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PARLIAMENTARY DEBATES
(HANSARD)

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OFFICIAL REPORT

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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

Wednesday 4 November 2020

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Winchester.

Arrangement of Business

Announcement

12.06 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.

Royal Assent

12.07 pm

The following Act was given Royal Assent:

Prisoners (Disclosure of Information about Victims) Act.

The following Measure was given Royal Assent:

General Synod (Remote Meetings) (Temporary Standing Orders) Measure.

Arrangement of Business

Announcement

12.07 pm

The Lord Speaker (Lord Fowler): My Lords, 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.

HMS "Queen Elizabeth"

Question

12.07 pm

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government what plans they have to change the level of support that will accompany HMS Queen Elizabeth's deployment to the South China Sea in 2021.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, HMS "Queen Elizabeth" will sail on her first operational deployment during 2021. Detailed planning continues, but we have yet to announce our programme or destination. A Statement will be made to Parliament in due course, once planning is complete. All Royal Navy deployments and decisions on support are planned carefully, in line with operating environment, and constantly reviewed over time. The first operational deployment programme of HMS "Queen Elizabeth" will be no exception.

Lord West of Spithead (Lab): I thank the Minister for her Answer. We are in a dangerous world; no one can predict what will happen tomorrow, let alone a few months hence. There are real concerns about Chinese behaviour, and I believe it is right we should show solidarity with our friends in the region. This year, Australia has increased defence spending by a massive 70% and Japan by 8%—a seventh consecutive annual increase. Both countries have cited concerns over China's aggressive actions. There is a need for strong alliances in the region. Sending a carrier task group is a good way of showing support, but we must not deal in half measures. Since 2010, our military has been grievously damaged. Can the Minister confirm that the "Queen Elizabeth" carrier battle group, deploying to the Indo-Pac region, will have its complete array of ships and aircraft and its air wing, weapons, weapons stocks and support to be able to conduct, if necessary, operations at every level of intensity? Only then can we be sure it will not be called upon to do so.

Baroness Goldie (Con): As I indicated to the noble Lord, I cannot comment on where the "Queen Elizabeth" is going, how she is going to get there or what route she will take. All of that will be unfolded to Parliament in due course. But the noble Lord makes an important point about the purpose of our military and naval capability. Certainly, I want to reassure him that HMS "Queen Elizabeth" will operate as part of a maritime task group, which will include allies and will be tailored to meet the required task. The destinations and precise number and mix of vessels deployed will depend on the operational circumstances in 2021.

Viscount Trenchard (Con): My Lords, the deployment of HMS "Queen Elizabeth" to the South China Sea would show that Britain is prepared to make a contribution to the protection of freedom of navigation through the South China Sea, which is vital to protect rules-based free trade in the region. Does the Minister agree that our involvement in naval operations in Asia necessitates not only an increase in joint exercises with friendly nations, such as Japan, but deeper co-operation in procurement? Would she also agree that this strengthens the case to pursue opportunities to collaborate where such countries have similar requirements?

Baroness Goldie (Con): I say to my noble friend that he is correct that the UK has enduring interests in the Indo-Pacific and south-east Asian regions. That is without prejudice to what the "Queen Elizabeth" may or may not do. But he is also correct to identify that we are committed to maintaining regional security, and we are certainly committed to asserting rights to freedom of navigation and overflight, as laid out in the United Nations Convention on the Law of the Sea. We continue to challenge any coastal nation's excessive maritime claims.

Lord Boyce (CB) [V]: My Lords, the deployment of our carrier strike group next year is to be welcomed. If that is to include the Indo-Pacific, would the Minister confirm that the opportunity will be taken to refresh our ties with the five-power defence arrangements? Would she also agree that, if there are not already plans to do so, there would be great merit in establishing

[Lord Boyce]
links with the Quadrilateral Security Dialogue, known as the Quad, consisting of the United States, Australia, Japan and India, and that, furthermore, we could act as a catalyst in bringing the FPDA and the Quad together, which would both be beneficial to our alliances in the region?

Broness Goldie (Con): The noble and gallant Lord identifies a number of significant issues. The unique attributes of the carrier strike group mean that it can provide a global presence wherever the Government require it. The carrier and its supporting ships and aircraft can be configured to support a range of joint operations. We enjoy good relations with the parties to which he has referred and we see our purpose as a global influencer. We will do what we can that is in the best interest of upholding law and setting a good example.

Lord Judd (Lab) [V]: My Lords, if the "Queen Elizabeth" is to be deployed as planned, with all the necessary and vital support, what are the implications for our flexibility and speed of response, and for the role that must be played by the Royal Navy in such a response, if something arises elsewhere in the world? Will we become a bit tied and muscle-bound by where we are down there if we do not have the flexibility to respond elsewhere?

Baroness Goldie (Con): I reassure the noble Lord that the deployment of the carrier strike group 21 does not leave the Navy short-handed for other priorities. The Royal Navy has sufficient ships and submarines to meet its global commitments.

Baroness Smith of Newnham (LD): My Lords, the Minister's predecessor, the noble Earl, Lord Howe, in his inimitable reassuring way used to suggest that the support vessels would come not necessarily from the Royal Navy but from our allies. Have the Government assessed whether the support will be there from our allies in the context of the likely or possible outcomes of the American elections?

Baroness Goldie (Con): The noble Baroness's crystal ball must be bigger than mine, because the answer to the outcome of the United States presidential election is unclear to me. As she will be aware, the United States is of course a very important ally. It is very significant to our defence relationships across the world. We work with Administrations of whatever hue. That is what we have done in the past and will do in the future.

Lord Touhig (Lab) [V]: My Lords, on 13 March last year, during a Question about deploying HMS "Queen Elizabeth" to the Pacific, I said:

"When the Americans deploy a carrier they provide an escort of a cruiser, four destroyers, a carrier wing, a submarine and 7,500 sailors."—[*Official Report*, 13/3/19; col. 1019.]

I asked whether Britain can do that. Unfortunately, I am still waiting for an answer.

Baroness Goldie (Con): I am not sure the noble Lord will get one this afternoon, but I will do my best. As I indicated, the carrier strike group is importantly constructed to operate with the support of allies. By way of illustration, within the UK's capability, the October group exercise brought together all the CSG elements—a carrier, jets, helicopters, escorts and supporting assets. Building on that success, the carrier strike group then participated in the annual NATO exercise Joint Warrior off Scotland, which was a massive exercise and in total involved 6,000 people on land, sea and air. I reassure the noble Lord that the carrier strike group will be a formidable presence.

Lord Trefgarne (Con): My Lords, can the Minister say whether any other deployments of this nature are planned, for example to the south Atlantic?

Baroness Goldie (Con): I thank my noble friend. I am unable to comment in detail as to future deployments for the very same reasons that I am unable to comment in detail on the immediate deployment of HMS "Queen Elizabeth". He identifies an important point. The south Atlantic is strategically significant and is becoming more so. That is an aspect of our global approach that we keep under constant review.

Lord Houghton of Richmond (CB) [V]: The Minister will be aware that the proposed deployment of HMS "Queen Elizabeth" was conceived when there were many justified concerns about the overall size of the surface fleet and its ability to meet the Royal Navy's standing maritime tasks at home and around the world. Can she therefore confirm what risks are likely to be taken against those standing tasks to provide adequate escorts for the deployment of HMS "Queen Elizabeth" next year?

Baroness Goldie (Con): The noble and gallant Lord will be aware that, in contemplating any deployment, we make an extensive and robust assessment of risk in all respects. That is what we do at the moment and what we shall continue to do.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed. It was a rather leisurely session, which means that three Members were unable to be brought in. We now come to the second Oral Question.

Union with Scotland

Question

12.18 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government what steps they are taking to strengthen the union between Scotland and the rest of the United Kingdom.

Viscount Younger of Leckie (Con): My Lords, the Government recognise the importance of the union. The UK is a family of nations that share social, cultural and economic ties that together make us far safer, more secure and more prosperous. As we have seen throughout the Covid crisis, it is the economic strength of the union and our commitment to the sharing and pooling of resources that has supported jobs and businesses throughout Scotland. It is the strength of our union that will enable us to rebuild our economy following this crisis.

Lord Lexden (Con): Why are the Government, composed of members of the Conservative and Unionist Party, with a self-proclaimed Minister for the Union at its head, not making the case for the union with vigour and conviction as a possibly landmark Scottish election approaches? What are the specific recommendations in the as yet unpublished Dunlop report on the union, which are now apparently being implemented, as I was told in a Written Answer given on 5 October? How will they help strengthen our great but seriously imperilled union?

Viscount Younger of Leckie (Con): The message behind my noble friend's Question is that we must do more to ensure that Scottish people see and understand the benefits of being part of one of the most successful partnerships of nations. The Prime Minister has created the Cabinet Committee on Union Policy Implementation, which will drive forward the message that Scotland benefits directly from the UK shared prosperity fund, for example. I am grateful to my noble friend Lord Dunlop, many of whose recommendations we are implementing. The Government have committed to publishing the review in due course, and before the end of the year, we hope alongside the successful conclusion of our joint review of intergovernmental relations.

Baroness Bryan of Partick (Lab) [V]: Does the Minister agree with Douglas Ross, Leader of the Scottish Conservatives, that

"we need to deliver formal representation for our nations and regions"

in a reformed House of Lords? Does he think that such a step would help to strengthen relationships within the United Kingdom?

Viscount Younger of Leckie (Con): I will not be drawn into commenting on that, but I will use this opportunity to say that we strongly believe that Scotland should remain, and is better off remaining, within the UK. So much comes from south of the border, such as delivering growth deals at a cost of £1.5 billion to every part of Scotland, preparing trade deals across the world, establishing at least one free port in Scotland, improving transport links and holding COP 26.

Lord Wigley (PC) [V]: My Lords, elections to the Scottish Parliament will indeed take place in six months' time. Can the Minister confirm that if a majority of Members of that Parliament are elected on a manifesto committed to holding a referendum on independence, the UK Government will respect that mandate and work with Scotland's Government to facilitate such a referendum within a reasonable timescale?

Viscount Younger of Leckie (Con): The noble Lord will not be surprised when I say that Scotland had an independence referendum in 2014 which was legal, fair and decisive. The people of Scotland voted by a significant margin to remain part of the UK, and we are committed to respecting and upholding that result. The noble Lord will know that the Prime Minister wrote to the First Minister of Scotland in January confirming that he cannot agree to any request for a further one.

The Earl of Caithness (Con): My Lords, it is difficult to keep a marriage together when one party wants a complete separation. I must say to the Minister that rough wooing will not win her ladyship back. Does he agree that some in Whitehall still do not get that Britain is not England? Can he ensure that this message is sent round the departments? Can he also tell us how he will get the Government to explain their policies better? For instance, the furlough scheme seems to have been invented in Holyrood as far as the Scots are concerned, not in London, and is not funded by the English taxpayer.

Viscount Younger of Leckie (Con): I will certainly take back my noble friend's first point. The furlough scheme, including the self-employment income support scheme, has supported the jobs of more than 930,000 people, so we can see how the Scots benefit. But the Prime Minister has said that if other parts of the UK need to go into measures that require the furlough scheme, it will be available to them not only now but in the future. However, it has been made clear that this would be a decision for the Chancellor, liaising with the Prime Minister.

Lord Roberts of Llandudno (LD) [V]: My Lords, when we think of the relationships between the various nations of the United Kingdom, we realise that there are advantages to belonging to the United Kingdom, as well as the benefits of remaining with our own identities. I cherish my Welsh identity, but I also see advantages in our four nations working together. Would a federal solution not be the way forward, and in any ballot to have not simply "in" or "out" but three options: to stay as we are, with Scotland staying as it is; to leave 100%; or to build a federal United Kingdom?

Viscount Younger of Leckie (Con): The noble Lord leads me nicely into saying that there we are looking at two reviews: the Dunlop review, which I mentioned earlier, and the intergovernmental review. The noble Lord will be aware that there is a balance to be struck between devolving powers to the nations and having Great Britain—or England—supporting the nations too. The successful devolution of powers to legislatures and Ministers in Scotland, Wales and Northern Ireland has taken place gradually over the last 20 years, with the Scotland Act and the Wales Act. Now is the time to review that, which is what we are doing.

Lord Norton of Louth (Con) [V]: My Lords, in its 2016 report, *The Union and Devolution*, the Constitution Committee stressed that the four nations of the United Kingdom are stronger together than apart, and reiterated what it said in 2014: that the Government must

"devise and articulate a coherent vision for the shape and structure of the United Kingdom, without which there cannot be constitutional stability."

The Minister has just stressed the benefits of the union to all parts of the United Kingdom, but what is the Government's coherent vision for the shape and structure of the United Kingdom?

Viscount Younger of Leckie (Con): Notwithstanding the reviews that I have mentioned, one of the key policies that has been rolled out is the presence of the

[Viscount Younger of Leckie]
new Queen Elizabeth House in Edinburgh. This opened in September and is a powerful example of the UK's wanting to show greater commitment to Scotland by liaising more closely with the Scottish Government, local authorities and communities. We want to emphasise once again that Scotland clearly is stronger as part of the UK.

Lord Davidson of Glen Clova (Lab) [V]: My Lords, there is a clear surge in Scottish opinion supporting independence. The single factor identified behind this surge is the unpopularity of the Prime Minister. How do Her Majesty's Government propose to remedy this danger to the union?

Viscount Younger of Leckie (Con): The measures that I have set out regarding what we are doing to help Scotland need to be put forward more clearly. The essence of my message today is that, from the unit in No. 10, we need to work harder on our communications, explaining and ensuring that the Scottish people understand what we are doing for them in all kinds of respects, from big infrastructure projects to new transport links.

Lord Greaves (LD) [V]: My Lords, the existing constitutional arrangements throughout the UK, including in England, are increasingly unstable and unsustainable. A major cause is the economic, social and political dominance of London and south-east England and the London-based elites in all areas. Would the Government not be better setting up, in co-operation with other political parties, a constitutional convention covering all parts of the United Kingdom, including the regions of England?

Viscount Younger of Leckie (Con): Let us see what comes out of the reviews that I have mentioned. The noble Lord will be aware that on 1 January 2021, we will see the single biggest transfer of powers to the devolved Administrations in history, as the EU structures fall away and new powers transfer to the Administrations in Scotland, Northern Ireland and Wales. It comes back to this balance, and the importance of ensuring that the nations know that they are better off together.

Lord Mackay of Clashfern (Con) [V]: My Lords, what can the Government do to reduce the tensions with the devolved Administrations when legislating for an internal market?

Viscount Younger of Leckie (Con): We want to engage with the devolved Administrations on the UK internal market in order to manage the potential for market divergence and deliver a shared solution. We have a well-established government structure with the devolved Administrations to ensure collaboration on these policy issues, including the Joint Ministerial Committees and bilateral agreements.

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

Planning: Accessible Homes

Question

12.29 pm

Tabled by ***Baroness Greengross***

To ask Her Majesty's Government what steps they are taking to ensure that changes to the planning system will deliver more homes that are accessible for people with disabilities.

Baroness Bull (CB): My Lords, with the permission of my noble friend Lady Greengross, and at her request, I beg leave to ask the Question standing in her name on the Order Paper.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, the Government place great importance on the provision of suitable homes for people with disabilities. This is why we are currently consulting on making higher accessibility standards mandatory in reviewing the provisions for accessible and adaptable housing within building regulations. Our consultation has proposals to see more homes delivered, and authorities still need to plan for the housing needs of different groups within their communities, including the needs of people with disabilities.

Baroness Bull (CB): My Lords, housing with care, sometimes described as assisted living or extra-care housing, provides a vital alternative to residential care for those older people who can no longer live on their own but do not need 24-hour complex medical supervision. It protects safety and security while boosting independence, health and well-being. Will the Minister say what the Government are doing to support housing-with-care developments in any new planning system?

Lord Greenhalgh (Con): My Lords, we are currently consulting on the accessibility standards. I propose that we wait until the end of the consultation, which completes on 1 December, for our response to that.

Lord Young of Cookham (Con): My Lords, I support the proposal made by many groups representing those with a disability that Part M of the Building Regulations should be raised to what is known as the adaptable and acceptable standard, or M4, Category 2. This would enable more people to live healthy and independent lives without having to move. Further to what my noble friend just said about the consultation document, when will the results be published and when will its conclusions be implemented?

Lord Greenhalgh (Con): My noble friend should know that the response to the accessible-homes consultation will be published by March 2021. The implementation of any change will depend on the course of action that the Government take.

Baroness Prashar (CB) [V]: My Lords, the need for accessible housing is increasing and we urgently need homes that meet appropriate needs. Delaying provision of such housing and doing nothing is not an option. How quickly are the Government intending to implement the outcome of the consultation?

Lord Greenhalgh (Con): I refer to my previous answer. The results of the consultation will be published by March 2021.

Baroness Young of Old Scone (Lab) [V]: The Minister indicated that more homes were needed, as well as more accessible homes. We know that the viability test often puts the lid on accessibility being built into the equation by developers when they say that they cannot afford to provide these standards. Can the Minister assure the House that, in this consultation, the Government will not allow developers to hold them to ransom, as well as those in need of these higher levels of accessibility in their homes?

Lord Greenhalgh (Con): My Lords, the Government recognise the importance of accessible housing for the elderly and the disabled. I point to the strengthening of the policy approach in the NPPF in July 2018 and in the planning guidance issued in June 2019 on housing for the disabled. These point to the direction in which we are travelling to ensure that there is enough accessible housing. As your Lordships know, we have been looking at Part M of the Building Regulations as well.

Baroness Verma (Con): My Lords, while my noble friend the Minister is looking at the consultation process, will he also look at the new ways of designing housing within an urban planning system? That really should be reflective of the 21st century. Covid has made us all realise that mental as well as physical well-being is essential, and intergenerational living is something that we should seriously consider. We should think about housing for the elderly or disabled not just as separate from us but rather as integrated with us.

Lord Greenhalgh (Con): My Lords, my noble friend is right: we are living longer and getting older. It is important that we have accessible housing for the elderly and learn from models across the country where there is both public and private housing. Proposals for accessible housing have to be relevant to older people, as she so rightly states.

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 and as a trustee of the United St Saviour's Charity in Southwark. As part of the modern almshouse that we are building, 11 of the 57 units will be for people with physical disabilities and fully wheelchair-accessible. This whole development has been the result of collaboration, with the developer delivering on its obligations to the community, Southwark Council providing the land and investment from United St Saviour's to develop and manage the facility. What guarantees can the Minister give to the House to reassure us that this sort of development will be encouraged and supported in the new planning regime?

Lord Greenhalgh (Con): My Lords, we recognise the importance of the almshouses and that they are growing at their fastest rate in more than a decade. We are currently consulting widely on the proposals for reform set out in the planning White Paper and will listen carefully to all the representations made, including from those representing almshouses.

Lord Best (CB) [V]: My Lords, it is excellent that the Government seem likely to be raising standards of accessibility for all new homes. When the volume housebuilders object that this will damage profits, will the Minister recall that when housebuilders made similar complaints last time around—when the standards were raised 30 years ago—extra costs actually proved minimal? Profits did not fall and hundreds of thousands of households have enjoyed better homes. This time, will the Government stand firm again?

Lord Greenhalgh (Con): My Lords, this Government will not seek anything other than an upward drift in the standards that we need for the 21st century. We recognise that developer profits are far greater than those of the construction industry, where they are typically about 4%; it is often up to a third for large-scale developments. The noble Lord, Lord Best, is therefore pointing in the right direction in respect of our ability to raise building standards.

Baroness Blackwood of North Oxford (Con) [V]: My Lords, accessible homes need accessible transport. While it certainly makes sense to reduce health inequalities through promoting active transport, there will always be some people with disabilities who need to use cars door to door. We are not lazy or bad citizens: we are just trying to play a full part in society while managing our condition. A poorly executed and abrupt shift from car use to congestion charges, large pedestrian areas and public transport that is not yet disabled-accessible risks no-go areas for those with limited mobility. Will the Minister commit to smarter community design options that achieve public health aims without designing in exclusions or penalties for those with limited mobility?

Lord Greenhalgh (Con): My Lords, I thank my noble friend for pointing out a report which is just over a year old. With the Covid-19 pandemic, we are seeing a massive impact on our town centres and we need good policy to ensure that we have more inclusive and smarter options for urban design. Of course, we will look carefully at that report.

Baroness Thomas of Winchester (LD) [V]: My Lords, following on from the question from the noble Lord, Lord Best, does the Minister agree that changing the regulations for homes to be built to accessible and adaptable standards should not mean that fewer homes will be built, as the additional costs per typical dwelling are very small?

Lord Greenhalgh (Con): My Lords, I made clear in response to the noble Lord, Lord Best, that we can raise standards while continuing the drive for the numbers of homes, of all types and tenures, that this country so badly needs. However, we have to wait to have time to respond to the ongoing consultation.

The Lord Bishop of St Albans: [V] My Lords, with regions such as the north-west, the north-east and Yorkshire hosting less than one disabled-access home

[The Lord Bishop of St Albans]
for every 100 homes, and regions such as the West Midlands hosting just over one disabled-access home for every 300 homes, given that 15.2% of the population is elderly and 18% of the population is disabled, is it now time that the Government mandated targets for disabled-access homes rather than simply relying on local authorities?

Lord Greenhalgh (Con): My Lords, I am afraid I am the wrong person to answer that. I spent 20 years in local government and have every confidence that local councils know the needs of their communities, and can respond to them in a way that ensures we see the drive for standards and improved accessibility needed in our homes.

The Lord Speaker (Lord Fowler): My Lords, I am glad to report that all supplementary questions have been asked and we now move to the next Question.

Covid-19: Contracts and Mass Testing Programme

Question

12.39 pm

Asked by ***Lord Harris of Haringey***

To ask Her Majesty's Government how many contracts they have placed for the purchase of (1) personal protective equipment, and (2) the mass Covid-19 testing programme, (a) with suppliers identified as "VIPs", and (b) using fast-track procurement procedures since 1 March; what is the total value of any such contracts; and what steps they are taking to demonstrate that such contracts (a) represented value for money, and (b) involved no favouritism.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, 289 contracts with an estimated value of £6.1 billion have been awarded by the DHSC to private sector suppliers to support test and trace, and 370 contracts worth an estimated £8.3 billion for the delivery of PPE. These figures are currently being validated with the National Audit Office. A direct award of a contract—an option available under the procurement regulations in cases of extreme urgency—has been used in the great majority of these cases. I reassure noble Lords that suppliers are evaluated by departmental officials and awarded contracts in line with the DHSC's standard contract terms and conditions.

Lord Harris of Haringey (Lab): My Lords, the noble Lord must realise that he is in danger of appearing complicit in the stench surrounding these procurements. On 6 April, he met with Meller Designs, which provides beauty products. It is owned by a man who was the finance chief of Michael Gove's leadership campaign and a donor to the Conservative Party, while the noble Lord, Lord Feldman, who also sat in on that meeting, was chairman of the party. A few weeks later, the company was awarded a series of contracts amounting to £155 million for face masks and hand sanitisers. Those did not go through the normal procurement processes. What was discussed on 6 April? Will the Minister publish all documentation relating to every one of these VIP and fast-track procurements, including emails or messages suggesting specific contractors, and show how decisions were based on value for money rather than favouritism?

Lord Bethell (Con): My Lords, the noble Lord will remember that at the beginning of this year the global supply of PPE, in particular, and other medical supplies completely collapsed. There was a global drought in the supply of key materials necessary for the protection of doctors, nurses and front-line healthcare staff. In those circumstances, we relied on a very large network of contacts and formal and informal arrangements in order, under extremely difficult circumstances, to reach the people who could manufacture these supplies, often moving their manufacturing from one product to another.

A noble Lord: Oh!

Lord Bethell (Con): My Lords, please.

The Lord Speaker (Lord Fowler): Would noble Lords please not interrupt the Minister.

Lord Bethell (Con): We have published 80% of the contracts to date and are working on publishing the rest. I hope that that will meet noble Lords' expectations.

Lord Sikka (Lab) [V]: KPMG, PricewaterhouseCoopers, Deloitte and Ernst & Young have been fined for audit failures and have regularly been chastised by the regulator, even though they have been doing audits for over a century. They have no experience of test and trace or of dealing with viruses but have received multimillion-pound Covid contracts. What due diligence checks were carried out by the Government and how? Will the Government inform Parliament and allow a public audit of all their checks on these firms?

Lord Bethell (Con): My Lords, the circumstances of the pandemic were exceptional, and I am not sure that any large company had any experience of putting together a national test and trace programme. The firms to which the noble Lord refers have considerable consulting experience and the capacity to support the national rollout of a large organisation such as NHS Test and Trace. They have provided invaluable support to the country at a time of need. All our contracts are scrutinised extremely closely by the finance function in the DHSC, and we are supported in that by the government legal service and finance staff from the MoD and the Cabinet Office, for which we are enormously grateful.

Baroness Barker (LD): My Lords, in July, a company called Topham Guerin was given a £3 million contract, without any tender process, to test public understanding of health messages relating to Covid. It did not have any experience in health messaging; those running the company appeared to be friends of Dominic Cummings and Michael Gove. Will the Government now publish the tender that has subsequently been issued, the

research findings and the evaluation relating to this contract? As the country goes into lockdown, it is fair that taxpayers know whether we are paying money for old rope.

Lord Bethell (Con): My Lords, the insight into how the public react to key messages associated with our healthcare and health advice has been absolutely critical. Behavioural change and asking the public to step up to extremely challenging requests from the Government require a huge amount of analysis and study. The support from our own communications team has been supplemented by agency support, which has both the capacity and the expertise to provide the necessary insight. That insight has been critical to the success of our messaging.

Baroness Warsi (Con) [V]: My Lords, there is little doubt that one of the main reasons we are re-entering lockdown this week is the failure of Serco's track and trace system, which the Prime Minister promised would be world beating. I do not want to go into the detail of the connections between Serco and the party and key members of the Government. However, on a general level, can my noble friend justify renewing the Government's contract with Serco when it has failed so badly, resulting in loss of life and livelihoods—a situation that SAGE has warned will decline further in the future?

Lord Bethell (Con): My Lords, I do not accept the assumption that we are going into a second lockdown because of the failure of tracing. The tracing system has led to the isolation of more than 1 million individuals, which has done an enormous amount to break the chain of transmission. However, there is more that we could do. I completely acknowledge that the Government are focused on improving performance in tracing, and we will use the opportunity of the next month to ensure that that performance gets better.

Baroness Finlay of Llandaff (CB) [V]: My Lords, I declare my interests in medicine. Given that 55% of GPs, 35% of physicians and 11% of surgeons recently reported that they lack confidence in adequate PPE being available during the ongoing pandemic, when will the Government issue revised guidance to all NHS managers insisting on a duty of care to all front-line staff to ensure that staff are supplied with quality-certified appropriate PPE that is in date and fit tested under a risk assessment for the well-being of the clinical workforce? Have the Government commissioned research into reusable UK-manufactured PPE?

Lord Bethell (Con): My Lords, we take the duty of care to our staff and patients extremely seriously, and that is already well documented by the NHS. I reassure the noble Baroness that purchase orders have been raised for 32 billion items of PPE in anticipation of a second wave; 18.6 billion items have already been delivered, 2.2 billion are with our delivery partners, and a further 16 billion are on their way. This is a massive investment in PPE and I reassure her that it will be made available to healthcare staff in abundance.

Baroness Thornton (Lab): My Lords, it seems to me that, however urgent the requirement for PPE and other services, transparency becomes even more important in those circumstances. The Minister will be fully aware that the Ministerial Code says that Ministers are responsible for ensuring that no conflict exists, or appears to exist, between their personal interests and their public duty. As the former chair of a procurement committee for MyCCG, I received extensive NHS training on conflicts of interest, which are defined as

"a set of circumstances by which a reasonable person would consider that an individual's ability to apply judgement or act, in the context of delivering, commissioning, or assuring taxpayer funded health and care services is, or could be, impaired or influenced by another interest they hold."

Perception is as important as reality. Has the noble Lord declared the interests that arise out of the meetings that other noble Lords have mentioned today? Where are they recorded and published?

Lord Bethell (Con): The noble Baroness is right that transparency is key. I take those principles extremely seriously, and that is why we are publishing the contracts. I encourage anyone who is interested in looking at them to look at my Twitter feed, where I published a link to the Contracts Finder service yesterday. I reassure her that, although some connections were made through networks, absolutely every contract had exactly the same technical assurance, exactly the same contract negotiation and exactly the same procurement scrutiny. Those were done by civil servants, and value for money for the taxpayer and the people was guaranteed by that process.

Lord Scriven (LD): My Lords, the Minister seems to say that there is nothing to see here, whereas some of us think that there is a whiff of uncertainty and of some things being not quite right. Therefore, will he agree to appoint an independent forensic auditor to carry out an independent report that can be published publicly to show exactly what has happened with PPE procurement?

Lord Bethell (Con): My Lords, I do not want to give the impression that absolutely everything is perfect. Those were desperate days and we had to do extraordinary things to protect our healthcare staff. I remind noble Lords that other countries were flying in their representatives with bags of cash on private jets in order to seal contracts and some of our supplies were literally taken from under our noses on the runway at Hong Kong airport. They were extremely difficult times and I do not pretend for a moment that everything was absolutely perfect, but I reassure noble Lords that the right procedures were put in place by officials, and I reassure the noble Lord that these figures are currently being validated with the National Audit Office.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed and it brings Question Time to an end.

12.50 pm

Sitting suspended.

Covid-19 Lockdown: Economic Support

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Tuesday 3 November.

"Yesterday, the Prime Minister set out why we are introducing new measures to tackle coronavirus. This decision is not one we would wish to take, but it responds to the soaring infection rate.

Just as we have a responsibility to protect lives, we must also safeguard livelihoods. That is why the Government have provided unprecedented levels of financial support throughout this crisis, in a package described by the International Monetary Fund as

'one of the best examples of co-ordinated action globally'.

This package includes an extension to the Coronavirus Job Retention Scheme, where employees will receive 80% of their usual salary up to a maximum of £2,500, while employers need only pay national insurance and pension contributions. We will provide more support to the self-employed. We are increasing the Self-employment Income Support Scheme grant from 40% to 80% in November. This boosts the total grant from 40% to 55% of trading profits from November to January, up to a total of £5,160, aligning it with the furlough scheme. In addition, home owners hit by the pandemic can continue to claim a six-month mortgage holiday, and businesses that are required to close can receive non-repayable grants worth up to £3,000 a month. In total, these grants are worth over £1 billion a month.

We are also planning to extend the existing business loan schemes and the future fund to the end of January, as well as making it possible to top up bounce-back loans. Local authorities will also receive £1.1 billion to support businesses more broadly, and up to £500 million to support the local public health message through the contain outbreak management fund. We will also uplift the Barnett guarantee this week to give Scotland, Wales and Northern Ireland further certainty over their up-front funding.

These measures build on the Government's economic package that now totals over £200 billion. They will provide security to millions of people while giving businesses the flexibility to adapt and plan, and they underline our unrelenting focus on listening and responding to the damaging path of this virus."

1 pm

Lord Tunnicliffe (Lab) [V]: My Lords, the announcement that the Self-employment Income Support Scheme grant will increase to 80% for November is welcome. However, the Chancellor still has not moved on the issue of the thousands who are not eligible for payments. When will the Government act to ensure that the scheme provides wider and fairer coverage, rather than awarding a 55% grant to some and nothing to others? In addition, can the Minister confirm whether the test and trace support payment will be extended to those who receive a notification via the NHS app? Will the size of the payment remain the same even if the Government reduce the self-isolation period to seven days, as has been reported in recent days?

The Minister of State, Cabinet Office and the Treasury (Lord Agnew of Oulton) (Con): My Lords, we are very aware of the pressure on self-employed people at the moment, and it is important to remind the House of the level of support that we have given. Up to 19 July, there were 2.7 million claims for SEISS, totalling £7.8 billion. On the second grant, up to 22 October, we had 2.3 million claims of up to £5.9 billion. We keep under review the whole issue of trying to protect those who have fallen through the cracks. As the noble Lord will know, in relation to the universal credit system, yesterday we announced that the removal of the minimum income floor has been put back until April, which will help. In relation to his very specific questions about linking the isolation payments to NHS Test and Trace, I will have to write to him, which I will do as soon as possible.

Baroness Kramer (LD) [V]: My Lords, the Minister did not answer the question on the 3 million people excluded, who are largely self-employed and just seemed too complicated to deal with last spring but surely could be provided for now? Will he specifically address that? Businesses are under extreme pressure: they are being asked to cope with constant stopping, starting and change in support schemes. Will the Minister now commit to extend 80% furlough and related schemes until the end of June, when we expect a vaccine, so that any business that will be viable, if it can survive the pandemic, can cope with the short-term constraints and closures?

Lord Agnew of Oulton (Con): As the noble Baroness will know, we have no certainty about when a vaccine will be available in quantity. She mentioned June next year, which is a possibility; it might be sooner or later. That is why we are not able to make long-term commitments. I tried to answer the questions that the noble Lord, Lord Tunnicliffe, asked about support for the self-employed and mentioned various mechanisms. She will know that, if they are businesses that have their own premises, we are providing support at £3,000 a month to go towards fixed costs like rates and running costs.

Lord Lucas (Con) [V]: My Lords, my noble friend the Minister will know that I have written to him about a local business that I am sure is not alone in that, since the beginning of lockdown, its business, which is in exhibitions, has shrunk by 90%. It does not see any business coming back until autumn next year. It has taken out loans, made redundancies and done everything sensible, but the business rates keep having to be paid month on month on month, and that is getting extremely hard for it. What can the Government do to help businesses in that sort of circumstance?

Lord Agnew of Oulton (Con): I share my noble friend's concern about small businesses: it is absolutely ghastly for all these people. I want to explain to him that all eligible businesses in retail, hospitality and leisure will pay no business rates in England for 12 months from 1 April 2020 until March next year. This support is worth almost £10 billion to business, and an estimated 735,000 retail, hospitality and leisure properties will

be included in this over that period. There is no rateable value threshold on the support; businesses large and small can benefit. In addition to the business rates holiday, the Government have announced further measures in response to the second lockdown: as I mentioned to the noble Baroness a moment ago, cash grants of up to £3,000 a month, and the extension of the Coronavirus Job Retention Scheme until 2 December.

The Lord Bishop of St Albans [V]: My Lords, there has been a particular problem in the rental market, whereby renters and landlords have suffered as a result of these latest measures. Given the temporary protection from eviction for those living in tier 2 and 3 areas, could the Government confirm whether an eviction ban will now be extended across the country and whether they will now develop a strategy to help tackle arrears brought on by Covid to avoid a tragic spike in homelessness?

Lord Agnew of Oulton (Con): My Lords, we will keep all these issues under review. As the right reverend Prelate will probably be aware, we have extended payment holidays on mortgages and certain consumer credit products to take pressure off individuals. In relation to his rental suggestions, we will keep them under review and will keep the House notified.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, yesterday in the Commons, the Chief Secretary to the Treasury responded to repeated questions from all sides of the House about whether the furlough scheme would continue at 80% in Scotland and Wales after 2 December if there was a continued lockdown. He said:

"the Government will always be there to provide support to all parts of the United Kingdom."—[*Official Report*, Commons, 3/11/20; col. 166.]

We know that the Government will always be there, but will they provide support at 80% if the lockdown continues beyond 2 December? Will they provide that support not just in Scotland and Wales but in the north of England if the lockdown continues as it is at the moment?

Lord Agnew of Oulton (Con): My Lords, as I am sure the noble Lord knows, we have provided some £14 billion of funding to the devolved authorities. That is important because £1.3 billion was announced on 9 October. It is there to support businesses: in Scotland, for example, we have been able to support nearly 1 million jobs, some 6,500 businesses and 240,000 people in employment. I am aware of no proposal to change the 80% furlough either in England or in Scotland.

Lord Caine (Con): My Lords, I welcome the economic support being provided by the Government, which is unprecedented in our peacetime history. Despite that, is it not the case that, as we approach Christmas, very many individuals and businesses face an uncertain future, particularly in retail, hospitality and leisure? Therefore, does my noble friend agree that, for the economic health and well-being of our entire nation, it is vital that the second lockdown does not extend a moment beyond 2 December?

Lord Agnew of Oulton (Con): I absolutely agree that it is a top priority that we do not stay in lockdown for a day longer than we have to. It was done with great reluctance because of the very rapid expansion of the virus across parts of England, which had not seen it accelerating at the pace that it has in the last week or so. Nobody wins from a lockdown, but we are also very aware of the pressure on health services and need to ensure that the NHS is able to cope with the surge that is inevitably coming at us, as we know from the data we have now. This is one of the advantages that we have over the first lockdown: we see this tsunami of infections approaching a little further ahead than we did six or nine months ago. Therefore, we are trying to react to that, but I absolutely agree that we do not want to stay in lockdown for a moment longer than we have to.

Lord Wigley (PC) [V]: My Lords, when the Government put England into a new lockdown, it was announced that the furlough scheme would be extended for England. When the Prime Minister was challenged whether this would likewise be the case for Scotland, he said of course it would, so why did the UK Government refuse the Welsh Government's original request that furlough be available for businesses in Wales at those times when Wales is in lockdown, thereby ignoring the pressing needs of business in Wales and causing unnecessary uncertainty?

Lord Agnew of Oulton (Con): As the noble Lord will be aware, we have made very substantial payments to the devolved authorities over the last few months and increased those payments in October by £1.3 billion. We are all in this together, as my right honourable friend the Chief Secretary said yesterday. We keep all these situations under continual review.

Lord Inglewood (Non-Afl) [V]: My Lords, some firms are facing considerable difficulties in obtaining CBILS loans; I speak as chairman of the Cumbria Local Enterprise Partnership. This appears to be because some banks are reorganising their own internal arrangements in response to the crisis, while some are reluctant to deal with businesses that are not regular customers. What are the Government doing to ensure that these problems will be resolved and that the CBILS arrangements work as intended before the potential borrowers' money runs out?

Lord Agnew of Oulton (Con): My Lords, my honourable friend the Economic Secretary is in constant dialogue with the banks on how all these schemes operate; he continues to try to help to improve them. If the noble Lord would like to write to me on the specific concern he mentioned, I will ensure that it gets the proper attention.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, the time allowed for this Question has elapsed. I apologise to the noble Baronesses, Lady Redfern and Lady Uddin, who were not able to put their questions.

Nazanin Zaghari-Ratcliffe

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Tuesday 3 November.

"I am grateful to the honourable Member for Hampstead and Kilburn (Tulip Siddiq) for raising this question. We are deeply concerned that Iran has issued new charges against Nazanin Zaghari-Ratcliffe. This is indefensible and unacceptable. We are relieved that the groundless new trial, which commenced on 2 November, was adjourned and that Mrs Zaghari-Ratcliffe remains on furlough, but we will continue to call on Iran to make Mrs Zaghari-Ratcliffe's release permanent.

On 29 October, we summoned the Iranian ambassador to make clear our deep concerns about these new charges. We fully support the family's request for officials from the embassy in Tehran to attend any court hearings. The UK Government issued a note of avowal formally requesting UK Government attendance at Mrs Zaghari-Ratcliffe's recent 2 November hearing. So far, regrettably, we have not been granted access to Iranian judicial hearings of any of our dual British national detainees. We will continue to firmly lobby for access to them.

On 22 September, we summoned the Iranian ambassador and handed over a letter from E3 Foreign Ministers about the human rights situation in Iran, including our shared concern about the arbitrary detention of dual nationals. The ambassador in Tehran will continue to raise this with his Iranian counterpart. The Foreign Secretary has spoken directly to Foreign Minister Zarif three times since the summer and continues to raise the situation of Nazanin Zaghari-Ratcliffe and the other UK dual nationals in the strongest terms.

Since the Foreign Secretary was last at the Dispatch Box both he and Foreign, Commonwealth and Development Office officials have been in regular contact with Mrs Zaghari-Ratcliffe and her family. The Foreign Secretary has spoken with both Mrs Zaghari-Ratcliffe and her husband, when he reiterated that the UK Government, from the Prime Minister down, remain committed to doing everything we can for her.

The UK Government continue to engage with international partners and directly with the Government of Iran on the full range of issues of interest to the UK. Our priority remains to prevent Iran from acquiring nuclear weapons capability, to promote stability and security in the region, to secure the release of all our dual national detainees, and to keep the diplomatic door open for a new talks with Iran.

Alongside our E3 partners, we are committed to the nuclear deal with Iran—the joint comprehensive plan of action, or JCPOA—as the best means available to monitor and constrain Iran's nuclear programme. As we have said before, we are deeply concerned by Iranian non-compliance. Iran must engage with the dispute resolution mechanism, which we triggered with France and Germany on 14 January, and return to compliance. We also continue to have serious concerns regarding the implications for the security of the region with the expiry date of the United Nations conventional arms embargo on 18 October.

I can assure the House that the safety and good treatment of all dual national British detainees in Iran remains a top priority of the UK Government. We will continue to lobby at all levels for their permanent release on humanitarian grounds so that they can return home safely to their loved ones."

1.12 pm

Lord Collins of Highbury (Lab): My Lords, I welcome this Statement and the Foreign Secretary's representations about Nazanin's case generally, including his rightly voiced opposition to her potential return to prison during a second trial. Yesterday, James Cleverly welcomed the fact that she had not been sent back to prison. However, can the Minister confirm whether the Government have made specific representations to Iran on this possibility? Can he also detail any further multilateral action at the UN to secure her release and that of other British dual nationals incarcerated in Iran?

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, I thank the noble Lord for his support. I know that this issue has cross-party support and we are working together on this aim. On his final point, yes, we are working with partners to apply maximum pressure for all dual nationals arbitrarily detained in Iran to be released. On this specific case, we have made specific representations, both through the interactions of my right honourable friend the Foreign Secretary and at ambassadorial level.

Baroness Northover (LD): My Lords, the cases of the dual nationals being held in Iran are clearly appalling. Following the question asked by the noble Lord, Lord Collins, I would like to probe the Minister on whether the Government carried out a risk assessment of the safety of Nazanin and others due to the postponement of the IMS debt. We have not had an answer to that either in the Commons or here. Exactly when did the Government ask to attend her trial and what answer did the Iranian authorities give?

Lord Ahmad of Wimbledon (Con): My Lords, on the noble Baroness's second point, as she will be aware, the Iranians do not recognise Nazanin's dual national status. We made that representation; it was declined. On the IMS dispute, I assure the noble Baroness that discussions are ongoing to explore further options to resolve this 40 year-old case, but it would be inappropriate for me to comment further on the case at this time because of those ongoing discussions.

Lord Alton of Liverpool (CB): My Lords, the shocking treatment of Nazanin Zaghari-Ratcliffe throws into sharp relief the appalling human rights track record of Iran, does it not? Will the Minister therefore talk specifically about the recent executions of some of the 2019 protesters and the despicable intimidation of members of staff at the BBC Persian service and their families?

Lord Ahmad of Wimbledon (Con): My Lords, I join the noble Lord in recognising that the UK has a long-standing opposition to the death penalty, whatever the reason and in whichever country. We continue to

make that case to Iran and other nations. Iran's criminalisation of co-operation with the British Council and the attacks against BBC Persian employees are also deeply concerning. The Government continue to provide support to defend them repeatedly at the highest levels in Iran.

Lord Polak (Con): In the Statement, the Minister in the other place said that

"we are committed to the nuclear deal with Iran—the joint comprehensive plan of action, or JCPOA—as the best means available to monitor and constrain Iran's nuclear programme."—[*Official Report*, Commons, 3/11/20; col. 185.]

The Foreign Secretary suggested on television this morning that there are flaws but until something else is out there, it is the only option. What work has the FCDO undertaken to create an alternative? It has also been suggested that the Iranian Islamic Revolutionary Guard Corps has shamelessly harassed Mrs Zaghari-Ratcliffe. To save my noble friend the Minister from telling us that he cannot discuss future proscriptions, I ask this: given that the Minister in the other place was clear on the concerns about Iran's destabilising activities throughout the region, can my noble friend tell the House what possible further destabilising activities the regime and the IRGC can get up to before we act in a tough and appropriate manner?

Lord Ahmad of Wimbledon (Con): My Lord, on my noble friend's second point, we are acting in conjunction with our E3 allies to ensure that the JCPOA remains alive and on the table. It prevents Iran becoming a nuclear state, which must be a priority.

My noble friend raises concerns about the IRGC. We share them, particularly regarding Nazanin Zaghari-Ratcliffe's case and the challenge that she has been presented with the IRGC. On the efforts that we are making, we continue to work with our US allies and E3 partners to ensure that the current ban that was lifted on arm sales to Iran can also reach a conclusion that satisfies our allies across Europe and in the US.

Lord Browne of Ladyton (Lab) [V]: My Lords, in April 2019, the Government granted diplomatic protection status to Mrs Zaghari-Ratcliffe—a very welcome signal that the UK treats the case no longer as a consular matter but as a formal legal dispute between Britain and Iran. Has that change of status been reflected in any change in the Government's approach to this matter? What difference has it made, if any?

Lord Ahmad of Wimbledon (Con): My Lords, exercising diplomatic protection to Mrs Zaghari-Ratcliffe's case formally raised it to the level of a state issue. We continue to take further action where we judge that it will help to secure her full and permanent release. For the time being, we welcome the fact that she has been allowed to return home and has not been taken to prison.

Baroness Goudie (Lab) [V]: My Lords, following on from my noble colleagues' questions, can the Minister assure us that Nazanin Zaghari-Ratcliffe will be able to have medical check-ups through the embassy every week and that a permanent person will visit her every other day from the embassy? At the moment, I feel she is in a very fragile state, with no continuity of people to be with her besides her family.

Lord Ahmad of Wimbledon (Con): My Lords, we as Her Majesty's Government cannot guarantee this, but I assure the noble Baroness that we continue to implore the Iranian authorities that she should receive whatever medical attention she needs.

Viscount Waverley (CB) [V]: My Lords, what is holding back a resolution? The issue must be more complex than we understand it to be. Is practical horse-trading really going on behind the scenes? For example, have the Supreme Leader's personal representatives, who are based in London and directly responsible to him, been sat with? If so, with what outcome? What price freedom? Is Iran holding out on its internal judicial process by saying no to the return of the £400 million-plus owed by the Government rather than having the UK turn this into an advantageous negotiation position that could also be put to the benefit of the desperate lot of Iran's long-suffering people, having been instructed to do so by a UK court? Where is the best practice in the UK's rule of law in all this?

Lord Ahmad of Wimbledon (Con): I agree with the noble Viscount that our argument and challenge are not with the Iranian people; they have suffered for far too long. We are engaging on this issue at the highest level. From the Prime Minister downwards, we are engaged in getting Nazanin Zaghari-Ratcliffe, and other dual nationals who are arbitrarily detained, released on a permanent basis.

Baroness Stuart of Edgbaston (Non-Afl): My Lords, it seems clear that the Iranian regime is using the court process as a negotiating tactic. This does not affect dual nationals just from the United Kingdom but also from France, Germany, Australia and the United States. We can probably anticipate that some of these practices will be accelerating ahead of the presidential elections in Iran in June. Have we had discussions with our partners to protect dual nationals across the board and to take joint action?

Lord Ahmad of Wimbledon (Con): I welcome the noble Baroness to the House and assure her that we work very closely in conjunction with our partners, including those who have detainees who are arbitrarily detained. On the future elections, it should be in our mind that Ayatollah Khamenei, as spiritual leader, also has ultimate adjudication powers on any decision taken by the Iranian Government.

Lord Dubs (Lab) [V]: My Lords, is there any truth in the allegation that some other countries—Australia, France, Germany, Canada and the USA—have had greater success in getting their people back? Is this only because their people were not dual nationals? Secondly, have the Iranians ever mentioned the money in the course of our negotiations with them about Nazanin's release?

Lord Ahmad of Wimbledon (Con): My Lords, I have already commented on the ongoing discussions that we are having on the issue of the debt. On the noble Lord's first point, I believe that he answered his own question. He is quite right that those detainees have been successfully released because they hold a particular nationality. Regrettably, Iran does not recognise dual nationals and that has been its persistent response to our lobbying on this case and others.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, all supplementary questions have now been asked.

1.22 pm

Sitting suspended.

United Kingdom Internal Market Bill

Committee (4th Day)

1.30 pm

Relevant documents: 14th Report from the EU Select Committee, 24th and 26th Reports from the Delegated Powers Committee, 17th Report from the Constitution Committee and 8th Report from the Joint Committee on Human Rights

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): My Lords, hybrid proceedings will now resume. 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.

I will call Members to speak in the order 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 invite Members, including Members in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request and will call the Minister to reply each time. 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 have given notice in the debate. Leave should be given to withdraw amendments. When putting the question, I will collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make this clear when speaking on the group. We will now begin.

We now come to the group beginning with Amendment 149. Anyone wishing to press this, or anything else in this group, to a Division should make that clear in the debate.

Clause 38: Information-gathering powers

Amendment 149

Moved by ***Baroness McIntosh of Pickering***

149: Clause 38, page 29, line 36, after "evidence" insert "or is subject to legal professional privilege"

Member's explanatory statement

This amendment makes explicit reference to legal professional privilege in Clause 38(8).

Baroness McIntosh of Pickering (Con): My Lords, I will speak to Amendment 149. It will not surprise the House to learn that I am very grateful to the Law Society of Scotland for its help in briefing me and preparing this amendment. I state once again for the record, as on the register, that I am a non-practising member of the Faculty of Advocates, so have had cause in the past to be deeply grateful to solicitors in Scotland.

Amendment 149 amends Clause 38, which relates to information-gathering powers, setting out the powers the CMA will have to gather information in support of its functions in this part; under subsections (2) and (3), it will be able to provide an information notice or require the production of a document by an individual business or public authority. The notice must describe the type of information required and when and how it is expected to be relayed. Under subsection (6), the notice must make clear which precise function of the CMA is relevant, as well as the legal and financial consequences of non-compliance. Subsection (8) sets out that no information can be requested if it could not be compelled to be given in the course of civil judicial proceedings before the court, and that a notice may not require a person to go more than 10 miles from their residence without having their travelling expenses paid or offered to them.

This begs a question, which has been identified. Through this amendment, I would make explicit reference to "legal professional privilege" in Clause 38(8), for the very simple reason that a person should not be compelled, as I just stated, under subsection (8),

"to produce or provide any document or information which the person could not be compelled to produce, or give in evidence, in civil proceedings before the court".

This provision may apply to legal representatives, but that should be made clear by a reference to "legal professional privilege" in the clause. My direct question to the Minister is this: why is it specifically not referred to? I am sure he will say that it is implicitly relied on, but I pray in aid that legal professional privilege is the client's privilege, not the lawyer's privilege. It is an essential aspect of the rule of law which enables clients to consult freely with their lawyers and is widely recognised in statute. I would like it in this Bill, unless I hear extremely good reasons from my noble friend why it is not already there. I beg to move.

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, I have two amendments in this group. I also support the amendment just explained by the noble Baroness, Lady McIntosh.

This group concerns the information-gathering powers in Clause 38; it applies to Clause 31, under which requests for a report from the CMA may be made by anyone, and to Clauses 32, 33 and 34, under which administrations may request, respectively, advice on proposed regulatory provisions, reporting on the impact of a regulatory provision and reporting on a regulatory provision that is or may be detrimental to the market.

To prepare reports, information needs to be gathered. The powers enable the CMA to ask any person for any document in their possession or to require any person

who carries on a business to provide estimates, forecasts, returns or other information as may be specified. As the noble Baroness, Lady McIntosh, has already highlighted, it can further specify the time and place at which, and the form and manner in which, the information is to be provided. It may also require conversion of a non-legible record into a legible and intelligible copy of information. There is no acknowledgment of how onerous this may be other than in subsection (8)(b), which says that travel expenses must be offered if a person has to go more than 10 miles from their place of residence. This could impose significant burdens on individuals or small businesses, to whom time is money.

It does not indicate that the information sought is only that which is readily available; it seems there is nothing to stop it requiring the preparation of estimates rather than, say, just the forwarding of those that might have been given to customers in the course of business. Many businesses may well be happy to assist in what is tantamount to a survey about the effects of regulation, just as many respond to consultations, but for small businesses it could be a burden. For sole traders it may mean a significant loss if income is dependent on work, whether that is as a plumber, lawyer, childminder, shopkeeper or anything else.

I am aware that the template of CMA market study investigations and Section 174 of the Enterprise Act have been followed, but are we truly looking at comparable circumstances? Market studies have more statutory requirements and guidance around them, such as the requirement of a market study notice and all the defined stages and practices. That does not seem to have been transposed into this. Nor are the circumstances those of known market deterioration caused by market participants—for example, it may just be about proposed or enacted regulation, with any flaws caused by administrations, which is completely different from when businesses, collectively or individually, have themselves created oligopolies, monopolies or concentrations.

In Amendment 150, I put forward that there should be provision for loss of earnings—why not, if the circumstance is that the expertise of the business is being sought? An alternative way to collect this kind of information is through consultations or by commissioning research. The CMA is empowered already under Section 5 of the Enterprise Act to commission such reports without resorting to enforced business responses. The members of the panel that will prepare the reports are being paid for their expertise, so why not those others who are being harvested for information?

My Amendment 156, would insert a new clause:

"The CMA must take account of the effects of additional duties imposed on small business in its approach to the exercise of its functions under sections 31 to 34, and its powers under sections 38, 39 and 40."

This is not a strong amendment, but at least it makes the point, as otherwise there is no guidance. I am sure that MPs would interest themselves in the sorry stories they will be sent if there are burdensome requirements but, absent something like this, they have nothing to point to when overstepping has taken place. I will return to this matter in the context of penalties in the next group, but when there has been no wrongdoing that brings about the request for information—possibly burdensome requests, enforceable through fines rather than encouragement—it seems a wholly disproportionate measure. As I have said, I do not believe the cause is comparable with current CMA market studies.

Whither now the comply or explain principle—I have always been more of a "make them comply" person, as my track record will show, but these measures offend me in principle and seem to come from the department against business. I can see the matter is different if the business is under investigation for their own doings, but there is no distinction made in the clause. Clause 39 has a "without reasonable excuse" provision and I intend to probe that in the next group but, for now, can the Minister clarify the limits to the burden that can be put upon small businesses and the circumstances envisaged? Something of record has to be made.

As a final related point, there are also circumstances, of course, where much more has been opened up for challenges by businesses through Clause 31, giving the CMA reach into both administrative decisions and to other companies. My noble friend Lord Fox will say more on that.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I will be very brief, as the noble Baronesses, Lady McIntosh and Lady Bowles, have explained this group extremely clearly. As the noble Baroness, Lady Bowles, said, these measures just offend me in principle. The Government seem, time and again, to understand big business, and are happy to give very large amounts of money and all sorts of leeway to such businesses and organisations but, at the same time, quite often miss the point on small businesses, which often struggle to survive—particularly during lockdown.

Small businesses can be the creative heart of our society at times—creating jobs for a lot of local people and, indeed, more widely. Will the Minister listen and understand that such intrusive and burdensome measures really do impact on small businesses that are already struggling to survive? I know it is very difficult for the Minister to commit to anything, but surely he is prepared to discuss this sort of issue with noble Lords and perhaps come to some sort of agreement.

Baroness Neville-Rolfe (Con): My Lords, I was glad to see Amendment 149. It is always good to be clear about legal privilege to avoid needless or inappropriate fishing expeditions by regulatory staff, and it matters for in-house counsel as well as for external lawyers. It would be good to be clear on the Government's intentions.

I also support the sentiment behind Amendments 150 and 156. We need to look after small business, the economic dynamism of which reflects a UK sector that was the envy of everyone when I was the Competitiveness Minister in Brussels. There is much in this Bill that they might fear: rules of which they are unaware; costs, as the noble Baroness, Lady Bowles, suggested, from burdensome requests; big fines; and quasi borders created between the different nations of the UK. I worked with the Federation of Small Businesses on regulation and getting them paid on time, and I try to promote a positive climate for the scale-up of small businesses, rather than a sale to a Silicon Valley, or other, giant after a short run of success. How will the Bill help small businesses, and are there dangers lurking here?

1.45 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I am very pleased to support these amendments, the first in the name of the noble Baroness, Lady McIntosh of Pickering, and the other two in the name of the noble Baroness, Lady Bowles. In relation to the amendment on legal privilege, I note that the Lords Constitution Committee report on the UK internal market Bill says:

"We welcome the confirmation by the Lord Chancellor that information protected by legal professional privilege will not be required to be disclosed to the Competition and Markets Authority under the information-gathering powers in clause 38."

Can the Minister provide any further detail from the Lord Chancellor in relation to this particular issue? Can he say how and when the Government will bring amendments on Report dealing with this specific request to allow protection for clients in respect of the information-gathering powers?

In relation to the two amendments in the name of the noble Baroness, Lady Bowles, I would say that the last thing we need, particularly with Brexit hitting so many businesses and with the impact of Covid and the lockdown, are any more limits to business or on businesses. They have already suffered considerably, particularly the small businesses of sole traders or freelancers.

I think simply of the Northern Ireland situation, where the majority of businesses are small and, combined with the impact of Covid, many could close, resulting in loss of jobs and trading. There are some 148,300 small and medium-sized enterprises in Northern Ireland out of a total population of 1.8 million. This is the fewest of any UK region, as recorded in September of this year.

Another worrying factor is that research by Ulster Bank, a subsidiary of NatWest, shows that any hope of a V-shaped recovery in Northern Ireland has been snuffed out with Covid. I can understand and agree with the sentiments conveyed by the noble Baroness, Lady Bowles, that we do not want to see any further limits on businesses. In that regard, can the Minister advise noble Lords on what discussions he and his colleagues in BEIS have had with the devolved regions regarding these measures in the UK internal market Bill? Maybe he will surprise us and illustrate that there has been quite a bit of discussion.

Lord Fox (LD): My Lords, I support Amendments 150 and 156, and indeed broadly support Amendment 149. My noble friend Lady Bowles, in characterising the information-gathering powers that are attempted to be brought in through this Bill, ably described the wide, broad remit that is being given to the CMA. I fully support and share her case, which was well put, as to why we should be concerned about this.

This is not just a burden on small businesses. Like the noble Baroness, Lady Neville-Rolfe, I have experienced the sharp end of a market study. It is a lot of work. This Bill envisages more than that for all businesses. No such undertaking should be given lightly without understanding what it will do—particularly, as many speakers have said—for smaller and medium-sized businesses. There should be limits.

More broadly, as prefaced by my noble friend Lady Bowles, during the debate on Clause 31, my noble friends and others raised the potential for universities to be dragged into the ambit of the CMA and the OIM—not least because of the different tuition fee regimes that exist within our nations. As we all know, this is a devolved responsibility. Despite their efforts, Ministers did not satisfactorily explain how this would happen, including in the letter.

We now turn to Clause 38, which, once again, broadens the powers of the CMA and enables it to be involved in these matters. The powers which are envisioned, though extensive and with little or no restraint, further stoke the fears harboured by Scottish universities. It could work the other way around. It could be the English university fee policy that is being challenged. This power is wider, with very few limitations.

I wish to probe the potential role of the office for the internal market under Part 4 of the Bill in relation to tuition fees. According to Universities Scotland's brief, the powers in the Bill could

"give the OIM/Competition and Markets Authority (CMA) the power to investigate and reach a view on whether differential student fees represent a distortion of the new UK internal market. Regardless of the non-binding nature of the reports and advice of the OIM/CMA, it would have to be taken seriously by Parliament (Holyrood or Westminster). This could introduce new and greater basis for individual challenges to the variable fee regime within the UK, brought by individuals who feel they are discriminated against. … If this understanding is correct, this would apply in both directions, with possible challenges brought by Scottish domiciled students/individuals who consider the fee policy as administered by universities in England to discriminate against their options."

That is one example of the consequences of this Bill. Will the Minister tell your Lordships' House whether it is intended or unintended? If it is intended, why do Her Majesty's Government see fit to mess with this devolved responsibility? If it is unintended, can the Minister acknowledge the issues that pervade this Bill?

In the Minister's letter to my noble friend Lord Purvis of Tweed, which I hope has been placed in the Library, the Government accept that there are issues about university services. It highlights the power to amend exclusions after the Bill is enacted. This should be clarified by a government amendment before Report, not afterwards.

There are many other examples. In the short time we have had to examine this Bill, we have uncovered anomalies, irregularities and mistakes not just in relation to universities but in the food, alcohol and energy sectors. The noble Baroness, Lady McIntosh, also raised queries about the legal profession. In the spirit of whack-a-mole, I can add more, such as the water industry. Powers under Clauses 31 and 38 could mean that the CMA could be asked by an investor in an English water service company to investigate, let us say, the mutual Welsh Water company. Water is to be considered as a UK market, where it was not before. Once a case is opened, who knows where it will end up? Is this accidental or deliberate?

At the same time as the Government accrue these badly-defined powers to the new OIM and CMA, corporate lawyers on behalf of big businesses headquartered in the UK and beyond are sharpening their pencils. As the Government seek to regulate on a

UK-wide basis services that until now have managed very well without Her Majesty's Government's help, consumer lawyers are looking into their practice development strategies and preparing to sell litigation ideas to future clients. As the noble and learned Lord, Lord Falconer, put it, this will be "a lawyer's paradise". At its heart is the Government's decision to sideline the flexibility of the common frameworks and pursue the central ambition of trying to create a rigid one-size-fits-all regulatory structure to deliver a one-size-fits-all United Kingdom. The persistent and obvious flaws in this Bill demonstrate that this one-size-fits-all approach is impossible, even if it were desirable, which it is not.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, this debate has raised some interesting and important issues. I have listened with care to all the speakers and particularly to the contribution of the noble Baroness, Lady McIntosh, based on information provided by the Scottish Law Commission, whose help I also acknowledge. I look forward to the Minister's response. The noble Baroness, Lady Bowles of Berkhamsted, raised a number of issues to which I wish to return. Other speakers have made small but important points on SMEs and the role of Northern Ireland.

The noble Lord, Lord Fox, picked up on the recent letter from Ministers about university fees, particularly in Scotland, and questioned whether this could constitute indirect discrimination. This was also raised in an earlier group. Like the noble Lord, I wonder why this could not be better dealt with by the common frameworks approach. This should be applied to all aspects of managed divergence, in relation not just to goods but also to services and the regulation of professions. We will return to this on Report.

In respect of the amendments tabled by the noble Baroness, Lady Bowles of Berkhamsted, the powers included in Clauses 38,39 and 40 are quite extensive and detailed. Do they go beyond the existing powers of the CMA? Are they new because of the responsibilities that will accrue to the CMA or the office for the internal market under this Bill? Or do they simply repeat existing powers reframed in some way to suit the new circumstances? I would appreciate the Minister's response. As other speakers have said, this additional activity is very detailed and gives specific examples of what can and cannot be done and how it is to operate. Does this not play to the concerns raised by the noble Baroness, Lady Noakes, in an earlier amendment that asking the CMA to extend its focus and the range of its work might blur the good work it does at the moment? Does the Minister accept that there might be a problem here?

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, I thank all noble Lords who have taken part in this debate. The noble Lord, Lord Fox, raised issues around university tuition fees and water services. As he said, I have written to him and to the noble Lord, Lord Purvis, about the points they raised in earlier debates. I am told that these letters have been submitted to the Library but there may be a slight delay in their publication. I confirm what I said there about the exemption in the legislation for public services. More details are set out in the letters. If for some reason they have not yet been published, the noble Lords, Lord Fox and Lord Purvis, should get in touch with my office, which will be happy to furnish them with a copy.

2 pm

Regarding Amendment 149, as previously noted, Clause 38 is based on the CMA's existing powers under the Enterprise Act 2002. The clause has appropriate modifications to allow the CMA to gather information from businesses, individuals or public authorities. I can tell the noble Baroness, Lady McIntosh, and the noble Lord, Lord Fox, that this includes an existing exclusion for information that is subject to legal professional privilege from being required to be produced or provided to the CMA, whether that information is subject to legal advice privilege or litigation privilege. That confidentiality of communication between lawyers and their clients is protected by subsection (8) and therefore no amendment on the subject is needed.

Amendment 150 seeks to add new wording to the end of Clause 38(8). In reply to the noble Baroness, Lady Bowles, and the noble Lord, Lord Stevenson, I emphasise that the powers in question have to date functioned effectively for the Competition and Markets Authority and all its stakeholders without any need to provide further clarification as sought by this amendment. The Government remain confident that the CMA will continue to apply a flexible and pragmatic approach that will maintain the already high confidence of stakeholders in fulfilling its information-gathering power in Clause 38.

Amendment 156 would add a new clause to place a duty on the Competition and Markets Authority to consider impacts on small businesses when undertaking its functions in Part 4. I understand the concerns of the noble Baronesses, Lady Bowles and Lady Jones, and my noble friend Lady Neville-Rolfe. The Government are aware of the importance of recognising the impact on small businesses. However, the interests of small, medium and large businesses will be taken into account by the OIM in its monitoring and reporting functions, so there is no need to add a specific reference about the impact on small businesses. This is because Clause 32(4) sets out a function for the CMA to advise and report on a regulatory proposal prior to it being passed or made in law. The CMA will examine the potential economic impacts of the proposal on the functioning of the UK internal market. This could include a proposal's impact on competition or trade distortions, indirect or cumulative economic effects or impacts on prices.

All these assessment criteria are highly relevant to and must cover impacts on small businesses. In order to serve all those with an interest in the internal market, the advice and reporting in question will of course account for the impacts on consumers, professionals and businesses of all sizes, in all sectors.

In the light of the reasons I have set out today, the Government do not consider that the amendments in the group are necessary. I hope that noble Lords will withdraw or not move them.

The Deputy Chairman of Committees (Baroness Henig) (Lab): I have received a request to speak after the Minister from the noble Lord, Lord Fox.

Lord Fox (LD): I much appreciate the Minister's answer. The questions I asked about university tuition fees were in the light of having read his letter, which my noble friend Lord Purvis made available to me—there is no need to send it to me. In it the Minister states that,

"we are aware of the questions raised in relation to university services and how they may interact with the Bill",

which is good. The letter continues:

"We have the power to amend the exclusions Schedule and will keep the area of higher education under close review."

It therefore seems that the Government are planning to do that after Report. My point is that it would be a boon to our process on the Bill if the Government were to consult before Report and come back with something that I am sure, given what the Minister said, would merely fulfil their ambition for the Bill while settling concerns in the university sector.

Lord Callanan (Con): I thought that I had put the matter to rest by writing the letter to the noble Lord, Lord Purvis, on which the noble Lord, Lord Fox, has commented. In our view, there is no doubt that the regulation of tuition fees is outside the scope of the Bill and, therefore, beyond the scope of the office for the internal market's functions. But as the letter to him confirmed, we will keep the matter under review and not hesitate to take action if there is a problem, which we do not believe exists.

The Deputy Chairman of Committees (Baroness Henig) (Lab): The noble Lord, Lord Stevenson, and the noble Baroness, Lady Neville-Rolfe, also wish to speak after the Minister.

Lord Stevenson of Balmacara (Lab) [V]: I asked the Minister a specific question on whether the framing of Clauses 38 to 40 was exactly the same, or differed from, the existing powers of the CMA. He did not answer that. I do not want to delay us too much today but perhaps he could write to me about it.

Lord Callanan (Con): I would be happy to write to the noble Lord but, as I said, the powers to date have functioned effectively and are based on the CMA's existing powers.

Baroness Neville-Rolfe (Con): I have another couple of points for clarification by my noble friend. First, does legal privilege apply to in-house counsel, provided that they are properly qualified lawyers? I would be happy for the Minister to write to me about that. Secondly, he referred in the debate about small business to Clause 32(4), and helpfully explained that the CMA will advise on regulatory proposals before laws are made, which provides an opportunity for small business interests to be taken into account. However, my concern was also about enforcement of the law, which would bear particularly harshly on small businesses that do not have the same fancy legal departments as others. I am not sure that the clause deals with that but would be delighted if I was wrong.

Lord Callanan (Con): On my noble friend's first question, she will notice that Clause 38(8) states:

"A notice under subsection (2) or (3) may not require a person … to produce or provide any document or information which the person could not be compelled to produce, or give in evidence, in civil proceedings before the court".

I hope that that resolves the matter. I will write to her on her second point.

Baroness McIntosh of Pickering (Con): I thank everyone who has contributed, including my noble friend the Minister in summing up the debate. We had an excellent discussion on the issues, and I am grateful to the noble Baroness, Lady Bowles, for raising them because they are pertinent. I am slightly confused as to why it is necessary to include in the Bill powers that already exist. We are told that they are not new, yet my noble friend will not agree to include in the Bill a matter that is already causing alarm.

I am grateful to the noble Baroness, Lady Ritchie, for alerting me to the Constitution Committee report in that regard. It has highlighted its concern and received a verbal undertaking from the Lord Chancellor. I should repeat that we are referring to the Law Society of Scotland, not the Scottish Law Commission. If both the committee of this House and the Law Society of Scotland are concerned, that verbal reassurance is not enough. I may well reflect on the matter and come back on Report. However, for the moment, I am grateful for having had the opportunity to debate this matter and I beg leave to withdraw the amendment.

Amendment 149 withdrawn.

Amendment 150 not moved.

The Deputy Chairman of Committees (Baroness Henig) (Lab): We now come to the group beginning with the question that Clause 38 stand part of the Bill. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this question or anything else in the group to a Division should make that clear in the debate.

Debate on whether Clause 38 should stand part of the Bill.

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, the previous group has already set the scene on Clause 38, where I propose some changes to help small businesses, at least. The point remains that the CMA, or OIM, is an opining body, often for the benefit of Administrations, even if most of those are not happy with how it is set up. I also clarify that I am not against the CMA per se. I have responded to its consultations, been quoted by it and would give it more powers in competition matters. Even if it were the chosen body, I would still consider the same procedures and culture not right for monitoring the internal market, so to copy and paste legislation created for the competition field is not appropriate. I mention again the different approaches of DG COMP and DG Internal Market as an illustration.

In this group, I am further probing the constraints on information-gathering powers. As I have said, they often apply to individuals and businesses that have not done anything wrong, nor have their actions, individually or collectively, distorted the market. If the regulations are amiss, that is created by Administrations. With all due respect to the response the Minister gave on the

previous group, that is different from competition matters, which the businesses and their actions have brought forward. I find it alarming that there is no understanding of the fundamental difference between applying competition law and monitoring an internal market, but it is early days and this is all new.

I accept that an investigation into and report on the activities of companies that are causing distortion, as could be the case under Clause 31, is different. Then, it is perhaps reasonable to use the existing CMA powers and scope. But I can assure the noble Lord, Lord Stevenson, that the format of these enforcement powers is copied and pasted from the CMA in its role dealing with companies that potentially threaten the public interest, where there is at least a suspicion that competition laws or norms, such as market concentration or fair pricing, are being challenged. In the Bill, individuals or companies are being used as sources of information for things that they have not brought on themselves, and that is the difference. It is why having the same laws is not appropriate. For this reason, I object to the compulsory scope of Clause 38 for all circumstances, and the same applies to the enforcement and penalty powers in Clauses 39 and 40.

Clause 38(6) states that the notice will be sent with "information about the … consequences of not complying". That is a frightener. Is that the way to treat business? Was it consulted upon? We challenged the Minister on Monday about the information he had been given to say to us, stating that using the CMA was consulted upon. Even if there were a few throwaway lines like "such as the CMA" in response, was any consultation conducted on whether CMA market study legislation fits the rather different circumstance of investigating Administrations' actions? If businesses or individuals decide that they do not wish to or cannot provide information, and the CMA decides, under its own rules, that their excuse is not reasonable, they can be dealt with as obstructing and fined.

There was an interesting exchange on fines on Monday, when the noble Baroness, Lady Finlay, asked whether a Member of the Senedd could be fined. The Minister said that they could be asked for information, but not fined. Now we see another way to get some of that information: turn any business that had been in discussions with the Senedd into the informer. Who knows? Perhaps one day we might even get some of the unpublished consultation responses that the Government sit on.

2.15 pm

The only ray of hope is a reasonable excuse for failing to comply, and I would like guidance on what is reasonable. Is it a reasonable excuse that the person does not have time or cannot afford to attend wherever they are summoned, from a loss-of-earnings perspective? Is it a reasonable excuse that the businessperson concerned also has childcare responsibilities, which make it difficult to attend as well as costly? Is it a reasonable excuse, as there is no suggestion that they have done anything wrong and it would be inconvenient, that they wish to decline to do it? Is it a reasonable excuse that they do not have ready estimates and forecasts, and that it takes them away from fee-earning work to construct them? Is it a reasonable excuse that they do not keep those kinds of records? Is it a reasonable excuse that a Member of the Administration has the information and has declined to produce it?

Freedom of information requests can be declined for taking too much time and involving too much expense. Does a similar consideration apply here, at the discretion of the person from whom the information is sought? Why is it any different when they have not done anything wrong? The Minister knows full well that businesses want a smooth-running internal market but, frankly, how many board members want to add CMA or OIM internal market information requests to their risk register? A good place to do business—what are you thinking?

On the other side, there are also circumstances where much more has been opened up for challenge by businesses through Clause 31, giving reach into administrative decisions; and, as mentioned in the impact assessment on page 29, legal actions may occur, possibly as a follow-on. This may also extend beyond UK shores, so can the Minister explain the scope for investigative actions from other countries that the provisions in the Bill create? For example, will the CMA accept third-country complaints under Clause 31? Or, when we get to it next week, under the wording in Clause 50, what third-country actions are opened up in services that are beyond the WTO provisions? Using the example mentioned by my noble friend Lord Fox, an English water company might actually respect the mutual Welsh water companies, but could a foreign water company intervene?

The Deputy Chairman of Committees (Baroness Henig) (Lab): I am assuming that the noble Lord, Lord Naseby, has scratched from this group, so I call the noble Lord, Lord Tyrie.

Lord Tyrie (Non-Afl): Some very interesting points have just been made that bear serious consideration, and the concerns we have just heard are reasoned, particularly on SMEs. At the very least, the Government may wish to offer a review of the CMA's use of these powers, after an interval, to give us the assurance that they are being proportionately deployed and to see whether they need some amendment. The argument that they were derived from legislation the purpose of which was very different is well taken and might point to further amendment.

Overall, I support the Government in what they are trying to do here, having decided to create the OIM. It is true that the powers are robust, but they will need to be. If the CMA is to be expected to offer timely and high-quality advice, it will need to secure information quickly, without being given the runaround by devolved Administrations or parts of the private sector.

The penalties proposed are a weakness, though. Crown immunity will be in play for the devolved Administrations. I would be interested to know what thought the Government have given to the penalties that can be imposed for non-compliance in those cases. Public censure might help; on the other hand, a devolved Administration standing up to nasty Westminster might win local plaudits, resulting in the opposite effect. A lot of careful thought needs to be put into this issue if these measures are to be made effective.

[Lord Tyrie]
The proposed fines on the private sector are capped at £30,000. I simply do not see that sum troubling a recalcitrant or determined large third party. Has the Minister considered larger fines in certain circumstances?

It might be helpful to make one more general point. The CMA's existing arrangements for securing compliance and information gathering across all its other functions are manifestly inadequate, as I saw it during my time there. They should not be used as a benchmark. Incidentally, the £30,000 figure comes from the merger regime. Something has to be done. The European Commission recently fined Facebook £1.6 million for not supplying information, while the CMA recently fined Amazon £30,000 over the merger with Deliveroo for not supplying information. That should give some idea of the disparity.

In February 2019, the CMA put proposals to the Government for improvements to information-gathering powers across all its functions. First, it needs to be able to gather information from a much wider range of sources to reflect the increasingly digital nature of the information that it is trying to collect: iCloud, machine-learning algorithms and so on spring to mind. These are not at all easy to capture with existing legislation. Secondly, and even more importantly, subject to safeguards, the CMA needs a general information- gathering power outside the context of a formal investigation. I do not like giving general powers, but I think the CMA now needs this to find out what is really going on in markets and enable it to think through much better than it can at present. It needs to be able to use the full range of tools to best bear down on consumer detriment. It is struggling to do that at present, and increasingly so with the growth of rip-off culture.

When the Minister returns to his department, he will find the proposals, of which I am just touching the surface, have been fully developed by the CMA and are sitting with his officials. Will he agree to take another look at those proposals to see what might usefully be drawn from them? For improving the ones we are discussing today, quite a lot of what is in there is likely to be relevant. Will he agree to report back to the House on what he has found?

I have been following this Bill closely, particularly Part 4, which I have an interest in because of my previous job. Some very important points have been made across the Committee, not least in Monday's relatively brief debate on Clause 28 about whether the CMA is the appropriate body in the beginning to have responsibly for these functions. Those points are sufficiently important for us to have another look at them on Report. I hope the House will find a way to enable us to do this.

Baroness Neville-Rolfe (Con): My Lords, this Committee is nearing its end, apart from Part 5. I support the noble Baroness, Lady Bowles, in her forensic efforts to probe the purpose of Clauses 38 to 40. I welcome my noble friend Lord Tyrie to today's debate. Although I do not agree with him on fines or general powers, he makes a very good point about digital information. I am sorry he was not here for the debate on where the OIM sits. As he says, that is something we hope to debate again on Report.

On the plus side, these clauses give a great deal of detail. I usually complain to the Minister that EU exit Bills fail to do just that and leave too much to regulations. On the minus side, these are extremely strong powers of enforcement with very high penalties—for example, fixed fines of up to £30,000 would make many a small company bankrupt. There is no due diligence defence that I can see or provision allowing a reasonable excuse. The CMA can use its own discretion to decide whether a request for information has been complied with and can impose a financial penalty if it thinks there has been obstruction or delay. Such powers are fiercer than those of the police. The Minister will be able to tell us whether the CMA has those powers in relation to competition law and perhaps explain in each case why they are justified in the internal market Bill which, as many have said, is a little different from competition law.

Moreover, we do not know to which regulations these various measures and penalties will apply. Can the Minister kindly take us through some examples of their proposed use? He may have done this elsewhere; if so, I am sorry if I missed that. Perhaps more importantly, could he lay some sample regulations for us to review before Report, as his predecessor did so helpfully on the Bill relating to nuclear issues on EU exit?

I worry that both Houses of Parliament have been distracted by unease with Part 5 of the Bill into agreeing wide-ranging, open-ended and burdensome powers in these clauses and, for the first time, on services, the beating heart of the economies in all four nations of the UK. All this has been relatively lightly scrutinised despite our efforts, and experience shows that some nasty surprises might be in store. I am keen to work with others to minimise those while generally supporting the Bill's direction of travel.

Lord Fox (LD): My Lords, once again this has been a short but important debate. I congratulate noble Lords on speaking on this. Once again, I find myself in complete agreement with the noble Baroness, Lady Neville-Rolfe, and my noble friend Lady Bowles. It was good to hear from the noble Lord, Lord Tyrie, whose experience is important.

During her speech, my noble friend Lady Bowles sought to characterise the difference between getting information from potential recalcitrants—people who are suspected of or known to have distorted the market—and getting information from people to create a picture of a market. I hope the noble Lord, Lord Tyrie, will not mind me saying that the sort of language used about needing more sanctions and similar issues is coming from the mindset of dealing with recalcitrants. That is where the experience of the CMA has lain to date. There is a real concern that in creating this new role the culture of having to fight to get what you need is transferred into this second activity, and that is not appropriate.

I was interested to hear the point of the noble Lord, Lord Tyrie, about Clause 28 and looking again at the positioning of the OIM and CMA. I would be very keen to hear what he has to say.

Lord Tyrie (Non-Afl): My Lords—

Noble Lords: Oh!

Lord Tyrie (Non-Afl): May I not respond? What a shame.

Lord Fox (LD): Perhaps the noble Lord can put his point in writing, or speak after the Minister if it is a question to him.

Enormous care is needed, at the very least, but it is not clear in the Bill where that care is and how careful the Bill is; it seems quite careless. We come back to whether the Bill is deliberately underwritten or accidentally underwritten because there was not enough time. There is plenty of scope for the Minister to answer the questions set out by my noble friend Lady Bowles, the noble Baroness, Lady Neville-Rolfe, and the noble Lord, Lord Tyrie, and to nail how this will work, what it is for and how small and medium-sized businesses in particular will be protected from an overzealous information-gathering process.

2.30 pm

Baroness Hayter of Kentish Town (Lab): My Lords, this debate is perhaps even more important than some of the others that we have had. The real advantage of a stand part debate is that one can question the purpose of a clause rather than getting down into the weeds of amendments.

The issue that the noble Baroness, Lady Bowles, has raised is fundamental to how we have been looking at this. She asked—these are actually my words, although the noble Baroness, Lady Neville-Rolfe, said much the same—whether the competition regime was appropriate for work on the internal market. I am sorry that the noble Lord, Lord Callanan, gave away in an earlier debate that this may have been written hastily over the summer; it certainly sounds like a cut-and-paste job, done without stopping to think. Just because it is the same organisation at the same address in Holborn, or wherever the CMA is these days, you cannot just cut and paste it; as the noble Lord, Lord Fox, was saying, it is about the culture of that organisation as well as whether the structure is available. There is a fundamental question here, which my noble friend Lord Stevenson dealt with under Amendment 115, of whether the OIM should be within this framework, as well as the even broader subject of whether these sorts of penalties are appropriate for such a different role.

There are some specific issues in these clauses, such as whether it is appropriate for the Government to be able to amend the list of exclusions without any involvement of the devolved authorities. We have discussed such matters before, but under this legislation the fixing of penalties could again be altered without any involvement of the devolved authorities. This is serious stuff. They are a part of the overall governance and working of the new internal market, yet the Bill is written as if this is simply a Westminster responsibility.

I come to what the noble Baroness, Lady Neville-Rolfe, was saying: exactly what is covered by these clauses? In an earlier debate I asked the Minister to set out what services were covered, but obviously I was mumbling at the time because he wrote me a very nice letter on 2 November telling me about the services that are excluded, which of course already exist in the Bill. The question that I was trying to ask is: what services will be covered? I still cannot get a handle on that. This is really important given what has been said about whether the demands and penalties applying to services that are covered are appropriate.

Obviously I was not very clear about what I wanted but I had talked about housing and whether someone organising a register of housing would count as a service. I was talking about landlords but the letter refers to social housing. We are talking not about social housing but about landlords of private housing. I am involved with another part of the Government, the Ministry of Housing, Communities and Local Government, in chairing something to try to set up a code for property agents for when the Government are ready to fulfil what they have already promised—that is, to set up a regulator of property agents. They are already a service but the circumstances are different—buying and selling a house in Scotland is very different from England; if you buy there, you tend to go to a solicitor rather than an estate agent—so there are different ways of a service being developed or in existence. Once they are regulated, perhaps property agents will count as a profession, which is a different issue, but before then, as a service, are they going to be covered by these sorts of requirements?

If that is the case—and this is the main thrust of what I want to say on this group— how will these services know that they are covered by this provision? It is important for anyone risking breaking the law, in the sense of civil law, and being charged a penalty to know that that law applies to them. If they do not define what they are doing as a service and therefore do not know that they are captured by this provision, they may find it difficult to understand that they could be required to provide information. I can imagine that this could really affect property agencies. They need to know that it covers them, which is quite an issue, but it is also unclear to me whether the level of penalties is appropriate for this area. For a small housing management group, for example, this daily rate of £15,000 will basically wipe out its business if it has an £80,000 annual turnover. We are talking about levels of penalty.

It seems to me that those agents are covered by this, but I am unclear about the appeals process. If they are asked a question, how do they know that it has legal force behind it? Even if they are told that—most of these people will of course not have lawyers —and there is a penalty, do they have any appeal? I could not find one in the Bill but I am sure the Minister will be able to tell me; it is quite unusual to have a penalty without any sort of appeal. I could not work this out but I am sure the Minister will.

My main ask is: can we know the sort of services that will be covered? Perhaps we could hear more—not in legal language but in language that I can understand—about how they would know and about their rights to appeal any fixed penalty.

Lord Callanan (Con): I thank all noble Lords who have taken part in this debate. I apologise to the noble Baroness, Lady Hayter, if she found my letter disappointing; I will try to do better next time. The noble and learned Lord, Lord Falconer, looks disapproving; I am not going to write him any more letters if that is the case.

[Lord Callanan]

With regard to exclusions on services, all services subject to the authorisation requirements or the regulatory requirements are affected under the Bill unless they are specifically excluded from some or part of the rules under Part 2. I hope that that clarifies the noble Baroness's question—if not, I will be happy to write her another letter. She is shaking her head in disbelief.

I say to the noble Baroness, Lady Bowles, with regard to her question on consultation, that we consulted on the general office, what enforcement provisions there should be and whether or not it should be included as part of an arm's-length body. Once we had made the decision that it should be located within the CMA, there was of course extensive discussion between officials and the CMA on the powers and how they will be enforced. I say to my noble friend Lord Tyrie that I am of course aware of the proposals that he refers to on the CMA and I will be happy to take another look at them.

Addressing the specific questions on this clause stand part debate, I will set out the rationale for these clauses. Clause 38, as I believe we already discussed in the previous group, sets out the powers that the Competition and Markets Authority will have to gather information in support of its monitoring, advisory and reporting functions. As I said previously, in order to carry out its functions the OIM must have access to high-quality information to produce accurate, relevant and credible reports. Clause 38 will ensure that the CMA is able to require the assistance of third parties to perform its functions and is able to independently gather evidence in a timely manner.

I hope that the noble Baroness, Lady Bowles, agrees with me that presenting analysis based on partial or inaccurate information could be detrimental to the regulatory decisions taken as a result of OIM reporting and monitoring and would damage the reputation of the OIM among many key stakeholders in these fields. The powers in this clause are therefore put on a strong statutory footing. They will ensure that the reporting that the OIM undertakes will be as effective and comprehensive as possible for the benefit of policy-makers in the UK Government and the devolved Administrations, significantly strengthening existing stakeholders' ability to navigate the new UK internal market.

Clause 39 describes what action the CMA is able to take in response to non-compliance with the information requests described in Clause 38. As noble Lords said, the CMA has existing powers under the Enterprise Act 2002 regarding non-compliance with its information requests. This is necessary to enable the CMA to carry out its functions effectively. As with Clause 38, the provision for the OIM in Clause 39 is modelled on those powers. The clause will allow the CMA to determine the most appropriate policy approach and the amount of any financial penalty to be imposed within the limits that have been prescribed. The clause also sets out the conditions where financial penalties may not be imposed because more than four weeks has expired since the CMA exercised its relevant functions.

Clause 40 sets the parameters that the CMA should consider for financial penalties in cases of non-compliance with an information-gathering request notice. Let me first say that I understand the concerns of noble Lords, but the preference and expectation will always be that information gathering is on a voluntary basis. The Government do not anticipate that the CMA will need regularly to fall back on the information-gathering and non-compliance powers. However, it is important to ensure that this facility is available to the CMA to detail how penalties will be set. As with other provisions, the Government have chosen to mirror the relevant provisions of the Enterprise Act 2002.

I can say to the noble Lord, Lord Tyrie, and my noble friend Lady Neville-Rolfe that the Secretary of State will make regulations specifying the maximum amounts in practice within the specified ceilings for these penalties in consultation with the CMA and other interested parties. I can confirm for the benefit of the noble Baroness, Lady Hayter, that the devolved Administrations will of course be consulted as part of this. In addition, and as noted in our debates on previous groups, I confirm to the noble Baroness, Lady Bowles, and the noble Lord, Lord Tyrie, that the CMA will not be able to issue a financial penalty against the UK Government or any devolved Government. Let me be very clear about that. Let me also assure the noble Baroness, Lady Bowles, that the Government are committed to not taking any steps to bring in the financial penalties until there is credible evidence that there is a need do so, so we will not commence these provisions without that credible need being demonstrated.

I will deal with a couple of other questions. The noble Baroness, Lady Bowles, asked about third-party requests. Such requests would be permissible if they were within the scope of Clause 31 and the CMA thought that they were appropriate. As I confirmed earlier, the White Paper invited consultation responses on how the functions to be delivered should be implemented as well as on whether an existing arm's-length body should deliver them or bespoke arrangements should be established. As is obvious, we decided after that consultation that the OIM should be situated within the CMA.

With the reasons I have set out, I hope that I have been able to reassure noble Lords on their legitimate concerns and on why this clause should stand part of the Bill. I hope that the noble Baroness will feel able to withdraw her amendment.

The Deputy Chairman of Committees (Baroness Henig) (Lab): I have had a request to speak after the Minister from the noble Lord, Lord Fox.

Lord Fox (LD): My Lords, I thank the Minister for his answer. I have two questions. First, does the Minister understand the difference between a voluntary activity and a voluntary activity where there are potential fines? It is the difference between cleaning the house voluntarily and cleaning the house knowing that I could have my tea withdrawn if I did not. There is a very big difference. That needs to be understood in terms of the culture of the way in which this information is sought. Does the Minister understand that difference?

Secondly, my noble friend Lady Bowles asked a series of questions about what is permissible as a reason for not delivering information. There was a huge multiple

choice question and an overarching question. I think that the Minister dodged—sorry, I withdraw that word. The Minister did not answer any of those points. They were an important element of my noble friend's questions so will he address them, perhaps generally today and more specifically, bearing in mind the very specific questions that she asked, in one of his letters?

2.45 pm

Lord Callanan (Con): With regard to the noble Lord's first question, I understand why his cleaning abilities might not be up to standard and he might not get his tea. With regard to the questions asked by the noble Baroness, Lady Bowles, on reasonableness, we certainly do not intend to create disparity within the CMA over the functions it carries out and the processes it follows.

To be serious, of course I understand the difference between being asked to do something voluntarily and being asked to do something voluntarily with the back-up of potential penalties. The powers and penalties in question are similar to those used by the CMA for its existing functions, such as conducting market studies. This will ensure consistency in the way that the CMA, under its existing and its OIM capacities, interacts with stakeholders across all its functions. We do not intend to commence the powers on fines until it is proved that they are necessary, as I said.

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

Baroness Neville-Rolfe (Con): I thank my noble friend for his assurance on commencement. He did not answer my specific questions, but I think that the answer in general terms was that the Government have taken the same powers as the CMA has on competition and applied them pro rata. Perhaps I can pick up something that the noble Lord, Lord Stevenson, said earlier. I wonder whether we could look at this line by line to see whether things are or are not all the same; that would be a helpful Committee-type process.

I really got up to ask a question about examples. The Minister helpfully gave an example of a penalty regulation—he said that he might make regulations with penalties under £30,000, perhaps at a lower level for particular things—but I am confused about what kind of regulations are going to be made here. That may be an impossible question to answer but if my noble friend could give us some more examples, perhaps ones that are in draft or have gone out to consultation, it would be incredibly helpful.

Lord Callanan (Con): I referred in my earlier speech to the need to make regulations setting the maximum penalty, which the Secretary of State will do, but I will write to my noble friend if there are any other examples of regulations that we feel we may need to make.

The Deputy Chairman of Committees (Baroness Henig) (Lab): Does the noble Baroness, Lady Bowles, wish to respond to any of the points made?

Baroness Bowles of Berkhamsted (LD) [V]: Yes. My Lords, I thank all noble Lords who have spoken in this debate; I think that it will be even more interesting when we read it in *Hansard*.

I think that there is still a sticking point, which was exemplified by one of the Minister's comments. He said that he did not want there to be disparity between procedures in the CMA. The point that I have been making, which seems to have been supported by all the speakers in this debate, is that they are for different things. The noble Lord, Lord Tyrie, acknowledged that it was for a different purpose. My noble friend Lord Fox referred to people being recalcitrant rather than doing nothing. I was trying to say that, within competition policy, the Government are pursuing miscreants, but they are pursuing innocent people for information. In fact, at the beginning of his response, the Minister said that the purpose is to gain the assistance of third parties. That was the first time I had heard a reasonable word about this. The Government are asking the private sector to give assistance. They can go to the devolved Administrations but there is complete asymmetry: the Government cannot fine them but people who find it too difficult to give assistance are at risk of a fine.

Of course we expect reasonable behaviour, but we do not always get it. I point to that wonderful machinery of HMRC on loan charges and ask whether we have evidence that we always get reasonableness where we want it. I am not yet satisfied. There have been some interesting suggestions about reviewing how it has gone, that we can have sight of the regulations, or that we can examine procedures that are likely to be implemented. Surely we could do some of these things between now and Report.

I still think that where we are essentially sampling and wanting views from people in the market, the burden is on the sampler, not the samplee. This is therefore a matter I wish to return to on Report, but I hope it is something we can solve. On Monday on our first group, people said that patent attorneys were vital for the country, so I had a smile on my face. Maybe now noble Lords actually know where I learned to be a nerdy pedant.

The point is that we have to have protections in the Bill where, if something unjust happens, somebody can say, "Hang on a minute, look, it says here that that excuse was reasonable," or, "You can't make me do this because I haven't done anything wrong." You cannot go around arresting people without reasonable suspicion. I do not think we should fine people without reasonable suspicion that something wrong was done in the first place. We cannot just invent a wrongness by saying, "I wanted you to give me some information and you said no", which is basically what the powers in the Bill do.

I thank noble Lords. I look forward to a letter with some more answers to my questions from the Minister. I do not think there is anything to withdraw because this is a stand part debate, but obviously I will not call a vote.

Clause 38 agreed.

Clause 39: Enforcement

Amendment 151 not moved.

Clause 39 agreed.

Clause 40: Penalties

Amendment 152 not moved.

Clause 40 agreed.

The Deputy Chairman of Committees (Baroness Henig) (Lab): We now come to the group consisting of Amendment 153. 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 debate.

Amendment 153

Moved by ***Baroness Hayter of Kentish Town***

153: After Clause 40, insert the following new Clause—

"Duty to consider the internal market when considering mergers

In section 58 of the Enterprise Act 2002 (specified considerations) after subsection (2E) insert—

"(2F) The need to promote the better operation and improvement of the United Kingdom internal market is specified in this section, having regard to—

(a) the need to promote research and development and innovation in new and existing industries and enterprises, and

(b) the need to act in the interests of United Kingdom public policy.""

Baroness Hayter of Kentish Town (Lab): My Lords, before I speak to the amendment, I will slightly cheekily ask something about the previous group. At the very end the Minister said that the Government would not commence the powers unless they felt they needed to, or some words like that. As he indicated, each bit of the Bill can be brought into force on different days, as the Secretary of State may by regulation decide. When the Minister responds could he say whether that would be by the affirmative procedure and whether the House would consider the commencement date at that point? He could have some assistance if he does not know. How such things are done is beyond my understanding. It would be quite interesting to debate at that point whether the powers should be taken. I am sorry to ask the Committee's indulgence to deal with the previous group, but I am sure that everyone is very forgiving.

Amendment 153 seeks to insert into the CMA's powers a clear and specific reference to the need, when regulating takeovers in the new and initially demanding internal market, to promote research and development and innovation in new and existing industries and enterprises, as well as the need to act in the interests of UK public policy. The latter point is key to attracting long-term investment, as the CMA needs enhanced tools to intervene against hostile takeovers.

There has been a catalogue of such hostile takeovers, such as of GKN by Melrose in 2018—surely a bleak day for British industry, with perhaps 6,000 jobs with the UK's third-largest engineering company suddenly in the hands of new owners following a very narrow vote by shareholders in favour of the takeover of a 250-year old company. That vote was swung by hedge funds and arbitrageurs who owned 25% of the shares, which had been very recently acquired. Their short-term interest in making a quick profit came at the expense of the jobs, skills, research and development of this major industrial company, to the detriment of UK plc. Needless to say, the result has not been good. Not all takeovers are bad, but when Melrose's own website describes its strategy as "Buy Improve Sell", with its objective to achieve a significant increase in shareholder value often in as little as three to five years, one has to ask whether this is in the interests of UK plc.

Last year, Unilever, our third-biggest company by market value, only just escaped a hostile takeover bid from Kraft, which took over Cadbury in 2010. Unilever's proposed move of its registered office to Rotterdam, which did not actually take place, would have meant that Dutch law, which provides a public interest defence for the company from predators, would have been available. Sadly, we do not have that in UK law. We must now strengthen our laws against hostile takeovers and takeovers generally that are not in the public interest, not just because it is the right thing to do but to encourage long-term UK and overseas inward investors that their investment is safe from short-termism.

Until recently, the law provided only three grounds on which the Business Secretary could refer a takeover to the CMA, which then decides whether it should be blocked. The first is media plurality, the second UK financial stability, and the third national security. The addition of a fourth—public health—earlier this year was most welcome, as it allows for, in its words:

"The need to maintain … the capability to combat, and to mitigate the effects, of public health emergencies".

Ideally we should add a fifth—the need to foster and promote research and development and innovation in new and existing industries and enterprises—and a sixth: to act in the interests of UK public policy.

As the Business Secretary I think accepts, there remains a concern about foreign takeovers of British companies on the cheap. We need to ensure that, in considering relevant takeovers, the Business Secretary can refer a takeover bid, and the CMA should be able to consider whether the bid is in the interests of research and development or science and technology, or in the public interest generally. That would cover cases where the national interest should be considered, but where the definition happens not to fit neatly into one of the existing categories.

I acknowledge that any such new grounds for referral by the Business Secretary are outwith the Bill's scope, but as the CMA now stands more alone in the world of competition regulators outside the EU family, we need to give it the tools, as it oversees the development of the internal market, to put the national interest and support for research and development clearly into its thinking and terms of reference. This will help UK plc to build back better after Covid, in the national interest. This is something the Bill allows us to do, adding a useful tool to what the CMA will do. I beg to move.

3 pm

Lord Naseby (Con): My Lords, the idea behind this new clause has validity, and particularly will after the pandemic, whenever it is over. There is little doubt that some companies will be strong after the pandemic because they happen to be in a particular market, and others will be extremely weak and looking to be rescued somehow. The only problem I have is that the new clause refers to the

"duty to consider the internal market"

when in fact, that is the only market that will apply from 1 January onwards as far as the UK is concerned. So, it is not as though it is one of several markets; it is the only market in my judgment.

The noble Baroness is quite right that in some of the markets, there are already signs that things are happening. In the fintech market, things are undoubtedly moving quickly—for example, in sections such as payments and operations. You only have to read the *Financial Times* regularly, as I am sure a lot of noble Lords do, to see that things are moving all the time there. Equally, a fair number of our universities have what you might call cradle operations or primary operations, whereby they are looking to develop research that they believe might be marketable. Many are quoted companies; others are not. There is a lot of activity happening.

Although it is undoubtedly true that we want to see both paragraphs (a) and (b) happen, given the original role of the CMA, which emerged from the Monopolies and Mergers Commission, I think it pretty inconceivable that it would not look at these aspects. My noble friend on the Front Bench will be able to clarify that more than I am able to.

If there is not sufficient cover within the current Bill and other parts of the law, I hope my noble friend will look upon the amendment seriously. If that degree of cover already exists, I can understand why, although the issue is worth looking at and talking about, it may not be appropriate to deal with it in a new clause.

Baroness Neville-Rolfe (Con): I rise to speak to Amendment 153 in the name of the noble Baroness, Lady Hayter. This is a new clause relating to mergers that might affect the internal market. She may have a reasonable point that this is a matter of public policy about which we should be concerned. It is odd the way mergers involving an overseas player without a UK business cannot be stopped under merger law—think Cadbury, think ARM, as well as GKN Melrose, which the noble Baroness, Lady Hayter, explained was a particularly heinous example—because there is not the necessary lessening of competition. Although she did not say so, perhaps there is a parallel concern about takeovers important to one of the devolved nations or to a particular R&D base.

However, I do not think this is a big risk, as representations would be made to the CMA and taken into account in consultation and decision-making by the CMA, which is domestically focused and operates across the UK. My concern is that the new clause would be a major change to the way merger law works; I do not think it right to try to change one aspect in this Bill. Therefore, I cannot support this amendment.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I support the new clause in the name of the noble Baroness, Lady Hayter of Kentish Town. As she said, it would insert into the CMA's powers a clear and specific reference to the need, in the new internal market and the regulation of takeovers, to promote research, development and innovation in new and existing industries and enterprises, and to act in the interests of UK public policy.

We already know that the CMA has a number of responsibilities, including protecting consumers from unfair trading practices, investigating mergers between organisations to prevent a reduction in competition and taking enforcement action in relation to anti-competitive practices by businesses and individuals. It will have more burdens as a result of the Internal Market Bill. Put simply, it will be responsible for strengthening business competition and preventing and reducing anti-competitive practices.

The new clause seeks to nail down the role by referring to promoting research, development and innovation in new and existing enterprises. It would also assist with business development and innovation and in so doing, help to encourage overseas investment with job creation and sustainability—central facets of UK economic policy. It could also help to steady the market.

The Institute for Government has already stated that there is a clear gap in the Government's plans for how governance of the internal market will function at a political level, and it is not clear how disputes concerning the functioning of the internal market will be managed. It is therefore important that this power be inserted to ensure greater protections where there may be hostile takeovers.

In devolved Northern Ireland, companies are generally small. However, the agri-food sector would sit under the new dispensation via the Northern Ireland protocol. There have been takeovers by companies based in the Republic of Ireland, so how would that fare if there were problems with the competition elements in the internal market Bill? The new clause in the name of the noble Baroness might assist in this regard.

The Institute for Government also notes that the office for the internal market within the CMA has very limited powers and, in many cases, can choose not to exercise them. It is worth noting that it can also request specific documents from any individual, business or public body to support its functions. Although it will be able to impose certain financial penalties, it will not be able to request any information that a business, individual or public authority would not be compelled to reveal in court, hence this new clause, on the need to promote the better operation and improvement of the UK internal market.

I therefore have no hesitation in supporting the new clause. It would promote much-needed research, development and innovation in new and existing industries and enterprises, and pump-prime UK public policy on the economy and finance in particular.

Lord Fox (LD): My Lords, at the outset I should say that, because of my past but discontinued interests, I will not be speaking to the specifics of the example that the noble Baroness, Lady Hayter, brought up; rather, I will speak generally on this issue.

I speak to support the spirit of this amendment. It is a shame that the noble Lord, Lord Tyrie, is not still here because I would have welcomed his view on this issue. As the noble Baroness, Lady Neville-Rolfe, said, there are examples of Secretaries of State who wanted to do more but were constrained, and Cadbury is a good example of that.

However, after two dozen or more hours in Committee, I find myself at last coming to agree with something that the noble Lord, Lord Naseby, said, and that is that this issue goes wider than simply the nature of the Bill.

[Lord Fox]
The noble Baroness, Lady Neville-Rolfe, said the same thing. It is an important issue, so we should be thankful that the noble Baroness, Lady Hayter, has brought it up. It is clearly inadequate; the Secretary of State needs a better armoury to assess the public interest and deal with what will undoubtedly be, as the noble Lord, Lord Naseby, said, a flood of potential acquisitions and hostile takeovers.

This may not be the right Bill to be doing it in, but it is a big issue. That said, it also opens up the question of how the new office for the internal market relates to the Secretary of State and the CMA when it is dealing with a hostile takeover that the Secretary of State has called in. As the Bill stands now, allowing for the fact that the Minister may not accept the amendment, how do the Government envision the interactivity between the office for the internal market, the CMA and a hostile takeover bid that the Secretary of State has called in? Who does what, and where?

Lord Callanan (Con): I thank the noble Baroness, Lady Hayter, for her amendment. I understand her concerns but, as I am sure she is aware, the internal market Bill is concerned with protecting the flow of goods and services across the UK after the end of the transition period. It is not concerned with the general merger regime, nor with Ministers' powers to intervene in mergers. Noble Lords should be aware that they will have the opportunity to debate these matters further in the Government's forthcoming national security and investment Bill.

A noble Lord: Will that be soon?

Lord Callanan (Con): It is forthcoming. Noble Lords will know that I cannot go further in terms of dates. It was flagged up in the Queen's Speech and is forthcoming.

The grounds for ministerial intervention in mergers are deliberately precise and limited, in order to maximise transparency and predictability for businesses. The effect of the amendment would be to broaden the grounds upon which Ministers may make a public interest intervention in mergers. This would constitute a significant change to the UK's approach to merger control which, as noble Lords observed, currently puts the emphasis on competition-based assessments by the Competition and Markets Authority, with narrow and specific grounds for ministerial intervention.

It is not clear how such a change would materially assist with the effective operation of the UK internal market which is, of course, the focus of this part of the Bill. The CMA already has significant powers and expertise to investigate the benefits and risks of mergers in relation to competition. An excessively broad power to intervene in the affairs of investors, shareholders and company boards risks stifling competition, innovation and creativity. This could lead to worse outcomes for both businesses and consumers, as well as stifling inward investment. For these reasons, I cannot accept the amendment and hope that the noble Baroness will withdraw it.

Before I sit down, I will answer the other question which the noble Baroness asked about the previous group. The power for the Secretary of State to specify the maximum penalties for breach of information-gathering notices will be brought in by negative SI. This mirrors Section 111(4) of the Enterprise Act 2002.

Baroness Hayter of Kentish Town (Lab): The Minister is very polite. What he really wanted to say to me was: "Nice try". There is a serious point here. As I said in my introduction, I know that the basic power is outwith the scope of this Bill, but there is some urgency to this question. The noble Baroness, Lady Ritchie, used the words "greater protections are needed against hostile takeovers". They may not be exclusively from outwith the UK, but those are some of the ones where there have been particular problems. I think it is agreed that, as the noble Baroness, Lady Neville-Rolfe, said, there is a weakness in our armour because you cannot argue against them on the grounds of competition. I thank the noble Lord, Lord Naseby. The problem is that it is not within the tools of the CMA. It cannot use as a ground the need to either respond to public policy or promote particular industries. If it does not affect competition, it is not within its powers.

This does need to be added. The noble Lord, Lord Fox, is right that this is perhaps not quite the right mechanism, but we are delighted to know that there is a Bill coming and I look forward to the Minister accepting an equivalent to Amendment 153 at that point. I will, needless to say, use today's *Hansard* to support that amendment to get this in then. I look forward to the noble Lord, Lord Naseby, and other noble Lords supporting me at that time.

I wanted to table the amendment to this Bill because of the changes there will be when we have got the internal market growing and we are looking for new investments. Even those who think everything is going to be wonderful after Brexit know that we are going to need a lot of support to get the economy going again after Covid. There is a slight weakness, so it would have been nice to have been able to put this clause in at this point. It was a nice try, but I beg leave to withdraw the amendment.

Amendment 153 withdrawn.

Amendments 154 to 156 not moved.

Clause 41 agreed.

Amendment 157 not moved.

House resumed.

3.17 pm

Sitting suspended.

Health Protection (Coronavirus) (Restrictions) (England) (No. 4) Regulations 2020

Motion to Approve

5.02 pm

Moved by ***Lord Bethell***

That the Regulations laid before the House on 3 November be approved.

Relevant document: Instrument not yet reported by the Joint Committee on Statutory Instruments

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, we have come to a critical juncture. Incidence rates are growing, and the NHS is under increasing pressure. The ONS now estimates that approximately 568,100—one in 100 people—in England have Covid-19. That has risen from one in 2,000 in July, and one in 240 at the beginning of October.

The Prime Minister explained things very clearly in the other place. The R number is above one in every part of England, the virus is spreading even faster than the reasonable worst-case scenario, there are already more Covid patients in some hospitals than there were in the first wave, and, even in the south-west, current projections mean that we will start to run out of hospital capacity in a matter of weeks. The chief executive of NHS Providers, the membership organisation for NHS trusts, said:

"Looking forward, there is a clear and present danger that the NHS will not be able to treat all the patients it needs to in the best and most timely way."

The modelling presented by our scientists suggests that, without action, we could see up to twice as many deaths over the winter as we saw in the first wave.

I recognise that some noble Lords are sceptical about whether the full range of measures in these SIs is needed right now, or whether they are needed at all. I acknowledge the concern that perhaps the cure does more damage than the disease itself, but that is not the belief of the Government. Without action, the NHS will be overwhelmed, which could put life-saving procedures, cancer therapies, emergency services and diagnostic investigations at risk.

It is true that we are much better prepared than before, with large stockpiles of PPE and ventilators, the Nightingales on standby and 13,000 more nurses than last time. However, the virus is growing exponentially, far faster and heading far further than we could ever conceivably add capacity for. Even if, by some incredible national effort, we doubled capacity, that gain would be consumed in one gulp of the virus doubling once.

Meanwhile, the scientific evidence shows us that the measures have worked and lives have been saved. The analysis of my department, the Office for National Statistics and the Government Actuary's Department has shown that the mitigations we have put in place have prevented more than 500,000 deaths, and our previous sacrifices and efforts have therefore saved us all from untold personal heartache, civic pressure and economic disruption.

However, we recognise that these interventions are difficult for many people, and that is why we have evolved our approach from the first wave and the previous lockdown. I will say a few words about this. For the first lockdown we paused non-urgent care to stop the NHS being overwhelmed. This time, we are maintaining as many NHS services as possible. In response to arguments made forcefully by noble Lords in this Chamber, we are prioritising education—doing everything we can to keep open schools, colleges, universities, childcare and early years settings.

We have taken steps to mitigate the impact on the vulnerable: the new lockdown measures include allowing support and childcare bubbles, support groups and unlimited outdoor exercise, for instance, to continue. We have amended guidelines to suggest that the clinically vulnerable and the over-60s should minimise their contact with others, and the clinically extremely vulnerable should work only from home, rather than asking them and their households to shield themselves, as we did for the first lockdown. On funerals, we have changed the Covid-secure guidelines to allow up to 30 people to attend.

Lastly, we have improved how we work with local authorities to support them in responding to this crisis. My department has regional teams made up of PHE regional directors, Contain regional convenors and Joint Biosecurity Centre regional leads, who work continuously with local authority chief executives, the directors of public health and local resilience forums. I pay testimony to all those noble Lords who have brought this challenge to our attention. These groups attend local incident management meetings and outbreak boards as well as meeting more informally. They also organise meetings at a regional level to share good practice and help areas support each other through mutual aid.

In relation to those who are less privileged and in the area of financial support—another subject raised by noble Lords—we completely recognise that these measures are difficult for the general public and business, which is why we will provide support to protect jobs and get people through the crisis. This includes extending the furlough scheme until the end of November, helping with mortgages, helping the self-employed—as the Prime Minister outlined earlier this month, we are doubling our support from 40% to 80% of trading profits—extending the deadline for applications to the Covid loans schemes, cash grants of up to £3,000 per month for business premises closed as a result of the national lockdown, additional funding worth £20 per head to enable local authorities to support other business affected by the lockdown, and other measures.

My final points are on the steps out of this lockdown. I stress that these restrictions are time limited: after four weeks, on Wednesday 2 December, they will expire, and we will return to a tiered system on a local and regional basis according to the latest data and trends. As the Prime Minister set out in the other place, the best way to get R down now is to beat this autumn surge and use the breathing space to exploit the medical and technical advantages we are making to keep it low.

Our doctors and scientists have led the way in improving how we treat people with Covid, work continues to progress on developing a vaccine and we are working to continue to increase our testing capacity, most notably with cheap, reliable and rapid-turnaround tests with results in minutes. As the Prime Minister outlined, plans are already in place for the deployment of these quick-turnaround tests, which we will manufacture in this country and apply in an ever-growing number of situations to allow us to beat the disease.

By way of conclusion, I acknowledge that these measures are difficult for us all. There is not one of us who does not regard them with a heavy heart, but I know that the general public will continue to come together, as they always have done. Together, we can protect the NHS and the vulnerable, and save lives.

[Lord Bethell]
We must place difficult but time-limited curbs on our freedom in the short term so that we ensure greater freedom and prosperity in the long term. If we act now to suppress the virus and support the economy, education and the NHS, we can restore those cherished freedoms more quickly and get closer to the lives that we all want to be living. We cannot do this with the virus growing exponentially so we must all make sacrifices now for the safety of all. It will not be easy, I know, but in a pandemic the effective steps are not always easy. We are called on to make fundamental changes to how we work, live and interact with each other, in pursuit of a common cause. I beg to move.

Amendment to the Motion

Moved by ***Lord Robathan***

Leave out from "That" to the end and insert "this House declines to approve the draft Regulations because no impact analysis of the social, economic and health costs of a national lockdown, compared to the benefits of addressing the transmission of COVID-19 of such a lockdown, has been laid before Parliament, and because Her Majesty's Government have not published a comprehensive long-term strategy for the lifting of all the restrictions put in place to address the pandemic."

5.10 pm

Lord Robathan (Con): My Lords, I declare an interest in that I am 69 and am definitely entering the danger zone for coronavirus. Actually, I believe I had it in late March after lockdown. It was largely asymptomatic and possibly acquired here in this House. I appreciate that my noble friend the Minister and the Government are in an impossibly difficult position. Nobody doubts that this is an unpleasant, virulent and highly contagious virus that is killing people, especially the old and vulnerable. Beyond that, there is huge disagreement among the public, politicians and scientists.

This morning, I attended a meeting with Sir Jeremy Farrar of SAGE. He was very reasonable, plausible and balanced but not ultimately convincing because of differing and competing views. For instance, Professor Heneghan, of the Oxford Centre for Evidence-Based Medicine—I emphasise "evidence-based"—said that the R rate in Liverpool is falling among the over-60s. Apparently, Covid cases in Liverpool hospitals are falling. King's College London believes that the R rate in England and Wales now is approximately one and Tim Spector, a professor of epidemiology at King's, thinks that the peak of the second wave has passed. Professor Gupta at Oxford and many other eminent scientists disagree with the SAGE analysis. We were told on Saturday by Sir Patrick Vallance of a trajectory of 4,000 deaths each day without a lockdown and yesterday, the Chief Medical Officer, under questioning, reduced that number to 1,000.

What I am saying is that nobody really knows, and scientists and doctors disagree. For instance, just over 1 million people have officially had Covid but I think that there are very many more. I suspect that all of us know people who believe that they have had it. We do not know how many cases are hospital-acquired infections; yesterday, Jeremy Hunt said that it is 18%. We do not know when and if a viable and effective vaccine will be produced. We still do not know why people have such totally different responses and symptoms. My son had the virus before the lockdown in mid-March. He recovered but said that he could not taste or smell anything. That was not declared a symptom until late May. This morning, Professor Farrar said that we still do not know much about the long-term effects—so-called long Covid. Of course, respiratory diseases such as pneumonia have a lingering effect that sometimes takes six months or more to recover from. The truth is that nobody knows much about this virus or the epidemic.

However, we now know that one has only a 50% chance of survival if put on a ventilator. We were not told that in April during the panic to get more ventilators, so advice changes. We know that only something like 320 deaths from coronavirus, every one of which is a tragedy, have occurred among those aged under 60 without comorbidities. Among the under-40s, there has been a total of about 250 deaths from the virus during the epidemic, overwhelmingly of people who were already vulnerable with comorbidities.

We know that our young people—our children and our grandchildren—will be saddled with debt for decades, as my parent's generation spent decades paying off debt from the Second World War. Will our children ever forgive us? We know that unemployment will rocket next year. We know that businesses, large and small, will be closed in their droves. In hospitality, pubs and restaurants will close their doors tonight and many will never reopen. We know that cancer treatment has ground to a halt for hundreds and thousands of patients. We know that domestic abuse and mental health issues have increased dramatically—as, it appears, have suicides. We know that students are locked into halls of residence, ruining their time at university; they are turned into criminals if they leave. They will then face a desolate employment landscape in which to find a job. Therefore, is it not reasonable to ask for a cost-benefit or risk analysis? Yesterday, Robert Jenrick, a Cabinet Minister for whom I have a high regard, said that there had been no impact assessment. Surely we should expect such an assessment before embarking on a serious act of national self-harm, yet the Government do not appear to have done one.

The second part of my amendment calls for an explanation of the Government's comprehensive long-term strategy. In the last century, when I was in the Army, it was a given that one explained to all one's soldiers the rationale behind orders if one expected them to follow them. It is called leadership. I ask the Minister to tell the House what the strategy is behind government policy. The country is locked down so infections should fall, but when restrictions are lifted, it seems to me that infections may rise again, meaning a third wave. Then what? An effective and reliable vaccine may appear, or it may not. It may be only 50% reliable anyway, as I read from another expert. As I understand it, a vaccine makes the patient's body produce antibodies, but now we are told that many recovered patients lose their antibodies within six months. Is that the case?

As a loyal Conservative, I want to believe that the Government have a strategy but my credulity has been strained somewhat. We were originally told, until late August, that face masks were essentially of no use. We have been told to go back to work. It is only two or three weeks since we were told that there would definitely not be a second national lockdown. I regret to say that an enormous amount of good will and trust has evaporated. We are told that the public support a second lockdown. I am not so sure, but the role of leadership is to lead. We need courageous leadership to explain the costs, benefits and risks surrounding this crisis and this measure. We need to a clear strategy to take us through this crisis.

I do not underestimate the extraordinarily difficult choices before the Government; nor do I envy Ministers having to make these decisions. I will listen to the 50 or more contributions and look forward to the Minister's response, but I currently intend to divide the House on this amendment.

The Deputy Speaker (Lord Haskel) (Lab) [V]: I should inform the House that if the amendment in the name of the noble Lord, Lord Robathan, is agreed to, I cannot call any of the other amendments by reason of pre-emption.

5.17 pm

Baroness Andrews (Lab) [V]: My Lords, on 13 October, I asked the Minister why the Government were so resistant to following the SAGE advice of 21 September. I said that I could see us back here in this Chamber debating a national lockdown within weeks, during which time more lives would have been lost. I have never been less gratified at having been right, like so many other people. If this Government reject hindsight, they have certainly failed at foresight.

Yesterday, in response to questions from my noble friends asking why the Government have chosen now to commit to a national lockdown, the Leader of the House said:

"We were presented with national data that we could not ignore."—[*Official Report*, 3/11/20; col. 682.]

Can the Minister tell me why, having been presented with evidence that they could not ignore in September about exponential rates of infection, the Government chose to do just that? What evidence were they acting on? SAGE was clear that national measures were needed and was clear about the urgent need for more rapid, more stringent interventions that would more quickly reduce incidents, prevalence and Covid-19-related deaths.

Since the start of this epidemic, we have known that a second wave of infections this winter was probable. We in this House have asked constantly what evidence was being used to assess risk and what had been learned from the first wave about preventing the spread of infection. We asked what was being done to prevent spillover from areas of high to low infection. We asked time and again what was being done to support local authorities and correct for the diverse failures of the test and trace system. Over the months, we have had no answers; there were none because it was just drift and dither and now a bit of panic. It is no wonder that, even now, with a reluctant lockdown that is subtly different from the first, there is still a sea of confusion and deep anger across the country. No one underestimates the seriousness of what the Government are asking people to do or the impact that the next month will have on mental health, jobs, family and social life. I welcome the fact that schools are being kept open but it needs extra vigilance.

In a spirit of hope over experience, therefore, I shall ask the Minister some more questions. What is the current state of intensive-care hospital capacity in the south-east, where, like the south-west, the virus is rising faster? When will those beds be full? What range of criteria will be used to determine when the lockdown can be lifted on 2 December? People want certainty that it will end but if they are expected to comply, they want to know the plan and what it is based on. People also want to believe in the prospect of a vaccine, so can the Minister tell me what steps the Government are taking on all current vaccine candidates to license production in the UK to ensure that a supply is assured, regardless of which is approved? Who will get priority?

Finally, people want to be able to trust the scientific consensus and to know that the Government do too. But the Government have undermined that trust through their inconsistency, which has fuelled the scepticism that we see in this evening's amendments expressing regret. Therefore, I agree with the noble Lord, Lord Robathan, in this respect: the management of the epidemic is an object lesson in the failure of leadership, governance, management and communication. However, I am sure that the House will support the regulations.

5.20 pm

Lord Scriven (LD): My Lords, in September 500 people were in hospital with Covid-related symptoms. Today, as we speak, the figure is nearly 11,000. If the Government had taken the advice of SAGE at the beginning of September, the number would clearly have been lower.

The effect on the NHS of having 11,000 Covid patients is not just a crisis in critical care for Covid patients; it is a crisis for anybody who has a life-threatening condition. Beds are filling up and, if this rate continues, people with life-threatening conditions will not be able to get the life-saving treatment they need in the NHS. That is why we need to act. I have some sympathy with some of the amendments that have been tabled but, because of that one fact, I cannot support them today. It is beholden on us to act, not just because of those with Covid but because of those who will have strokes, heart attacks and other life-threatening conditions now that we have got to this stage. I blame the Government for getting to this stage by not acting faster, but that one statistic alone makes me feel that we have to act.

We then have four weeks in which the Government have to put in place a national system for sorting out test, trace and isolate. On testing, it is not just a case of putting another two or three noughts on the number of tests carried out; it is about getting to the right people at the right time and getting the test back speedily. That is absolutely vital. The Government need to make sure that they stop talking just about quantity and start talking about quality as well.

[Lord Scriven]

Tracing is a national disgrace and is causing the virus to spread faster. We need to localise the tracing system, with local knowledge and shoe-leather epidemiology. We need people who know the streets, back doors and ginnels, and who know where to get to and how to speak to people. The Government need to localise by working with industry, academia and local government. It has to be about not just money but expertise, getting the data in a way that local areas require. That is absolutely vital.

Isolating is about giving people financial security so that they do not have to worry about feeding their children or paying their mortgage or rent. It should be seen as a national and civic duty which the Government support, without more sticks or penalties. Taiwan has shown how this can be done: with Covid teams which go in and support people, not just financially but with psychological help. There is help with childcare and food, and by checking on people's health.

So, through gritted teeth, I will support these regulations. We, the public, will do our bit. We will stay at home, protect the NHS and save lives, but over the next four weeks the Government have to do their bit—sorting out the test, trace and isolate system.

5.24 pm

The Lord Bishop of Winchester [V]: My Lords, I am grateful to Her Majesty's Government for seeking to ensure that the appropriate measures are in place to protect the most vulnerable and restrict the spread of this virus. It is important that we do not prolong such stringent lockdown measures because of the way that they impact on the mental, physical and, indeed, spiritual well-being of the population. However, I will not be supporting the fatal Motion. I recognise the exceptional nature of these times, and welcome that the regulations will enable places of worship to remain open for private prayer and broadcasting acts of worship. Creating such broadcast acts of worship often requires a team of people, both amateurs and professionals. I would welcome more clarity from the Minister on the number of people allowed to do this.

Clergy across the country have worked hard to ensure that our church buildings are Covid-secure for public worship, education settings, food banks and other essential services. In most places, by distancing and limiting congregation sizes, communal worship can safely take place without the need for an outright ban. Religious worship is not a leisure activity: the freedom to worship and to assemble for this purpose is a right that we enjoy in this country and strongly advocate for in other countries. The law will be adhered to, but I hope that the Prime Minister and the Government have understood from the united response of faith leaders yesterday that legal and safe acts of public worship are not things to be switched on and off by government regulation. Many have already asked this, but I will reiterate: can the Minister commit to providing the scientific evidence to justify such a suspension? The impact of this suspension will be felt publicly.

On Remembrance Sunday, a day in the year that is hugely significant for so many veterans and their families and for the whole country, our commemoration services will now be severely limited. Furthermore, over the next few weeks, important religious festivals for Hindus, Sikhs, Jains and the Jewish community will be disrupted by the lack of access to communal worship. I regret this. Faith groups serve the needs of their local communities, and clergy and healthcare chaplains provide significant support for the mental, social and spiritual well-being of the nation. Public worship is essential for spiritual and mental well-being, and a source of strength to many. It is not an optional extra for the Christian faith: our weekly worship services are part of a whole way of life. The importance of this must not go unrecognised. It is in drawing on their Christian faith and in the hope that Christmas brings that the Archbishops say in their letter to the nation today that it would help the whole nation if we adopted a "calm, courageous and compassionate" response to this trial.

5.26 pm

Lord Birt (CB) [V]: My Lords, all the trade-offs that the Government have to make during this pandemic are unwelcome: trade-offs between our health, our prosperity, our freedom, our future and our happiness. We would all like to maintain them all, but the rise in numbers makes a lockdown unavoidable. Noble Lords should watch Fergus Walsh's measured and harrowing report on Monday's "BBC News at Ten", from the Royal Liverpool Hospital in my home city, if they need human citation to bring the stats to life.

On the eve of our second lockdown in England, however, I ask the Minister what will come after. We all pray that new vaccines and improving treatments will gradually restore normality, but what if they do not? Is there active contingency planning in government on pessimistic, as well as optimistic, assumptions for the moment when this second lockdown is lifted? How can we avoid turning a new period of relative freedom into a third wave where—in the nightmare scenario—we tumble on in this way for years, always fearing the grim reaper at the door or in the supermarket queue, while becoming significantly poorer and ever more disunited in the process?

I hope that the Government are investigating in careful detail exactly what went wrong when the first lockdown was lifted. What were the primary drivers of rising infection? Who obeyed and who ignored the guidance, whether in workplaces, social or family settings? Did those reached by test and trace quarantine when asked to? Which sanctions worked and which failed to bite? Next time, how can we better persuade every section of society that the Government do not give you the virus but other people do; and that, absent a vaccine, we have no hope of achieving a modicum of normality until we stop transmitting this dread virus to one another? In conclusion, are the Government preparing now to ensure that this will be not just our second but our last lockdown?

5.29 pm

Lord Forsyth of Drumlean (Con) [V]: My Lords, these regulations will bring misery to the lives of millions of our fellow citizens. We know now what lockdowns do from our experience in the spring and from that of other countries which took the same course.

Jobs are destroyed and perfectly good businesses are forced to close their doors for the last time. Anxiety, depression, mental illness, suicides and domestic abuse increase, as the noble Baroness, Lady Andrews, pointed out. Lives are lost as screening programmes are disrupted and people are fearful of going to hospital. Young people's education is disrupted, their employment prospects blighted and their career paths distorted. The elderly are separated from their families and grandchildren as they ponder their own mortality. There is a cruelty here too, in cutting off folk in nursing homes from family visits, banning weddings and denying people the comfort of religious observance and the chance to join immediate families to mourn the passing of friends and relatives.

Tax revenues evaporate, and we add to the burden of our children a legacy of eye-watering debt. The deficit is now heading to £400 billion and probably on to half a trillion. Parliamentary democracy is a casualty too, as most of us in this debate get three minutes to speak, late at night, on the merits of nothing less than the shutting down of the entire economy and these extraordinary assaults on our liberty and prosperity. Who would have thought Ministers and officials would start telling people whom they can sleep with? The decisions are taken by folk in secure public sector employment, with inflation-proof pensions and good salaries. The highest price is paid by the poorest and those whose livelihoods depend on enterprise and the ability to make a profit. Lockdowns are the midwives of inequality.

Occasionally you see signs in shops saying, "If you break it, you pay for it". I believe this applies to the Government today. It is irresponsible to present these regulations to Parliament without having done any analysis of the costs and means for mitigating all the consequences of their actions. I am grateful to Julia Hartley-Brewer of talkRADIO for succeeding where I failed through parliamentary questions in getting an answer from my right honourable friend Robert Jenrick MP, who told her it was unfair to ask whether the Government had done a cost-benefit analysis of the consequences of lockdown. After very robust interrogation, he admitted that he had not seen one, because it did not exist.

Again and again, Ministers rightly say they have to balance lives against livelihoods, but to achieve balance you need to weigh both sides of the scale. We are told that the models say we have no alternative, as the NHS will be overwhelmed. We of course have a duty to take this very seriously, but the Explanatory Memorandum for these regulations says the Government are assuming an R rate of 1.1 to 1.3. Professor Tim Spector from King's College has suggested that R is now one in England and the UK as a whole, and Professor Heneghan from Oxford University says the infection rate in Liverpool is falling from a run rate of 490 a day over seven days to 269 and the R value is well below one, a point that the noble Lord, Lord Birt, may not have noticed. It seems the Government's tiered approach is not only hurting but working.

The last financial crisis was caused by groupthink and people believing models which told them they could convert lead into gold at the expense of common sense. Then, the poorest paid the price, and those responsible became very rich. The fact that we were all scared by headlines over the weekend telling us that 4,000 people a day would die, and learned within hours that this came from a discredited model which predicted four times as many deaths as occurred in real life on 1 November, is worrying to say the least. With all models, the rule is very simple: garbage in, garbage out.

We also know that, once implemented, lockdowns are hard to exit. On Saturday the Prime Minister told us it would be for a strictly limited period, until 2 December. In less than 24 hours, Michael Gove was telling Andrew Marr it could be extended. When asked about this yesterday, Professor Whitty said:

> "I think that the aim of this is to get the rates down far enough that it's a realistic possibility to move into a different state of play at that point in time."

What are people running businesses meant to do? Do they listen to the PM and take on more debt to survive another month if they can, or do they conclude, after listening to Mr Gove and Professor Whitty, that they should throw in the towel?

The Chancellor has done brilliantly, but he knows we are heading for Carey Street. What will this lockdown cost—perhaps £12.5 billion for furlough and the self-employed alone? He will need to extend the £20 a week standard allowance for universal credit from April. When folk who thought they were in secure jobs—say, on £25,000 a year—discover that they are not eligible for universal credit because they have savings or a working partner, his colleagues in the Commons with be inundated with constituents worried about how to pay their bills and feed their families. Where will he find the money for health, welfare and social care, and for the job creation initiatives that will be needed? To paraphrase Tacitus, we will have created a desert and called it protecting the health service.

5.35 pm

Lord Rooker (Lab) [V]: My Lords, at Prime Minister's Questions today, the Prime Minister refused on more than one occasion to say what the Government are going to do with the time the next four weeks gives them. Can the Minister, in winding up, tell us, please?

Will a system for visitors to care homes be implemented? It should be really simple to designate one family member as a key visitor who can be tested like care workers. Will the Serco test and trace be fixed and then handed on to local authorities? The clinical director of the NHS, in his Q&A this afternoon, made it crystal clear that it is not an NHS test and trace.

We have lost a lot of time since the SAGE advice on 21 September. The tier system was not working as planned, so we now have lockdown longer and harder as a result. How can this be avoided again in the future? This is the second lockdown, later than it should have been to be effective and save lives. Surely, we cannot contemplate a third time—so what is the strategy to avoid this?

There are some 11,000 people today in hospital with Covid. We need these regulations to keep within capacity and so keep elective services going, unlike in the spring. I understand that the capacity for Covid is about 20,000, and it reached 17,000 in the spring. That still allows us to do other work, which is absolutely crucial. But compared to many OECD countries, our health capacity is not that good, measured by population

[Lord Rooker]
against doctors, nurses, beds and intensive care units—and that is before we get to equipment such as scanners. Is anybody in government thinking about increasing our overall capacity?

My final point is that almost exactly a year ago, without warning or planning, I occupied an intensive care unit bed for two weeks while the NHS worked to stop me going over to the dark side. This was followed by another three weeks in the hands of the NHS. I want anybody in the same position as I found myself in to have the same chances of the NHS helping and saving them. This will not happen if Covid gets completely out of control and all the beds are taken. For that reason—to keep within our capacity—I have no hesitation in supporting these regulations.

5.38 pm

Lord Bradshaw (LD) [V]: My Lords, it is pleasing to note that today's regulations make no reference to avoiding the use of public transport, I hope at least in part as an acknowledgement of the huge effort made by operators and staff to keep people safe.

However, it is another public health issue of serious proportions that I wish to draw to the attention of the House this evening: the rapidly rising congestion of and pollution from our road system, which, of course, is again making operating a reliable bus service very difficult. A sensible Government would be alive to the issue. Yet we see oil prices falling, when a more prudent Chancellor might have raised fuel taxes to help repair the huge budget deficit, and the pouring on to our roads of many more large sports utility vehicles, which emit more pollution and take up more road space.

Time is not on our side if we are to make meaningful efforts to tackle this country's pollution problems. While coronavirus is the immediate priority, I hope that someone in government—the Minister is a health spokesman—has plans to deal with the problems of congestion and pollution.

Climate change will not go away. Next year the eyes of the world will be fixed on us again when we host the climate change talks in Glasgow.

5.40 pm

Baroness Noakes (Con): My Lords, my amendment is about the evidence for the lockdown in the order before us. The Government have no easy task in finding the optimal policy responses to the virus. They deserve the best advice they can get, but I am not sure they are getting it.

I hope that at least some noble Lords have read the book published earlier this year by the noble Lord, Lord King of Lothbury, and John Kay, entitled *Radical Uncertainty*. It warns of excessive reliance on probabilistic reasoning and modelling. Its core insight is that we need to face not knowing the answers when confronted with massive uncertainty. Instead people should stand back and ask themselves, "What is going on here?". If that had been the focus of policy discussions, I do not believe this destructive lockdown would have been the solution.

On Monday, my right honourable friend the Prime Minister said in the other place that the data now suggest that our health system will be overwhelmed. The so-called data on which he was relying were not facts but modelled numbers. Modelled outcomes are only as good as their base data and assumptions.

As we have heard, last weekend the Chief Scientific Adviser showed a slide that suggested a scenario of 4,000 deaths per day in December. According to that chart, there should have been 1,000 daily deaths last weekend. There were fewer than 300. Four thousand deaths per day is virtually impossible, even using SAGE's inflated infection fatality rate of 0.7%, and implies that around 600,000 people will be infected every day next week. None of the data points that we have on infection levels come anywhere close to that.

The adviser then showed something called the SPIM—medium-term projections of hospital admissions, deaths and NHS bed usage. These indicated bed demand later this month apparently shooting way ahead of the March-April peak and ahead of the assumption that only about 20% of NHS beds can be used for coronavirus patients. However, the detailed modelling assumptions have not been made public. Instead, the small print says that this is a consensus forecast, based on several models, none of which assumptions has been made public. Does that sound like a good basis for a momentous decision to close the country down?

We learned yesterday from evidence given to the Science and Technology Committee in the other place that these models were based on earlier, not up-to-date, data. The assumptions took no account of the recently introduced tier system, despite those areas already showing reduced infection rates and hospital admissions. Leaked NHS data show that, despite a few local hotspots, intensive care bed capacity is around normal for this time of year.

Some have suggested that those scenarios and forecasts were deliberately calibrated to produce the maximum fear in the general public and thereby generate support for another national lockdown. The *Daily Mail* has also called out the way in which last Saturday's presentation cherry-picked data and presented it in a way that would make even Liberal Democrats blush. Is this all a deliberate plot to provide cover for the curtailment of our liberties? I could not possibly comment. However, I know that the Government should be alert to dangers of groupthink and the self-reinforcing nature of scientific cliques. The history of science is littered with views, such as whether the earth is flat, that remained widely held beliefs long after clear evidence to the contrary emerged.

There is no independent challenge to the SAGE analysis. There ought to be a place for techniques such as red teaming that robustly challenge house views. There certainly are scientists out there, for example in the Oxford Centre for Evidence-Based Medicine, who could provide that challenge. Was anyone asking, "What is going on here?" I do not think so. Otherwise, they would have compared infection rates and R numbers in the models with the latest data points and would have noticed that the models use R numbers that are ahead of current numbers, even though the R numbers from the ONS data have been falling. As we heard, the Liverpool R number is already below 1. The Prime Minister said several times in the other place on Monday that an R number of 1 or less was the aim of the

lockdown. As we have heard, the latest ZOE survey data show that infections are past their peak and the R rate is already at the magic number, 1.

If the Government had sought independent challenge, they might well have concluded that this heartless order was unnecessary and, as a minimum, dialled back their scary charts. The Prime Minister cares sincerely about civil liberties but I suspect that he has more of a way with words than numbers and is in thrall to a tightly knit group of scientists with a single world view. It is time for him to ask, "What is going on here?", and take back control of the coronavirus agenda.

5.47 pm

Lord Knight of Weymouth (Lab) [V]: My Lords, let me say clearly at the outset that I am reluctantly in favour of the national lockdown. The pandemic is serious and we need to protect the lives of vulnerable people by following the advice to stay at home when we can, and otherwise to follow the advice on safe distancing, clean hands and face masks. However, that is at a huge cost. It will take years to recover economically, and many will bear the social and emotional scars for a similar period.

I cannot let this moment pass without joining those who are saying that government inaction has made those impacts a whole lot worse. For example, SAGE member and UCL professor of epidemiology Andrew Hayward said about SAGE's recommendation of 40 days ago:

"We can't turn back the clock, but I think if we had chosen a two-week circuit break at that time we would definitely have saved thousands of lives."

He went on to say that an earlier short circuit break,

"would clearly have inflicted substantially less damage on our economy than the proposed four-week lockdown will do."

The Government should be ashamed and apologise to Sir Keir Starmer MP, the leader of the Opposition, for the attacks that they made on him when he made the right call on a national lockdown after the SAGE advice, which would have saved lives and jobs.

I turn to my main point about children. I am pleased that schools remain open. Children need not only to learn but to socialise and play. We should collectively thank the nation's teachers for putting themselves at risk by continuing to work in difficult circumstances and with limited testing and support services to assist them. Without teachers' professionalism, the economic and social scarring of this pandemic would be much worse. However, I ask the Minister, please come back with a slight change to these regulations to allow children to continue to play together safely. Play is an essential part of childhood. Pupils can play together in their bubbles when at school but not with those same children after school, at weekends and in holidays. To parents, that makes no sense. Why cannot children play with others from their same school bubble out of school? That would help hugely their mental health and that of their parents, at negligible additional infection risk.

These regulations are too late but necessary. The Government need to do more, where they can, to allow us the freedom to safeguard our mental health in lockdown. Letting children play is one way in which they could help.

5.50 pm

Baroness Masham of Ilton (CB) [V]: My Lords, coronavirus is proving to continue to disrupt and cause great anxiety throughout society. Regulation 4 is not very clear to follow—it must be me.

I declare an interest as I have a small rural riding centre, which will have to close tonight. People who come to have lessons or go for rides do so for much-needed exercise, confidence-building, education and freedom to enjoy the countryside. It is difficult to explain to children why they can go to school but cannot come riding, which is all outside. I have a work experience pupil from college, which is part of her education. I have yet to sort that out. I have some clients who have autism. They look forward to when they come. Good, healthy exercise is important for public health. I am concerned that closing outdoor sports and locking people in their home will damage a healthy lifestyle.

This coronavirus nightmare is proving to be particularly difficult for severely disabled people, who might have several severe, complex conditions and depend on specialist care, which is now mainly available only through a telephone call, which is not easy for early diagnosis. This must be difficult for GPs, who might not have experience of some of the complications. A growing difficulty for disabled people who live in their own home is getting carers, with the approach of winter, coronavirus and lockdown.

Many disabled people are confused and feel, in this difficult time, that they might be forgotten this time round. If communication is improved and people work together it will help to beat this treacherous virus.

5.52 pm

Lord Shinkwin (Con): My Lords, I shall speak to the amendment to the Motion in my name. As far as I know, I have not had coronavirus. What I do know is that whether I live or die is neither here nor there. In the grand scheme of things, though, whether parliamentary democracy survives and thrives is an entirely different question. That does matter, not just to all of us privileged to serve in the mother of Parliaments. It also matters to a totalitarian regime whose evident aspirations for domination depend on democracy's demise. The totalitarian regime to which I refer is, of course, that of the Chinese Communist Party, or CCP. For that regime's value system to succeed, ours must fail.

As Lord Sumption and others have made clear, coronavirus has caused democracy to be placed under threat. The threat stems not just from the CCP's military expansion and its aggression in, for example, Nepal and the South China Sea, nor in the corrosive cynicism of the retrospective application of new laws of repression in Hong Kong, but also from the growing popular disenchantment with the ability of democratic Governments to strike the right balance, to which my noble friend Lord Forsyth of Drumlean referred in his excellent speech, between saving lives and saving livelihoods during a pandemic which originated in Wuhan.

I do not intend to rehearse the points made so eloquently by my noble friends Lord Robathan, Lady Noakes and Lord Forsyth of Drumlean, with which I agree. Naturally, most people are focused on

[LORD SHINKWIN]
the impact on their families and friends, but we can be sure that Big Brother is watching us. I do not mean our own state, although it is increasingly intruding on and controlling every aspect of our lives. I refer of course to Xi Jinping, the head of the CCP and of the world's most repressive, surveillance-obsessed and threatening totalitarian regime. He may not be watching today's debate in your Lordships' House, but we can be sure that he will be watching and analysing the signals that we and the other place send. It is therefore worth reflecting on whether the messages that we are conveying highlight the strength of parliamentary democracy in the face of crisis or show panic, disarray and weakness.

I wish this were simply about tackling a dreadful, devastating and deadly virus. Unfortunately, what is at stake is so much more significant than any of our lives: it is the future of western democracy itself. That is why we cannot afford to signal that we are panicking or weak. Consider this: if one wanted cynically to expose the fault lines of western democracy, there could scarcely be a better way to do so than to allow a vicious virus to engulf the globe and plunge it into poverty. That is what we are facing.

We cannot afford to be in this situation again. We cannot afford, as Theresa May said in the other place only a few hours ago, for it to look as if the figures are chosen to support the policy rather than the policy being based on figures. That is the path to mistrust and cynicism. If we really want to save Christmas, we need to save people's livelihoods. If we want to save the NHS, we need to ensure that we safeguard the tax revenues that are so crucial to funding it.

I am not saying this is necessarily the case, but I am saying it is essential that we entertain the awful possibility that a totalitarian regime capable of incarcerating in concentration camps millions of its Muslim Uighur population and harvesting their organs, capable of turning disputed rocky outcrops in the South China Sea into fortified islands and capable of turning the bastion of freedom that was Hong Kong into a police state is surely capable of allowing perhaps the most potent threat that western democracies have faced in the last 30 years to spread until it was too late.

The Government do not know best and noble Lords should resist any suggestion that they do, especially at a time of crisis.

5.58 pm

Baroness Walmsley (LD) [V]: My Lords, I support the need for the lockdown and will not be supporting any of the amendments to the Motion that express regret. However, I regret the fact that the Government did not accept the advice of their scientific advisers and take the decision to do this sooner; if they had, the NHS might not have needed to move to the highest level of risk in its emergency preparedness framework this morning.

I agree with my noble friend Lord Scriven that the Government must use the lockdown to get test, trace and isolate right. There is no point in boasting about the capacity of 500,000 tests per day; people do not trust that figure because we know that it does not mean 500,000 people tested, so it undermines trust and affects compliance. Although the processing time of the tests has improved, it is still not good enough. Tests have been returned several days late or are sent back to the wrong care home, so they are of no use.

Isolating rates may be as low as 10% and the ability of police and local officials to enforce quarantine is low. We need to use the carrot rather than the stick and make more support available for those isolating. I heard an MP the other day say, "Just pay their wages". After all, it is for only two weeks, but it would have a massive effect on people's willingness to isolate, and that matters for getting the R rate right down. If we do not reduce the R rate well below one, it will cost the economy a lot more because the lockdown will have to be extended. Will the Government consider this?

The Government are now trialling the new mass testing system in Liverpool, and I wish it well. However, from residents' comments I have heard, they do not seem to have the messaging right. People are questioning why they need to take a test if they feel well. That, of course, is the point—testing potentially asymptomatic people—but, clearly, the message has not got through. What does the Minister propose is done about that?

Now that the rapid test is available, could it please be given to relatives of care home residents so they can safely visit their loved ones whom they have not seen for many months? Finally, there are children with very rare diseases who need special treatments which schools cannot cope with and who therefore cannot go to school, and their parents are getting to the end of their tether. The prospect of another four weeks of lockdown fills them with dread. They also need more clarity about who should shield. Will the Minister look into this because these families have been left behind?

6.02 pm

Baroness Meyer (Con): My Lords, I rise to speak to my amendment to the Motion on the increase in mental illnesses and other long-term psychological harms. Earlier this week, I was talking on the telephone to my younger son who is a physician at the clinic for psychiatry and psychotherapy at the Charité in Berlin, one of Germany's very best hospitals. He was angry; he described the disastrous impact on people of the German Government's lockdown. By isolating them from their friends, their families and their fellow human beings in conditions akin to house arrest, their essential humanity was being denied. Many could not take it. Depression and suicide were often the inevitable consequence. Still others will be mentally scarred for life. Many turned up in his clinic, seeking help.

So from Germany, a country rightly admired for its handling of the coronavirus, comes the warning that it is not just the damage to the economy that must be calculated, but the impact on the nation's mental health. Who in our Government is taking responsibility for making these calculations? Where is the risk analysis? Who in government can give us evidence that the cure will not be worse than the disease—because that is the heart of the matter, is it not?

It is no longer enough for the Government to say that they are following the science. That begs the question: which science, which scientist? There is the science of the Chief Medical Officer, of the Chief Scientific

Officer and of Sage, which the Government are following. Then there is the science of innumerable expert voices, each with impressive titles after their names, who advance dissenting views. Contrast and compare, for example, the most recent pronouncements from Imperial College and King's College London. The latter has asserted that there is no Covid surge. Why do we follow Imperial and not King's? Or, as the latest edition of the *Spectator* magazine has put it:

"Why have No. 10's Covid forecasts changed so much?"

Back in March, we were all innocents wandering through Covid's dark forest. Nearly eight months later we have all become amateur epidemiologists and virologists. I know that a little learning is a dangerous thing. However, with it has come the need for, and the right to, far greater transparency in explaining the Government's modelling inputs and policy decisions. Instead, we are blinded by science and its myriad predictions, forecasts, scenarios, and indecipherable graphs.

I stand second to none in my admiration of the Prime Minister's fortitude, confronted as he is by intolerable policy choices on an almost daily basis. Those who are too willing to criticise him and his team over Covid handling—the Labour Party keep saying that we should have done lockdown before—should show some humility. However, the harsh fact will not go away. The one thing we know beyond all doubt is that the collateral damage inflicted by lockdown is immense: to our economy, to our freedoms, and to our mental and physical health. The latest lockdown will tear still further the fabric of the nation.

It should be about risk management, rather than predictions, which may prove to be wrong. Will Her Majesty's Government publish a full impact assessment, setting out the cost of the lockdown in terms of jobs, the businesses that will fail, the toll on people's mental and physical health, and the lives that will be lost—and saved—as a result of lockdown? On the evidence so far, I have to say I find it difficult to accept that the benefits of lockdown outweigh its long-term risks.

6.07 pm

Lord Hunt of Kings Heath (Lab) [V]: My Lords, I have no doubt the latest lockdown will damage the economy, but you can have as many impact assessments as you like; the fact is that, unless we take action, the NHS will simply fall over.

In his opening remarks, the noble Lord, Lord Robathan, referred to capacity of the NHS to deal with non-Covid treatments. I would like to link that to criticism made by a number of Conservative MPs, who have argued that because hospital intensive care is currently no busier than normal for the majority of trusts, the national lockdown is not justified. I refer them to the statement made today by NHS providers, collating the views of NHS trust chief executives. They put forward three points. First, you cannot just measure the degree of pressure in a hospital just by looking at ICU capacity; you must look at pressures on acute and general beds, which is often greater, partly because many Covid patients are being treated with oxygen therapy on general wards.

Secondly, if NHS hospitals have too many Covid patients over the next two to three months, they will not be able to deal with winter pressures and carry on recovering elective surgery backlogs. Those cases are usually all treated in general and acute wards. Many hospitals are having to turn those wards into Covid beds. This in turn, is threatening elective surgery recovery rates and impacting on ability to cope with winter.

Thirdly, many hospitals are already seeing a frighteningly high level of general bed occupancy. If this pattern, now mainly in the north, is repeated elsewhere, it will coincide with winter, when the NHS is at its most stretched. None of this is reflected or effected by current national intensive care unit bed occupancy rates; in fact, they are irrelevant as far as risk is concerned. The argument for national lockdown therefore fully stands. That is the view of people at the front line of the health service; they need to be listened to.

The only question I have, which is one asked by my noble friends Lady Andrews and Lord Knight, is why the Government did not act in late September following the SAGE advice on 21 September? The more you read the two pages of advice, the more you see it was abundantly clear the circuit breaker was required. I did not hear the Minister refer to that in his introductory remarks. I hope he will respond to that. The point is this; government is not easy at the moment, but they could have taken action six weeks ago. They should have done it.

6.10 pm

Baroness Meacher (CB): My Lords, I reluctantly support the thrust of these regulations but have a few strong concerns about the illogicality and unnecessary destructiveness of just some of them. I hope the Government may reconsider their position and find a way to introduce small but incredibly important changes, though I understand that once these regulations are passed, that may not be straightforward.

My first concern is that under Regulation 11, schools are exempt from restrictions on gathering. I agree with keeping schools open. However, the lockdown will be undermined by this, unless regular testing of secondary school children and compulsory wearing of masks in class are introduced. If we can test the whole of Liverpool, we can surely test children with these new rapid-result tests. Secondary school children are spreaders of Covid as much as adults are. Keeping schools open makes no sense at all in terms of the lockdown without the protections that I propose.

My second concern is about exercise. Regulation 6 rightly introduces exemptions from the restrictions on leaving home to enable people to take exercise—fabulous. Illogically, however, the Government have decided that this exercise cannot be done with a tennis racquet or golf club in your hand, even though these particular exercises are inherently socially distanced. In particular, children's outdoor sports have all been prohibited. Yet children can sit in a classroom for hours without a mask, which is surely a far higher risk activity. When children's social activities are restricted, outdoor sports should be a top priority for them for their mental and physical health. I earnestly ask the Government to reconsider this slightly crazy state of affairs.

[Baroness Meacher]

On a totally different note, I have a third concern: these regulations should not exacerbate serious addictions. Why exclude vape shops—not normally places I visit, but still—from the list of businesses that can remain open for health purposes as listed in paragraph 47 of Schedule 1? Tobacco-related illnesses kill 70,000 people every year. The anti-smoking campaign has been hugely successful, and the 3.2 million vapers are ex-smokers or current smokers attempting to stop. Closing the vape shops could set back the anti-smoking campaign terribly badly. Will the Minister take away my request for vape shops to be slipped into that list of businesses that can remain open for health reasons?

6.13 pm

Lord Lilley (Con): My Lords, these measures involve grave restrictions on the economy and our liberties. They may be necessary, but we should take them only on the basis of sound law and solid data. Unfortunately, they are based on dubious law and dodgy data. So, I have tabled a Motion that

"this House regrets that the Regulations have been laid under the Public Health (Control of Disease) Act 1984, which does not give specific powers to Her Majesty's Government to impose restrictions on uninfected persons, and not the Civil Contingencies Act 2004, which does."

I am not a lawyer, but I know a man who is: Lord Sumption. He has spelled out that the Public Health (Control of Disease) Act 1984 empowers Governments only to confine infected persons, not to confine the population as a whole, the vast majority of whom are not infected, and still less to close down large swathes of the economy. None the less, the Government could lawfully do all they seek to do in these and other regulations if they invoke the Civil Contingencies Act 2004. In that case, however, they would be subject to much closer parliamentary scrutiny than has been the case. In my own ministerial experience, parliamentary scrutiny invariably led to better decision-making, if only because officials had to work to satisfy all conceivable criticisms, not just those that their Minister could envisage.

The noble Lord, Lord Anderson, contacted me to say that he, too, considers it regrettable from the point of view of parliamentary scrutiny and arguably unlawful that the Public Health Act 1984 was selected in preference to the Civil Contingencies Act, though he took the view that the courts might find a plausible legal argument for upholding regulations made on this basis. Will the Minister either provide a convincing rebuttal of Lord Sumption's critique, or use the Civil Contingencies Act in future?

I may not be a lawyer, but I did take the Institute of Statisticians' exams half a century ago and I have been allergic ever since to statistical jiggery-pokery. Noble Lords may recall the gang in Oxford Street which I used to watch fleecing gullible passers by using the three-card trick. They were eventually exposed when a covertly taken film, played back in slow motion, revealed how the trick was done. Ed Conway of Sky News has performed a similar public service by showing, slowly and methodically, how official sleight of hand has misused the figures to justify this lockdown by creating a scarier illusion than they warrant. I urge every noble Lord to google: "Ed Conway: Why doesn't the Government give us all the information" to see how this trick has been performed.

In brief, we were told at the weekend that the Government's case for the lockdown rests on the fact that the virus is now spreading even faster than the Government's reasonable worst-case scenario. Most of us assumed that that referred to the scary projection by Sir Patrick Vallance in mid-September showing reported cases doubling every seven days, to reach 49,000 a day by the end of last month. Far from spreading faster, reported cases are growing less than half as fast—just 20,000 per day. Sir Jeremy Farrar, of SAGE, rushed to Patrick Vallance's rescue, claiming that his projection has been met, citing the Office for National Statistics' figures that new infections are running at about 50,000 a day. However, to compare new infections with reported cases is comparing oranges with pumpkins. New infections include non-symptomatic cases and are typically two and a half times as numerous as reported cases, which Patrick Vallance was using.

The Government then claimed that Vallance's projection was not the realistic worst case. It was certainly never realistic, and it has proved far worse than reality, but the Government refused their actual realistic worst case. Fortunately, the *Spectator* got hold of an official realistic worst-case scenario for projected deaths. It assumed that the second wave would not begin until mid-November, apparently unaware that students return, the weather gets colder and evenings darker, well before then. Stark data apart, the curve of deaths that have actually happened during the real second wave has followed closely the curve of the projected one. It does not overshoot the scenario for which the NHS has been planning. In short, instead of evidence-based policy, we have seen policy-based evidence.

I am not claiming that a second wave is not serious; it is. I am not suggesting that no action is required; it may be. But using a weak legal base and playing fast and loose with the statistics can only undermine trust in what is proposed in these regulations.

6.18 pm

Baroness Bonham-Carter of Yarnbury (LD) [V]: My Lords, what a terrible toll this pandemic has taken on the creative industries, and the arts and cultural programmes that underpin them. Financial help has been forthcoming from the Government via the recovery fund and the extension of the furlough scheme, which the Minister mentioned earlier. However, there remains the serious problem of the plight of freelancers. Some 72% of those who work in the creative industries fall into this category; most of them have not been able to access the Government's support schemes. They are the excluded, mentioned earlier by the noble Lord, Lord Forsyth.

We welcome the exemptions included in this SI that will allow film and TV production to continue, along with training for elite athletes and dancers, as well as the ability to rehearse. But that training and rehearsals are often for live performances which have no opening date and, at the moment, no hope of the opportunity of actually being able to perform. Live events are major contributors to the economy, providing thousands

of jobs and playing a crucial role—I am sure the Minister will agree—in levelling up through supporting local communities and small businesses. They seemed to have been emerging from the woods. Many theatre and music businesses have been spending scarce resources on making their venues Covid-safe—and then along came the need for this second lockdown. That makes the Question I asked only last week all the more pertinent, which is that a major stumbling block for those who want to put on live events is the availability of affordable contingency insurance. In her response, the noble Baroness, Lady Barran, said

"We continue to work with UK Theatre and colleagues in the Treasury and others so that we leave no stone unturned."—[*Official Report*, 26/10/20; col. 7.]

Can the Government unturn the stone that is the precedent—the cover needed for acts of terrorism committed in the 1990s, when the Government did indeed intervene? More recently, it was key to keeping filming going. Please can the Government find a solution to this issue for live events so that venues can start planning properly to come back? Culture will be central, following this pandemic, to the recovery and renewal of our nation.

6.21 pm

Lord Trevethin and Oaksey (CB) [V]: My Lords, it is a pleasure to follow the noble Baroness. These regulations place everyone in the country under a form of qualified house arrest. The freedom to travel, to go into a friend's house, to play sport, to go to the pub—all taken away. Lord Sumption was obviously right when he described this in his recent lecture as

"the most significant interference with personal freedom in the history of our country."

Those who are the most affected are the young and active. The bill—billions and billions of pounds—is not an illusion. Who is going to pay that bill? Generally speaking, it will not be those who directly benefit from the lockdown. It will be paid by the economically active and the young, who for the most part are at no real risk, along with their children and perhaps their children's children.

Is the Government's decision a good one? I have no idea and I certainly do not envy the decision-takers. There are many unknowns. However, it seems that the country—in particular the young, who are being ordered to give up anything resembling a normal life when they themselves are not at risk—is entitled to expect certain things. The first is that decision is taken in a properly objective and rational way. There is an obvious danger in the so-called "sunk costs" fallacy which occurs when a decision to take a future course of action is justified by reference to costs already incurred rather than the merits and demerits of the possible alternatives. There is a particular danger of a sunk cost reasoning where the decision-taker is responsible for an earlier decision whose correctness may be called into question by a change of course. Is this fallacy operating here? It is troubling to hear one of the decision-takers say recently, "We have travelled too far to turn back now". That is classic sunk costs reasoning.

Secondly, we are all entitled to expect that the adverse effects of the proposed course of action are evaluated as thoroughly as its beneficial effects. Where is that evaluation? We have heard a great deal about the deaths that will be avoided by the lockdown, but almost nothing from the Government about its effect on mental health, a subject on which the noble Baroness, Lady Meyer, spoke so powerfully, on the diagnosis of other serious diseases and on our future ability to be able to afford to care for those who fall ill.

Thirdly, we are entitled to expect that the evidence presented to us as justification for these very extreme measures has been assembled and considered in a properly objective way. Graphs, forecasts, projections and so on are guesses. The guesswork may be informed, but the utility of this spuriously precise-looking material depends entirely on the underlying assumptions. You tweak the assumptions and the figures on the bottom line jerk around wildly. Anyone who has dealt with forecasting in the commercial world knows that.

The already rather notorious 4,000-deaths-a-day graph deployed in terrorem at the weekend reminded me of a different claim about a different supposed weapon of mass destruction: chemical and biological weapons ready for use within 45 minutes of an order from Saddam Hussein—we all remember that one. That war against supposed WMD did not go well. This is a very nasty and dangerous virus but, if it proves that the cure is more damaging than the disease, we will have betrayed generations.

The Deputy Speaker (Lord Alderdice) (LD): The noble Baroness, Lady Stroud, has withdrawn, so I call the noble Lord, Lord Boateng.

6.25 pm

Lord Boateng (Lab) [V]: My Lords we have been told with some force in the course of this debate that, without these regulations, the NHS will fall over. I am not in a position to challenge that and will support these regulations, albeit with a heavy heart. However, I cannot help but ask myself, as so many others have, why it took so many black, Asian and minority-ethnic lives to prop the NHS up during the last lockdown? What lessons have been learned from the disproportionate number of black and minority-ethnic NHS and care workers who died as a result of this virus during the last lockdown? If you look at the NHS website, you are told that

"A bespoke health and wellbeing offer … for BAME colleagues is being created".

The question I have for the Government—and I hope the Minister will answer it directly—is: is that offer now in place and going to be given to black and minority-ethnic staff?

You are four times more likely to die of Covid-19 if you are black than if you are white. This virus does discriminate: it discriminates against ethnic minorities, the poor, the homeless or those who are disadvantaged in any way. It takes advantage of the systemic inequalities within our society. We must have data to back up strategy and its implementation to address those inequalities. As such, I also have the following question for the Minister: will he confirm that the data collection that contributes to the NHS workforce race equality standard, which was suspended during the last lockdown, has now been resumed? Will he continue to make sure that we have the data available to make judgments on?

[Lord Boateng]

The virus takes advantage of homelessness, particularly street homelessness, infecting those who are homeless and posing a risk generally to us all in relation to the nation's public health. Therefore, will the Minister please confirm that the Home Office will not require failed asylum seekers to be evicted from accommodation supported by the Home Office during this lockdown? If not, why not? Will he also, on the question of inequality generally, publish an equality impact assessment on government support schemes? We know that these are not able to be accessed as easily, well or effectively as they should be by those from black and minority-ethnic backgrounds. I do not doubt the Minister's sincerity or his good intentions, or those of the Government, but we need some practical measures taken and genuine and effective responses to the threat and peril that Covid-19 presents to us all.

6.28 pm

Lord Thomas of Gresford (LD) [V]: My Lords, at the beginning of October, Mark Drakeford, the Welsh First Minister, and Vaughan Gething, the Health Minister, expressed their concerns to Boris Johnson over his failure to introduce travel restrictions from high-transmission areas in England to low-risk areas in Wales. Those of us living in Wales had, for many weeks, not been permitted to leave our immediate home area without a reasonable excuse, such as travel for work, health or childcare.

On 12 October, one of the new and inexperienced Tory Members of Parliament for this area described these restrictions as "draconian travel bans", which made things massively difficult for businesses. The Prime Minister agreed and refused to do anything. We have heard echoes of this sentiment in some of today's speeches. The Prime Minister had previously ignored the written requests of Mr Drakeford, who raised the issue of supporting the Welsh effort to contain the virus in a COBRA meeting and a subsequent letter of 13 October. He received no response.

Since then, a firebreak lockdown has been imposed in Wales. It is due to end next Monday, when the rules will be relaxed. Pubs, restaurants and cafés will be opened, subject to strict protections, including a rule of four. Outdoor activities will be allowed for groups of up to 30—which, coincidentally, is two competing rugby teams.

The regulations before us allow English people to leave their homes for essential purposes, including exercise. I can find no travel limit, so north Wales recreational spaces will be open to an influx from some of the most heavily infected areas: Liverpool, Lancashire, Manchester and Birmingham. This also gives an excuse for people to pour across the border to drink in pubs and restaurants. In normal times they would be more than welcome, but at this time it will negate any improvement we may have made through enduring the sacrifices of our current lockdown. I declare an interest, living only five miles from the border. A lot of questions have been put to the Minister, but I would like him to give a specific answer to the concerns of all Welsh people, and to address this issue, which was first raised by the First Minister with Mr Boris Johnson.

6.31 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I formally offer the Green group's support for these provisions, and strongly oppose the fatal Motion.

I speak on the day when a good friend lost her father to Covid. The horrific figures, to which that is one sad addition, are a measure of the failure of our provisions and our governance. My sympathy goes to everyone affected and everyone living in fear. In March we were facing a suddenly arising, little-understood threat. We should have been better prepared for a pandemic, but some of the mistakes made then were made because the detail of the threat was, unavoidably, not clearly understood. We do not have the same excuse now. We allowed the virus to run wild again through bad decisions, and through our failure to support the vulnerable and deal with the vulnerabilities in our society.

However, I want to look forward and ask the Government about their plans for the next month—or however long this lockdown needs to last—for to justify the economic, social and medical costs, we must use this time to genuinely control the virus. The disastrous failures of test and trace have been covered by other Peers, although on "trace" we seem finally to be heading somewhat in the right direction in local public provision. I want to focus on the final two elements of what is needed to bring down infection rates: isolate and support. Without the latter, the "isolate" part is not working and cannot work, not because of individual choice but because of system failure.

There must be real, effective, genuine support for everyone asked to self-isolate who needs it. If you are a young adult in a shared household, a parent in a multigenerational one with child and elderly care responsibilities, or a teenager who shares a bedroom with a sibling as a result of the disastrous bedroom tax, isolation is incredibly difficult. There are a lot of empty hotels in this country. Why are people not being offered a free, supported option to isolate when it would be very difficult, or impossible, at home?

The £500 payment must be extended to everyone who needs it. Currently, only one in eight workers is eligible. Everybody needs enough money each day, including the self-employed, the casually employed and those who have fallen through the gaping holes in the Government's financial safety nets. If you have been penniless for months, have secured a job starting today and then start to show symptoms, what are you going to do?

Poverty, inequality and insecurity are gaping wounds through which the virus can readily enter. There must be support for people effectively returning to shielding—£14 per person for councils is clearly not enough—people in their 60s with chronic health conditions and workers left with desperately difficult decisions to make. We also must address transmission in workplaces and schools. "Covid-safe" is a nice phrase, but it is clearly not the reality for lots of workers. Universities and schools, particularly secondary schools, attended by pupils vulnerable to catching and spreading the virus are another systemic vulnerability. They cannot continue as now.

6.35 pm

Lord St John of Bletso (CB): My Lords, I am in favour of the amendment moved by the noble Lord, Lord Robathan. I seriously question why it is necessary to have a nationwide lockdown when the three-tier system was working well in many regions. Clearly, the Government were put into an impossible predicament by the dire warnings from SAGE and several scientific institutions that base their conclusions on worst-case scenarios. As the noble Lord rightly mentioned, there have been many disagreements among the scientific community. The fear and hysteria were hyped up by many in the media. Why, as the noble Lord, Lord Forsyth, has asked, was there not a cost-benefit and risk analysis?

As several noble Lords have mentioned, the King's College Covid symptoms app, based on 4.3 million contributions, shows clearly that while cases are still rising across the UK, they have not spiralled out of control and the R value is just above one. There is clear evidence that the tier 3 restrictions in Liverpool and in the north-east have had a positive impact. Why did we not have tier 4 restrictions and regional lockdowns, which have been highly effective in other parts of the world such as Australia?

Businesses both large and small have acted responsibly in respecting social distancing, the wearing of face masks and strict hand-washing measures. This second lockdown will devastate many businesses and, inevitably, take us into a double-dip recession, destroying jobs and adding to the problems of anxiety, depression and domestic abuse.

I dread the long-term repercussions of the huge debt that will have to be repaid, predominantly by the younger generation. What will this lockdown cost? We seem to be reacting purely to bad news. In most cases, except long Covid, the recovery period is a matter of a week. I say this having had Covid. Apart from a dry cough for a few days, I recovered in no time at all. My 93-year-old mother-in-law has just recovered from Covid within two weeks. The treatment of Covid patients has hugely improved. We have over 250 vaccines under development globally.

While death rates are running at 10% above the seasonal average, death rates from Covid compared with earlier in the year have come down considerably. We all knew there would be a second wave. The NHS had seven months to prepare for it. What evidence does the Government have that the NHS cannot cope? The Government are using a sledgehammer to crack a nut and allowing the tail to wag the dog.

6.38 pm

Lord Barwell (Con): My Lords, I support the regulations, although it gives me no pleasure to do so. I concede that the lockdown will damage our economy and people's mental health and will restrict our freedoms —all the arguments that my noble friend Lord Forsyth so eloquently spelled out. I do so because the lesson from the first wave is very clear: that the consequences of not acting are worse. The countries that took quick and decisive action did not see more damage to their economies and more people out of work; they saw less damage. Countries that, like us, were late to act did not better protect their economies; they saw a sharper fall in GDP and more job losses.

My noble friend Lord Robathan said that there was uncertainty about the sums. He is quite right, but at every stage during this process, we have suffered from optimism bias. Back in February and March, we believed that we were several weeks ahead of Italy, before it became apparent that that was not the case. We came out of lockdown in May and June too quickly, failing to achieve suppression of the virus—particularly in the north of the country, which is why the pandemic has recurred there first.

We did not listen to SAGE back in September, when its advice was for a short circuit-breaker lockdown. The Prime Minister clearly did not want to adopt the policy that he is now pursuing. We were told that this was all going to be over by Christmas. Even now, some noble Lords seem to believe that what is happening in Belgium, the Czech Republic and France will somehow not happen here.

I fear that we live in an age of increasing unreason, where experts are maligned. I have a lot of sympathy with those noble Lords who have asked to see the assumptions that underpin the modelling, but others go further. My noble friend Lady Noakes said that, although she could not comment on this herself, some have said that there is a deliberate plot to curtail our civil liberties. Who would benefit from such a plot? How can what the Government are recommending to the House possibly be in their interest? It will make their job over the next few years immeasurably more difficult.

I believe that a vaccine and improvements in treatment and testing are on the way. However, lest noble Lords fear that I am suffering from the optimism bias that I have criticised in others, let me say that, if we look around the world, there are countries that, even before those developments, have achieved suppression and returned life to normal.

As I come to the end of my time, I say to the Minister that the Government need to use this period to achieve proper suppression of the virus—to get the tracing system working properly and ensure better compliance—so that, if I am wrong in my optimism about vaccine treatment and testing, we do not find ourselves in January or February back debating a potential third lockdown. This measure is the right thing to do now to protect our NHS. It is better than any alternative course of action.

The Deputy Speaker (Lord Alderdice) (LD): My Lords, the noble Lords, Lord McConnell of Glenscorrodale and Lord Greaves, have withdrawn so I call the noble Earl, Lord Clancarty.

6.42 pm

The Earl of Clancarty (CB): My Lords, my first question is: what is the Government's understanding of where in the community the virus is being transmitted most? Surely this is the evidence that should be shaping the measures being taken, including this lockdown.

I welcome the Prime Minister's intention to mass test. However, if, as the ONS has said, Covid is rising rapidly among older schoolchildren, should not a priority during this period be to test all schoolchildren and staff, and indeed university students and staff

[The Earl of Clancarty]
too? Will there be an advertising campaign to accompany the Liverpool testing pilot, perhaps along the lines of getting tested being a social duty, particularly as so many people might be infectious but display no symptoms? Mandatory testing, as in Slovakia, would create an undesirable precedent in the UK but Slovakia's project to test the whole population over two weekends is nevertheless admirable.

On Friday, I was privileged to attend one of the few live performances of Sarah Kane's play "Crave" at the Chichester Festival Theatre before it was live-streamed. Everyone was masked and socially distanced in an airy auditorium. Lockdown is another blow to the arts when they are just starting to get back on their feet, particularly because of their considerable dependence for survival on a paying public.

However, those who continue to be most affected are the self-employed. The increase in support, at least for the lockdown period, is welcome, but a majority of the self-employed in the arts and entertainment are ineligible for support. They include the newly self-employed and those paid through dividends. Freelancers who work in the arts will not be covered by the Culture Recovery Fund. In its report *Jobs, Jobs, Jobs*, the Resolution Foundation identified a real issue with targeting the self-employed most in need. Have the Government looked at that report? Will they address these continuing concerns?

Lastly, I ask the Minister for clarification on what the lockdown means for private music teaching. The Minister says that the Government are prioritising education. It is vital that this teaching continues through the lockdown to nurture the next generation of musicians. I sent the Minister a note on this question this morning, so he might not have had time to see it, but there is a discrepancy between the guidance and the legislation, which clearly lists education as an exception without specifying what form that may take. Can music teachers continue to teach privately from home and visit other houses to teach? Can private music schools still operate face-to-face teaching? Can peripatetic music lessons in schools take place?

Concerns about the status of extracurricular activity within Covid-safe environments extend to art, drama and sport, as we have heard, with huge implications for mental and physical well-being, which we should not neglect, even for a month.

The Deputy Speaker (Lord Alderdice) (LD): The noble Lord, Lord Lamont of Lerwick, and the noble Baronesses, Lady Clark of Kilwinning and Lady Newlove, have withdrawn so I call the noble Baroness, Lady Smith of Newnham.

6.45 pm

Baroness Smith of Newnham (LD): My Lords, I, like many noble Lords who have spoken this evening, find that it is with a very heavy heart that I support the regulations for a further period of lockdown. I very much regret that. I have a series of questions for the Minister because I have concerns about the Government's approach to scrutiny, parliamentary democracy and the use of evidence. I am not a scientist and will not try to second-guess any of the scientific evidence, unlike some noble Lords who have put down amendments or moved a fatal Motion, as the noble Lord, Lord Robathan, has.

Back in September, the Government appeared to have evidence that a second lockdown or circuit-breaker would be necessary. Why did it become so urgent that it had to be announced only last Saturday, and the Prime Minister had to announce what he planned, not in front of the House of Commons but at an emergency press conference, allegedly because of a leak? Are this Government fit for purpose? Are they able to produce the necessary legislation in a timely manner? If the information that the Government had last week was dramatically different from that in September, it would be useful to know, but it is not clear that it was. There were calls from the Official Opposition and the Liberal Democrats for a circuit-breaker much earlier. Why do the Government use the evidence only when they choose to then claim that it is urgent, making sure that there is little time for parliamentary scrutiny?

Like several of the noble Lords who have tabled amendments, I have concerns about the economy and mental health. I declare an interest as a resident fellow of a Cambridge college; I will be locked down, as will the students. I live in a flat; they will live in small rooms for a month. Have the Government done an assessment of the impact on mental health? On 16 March, I asked the Minister what assessments had been done, before the lockdown proposed then. On that occasion, he told me that I was

"entirely right to be concerned about the holistic challenge we face"

and that the announcement on 16 March

"focused on the clinical response",

but that the Minister would

"be glad to answer any questions on specific subjects as they arise."—[*Official Report*, 16/3/20; col. 1362.]

Eight and a half months later, can he give us some answers?

6.48 pm

Baroness Altmann (Con): My Lords, it is a pleasure to follow the noble Baroness, Lady Smith of Newnham, with whom I normally agree; I do on this occasion, in many ways. I do not underestimate the challenges faced by the Government and have enormous sympathy for my noble friend the Minister, but I believe that the measures in these regulations, which we are being asked to approve as a whole—with the dramatic consequences they will have on millions of people's lives, physical and mental health, personal safety and livelihoods—are flawed. We still have not been presented with an impact assessment, a cost-benefit analysis or alternative scientific views—of which there are many suggesting that these measures are based on questionable data and invalid assumptions.

I find myself agreeing wholeheartedly—unfamiliarly, perhaps—with my noble friends Lord Robathan, Lord Forsyth, Lord Lilley and Lady Noakes. We need to prepare proper analysis and present it to Parliament, with full transparency on all the assumptions, and have an opportunity to amend these measures in the light of evidence.

I do not believe that these regulations had been sufficiently broadly considered. They are not based on rigorous analysis. For example, there is no evidence to suggest that banning communal worship will impact the spread of the virus, especially after churches, synagogues and other religious venues have spent so much to ensure that they are Covid safe, as the right reverend Prelate the Bishop of Winchester rightly said. Where is the evidence that outdoor sports such as golf and tennis, or swimming in a chlorinated pool, are dangerous?

These measures need to be amended, but we are not able to do that. Yet surely we have a duty to satisfy ourselves that they are based on robust data. As an economist, I have plenty of experience of flawed models that assume away the real world or depend on incorrect assumptions. Selected statistics, presentation out of context and failing to consider issues broadly are classic errors. I feel that we are in danger of being misled. Of course I am concerned about the economic impacts of the measures we are being asked to approve, but I am even more concerned about the effect on broader national health, particularly mental health, to which my noble friend Lady Meyer refers in her amendment to the Motion, and the impacts on family life, people in care homes and people missing cancer, heart, stroke or other diagnoses and treatments.

These measures have been hastily put together and I believe they are dangerous. Policy devised in panic is not good policy. Can we not take some extra time—even just a few days—to consider them more carefully, gather more evidence, and produce a proper cost-benefit analysis and impact assessments to allow a more cogent set of measures to be laid before us?

6.51 pm

Lord Desai (Lab): My Lords, it is a pleasure to follow the noble Baroness, Lady Altmann, who is an economist and a friend from the LSE. In the 30 years I have been in your Lordships' House, I have never had the luxury of six regret amendments from the Government Benches themselves—so we can have the luxury of supporting the Government for a while. Let them quarrel among themselves.

As an economist, I used to be very humble in the face of natural scientists. I used to think that their models were solidly based on theory, experiment and science, and that we economists were just doing things and quarrelling with each other. I have to admit that I was in the econometric modelling business—my God—60 years ago and did the first computer simulation of an econometric model for my PhD. But let us leave all that behind.

I am embarrassed that what we call science has made a complete fool of itself in front of all of us. Epidemiologists, virologists and people who claim to have done several computer simulation models have not come to a single agreement. They have not got a model of what causes the infection or how it spreads. They have not given us any solid clue as to the rate at which the infection spreads—the R number. Is that number valid for a whole nation or only for a locality? What is the technical basis of the R number? How can we have a national lockdown with the goal of reducing the R number to below 1 across the nation, with no errors? Is this serious science? Do the Government have any critical ability they can borrow from somewhere else to judge what they are hitching us to do for the next month, if nothing better turns up?

I will make two points I have raised before. Is our aim to reduce the rate of infection or the rate of mortality? There is a difference. Look at America, where everybody says that Trump made a mess and there are a lot of infections. The rate of mortality as a proportion of infection is the same in America as here. The economic outcome in America for the third quarter of this year is a plus 33% growth in GDP: a real bounce-back from the recession—a genuinely V-shaped recession—while we are floundering around. As the noble Lord, Lord Forsyth, who is very knowledgeable on this matter, pointed out—

Baroness Penn (Con): My Lords, there are many more speakers.

Lord Desai (Lab): I will now sit down, under protest.

6.55 pm

Lord Howard of Rising (Con) [V]: My Lords, the Great Barrington declaration, signed by more than 40,000 doctors and scientists, called for care of the elderly rather than lockdown. Such a large number of medical professionals taking this view makes one wonder why this country is being pushed into a devastatingly damaging lockdown. It is questionable whether lockdowns work or whether they merely push the problem forward. The information on which the present lockdown has been decided is out of date—which makes the idea of a lockdown even more suspect.

Charts presented by my right honourable friend the Prime Minister's advisers last Saturday had labels at the bottom saying, "These are scenarios, not predictions or forecasts". How have we reached a state of affairs where scientists can push the Government into decisions which have disastrous side-effects by using scenarios that are effectively guesses? Aside from the devastating—and, some would say, improper—attack on personal liberty, people's lives are being ruined on a large scale. A huge number of businesses have had to close, many of which will never reopen.

The impact on health is nothing short of a disaster, from diseases such as cancer not being treated to others arising from the stress caused by lockdown. We have absolutely no idea what the destruction of the sense of well-being in the bulk of the population will lead to—all on the back of dubious scenarios by scientists with a track record of making lurid forecasts which have not come to pass. The present scenarios have been ridiculed by many well-respected members of both the medical and academic professions; even Sir Patrick Vallance and Professor Whitty are now rowing back from what they have been saying. After 2 December, it will be time to ignore scaremongering scientists and get back to normal, with special care for the vulnerable, and let the remainder of the population return to living their lives.

6.58 pm

Lord Berkeley of Knighton (CB) [V]: My Lords, I have considerable sympathy with those like the noble Lords, Lord Howard of Rising and Lord Forsyth, and

[Lord Berkeley of Knighton]
my noble friend Lord St John of Bletso, who feel that the cost of lockdown is simply too great or even that the road to herd immunity would be a preferable route. As someone with a financial toe in the hospitality arena—as declared in the register of interests—I also have great sympathy with those who are struggling; indeed, I worry too about the artists and freelance musicians who will once again be hit and may fall between the Government's safety nets, as mentioned by my noble friend Lord Clancarty.

But—and it is a big "but"—despite this, and despite the utter incompetence over testing, with all the Prime Minister's Trump-like boasting about us being world-beaters, I feel that we simply cannot risk people's lives. The NHS is adamant—adamant—that without a circuit breaker, this is what we would be doing. In fact, if the figures that we are being asked to swallow are correct, we should have locked down sooner and also used the natural break of the school half-term to widen that circuit breaker still further.

The noble Lord, Lord Thomas of Gresford, made some well-argued points about Wales. In my area of mid-Wales, we had virtually no cases at all until the last two weeks, when, suddenly, two groups of people contracted Covid. How? Both groups went to either a bar or a pub. Alcohol leads to loss of inhibition and lack of safe distancing. Since people are not prepared to play by the rules, the Government need to impose them so that we do not see hospitals having to close their doors. I am not prepared to take responsibility for having on our conscience the deaths of patients who cannot be looked after, not to mention the terrible stress on doctors, nurses and NHS staff.

I believe what the Minister said in his opening comments. Therefore, despite my love of tennis, I must support the Government in these regulations, though with some reservations.

7.01 pm

Lord Balfe (Con): My Lords, this is not the first time I have said in this Chamber that the Government need to fundamentally rethink their position. We are asked to believe that the rate can be pushed down by closing churches, John Lewis, bookshops, gyms and swimming pools but leaving open Tesco, Sainsbury's, Marks & Spencer and the Co-op. I have very good news for the noble Baroness, Lady Smith. My wife was in the Cambridge branch of M&S yesterday to buy some tights before lockdown; they assured her that they would be packing as many clothes as possible into the grocery section so that it would still be possible to buy tights and so on. Are this Government sponsored by Amazon or by Deliveroo? Which is it, or is it both?

Some 40,000 people have died, and we are now told that another 80,000 are going to die. What have we been doing for the last six months? The Government need to go back to the drawing board and call in people such as Professor Heneghan and other scientists to look more carefully at the numbers.

I recently spent four days in Stockholm. They have the same problem as we do, but they have dealt with it very differently. Stockholm has not locked down its economy; the death rate is lower than ours and it is managing to carry on. A lot of sensible social distancing precautions are in place; most of the museums are closed, but not the economy. As you walk around, you do not get this feeling of dread, with everybody looking like frightened little mice. I ask the Government to look at resetting their strategy.

My final point is this. If there is a vaccine, the consequences will still have to be dealt with. The virus might well mutate. After all, the flu virus mutates—you need a flu jab every year. We seem to be talking about a vaccine as though it will come down from heaven like manna, we will consume it and we will be protected for ever. It will not work that way. The virus will manage to mutate, and we will have this problem with us for a very long time.

At the beginning of this debate, the noble Lord, Lord Robathan, talked about causing national self-harm. I honestly believe that we are talking ourselves into a corner because we are refusing to consider the basis on which we are working. That basis is wrong and it needs to be looked at again.

7.04 pm

Viscount Trenchard (Con): My Lords, I do not envy my right honourable friend the Prime Minister for having to decide where the balance should lie between saving jobs and the economy or saving lives. When I watched his press conference on Saturday, however, I felt immediately sceptical about the data we were shown by his advisers. Part of the reason for the much higher incidence of infections in this second wave is that very many more people are being tested. Therefore, many more people with only mild symptoms, or no symptoms, are appearing in the statistics than was the case in March and April. The proportions of infected people who are dying, and of those who are hospitalised, are also very much lower than was the case in the first phase. In particular, the graph showing scenarios for expected winter deaths—not predictions or forecasts—produced by several modelling groups looked suspicious, as did the graph with an enormous shaded area projecting possible hospital admissions.

I find the arguments put forward by Professor Carl Heneghan and Ross Clark persuasive, and they have not been given enough weight, particularly when there is some evidence that the regional measures were actually working in the areas where they had been introduced and no likelihood whatever that hospital capacity may be threatened in the rest of the country.

It has been argued that immunity provided by antibodies may not last long, and statistics have been presented showing a declining proportion of people possessing antibodies. Having had the virus, without realising it at the time, in late March, I tested positive for antibodies both in early May and at the end of September. I am not aware of anyone who had tested positive for antibodies who has subsequently tested negative. Could the Minister tell the House if he knows what data exists in this area? Without specific data it is clearly misleading to argue definitively that the possession of antibodies offers little mitigation of the risk of being hospitalised or dying as a result of contracting Covid for a second time.

I am no epidemiologist but, based on the evidence I have seen, I do not believe that the state is justified in intervening to deprive citizens of their freedoms in the

way that it is doing, particularly if it is using powers granted by an Act of Parliament which was never intended to restrict the activities of healthy people, as was so convincingly argued by Lord Sumption.

I have attended in two cases, and been prevented from attending in one case, the funerals of three close relatives during the period since the pandemic struck. It is welcome that the number who may attend funerals—which had been increased from nine to 30—remains 30 under this current lockdown. However, I think it is most regrettable that the Government have now banned marriages altogether. I have another close relative whose wedding has already been postponed for several months by Covid-induced travel restrictions. He had planned to marry this month, albeit with only 15 people in attendance, but that is not now possible.

The Deputy Speaker (Lord Haskel) (Lab): The noble Lord, Lord Loomba, has withdrawn, so I now call the noble Lord, Lord Marlesford.

7.08 pm

Lord Marlesford (Con) [V]: My Lords, I want to focus on one aspect of the economic consequences of this lockdown: youth unemployment, or, to be more precise, the outlook for the young people who will be leaving full-time education next summer. There will be about 200,000 of them; it would be a terrible tragedy if a significant number of them can find no job to go to. I believe that HMG have as great an obligation to mitigate their lot as that of any other group, for many of whom the Chancellor has already made most imaginative and generous provision.

My proposal involves our Armed Forces, who have performed magnificently in organising the construction of the Nightingale hospitals. Next month will see the 60th anniversary of the ending of national service in the UK. Those of us who were privileged to serve for 18 months or two years in uniform know what a huge benefit it was to us as individuals, whether or not we ever heard a shot fired in anger.

My proposal is that the Government should task the Ministry of Defence to prepare a scheme for school leavers next summer to be able, if they wish to, to join one of Her Majesty's services for either one or two years. Many young people have already been in Cadet forces at school. I want to quote from the head teacher of a middle school in Suffolk who in the 1980s said:

"I used to be opposed to Cadet forces recruiting in school. After two years, I have become a convert. You take young people who frequently are not achieving, have low self-esteem and can be in trouble, and you give them a framework, self-discipline. They learn teamwork and start achieving. They go on to become active members of the school."

My suggestion could give a magnificent start in life for some who might otherwise suffer long-term disadvantages from this wretched pandemic. It ought also to produce some valuable recruits for the Regular Forces. It would certainly improve job opportunities for others. As the Swiss have believed for many years, to have a trained militia can be very useful in times of peril. As we have seen increasingly in recent weeks, we face times of real peril to come. I hope that my noble friend the Minister will pass on my suggestion to his ministerial colleagues for action this day.

The Deputy Speaker (Lord Haskel) (Lab): The noble Baroness, Lady Verma, has withdrawn, so I call the noble Baroness, Lady Mallalieu.

7.11 pm

Baroness Mallalieu (Lab) [V]: My Lords, I cannot support the regulations, because the damage which they are bound to cause cannot, I fear, be justified by the very limited and temporary benefit which might result from them. Until we have a cure or a vaccine, or the virus burns itself out, we will have to live with Covid. No one here or overseas has the certain answer to what should be done, and I certainly would not want to walk in the Prime Minister's shoes or of those who advise him, all of whom I accept are honourable, decent and trying to do their best, but nor can I any longer respect their judgment.

The country has stoically supported three months of lockdown, lessons in handwashing, face masks, shutting down at 10 pm, confinement to groups of six, division of the country into tiers of restriction, all of which have had little effect, and then temporary, or we would not be here tonight. I would love to see the basis for the claim made by the noble Lord, Lord Bethell, of half a million lives saved. I think I can guess who that figure comes from—perhaps he could tell us in reply.

Those measures have also inflicted enormous damage not just economically but socially and in terms of both the physical and mental health of our people. They have caused great human misery to many. These regulations will simply add to them. We are told they are needed because of a possible lack of hospital capacity or, in some places, an actual lack of capacity, but trying to stop demand cannot provide a lasting solution. Increased capacity is the only answer to lack of capacity, and that means more ICU beds and serious financial incentives to staff them—not shutting down the local hairdresser or pushing the local pub into bankruptcy.

A new and courageous approach is needed; we are not going to get it now but let us hope we do in a month's time or when sense starts to prevail. How do we get the co-operation of the nation, which is increasingly fed up? How about giving them the facts without frightening them, and the facts rather than guesswork? Covid is a horrible illness and kills some people, but as many as eight out of 10 who catch it are symptomless and the death rate is just 0.2%. Then give us simple, readily available, reliable and speedy tests at home which sick people do not have to drive miles to get. Stop pretending that things which are not working, such as track and trace, are triumphs because if you do, people see that they are being taken for fools. Do not tell us that restrictions are only for a short period of weeks; we know that they are going to go on after the month is up.

Above all, do not deprive us of the right to make our own life choices and decisions for ourselves and our families. A sizeable part of the nation is at tipping point and the protests are daily growing. Preservation of life is of course important, but so is preservation of a life worth living. For an increasing number of people, those in charge appear to have forgotten that.

7.15 pm

Baroness Neville-Rolfe (Con): My Lords, I am glad to follow the noble Baroness, Lady Mallalieu, and agree with a great deal of what she said. The last time we debated a Covid SI, I said that I was unhappy with the direction in which policy was moving, but I agreed with the Government that, at all costs, another national lockdown had to be avoided. We have not avoided such a lockdown, and I am now even less happy.

First, I am not convinced by the explanations given for this change of tack. As we have heard, the charts purporting to show its necessity were, to put it politely, not based on the latest evidence. In particular, the apocalyptic claims about what was likely in December if nothing was done have been undermined. Secondly, and equally bad, Ministers' presentations continue to ignore the other side of the ledger; for example, the extra cancer deaths and other miseries well described by my noble friend Lady Meyer and the noble Baroness, Lady Smith of Newnham. The lockdown's enormous economic costs are of course also ignored. If we look only at the benefits of our policies and ignore the costs, it is easy to persuade ourselves that we are doing wonderfully when the reality is different. The House accepted a lack of cost-benefit analysis and impact assessment for the emergency measures in March. That was a failure of scrutiny by us but, deplorably, the Government have made it a habit.

Finally I turn to test, track and trace. But a short time ago, we were assured that the UK national system would be world beating. Not merely is it not yet world beating but struggles to reach the level of simple competence, especially in relation to trace. I begin to believe that it might be better to scrap the whole thing, save the money and rely on local endeavour. I also worry a lot about cleanliness and reinfection in hospitals.

I recognise all this is very difficult for the Prime Minister and my noble friend the Minister. Any Government would have a hard time, given the unknowns. There are a few positives. The Government have so far recognised the mistake they made last time and kept schools open. They also need to ensure that national exams are held next summer. Elite sport is provided for, unlike last time. However, overall, we are going in the wrong direction. We need to move towards a system where it is recognised that most people are not in real danger from Covid and are hampered as little as possible in everyday life, while those most at risk are helped to shelter if they feel it right. I agree on this matter with the noble Lord, Lord St John of Bletso, and my noble friends Lord Howard of Rising, Lord Forsyth and Lord Robathan, and I will not be voting for this measure.

7.17 pm

Baroness Morrissey (Con) [V]: My Lords, I am honoured to follow my noble friend Lady Neville-Rolfe and agree with so much of what she said, and with other Members of your Lordships' House. They have put forward such compelling arguments around the shortcomings of the Government's approach in decreeing another national lockdown.

I do not want to repeat anything that others have said but, as a businesswoman, I would like to draw parallels with how decisions are required to be made in business, at least those that will affect many stakeholders. In business, the higher the stakes, the higher the burden of proof on the decision-makers. A FTSE 100 CEO announcing a major change in strategy needs to bring along those who are affected by setting out the basis for the decision, the pros and cons and the likely impacts—good and bad—across all parts of the business and groups that will be affected. If it is a particularly controversial decision, that CEO may also take the trouble to explain what other options were considered and why they were not chosen. He or she will share the numbers, the assumptions behind them and the projections into the future and take detailed questions. If noble Lords ever attend a company's results day, they will find it a spreadsheet-heavy affair. Even if it is sobering news, if the case is well made and the analysis sound then shareholders and other stakeholders, such as employees, tend to go along with the decision. The CEO respects the need to bring them with him or her because if he or she does not and the news is unpalatable, they will vote with their feet.

Of course, I completely understand that running the country is not the same as running a business. No, the stakes are much higher and far more people are affected, which is why there needs to be scrutiny and sound evidence to back up such decisions, at least in a democracy.

Let us remember that we have had eight months to develop our understanding, modelling and preparedness for Covid-19. We should not be back to where we started. Yet we hear a reprise of the justification used in March that we willingly accepted at the time because we knew so little about the virus and its impact, and had not built capacity in the NHS or effective treatments for those hospitalised.

At present, although we have even more to lose and the economy is already fragile, the less we are told, the weaker the basis is for the decision. There is vagueness and confusion around the medical evidence used to justify the second lockdown decree. On Monday, when Conservative MP Huw Merriman asked why East Sussex was being locked down when it had,

"one of the lowest Covid rates of any county",

the Prime Minister replied that

"the medical data is, alas, overwhelming."—[*Official Report*, Commons, 2/11/20; col. 49.]

I use my analogy again. Imagine a FTSE CEO, when challenged by an analyst about a decision to close, say, a factory, saying, "Alas, we just have to". Real data is needed, not just numbers around the virus, although that would be a very useful start, given that the Government's scientific advisers seem unconvinced by the out-of-date graph shown alongside Saturday's announcement.

In my draft of this speech, I was going to say that there is no evidence that the Government have undertaken a broader impact assessment before coming to the conclusion that a second lockdown was necessary.

Baroness Penn (Con): My Lords—

Baroness Morrissey (Con) [V]: There has now been an admission that no such impact analysis has been made. Yet although we do not know whether lockdown will work or even if it is necessary—

Baroness Penn (Con): My Lords—

Baroness Morrissey (Con) [V]: We know, as others have said, that the collateral damage will be devastating. We and the public need to see how devastating that will be and why the other options, such as continuing with tiers 1 to 3 local restrictions or shielding only those who are vulnerable, would be worse. No one from the Government has shared any such analysis. Presumably, the Treasury has modelled the outcome on the economy, so why can we not see that? What are the expected excess deaths from untreated cancers, heart disease and suicides borne out of loneliness, despair and poverty?

Baroness Penn (Con): My Lords, the time limit for Back-Bench contributions is three minutes. Everyone else has respected that limit and I will have to ask the noble Baroness to draw her remarks to a close.

Baroness Morrissey (Con) [V]: I will do so. I apologise.

It is shocking that when the stakes are so high, when a draconian step is being dictated to us, so little information is shared. Saying "alas" is not good enough. Will the Minister explain why the Government have not carried out an impact assessment and whether they plan to do so now?

7.23 pm

Viscount Ridley (Con) [V]: My Lords, I had wanted to spend my three minutes spelling out the potential alternative to lockdown, namely focused protection, because the Government have not taken it seriously enough. A staggering 45% of the UK's Covid deaths have come among the 0.6% of people who live in care homes. That is where our efforts should be focused.

However, like others, I was so disturbed by what I have learned about the numbers used last Saturday to bounce us into lockdown that I must devote my few minutes to that issue. We were told that the virus is spreading faster than in the reasonable worst-case scenario. Like my noble friend Lord Lilley, I had to find out from Ed Conway of Sky News that the scenario was drawn up a long time ago in July and had absurd assumptions about the timing of the second wave. We were told that we could expect 4,000 deaths a day on a chart that did not even disclose where the projection came from. That is more deaths than have occurred on any day in any country, even those with vastly larger populations than ours.

The fatality rate of the virus is about 0.2%, as the noble Baroness, Lady Mallalieu, said, and falling. Therefore, as my noble friend Lady Noakes said, 4,000 deaths a day implies 2 million infections per day, with the entire population infected within a month. That does not pass the common-sense test. What we were not told, and had to drag out of the secretive conclave of oracles known as SAGE, was that that was a nearly three-week-old projection that subsequently had been updated twice, producing much lower numbers which were ignored. The death toll was undershooting not just that model but all three projections shown on that graph. I echo the despair of the noble Lord, Lord Desai, at the performance of the models. They mostly still do not take into account matters such as the heterogeneity of infectiousness, whereby in each wave the superspreaders are depleted and the wave therefore crests, which is why Sweden now has almost no daily deaths, as my noble friend Lord Balfe said, after no lockdown.

It is not true, as my noble friend the Minister said twice in his speech, that the numbers are rising exponentially; they have not been for several weeks. Even by last weekend, and certainly today, it is clear that the second wave is peaking. Cases peaked in Liverpool, Nottingham, Newcastle and Manchester well over a week ago. As we have heard this evening, the King's College data show that cases are now starting to nudge downwards nationally.

I have huge sympathy for the Government but, in the light of the failure to produce proper evidence for this measure, as my noble friend Lady Altmann said, the Government have every justification to pause this lockdown, with its inevitable products of further deaths from suicide, untreated cancer and heart disease and its miserable consequences of mental ill health, unemployment, bankruptcy and poverty, and go back and demand proper evidence-based graphs from SAGE.

7.26 pm

Lord Brooke of Alverthorpe (Lab): My Lords, the one thing that Covid-19 has done and continues to do is to puncture egos at the highest levels and in all parts of society throughout the world.

I have considerable sympathy with many of the points made by the amendments. In particular I believe that there is an overwhelming requirement, as many others have argued, for the Government to use the lockdown period to provide a strategy, a way for them to show that they have learned lessons from the first two lockdowns, that they are finding a way to exit it and that we are setting out on a course that will avoid the possibility that we could have a third wave early in 2021 followed by another lockdown.

Yesterday I asked the noble Baroness the Leader of the House:

> "If the Government intend, as they state, to adopt a pragmatic and local approach again in the months ahead, is one of the lessons learned that this might be more successful if the Government seek to bring all the political parties, at all levels, into the process? Would the noble Baroness consider a joint plan of action along the lines suggested by"

others and

> "her colleague and former Minister, the noble Lord, Lord Bridges of Headley?"

Listening to today's many contributions makes the case even more strongly to me that we need wider involvement by people than we have had hitherto. The noble Baroness the Leader replied:

> "The noble Lord is right that we need co-operation locally and nationally"—[*Official Report*, 3/11/20; col. 688.]

but she referred only to co-operation locally with the Liverpool experiment; she made no mention whatever of anything that might happen at national level.

I believe that the country is sick and tired at the lack of direction. We heard from the noble Baroness, Lady Mallalieu, that people despair of politicians and

[Lord Brooke of Alverthorpe]
the bickering among them. I would have thought that the assembly here today could all come together, work together and find a way through. My plea is that, as we look forward, we should try to work together against a common enemy as we always have done in the past when we have been faced with such an approach. That is the way in which we will get the confidence of the Government behind us and we will be more likely to find solutions to these problems. If our good friend, my noble friend Lord Desai, had been brought in, he could have been helping to find a better way forward than we have at the moment.

7.28 pm

Lord Mancroft (Con) [V]: My Lords, while in February and March there was a paucity of data on which anyone could base an opinion or construct a strategy, there is now almost a tsunami of facts and figures, along with as much commentary as anyone could want. We therefore all know just about as much as the Prime Minister does. One result of that is that the case for this lockdown, as set out by the Prime Minister and his advisers on Saturday, and my noble friend the Minister today, has since been largely debunked by enough reputable scientists and commentators to the point where the Government's case for this lockdown is simply no longer credible. In particular, Monday's report by King's College, referred to by the noble Lord, Lord St John of Bletso, set out that the R rate is significantly lower than the Government's advisers reported on Saturday. As my noble friend Lord Lilley told us, the number of new cases in the north west has plateaued and is now falling.

No one doubts the seriousness of coronavirus, but the reality is that, while this is a very nasty, frightening illness, it is really only fatal to specific vulnerable people. More than 90% of the population get over the virus within a few days or weeks at worse. In these circumstances, it is difficult to understand the case for locking down the whole community. The chaos surrounding the Prime Minister's announcement on Saturday and the delay in tabling this statutory instrument has simply added to the uncertainty surrounding this measure and the general lack of confidence in the Government's handling of what is undoubtedly a difficult situation. There is a large and growing body of opinion, based on the enormous amount of data now available to all of us, that believes that the cure—in the form of a lockdown—may well be more damaging than the pandemic itself.

In order to address these concerns, will the Minister share with this House the work that the Government have presumably done which convinced them that there will be fewer job losses, less economic damage, fewer long-term physical and mental health problems in the population as a result of the lockdown than there would be without it? We all recognise the need to protect the NHS, and we have been told how many lives could be saved by lockdown, but this has been based only on projections. We now also need to be told how many lives will be ruined by the economic fallout of lockdown. The heavy price of lockdown will be paid by working people, and we need to know what that price is going to be. I shall, of course, listen carefully to everything that noble Lords say tonight, but as it stands, if my noble friends divide the House, I will support them.

7.31 pm

Lord Cormack (Con): My Lords, we have to remember that on Sunday—Remembrance Day—when we commemorate those who gave their lives and their health for our freedom, we will be one or two inches nearer to living in a benevolent police state or a benign autocracy. That is a matter of enormous grief to me and to many others. It has been the subtext of a number of speeches today, particularly the moving speech of my noble friend Lord Shinkwin.

I have two questions for the Minister. On the subject of churches, we had a perfectly benign but totally unsatisfactory Answer yesterday to my noble friend Lord Moylan's Question from my noble friend Lord Greenhalgh. He was not able to produce a single shred of evidence to suggest that it was unsafe to go to a place of worship. Yesterday, the most reverend Primate the Archbishop of Canterbury, the Archbishop of Westminster, other leading Anglicans, the Chief Rabbi and many other faith leaders wrote to the Prime Minister spelling out how important it was to keep open places of worship for public worship. We have had no answer. I say to my noble friend that the House has every right to demand a proper answer. Where is his evidence to justify this draconian step, for that is what it is? We should resist it if we possibly can.

I go from the sublime to the earthy: why are we preventing people from playing on golf courses? Nothing is safer than regulated exercise in the open air. I am not a golfer; I have never played golf in my life and I do not want to. A petition was launched on Saturday of last week and, by Monday, it had a quarter of a million signatures. If you are expecting people to obey orders, you should make orders that you can justify; you should not alienate normally law-abiding people such as those who play golf or go to churches and synagogues. You should not alienate them, because the price you will pay as a Government will be a very large price indeed. I rest my case.

7.34 pm

Baroness Fox of Buckley (Non-Afl): My Lords, it is hard to follow that. We have heard important and shocking contributions, exposing the flaws in the reliability of the evidence and forecasts used, but I want to make a plea that we do not just get trapped in evidence wars. We have just heard a fine example of why values matter, along with principles such as freedom.

I have been nervous about how enthusiastically and gleefully so many government Ministers have taken to drafting draconian measures, selling them to the public as though their belief in freedom could just be dispensed with. I have been disappointed by the opposition Benches in the other place, whose only regret at the illiberal measures is that they were not brought in sooner, harder, longer and scarier. A tax on freedom appeared to be fine if it is funded. I say this because it is important that we do not let values get forgotten and find ourselves trapped in seeing the world only through Covid eyes and evidence eyes, discussing things only in relation to science.

The Government need to shake off the mindset of the technocrat. They completely overlook the real lives of ordinary people. That was brought home to

me by that public health pundit on the TV recently who raged at the stupidity of those members of the public who wanted to breach regulations for the sake of a roast dinner. When we get people in charge who cannot tell the difference between a roast dinner and Christmas Day, we are in trouble. He did not understand that the priorities that scientists might have, in a narrow way, might be different from those of the rest of us. Individuals are not reducible to data points on a graph, whether it is a dodgy graph or an accurate one. Lived lives are more than statistical talking points.

I urge government Ministers to talk to people, and I want them to note that that is not the same as polling them. Noble Lords might notice that polling people does not get accurate evidence or results. Many who are scared that their loved ones might catch the virus want to balance risk themselves. They want to say that there is more to life than physical health and that saving lives is not the only end, but that quality of life matters. Often the elderly are being robbed of their agency and used as a stage army to justify this lockdown, when their quality of life is completely compromised as they are cruelly denied access to their families—they are lonely and neglected.

The Minister mentioned in his introduction that these measures are time-limited, but my problem is that the wrong-headed measures will have long-term impacts on the community. They will rip the heart out of civil society if the Government are not careful, and they will not be able to roll it back. What could the impact be if we coerce people to turn their backs on their neighbours, families and friends and leave people cruelly isolated? Saying to the young and the fit, "Don't go near the elderly or you'll be accused of killing Granny" will have a long-term demoralising impact. Talk to the public; do not blame them, but realise that this measure of lockdown is knocking the stuffing out of people.

7.38 pm

Baroness Uddin (Non-Afl) [V]: My Lords, it is a privilege to follow so many eloquent and committed speakers. I speak today with the heaviest heart. In spite of the unnecessary delays, I accept that the proposed lockdown may be necessary to prevent pressure on the NHS beyond its capacity. I extend my good wishes to all the families of those affected and pray for their speedy recovery.

I welcome some of the financial measures being extended until December. Many of the questions that I have asked the Minister on countless occasions over the past few months remain unanswered. One such question that other noble Lords and I have repeatedly asked is about a cost-benefit and risk analysis and an equality impact assessment of government policies.

I agree with the noble Lord, Lord Forsyth of Drumlean, about the unequal and unimaginable duress on the poor and low-wage families. Inevitably, this intensive period of isolation will again affect women and children, who may face further abuse and violence to comply with government regulations. Many leading civil society organisations have continuously warned that vulnerable women and their families are not accessing financial measures to which they are entitled. Will the Minister assure me that he has listened to their call, and to the many suggestions that other noble Lords and I have made to improve the Government's communication with vulnerable groups? Will he agree to meet community experts urgently to address and improve this crucial messaging?

The Government have had months; why are there no assessments or data available to the Government on the effect of Covid on victims who have experienced exponential levels of poverty and domestic abuse, or on children and young people experiencing mental health issues? Have Public Health England and Kevin Fenton's recommendations been understood and, if so, what action has been taken to improve financial packages and services to vulnerable groups? Are the Government mindful of the systemic inequalities which cause disproportionate numbers of deaths among minority communities? Will the Minister assure the House that lessons have been learned and actions are being taken to monitor and avoid unnecessary deaths and infections among the specified vulnerable groups as we progress through lockdown?

Locally led test, trace and isolation is crucial, as has been said by many noble Lords. It has been reported that Hammersmith and Fulham Council successfully helped the NHS reach out to its communities; its efforts and the work of housing officer Hasnat Syed were commended. Can the Government make local government their delivery partners using this model? The Government's chaotic and inconsistent responses and delay is clearly one reason why we have the current number of in-patients.

While I give the benefit of the doubt to keeping children safe in education, I know that, in my own close and extended family, a number of children have tested positive for Covid, and I witnessed their parents' dread of hospitalisation. I hope the Government will keep reviewing their decision based on sound evidence, and we must continue to do everything to keep the Government and Ministers answerable.

7.41 pm

Lord Moylan (Con): My Lords, I shall be voting with the Government tonight, conscious of the many concerns expressed by noble Lords, not least those recently expressed by my noble friends Lord Cormack and Lady Altmann about the complete absence of evidence that the Government can produce for the ban on collective worship. We are at a point where something must be done and this is the only option in front of us, but I will make two points.

First, this has now ceased to be a matter fit for legislation. If you want a law to close pubs or restaurants, that is fine; it is nice and simple. However, when you come to micromanaging the lives of individuals and families, as Part 2 seeks to do, with 10 principal exemptions and numerous sub-paragraphs, it is simply absurd. It will be incomprehensible to families, police and enforcement authorities alike.

Many of these exemptions are common sense, but you cannot legislate for common sense; you can only ask people to exercise it. If any of these measures are to be continued after 2 December, they cannot be in this form; they need to be based on trusting people. That sounds like Sweden—I have never been a vocal advocate, or any advocate at all, for Sweden or its approach, but that is clearly where these regulations are pointing.

[Lord Moylan]

My second point is that Covid is a medical problem, requiring medical solutions. However, we have made it the prisoner of statisticians and geeks with models. As the noble Lord, Lord Desai, pointed out, they are geeks who cannot agree on anything significant, except that a line pointing upwards will continue to do so if nothing prevents it. We have no choice, in practice, but to rely on improvements in treatment and care to reduce mortality, as is already happening, as the noble Lord, Lord St John of Bletso, pointed out.

We cannot rely on a silver bullet: a vaccine that may be only partially effective—who knows?—or a test, trace and isolate system, which, even if it tested and traced effectively, cannot persuade people to isolate. Today is the day, and November is a write-off, but we cannot find ourselves in this position again. I urge the Government to use this month to consider a reset in their approach and lead us forward on the basis of trusting people and improving treatment and care.

The Deputy Speaker (Lord Haskel) (Lab): The noble Baroness, Lady Browning, has withdrawn, so I now call the noble Baroness, Lady Boycott.

7.45 pm

Baroness Boycott (CB) [V]: My Lords, it has been very interesting listening to noble Lords talking about the way we have blundered into this lockdown, thoughtlessly and without a great deal of evidence.

As many noble Lords will know, my concern is how people are going to eat or, rather, not going to eat. During the first lockdown, Feeding Britain—I declare an interest as its chair—worked with Northumbria University and found that one in four adults across the UK were struggling to access food they could afford. Half of all adults tried to cope by purchasing much less expensive—that is, really unhealthy—food which they would not ordinarily choose to buy. Nearly one in four adults looking after children ate less than they would normally do in order to feed their kids. Some people were going without food for up to three days. Since then, the economic consequences of the pandemic have led to many people, whose earnings from regular or self-employment previously afforded them a decent quality of life, using food banks for the first time. This was widely reported earlier this week.

There is a sense of outrage and injustice attached to each of these developments, and I propose the following four measures to the Minister to prevent these alarming trends worsening during this second lockdown, which is happening in the winter with a huge number of lay-offs. First, benefit sanctions must be suspended for at least the duration of this lockdown, given the lack of jobs which people can apply for. Secondly, the gaps in support schemes for low earners and the self-employed must be plugged so that nobody losing work is forced, in these cold months, to choose between eating or keeping warm. Thirdly, we need a Defra-led taskforce to maintain and improve the supply of affordable food to vulnerable people and those on low incomes. I suggest that money could be diverted to local cafés to feed such people. That also secures employment, rather than trying voucher schemes, which did not work last time. Fourthly, the national food strategy's recommendations need to be implemented immediately, with a national programme of meals and activities for children over the Christmas and February holidays. We all know what that one is about.

Finally, while we all welcome the £20 increase in the universal credit, can that please be extended to those on legacy benefits such as JSA and ESA to ensure that they can meet any additional costs that crop up in this pandemic? My fear is that, in the absence of any of these reforms, the poorest in our society will be clobbered yet again by the latest social and economic consequences of Covid-19 and this pretty unnecessary shutdown.

The Deputy Speaker (Lord Haskel) (Lab): The noble Lord, Lord Fairfax, has withdrawn. I call the noble Lord, Lord Trimble.

7.48 pm

Lord Trimble (Con): My Lords, I should point out at the outset that there is no significance whatsoever in the positioning of my name on the Order Paper. Although it is set up that way, I have nothing to do with the wind-up of this debate.

I have a sad story to tell. Before the debate started, I was looking for somewhere to sit, which is difficult in this building at the moment. At that point, some of the helpers took pity on me and told me that I could sit in this seat. As they had arranged me for me to get that seat, the only decent thing I could do was sit on it during the debate. It has been a very interesting exercise, sitting here over the last couple of hours and seeing the Government's case disintegrate. We now have to do the more difficult job of finding ways of steering them back to doing something sensible, which is not happening at the moment. There are a couple of things on my mind, but I will try to keep to three minutes. I appreciate the cheerful wave that came from the other side.

Going back to the first situation we had; there was one reference during the debate to the Nightingale hospitals. We were very proud to see them created so quickly. I do not know the full number now—about half a dozen of them—but presumably, the designers had in mind that people would then work in them. I want to ask the Minister: what has happened to the Nightingale hospitals? They are sitting empty, I believe. Are they ever to be used? Are there any staff in line for them? If these hospitals were put into use, there would be a considerable increase in what is available and can be done. Think about that; we could do a lot more for people in care homes, and many other worthwhile things. However, it is really sad to think that those interesting buildings are just sitting there, not doing anything.

I noticed an article in a newspaper the other day by Sir Simon Stevens, the chief executive officer of NHS England, where he did not mention Nightingale hospitals at all. I wonder: is this just another case of the health service imposing its view on the situation, irrespective of what might be valuable or otherwise? The position in Liverpool also caught my eye; it is very encouraging that the situation in Liverpool is okay. We should bear that in mind.

I did say I would keep to three minutes and it has been signalled to me from the Front Bench that I should stop at his point. I was going to make another point but you never know, I may find an opportunity to do that later.

7.52 pm

Baroness Jolly (LD) [V]: My Lords, I believe this is the first time we have debated one of these statutory instruments before they come into force—there will be more, and I hope this sets a trend. This is the umpteenth of these regulations since Covid began in the UK, and it is worth remembering this SI applies only to England. Scotland, Wales and Northern Ireland have their own legislation, outlining their restrictions.

The SI is in five parts: Part 1 sets out the definitions for the rest of the regulations; Part 2 is a list of 12 reasons one can leave the home; Part 3 has "Restrictions on gatherings"; Part 4 the restrictions on businesses, and Part 5 gives details about enforcement. It will expire in 28 days and goes into the first week of December but, as Mr Gove pointed out, lockdown can be always be extended further. The fervent hope is that this lockdown will curb the virus, as it did in the spring.

As has been said many times before, public health and environmental health know their areas well and are best placed to support and work closely with their communities. Local authorities are best placed to test, track and isolate. My noble friend Lord Scriven put it well: he referred to "shoe-leather epidemiology".

We have four weeks. Can the Minister explain how his department will work with local authorities in this time? Can he confirm that we are in a much better place regarding PPE, both in the NHS and in care homes? In the space between lockdowns, have we found a way for those in care homes to see their family? Could the testing system used in Liverpool be adapted for determining the Covid status of staff and visitors to care homes?

We have often debated the problem of mental health in people who will again be confined to home—particularly, but not exclusively, the elderly and those who are ill. Many who have never before had a mental health problem now do. What support is available to them and how might they find that support? Can the Minister signpost the way to talking therapies?

Once we have reached the end of these restrictions, how confident are the Government that the population will not head out to party and shop in the Christmas spirit, undoing much of the good that the lockdown achieved?

Our local church congregation has spent some considerable time ensuring that distanced worship is possible, and I agree with the right reverend Prelate the Bishop of Winchester about championing public worship and the need to keep open churches, synagogues, temples, mosques and gurdwaras.

Regulation 3 refers to elite sportspeople. I enjoy watching sport, like many of us, and I fit into the category of someone who watches key annual national matches and has a preference for some sports over others. But why are those well-paid members of the sports community not treated like anyone else who has a living to earn? Why does the help and support they get not apply to professional musicians playing for a national orchestra, or actors? Perhaps I am missing something obvious, and I wonder whether the Minister would enlighten me.

The noble Lord, Lord Knight, made a really good point about play. Will the Minister outline why children cannot take part in organised outdoor sport outside school? It would be good for their well-being and fitness. The noble Baroness, Lady Masham, underpinned the argument by speaking about the benefit of riding for the disabled.

In the past I have asked the Minister about the number of people who have been fined for breaking the regulations. I am sure we appreciate that the police have plenty to do without having to attend to those contravening these regulations. Is anyone in the Department of Health and Social Care or the Home Office keeping a record of these penalties and how much has been added to the Exchequer in fines? Is there a particular age or gender profile?

Moving to test and trace, the Government should invest heavily in localised test, trace and isolate to bring it up to speed before Christmas. I welcome the move to pay those on low incomes who test positive a £500 support payment. I understand that No. 10 might be concerned about quarantine compliance. Can the Minister confirm a press report that, soon, if tested positive there will be a need to self-isolate for a week only? It is one of the rumours going around, but I cannot find a definitive government source. Experience thus far suggests that between only one-fifth and one-quarter isolate fully, so that might be a pragmatic solution. It is difficult to predict what individuals will do. In my region, the south-west, the situation has been quite clear thus far, but now we note that Covid numbers are rising.

Over the last few days, we have seen the spotlight fall on Liverpool, where there will be the first all-population testing programme, involving half a million people. We await the results and following action with interest. Can the Minister explain the technology being used and the process of selecting that technology? How many candidates were looked at and what sort of prior testing took place, and where? Was single-source procurement used, and if so why?

Many noble Lords have asked about the quality and availability of evidence. We need to know who to believe, but those making decisions about our future surely need to know that as well.

7.58 pm

Baroness Thornton (Lab): Like the noble Baroness, Lady Jolly, I will actually be addressing the statutory instrument, the Minister will be pleased to hear. In a way, these Benches are probably the least of his problems tonight. I do not expect that he is thanking his clutch of colleagues who, for one reason or another, are trying to stop these important regulations or have regrets. Of course, most of the regrets are perfectly legitimate questions to be asked and concerns to be raised, which is actually the point of the debate. Putting down an amendment to the Motion to double your speaking time seems a bit iffy to me.

[Baroness Thornton]

On behalf of these Benches, I will not be commenting further on the amendments to the Motion, which I think are based mostly on internal Conservative Party arguments. We will abstain if any of the five noble Lords move to a Division. As for the noble Lord, Lord Robathan, we know that he has form—possibly a quasi-herd immunity supporter, I wonder, who disregards the science which at present tells us that such abandonment of restrictions might mean many deaths until we have a cure or a vaccine. We know the noble Lord's intemperate views are not those of his own Government. If he tests the opinion of the House tonight, we will vote against his amendment. Frankly, this is too important for the whole country to play games, like the noble Lord, Lord Robathan, and those who support him.

As my right honourable friend Sir Keir Starmer and my honourable friend Jon Ashworth have made clear in the past few days, these Benches have major concerns over the Government's decision-making, communications and messaging, and it is of the greatest importance that we have far more clarity about what is to be done during lockdown II and its exit route, as my noble friend Lord Rooker said.

We have been offering to work with the Government for months. Indeed, yesterday in the House of Commons my honourable friend Rosena Allin-Khan MP asked the Minister Nadine Dorries five or six times about working together to deal with the mental health pandemic. She got a very rude brush-off from that Minister—not at all the kind of behaviour we would expect from our Minister.

This afternoon, the House is invited to endorse the Prime Minister's decision to impose upon the whole country a deep, restrictive lockdown for which the exit strategy is still unclear. As the Chancellor of the Duchy of Lancaster confirmed on Sunday, it could stretch beyond four weeks. On these Benches, we have argued very strongly that the previous lockdown was the time when we could have got the vital systems, particularly test and trace, in place and rebuilt the vital local capacity that has been so foolishly run down by years of cuts and hostility to local government. This time we hope that the Government will not only recognise the crucial role of local knowledge and expertise but will fund local authorities as they have promised. We have at least to flag up that one day there will have to be a reckoning for the absurd way that contracts have been handed out to private organisations in a manner more reminiscent of a banana republic.

As Keir Starmer has made clear, Labour supports the introduction of national measures to slow down the spread of the virus. This is an approach that he made weeks ago on the emergence of evidence on 21 September, as my noble friends Lord Hunt and Lord Knight said, and for which he and the Labour Party received abuse from the Government and some of their supporters in the media. I think we are entitled to point out that the initial reaction of the Government was to do too little, too late; their shambolic press conference on Sunday was a graphic illustration of that. The cost of inaction is an inevitable harder lockdown now, as my noble friend Lady Andrews said.

Labour will support what the evidence required all along. Of course, here and in the other place, the details will be subject to scrutiny, which is our job. As the noble Baroness, Lady Jolly, said, we are at least debating these regulations four or five hours before the lockdown into comes into place, which is definite progress. We will join the Government in delivering the message that everyone has to play their part, abide by the rules and bring the rate of infection down. The Government are rightly saying that lockdown II may not end on 2 December but, like other noble Lords, I ask the Minister: what is the strategy for exiting this lockdown? Are we really going to go back to the three tiers that did not appear to work in the first place?

Above all, we have to have ready a proper world-class find, test, trace, isolate and support system. There have been so many months of unfulfilled promises on this, but it will have disastrous implications if we do not get it right. It is that case that our hospitals are filling up. Almost 11,000 people are now in hospital. Does the Minister feel that that will end if we bring the nationwide R rate to less than one?

I make a final plea for those who have people in care homes. Mistakes were made in the first wave of the pandemic. Families will be anxious to know that their loved ones in care homes will be protected as infections rise, but keeping care home residents safe should not mean locking residents up and keeping them away from the people who care about them, so can the Minister guarantee that families will be able to visit care homes during this lockdown and that they will be treated as key workers with access to regular testing so that they can visit their loved ones safely?

8.05 pm

Lord Bethell (Con): My Lords, this has been a hard-hitting debate. I thank noble Lords for their clarity and candour. In honesty, I do not agree with everything that has been said, but I share the frustration expressed by noble Lords in the Chamber and I absolutely recognise the seriousness of the issues that have been raised.

Before going further, I reiterate noble Lords' thanks to those NHS, social care and ancillary services for their ongoing work to tackle the virus, and to the public for the sacrifices that they have already made. I also thank the usual channels for allowing this debate to be scheduled before the regulations we are debating come into effect. I recognise that the delay in holding debates has been a concern for a number of Members, as has been raised many times in this Chamber, including by the noble Baroness, Lady Jolly. We have listened and will continue to value noble Lords' scrutiny as we respond to the Covid crisis.

I completely hear the concerns of my noble friends Lord Robathan, Lord Forsyth and Lady Noakes and others that we have not published an impact statement. This is a temporary piece of legislation; there is no requirement to publish an impact statement. However, there has been a very large amount of published data, shared analysis and debate on these subjects. My noble friend Lord Mancroft put it very well with his characteristic colour. With NHS data, test and trace data, PHE data, SPI-M data and SAGE papers, a colossal amount of scientific data has been published

into a vigorous debate. It is impossible to generate a scientific consensus; that is not what science is about. It is up to the politicians to make the decision. It has been the Government's decision to go into these measures, and we stand by them, but in doing so we welcome the scrutiny of this Chamber and Parliament. I welcome the fact that we are debating these regulations today.

Noble Lords have raised a number of issues about the regulations. I would like to reference them, even if I do not have the time or capacity to offer answers to each and every one. A lot of them are about how we mitigate the lockdown measures. As I said in my opening words, we have already done a lot but there is more that we can do.

The noble Baroness, Lady Meacher, made a very good point about vape shops; I am happy to take that back to the department.

A number of Peers, including the noble Baroness, mentioned tennis and golf; that has been discussed and is the subject of a high-profile petition. I will take that back to the department as well.

The noble Baroness, Lady Bonham-Carter, and others mentioned rehearsals and live events, a subject that I care about enormously.

In terms of the relatives of those in care homes, particularly those visitors who provide an enormous amount of service and support for their loved ones, we are working really hard to get the testing capacity and systems in place to change the situation. The noble Baroness, Lady Walmsley, and the noble Lord, Lord Rooker, raised this.

The challenge faced by special needs children whose schools have been shut was well raised by the noble Baroness, Lady Walmsley. There will be challenges around riding schools for the disabled, but I am happy to take that back to the department. The noble Lord, Lord Knight, and the noble Baroness, Lady Jolly, mentioned children playing together, a situation that I am very aware of and one that I can definitely look into.

Private music teaching, raised by the noble Earl, Lord Clancarty, and the noble Lord, Lord Berkeley, swimming in pools, raised by the noble Baroness, Lady Altmann, and affordable food, raised by the noble Baroness, Lady Boycott, are all subjects that I am happy to take back to the department and write to noble Lords on.

Most powerful and emphatic was the point on freedom to worship, which my noble friends Lord Cormack and Lord Moylan, the right reverend Prelate the Bishop of Winchester and the noble Baroness, Lady Altmann, all raised. It is a very touching and important issue. I am happy to take it back to look into it further and, if possible, seek some sort of mitigation.

The noble Lord, Lord Desai, put it well when he described the "luxury" of six Motions on this SI; it is not something that I have come across before. I will try to enjoy the privilege in addressing them.

The concern of my noble friend Lord Lilley that the regulations were laid under the Public Health (Control of Disease) Act 1984 has been raised a number of times in the Chamber. I have answered it a few times before but will do so again. His point is that this Act does not give specific powers to Her Majesty's Government to impose restrictions on uninfected persons. However, the Government's view is that this legislation does provide those powers. I am happy to take up his points on the Civil Contingencies Act with him. It has been looked at by the Government, but our very strong advice is that it could not be used on this occasion.

In relation to the concerns of my noble friends Lord Shinkwin and Lord Cormack, I do not agree that we compare unfavourably with totalitarian regimes. This virus can infect everyone, and the only way to protect our loved ones is by taking the necessary steps to bring down the R number. Our measures have been applied largely through consent and enjoy enormous popular support.

I completely agree with the concerns of the noble Baroness, Lady Meyer, on the impact of the lockdown on mental illness and other long-term psychological harm. The Government share these concerns and we have taken a huge number of steps to reduce the risk, which include providing exemptions to stay-at-home guidance and supporting the charities concerned.

A number of noble Lords including the noble Lord, Lord Scriven, raised NHS Test and Trace and the challenge around tracing. I agree that the regulation provides breathing space for us to upgrade the tracing service and build the capacity of the testing service. Noble Lords mentioned the work we are doing on that in Liverpool; that will be an enormously impactful pilot and experiment which, if it proves successful, could have a transformative effect on the way in which we manage this pandemic.

The noble Lord, Lord Boateng, referred to the challenge faced by those from a BAME background. I reassure him that staff who are potentially at greater risk of serious illness from Covid have been protected. Over 95% of BAME staff in the NHS have received risk assessments and, where necessary, agreed to mitigating measures.

As I said before, no Government would want to take these measures. However, if we do not take them now, we will not make use of the hard work and sacrifices that we have all made. We do not seek to repeat the mistakes of the past, but to demonstrate that we have a plan and are serious about beating this virus. As the Prime Minister said in the other place, although scientists are bleak in their predictions in the short term, we are unanimously optimistic about the medium and long terms. The noble Baroness, Lady Thornton, asked about the exit strategy. The ongoing work on vaccines and test and trace will, I believe, allow us to beat this virus.

I will quite happily come back to the House when these regulations are near their expiry, if not before, to update your Lordships on our next steps. I believe that the case is proven, and that the necessity and urgency of these measures have been put forward by the Government. For that reason, I respectfully ask that my noble friends Lord Robathan, Lord Forsyth, Lady Noakes, Lord Shinkwin, Lady Meyer and Lord Lilley withdraw their amendments to the Motion. I hope that I have addressed noble Lords' questions, and beg to move.

8.13 pm

Lord Robathan (Con): My Lords, my noble friend the Minister—and I hope he still is a friend—may have noted that there was not a lot of support for his position in the House. I thought the noble Baroness, Lady Thornton, was somewhat rude to me in this allegedly courteous House. I remind her of what Dr David Nabarro of the WHO said. I remember him doing excellent work when I was on the DfID Select Committee. He said that lockdowns make

"poor people an awful lot poorer".

I have not heard any Member of the Labour side say that.

Wise counsel and friends who I respect told me to pull my punches, not to push this amendment and to wait for something more important. I am not sure that there is anything more important. Now is the time to stand up and be counted. I do not wish to defend my weakness to my locked-down children or to the locked-down young people of this country who are suffering, in my opinion, unnecessarily. Time will tell whether I am right or if the Government are. I may easily be wrong—I have been before—but I would like to divide the House on this amendment to the Motion.

8.14 pm

Division conducted remotely on Lord Robathan's amendment to the Motion

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Lord Robathan's amendment to the Motion disagreed.

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8.28 pm

Amendment to the Motion
Tabled by ***Lord Forsyth of Drumlean***

At end insert "but that this House regrets that no impact assessment has been published which sets out the (1) number of jobs lost, (2) businesses permanently destroyed, (3) costs to taxpayers, and (4) consequences for mental and physical health, of a national lockdown; and regrets that Her Majesty's Government have not provided a strategy for the lifting of the restrictions put in place to address the COVID-19 pandemic."

Lord Forsyth of Drumlean's amendment to the Motion not moved.

Amendment to the Motion
Tabled by ***Baroness Noakes***

At end insert "but that this House regrets that the modelling used to support the claims that (1) the National Health Service would be overwhelmed, and (2) daily deaths from COVID-19 would be 4,000 or more, has not been subjected to independent review and challenge."

Baroness Noakes's amendment to the Motion not moved.

Amendment to the Motion
Tabled by ***Lord Shinkwin***

At end insert "but that this House regrets that a further national lockdown to address the COVID-19 pandemic signals to totalitarian regimes that Her Majesty's Government have failed to address the pandemic effectively, and that the United Kingdom's parliamentary democracy is weak."

Lord Shinkwin's amendment to the Motion not moved.

Amendment to the Motion
Tabled by ***Baroness Meyer***

At end insert "but that this House regrets that the Regulations will result in an increase in mental illness and other long-term psychological harm."

Baroness Meyer's amendment to the Motion not moved.

Amendment to the Motion

Tabled by ***Lord Lilley***

At end insert "but that this House regrets that the Regulations have been laid under the Public Health (Control of Disease) Act 1984, which does not give specific powers to Her Majesty's Government to impose restrictions on uninfected persons, and not the Civil Contingencies Act 2004, which does."

Lord Lilley's amendment to the Motion not moved.

Motion agreed.

Overseas Operations (Service Personnel and Veterans) Bill

First Reading

The Bill was brought from the Commons, read a first time and ordered to be printed.

Agriculture Bill

Returned from the Commons

The Bill was returned from the Commons with reasons and amendments. The Commons reasons and amendments were ordered to be printed.

Immigration and Social Security Co-ordination (EU Withdrawal) Bill

Returned from the Commons

The Bill was returned from the Commons with a reason and amendments. The Commons reason and amendments were ordered to be printed.

House adjourned at 8.30 pm.

Grand Committee

Wednesday 4 November 2020

2.30 pm

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.30 pm

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): My Lords, the Hybrid Grand Committee will now begin. Some Members are here in person respecting social distancing, while 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 desks, chairs and other touch points before and after use.

The microphone system for physical participants has changed. The microphones will no longer be turned on at all times, in order 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. 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.

Medicines and Medical Devices Bill

Committee (4th Day)

2.31 pm

Relevant documents: 19th Report from the Delegated Powers Committee, and 10th Report from the Constitution Committee

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): A participants list for today's proceedings has been published by the Government Whips Office, as have lists of Members who have put their name down to the amendments or expressed an interest on each group. I will call Members to speak in the order listed, but ask noble Lords to note that both the noble Lord, Lord Lansley, and the noble and learned Lord, Lord Woolf, have had to withdraw. Members are not permitted to intervene spontaneously. The Chair calls each speaker. Interventions before speeches or "Before the noble Lord sits down" are not permitted.

During the debate on each group, I will invite Members, including Members in the Grand Committee Room, to email the clerk if they wish to speak after the Minister, using the Grand Committee address. I will call Members to speak in order of request and will call the Minister to reply each time. Groupings are binding, and it will not be possible to degroup or amend for separate debate. A Member intending to move formally an amendment already debated should have given notice in the debate. Leave should be given to withdraw amendments. When putting the question, I will collect voices in the Grand Committee Room only.

I remind Members that Divisions cannot take place in Grand Committee. It takes unanimity to amend the Bill, so if a single voice says "Not content", an Amendment is negatived, and if a single voice says "Content", a clause stands part. If a Member taking part remotely intends to oppose an amendment expected to be agreed to, they should make this clear when speaking on the group. The proceeding today will cease at 4.30 pm, earlier than originally planned. We will now resume debate on Amendment 27.

Debate on Amendment 27 resumed.

Baroness Penn (Con): My Lords, I thank noble Lords for their patience in waiting a full week to hear the response to what was a very useful and detailed debate. By way of compensation, I hope my response today reassures them that my time has been put to good effect: I am sure they will let me know if that is not the case.

Amendment 27 was tabled by the noble Lords, Lord Patel and Lord Hunt of Kings Heath. I reassure both noble Lords that the Government and the MHRA remain committed to ongoing international collaboration for the benefit of patients and the life sciences sector in the UK. The noble Lord, Lord Patel, set out some of the work the MHRA is doing to deliver on this commitment after the end of the transition period in his opening remarks on this group. I am pleased that noble Lords had the opportunity to hear from and question the MHRA directly on this and other issues this week. The Government heard the request from noble Lords to ensure that this is part of an ongoing dialogue with the regulator and parliamentarians.

In response to the noble Lord, Lord Hunt, I am reluctant to revisit the debate on alignment with the EU, which we have already had in this Committee, as well as in many previous debates. However, I reassure him that the UK is seeking mutual recognition with the EU on a number of areas, including batch testing, good manufacturing practice and continuing co-operation on pharmacovigilance. Certain aspects of medicine regulations are also harmonised at an international level and we are committed to those international standards in all areas. Indeed, to further support the aim of continued international collaboration, we have tabled Amendment 48, which I will come to shortly.

Turning to Amendment 118, tabled by the noble Baroness, Lady Thornton, I reassure her that this amendment is unnecessary. The MHRA and the VMD are both recognised globally as leading regulators and will retain their regulatory sovereignty regardless of any trade deals agreed. This will include the MHRA's duty to consider the safety and efficacy of human medicines placed on the UK market. We will ensure that our new FTAs provide flexibility for the Government to protect legitimate domestic priorities; we have made this clear in our published approach to trade negotiations with specific trading partners.

On the price the NHS pays for medicines, the Government have made clear that this is not on the table for negotiations. The prices of branded medicines will continue to be controlled through the 2019 voluntary scheme for branded medicines pricing and access—VPAS. To be absolutely clear, the powers in the Bill do not

[Baroness Penn]
enable regulations to be made that relate to the pricing of medicines or medical devices. In relation to data, the UK has a strong system to protect health and care data, as set out in the Data Protection Act 2018 and covered by the common law duty of confidentiality. Our objectives for trade negotiations are explicit that we will maintain the UK's high standards of data protection. Again, to be absolutely clear, it would not be within the scope of the powers in the Bill under Clauses 1, 8 and 12 to create exceptions to or modify the provisions of our data protection legislation.

I heard in last week's debate that questions of safeguards and data protection were at the heart of noble Lords' concerns about the government amendments in the name of my noble friend Lord Bethell, to which I will now turn. These amendments would allow us to share information regarding these areas with international regulators or networks where this is required to give effect to international agreements or arrangements. I reassure the noble Lord, Lord Clement-Jones, and others about the motivation behind these amendments, which have been identified as necessary as part of the work to support the future relationship with the European Union, and to protect and preserve existing work that the MHRA does. On his question about source codes and algorithms in medical devices, I make two points. The UK-Japan trade deal, as with the EU-Japan trade deal that came before it, provides for safeguards against IP infringement on the question of source code and algorithms. However, to protect patient safety, and for effective regulation, there remains provision for a regulator or conformity assessment body to request source code and algorithms as part of their regulatory responsibilities.

The MHRA and the VMD presently share and receive intelligence from their counterparts through our membership of the European Union, which will come to an end. The MHRA and the VMD will be the UK's independent, standalone regulators and require appropriate legal powers for their own reciprocal information-sharing arrangements with other nations and forums. Without this, the UK may not be able to comply with its information-sharing obligations under international agreements; nor would it be able to participate in international arrangements facilitating the mutual exchange of intelligence regarding medicines and medical devices. These exchanges of information are of vital interest to UK patient safety. For example, intelligence sourced from international regulators through the EU has ensured access to life-saving medical devices for UK patients during Covid and has enabled the MHRA to trace suppliers of non-compliant testing kits. This is vital and will continue to be so going forward.

Future reciprocal information-sharing agreements with international regulators will help the MHRA and VMD to take swift regulatory action on medicines and medical devices that pose a risk, removing them from the marketplace if necessary. I reassure noble Lords that this data is limited to the data that the MHRA holds. The MHRA will always anonymise patient data before it is shared internationally, under the powers in the Bill. For the purpose of pharmacovigilance, for example, the MHRA might need to share information received through adverse incident reports. However, the information would always be anonymised and is usually kept at a high level—for example, description of the safety signal, or a trend report to identify whether another country has also identified an issue with a particular product or manufacturer.

I appreciate that there has been some concern over the use of the word "person" in the drafting of the amendment. We used that word, rather than specifying particular organisations, because we anticipate that international agreements will require the UK to share information not only with overseas regulators but with other bodies, such as overseas Governments, international organisations such as the World Health Organization, and international networks such as the International Medical Device Regulators Forum.

The wording is necessary because it provides the breadth, for example, to share data with international networks that might not be formalised. If we were to list all the organisations, networks and relationships that might be involved, it would simply not be possible to keep that list live on the face of legislation. Debate has been categorical that the MHRA needs to be a front-footed international regulator, and to limit it to the relationships it has now, rather than being flexible with regard to new regulatory forums or relationships, would restrict that aim.

The noble Lord, Lord Patel, asked pertinent questions about the data protection provisions in the new clauses. I have to admit to noble Lords that I had the same reaction about their potentially circular nature when I first read them, and I hope that I shall be able to unpack their effect here. The GDPR sets out seven key principles for processing personal data, the first of which involves "lawfulness, fairness and transparency". We are providing a lawful basis for processing personal data by inserting these powers. That does not remove the other protections under the Data Protection Act that apply to the sharing of information under these clauses.

Where personal data are sensitive personal data, which are now called special category data, the GDPR requires further conditions, under Article 9, to be met for the processing to be lawful. Patient health data are a type of special category data. Relevant conditions under the GDPR, of which there are 10 that could be relied on to disclose patient data under the clause, would include "explicit consent", reasons of "substantial public interest", health or social care reasons, or public health reasons.

The GDPR also sets out further requirements where personal data are to be shared internationally. There must be an adequacy decision in place confirming that the third country or international organisation ensures an adequate level of data protection. In the absence of an adequacy decision, appropriate safeguards must be put in place that provide enforceable data subject rights and effective legal remedies, which can take the form of a legally binding agreement or contracts between parties. In the absence of an appropriate safeguard, data could be transferred only if it were

"necessary in order to protect the vital interests of the data subject or another natural person where the data subject is … incapable of giving consent."

Equivalent safeguards for personal data and commercially sensitive information are already in place in Clause 35 for information relating to medical devices.

This is solely to facilitate the appropriate sharing of information to give effect to international agreements and arrangements. They are critical to ensuring we can regulate effectively and uphold high standards of patient safety and access.

Amendment 45, in the name of the noble Baroness, Lady Thornton, seeks to achieve what is already standard and long-standing practice. Existing arrangements already ensure that timeliness, openness and transparency are key to the fees regime, and they are published online and available on GOV.UK. We will ensure that the industry and any other interested stakeholders know about any future fee changes in good time. We have laid statutory instruments to implement changes at the end of the transition period, as the cost of providing some regulatory services has fallen, so the fees charged will need to be reduced.

On the basis of the reassurances I have provided on Amendments 27, 45 and 118, I hope the noble Lord, Lord Patel, feels able to withdraw Amendment 27, and that the noble Baroness, Lady Thornton, is similarly assured and will not move her amendment.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock (CB): I have received a request to speak after the Minister from the noble Baroness, Lady Thornton.

Baroness Thornton (Lab): I gave the Minister notice last week that I might well want to speak after her, and I am doing that, for two reasons. One is to remind the Committee that, although we will allow the government amendments to go through without any objection, we do not agree with them, and will probably seek to amend them at a later stage.

The second point is to do with the word "person". I thank the Minister for going into some detail, but frankly, that alarmed me more than reassured me, so I think we may have to engage with this, and discuss how to remove that word. It would be much too dangerous and risky to have such an amorphous expression in the Bill. Perhaps the Bill team could find some expression that, although it does not list all the different things that the person is supposed to be, provides some protection to cover the range of bodies that need to be consulted. I accept that we do not want long definitions in the Bill, but I am concerned about our having such an open definition, and we may discuss this again at a later stage.

2.45 pm

Baroness Penn (Con): To reassure the noble Baroness, I can tell her that the Opposition's position on the government amendments is well noted. We will take away and reconsider the use of the term "person", but there is a view that the safeguards that the noble Baroness is talking about are built in elsewhere, in how the clause would take effect. That does not mean, however, that we would not be happy to go away and look at those exact concerns, and see whether we can provide further reassurance. I am not a lawyer drafting the Bill, but that would be about looking at the terminology as well.

Lord Patel (CB) [V]: My Lords, I thank the Minister most sincerely for her full and comprehensive—I might even say persuasive—response. She is right to say that it has been a week since we debated this group, and even I had forgotten some things. Certainly, the venom certainly seems to have gone out of our debate.

The Minister reminded us what our anxieties were. She is right to point out that I referred to the word "person" in the government amendment, and also to the GDPR. I am pleased to hear that, on reflection, she, too, had realised why we were concerned about the use of data that might not be protected through the GDPR. Some questions remain.

The noble Baroness, Lady Thornton, has raised some important points, and I am glad that we may debate this subject again. It would be useful to have a discussion beforehand, if possible, because the word "person" is too amorphous—unless the definition could be confined as to what kind of person is meant. In her response, the Minister mostly covered organisations that might be involved in the regulation of medicines or in recommendations regarding medicines and devices, but the proposal as drafted goes much wider than that and would go beyond that. I will not say any more about that now.

The meeting that the noble Lord, Lord Bethell, arranged with the MHRA was useful, and it would have been better if we had had some of the information earlier. The information that I gave with regard to my Amendment 27 I had acquired from the industry. Of course, we got the same information from the chief executive of the MHRA. It would have been better if we had had that earlier—but that is water under the bridge. We know that there will be new ways of keeping us informed, and that will be good. At this point, I thank the Minister sincerely for her response, and I beg leave to withdraw the amendment.

Amendment 27 withdrawn.

Clause 2 agreed.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): We now come to the group consisting of Amendment 28. I remind noble Lords that anybody wishing to speak after the Minister should email the clerk during the debate.

Amendment 28

Moved by ***Lord Patel***

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

"Innovative Medicines Fund

In section 261 of the National Health Service Act 2006, after subsection (9) insert—

"(9A) The Secretary of State must make a scheme to promote the availability of innovative medicines for human use within the National Health Service and must provide monies paid to him or her under subsection (9) for the benefit of that scheme to be known as the "Innovative Medicines Fund"."

Member's explanatory statement

This amendment would require the Secretary of State to establish the Innovative Medicines Fund, as foreshadowed in the Conservative 2019 Manifesto; and provides that it is funded from rebates paid to the Government under the terms of the Pharmaceutical Price Regulation Scheme.

Lord Patel (CB) [V]: My Lords, this amendment was tabled by the noble Lord, Lord Lansley, who unfortunately is not able to attend today. My name is on the amendment and I am very pleased to move it in his name.

This is an amendment that normally one would have thought the Government would have no difficulty in accepting, because it was in the Conservative manifesto at the time of the election. So if you are going to choose an amendment, choose the one that they cannot turn down. I am in the good position of making two speeches, one in the name of the noble Lord, Lord Lansley, and one in my own name. It will be interesting to see which one the Minister accepts, because I am not going to tell her which one is which—I may as well enjoy this while I can.

Patients in the UK often face delays in accessing breakthrough innovations due to the NICE technology appraisal process. This is particularly true of treatments for smaller patient populations, such as patients with rare diseases, where there is greater uncertainty around effectiveness due to the challenges of collecting sufficient data to satisfy NICE's requirements. To overcome similar challenges and enable access to the latest cancer treatments, in 2016 changes were made to the Cancer Drugs Fund, to increase NICE's flexibility in decision-making. Between July 2016 and November 2019, approximately 41,000 patients were registered to access 79 drugs, used to treat 160 different cancer conditions. Despite the clear benefits to patients, similar flexibilities have not been extended to other areas such as gene therapy and gene silencing—treatments for rare diseases where there is not much treatment available.

Amendment 28, in the name of the noble Lord, Lord Lansley, would add a clause to the Bill that would require the Secretary of State to establish the innovative medicines fund. This fund was promised in the 2019 Conservative manifesto. Like the Cancer Drugs Fund, its purpose would be to bring innovative medicines into use in the NHS. It would give NHS patients in England access to the latest new medicines, as advised by clinicians, and would give the NHS and NICE valuable data on their effectiveness, often adding information about drugs being used in clinical practice which is not normally available through clinical trials alone. There is an increasing need to extend these access schemes to disease groups beyond cancer, including neurodegenerative conditions such as motor neurone disease and Parkinson's, as well as haemophilia, cystic fibrosis and sickle cell disease. These are diseases with a high unmet need for treatment, but also with real hopes for new treatment options, including gene therapy and gene silencing, as I have already mentioned.

This amendment would amend Section 261 of the NHS Act, which provides powers for the pharmaceutical voluntary price and access schemes, often known as VPAS, as amended by the Health Service Medical Supplies (Costs) Act 2017. An essential part of VPAS is to improve access to innovative medicines. The new fund would help to deliver this, alongside the MHRA Early Access to Medicines Scheme that we have already heard about. The predecessor to VPAS was the Pharmaceutical Pricing Regulation System. However, over the years, lack of access to innovative medicines has been a source of angst in the industry about the scheme and, for many of us, is part of a system that fails patients. It was not only industry that did not like the scheme; it was denying treatments to patients. We should not have a stand-off between the NHS and drugs companies, with patients losing out in the process. We should have a scheme that adequately rewards the value that is inherent in medicines and also ensures that the NHS is able to provide the treatments that patients need.

The current VPAS sets a budget limit on the NHS drugs bill. If it is exceeded, the industry will provide a rebate. In the past, the NHS has seen rising drug costs but has not seen the rebate—so the NHS took the rebate but did not reinvest it in other innovative medicines. By way of the Innovative Medicines Fund, the NHS, the life sciences sector and patients would all see the benefit of the rebate. The proposed new clause would require the rebate to be made available to the fund, and it is that rebate which will provide the money for the fund. I hope—and I hope that the noble Lord, Lord Lansley, will agree—that it will be open to Ministers to take advantage of these powers to provide additional resources to the fund, according to its needs. The clause will provide the means by which the Government can deliver on their manifesto pledge and, in doing so, deliver to patients, some of whom are in great need.

I do not see how the Government can resist Amendment 28; they can only improve on it. I beg to move.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, I am glad to support the noble Lord, Lord Patel, and I have a great deal of sympathy with this amendment. Of course, I speak as one of a long line of former Ministers who have wrestled with the tension between a cash-restrained NHS and the imperative to invest in new medicines and devices. I have come to the conclusion that we are not going to see the investment we want to see in these new medicines without a radical change of approach.

When we debated access in Grand Committee a couple of meetings ago, the Minister used words to the effect that he would not go anywhere near reimbursement. That is at one with the way the NHS regards drug costs: as a price and a cost to be pared down rather than as an investment in patient care. The unwillingness of Ministers to tackle the issue of reimbursement to the industry in a way that incentivises the use of new medicines is, I think, very disappointing. I do not think that there is any way around this, unless we top-slice some of the resource for the NHS and distribute it separately for investment in new medicines.

The noble Lord, Lord Patel, referred to current and previous agreements with the industry. I want to go back to the 2014 PPRS agreement, which does I think provide a model for us. It provided assurance on almost all of the branded medicines bill for the NHS, so the bill stayed flat for the first two years of the scheme and grew slowly after that. The industry made quarterly payments to the Department of Health when NHS spending on branded medicines exceeded the allowed growth rate. The quarterly payments that the industry made could have been used to fund new medicines—but, as the noble Lord, Lord O'Shaughnessy, mentioned

last week, it is very hard to explain what exactly happened. With a cap in place and with reimbursements being made by the industry, the NHS proceeded to try to ration drug costs at local level. So, instead of having a virtuous circle where essentially the industry guaranteed the cap on drug costs in order to allow for investment in new medicines, we had a double whammy. The industry price was pared down and the NHS continued in its bad old ways of trying to prevent new medicines being accessed by patients.

3 pm

We have a new scheme—the voluntary scheme for branded medicines pricing and access—that came into force in January 2019. It has two parts. First, it sets out a range of measures to support innovation and better patient outcomes through improved access. It then sets out a UK-wide affordability mechanism under which scheme members make a financial contribution to the department for sales of branded health service medicines above the agreed allowable growth rate. It is very much built on the foundations of the 2014 agreement. The big question is this: where does the rebate go to? Is it recycled back to the NHS through the kind of mechanism that the noble Lord, Lord Patel, mentioned, or is it simply an in-year addition to the DHSC to help it balance its books? Is it discounted in advance by the Treasury, which, in a sense, keeps the proceeds?

I will be very interested in the Minister's response. The one thing for sure is that, unless we change the dynamics, we are going to starve a fantastically important industry in this country, NHS patients will not get access to new medicines and we will all be the loser.

Lord O'Shaughnessy (Con): My Lords, I thank the noble Lord, Lord Patel, for moving this amendment. I also pay tribute to my noble friend Lord Lansley for laying the amendment and for creating the template for the innovative medicines fund—the Cancer Drugs Fund—in the first place. The noble Lord, Lord Patel, described the tens of thousands of patients who have benefited from that scheme. It has been a fantastic innovation and something I am sure we all want to build on.

It also seems entirely appropriate that I am following the noble Lord, Lord Hunt, who gave a powerful speech. When I was a Minister, he was unrelenting in pointing out the weaknesses in the PPRS when it came to supporting innovation. He was right then and he is right now. That is why I needed no persuading to support this idea and this amendment. It was something that I tried and failed to introduce in the VPAS when I was a Minister, but perhaps a seed was planted then. It was fantastic to see the commitment made in the Conservative party manifesto in 2019 to create an innovative medicines fund.

As the noble Lord, Lord Patel, said, there are many areas, particularly, but not exclusively, rare diseases—and I have a daughter with a rare genetic condition—where experimental drugs seem to offer great hope, whether that is cannabinoids for epilepsy in children, or gene therapies for children with spinal muscular atrophy, or the many other conditions where the promise seems huge but the data does not yet convince. It feels to me that if we accept circumstances in which it is right to give cancer patients access to those kinds of therapies, it should also be right to give all other patients access to those kinds of therapies too. That is really what the innovative medicines fund is about.

I think that we have seen the shape of the future innovative medicines fund and what it would look like. The VPAS allows for confidential, complex deals for the first time. We have seen CAR-T therapies come through that route. We have also seen a deal signed for Inclisiran—originally from the Medicines Company, now Novartis—with testing of that in a real-world situation following a very successful large-scale clinical trial that was largely focused in the UK. This provides a template for how we might go about doing business for common conditions, as well as for rare ones.

I am sure my noble friend the Minister will agree with everything she has heard today, so I want to ask her what the timetable is for introducing the scheme. Questions have been raised by the BIA and ABPI and others, and I very much agree with them that an ambitious definition of innovation is required. The noble Lord, Lord Hunt, made an excellent point when he forcefully said that we must make sure that the rebate is recycled into innovative medicines, rather than just going back to the Treasury—there does not need to be an additional expenditure control mechanism. I will be grateful for my noble friend's guidance on that.

One other thing that has come up in our debate in Committee so far—and of course this is more difficult because it takes it outside medicines and into other areas—is the exciting potential in devices, digital and diagnostics. There is no rebate scheme or automatic source of third-party funding that could provide for that. Is the Minister prepared to entertain exploring the potential for expanding the innovative medicines fund into something broader, and beyond medicines, perhaps not in its first iteration but in the future? I look forward to hearing what she has to say.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): I call the noble Baroness, Lady Finlay of Llandaff. Lady Finlay? I think we had better move on and we can come back. I call the noble Baroness, Lady Jolly.

Baroness Jolly (LD) [V]: My Lords, this amendment would require the Secretary of State to establish the innovative medicines fund, as promised in the Conservative's 2019 manifesto. It provides that it is funded from rebates paid to the Government under the terms of the pharmaceutical price regulation scheme.

The Cancer Drugs Fund was a Cameron initiative from the general election of 2010, and the 2019 general election saw a Johnson extension: the innovative medicines fund. He promised that

"doctors can use the most advanced, life-saving treatments for conditions such as cancer or autoimmune disease, or for children with other rare diseases."

The promise was to increase the funding to £0.5 billion. Can the Minister confirm the figure and clarify how "innovative" will be defined? Importantly, how will the fund address the UK issue of combination pricing, where some new cancer treatments are not cost effective, even when the price is nothing?

[Baroness Jolly]

There are questions about what drugs outside of cancer drugs could qualify to go into the new fund. Can the Minister help with a response here? There might be candidates from medicines selected for the early access to medicines fund, a pre-licensing indicator of promising innovation given by the MHRA. This would allow them to be funded while further evidence is generated. Given the focus on innovation and the very reason for EAMS to designate a drug as a promising innovative medicine, which is a prerequisite for any drug to get a full, positive EAMS designation, there looks to be a good fit, and we support it.

Baroness Wheeler (Lab): My Lords, I support this amendment from the noble Lord, Lord Patel. It is very much the ambition to ensure access for UK patients to the latest and most innovative treatments. This is reflected in many of our amendments to this Bill, relating to attractiveness, clinical trials and regulatory alignment with the European Medicines Agency.

We fully support the Government's commitment to extend the Cancer Drugs Fund into a £0.5 billion innovative medicines fund to be used for

"the most advanced, life-saving treatments for conditions such as cancer or autoimmune disease, or for children with other rare diseases".

If, at last, the principle of using the rebates from the pharmaceutical rebates scheme could be achieved so that they are used for the benefit of the NHS and patients, then this will represent progress indeed, particularly ensuring that the money is used as an additional source of income and revenue for the NHS and is not part of expected and planned funding.

Like other noble Lords, we are very much looking forward to hearing from the Government the detail of their proposals, when they intend to commence the promised consultation and the proposed timetable for implementation.

We heard in previous debates important questions as to how the new fund will relate to the current NICE process for reviewing new cancer drugs, particularly those to treat rare cancers, and, more broadly, around what drugs will qualify, outside of cancer, to be covered by the new fund. For example, there may be candidates from medicines selected for the early access to medicines fund, the MHRA's pre-licensing indicator of promising innovation, allowing them to be funded while further evidence is generated. Given the focus on innovation and the very reason for EAMS to designate a drug as a promising innovative medicine, a prerequisite for any drug to get a full, positive EAMS designation, what consideration have the Government given to this?

Detail, too, is needed, as we have heard, on the criteria that will apply to any prospective drug for the fund. I certainly endorse the comments of the noble Lord, Lord O'Shaughnessy, on needing to have an ambitious definition of innovation. Will the criteria mirror the current processes that the NICE committee considers for funding under the CDF, or will it be widened to reflect and include some of the criteria for highly specialised technologies, where NICE takes a different approach to treatments for some of the rarest conditions?

One of the key concerns in earlier discussions in Committee was the need for reassurances about NICE's work to support innovation and to ensure that the current NICE review of its methods and processes is open and transparent and delivers real and effective change. As was made clear, it is important that we learn lessons from both the strengths and criticisms of the CDF, and that we ensure speedy access to new medicines going forward. I look forward to the Minister's response.

Baroness Finlay of Llandaff (CB) [V]: I thank the Committee for allowing me to come in a bit late; I apologise for that.

Noble Lords have made the main points that I would have made but I simply add this. A large number of molecules are held by pharma, often with a good scientific rationale, for use in a rare condition, and we have drugs that are licensed for other uses that could be reused or repurposed. If we can speed up all these processes, and provide an incentive for medicines development, those with rare conditions—who are often absolutely desperate to try something new and very keen to be part of a monitored development—could access medicines. That would put the UK in a stronger position in the long term.

In addition, the concept of this seems so sensible that I have also put down an amendment, later in the Bill, to try to replicate it for innovative devices. We have complex situations where medical engineers may come with up a device, but we will deal with that the next time round.

In the meantime, I am most grateful to all noble Lords for the important points they have made. I await the Minister's reply with interest.

Baroness Penn (Con): My Lords, this debate has once again focused the Committee's mind on the importance of innovation and the way in which it can have a transformative impact on patients' lives.

As noble Lords have spoken of, the success of the Cancer Drugs Fund in providing interim funding means faster access to cancer drugs, saving valuable time—up to eight months in some cases—for patients accessing those drugs. Patients are now able to access cancer drugs that have received a draft NICE recommendation from the point of marketing authorisation. As noble Lords have noted, this provides the template for the innovative medicines fund.

The success over the lifetime of the Cancer Drugs Fund to date did not need legislation. It was a response to the immediate need to target access to cancer drugs. In expanding the fund to become the innovative medicines fund, I do not think legislation would advance the fund's purpose, capacity or delivery in any material way. It will be a managed access scheme delivered by NHSEI and NICE to expand the range of medicines that could be supported by that funding.

I understand that my noble friend Lord O'Shaughnessy and other noble Lords would like this debate to cover an update on progress towards delivering that fund. I assure noble Lords that proposals for the innovative medicines fund are in development as we speak. We know that patients will be keen to understand the impact on them, as well as pharmaceutical companies and the NHS. It is our intention that NHSEI and NICE will lead an engagement exercise in the first quarter of 2021 to get the fund established.

3.15 pm

I am glad that the fund is a Cameron-Johnson initiative that the noble Baroness, Lady Jolly, can support. She asked many good questions on the operation of the fund, many of which will be covered by the engagement exercise that NHSEI will carry out next year.

The noble Baroness, Lady Wheeler, asked a question on the operation of the fund. We expect it to mirror that of the CDF, with entry and exit points agreed by NICE. The noble Baroness, Lady Jolly, asked about the level of the fund. Again, that will be covered by the engagement exercise.

Noble Lords may ask why we have not made further progress since the manifesto commitment last year. Unfortunately, the impact of Covid-19 on business-as-usual activity has delayed a lot of what we would have liked to achieve this year. I am sure noble Lords will agree that, at a time when the pharmaceutical sector has been most concerned with ensuring the continued supply of medicines, and the NHS with the protection of patients, a delay to the formal establishment of the scheme is necessary, if not ideal.

I hope noble Lords are reassured on the timing of the engagement exercise—to be undertaken in the first quarter of next year, and I hope that the noble Lord, Lord Patel, feels able to withdraw the amendment.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): I have received a request to speak after the Minister from the noble Lord, Lord Hunt.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, before the noble Lord winds up, I want to thank the Minister. Clearly, the fund is welcome, but it will cover only a limited number of medicines. The debate goes wider than that.

I want to ask the Minister about the financial contribution that her department receives under the current voluntary agreement with pharma for sales of branded health service medicines. Does she not agree that it is a strange position we have reached where, if the cost to the NHS of those branded medicines goes above the agreed rate, her department receives a rebate? That is excellent, but why then does the NHS continue to treat drug costs almost as a pariah and hold down its investment in new medicines? Why cannot that rebate be used as a way to incentivise a switch by the NHS to new medicine?

I have debated this with the noble Lord, Lord O'Shaughnessy, and his predecessor. It is a real issue. The NHS itself believes drug costs to be a major problem, but the department has essentially solved the problem at a national level through the rebate scheme. Somehow, instead of a virtuous circle, we have got the very opposite.

Baroness Penn (Con): The noble Lord speaks with great passion. He is right that the debate goes wider than the innovative medicines fund, but it might also go somewhat wider than the scope of the Bill. I am, however, happy to write to him on the points that he raises.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): I have also received a request to speak after the Minister from the noble Lord, Lord O'Shaughnessy.

Lord O'Shaughnessy (Con): I apologise for my email ineptitude.

I am grateful to my noble friend for her response. I was not planning to do so, but I have to again underline the points made by the noble Lord, Lord Hunt. We have trapped ourselves in a vicious, rather than a virtuous, circle that could well be undone. That may not be a discussion for now, but I want to underline its importance.

I want to ask my noble friend a very practical question. What did she mean by engagement? That could mean anything; it could mean pre-consultation discussion or a formal consultation. She will have garnered the strength of feeling on the topic, even in this small debate, and I am sure that will not dissipate as move forward to Report. The more detail and specificity she can give us on that process, the better.

Baroness Penn (Con): I am reminded that my noble friend Lord Lansley referred to the collective noun for former Health Ministers as a "frustration" of former Health Ministers. I can tell my noble friend that the engagement exercise will involve the pharmaceutical industry, the NHS and associated bodies and patient groups. That is the level of detail that I can give to him today. I was very pleased with being able to say "quarter 1" next year; it felt to me like a very specific timeframe for when that engagement exercise would be undertaken.

Lord Patel (CB) [V]: Thank you, my Lords. I apologise to the Chair for jumping in. I forget that, in the new world, I do not speak unless instructed to do so.

I thank the Minister enormously for her response. She mentioned the frustrations of the former Ministers. If she thinks that former Ministers get frustrated, think about us lesser mortals who have suffered the former Ministers when they have not listened to our arguments. Maybe that should be taken into account, too.

I thank all noble Lords who have taken part. They have spoken with passion and commitment. This has been referred to by several people, but I do so again. The noble Lord, Lord Hunt of Kings Heath, has been pursuing this passionately and eloquently for a very long time. He has made an important point: if the medicines are available and people are suffering, why do we keep arguing about health and drug budgets and how to deliver it? The principle should be how we can get those drugs to the patients who might be suffering. He is right. If a rebate is available, where did the money go? The rebate was a drug fund rebate to be reinvested, you would have thought, in people getting the medicines.

No doubt the Minister is aware that there seems to be complete consensus around this amendment. I hope that it does not need to go to Report but, if it does, Ministers will be aware that there will be complete consensus. I hope that the Minister makes rapid progress with sorting this out. In the meantime, I thank all

[Lord Patel]
noble Lords and the Minister most sincerely for taking part. In begging leave to withdraw the amendment, I hope that the noble Lord, Lord Lansley, will feel that we gave it enough airtime and passion.

Amendment 28 withdrawn.

Amendment 29 not moved.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock): We now come to the group beginning with Amendment 30. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate.

Clause 3: Falsified medicines

Amendment 30

Moved by ***Baroness Thornton***

30: Clause 3, page 2, line 39, leave out ", for any purpose to do with human medicines,"

Member's explanatory statement

This amendment tightens the provisions to avoid unintended consequences of data being used for purposes other than to ensure that medicines are safe.

Baroness Thornton (Lab): This clause deals with falsified medicines and is a very important clause, and it is important therefore that we get this right. Amendment 30 would tighten the provisions to avoid unintended consequences of data being used for purposes other than to ensure that medicines are safe, and Amendment 33 would place a duty on the Secretary of State to act with a view to, rather than having regard to, the importance of ensuring that information is retained securely when exercising powers. The amendments in the name of the noble Lord, Lord Clement-Jones, whom I thank for supporting mine, are similarly concerned with the safety of information and accountability.

The MHRA said that the Falsified Medicines Directive will cease to apply in the case of a no-deal Brexit, because UK pharmacies will no longer have access to the database that holds false medicines data under the FMD. The noble Lord, Lord Clement-Jones, during Second Reading described the measures as "legislative creep" with regard to how any data could be used. He said that the clause

"considerably broadens the original data-collection provisions of the Falsified Medicines Directive".—[*Official Report*, 2/9/20; col. 391.]

That is the whole point of these amendments. Indeed, the noble Baroness, Lady Masham, also said at Second Reading that the Company Chemists' Association had raised concerns around the clause. Malcolm Harrison, the chief executive of the CCA, said he had grave concerns about the wording of Clause 3(1)(b), which relates to the development of a UK system to prevent the supply of falsified medicines. Jerome Bertin, general manager of SecurMed UK, said

"it is hard to determine if this would broaden the rights of access to such data, but the use of 'for any purpose' might suggest wider access rights, though for which stakeholders or regulators is unclear".

Clearly, there needs not to be any ambiguity in this Bill. The wording of the clause therefore needs to be adjusted to ensure that there is no confusion and that there is a clear direction that data should not be used for any other purpose than ensuring that medicines are safe. Jerome Bertin also said that the Bill

"does not go anywhere near the detail of the EU directives (2001/83/EC superseded by 2011/62/EU) so it is hard to assess whether the FMD style protections would be diluted in a UK-only falsified medicines regulation".

That is a legitimate question that needs to be answered.

There is no mention of this clause or this issue in the Explanatory Notes or the impact assessment for the Bill. With such a big issue regarding extremely sensitive data, there should be a more clearly outlined direction and a better thought-out way of introducing this clause for falsified medicines that also protects the extremely sensitive data that comes with it.

These amendments aim to ensure that data is protected and will not be used for any other purpose other than to ensure that medicines are safe. It is crucial that we get this right to avoid any unintended consequences, which could have grave repercussions. I beg to move.

Lord Hunt of Kings Heath (Lab) [V]: I very much support my noble friend in these amendments. As they have with her, a number of organisations have raised with me their concerns. The clause refers to the

"use, retention and disclosure, for any purpose to do with human medicines",

which is very open-ended. In relation to information collected by such a system, it considerably broadens the original data-collection provisions of the Falsified Medicines Directive. Yet the Explanatory Notes make no mention of this. The noble Lord, Lord Clement-Jones, is not with us today but, when we debated it earlier, he referred to it as "legislative creep"—and, I must say, I agree with him.

In the Commons, the Health Minister Jo Churchill said in Committee:

"The Bill, in the main, does not deliver any immediate change to the regulation of medicines and medical devices."—[*Official Report*, Commons, Medicines and Medical Devices Bill Committee, 8/6/20; col. 7.]

So it is very surprising to see this clause as currently drafted.

We have had briefings from the Company Chemists' Association and ABPI, in addition to the ones that my noble friend mentioned. Because of the issue of commercially sensitive data, Article 54a, regarding the protection of personal information or information of a commercially confidential nature generated by the use of the safety features, was inserted into the preamble of the Falsified Medicines Directive. The principle of "whoever generates the data owns the data" was enshrined in Article 38 of the associated delegated regulation of 2016, which followed the Falsified Medicines Directive.

The Minister's department already has access to a wide range of data on medicines' sales and use in the UK under the Health Services Products (Provision and Disclosure of Information) Regulations, which we debated at some length a little while ago in your Lordships' House. Of course, Ministers can request more detailed information if required. Given this access

and the known sensitivities around falsified medicines data in general, it is unclear why the department wants to extend the purposes for which data is collected under a future UK system and why this has not been discussed with stakeholders in the existing Falsified Medicines Directive scheme. Why was such little reference made to it in the Explanatory Notes?

It is not unreasonable to ensure that the Bill is amended to enshrine at least a duty of full consultation with stakeholders before it goes through your Lordships' House.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): The noble Lords, Lord O'Shaughnessy and Lord Clement-Jones, have withdrawn. I therefore call the noble Baroness, Lady Jolly.

3.30 pm

Baroness Jolly (LD) [V]: I should apologise to noble Lords: my noble friend Lord Clement-Jones is unable to be part of today's Committee, so I will be speaking on his behalf—at some length but without, I suspect, his bravura.

Amendment 30 seeks to tighten the provisions in Clause 3 to avoid the unintended consequences of data being used for purposes other than to ensure that medicines are safe. Amendment 31 also seeks to do this, by requiring a framework for data to be used as agreed in consultation with the pharmaceutical industry, and Amendment 33 places a duty on the Secretary of State to

"act with a view to",

rather than

"have regard to the importance of",

ensuring that information is retained securely when exercising powers.

There is no doubt that the noble Baroness, Lady Thornton, the noble Lord, Lord Hunt, and my noble friend Lord Clement-Jones are travelling down the same road, and I have very similar concerns. That is why we signed Amendment 30, and I am grateful to the noble Lord, Lord Hunt, for his support for the amendment tabled by my noble friend Lord Clement-Jones.

As explained at Second Reading, there are grave concerns about the wording of Clause 3(1)(b), relating to the development of a UK system to prevent the supply of falsified medicines. The clause refers to

"the use, retention and disclosure, for any purpose to do with human medicines, of information collected"

by such a system. This is an attempt to unreasonably broaden the original data-collection provisions of the Falsified Medicines Directive after the transition period.

The background to the current legislation is very clear. By the early 2000s, pharmaceutical companies were concerned about falsified, counterfeit products entering the legitimate medicines supply chain—especially high-value items such as Viagra. At that time, this was the only real way to distribute such products at scale. Schemes involving pack serialisation were proposed to reduce the risk of reputational and trading losses from counterfeit and falsified medicines entering the supply chain, and to reduce the potential risk of harm to patients.

A stakeholder model was established which is governed by the main groups in the supply chain and funded mainly by manufacturers—branded, generic and parallel trade—with smaller contributions to costs from wholesalers and pharmacies. These proposals became the EU Falsified Medicines Directive 2011/62/EU. In the meantime, the issue of falsified medicines had moved largely to the internet, where they are sold from trading platforms and/or unlicensed pharmacies.

So why is data use so important? As the Company Chemists' Association has pointed out, data is a very sensitive commercial currency. All parts of the medicines supply chain need access to broad patterns of medicines usage for the purpose of planning or adjusting manufacturing, marketing, prescribing, buying and stock control. But access to pack information—who is handling which packs—could highlight purchasing decisions, the margins being made and those trading for import/export purposes.

So the principle of "Whoever generates the data owns the data" was enshrined in Article 38 of the associated delegated regulation of 2016. As a result, general access to FMD data is restricted to pack information—name, batch, expiry, serial number—and active/inactive status, with some exceptions for investigating incidents and national competent authority use for reports, reimbursement, and pharmacovigilance and pharmacoepidemiology research.

The Department of Health and Social Care already has access to a very wide range of data on the sales of medicines, and their use in the UK, under the Health Service Products (Provision and Disclosure of Information) Regulations 2018. These require manufacturers, wholesalers and pharmacies to provide summaries of products sold and prices paid. Ministers can request more detailed information if required.

Given both this access and the known sensitivities around FMD data, it is unclear why the department has included the sweeping provision of Clause 3(1)(b) on the use, retention and disclosure for any purpose of data collected under a falsified medicines system, and why this has not been discussed with stakeholders in the existing Falsified Medicines Directive scheme.

The pharmacy community has concerns not just that the department might accidentally release commercially sensitive data—this is covered by Clause 3(3)—but that it might use such data to gain unfair advantage by abusing its monopoly position as the main purchaser of medicines in the UK. Pharmacies wish to see data use under any future system being part of an agreement that has been subject to discussion with stakeholders and approved by Parliament. My noble friend understands that the department has said that the details of any proposed use under a new falsified medicines system would be contained in a statutory instrument by the affirmative procedure.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, I understand that the intention of Amendment 30, in the name of the noble Baroness, Lady Thornton, is to prevent the use of data for any purpose other than preventing the supply of falsified human medicines. The noble Baroness raises an important question. Let me reassure her that we have thought very carefully

[Lord Bethell]
about these powers. There is an important precedent already for using the data held in the current EU Falsified Medicines Directive "safety features" system for wider purposes. For instance, as well as using the data to investigate instances of falsified medicines, data on the EU system can be used for the purposes of reimbursement, pharmacovigilance and pharmacoepidemiology. The effect of this amendment would be a step backwards on what any potential falsified medicines scheme introduced under Clause 3 could deliver.

We know from implementation of the EU system that the checks involved could generate a rich source of data, and that there may be circumstances where we would want to be able to use that data to support the safe and effective use of medicines. For example, information in a future falsified medicines scheme could be useful in the event of a product recall to help quickly identify individually affected packs. I recognise that information about the supply of medicines through the supply chain can be commercially sensitive—the noble Baroness, Lady Jolly, made this point very well. That is why Clause 3 ensures that, in making regulations under this power, the appropriate authority must ensure that information is retained securely. Information will be subject to strict controls set out in regulations, including what purposes the data could be used for, who would have access to or use it, and under what conditions.

I turn to the noble Baroness's second amendment in this group, Amendment 33. While I understand the desire of the noble Baroness, Lady Thornton, to ensure that we have robust requirements around the safeguarding of information, this amendment would cause difficulty for the appropriate authority making regulations under the provision in Clause 3. This is because it would require action to secure retention of data even where the regulations themselves may not concern data—for example, provisions related to who may set up the infrastructure.

Amendments 31 and 32, in the name of the noble Lord, Lord Clement-Jones, would operate together to place an obligation on the Secretary of State to seek to agree and lay a framework on the use of information collected for the purpose of preventing the supply of falsified medicines. This would be done within six months of the Act coming into force.

We can all agree with the noble Lord, Lord Hunt, and others that close collaboration through consultation with stakeholders, including with pharmacists, is essential to getting something like this right, not least given the importance of data security. However, Amendments 31 and 32 would not create the right mechanism for providing this. I can reassure the noble Lord that we have planned fulsome engagement and consultation with a wide range of stakeholders. This can be achieved without this additional obligation, but I would be glad to commit to an engagement session with noble Lords and officials if noble Lords would find this helpful.

The Government have committed to exploring all options in regard to a falsified medicines scheme to ensure that patients continue to be protected from the public health threat posed by falsified medicines. As part of this, we will explore with stakeholders what information needs to be collected as part of any national scheme. Only once we have established how any scheme could work can we fully consider how the information that it collects could be used to deliver the most benefits for the UK and for patients. However, this amendment would force us to consult on an agreed framework outlining the use of information within six months of Royal Assent, without necessarily having the full picture of how a national scheme could work.

We also want to explore creative uses of information as long as they are for public interest purposes. Therefore, we do not want to constrain or limit options ahead of engagement with stakeholders.

I should make it very clear that the overarching principles of the Bill as set out in Clause 1 also apply to our powers here. The scope of the purposes mentioned is not unfettered. The appropriate authority must be satisfied that regulations dealing with anything under Clause 3—not just around how the information will be used—will promote the health and safety of the public. In making that assessment, the appropriate authority is required to have regard to the three considerations discussed previously in Committee.

I remind noble Lords that Amendment 126 in my name ensures that this will be a public consultation, while Amendment 131, also in my name, places an obligation on the Secretary of State to review regulatory changes made under Clause 1(1). The consultation will consider how the information collected as part of the scheme could be used, and any regulations providing for the use of information would be subject to parliamentary scrutiny under the affirmative procedure. In light of these reassurances, I hope that the noble Baroness, Lady Thornton, will feel able to withdraw her amendment and the noble Lord, Lord Clement-Jones, will be content not to press his.

Baroness Thornton (Lab): I thank the Minister for his detailed response. I just have to wonder why the consultation did not take place before the Bill was drafted. You have to ask why stakeholders were not involved in the discussions prior to this happening and why they then felt the need to get in touch with those of us involved in this Committee to express their concerns. So I have to say to the Minister that I will certainly be discussing with stakeholders their reaction to what the Minister has said and whether that allays their frustrations and anxieties.

The process that the Minister described, which I shall read in detail and think carefully about, looked circular. It looked like a process that involves consultation, powers in the Bill that we have already questioned, and the affirmative procedure. All those things may not be satisfactory, so we will probably need to return to discuss this at a later stage of the Bill—or, preferably, before. I beg leave to withdraw the amendment.

Amendment 30 withdrawn.

Amendments 31 to 33 not moved.

Clause 3 agreed.

3.45 pm

Clause 4: Clinical trials

Amendments 34 to 39 not moved.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): We now come to the group consisting of Amendment 40. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate.

Amendment 40

Moved by ***Lord Patel***

40: Clause 4, page 3, line 25, at end insert—

"(f) about requirements to consider babies, children and young people in research about new medicines, in a manner similar to the EU Paediatric Regulation."

Member's explanatory statement

This amendment is to ensure that in the development of new medicines and clinical trials, data related to children is taken into consideration.

Lord Patel (CB) [V]: My Lords, I shall curtail my remarks, as time is limited and this is very much a probing amendment. It draws attention to the need to ensure that paediatric regulation-specific measures that preside over the licensing of medicines to better protect the health of children, are reflected in future legislation regarding clinical trials in the United Kingdom.

New medicines licensed in the EU are currently subject to an EU Parliament directive that requires research about new medicines to consider babies, children and young people. The directive means that standardised procedures are in place for sponsors to plan and conduct studies. To get new medicines intended for use by children licensed for marketing in the EU, sponsors must have in place a paediatric investigation plan that aims to ensure that the necessary data are obtained through studies in children. In short, new medicines applying to be licensed for use by children must be trialled by them. It is often the case that medicines trialled in adults are then given in lower doses to children.

New medicines trialled in the United Kingdom are currently subject to this regulation. Moving on, there are clear clinical reasons why it is important for babies, children and young people, as they may show differences from adults in their response to and tolerance of medicines. To ensure that new medicines are safe for their use, they must be involved in clinical trials. That is the important point of my modest amendment.

Furthermore, there is a commitment and a key pledge in the NHS long-term plan to raise to 50% by 2025 the involvement of children and young adults in clinical trials. If there is no regulation requiring that data be collected in clinical trials with children, we will not achieve this. So all I seek is an assurance from the Minister that the Government and the MHRA are well aware of this and that the paediatric regulation will be considered whenever the clinical trials regulations are drawn up by the MHRA. I beg to move.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): My understanding is that the noble Lord, Lord Lansley, has withdrawn, so I call the noble Baroness, Lady Jolly.

Baroness Jolly (LD) [V]: My Lords, since March 2011, the European Medicines Agency made available information on clinical trials in children via a public interface, the European Union Clinical Trials Register. The register is based on the information stored in EudraCT, a European database that contains information on all clinical trials with at least a site in the EEA. Can the Minister clarify whether this information will be available to researchers and paediatricians in the UK? Can he confirm whether this point has been part of EU negotiations? Can he further clarify whether there is any difference with data from joint research projects operating across the island of Ireland? Are all data equally accessible? We support the amendment.

Baroness Thornton (Lab): My Lords, I will not add much more, as I am very interested to hear what the Minister has to say. The noble Lord, Lord Patel, has done the Committee a great service by tabling the amendment and asking this question. I was not aware that there was an issue here, which there clearly might be, and I will be interested to hear the answer. If this is an area that is covered by European Union regulation, and we are therefore creating a new regulatory framework for children's data in clinical trials, it is important that we know that and how it might happen. I am very interested to hear what the Minister has to say.

Lord Bethell (Con): My Lords, in response to the point of the noble Baroness, Lady Thornton, the noble Lord, Lord Patel, is right: paediatric trials are very important, and they have sometimes been overlooked. However, that does not detract from the fact that the UK has a strong international reputation for paediatric medicine research. The MHRA authorised 177 new clinical trials that included children in 2019—more than any other country in the EU. The Bill, in Clauses 4(1)(d) and (e), already enables us to make regulations about requirements to be met before the clinical trial may be carried out and on the conduct of the clinical trial. That can provide for a number of different options, including paediatric clinical trials. I reassure the noble Lord that the Human Medicines Regulations 2012 will include provisions equivalent to those of the EU paediatric regulations when amendments come into force at the end of this year. These include requirements for the review and approval of paediatric investigation plans. These plans are aimed at ensuring that the necessary data is obtained through studies in children.

I recognise that the EU regulations played an important role in promoting the development of paediatric medicines, so that children are not forgotten when adult needs drive drug innovation. I am happy to commit to write to the noble Baroness, Lady Jolly, on her questions about EU statistics on that matter.

I understand that there is currently ongoing evaluation of the EU paediatric regulations and that this may bring about changes to the legislative landscape. This Bill will allow us to adapt the UK regulations based on patient needs and to keep pace with any changes in any other jurisdiction, including the EU. It gives us the opportunity to go even further to enhance the UK system and to encourage UK paediatric trials.

It is critical that the UK paediatric regulatory framework remains flexible, to adapt to emerging paediatric research challenges, and supports UK innovation, while also supporting global development plans. I reassure noble Lords that the MHRA has already published guidance on a new UK approach to

[Lord Bethell]
paediatric investigation plans. This is part of the GOV.UK transition period guidance for businesses and citizens. The UK will simplify the PIP application process for applicants conducting paediatric research by offering an expedited assessment where possible and by mirroring the submission format and terminology of the EU PIP system. This approach ensures that the UK can continue to provide incentives and rewards to support innovation in paediatric drug development and to encourage manufacturers to bring medicines to the UK market.

The MHRA will aim to continue to participate in paediatric scientific discussion among the global regulators at an early stage and during the conduct of clinical trials. This will facilitate the exchanging of emerging information during the studies to minimise the exposure of children to medicines that do not work or are unsafe, and we will aim to maintain a national position of influence, so that the final paediatric development aligns with, and supports, global regulators' requirements.

I hope that the noble Lord, Lord Patel, has had sufficient reassurance that the amendment is unnecessary and feels able to withdraw Amendment 40.

Lord Patel (CB) [V]: I thank the Minister for his response, as I thank all other noble Lords who have spoken. A small point was raised, with a good, short debate and the right response. I beg leave to withdraw my amendment.

Amendment 40 withdrawn.

Amendment 41 not moved.

Clause 4 agreed.

Clause 5: Fees, offences, powers of inspectors

Amendment 42 not moved.

Amendments 43 and 44
Moved by ***Lord Bethell***

43: Clause 5, page 3, line 35, leave out from "regulations," to "or" in line 36

Member's explanatory statement

See the explanatory statement for the amendment in the Minister's name inserting new subsection (1A) into Clause 5.

44: Clause 5, page 3, line 39, at end insert—

"(1A) Regulations under section 1(1) may not provide for an offence to be punishable with a sentence of imprisonment of more than two years."

Member's explanatory statement

This amendment, and the other amendment to Clause 5 in the Minister's name, ensures that regulations under Clause 1(1) may not provide for any offence to be punishable with a sentence of imprisonment of more than two years.

Amendments 43 and 44 agreed.

Amendment 45 not moved.

Clause 5, as amended, agreed.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): We now come to the group beginning with Amendment 46, and I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate.

Clause 6: Emergencies

Amendment 46
Moved by ***Baroness Wheeler***

46: Clause 6, page 4, line 12, leave out paragraph (b)

Member's explanatory statement

This amendment removes provision for the disapplication of regulatory provisions in an emergency to be made subject to conditions set out in a protocol published by ministers, which is not subject to parliamentary scrutiny.

Baroness Wheeler (Lab): I am pleased to move Amendment 46 in the name of my noble friend Lady Thornton, which, alongside other amendments in this group, amends provisions in Clauses 6 and 15 and removes provisions for the disapplication of regulatory provisions in an emergency to be made subject to conditions set out in a protocol published by Ministers.

We understand why the Bill confers emergency powers on the Government to disapply existing health medicine regulations in circumstances which give rise to the need to protect the public from a serious risk to public health. However, we are concerned that the disapplication authorised in the regulations can be subject to conditions specified in the regulations, or conditions set out in a protocol published by the public authority. Furthermore, no formal requirements are set for the form, publication or dissemination of a protocol. It may simply be a document published on a website by the appropriate authority. This is completely inappropriate and unsatisfactory.

The Minister will be very aware that both the Delegated Powers and Regulatory Reform Committee and the Constitution Committee raised concerns about this provision. The Constitution Committee noted that:

"In other bills emergency powers are time-limited and there are often requirements for periodic reviews of their use",

and yet

"No such constraints or safeguards exist in this Bill. These powers are subject only to the negative resolution procedure and can be adjusted by the amendment of a protocol which is not subject to parliamentary scrutiny".

As the DPRRC commented at paragraphs 39 and 42:

"On a number of occasions, we have drawn the attention of the House to provision in Bills which enables Ministers to make what are, in effect, legally enforceable rules under the radar of the Parliamentary scrutiny that is afforded to primary and secondary legislation … Allowing regulations to make the disapplication of legislation subject to conditions set out in a 'protocol' is yet another example of 'camouflaging legislation' … we consider that, where those powers are to be used to provide for legislation to be disapplied in an emergency, any conditions to which disapplication is to be subject should be set out in the regulations themselves and not in a 'protocol' which is not subject to Parliamentary scrutiny."

The Constitution Committee concurred and recommended that

"the use of these powers should be time bound, subject to periodic review and that any conditions on the disapplication of legal provisions should be set out in regulations."

Although the Government have yet to publish their full response to those reports, as we know, the Minister has tabled, and indeed moved, a number of amendments in Grand Committee which are intended to address the concerns of the DPRRC and the Constitution Committee. This amendment provides an excellent

opportunity for the Minister to explain to the Committee exactly why he has not therefore tabled an amendment ensuring that the disapplication of legal provisions is invariably set out in regulations, as recommended. I beg to move.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, I am very glad to support my noble friend Lady Wheeler. I will not repeat what she said, because I thought she put across the points very powerfully. She quoted extensively from the Delegated Powers Committee, which complains that no justification whatever has been given for what the Government seek to do.

It is worth saying that the committee has drawn the attention of the House to this kind of mechanism being adopted in a number of Bills over the past few years. I was very struck by the assurance it sought from the Government that they would not continue the practice of what it called "camouflaging legislation" as guidance. In response to the committee's report on both the Ivory Bill and the Mental Health Units (Use of Force) Bill, the Leader of the House, the noble Baroness, Lady Evans, wrote:

"As you will be aware, it is Government policy that guidance should not be used to circumvent the usual way of regulating a matter. If the policy is to create rules that must be followed, the Government accepts that this should be achieved using regulations subject to parliamentary scrutiny and not guidance".

4 pm

When you take that assurance given by the Leader of the House, and the concurrence of the Constitution Committee with the Delegated Powers Committee, the Minister at least has some questions to answer. For me, it takes us right back to our first debate on the proposal for a sunset clause. The Bill is riddled with executive powers under the guise that they need to have flexibility. Even if it is accepted that flexibility is needed in the short term, I do not believe that that justifies permanent legislation. I look forward to the Minister responding here, and no doubt on Report when we come back to the sunset clause.

Lord Patel (CB) [V]: My Lords, I support these amendments. They touch on the issues and arguments returned to in respect of amendments to Clauses 15 and 42, which set out the procedures to be followed in exercising these powers, as was mentioned by the noble Lord, Lord Hunt of Kings Heath, its unjustified use of negative procedure and this case of protocols. Clauses 6 and 15 provide that the Secretary of State can disapply certain provisions of the medicines and medical devices regulations

"in circumstances which give rise to a need to protect the public from a risk of serious harm to health."

Such provisions may be within the Human Medicines Regulations 2012, the Medicines for Human Use (Clinical Trials) Regulations 2004, and the Medical Devices Regulations 2002. However, they also may refer to those provisions that are still to be drafted at the current time and are thus unknown and not yet subject to scrutiny.

I recognise that it is necessary to be flexible in the face of an emergency situation as in the current pandemic. However, in its present form this is another example of broad-reaching powers falling outside of that which is reasonable and proportionate. While the disapplication of certain provisions using this power can be exercised to regulations under the affirmative procedure, they may also be passed in certain circumstances by the negative procedure, and, as in these amendments, by protocol. The use of a protocol, in particular, bypasses Parliament, and therefore is unnecessary. I support these amendments.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): The noble Lord, Lord Blunkett, has withdrawn, so I call the noble Baroness, Lady Jolly.

Baroness Jolly (LD) [V]: My Lords, we support these amendments, which relate to the disapplication of regulatory provisions in an emergency. As the Bill stands, the Secretary of State may make regulations about these provisions. This can be subject either to

"conditions set out in the regulations"

or in

"a protocol published by the appropriate authority."

As the protocol is not subject to parliamentary scrutiny, the amendment in the names of the noble Baroness, Lady Thornton, and the noble Lords, Lord Hunt of Kings Heath and Lord Patel, would remove this provision from the Bill so that, as the noble Baroness, Lady Wheeler, said, conditions would have to be set by regulations alone.

Lord Bethell (Con): My Lords, the lockdown debate later this afternoon brings home the significance of an emergency like Covid. It requires swift, dramatic change to protect public health. Clauses 6 and 15 are essential. They would allow us to make provisions about the disapplication of a medicine or medical devices provision where there is a need to protect the public from a serious risk to health. We would need regulations to do this, because to act in breach of an otherwise applicable provision would be an offence.

Medicines is a highly regulated area. Regulations apply from development of medicines to delivery, right the way down to the pharmacy. It is a complex and overlapping system, designed to protect the end-user, the patient. But there are times when we need to switch off a circuit of the system to respond to an emergency. This is most vividly apparent when we speak of a Covid vaccine. This is end to end, from port arrival, to the logistics of its delivery, to who may administer it. We need to be able to pick this circuit out of the whole and isolate it. Otherwise, to disapply regulation without being highly specific is to disapply regulation not just from the vaccine but from other medicines as well.

This is the point of conditions that go alongside the disapplication. Where we know what the conditions will be, of course it should be in the regulations. But often we cannot know what the specific conditions are. That is where the protocol comes in that the noble Baroness, Lady Thornton, with her Amendments 46, 47, 93 and 94, would like to remove. I acknowledge that the Delegated Powers and Regulatory Reform Committee objected to the use of a protocol. I note that its condemnation was not limited to this Bill but was a broader point about other legislation as well. I hope that I can explain why such a protocol is necessary here.

[Lord Bethell]

Protocols are a last resort in any emergency that provides critical flexibility in highly regulated areas. They would be time limited to provide flexibility and administrative detail, tailored to the professional audience that requires it and in language which they are familiar with. A protocol will be used only where it is not be possible to determine all the necessary conditions of disapplication at the pace needed to deal with an urgent threat. The protocol allows for the finer details to be sketched in, while giving Parliament the structure of the regulations to consider. We can debate the principle of disapplying certain provisions of the regulations, without always having the specific names of medicines or vaccines in front of us.

There are existing provisions in the Human Medicines Regulations 2012 that allow for the disapplication of regulatory provisions on how prescription, pharmacy and over-the-counter medicines may lawfully be supplied. These are limited to circumstances in the event or anticipation of a pandemic disease. This formed part of the response to the swine flu pandemic in 2009. Six protocols were issued in relation to specific antivirals for the treatment of swine flu, enabling them to be supplied by authorised staff who would not normally be able to supply prescription-only medicines. This involved separate protocols for different strengths of oseltamivir, a demonstration of just how specific we would expect the protocols to be.

We have made an SI this month introducing provision for the use of protocols in relation to coronavirus and influenza vaccinations. That SI seeks to anticipate the certain flexibilities that might be needed but it is not possible to cover all eventualities. It anticipates the need for rapid supply and the potential mass administration of medicines, since the anticipated vaccine may be delivered by injection.

However, until we are presented with a vaccine, we cannot know how many injections are required, for example. That is a finer point of detail that has implications for the scale of operation required. The SI makes clear that the disapplication of existing regulatory provisions about supply and administration of medicines will be subject to conditions set out in the protocol. These conditions of disapplication will include specifics around the class of persons permitted to administer the vaccines, and the protocol would specify the process by which a person in that class is designated as a person authorised to do so. It will provide for supervision and recording requirements that must be met when the vaccine is administered. These requirements will change depending on the necessities of the specific vaccine. Parliament can debate the regulation, but until we know the detail of that vaccine, we simply cannot establish how this operation will run.

The emergency powers allow us to go broader in terms of disapplications than what is currently available, a reflection of the type of emergency we face. In the illustrative SI published on introduction we have provided some clarity on our intent. It gives an example of what might be needed to ensure the disapplication could be relied upon in response to other circumstances, including a spread of toxins, pathogenic agents, and so on, that give rise to the risk of serious harm to health. This too would operate alongside a protocol.

Amendments 93 and 97 in the name of the noble Baroness, Lady Thornton, relate to emergencies involving medical devices. Provisions already exist in the Medical Devices Regulations 2002. These provisions allow particular devices to be put into service without being subject to CE marking, following a duly justified request if the Secretary of State considers this to be in the interests of the protection of health.

The ventilator challenge allowed us to fulfil the clinical need for ventilators through a combination of CE-marked devices, and devices which were granted an exemption from the requirement. They were required to conform to bespoke technical specifications as a condition of the exemption being granted, and the technical specifications evolved as they needed to. That ensured that the only devices in service without a CE mark were those that met the highest possible standards.

Online publication will also support dissemination to the required audience, to whom it will be targeted, such as operators in the supply chain, enabling conditions to be quickly understood by those who must use them, referring to concepts, processes and so on that they are familiar with from their field.

Protocols are a last-resort power. Where we can anticipate what the conditions of disapplication will be, we will put these into regulations, but I cannot say now how many injections will be required for a Covid vaccine or how many staff will be needed to deliver it. Parliament has our intent, our plans and our proactive preparations now, but not technical specifications—nor do we. I commend the noble Baroness, Lady Thornton, and her team for all they do to hold us to account. It is right that they look at how we can write good legislation, although we need legislation that allows for practicality in a crisis. Therefore, I hope I have provided enough assurances for her to feel able to withdraw her amendment.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): My Lords, I have received a request to speak after the Minister from the noble Lord, Lord Patel.

Lord Patel (CB) [V]: My Lords, I say respectfully to my friend the Minister that he is putting up smokescreens. As he mentioned, he already has the power under the 2012 Act to do much of what he wants to do. Furthermore, the arguments used all relate to the Covid emergency. He alluded to this afternoon's debate and the measures that are about to be taken, but he already has those powers, otherwise he would not be able to do it. We have emergency legislation related to Covid, which includes immunisation through vaccines. By the way, how many doses would be required? It is not necessary to have that in legislation: it is a clinical decision based on the effectiveness of a vaccine. I do not require legislation to tell me how many tablets I should prescribe to my patients for any disease, so I fear that these are smokescreens. He already has powers of disapplication in an emergency, and I continue to support the amendment.

Lord Bethell (Con): I welcome the challenge from the noble Lord, but the examples we have given are also more recent, from the 2009 swine flu attack. The protocols were also used in the Salisbury Novichok attack. I know from my own experience that public

health disasters can throw up extremely unexpected hurdles and barriers to action, in the form of legislative surprises. Therefore, these powers are not considered to be frequently used. In fact, they are never used—noble Lords will all breathe a sigh of relief—but public health challenges are likely to be a feature of the future, and it is prudent to put in place the protections we need in order to provide for them.

Baroness Wheeler (Lab): I thank noble Lords for their contributions in supporting the amendment—the noble Lord, Lord Hunt, reinforced by the noble Lord, Lord Patel, and the noble Baroness, Lady Jolly. I was particularly interested to hear the quote from the Leader of the House on this matter, and I am glad that that has now gone on record. I certainly echo the comments by the noble Lord, Lord Patel, about what he calls smokescreens, and his underlining of the powers the Government already have for dealing with such situations.

I thank the Minister for the very detailed explanation he offered on this issue, and for telling us why the Government feel that they do not need to address the DPRR Committee's concern and table amendments. He also talked about protocols being a last resort, and I was grateful for that—and also for the fact that they would be time limited. I note those two things. This is a complex issue, not least for me. I need to look carefully at the Minister's response, and, if necessary, come back to this issue on Report. I beg leave to withdraw the amendment.

Amendment 46 withdrawn.

Amendment 47 not moved.

Clause 6 agreed.

Amendment 48

Moved by ***Lord Bethell***

48: After Clause 6, insert the following new Clause—

"Disclosure of information in accordance with international agreements

(1) This section applies to information which a relevant authority holds in connection with human medicines.

(2) The relevant authority may disclose information to a person outside the United Kingdom where required for the purpose of giving effect to an international agreement or arrangement concerning the regulation of human medicines.

(3) The relevant authority may not disclose commercially sensitive information in reliance on subsection (2) unless the relevant authority—

(a) considers that it is necessary to do so for the purpose mentioned in that subsection, and

(b) is satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it.

(4) Except as provided by subsection (5), the disclosure of information in accordance with this section does not breach—

(a) an obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on the disclosure of the information (however imposed).

(5) Nothing in this section authorises a disclosure of information which—

(a) contravenes the data protection legislation (but in determining whether a disclosure would do so, take into account the powers conferred by this section), or

(b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

(6) In this section—

"commercially sensitive information" means commercial information whose disclosure the relevant authority thinks might significantly harm the legitimate business interests of the undertaking to which it relates;

"relevant authority" means—

(a) the Secretary of State, or

(b) the Department of Health in Northern Ireland;

"data protection legislation" has the meaning given by section 3(9) of the Data Protection Act 2018."

Member's explanatory statement

This new Clause makes clear that information held by the Secretary of State or the Department of Health in Northern Ireland in connection with human medicines can be disclosed, subject to certain restrictions, to persons outside the United Kingdom in order to give effect to a relevant international agreement or arrangement.

Amendment 48 agreed.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): That concludes the work of the Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the Room.

Committee adjourned at 4.15 pm.