happy to move this amendment on behalf of the noble Lord, Lord Porter of Spalding. He is highly regarded in this House and in local government, where he led the LGA for many years with distinction and was respected by councillors of all parties and none.

There have been constant themes this afternoon: the effectiveness of this order; the need to make sure that it works properly; the competence of the people who will have responsibilities under the order and who they are; and the resources available to local authorities and others to ensure that they can deliver what they are responsible for. I am sure that we will come back to these issues on Report. However, I am pleased to hear that the Minister is prepared to talk to the noble Lord, Lord Porter, on the issues he raised in this amendment; I know that the noble Lord will take these matters up with him between now and Report.

At this stage, however, on behalf of the noble Lord, Lord Porter, I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Amendments 15 to 18 not moved.

Clause 3: Extent, commencement and short title

Amendments 19 to 23 not moved.

Clause 3 agreed.

Amendment 24 not moved.

House resumed.

Bill reported without amendment.

House adjourned at 6.32 pm.

Grand Committee

Thursday 29 October 2020

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.30 pm

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): My Lords, the hybrid Grand Committee will now begin. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering except when seated at their desks, to speak sitting down and to wipe down their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

The microphone system for physical participants has changed. Your microphones will no longer be turned on at all times, to reduce the noise for remote participants. When it is your turn to speak, please press the button on the microphone stand. Once you have done that, wait for the green flashing light to turn red before you begin speaking. The process for unmuting and muting for remote participants remains the same.

Education (Exemption from School and Further Education Institutions Inspections) (England) (Amendment) Regulations 2020

Considered in Grand Committee

2.31 pm

Moved by ***Baroness Berridge***

That the Grand Committee do consider the Education (Exemption from School and Further Education Institutions Inspections) (England) (Amendment) Regulations 2020.

Relevant document: 30th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, it might appear slightly incongruous to be discussing today the lifting of an exemption from routine inspection that applies to certain outstanding schools and colleges at a time when Ofsted's routine inspections are suspended in light of the coronavirus pandemic. In September last year, when the Government announced the intention to see the exemption lifted, we obviously could not have anticipated this situation.

The pandemic has highlighted the vital role that schools and colleges play in the lives of children and learners, supporting not just their education but also their well-being. I pay tribute to the exceptional hard work that has enabled leaders and staff to meet and overcome so many challenges. There will be much to do to make up for the lost education that has occurred because of the pandemic, and Ofsted inspection will play an important part in this through the challenge and support it provides.

Routine inspections are currently suspended, and we are keeping under review the timing for their resumption in the light of our response to the pandemic. When the time comes to restart Ofsted's routine inspections, we believe, perhaps more than ever, that they should apply to every category of school and college. That is why this debate and these regulations are important.

As noble Lords will be aware, Ofsted was founded on a principle of universal inspection. The introduction of the exemption in 2012 represented a significant departure from this, but it was designed to reflect the need to increase autonomy and freedom and enable our best schools and colleges to focus on providing excellence, with Ofsted's inspection being concentrated where it was needed most. That policy has borne fruit: standards have risen, with 86% of schools now rated good or better, up from 68% in 2010.

The principles of autonomy and trust in our best schools and colleges to educate effectively remain relevant today, but must be balanced against the need to ensure that inspection arrangements support improvement most effectively and offer an appropriate level of reassurance to parents, schools, colleges and the public more generally. Here, we believe, the balance has now tipped in favour of universal inspection. Many exempt schools and colleges have not been inspected for a considerable time, in some cases over a decade. Of these, some were judged outstanding under previous Ofsted inspection frameworks, which placed different expectations on them. This is starting to erode confidence in the outstanding grade.

However, this is not just about loss of confidence; it is also about the opportunity that Ofsted's new education inspection framework presents in supporting improvement. The new framework, introduced in autumn last year, is a real step forward. It strengthens the focus on having a carefully considered and sequenced curriculum as well as making improvements to judgments on leadership, personal development and behaviour.

Removing the exemption now will mean that schools and colleges can benefit from having an independent assessment under Ofsted's new framework, and that parents, students, schools and colleges can benefit from having the up-to-date rounded picture of quality and performance that only regular inspection can provide. Noble Lords will be reassured to learn that the sector has given its support to our proposals: in response to our public consultation, around 90% of respondents agreed with the removal of the outstanding exemption for schools and colleges, and around 80% agreed with our proposed approach to doing that.

I thank the Secondary Legislation Scrutiny Committee for its consideration of the regulations, which revoke the current regulations that provide the exemption, meaning that all outstanding schools and colleges will once again be subject to routine inspection. They also introduce requirements for when routine inspections of former exempt schools must take place. Specifically, the chief inspector will be required to carry out an initial inspection of these schools before 1 August 2026.

[Baroness Berridge]

In some cases, where the initial inspection shows that outstanding performance may not have been maintained, there will be a follow-up inspection before 1 August 2027. However, thereafter, subsequent inspections must take place within the five-year window that applies to other schools. The timescales for college inspections are not prescribed in the regulations but, as a matter of policy, will follow a similar approach to schools. As I mentioned earlier, our intention is that the resumption of routine inspections for former exempt schools and colleges will align with the planned general restarting of Ofsted's routine inspections. These regulations do not signal that resumption; they simply enable it to happen at the appropriate time.

Given the strong public support for the proposals, the benefits that a return to universal inspection will bring and my reassurance that, in deciding when to resume the routine inspection of outstanding schools and colleges, we will of course remain sensitive to the impact of the pandemic, I hope that noble Lords will also be supportive of these regulations. I am sure that we will all wish to ensure that all schools and colleges can benefit from having an up-to-date picture of their performance once the exemption is lifted and routine inspections return. I beg to move.

2.37 pm

Baroness Massey of Darwen (Lab) [V]: My Lords, I shall limit myself to speaking about the inspection of schools. This is an issue that has been debated for many years, and now we are in unusual circumstances with Covid-19, which could influence how inspections are carried out when they resume. Years ago, when I was a teacher and school governor, the role of inspections was discussed intensely. One argument was that too much inspection could cause disruption to teaching and the running of schools. It made staff nervous and encouraged them to prepare specially for inspection visits. In theory this should not have been necessary, but it was a huge distraction. The future of a school could depend on an inspection report. As such, we moved to the current system of inspections every five years, with exemptions for outstanding schools, unless there were concerns about a particular school.

Today's amendment regulations remove the exemptions and require these outstanding schools to be inspected routinely every five years. What are the arguments for this? First, schools can change rapidly due to factors such as a change of head teacher, substantial turnover of key staff or change of intake. Secondly, Ofsted's frameworks for inspection have expanded in relation to, for example, greater emphasis on the importance of pupils' emotional and social development and relationships within schools. In June 2019, Ofsted's chief inspector called for the exemption for outstanding schools to go, with Ofsted stating, in relation to the 2018-19 academic year, that:

"Only 16% of outstanding primary and secondary schools inspected this academic year retained their top Ofsted rating".

I have recently spoken to educationalists who believe that schools should not be inspected in the midst of Covid-19 until all pupils have attended school for at least a full year because schools should be focused on providing a safe environment for pupils and staff. Managing schools at the moment requires constant vigilance and adaptation in accordance with circumstances. They should not be distracted from this by Ofsted inspections, and Ofsted should not be expected to carry out its usual duties. The focus should rather be on providing safety and a productive educational experience for pupils in school and those in remote learning.

However, Ofsted could make visits to schools when they return, identifying good practice in some aspects of a school's offering, such as the use of pupil premium funding and a broad and balanced curriculum, including the arts, humanities and foreign languages for all. Such inspectoral reports could be turned around quickly and serve as models of good practice for sharing with other schools. Ofsted inspectors could also visit parents who are home-schooling during Covid-19. They could assess the needs of such households: computer availability and online lessons, for example. Home-schooling is not, generally, well regulated. Good practice and limitations during a difficult time could provide valuable experience for sharing. I look forward to the Minister's comments on these concerns.

2.40 pm

Lord Addington (LD): My Lords, as the noble Baroness suggested when she introduced these regulations, they are not something that most of us would find objectionable. Indeed, most of us would say that they were not before time. In a regime where inspection is supposed to be a good thing, it is something of an anomaly that schools can go a decade without being inspected. I suspect there would be almost universal agreement on that.

The real question is: what are the inspections going to achieve? The noble Baroness, Lady Massey, touched on one or two of the things I was going to mention. What is the process? What are you examining? If we hope that schools are not just exam factories, what else are we doing here? What of the outside bits and how are they being addressed? We really must call this to the attention of everybody involved. We need to know what else we are getting out of this. Exams are nice and easy to assess—pass or fail, grades at a certain level, done. They are rubber-stamped and you move on. However, there has been a growing consensus that we have put too much attention on this in recent years. Can the Minister give us some idea of what else we are doing and what else will be inspected?

My particular interest is in special educational needs. I do not know if, after all these years, I still have to declare my interests, but I will. How are we dealing with this? For instance, given the most recent situation, how are we learning to use computers better? Many people who have special educational needs will in later life—after school—mitigate their downsides by using computers. How good are we at making sure that people are introduced early on to using this type of technology? There is no one set way of doing this. How are we looking at it? How have we worked it through? This is directly relevant to the recent experience of people having to work online.

I welcome the main thrust of these regulations. If you are going to have an inspection, it should be regular and no group should be removed. The idea that somebody

has got to the top once and is not inspected again is a bit like saying in a sport that, once you have got promoted, you can stay there. It does not work. Standards can slip. Can we just have a look at what else comes here?

2.43 pm

The Lord Bishop of Durham [V]: My Lords, I declare my interests as set out in the register. In welcoming warmly this new instrument to ensure that all schools are subject to inspection in the same way, we recognise the continuing value of inspections as a whole. I want to associate myself warmly with the comments made by the noble Baroness, Lady Massey, and the noble Lord, Lord Addington. However, although we welcome this instrument, we would also welcome the further postponing of Ofsted and school inspections, including the Section 48 inspections of schools with a religious designation, throughout the pandemic period.

As we all know, these are exceptional times and there are extraordinary levels of pressure for all, meaning we must adopt a unique approach, tailored to the circumstances. I note that where schools have been exempt for a long period they could well have a heightened sense of stress about the reintroduction of inspections, simply because it is an experience they have not had for a long period.

Considering the well-being of those working in schools should be of primary importance, all the more so given that head teachers and schools are already experiencing unusually high levels of pressure due to the pandemic. This unprecedented environment of stress and difficulty for teachers must be acknowledged by the Government in the choices they make. Therefore, I urge that consideration is given to further postponement of the resumption of the inspections regime. This would communicate an apposite awareness of the circumstances schools are facing and a necessary level of care from the Government by valuing the welfare of teachers, supporting them in their work and alleviating any undue stress.

Does the Minister agree, especially at this time when there has already been so much pain, confusion and stress caused by the pandemic, that our politics must be compassionate? We must look after those educating the nation's children by adopting a supportive approach for schools. I ask the Minister how the skills and expertise of Ofsted staff will be used to support schools known to be most in need of improvement so that, when inspections recommence, those schools are at least operating satisfactorily and with a vision that they can become outstanding themselves.

2.45 pm

Lord Lucas (Con) [V]: My Lords, I declare my interest as editor of the *Good Schools Guide*. I congratulate the Government on their decision to bring forward this regulation. In a system with a lot of leeway given to individual schools and multi-academy trusts, inspection is a crucial way of checking on problems and of spreading good practice. The inspection corps can do neither as well as they should unless they see outstanding schools regularly, because that keeps them up with best practice and gives them a yardstick against which to measure other similar schools that are not doing as well. It gives them a fund of experience and anecdote with which they can encourage schools that they are visiting that could be better schools.

I hope that, in time, the Government will consider moving back to the old—I mean very old—system of annual, informal visits from inspectors. Things move fast. The requirements and the interests of education are not best served by four-year intervals between inspections. We are coming up to a period now where schools will have been through the shock of Covid. In various ways, they will have had to have dealt with online learning. There may be a lot of learning and a lot of change to come from that. Not to have the benefit of an experienced inspector's visit for four years is a great waste of that opportunity.

When the Government encounter things they would like schools to come up to speed on—for example, the exemptions under the Equalities Act or the proper inclusion of black history in the curriculum—again, four years is a long time for the country to wait before the Government know whether these things are being performed, carried out or taught in the way in which they would hope.

I also think that a system of light-touch inspections—just a day or half-a-day's visit—would give parents much more confidence in how their school was going. It would mean that small wobbles in otherwise good schools were dealt with easily, informally and quickly without the whole weight of an inspection team descending on the school. We would need fewer big inspections, and I would hope overall it would be a cheaper system.

2.48 pm

Lord Adonis (Lab): My Lords, the arguments for and against this regulation are finely balanced—more finely balanced than some of my colleagues have suggested. When I was Minister for Schools, our principle of action was intervention in inverse proportion to success. There are so many problems that we have to confront in the education system and there is such a big problem still in the English education system of the long tail of chronic underperformance that the arguments for investing finite resources—and good inspectors are a finite resource—on schools that are clearly successful does not seem to be worth while on a cost-benefit basis.

Having said that, when I was Minister we inspected all schools and I can hardly complain that the present Government moved to a system where they exempted a whole category of schools from inspection. I supported that move at the time, as it was the direction of travel in which we were moving. It is not the case that you do just one or the other. You can tell pretty well from data what is happening to school in terms of standards. It sounds as if this decision is now firmly taken, but these things are constantly under review, particularly in this crisis.

However, I would have preferred it if we did not move to a wholesale system of devoting Ofsted resources to clearly successful and outstanding schools and did so only either when the data gave cause for concern or, crucially, where there are parental complaints. Parental complaints are always a good guide to when there are

[Lord Adonis]
issues in a school that need external intervention. I simply say that to the Minister to bear in mind in the next iteration which will come with these regulations.

However, my bigger concern is that all this is beside the point at the moment. We are in the middle of a crisis, where no inspections are taking place, as the noble Baroness said. It is not the case that the school system will get back to normal, as we had all hoped, in a month or two; it now looks like it may not get back to normal for another year. Meanwhile, inspections closed down entirely in that period.

The issues at stake are significant and urgent. I will make some suggestions to the Minister. It is always important to understand what went wrong in the past and what we can get right in the future. In my view, a fundamental mistake was made in March and April in closing the school system down. Legally, all state schools were closed in March. That was a fundamental mistake. I am not just saying that in hindsight; I said it at the time. It might have been the case that some schools could not operate physically—although, as it happens, I think it was a mistake to close all schools physically in March and April—but there should have been the expectation that schooling would continue as near to normal online. That did not happen in the beginning.

The Government have corrected that now with the continuous learning provisions, which mean that where schools cannot continue physically there will be online learning, but at the moment Ofsted is playing virtually no part in this process at all. My concluding suggestion to the Minister is that Ofsted should play a part in this. It is producing some guidance, and I understand from reading the new regulations that have been issued that it is monitoring the performance of schools in online learning. However, I do not think that this is enough if we are to be in this situation for many months. I will make three specific suggestions to the Minister about what Ofsted should be doing over the coming months while we are still in the Covid-19 crisis.

First, Ofsted should be not just giving advice, but grading all schools by the quality of their online learning, a good deal of the assessment of which can, by definition, be done without needing to visit the school, although I think some visits to schools would be perfectly appropriate in this instance. Secondly, it should be highlighting best practice for the provision of online learning away from school, including best practice in use and provision of IT, and the provision of wi-fi where that is not available. Thirdly, it should be not only highlighting best practice, but naming the best schools in the country in provision of education during the coronavirus pandemic so that other schools can imitate them. In my experience of education, imitating the best is the best way of levelling up.

2.53 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a pleasure to follow the noble Lord, Lord Adonis, with whom I strongly agree on some things and strongly disagree on others. I strongly disagree with his suggestion of further grading of schools, but strongly agree with his suggestion about the sharing of best practice.

It might seem strange that a Peer from a party that wants to abolish Ofsted should welcome a statutory instrument ending exemption from Ofsted inspection for some schools. I speak today to do just that, for the assumptions behind the exemption were an illustration of the deep faults and failure of the philosophy that has underpinned the operation of Ofsted, and, indeed, our entire education system, for decades. At the base was the assumption that schools were competing against each other in league tables, chiefly for exam results, but also for the Ofsted ratings that were closely related to them. Schools that managed to get those results, aided by their ability to perform and show themselves to the best advantage for a day or two, could clear the bar of outstanding and then be assumed to be in a special category, able to run off into the sunlit uplands away from Ofsted.

Meanwhile, their peers that did not do so faced the regular descent of the terrifying ordeal of the inspection. I speak as a former school governor, so I have some experience of this. The price of so-called failure was often the forced loss of local control, or at least the need to fight hard to fight it off. Moulsecoomb Primary School in Brighton, which I follow closely through my noble friend Lady Jones of Moulsecoomb, whose interest in the matter is obvious, conducted a poll in which 96% of respondents were opposed to forced academisation, yet still the push continued.

This ranking and testing has been and continues to be profoundly damaging, while also—as the statutory instrument implicitly acknowledges—failing to recognise that things can go wrong in a school very quickly. Parents have been encouraged to compete, to use their knees and elbows to get their child into a school based on this magic talisman of "outstanding", which has very little meaning and often reflects the socioeconomic circumstance of the pupils.

Of course, as several other noble Lords have noted, Ofsted is an institution with its own problems. As the Accountability Commission noted, inspectors were being spread too thinly, judgments were often dubious and reporting unreliable. It is built on competition and is widely judged to be unfit for purpose.

What is needed instead is a co-operative, supportive, continuous process of local and regional sharing of best practice. Every school has great aspects that it can share with others. One might be strong in maths, another strong in sport, another great at supporting pupils in difficult circumstances. If we think about the current situation with Covid-19, each school will have its own particular problems, but many will also have identified solutions that could be—[*Inaudible*]—will recognise these widely varying and often quickly changing strengths and weaknesses.

Rather than anxiously scanning league tables and thinking about whether they can afford to move house, parents should be able to look as a matter of course to their local school, at the centre and part of their community, and see the children attend it. Those schools should be working together for the best results for every pupil in the area, not being pushed to expel or force out difficult pupils. This would be of great benefit, particularly to the most vulnerable.

The Minister said that schools would benefit from an updated picture of their performance. I respectfully suggest that every school knows its own strengths and weaknesses far better than any outside inspector—so, indeed, do teachers for individual pupils. They do not need an outside test to do that, which is why I take this opportunity to ask the Minister to consider cancelling the 2021 SATs in the light of Covid-19, as the More Than a Score campaign is asking, as well as introducing alternative assessment systems for GCSEs and A-levels next year in the difficult circumstances that we will clearly face.

2.57 pm

Lord Jones (Lab): My Lords, I thank the Minister for her introduction, clarity and brevity, and for a helpful Explanatory Memorandum. The inspectorate has been a ubiquitous, necessary and often feared power and presence for many generations. For context, I refer to the great Education Reform Bill—the GERB, as it was called—from the noble Lord, Lord Baker of Dorking. From at least the time it became an Act, the curriculum and the inspectorate have been central.

I declare my interests. As a young person I headed a department, using chalk and blackboard. As a full-time regional official at a teachers union I served in three administrations, with responsibility for schooling and collaborating with the inspectorate, and sanctioning two special schools. I also chaired a diocesan board for schools. I never saw an inspector in my class or in my school.

With hindsight, the inspectorate should have been more robust and more active. It valued its independence. It perceived itself as a favour elite; it was superb, it wrote well and it cared. It had a low profile. Today, in a society of rapid social and economic change, the inspectorate is vital—and there is Covid-19.

I shall instance, again for context, an example of the impact of an inspection. It was of a good primary school in a working-class area. The head teacher was lively and a genuine leader. There were local problems but they were overcome. An inspection was scheduled but it was quite some weeks away. The prospect got on top of the professional staff—it was all they could think of. It was a blight. One experienced and highly regarded female class teacher in her 40s told me tearfully of her apprehension. The prospect terrified her and, without a doubt, psychologically she was broken. It was saddening to behold. In this sort of situation, an inspection can be counterproductive. This person was a valued staff member but so very obviously distressed.

Deploying the inspectorate requires constant revision, and clearly the Minister has that in mind. But I pose the question: who is for the children? It is "time irredeemable", as the distinguished Lady Plowden once said in her caring report. The inspectorate is for the children; the head teacher is for the children; the conscientious parent, one hopes, is always for the children; and clearly the Minister is. One might therefore argue that the forces are balanced and that the Minister has decided.

3.01 pm

Lord Storey (LD) [V]: Perhaps I ought to declare an interest, as my schools were inspected by Ofsted four times. I found the experience both rewarding and supportive. I welcome this SI. I never quite understood why we disapplied Section 5 for outstanding schools. Was it a reward for becoming outstanding—to set them apart from the others—or was it, as the noble Lord, Lord Adonis, suggested, to free up inspectors' time? I can understand saying to outstanding schools, "Next time, you will have a lighter-touch inspection", but now we have schools that have not been inspected for over a decade and, as we know, schools change. We owe it to parents, pupils and students that the schools are improving all the time and providing high-quality education.

The daughter of a friend of mine was appointed head of maths at an outstanding school. She was an experienced maths teacher. She tried to bring in much-needed changes to the syllabus but was constantly thwarted by cries of, "Well, no. We're an outstanding school". Needless to say, when it was inspected, it went into the "needs improvement" category. In September, Ofsted introduced a new education framework with a stronger focus on a broader, balanced curriculum for pupils and students. The outstanding schools should be the exemplars of change. If they are not inspected they cannot do that.

Since March, Covid has caused the suspension of inspections, with the situation kept under review. The date of January 2021 for the resumption of inspections is very optimistic. Whatever date is chosen, does the Minister agree that, with everything the schools have been through, they need a period of readjustment to normality? What about the problems they have faced, such as isolation perhaps, as we have heard from other noble Lords? If these inspections are to be carried out, perhaps they need to be light touch and peer to peer—to be supportive, to help the schools. In the old days we would have local authority school advisers and school inspectors who would be in schools now to support those local schools. Sadly, that does not happen unless, perhaps, you are in a multi-academy trust.

It will, of course, take six years to inspect all outstanding schools, but their safeguarding practices for their children and young people in many cases will not have been checked for 10 whole years. It is very important that it should not take six years to do this. Will the Minister give us an assurance that safeguarding will be checked as soon as is practicable? By the way, will she tell us why Ofsted inspectors are not routinely required to carry their DBS accreditation when visiting schools?

The Ofsted inspection system has been very important to our school system. Most independent schools are now inspected by Ofsted, but a number of private schools are inspected by the ISI or SIS. The Chief Inspector of Schools has been asking for greater powers to check on private schools, and the DfE agreed to limited monitoring activity. In the case of schools inspected by the ISI, there were only 17 reports; and by the SIS, six reports. The SIS has now closed down, but the ISI monitors more than 1,000 larger private schools. As the schools themselves pay for that monitoring, some might argue that that is a vested interest. Does the Minister not think that now is the time for all schools, including private schools, to be inspected by Ofsted as well?

[Lord Storey]

Finally, I reflect on the fact that if you ask teachers about Ofsted, only 18%—and that includes teachers from outstanding and good schools—agreed that Ofsted was a reliable and trusted arbiter of schools. That was down from 35% the previous year. On those figures, if Ofsted were a school, it would be put into special measures.

3.05 pm

Lord Watson of Invergowrie (Lab): My Lords, Labour supports these regulations, as they reverse the legislation that was incorporated into the Education Act 2011 that we opposed at the time. That we are considering them at all today is down to the persistence of my noble friend Lord Hunt of Kings Heath, who then spoke for the Opposition on education. In Committee on the then Bill he said:

"I would have thought that something as important as the exemption of categories of school from Ofsted inspections would, at the least, deserve to be treated as an affirmative order".

He convinced the Government, who introduced their own amendment to that effect.

My noble friend also said then, in respect of the amendment that was being made to the provisions of the Education Act 2005:

"I have considerable concerns about this. The fact is that not all outstanding schools remain outstanding".—[*Official Report*, 20/7/11; col. GC 472-73.]

That point has been echoed by many noble Lords today. Again, my noble friend was right. The National Audit Office found that, as of August 2017, 1,720 schools had not been inspected for six years or more, with 296 not having been inspected for more than a decade. My son's school proudly proclaims that it is Ofsted-rated outstanding. In my experience it remains outstanding, but that is something of which Ofsted is unaware, because it last inspected it in 2008—three years before my son was born.

According to Ofsted's most recent annual report, 17% of outstanding schools have not had a full inspection in the last 10 academic years—which would be the equivalent of 765 schools. Tellingly, of the 305 schools that Ofsted has re-inspected, 80% were subsequently downgraded, with 74 rated "requires improvement" and 14 rated inadequate.

These regulations are overdue and it is no surprise that the consultation found 89% in agreement for both schools and colleges. But there are wider issues regarding schools. The four Ofsted grades are not defined in law. The framework for inspection belongs to HMCI and there is no direct accountability about what it contains. HMCI "decided" to delay inspection of free schools from the second to the third year after its establishment some four or five years ago. HMCI could not exempt academies in perpetuity; that could be done only by regulations. However, our main objection to the original legislation still stands—regulations can exempt schools from inspection.

Last year's Labour manifesto set out our policy to replace Ofsted and transfer responsibility for inspections to a new body designed to drive school improvement. This is not the place for detailed analysis, but we believe that the current grading system is flawed and often counterproductive. For instance, it is not appropriate to attempt to summarise everything about such a complex organisation as a school in a single grade and the current system encourages unhealthy competition between schools, one result being those garish banners that some display—no matter how dated—to advertise their status. Of greater concern, getting a poor grade often makes a school's task in improving that much harder, as recruiting staff and pupils can become more difficult.

More generally, schools with favoured intakes are far more likely to get good or outstanding grades than schools with challenging intakes. That was a finding of the 2016 Education Policy Institute study of school inspections.

The Explanatory Memorandum accompanying these regulations seems unduly optimistic in stating that routine inspections will recommence in January 2021. It also outlines the mixed-model approach for the resumption of inspections of hitherto exempt schools and colleges, which are not due to be completed until August 2026. That represents an inordinate delay in addressing what the DfE itself has identified as an existential defect in the current system. If that is a staffing issue, it needs to be addressed to allow these inspections to be completed much sooner. The memorandum is silent on the question of costs associated with the introduction of these regulations. Indeed, it states:

"The impact on the public sector is minimal".

That impact should involve employing additional Ofsted staff, in that case, to ensure that the anomaly of the outdated status of some schools is ended as soon as possible. I invite the Minister to comment on that point in her reply.

3.10 pm

Baroness Berridge (Con): My Lords, I am grateful for the thoughtful and helpful insights given during this important debate, and I hope to cover many of the comments that have been made this afternoon.

I thank the noble Baroness, Lady Massey, for her comments and for agreeing with us that the time is now right for lifting the exemption. On the point that only 16% of those outstanding schools that were inspected in the academic year 2018-19 retained their Ofsted rating, it is not surprising to see such a drop because Ofsted inspects such schools specifically based on its own risk-assessment tool and from looking at the performance data. In those inspections, Ofsted should be targeting those schools with an outstanding rating where the data suggest that they no longer provide outstanding education.

On the point about school inspections that the noble Baroness raised, noble Lords will know that routine inspections are currently suspended. We are taking time and will look carefully, bearing in mind all the circumstances, at the appropriate time to resume those inspections. We will continue to look at how the pandemic has impacted on schools. When those inspections resume, it will be part of Ofsted's inspection framework to inspect remote education as well, although that is not part of the visits that it is doing currently.

The noble Baroness also asked about Ofsted making good practice visits to schools. During the autumn term, inspectors have been visiting a sample of schools to gather information about how schools have been managing the return to full-time education, including how they are managing remote education and delivery

of the curriculum. These visits are designed to be a collaborative process, and Ofsted will use those visits to produce certain thematic reports, which will be published.

As I hope noble Lords are aware, Ofsted has outlined that it will visit every inadequate school during the autumn term, because of course it is particularly important for us to know how those weak schools have been faring with the effects of the pandemic. It might also be useful for noble Lords to be aware that there has been an offer of support to the weakest schools, in terms of operational capacity, from national leaders of education. Hundreds of schools have taken up that offer.

We are sensitive to, and take into account, the poorest rating of schools, and the new framework will outline a broad and balanced curriculum. The new framework is not just an educational assessment, as the noble Lord, Lord Addington, mentioned; it is also about personal development and behaviour. As most noble Lords will be aware, although a school is given one overall grade, the Ofsted report grades the school on four different factors as well, and the report includes narrative.

On the issue of safeguarding, it is important to remember that the exemption has not removed any of Ofsted's rights—and obligations, actually—to go into any school, on a no-notice inspection, where it is aware of any safeguarding issues. That was also the case during the pandemic, when that was the only reason that Ofsted could go into schools.

On the points about home education made by the noble Baroness, Lady Massey, it is important to make a clear distinction between children learning their school curriculum at home and those who are electively home educated. Noble Lords will be aware that we had a consultation on the latter.

On the issue of the long-standing interest raised by the noble Lord, Lord Addington, it is important to remember that the exemption never applied to special schools or AP because of the particular issues involved. There is also that broad framework. I hope that I shall have addressed his points about computers.

On the sharing of best practice, which many noble Lords mentioned, edtech has been a real focus during the pandemic. The department opened a fund to enable those schools that did not have either Google Classroom or Microsoft Education to use one of those platforms. There are about 50 schools that are edtech demonstrator schools, which are the best of the system and provide school-to-school support, so that we share best practice. Noble Lords will have heard me mention numerous times that some of our best academies have come together to provide the Oak Academy, which has been made available as a free resource during this academic year, providing some of the best teachers, so that any school can access that resource.

As the right reverend Prelate said, compassion is of course at the heart of what the Government are trying to do in all their response to the global pandemic, and the supportive approach that he outlined is the nature of Ofsted's visits. These are visits to schools; they are not inspections resulting in a grade. The school is sent a letter, which is then published and which is useful. As I said, there will be thematic reports.

On Ofsted's role, which a number of Lords including the right reverend Prelate touched on, Ofsted's support when no inspections were happening was invaluable. Ofsted staff were redeployed, particularly as part of react teams in the department and in local authorities. Numerous Ofsted inspectors went in and back-filled for local authority children's services during the pandemic, so they have shown that they are flexible and have given the support that we would have wanted them to provide in relation to the pandemic.

I appreciate the comments of the noble Lord, Lord Adonis, who is right that much of Ofsted's response to inspecting outstanding schools was based on exam and performance data—Progress 8 and Attainment 8—which was part of its assessment of risk. There is a new framework, which was widely consulted on and welcomed by the sector when it was introduced last autumn, but an outstanding Ofsted grade will be based on the old framework. To retain confidence in the grades that we have, they all have to be on the same framework. I have outlined other reasons but that reason—to maintain confidence in the system—could also stand alone.

There is widespread confidence in the system. Ofsted has done small focus-group sampling of parents, but it is common knowledge that Ofsted is a well-known brand. Apparently, when certain people were educating at home, they gave themselves an Ofsted grade in their front windows. Parents look to it because it is independent of the department and schools. It is important that we know about the quality of education and safeguarding from an independent agency.

The noble Lord, Lord Adonis, made some suggestions. Yes, we had the initial response to the pandemic, but the Prime Minister has made it clear that schools will be closed as a last resort in lockdown, because it is important to keep education going, and for children's well-being. Best practice is shared online, as I have outlined. One of the positives of the pandemic in the education sector was a breaking down of the walls between maintained and academy schools, and between different academy chains. There was widespread sharing of best practice—exemplified by Oak Academy, as I said—across the system to make sure that all children got the best education that they could in the circumstances.

I therefore dispute the comments of the noble Baroness, Lady Bennett. There is confidence in Ofsted and it serves a great purpose. Yes, some schools are stronger in particular subject areas so, as noble Lords will be aware, particular schools are teaching schools for maths or English—the beacon that other schools can go to and get the best resource. There is no contradiction between having a local school and having, within the system, a focus on excellence in education. Parents and children should have that choice within the system. She mentioned SATs. We want them to continue, because they are the best way to know whether children are catching up and to have a baseline for figures. She also made comments about forced academisation. Some 75% of sponsored mainstream academies are good or outstanding. I look at the noble Lord, Lord Adonis, because I think that the system began under him. It is not a panacea for all situations in all schools, but it has been shown to be a major tool to improve some of our most difficult schools. We will not cancel the standard assessment tests.

[Baroness Berridge]

I shall answer the noble Lord, Lord Jones. We appreciate that an Ofsted inspection is sometimes stressful for teachers but there is only half a day's notice now, so we hope that any stress is for a limited time.

I welcome the comments from the noble Lord, Lord Storey. There are always safeguarding inspections, so no school has been exempt from those during this period. The ISI is now in a joint working relationship with Ofsted so, in terms of the monitoring that he outlined and Ofsted's statutory duty in that matter, we are satisfied that they work well in a constructive relationship where they share best practice. Of course, Ofsted inspects a proportion of independent schools; not all the schools are inspected by the ISI.

To the noble Lord, Lord Watson, I say that there is an honest assessment by Ofsted in relation to the quality of education, behaviour and leadership, and a strong focus on the curriculum.

I am aware that time is running short and I may not have answered precisely or particularly the questions asked by the noble Lord, Lord Watson, but I will address any further related matters. I commend the regulations to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): I remind Members to sanitise their desks and chairs before leaving the Room.

3.21 pm

Sitting suspended.

Arrangement of Business

Announcement

4.02 pm

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): My Lords, the hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear face coverings, except when seated at their desks, to speak sitting down and to wipe down their desks, chairs and other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division of the House, the Committee will adjourn for five minutes.

Higher Education (Fee Limits and Student Support) (England) (Coronavirus) (Revocation) Regulations 2020

Considered in Grand Committee

4.03 pm

Moved by ***Baroness Berridge***

That the Grand Committee do consider the Higher Education (Fee Limits and Student Support) (England) (Coronavirus) (Revocation) Regulations 2020.

Relevant document: 30th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, I will remind us of the background to these regulations and the circumstances leading to the introduction of student number controls. On 4 May 2020, my right honourable friend the Secretary of State for Education announced a package of stabilisation measures for the higher education sector in response to the Covid-19 pandemic. One such measure was the introduction of temporary student number controls.

As noble Lords may recall, following the onset of the pandemic, it was expected that fewer international students would travel to start their first year of study in England in the academic year 2020-21. This was in addition to an already known demographic low of 18 year-olds, and the risk of a high number of deferrals from domestic students. The real risk at the time was that our world-renowned higher education sector would have suffered a drop in fee income, which would have had significant financial implications for many providers.

Further, in the early part of this year, we became aware of aggressive recruitment practices being employed by some higher education providers, as they sought to make up the potential shortfall in student numbers and income by offering places to students to whom they would ordinarily not have made offers, for example, by making wholesale unconditional offers in March. While it is understandable that individual higher education providers would seek to ensure their own financial stability, this strategy could have had serious and detrimental consequences for the sector. It would have caused an uneven distribution of students, leaving some providers with even fewer students and income than they would have planned for, putting their financial sustainability at risk.

To counter this, higher education providers in England were allocated an individual student number control—a set number of students we believed constituted a fair maximum share of student recruitment for this academic year. To accompany this, we also made the Higher Education (Fee Limits and Student Support) (England) (Coronavirus) Regulations 2020. These regulations, which were the subject of rigorous debate in the House, provided that if providers exceeded their individual number, they would face a reduction in the maximum tuition fees they could charge for the academic year 2021-22. The purpose of this was to address the consequences of providers exceeding their allocated numbers, and thereby reducing the tuition fee income available to the sector as a whole, by reducing the sums available to the offending provider through the student finance system in the subsequent academic year.

Additionally, providers in the devolved Administrations which provided courses to English-domiciled loan-funded students were also allocated an individual student number control applicable to those students in the academic year 2020-21. In this case, the regulations provided that recruitment beyond this would result in a reduction in the maximum tuition fee loan available in the academic year 2021-22. The regulations—which we seek to revoke by the instrument we are debating today—set out in law what those reductions in the maximum tuition fee and tuition fee loan amounts would have been. These were short-term measures, to

be in place for one academic year only, and were a necessary targeted response to the unprecedented circumstances caused by the Covid-19 pandemic.

However, as noble Lords will be aware, there were unexpected issues with the A-level grading, resulting in the decision to use centre assessment grades, where those were higher than the calculated grades that were initially awarded, so as to avoid some students receiving grades that did not accurately reflect their performance. It then became clear that an unexpectedly high number of students had met the grades required to meet the conditions of the offer for their first choice place at university. This was in large part an issue of timing, with the move to centre assessment grades coming shortly after higher education providers had allocated the majority of their places. As a result, many providers were oversubscribed and would have been at risk of exceeding their student number control if they honoured these offers, through no fault of their own. We therefore announced our intention to remove the temporary student number controls for the coming academic year, a decision that was widely welcomed by the sector and Members across both Houses.

The introduction of these regulations, revoking the original regulations, means that the temporary number controls that were previously notified to providers will no longer apply, nor will the financial consequences of exceeding their student number controls, which would be unfair in these unique and unprecedented circumstances. I beg to move.

4.08 pm

Baroness Garden of Frognal (LD): My Lords, I thank the Minister for introducing these regulations. Our A-level students this year were so messed about with changes to their teaching and examinations that we must be as indulgent as possible over their university opportunities. When state and disadvantaged pupils missed out on their universities through government incompetence over a flawed algorithm, it was right for universities to try to put it right. Of course, collegiate universities such as Oxford and Cambridge did not have the flexibility to admit more students once they had admitted their first tranche, in spite of some bitter disappointments from bright, disadvantaged students who missed out through no fault of their own but the system.

I have two questions for the Minister. Where universities recruit above their original target, what assurances are there that sufficient teaching facilities will be available? Classes and classrooms have finite capacity, although with so many now resorting to online teaching only, this is not such an issue for many subjects. However, for practical, technical, scientific and artistic subjects, there is a need for laboratory, workshop and studio capacity and in-person teaching. What assurances are there that universities have enough equipment and laboratory space for all the additional students they may have enrolled?

We know from our Chamber that personal presence is far more effective than looming on Zoom. Yet very many students will not have any personal teaching this academic year. Tutorials, seminars and lectures seem destined to be virtual. My grandson, who is in his third year at Glasgow, has been told to expect virtual teaching for all this academic year. This is a far cry from students' expectations and will inevitably be an inferior form of university experience. So my second question is: what plans do the Government have to reduce tuition fees to reflect such different teaching and learning? To pay £9,000 for a year of Zoom seems very poor value for money.

4.10 pm

Lord Loomba (CB) [V]: My Lords, it is right that the Government alter course where necessary, especially where original regulations, introduced in haste, are no longer fit for purpose. With universities initially offering more student places to offset an anticipated reduction in numbers due to the pandemic, those regulations sought to control the amount of money that universities would receive in the next academic year from English-domiciled students to ensure fairness. What do the Government propose to do to ensure that this type of situation does not occur in future if we are still in the same position next year or something else causes a similar situation to arise?

This issue needs also to be addressed across the devolved nations. The original legislation permitted the English student loans finance system to curtail the amount of funding available for English-domiciled students proposing to study in the devolved nations if universities there exceeded their student control number quotas. What discussions have been had with the devolved nations to ensure that in future, if English universities offer more places to students from the devolved nations to gain a financial benefit, they will not be prevented from doing so?

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): After the next speaker, the noble Lord, Lord Forsyth, I shall call the noble Baroness, Lady Bennett.

4.12 pm

Lord Forsyth of Drumlean (Con) [V]: My Lords, I am most grateful to the Minister for explaining the regulations, which are clearly required, but I found myself very much in agreement with the noble Baroness, Lady Garden: students are being given a rough deal. I am disappointed that the Government are not using their regulatory powers to reduce the amount of fees that students are expected to pay. Many of them are having lectures online, and many are required to stay in accommodation because of Covid and are not able to go home, while those who can go home find that they are still required to pay the rent. Although some institutions have offered relief to take account of that, that is no good to the half a million or so students who are in private accommodation.

I suggest to my noble friend the Minister that she consider the recommendations included in the report of the Economic Affairs Committee—which I chair—entitled, *Treating Students Fairly*, which highlighted that all students from the moment they start their courses are expected to pay interest on the loans they take out to cover their fees. The interest rate charged is the rate of inflation plus 3%, yet the Government are currently borrowing money on a 10-year basis at 0.1%. This is an absolute rip-off. Cannot the Government at

[Lord Forsyth of Drumlean]
the very least cut the rate of interest on student loans to that at which they borrow money or, even better, go back to the previous situation in which students were not required to pay interest at all until they had graduated from their courses?

I also ask my noble friend to consider allowing students to repeat a year at no cost. Many students, particularly those who have no access to practical university experience, might prefer to take a year out and come back. Many of them, of course, are no longer able to find jobs in bars and restaurants to supplement their income. They are having a very bad time, and I do not see anything coming from the Government that recognises it. After all, they are not able to claim universal credit or housing benefit. It is true that some universities have hardship funds, but they are completely inadequate to the scale of the problem being faced.

My noble friend has obviously been thinking hard about protecting the universities as institutions. Could we think a little harder about protecting the students, who are having a terrible time? It is a terrible time induced by a policy which is about protecting the elderly. Young people are seen to be less at risk from the consequences of Covid, but they are taking the brunt of the consequences of the measures being used to combat it.

4.15 pm

Baroness Bennett of Manor Castle (GP) [V]: I thank the Deputy Chairman for the advance notice of the schedule change.

Yesterday, in the internal market Bill debate, the noble Lord, Lord Callanan, found it objectionable that my noble friend Lady Jones of Moulsecoomb used the term hypercapitalism. I refer to this now because this statutory instrument is a second attempt to manage extreme competition between universities. What were once communities of scholars working for the advancement of knowledge are now pushed to operate like cut-throat businesses. The "aggressive recruitment practices" to which the Minister referred are a perfect illustration that the Government might like to study to further their understanding of the term. I draw on the Wiley Online Library discussion of hypercapitalism, which states that

"critical scholars believe that once separate spheres of culture and commerce now overlap … culture and the way of life in a hypercapitalist society becomes subsumed by the commercial sphere".

Our universities are a case study for that subsuming. They have been pushed to become businesses by the policies of successive Governments over decades.

The original statutory instrument was a small concession from the Government, who were forced by the reality of our current circumstances to move away from their ideology of allowing market forces to run wild. They now acknowledge that there is a deep state of chaos. I am pleased to follow the noble Lord, Lord Forsyth of Drumlean, and others in asking for cuts to student fees—a cut , or perhaps the dropping of all fees this year, given the kind of suffering to which the noble Lord referred. On another occasion, I shall talk about why they should be dropped altogether.

While competition between factories to produce the best tools, or between market gardens for the tastiest produce, might not be a bad thing, competition in the educational sphere, as I noted in our earlier debate on Ofsted inspections, is innately damaging, particularly in the state of confusion we now find ourselves. I can only hope that such confusion helps the Government to see the problems that we are in now and understand the swingeing damage being done by hypercapitalism, which I note the Wiley reference says is also called "zombie capitalism". I would be interested in the Minister's thoughts.

4.18 pm

Baroness Gardner of Parkes (Con) [V]: My Lords, I am very interested in this debate because student numbers being larger than ever may sound a doubtful proposition, but when I went to Sydney University, that was exactly the situation there. Those who had fought in the Second World War were all allowed to come in in unlimited numbers, and they provided a huge surplus of dentists in Australia. Everything had to be taught on a shift mechanism. Eventually—there were no jobs; they were out building roads and things—they discovered that the National Health Service in London was desperately short of dentists. Hundreds came over and did wonders with the national health treatment, particularly of children.

It is children who I think would benefit from these extra numbers in the schools. It is essential that they be maintained and encouraged to go on. It does not matter what the financial difficulties are. We have to think of the future of these people who have now been offered a place at university. We cannot afford to fail to honour that. It is good that we have these numbers. I support the measures.

4.20 pm

Baroness Fox of Buckley (Non-Afl): My Lords, UCU, the UK's largest academic union, had to cancel its online congress because it ran into technical problems. Could anything be more ironic, especially when one of the key matters for debate was the union's opposition to the Government opening universities and the demand that all teaching be online? One does not need a PhD to know that Zoom and Teams are not fool-proof, or lecturer-proof, and are no substitute for face-to-face gatherings. I mention this because the greatest tragedy for students is not fees per se, or numbers, or algorithms, or even being locked up in their halls like prisoners or being accused of killing grannie by a government Minister. The real let-down is being abandoned by the official lecturers' body and far too many politicians, who have sacrificed quality and personal engagement on the altar of safetyism.

I declare an interest as a visiting professor at the University of Buckingham, and I commend the vice-chancellor and staff of that university, who have worked with the student union to maximise as much face-to-face teaching as possible within the restrictions and delivered that blended learning model. The students have loved it, and so have the staff. Indeed, rank-and-file staff and many of my colleagues around the country from my previous life love teaching face to face but are being stopped from doing so by management and, indeed,

their union. It is the cut and thrust of intellectual life, and far better than the stilted, awkward Zoom experience —such as here and now, indeed, in this Room.

Will the Minister commit to championing this higher education model, based on live human interaction, and challenge managements and the UCU which say that non-essential teaching should be done online? I want the Minister to ask what is "non-essential teaching". It is perhaps a bit like the Welsh Assembly's non-essential shopping. Any institution that believes it delivers non-essential teaching does not deserve fees or students. I would like to see the Minister and the Government championing face to face far more than they are doing, instead of getting caught up in the technicalities.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): After the next speaker, the noble Lord, Lord Liddle, I shall call the noble Lord, Lord Storey.

4.22 pm

Lord Liddle (Lab): My Lords, I welcome this statutory instrument as drawing a line under a particular chapter of confusion in government policy. The real question I want to put to the Minister is: what is going to happen next? What is the government's future policy on fees and student numbers? At the moment, we have a higher education sector that has no certainty about the financial perspective in which it operates, and there is a duty on the Government to show greater clarity.

I have some sympathy with what the noble Lord, Lord Forsyth of Drumlean, said about whether students should pay the full fee in the present difficult circumstances. However, just to cut the fee alone and do nothing else would gravely damage the financial position of one of the most successful sectors in Britain: the university sector. What we need is comprehensive reform. We need more teaching grant, because that is the only way to compensate for a reduction in fee. As the noble Lord, Lord Forsyth, mentioned, because of the difficulty students have in getting jobs, we need the reintroduction of maintenance loans.

I am an enthusiast for universities. I was, until recently, the chair of Lancaster University. I agree totally with the noble Baroness, Lady Gardner of Parkes, that we need to get more people into university, but we will not do that successfully unless we have a long-term, sustainable funding model, and that is just totally unclear at present.

4.24 pm

Lord Storey (LD) [V]: My Lords, I agree with what most noble Lords have said. Students get a raw deal. I only have to look at my city of Liverpool, which is in tier 3. Students arrive expecting to get the student experience. Polling suggests that 73% of students who decide to go to university away from home to live in halls of residence or rented accommodation do so because they want that student experience. What we are seeing is students trapped in their halls of residence or rented accommodation, in a local community, and having to do nearly all their lectures virtually. Imagine having to do that day in, day out. I suspect when they go home at Christmas quite a large number will choose not to return to university. That is not how we should be treating our students. I realise there are issues and problems, but we need to have a conversation with students. I do not have some sympathy—I have complete sympathy with students in the situation in which they find themselves.

Obviously, if one higher education provider overrecruits domestic students, it affects other HE institutions and, as the report states, disproportionately increases the public funding flowing to it through the student loan system. In so doing, it reduces the available students for other providers and increases the risk of insolvency of some HE providers, which puts further strain on public finances. There is some irony in a party that believes in letting the market decide bringing in these controls, but I will not go there.

This is the first cap on student places since 2012. All English providers get their student number cap. There are few exceptions: brand new providers do not get a cap, and nor do those in the approved registration category. If providers want to recruit more than the student number control, there are two ways they can do so. The first way allows them to bid for up to 250 extra places in a list of subjects. What are the criteria for the list? Why, for example, is architecture on it? Are we short of architects in the UK? The second way allows providers to bid for any number of courses in a selection of healthcare disciplines—very good. But have we given any thought to using, or would it be possible to use, that sort of top-up to recruit students from disadvantaged backgrounds or from black, Asian and other ethnic backgrounds?

What are these caps, and how are they calculated? We do not know how many students each provider can take this year. The Office of Students and the Department for Education have deemed it inappropriate. Can the Minister tell us why? There should be transparency. After all, it is a basic component of a trustworthy system of student number allocation. HEFCE used to do this rather well, after all. How will students retaking A-levels not be disadvantaged? Is there any mechanism for students who might chose to apply for a January start? Otherwise the cap will apply and they may not get a place.

Of course, there are wider considerations which Covid has accelerated. We could see a record number of students dropping out. In the case of first-year students, universities will be losing up to three years' tuition fee income. Universities are likely to start experiencing more serious falls in income with financially poorer and less prestigious universities being hit first, but richer institutions are not far behind. Instead of waiting for that process of attrition to happen, universities should look at their practices and rather than entrenching old models should look at pioneering new funding structures, increasing access to higher education and, of course, ensuring that students get a proper experience of university.

Finally, can the Minister tell us whether private universities and colleges which offer degree courses included in the cap number?

4.29 pm

Lord Bassam of Brighton (Lab): My Lords, we on the Labour Benches welcome the revocation of the original statutory instrument. We were initially supportive

[Lord Bassam of Brighton]
of the principle of the cap, as we could see scope for emerging aggressive recruitment by a small number of institutions. The decision to use a flawed algorithm to determine A-level results led to a great deal of distress and upheaval for schools, students and universities, which we thought was entirely predictable from early on. The belated but entirely sensible decision to use teacher assessments naturally led to an increase in the number of students seeking a place at university this year. That meant that the numbers cap proposed by the original regulations became unworkable and unfair.

It is to the universities' credit that they were able to respond quickly and flexibly to the disruption surrounding the admissions process and were able to honour their offers. They should be congratulated for the way in which they responded, given that they were simultaneously coping with the farce of the A-levels algorithm and putting in place measures to ensure that campuses were Covid-secure. We record our thanks to the universities that have done a lot in that regard.

We have to hope that chaos does not become an endemic feature of the Government's crisis management. For example, I am advised that guidance is habitually late from the DfE. Universities complain that the guidance they were promised for 11 October about managing the Christmas end-of-term departure of students has yet to appear. Perhaps when the Minister replies, she can advise the Committee on when that might be published. Can she also confirm that the Government have a special Christmas sub-committee, which, apparently, is reviewing all these issues?

I hope that lessons have been learned; it is right that the Government have listened to teachers, the Labour Party, schools, students and others and pushed back the timing of exams in this academic year to give pupils more time to catch up on the learning that they have lost. Frankly, the decision need not have waited weeks to be delivered, after it was called to be made—principally by the Labour Party but by others, the unions in particular. Although it is a necessary intervention, there are concerns that it will not be sufficient to prevent a repeat of the situation that led to the need to revoke the original order.

All the expert advice suggests that the virus will not disappear by next summer, so I have a few questions for the Minister. The HE sector, parents, students and schools are keen to learn how stability will be guaranteed next year. Nobody benefits from the chaos we had this summer, so will the Government be reintroducing a temporary numbers cap? Can we have early decisions on this issue? Have the Government undertaken an analysis of the impact of the removal of the cap on university finances, and on the current distribution of student numbers across the United Kingdom? What other measures have the Government considered to prevent aggressive recruitment practices in the following academic year? Will Ministers look at the impact of variations in overseas student numbers? Can we be reassured that there will be extensive dialogue with the devolved nations before any changes to the caps are considered? Given the additional number of students now attending university, how will the Minister monitor the student drop-out rate in real time while those students are still at university? Finally, have Ministers given any further thought to the mental health needs of students coping with the stress that they are enduring, cooped up in halls of residence, at a time when they do not have the necessary finances and resources to aid themselves?

Those are a lot of questions. While we are happy to support the order, the Government have a lot to answer for in the way in which they are conducting themselves towards universities, students, parents and the governing bodies.

4.33 pm

Baroness Berridge (Con): I am grateful to noble Lords for their contributions this afternoon. In the time available, I shall seek to deal with the many issues that have been outlined.

I say to the noble Baroness, Lady Garden, in relation to capacity for teaching, a £10 million capital fund was made available, recognising the issues that she outlined with physical capacity. The Office for Students oversees that funding, and universities are allowed to ask for additional funding. A number of noble Lords referred to the costs of teaching. Additional teaching grants have been given to subjects that are high cost, such as medicine, nursing and STEM subjects. However, it is important to note that a record number of disadvantaged 18 year-olds, at 23.1%, have gone to university this year. We pay tribute to their hard work.

In answer to the noble Lord, Lord Loomba, we are regularly in touch with the devolved Administrations. As the matters are devolved, there are still some funding arrangements and number controls separate to the student number caps in these regulations which are relevant in that regard. In relation to exams next year, on 12 October we announced that there would be a three-week delay. Next month, we anticipate further guidance and information on contingency plans in relation to next year's exams, should there be a wave of the virus. We regularly discuss matters with the devolved Administrations.

On the points raised by about finance, particularly by my noble friend Lord Forsyth—I pay tribute to his work on the Economic Affairs Committee—we must remember that universities are autonomous institutions; they are not like schools. Fees are a contractual arrangement between an institution and students—but, of course, the Office for Students is there as a regulator. My noble friend will be aware that only high-earning borrowers repay all the interest on their loan. The majority of borrowers do not fully pay back their loans, with borrowing written off at the end of their loan term. That means that reducing the interest rates would in practice benefit only higher earners and reduce the progressive nature of the student loan system.

On the point raised by the noble Baroness, Lady Garden, we want to see an increasing number of students going to university and taking advantage of that offer when it is appropriate for them. I am pleased to say that we have the admissions data for this year and more than 371,000 English-domiciled students have taken up a place at university.

Once again, I am sad to say, I have to disagree with the noble Baroness, Lady Bennett. Universities have a variety of structures: many of them, as noble Lords will be aware, are charitable in their foundation and

have great endowments, and they award degrees and have degree-making powers. Many universities do collaborate, and that is not just something we see with the Russell group. There are many regional collaborations between universities, and many of them are involved very closely with LEPs and institutes of technology and are playing their wider part in the system. Of course, at the moment—this perhaps goes without saying, but I do want to say it—they are at the front line of trying to find a Covid vaccine for us, and they deserve our support.

This is the first time that I have had the pleasure of hearing the noble Baroness, Lady Fox, address your Lordships' House, to which I welcome her. As we know from schools, there is no replacement for the face-to-face nature of teaching, and I commend the work of the University of Buckingham, which is one of our private universities. In answer to the question raised by the noble Lord, Lord Storey, I say yes: any other institutions in the higher education sector that were regulated by the Office for Students, including private providers, were subject to the cap. The noble Baroness is right that the blended offer is the best offer, and we commend that best practice to other institutions.

On the question from the noble Lord, Lord Liddle, unfortunately we cannot provide guarantees and certainties in any area of life at the moment, but we did bring forward millions of pounds of tuition fees to help the cash-flow situation of universities. We do not know what position we are currently in formally. Obviously, we know the admissions data for English-domiciled students, but, as noble Lords will be aware, many international students start their courses in January, so we do not know the full position of universities' finances. Along with the Office for Students, we are monitoring this, and there has been the offer of restructuring—thankfully, at the moment, no institution has come forward needing that support. As part of the wider post-18 education review, the Government are carefully examining the Augar report and its recommendations. We are considering our response to that along with the spending review, and the upcoming further education White Paper will be part of our response to that. Hopefully, this will give some certainty to providers and students.

Regarding the behaviour that we saw earlier in the year from some institutions, it is important to remember that one of the fundamental concerns of government was that this was not in the best interest of students, who, at that point in time, were put under pressure to accept an unconditional offer, which perhaps might not have been the one they wanted. We wanted to guard against that.

On the mental health and welfare of students, which many noble Lords have mentioned, the Minister for Universities in the other place, Michelle Donelan, has written to universities outlining their responsibilities in relation to the mental health and welfare of students, particularly those who are self-isolating. There has been £256 million of funding for this academic year in relation to students' mental health.

Of course there are no maintenance grants anymore, but there is a comprehensive system of maintenance loans, and, as I say, the figures for disadvantaged students going to university mean that we have not seen a drop-off in the numbers of people going to university from those backgrounds, which is of course very important.

Finally, I turn to the comments of the noble Lord, Lord Bassam. Yes, there will have to be particular arrangements in relation to Christmas, but, as I say, we do not know the situation in relation to overseas students. We are in dialogue with the devolved Administrations on the various matters, and we commend all the work that universities have been doing in order to make the offer. Many universities and students have shown enormous resilience. Obviously, this current situation is not ideal for them to study in, but, unfortunately, every sector in our society has been drastically affected by the pandemic, and we are doing what we can to support the sector, offering advice, guidance and restructuring, should any institution need that, as I have said. Therefore, it is right that we take this action to revoke the fee limit regulations in relation to student numbers. I commend these regulations to your Lordships.

Motion agreed.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): I remind Members to sanitise their desks and chairs before leaving the Room.

4.41 pm

Sitting suspended.

Arrangement of Business

Announcement

5.15 pm

The Deputy Chairman of Committees (Lord Bates) (Con): My Lords, the Hybrid Sitting of the Grand Committee will now resume. Some Members are here in person, respecting social distancing. Others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear their face covering except when seated at their desk, to speak sitting down, and to wipe down their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020

Considered in Grand Committee

5.16 pm

Moved by ***Baroness Scott of Bybrook***

That the Grand Committee do consider the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020.

Baroness Scott of Bybrook (Con): My Lords, these regulations relate to the recognition of legal qualifications and European lawyers' practice rights and form part of the Government's preparations for the end of the transition period.

[Baroness Scott of Bybrook]

This instrument will revoke and replace our existing legislation made in 2019 in preparation for the UK leaving the EU without a withdrawal agreement. It will remove from our domestic legislation in England, Wales and Northern Ireland any preferential practice rights for EU, EEA and Swiss lawyers, so that they are treated in the same way as third-country lawyers after the transition period. These regulations remedy the deficiency in retained EU law as such law makes provision for reciprocal arrangements with the EU which will no longer exist. However, EU and EEA EFTA-qualified lawyers who have already successfully become solicitors or barristers before the end of the transition period will be able to retain their qualification and related practice rights.

Noble Lords will be aware that the Government have signed agreements with the EU, the EEA EFTA states and Switzerland, which contain arrangements regarding the UK's withdrawal from the EU. This instrument will give effect to provisions in those agreements relating to lawyers' practice rights and the recognition of legal qualifications for those within scope of the agreements. Scotland will be taking forward its own legislation on this matter.

Before I turn to the detail of the instrument, I will briefly set out the background. EU law currently enables UK, EU and EFTA lawyers from one state to establish and practise in another state under their home-state professional title without necessarily having to requalify in the other state. In 2019, the Government made legislation which removed the preferential practice rights of EU and EEA EFTA lawyers in England, Wales and Northern Ireland to come into force on exit day, which I will refer to as the 2019 regulations. A further amending instrument was made, again in 2019, to implement parts of the Swiss citizens' rights agreement.

The 2019 regulations and the 2019 amendment regulations were not designed to come into force at the end of the transition period under a withdrawal agreement. Given that the UK secured a withdrawal agreement and a separation agreement with the EEA EFTA states, as well as the citizens' rights agreement with Switzerland, there are provisions in the 2019 regulations which are either no longer needed or will not function correctly. Furthermore, additional provisions are needed to implement the relevant provisions of the agreements relating to lawyers.

This draft instrument will therefore revoke the 2019 regulations and the 2019 amended regulations. Subject to transitional provisions, it will also revoke the domestic legislation that implemented the lawyer-related EU directives—the European Communities (Services of Lawyers) Order 1978 and the European Communities (Lawyer's Practice) Regulations 2000.

The lawyers' services directive and lawyers' establishment directive will no longer apply to the UK, and there will be no system of reciprocal arrangements under which EU and EFTA lawyers can provide regulated legal services and establish themselves on a permanent basis in the UK and, likewise, UK lawyers in the EU.

This instrument will implement provisions in the EU withdrawal agreement and the EEA EFTA separation agreement which allow applications to join one of the legal professions in England and Wales or Northern Ireland made before the end of the transition period to be completed under the current rules.

This instrument will also implement a transition period of four years from the end of the transition period for Swiss lawyers within scope of the Swiss citizens' rights agreement to register as a registered European lawyer and to practise under their Swiss professional title or to apply to join one of the legal professions in England, Wales or Northern Ireland. Additionally, it will implement provisions which allow lawyers established and employed in Switzerland to continue to provide temporary services under the lawyers' services directive for up to 90 days in a year, for at least five years, where this is under a contract agreed and started before the end of the transition period.

Finally, this instrument will implement provisions in the agreements to facilitate regulator-to-regulator co-operation and will make further provision to enable regulators in England, Wales and Northern Ireland to complete any ongoing disciplinary proceedings against EU or EEA EFTA lawyers which commenced before the end of the transition period. By aligning the rights of EU and EFTA lawyers with those of third-country lawyers, we will still allow them to continue to access our world-leading legal services market, while ensuring that the UK complies with its international obligations. I beg to move.

5.22 pm

Lord Kirkhope of Harrogate (Con) [V]: My Lords, I declare my interest as a practising solicitor and a member of the Law Society of England and Wales. These measures are part of a plethora of instruments brought about by our exit from the European Union, an exit that makes us a third country in relation to EU provisions and regulations of all kinds.

Some of my particular interests in this House are in the fields of security and justice and in those areas our new status as a third country is particularly problematic, especially where, in order to protect our citizens, we need to carry on a strong co-operation to defend us from terrorism and major criminality by the exchange in real time of information and data. Inevitably, our new status will diminish our rights in that regard and, unless we can find a way to avoid the third-country category, the challenges ahead are difficult to meet and solve.

Here before us are some regulations that are inevitable because of that new status. They are no doubt necessary, but regrettable nevertheless. Over many years, the reputation and strength of our legal services has grown and through calm and constant negotiations, in which I and many others had the privilege to be involved, we have established the rights of our lawyers and lawyers from other European nations to practise law in each other's jurisdictions, so that until this time the free flow in both directions has become reasonably straightforward.

Of course, the journey has not always been easy because in law, as in other professions, there have been the residual elements of market protection or closed-shop mentality in a number of countries. However, recently we have seen a lessening of boundaries that has resulted

in the growth of services which, while being of general benefit, has been particularly important to this country, to our financial services industries and the City of London and our national legal practices in particular. Therefore, noble Lords will understand why I have some regret for these measures.

Effectively, from 1 January 2021 UK-qualified solicitors will no longer be able to practise as EU lawyers in EU and EEA member countries. They will lose their rights of audience before EU courts and all communications between UK-qualified lawyers and their clients will lose the protection of legal professional privilege in EU courts and institutions—one of the most important elements of that relationship. Similarly, the same will apply in reverse to European-qualified lawyers.

UK lawyers, if they wish to continue European practice, will be obliged to requalify in a host state under article 10 of the establishment directive. This will be time consuming, costly and uncertain of outcome. UK law firms might have to cease activities in other European countries if professional rules or company law are inconsistent with ours. Also, some national rules on the continent do not allow a mix in a single legal firm of domestic and third-country lawyers. This means that the complications I have stated, plus differences in the limited liability of such entities, will force the termination of many international firms.

Of course, the Government have stated, which is welcome, that they are seeking a future relationship agreement with the EU. We do not know how that is going, but without it, and comprehensive provisions related to services as opposed to trade, lawyers and the vital services that they provide will suffer badly. Without it, the UK and the EU will fall back on the General Agreement on Trade in Services—GATS—under the umbrella of the WTO. If so, lawyers cannot guarantee that they will receive the protection of EU regulations, which would be universally applied. Instead, they will be at the mercy of individual states' treatment of third-country lawyers, which, of course, varies between states. There are limitations; these usually include certain areas of practice, such as only permitting in the fields of international public law and home country law from the lawyer's perspective. Unfortunately, some nationality requirements even block UK lawyers from requalifying and prevent new partnerships being formed or continued between EU and non-EU citizens.

As I suggested, being outside the EU, our solicitors will lose all rights of audience in front of EU courts, which is most important in some practice areas, such as competition law and intellectual property law—fields in which our practitioners are particularly needed and successful, and on which the economic advancement of the UK in the post-Brexit world surely partly depends. How we and our European neighbours allow market access to foreign lawyers in future, in the event of reliance on WTO rules, also limits our choice based on historical associations. As noble Lords will know, the most favoured nation provisions do not allow discrimination, even positive discrimination, between trading partners.

I have highlighted some of the areas of difficulty and disadvantage to United Kingdom lawyers in coming months. I accept that, of course, our Government can alleviate these problems to some extent by incorporating in their current negotiations with the EU a clear mutual recognition of professional qualifications provision, but history demonstrates the problems in re-achieving what we are now losing. Mutual recognition agreements between specific nations could follow if such arrangements were in a trade agreement and given sufficient prominence.

In the provisions before us, I am pleased that one of the welcome items is in respect of RELs, or registered European lawyers. They currently have only until the end of this year to meet the UK registration requirement for re-qualification. It would be very helpful and a positive gesture if a grace period could be afforded to those who need more time to requalify, even if they reach three years of being first registered after 31 December.

At the end of the day, there is an inevitability to measures such as these, but we have it in our power to ensure that implementation leaves us with minimum damage to vital parts of our service industries and maximum good will with our European neighbours, with which we will need to co-operate in these and so many other areas in future.

5.30 pm

Lord Thomas of Gresford (LD) [V]: I welcome the experienced speech from the noble Lord, Lord Kirkhope, who obviously has a great deal of experience in this field. I was interested in the debate in the House of Commons, when this statutory instrument was before its Delegated Legislation Committee. Mr Alex Chalk, the Parliamentary Under-Secretary, claimed that we are an open society, particularly when it comes to legal practice. He said:

> "We want to be a country that continues to attract the brightest and best lawyers from around the world, as long as they are … properly qualified and this is the appropriate place for them to practise."—[*Official Report*, Commons, Eighth Delegated Legislation Committee, 22/9/20; col. 6.]

This was a curious thing to say while introducing a statutory instrument which abolishes reciprocity between lawyers in Europe and our own legal profession. There are transitional provisions to protect European lawyers who currently work in this country. They have a limited time, as the noble Lord, Lord Kirkhope, pointed out, in which to seek qualification with United Kingdom legal regulating bodies; after that, they must take their chance with lawyers from all over the world.

Will the Minister explain clearly what routes there are for qualification or permission to practise in the United Kingdom for worldwide lawyers, other of course, than by applying to become members of the Law Society or the Bar and taking the necessary professional examinations? When I wanted to appear to conduct a case in Scotland, the noble Lord, Lord Forsyth, had he been here, would have been pleased to know that I was completely intimidated to find the barriers put in the way of a Queen's Counsel from Wales. It was easier to be admitted to the Bar in Hong Kong or Malaysia or Singapore or, indeed, in the Caribbean.

The noble and learned Lord, Lord Keen of Elie, said on 15 January 2019:

> "In the event of us exiting without any deal, there will be no reciprocal rights"

and that the regulations

> "are necessary in order that we can establish a position in which all third-party country lawyers will be on the same standing in the absence of a free trade agreement or other agreement with a third-party country."

[Lord Thomas of Gresford]

He said that it was clearly

"a matter that we would wish to address in future negotiations consequent on our exit from the European Union. This is dealing with the position in the United Kingdom in light of the existing regulatory regime under EU law. Clearly, and quite patently, you could not address the question of how the EU 27 are going to treat our lawyers going forward".—[*Official Report*, 15/1/19; col. 177.]

Well, 22 months have gone by since he spoke and we do not seem to have gone forward at all. Can the Minister confirm that, as from the end of the transitional period, UK lawyers will gain no opportunity in future to have rights of audience or rights to practise in EU member states? Are there negotiations for a deal about reciprocity for legal services? If so, what are they?

The noble Lord, Lord Kirkhope, referred to the costly and uncertain outcome of the current position and the blocks placed on qualifications overseas by various countries. The noble Baroness, Lady McIntosh of Pickering, pointed out in a debate on the precursor to these regulations that

"when the regulations were passed … Ireland's professional body has taken the opportunity to increase the cost of qualifying as an Irish lawyer to practise there from £300 to £3,000."—[*Official Report*, 30/1/19; col. 1141.]

Those are some of the blocks to which, no doubt, the noble Lord, Lord Kirkhope, referred.

Mr Chalk asserted blithely on 22 September that:

"We will continue to remain an attractive part of the world, because we believe in upholding the rule of law. Long may that continue."—[*Official Report*, Commons, Eighth Delegated Legislation Committee, 22/9/20; col. 6.]

This was only six days after the resignation of the noble and learned Lord, Lord Keen of Elie, so he can hardly have been unaware of what he was saying. Mr Chalk—who is a very personable and skilled Queen's Counsel currently working his passage through the Tory ranks—was, I am afraid, somewhat bravely off message. I fear for his future career under the present Administration, who, as we know, have complete disregard for the rule of law, as exemplified not merely by Mr Dominic Cummings's jaunt to Barnard Castle—now the stuff of legend—but by the provisions of the United Kingdom Internal Market Bill, which it is the duty of this House to excise. I am sure that Mr Chalk is busy reflecting on his position; a good resignation would see him reconciled to his professional colleagues and likely to flourish in a more sensible future Administration, if the Tories are ever forgiven for this one.

5.36 pm

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, the purpose of this instrument is to implement into domestic law the provisions relevant to lawyers' practice rights and the recognition of legal qualifications in the EU withdrawal agreement, the EEA and EFTA separation agreement and the Swiss citizens' rights agreement. It ensures that EU lawyers who apply to practise law across England, Wales and Northern Ireland before the end of the transition period can have their applications properly considered. The instrument also protects Swiss lawyers who have been practising in England, Wales and Northern Ireland and implements a four-year transition after Brexit for Swiss lawyers to register and practise law across those three UK countries.

The instrument also allows cross-border co-operation between legal regulators in the jurisdictions of England, Wales and Northern Ireland and the EU regulators. Importantly, this instrument will enable regulators to complete ongoing disciplinary proceedings, as we have heard from the Minister, against EEA, EFTA and Swiss lawyers, which had commenced before the end of the transition period.

In the Explanatory Memorandum, the Government state that:

"The impact of this instrument on business, charities or voluntary bodies is not … quantifiable",

because it is not known what the individual lawyers will choose to do. Will they continue with unregulated activities, will they undertake regulated activities under supervision, or will they transfer to the domestic legal professions? Having looked at the Explanatory Memorandum, it does not seem to me that there are that many RELs—registered European lawyers—in the country. Can the Minister say whether the RELs themselves have in fact been asked what they plan to do with their activities post Brexit? Have they been directly consulted?

It is clearly right that we should meet all our obligations under the withdrawal agreement and that we should also facilitate and help the lawyers concerned to continue practising law here. Britain's legal landscape needs to be outward-looking and welcoming. Colleagues with similar qualifications should be welcome to practise here. As has been pointed by the noble Lord, Lord Thomas, this point was made by the Minister in the other place; it is surely the purpose to keep the UK outward-looking and as a destination for legal and financial expertise. So I have another question for the Minister: how will the principles outlined in this statutory instrument be applied to lawyers from the rest of the world—from America and areas outside of those we are discussing today? Of course, they too may wish to come here to practise their professions on some sort of reciprocal basis.

Speaking on behalf of the Opposition, we will not oppose these regulations, but the two speakers before me raised some very pertinent points. The noble Lord, Lord Kirkhope, described the instrument as necessary but regrettable, and he highlighted very effectively the difficulties before us and before the Government. He asked a good question about giving a grace period to the registered European lawyers in their application process. The noble Lord, Lord Thomas, also made some important points about the reciprocity of legal services. I look forward to the Minister's answers to those questions. Underlying all the points that have been made is the benefit to the UK of keeping the legal profession as open and welcoming as possible while maintaining the high standards that have led us to the strong position that we hope to maintain.

5.41 pm

Baroness Scott of Bybrook (Con): I thank all noble Lords for their valuable contributions. I will start with my noble friend Lord Kirkhope. I listened to everything he said. I do not have very much to say, other than that we have left the European Union and we need to make these SIs to protect our UK lawyers through the transition period and give a clear understanding to

our European and Swiss lawyers about how they can remain in this country if they wish to do so. I have taken note of the idea of a grace period. I will certainly go back to the MoJ and say that that has been brought up and that we perhaps should consider it.

All three speakers spoke about third-country lawyers. Quite rightly, our legal services market is already one of the most open in the world. I say to the noble Lord, Lord Ponsonby, that we are not changing that at all. All we are doing is saying that, after the transition period, EU lawyers will have the same rights as those third-country lawyers. We regulate only certain legal services. Many foreign law firms provide services to clients without needing to be regulated in the UK.

Third-country lawyers also have significant opportunities to pursue careers in legal services in the regulated sector of the UK. This includes accelerated routes to seek admission as solicitors or barristers through transfer examinations, and to hold ownership and management interests in legal businesses alongside our UK lawyers in a regulated market. There is a public interest risk in retaining the current framework for EU and EFTA lawyers without the benefit of existing EU rules on the regulatory co-operation and oversight that we have had. There is a good and very exciting opportunity for EU lawyers to join third-country lawyers in this market.

My noble friend Lord Kirkhope brought up what the withdrawal agreement means for lawyers. Under the withdrawal agreement, during the transition period existing rights, including lawyers' home state professional title practice rights across the UK and the EU, will continue.

The withdrawal agreement allows UK lawyers resident in the EU 27 at the end of the transition period who have transferred to the host state profession to continue to practise in the member state in which they reside, subject to the regulatory rules in that member state. This means, for example, that where a UK lawyer is living in Germany and has been successful in joining the German legal profession, that will continue to be recognised. Similarly, EU lawyers who are resident in the UK at the end of the transition period and who have transferred to one of the UK's professions will be able to continue to practise in the relevant part of the UK, subject to the relevant regulatory rules. Those are the matters that will be dealt with soon after the withdrawal agreement comes into force.

A number of noble Lords asked what impact the outcome of the negotiations with the EU will have on this instrument. I assure them that the outcome of the negotiations should have no effect at all on this instrument.

The noble Lord, Lord Thomas, asked what we were going to do to protect the rights of UK lawyers in the EU and EFTA countries. As EU and EFTA lawyers will be subject to domestic rules in the UK, UK lawyers wishing to practise in the EU and EFTA states will be subject to the national rules and regulations of those individual EU and EFTA member states. This will vary between member states and may vary within member states where they have multiple regulators. This instrument does not and cannot address the issues of the rights of UK lawyers in the EU and EFTA states. However, we continue to work closely with UK regulators and professional bodies as they develop guidance for EU and EFTA lawyers in the UK and UK lawyers working in the EU and EFTA states. Continued information sharing and joint efforts to secure arrangements for UK lawyers through regulator-level agreements will be important to protect future market access. For UK lawyers working in the EU and in EFTA states, given the range of regulatory arrangements that may apply, we have advised them to contact their EU or EFTA member state regulator for guidance. The Government are doing everything they can to support lawyers through this change.

The noble Lord, Lord Ponsonby, asked me how many lawyers will be affected by these regulations at the end of the transition period. Estimating the total number of lawyers exercising rights under the lawyer-related EU directives in England and Wales and Northern Ireland or UK lawyers exercising such rights in an EU or EFTA state is difficult, as lawyers providing services on a temporary basis do not need to register with a regulator in the other state, so no data exists to quantify their activity. In terms of EU or EFTA lawyers exercising their rights to establish in England and Wales permanently, the Solicitors Regulation Authority data shows that there are 783 registered European lawyers registered with the SRA in England and Wales as of August 2020, while there are 301 English and Welsh solicitors practising as RELs in the EU. That will give the noble Lord an idea of the numbers that we are talking about.

The noble Lord, Lord Ponsonby, also asked if we have done any consultation with those RELs. The draft regulations remedy a deficiency in retained EU law, but also ensure compliance with international obligations. As such, we could not conduct a meaningful consultation on the approach we have taken.

I think that I have answered all the questions. However, I will look at *Hansard* early next week and if I have missed any questions I will certainly come back to noble Lords. The UK Government are committed to protecting the citizens who benefit from rights under the agreements—many of whom make valuable contributions to the UK legal profession. It is also important that this instrument makes other changes to ensure that we remove the EU frameworks, as we can no longer provide preferential rights to EEA countries unless provided for under a comprehensive FTA, except the transitional provisions to give effect to the relevant provisions of the agreements. Aligning the rights of EU and EFTA lawyers with those of third-country lawyers will allow them to continue to access our world-leading legal services market while ensuring that the UK complies with its international obligations.

The rights of UK lawyers in EU EFTA countries cannot fall under the scope of this instrument. The rights of practice, ownership and establishment of UK nationals or those with a UK qualification in the EU will be governed by the national policies and rules of individual member states. We continue to work closely with the UK regulators and professional bodies as they develop guidance for EU and EFTA lawyers in the UK, and UK lawyers working in the EU and EFTA.

[Baroness Scott of Bybrook]

The UK legal services sector is one of the leading and most attractive in the world. The Government are committed to championing the sector both through promoting legal services overseas and maintaining its competitiveness. I underline once more that this instrument is a vital part of the Government's preparations for the end of the transition period and enables us to comply with our international obligations.

Motion agreed.

The Deputy Chairman of Committees (Lord Bates) (Con): My Lords, the Grand Committee stands adjourned until 6.30 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

5.51 pm

Sitting suspended.

Arrangement of Business

Announcement

6.30 pm

The Deputy Chairman of Committees (Lord Bates) (Con): My Lords, the hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear face coverings, except when seated at their desks, to speak sitting down and to wipe down their desks, chairs and any other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

Taking Account of Convictions (EU Exit) (Amendment) Regulations 2020

Considered in Grand Committee

6.31 pm

Moved by ***Baroness Scott of Bybrook***

That the Grand Committee do consider the Taking Account of Convictions (EU Exit) (Amendment) Regulations 2020.

Baroness Scott of Bybrook (Con): My Lords, this instrument will implement the separation provision in the EU withdrawal agreement on taking account of convictions. In accordance with the separation provision, it will ensure that previous convictions in EU member states will continue to be taken into account in cases where criminal proceedings have begun before the end of the transition period. That separation provision partially preserves the application of a framework decision that established that previous convictions in EU member states are to be treated in the same way as domestic convictions during criminal proceedings.

To implement the separation provision, this instrument amends two pieces of legislation. First, it amends the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019, which were intended to address deficiencies in retained EU law in the event that the UK left the EU without an agreement. Now that we have left the EU with an agreement, this instrument modifies the 2019 regulations to give effect to the terms of the withdrawal agreement.

Secondly, this instrument amends the Sentencing Act 2020, which consolidates sentencing procedural law into a sentencing code, as a consolidation exercise. The code has been drafted on the basis of the current law. Therefore, this instrument amends the 2020 Act to also give effect to the terms of the withdrawal agreement. Therefore, the amendments made by this instrument ensure that the separation provision on taking account of convictions will be given full effect in domestic law. I beg to move.

6.33 pm

Lord Berkeley of Knighton (CB) [V]: My Lords, I am grateful to the Library and other noble Lords who helped me in my research. I decided to take part in this debate because I thought the regulations might impact on civil liberties and the evaluation of settled status. I need not have feared. I can see what the Government wish to achieve, and it fits nicely into the consideration given by the Joint Committee on Statutory Instruments.

The principle was well described in the introduction to the Commission's report to the European Parliament and Council on the implementation by the member states of the framework decision back on 24 July 2008. I quote this because the relevance of these aspirations seems to me to be far-reaching:

"In a genuine area of justice based on mutual trust, the European Union has taken action",

as the Minister has told us,

"to ensure that citizens are protected against crime across the European Union, while also ensuring that citizens' fundamental rights are respected when they find themselves involved in criminal proceedings, whether as a victim or a defendant. In the European Union, where people can"—

perhaps we should say could—

"move and settle freely, this objective of maintaining and developing a genuine European area of justice requires that convictions against persons sentenced in one Member State are taken into account in another Member State in order to prevent future crimes. Equally, if new crimes are committed by the same offender, subject to preserving fairness of the proceedings, this behavioural factor should be taken into account in the framework of new criminal proceedings."

Clearly this is a description of a desirable legal world that, whatever our Brexit beliefs, we should all want to live in. It is so desirable that it begs the question of what will happen to EU convictions in future and why we would not wish for a continuation of this level of protection for our citizens. Do these amendment regulations not in fact fix a problem that we might then have to break?

6.36 pm

Lord Morris of Aberavon (Lab) [V]: My Lords, I thank the Minister for her explanation of these modest proposals. I come to them as one who was a sentencer for many years. When I was a sentencer, I would have had even greater interest in them. I first sat as a sentencer in 1973 in Cardiff and continued to do so until I became a law officer in 1997. Sentencing is not an easy process. At the end of a week's sitting, you may have half a dozen cases to sentence, and each one has to be

considered carefully and—for lack of a better word—judiciously. The basic requirement has remained unchanged over the years: that the sentencer should have full knowledge of the track record of the person to be sentenced if justice is to be done. That is the paramount consideration.

The Minister has explained that what we are doing here is filling a gap, or at least a potential gap. We are dealing with criminal proceedings instituted but not concluded before the end of the transition period, which are the subject matter of these regulations. It is important that there is no gap in the knowledge available about a person to be sentenced. The requirement is that the circumstances are known to the sentencer, so far as they are required by national law. The Minister used the words "domestic law". My question is simple. These regulations obviously apply to the law of England and Wales and Northern Ireland, but do they apply equally to Scotland, given that the Minister used the words "domestic law"? With these few words, I very much welcome these regulations.

6.38 pm

Lord Thomas of Gresford (LD) [V]: My Lords, I was disappointed to discover that there is no accompanying draft memorandum to explain this statutory instrument displayed on the House of Lords Papers app. For those of us who are locked down in Wales, that app is a lifeline. Did the Ministry of Justice think that this SI is so insignificant as not to require an Explanatory Memorandum and that the few lines below the text of the instrument are sufficient?

The sad thing is that this is not an insignificant statutory instrument. As the noble Lord, Lord Berkeley, said, in 2014, the European Commission reported to the European Parliament on the workings of the framework decision of 2008, with which this statutory instrument is concerned. He quoted at length to your Lordships the inspiring introduction which sets out the purpose of the report and of the framework decision itself. It is indeed in the interests of effective criminal justice, including the protection of victims of crime within the European Union, that all member states should have rules in place to take into account at all stages of criminal proceedings whether a person is a first offender or has already been sentenced in another member state.

We have just thrown all this protection away. This miserable little statutory instrument merely preserves the regime of co-operation in respect of proceedings which were pending but not completed at the end of the transition period. It says nothing about co-operation in the future. Can the Minister tell us whether there are any negotiations in being to bring about similar co-operative and reciprocal mechanisms which must be in the interests of the UK, whether in the EU or not?

Obviously, such discussions cannot be part of the trade negotiations, which are stuttering along on their last legs at the moment. What happens if new proceedings are commenced against an offender on 1 January next, after the transition period, and result in a conviction? How will judges and magistrates in this country be warned and informed whenever an EU national with a string of convictions appears in a British dock? Will it be possible at all for our police forces or prosecutors to obtain information of past convictions from EU countries?

Similarly, what arrangements are proposed for co-operation with EU countries in providing the records of individuals convicted in this country? Come to think of it, where are we with the European arrest warrant or any mechanism to replace it? Is it not ironic that we can negotiate a trade agreement with Japan, a country on the other side of the world and ring the parish church bells, but are incapable of having in place after 1 January an agreement that will protect, and is designed to protect, the citizens of this country from criminals arriving from our European neighbours?

This statutory instrument is important simply because it stands as a symbol of the wreckage of a great idea: the binding together of European states wracked by war into a community for common security and prosperity. I look forward to the Minister's reply.

6.42 pm

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, the purpose of this instrument is to make transitional provision so that when the EU exit transition period ends the current regime for taking account of previous criminal convictions in relation to convictions in the EU will continue where criminal proceedings in the UK begin before the end of the transition period but conclude after it ends. Proceedings beginning after the end of the transition period will be dealt with under a new regime. When the UK ratified the withdrawal agreement, we agreed the framework for taking into account criminal convictions in the EU. It is right that it be extended to court proceedings that start in the transition period but conclude after it ends.

I remind the House that I sit as a magistrate in central London. I regularly deal with foreign nationals, both EU nationals and non-EU nationals, who are brought before the court for whatever reason. Very occasionally I see a record of their offences in their home country or another country. It is welcome when that information is available but, in my experience, it is rare to get it. In addition, I have never been told that a check has been done on a foreign country with a negative result. Usually we do not know whether that check has been done. I sit in the lowest court, the magistrates' court, and it may be that these checks are more usually done for more serious matters, such as those in Crown Courts, but my experience is that I rarely see the information when I am making sentencing decisions.

Speaking on behalf of the Opposition, we support this statutory instrument. However, I agree with the sentiments expressed by the noble Lord, Lord Thomas, that it is a testament to a very limited ambition, and I would be interested to hear what the Minister has to say about what she expects to be in place when we get past 31 December.

I conclude by saying to the Minister that, whatever the future arrangements are, the current arrangements leave a lot to be desired. Although they were theoretically in place, from my experience they certainly were not acted on in courts in London. Therefore, I hope that she will be able to reassure us that the Government

[Lord Ponsonby of Shulbrede]
have an ambition to improve the information available to courts, as has been the case under the current arrangements.

6.45 pm

Baroness Scott of Bybrook (Con): I thank noble Lords for taking part in this very short debate. The fact that it is a short debate is very welcome on a Thursday evening.

The noble Lords, Lord Berkeley and Lord Ponsonby, brought up a similar issue. Now that we have left the EU, there is absolutely no reason to treat EU member state convictions differently from those imposed in the rest of the world. However, the loss of taking account of convictions capability after the transition period does not affect the fact that, as we heard from the noble Lord, Lord Ponsonby, the courts will retain the discretion to treat previous convictions in EU member states as an aggravating factor during sentencing, as they can already do with convictions imposed elsewhere. I will take back the view expressed by the noble Lord, Lord Ponsonby, that, from his experience in London courts, he is not getting as much information as he should.

The noble and learned Lord, Lord Morris, asked about the extent of these regulations. They extend to the UK, subject to the exceptions set out in paragraphs (2) and (3) of Regulation 2. Paragraph (2) provides that the amendments of the Sentencing Act 2020 made in Part 2 of the regulations

"have the same extent within the United Kingdom as the provisions to which they relate."

Paragraph (3) provides that the amendments of the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019 made in Part 3 of the regulations

"extend to England and Wales and Northern Ireland."

I hope that that clears up that query for the noble and learned Lord, Lord Morris.

The noble Lord, Lord Thomas of Gresford, said that he could not find the draft memorandum. I am extremely sorry that it was not on the Lords website, but it has certainly been published on the legislation.gov.uk website if he wants to see it.

The noble Lord asked how the courts would obtain information about overseas convictions when we end the transition period. Our criminal justice system is well versed in obtaining such information. The process of obtaining it is a combination of law enforcement co-operation between police forces in the UK and other countries and the wider mutual legal assistance framework, or MLA, which will continue to apply between the UK and EU member states after 31 December 2020. At that point, it will be based largely on Council of Europe treaties, in particular the European Convention on Mutual Assistance in Criminal Matters and its protocols. The MLA is a method of co-operation between states for obtaining assistance in the investigation or prosecution of criminal offences. Such assistance is usually requested by courts or prosecutors and is referred to also as "judicial co-operation". There will therefore continue to be co-operation, as I have explained.

To reiterate, the purpose of this instrument is to give effect in domestic law to the separation provision in the EU withdrawal agreement on taking account of convictions. To that end, I commend it to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Lord Bates) (Con): That completes the business before the Grand Committee. I remind Members to sanitise their desks and chairs before leaving the Room. The Committee stands adjourned.

Committee adjourned at 6.50 pm.