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Monday
23 November 2020

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
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.

HER MAJESTY'S GOVERNMENT

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Secretary of State for the Home Department—The Rt Hon. Priti Patel, MP

Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster—The Rt Hon. Michael Gove, MP

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Parliamentary Secretary to the Treasury and Chief Whip—The Rt Hon. Mark Spencer, MP

Attorney-General—The Rt Hon. Suella Braverman, QC, MP

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Prime Minister, First Lord of the Treasury, Minister for the Civil Service and Minister for the Union—The Rt Hon. Boris Johnson, MP

Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office—The Rt Hon. Michael Gove, MP

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§ Members of the Government listed under more than one department

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23 November 2020

THE
PARLIAMENTARY DEBATES
(HANSARD)

IN THE FIRST SESSION OF THE FIFTY-EIGHTH PARLIAMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND COMMENCING ON THE SEVENTEENTH DAY OF DECEMBER IN THE SIXTY-EIGHTH YEAR OF THE REIGN OF

HER MAJESTY QUEEN ELIZABETH II

FIFTH SERIES **VOLUME DCCCVIII**

EIGHTH VOLUME OF SESSION 2019-21

House of Lords

Monday 23 November 2020

The House met in a hybrid proceeding.

1 pm

Prayers—read by the Lord Bishop of St Albans.

Arrangement of Business
Announcement

1.05 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 and others are participating remotely, but all Members will be treated equally.

Royal Assent

1.06 pm

The following Acts were given Royal Assent:

Fisheries Act,

Social Security (Up-rating of Benefits) Act.

Arrangement of Business
Announcement

1.06 pm

The Lord Speaker (Lord Fowler): My Lords, Oral Questions will now commence. Please can those asking supplementary questions keep them sensibly short and confined to two points, and I ask that Ministers' answers are also brief.

Hate Crime: Misogyny
Question

1.06 pm

Asked by ***Baroness Donaghy***

To ask Her Majesty's Government what plans they have to make misogyny a hate crime.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, any hate crime is completely unacceptable. The Government are committed to stamping them out. We have asked the Law Commission to conduct a wide-ranging review into hate crime to explore how to make current legislation more effective and whether additional protected characteristics should be added. It will report next year and we will respond to the review in full when it is complete.

Baroness Donaghy (Lab): The Home Office has the opportunity today to state clearly that unintended or apparent bullying is still bullying. A woman has been murdered every three days for the last 10 years, 62% of them by partners or former partners, yet there is no co-ordination among the authorities to build an accurate pattern of abuse. Making misogyny a hate crime will go some way to addressing this scandal in our society, but when, Minister, when?

Baroness Williams of Trafford (Con): The noble Baroness will know, because I have said it here before, that the Law Commission will report on its findings next year. She will also understand that equality of protection is a crucial element of ensuring public support for hate crime legislation.

Baroness Primarolo (Lab) [V]: My Lords, charities and campaign groups have raised concerns about closed online groups mobilising to incite hatred and violence against communities. The Government need to act now to protect ethnic, religious and LGBT+ communities living in fear. Will the Minister agree to provide an

[Baroness Primarolo]
urgent Written Statement to your Lordships' House at the beginning of January, after the end of the Law Commission review, on what plans the Government have to introduce hate crime legislation and protect those communities now from this insidious crime?

Baroness Williams of Trafford (Con): The noble Baroness will know that there are already numerous strands of hate crime legislation. After the Law Commission has reported, I fully expect that Parliament will be updated on its findings.

Lord Vaizey of Didcot (Con): My Lords, I will make one brief point. My noble friend will have noticed the concession made by the Scottish Government on their hate crime Bill that one has to show intent to incite hatred. Will my noble friend keep this in mind when the Law Commission reports next year?

Baroness Williams of Trafford (Con): I thank my noble friend for that point. We will certainly keep all aspects of findings and law in mind when thinking about future plans.

Baroness Hussein-Ece (LD) [V]: [*Inaudible*.]

Lord Ashton of Hyde (Con): The noble Baroness should unmute.

The Lord Speaker (Lord Fowler): With apologies, I think I will move on. I call the noble Baroness, Lady D'Souza.

Baroness D'Souza (CB) [V]: My Lords, hate speech that results in criminal actions such as incitement to violence is to be both deplored and subject to legislation. That said, I am concerned that one of our most precious democratic freedoms—freedom of expression—might be hampered if this is widely applied to include any offensive or misogynistic speech. The distinction between unpleasant, even hateful, speech and criminal incitement is often determined by the context in which it occurs. Does the Minister agree that each hate speech incident should be considered on a case-by-case basis rather than by means of broad legal sanctions?

Baroness Williams of Trafford (Con): I certainly agree that freedom of speech is one of the most precious things we preserve in this country, but it comes with responsibility. Where freedom of speech is used as an excuse to inflict a hate crime on someone else, that line has been crossed.

Lord Garnier (Con) [V]: My Lords, I agree with my noble friend's last answer. We are all against the hatred of women, but does my noble friend agree that we do not need to create more offences when there are already laws dealing with misogyny? Is it not already a crime, for example, to breach the peace, to threaten violence against a woman, physically to attack a woman, both sexually and non-sexually, and to incite violence against a woman? Where those crimes are aggravated by hatred of the victim or women generally, the court will take that into account when sentencing the defendant. If the evidence is there, we can and should prosecute. We do not need more offences.

Baroness Williams of Trafford (Con): We will keep an open mind until the Law Commission reports but my noble and learned friend is absolutely right in some of the things that he says. As I said to the noble Baroness, Lady Donaghy, if we created a hate crime in relation to gender, we would have to think very carefully about whether it would apply to the entire population or just women. That is what the Law Commission is considering.

Baroness Wilcox of Newport (Lab) [V]: This week is White Ribbon Week. Despite much progress around support for victims of domestic abuse, Citizens UK has found that hate motivated by gender is already a factor in 33.5% of all existing hate crime. It is therefore no wonder that many people feel that the current legislation is outdated. Further to my noble friend Lady Primarolo's question, may I press the Minister a little further? Will she commit to accepting the Law Commission's final recommendations on this issue and to bringing legislation forward next year?

Baroness Williams of Trafford (Con): I do not know what those recommendations are yet but I can say to the noble Baroness that the Law Commission's review will include how protected characteristics—including sex, gender and age—should be considered by new or existing hate crime law, as well as how legislation protects the existing protected characteristics.

Baroness Jones of Moulsecoomb (GP): My Lords, one of the problems in making sure that killers and abusers of women are prosecuted is the fact that the police often—that is, in the past and still now—do not take women seriously. Misogyny is clearly a problem in police forces. What is the Home Office doing about it?

Baroness Williams of Trafford (Con): The noble Baroness asks about domestic abuse, primarily, and misogynistically motivated crimes against women. In recent years, training for front-line police responders has been improved significantly, so what might have been seen as a domestic 20 years ago is now taken extremely seriously and the appropriate action is taken.

Lord Thomas of Gresford (LD) [V]: Following on from the question from the noble Baroness, Lady Jones, in 2016, Nottinghamshire Police introduced its misogyny hate crime policy, which enables women and girls to report cases of abuse and harassment as misogyny and for them to be recorded as such. Four other police forces have followed its excellent example. Will the Minister ensure that a similar policy is adopted nationwide, at least to assist with the collection of data for the Law Commission in the preparation of its report, promised for the coming year?

Baroness Williams of Trafford (Con): I was aware of Nottinghamshire and other police forces doing that. I welcome police forces across the country disaggregating hate crime into, say, anti-Semitic hate crime, Islamophobic

hate crime or, as the noble Lord said, misogyny. The data that they produce is very helpful but, again, I hesitate to say anything further until the Law Commission has reported.

Baroness Deech (CB) [V]: Reflecting on an earlier answer from the Minister, I would point out that a French author has published a book called *I Hate Men*. Far from being condemned, it has received widespread and pretty favourable coverage. The Law Commission's work shows that this is a very complex area. Research has even thrown doubt on the deterrent effect of sentences aggravated by hate crime. So, should we not wait, even if it takes another year, for the outcome of the Law Commission's consultation before rushing to create a specific offence?

Baroness Williams of Trafford (Con): I thank the noble Baroness for pointing out the complexity of this area. The consultation will finish on 24 December and the Law Commission will report next year. I agree with her that we should not pre-empt the outcome of the review just yet.

Baroness Crawley (Lab) [V]: My Lords, non-fatal strangulation is often part of the pattern of abuse leading up to attempts on women's lives. Can the Minister say whether an amendment to the Domestic Abuse Bill—shortly to be debated in this House— to include a new offence of non-fatal strangulation would be welcomed by the Government?

Baroness Williams of Trafford (Con): I am aware that such an amendment may come forward to your Lordships' House; the debate on it will be very interesting and thoughtful, as debates on such amendments always are. I look forward to discussing it with the noble Baroness before the Domestic Abuse Bill comes to your Lordships' House.

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

Farming: New Entrants

Question

1.18 pm

Asked by ***Baroness McIntosh of Pickering***

To ask Her Majesty's Government what assessment they have made of opportunities for new entrants into farming; and what steps they are taking to increase any such opportunities.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I declare my farming interests as set out in the register. The Government are working with the skills leadership group to introduce a professional body for agriculture and horticulture to promote the sector and the vibrant careers in it. New technologies are transforming food production, generating opportunities that require skills in farming, environment and business. The Government are also developing a new entrants' scheme to provide funding for councils and other landowners, providing opportunities for new entrants.

Baroness McIntosh of Pickering (Con): My Lords, my noble friend will recall that, during the passage of the Agriculture Act, a lot of emphasis was placed on opportunities for new entrants into farming, just as he described; I welcome that. Does he share my concern that a number of councils, including Scarborough Borough Council, are seeking to dispose of agricultural land, including tenant farmers' land, from their portfolio? This will lead to fewer opportunities for tenant farmers. Will my noble friend and the Government address this grave issue?

Lord Gardiner of Kimble (Con): My Lords, we value the role that council farms play in providing opportunities for new entrants. That is why we want to incentivise councils to retain and invest in their farm estates so that they can continue to provide opportunities into the future.

Lord Whitty (Lab) [V]: My Lords, post-Brexit British agriculture and horticulture require a new generation of farmers and a larger and more highly skilled UK-based workforce. In response to the point made by the noble Baroness, Lady McIntosh, about county farms, will the Government urge counties to stop divesting their county tenancies and start investing in new opportunities for those who wish to farm but do not inherit and cannot buy the land? Are they proposing to produce an updated recruitment, skills training and career structure for UK land workers in agriculture and horticulture?

Lord Gardiner of Kimble (Con): My Lords, one of the reasons the Government are reforming post-16 technical education to provide clearer routes into skilled employment in agriculture and other associated sectors is precisely to address the point the noble Lord has made. The other issue, as I will repeat, is that we want councils to retain and invest in their farm estates and for other landowners to take the opportunity of the new entrant scheme that we are developing because we think that this is a positive part of the future in agriculture.

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, with the changes in funding arrangements for farmers, many of the older generation are thinking about retirement, and ensuring that there are plenty of opportunities for the younger generation to take over these farms will be essential. How are the negotiations promised during the passage of the Agriculture Act for nieces and nephews to take over farms is progressing? If nothing has happened so far, can the Minister update the House on when this will take place?

Lord Gardiner of Kimble (Con): My Lords, so far as tenancy agreements are concerned, our first priority is to bring forward the regulations that are required following the Agriculture Act 2020 into modernising those areas of the tenancy regime that we think will be very productive. Once we have done that, working with the Tenancy Reform Industry Group, which engages with all parties, will enable us to bring forward any other changes with consensus.

The Earl of Shrewsbury (Con): My Lords, I refer noble Lords to my interests as set out in the register. From his earlier answer, my noble friend will doubtless agree that a considerable part of the problem of attracting new entrants into the agriculture industry has been the demise and disposal over many years of the county council smallholdings estate which has otherwise provided an excellent entry point for those who might have found it impossible to gain access to farming in their own right. Will there be an opportunity within the Agriculture Act, perhaps under the public good requirement, for larger landowners to be encouraged to make available land that will enable small entry-point farms to be established?

Lord Gardiner of Kimble (Con): My Lords, my noble friend has picked up on something very important. Going beyond our new entrants scheme and councils with rural estates, we also want to work with landowners and other organisations that want to invest in creating new opportunities for talented new entrants. We think that there are strong reasons for county local authorities to work with private landowners so that we can create a continuing momentum of availability of land. We want to have innovative and new agriculture entrepreneurs.

Lord Carrington (CB) [V]: My Lords, I declare my interests as a farmer and landowner as set out in the register. Opportunities are principally linked to the availability of land, availability of finance and likely profitability. Without resolving these points, the entrant is limited to apprenticeship or employment on an existing farm. Given the enormous amount of capital required to enter farming, can the Minister assure us that thought is being given to either the Government providing guarantees directly to a new entrant or to the banks, the landowner, the machinery manufacturer or other meaningful supplier to encourage their working with the new entrant?

Lord Gardiner of Kimble (Con): My Lords, my noble friend has raised a key point. Not only do we need access to land and skills, we want to ensure this through the productivity grants, which are part of the Agriculture Act and the work we want to undertake in this area. This important part of the Act addresses not only access but also equipment, technology and so forth, whether it is for entrants or indeed established farmers. That is part of our continuing work.

Baroness Jones of Whitchurch (Lab): My Lords, I am sure that the Minister will acknowledge that increasing the number of affordable rural homes is vital to enabling new entrants to come into the farming sector. However, the housing Minister revealed to me recently that the Government do not keep data on the number of existing affordable homes that are lost through sale or inflated rents. When are the Government going to address the haemorrhaging of cheap homes for rent in rural areas so that young families can afford to live and play their part in the rural economy?

Lord Gardiner of Kimble (Con): The noble Baroness is absolutely right that affordable rural housing is key to ensuring that we have a vibrant agricultural industry. That is why in 2018 the Government launched the revised National Planning Policy Framework. The rural housing chapter gives strong support to rural exception sites and includes new policies to support the building of homes in isolated locations where that supports, for instance, farm succession. In addition, the Government have amended the permitted development rights to support rural housing and agricultural productivity by enabling up to five new homes to be created from existing agricultural buildings, an increase from a maximum of three.

Lord Fox (LD): My Lords, more than 50 years ago, my mum and dad got their first foot in farming through the tenancy of a county council holding. A survey by Who Owns Britain? shows that up to 2017, the acreage of county farms halved. Only yesterday, Staffordshire had eight farms for sale. The Minister has said warm things about county farms, and we welcome that, but unless the Government put up money now, that haemorrhaging of county farms will continue. What are the Government going to do now in order to encourage councils to do what they want them to do?

Lord Gardiner of Kimble (Con): My Lords, we are working on a co-design with councils, landowners and others so that the new entrant scheme works precisely with county farms and local authorities. That is because, as I have said, we want that to be retained. This work is under way and will be co-designed in 2021, and we hope to roll out the programme in 2022. Not only are there county farms, but a third of the land in this country is tenanted and there are obviously opportunities in the tenant farming sector as well.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, will the Minister keep in mind the land mobility scheme in Northern Ireland? It has been in operation for three years and facilitates the transfer of land from older retired people to new young entrants. Will he discuss these matters with the Minister responsible for agriculture in Northern Ireland in order to ensure the implementation of best practice?

Lord Gardiner of Kimble (Con): My Lords, I shall certainly do that. Our proposals on lump sum and delinking are to facilitate retirement. That is an issue on which we are consulting, and I am most grateful to the noble Baroness.

The Earl of Caithness (Con): My Lords, in order to turn opportunities into reality, farming has got to be profitable or the Government must subsidise farmers. Is my noble friend any clearer on what the costs of implementing ELMs properly will be, and if he is, does he know whether the Treasury will fund them in the current economic situation?

Lord Gardiner of Kimble (Con): My Lords, it is fair to say that arrangements on agriculture and finance will be announced shortly.

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

Travel Agents

Question

1.29 pm

Asked by ***Baroness Clark of Kilwinning***

To ask Her Majesty's Government what assessment they have made of the future of high street travel agents; and what plans they have to appoint a Minister to be responsible for the travel sector.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, we are regularly assessing Covid-19's impact on tourism businesses. We recognise that these are extremely challenging conditions for those in the sector. High street travel agents have, of course, been able to access the Government's comprehensive economic support package. While we have no current plans to appoint a new Minister for the travel sector, a cross-government global travel task force has been established to consider what steps the Government can take to enable a recovery of international travel.

Baroness Clark of Kilwinning (Lab) [V]: I declare an interest as a member of the TSSA parliamentary group. In the summer, nine out of 10 holidays were either cancelled or changed. ABTA said in August that 90,000 people's jobs were either at risk or had already been lost. That figure increased to 164,000 people by the end of October. Will the Government look at a specific strategy for this sector and specific support? The TSSA and many businesses are asking for one Minister to have specific responsibility to put forward a strategy for this area because responsibilities lie across a number of departments—some are with the Department for Transport, some with other departments, and some fall between. Is this not something that the Government could look at and perhaps discuss with industry and the trade unions?

Lord Callanan (Con): We have many consultations with the industry and we have put in place a strong package of financial support that businesses in the sector can access, including government-backed loans, various grant schemes and the extended furlough and self-employed support schemes.

The Lord Speaker (Lord Fowler): I call the noble Baroness, Lady Wheatcroft. No? We will move on. I call the noble Lord, Lord Moynihan.

Lord Moynihan (Con): My Lords, I declare an interest as someone whose holiday was understandably cancelled due to Covid. Does my noble friend the Minister agree that it is unacceptable that some travel agents should still be holding back on refunding customers and using customer payments as interest-free loans to their business without customer consent? Should not the ending of such practices be a condition precedent of eligibility for government support schemes, as well as future certification as fit and proper travel agents?

Lord Callanan (Con): Companies have a legal obligation to ensure that they treat their customers fairly and that they pay refunds when they are due. Where disagreements exist we encourage customers and businesses to seek to find a solution that is mutually acceptable to both.

The Earl of Clancarty (CB): My Lords, while the imminent threat to the travel and holiday industry is the pandemic, can the Minister say what support the Government intend to give from 1 January to British holiday firms and the thousands of British workers, permanent and seasonal, including young working-class people, whose jobs and job opportunities are at risk following the UK leaving the single market?

Lord Callanan (Con): The noble Earl makes a good point. We have published lots of information for the travel sector to access. As I said, we are putting in place a comprehensive range of support to help the sector through this difficult and challenging time.

Lord Snape (Lab): I draw noble Lords' attention to my entry in the register of interests. Would the Minister accept that the call for a dedicated Minister is no reflection on the way he carries out his own duties? Such an appointment might help to bring sector-specific support for the travel industry, where, as I am sure he is aware, the number of redundancies is now expected to exceed 160,000. Would he agree that such an appointment would enable the Government to offer a cost-effective Covid-19 testing system to allow holidaymakers to travel and to shorten quarantine periods for those who return?

Lord Callanan (Con): There is of course a Minister for Tourism: Mr Huddleston, in DCMS. He is currently convening a cross-ministerial task force on the travel industry. The noble Lord can look forward to announcements tomorrow on that.

Baroness Doocey (LD): My Lords, the Government are currently developing a tourism recovery strategy to rebuild the £30 billion of export earnings that inbound tourism generates for the UK. What financial assistance are the Government providing to UK tour operators to enable them to get through this year and next year to deliver the tourism strategy that the Government want?

Lord Callanan (Con): I outlined the measures that we put in place for individual travel businesses, but bigger operators have been able to access extensive loan and grant schemes. However, I readily accept that it is a very difficult time for businesses in these areas.

Baroness Pidding (Con): My Lords, all aspects of the travel industry, international and domestic, have been hit as a consequence of the pandemic. With the continuing uncertainty in making foreign travel plans, would my noble friend the Minister agree that there is a unique opportunity for our domestic tourism and hospitality sector to be restored and to flourish? However, for this to happen, we first need to ensure these sectors survive what are likely to be an incredibly challenging few months ahead. Can my noble friend outline what steps the Government are taking to assist with this, especially in the hospitality sector?

Lord Callanan (Con): I agree with my noble friend. She is absolutely right that there is a unique opportunity for our domestic travel industry and hospitality sector to flourish once they get through these extremely

[Lord Callanan]
difficult and challenging few months. She will be aware that the furlough scheme extension and the tourism and hospitality VAT cut extension both run until March next year. We hope that they will help the industry.

Lord Bassam of Brighton (Lab) [V]: My Lords, the Transport Salaried Staffs' Association has said that the Government have "ignored calls for help" from our travel trade and that the buck

"has been passed from the Department of Business to the Department of Transport and back again."

Can the Minister explain why that is the case and why the travel sector has slipped between departmental cracks during the pandemic? Can he explain what support the Government will give because of the existential threat to high streets and travel agencies in particular? What additional help could the Government consider giving to this sector so that good companies do not go out of business or have to make people redundant?

Lord Callanan (Con): It is nice to see that the TSSA is well represented in today's questions from noble Lords. As I said, there is a Minister for Tourism. A cross-departmental tourism task force has been set up and, as I said to the noble Lord, Lord Snape, there will be an announcement tomorrow.

Baroness Altmann (Con): My Lords, following on from the previous question, could my noble friend look into the somewhat misleading, confusing and contradictory statements applied to travel agents? On 31 October, all non-essential retail was ordered to close. On 5 November, the Chancellor said in the other place that

"Travel agents' businesses … will benefit from business grants",—[*Official Report*, Commons, 5/11/20; col. 513.]

but when the regulations and guidance were published, travel agents seemed to be excluded. I urge my noble friend to clarify what the situation is, especially since florists and pubs, which can do click and collect, have qualified for support that seems not to have applied to high street travel agents.

Lord Callanan (Con): I will certainly have a look at the issue that my noble friend refers to, but I think the guidance has been very clear and most sectors of industry have been rigorously applying it.

Lord Bradshaw (LD) [V]: I believe that the advent of a vaccine gives a real glimmer of hope that the people working, as travel agents are, to the future have a lot to look forward to, provided they can get through the probably three months that we will have to wait until the industry starts to recover. I am quite happy that, if the Government believe they have made things clear so that people know what help is there, they have in fact done all we can ask.

Lord Callanan (Con): I thank the noble Lord for his support. The developments on the vaccine are encouraging. It is not my area of responsibility, but we all have our fingers crossed that the vaccine will prove successful, and that we will be able to help the industry through its current short-term difficulties and that it has a bright future ahead.

Lord Balfe (Con) [V]: My Lords, I draw attention to my interest in the register. I ask the Minister to urge on his friend convening the cross-departmental tourism task force the need to take on board the genuine concerns of the trade unions, and in particular pilots, who, because they have a need for a certain amount of flying hours, are being quite challenged on keeping their flying credentials up to date. I hope the Minister will be able to encourage his friend to look across the whole spectrum of problems in the travel industry.

Lord Callanan (Con): I will indeed pass on my noble friend's concerns. As I have said, I cannot predict what will be in the announcement tomorrow, but we have been looking very closely at all the problems that exist for the tourism sector, in particular for those who want to travel abroad. I will certainly pass on my noble friend's remarks.

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

Migrant Women: Domestic Abuse

Question

1.40 pm

Asked by ***Baroness Lister of Burtersett***

To ask Her Majesty's Government what steps they are taking to protect migrant women who have been subjected to domestic abuse who have no recourse to public funds.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, it is essential that migrant victims of domestic abuse, including those with no recourse to public funds, are treated first and foremost as victims. Already, the destitution domestic violence concession provides emergency crisis support to protect victims on certain spousal visas. We are taking steps to provide further protection through the £1.5 million scheme to support migrant victims, and to assess and address shortfalls in the current provision.

Baroness Lister of Burtersett (Lab) [V]: My Lords, instead of listening to the Joint Committee on the Draft Domestic Abuse Bill, organisations on the ground and the commissioner-designate, the Government's review of migrant domestic abuse victims has produced a pilot widely condemned as unnecessary, totally inadequate and, despite what the Minister has just said, potentially discriminatory, because it subordinates abused women's needs to their immigration status. Will the Government act on these concerns and rethink the pilot or, better still, enshrine in the Bill protection for abused migrant women and the Istanbul convention principle of non-discrimination, as is widely called for?

Baroness Williams of Trafford (Con): We listened very carefully to the Joint Committee's recommendations. I will discuss with colleagues whether there is any discrimination inherent in the scheme. While it will be

in force for only four months, we fully intend to roll it out far beyond March. I will keep the noble Baroness updated, and certainly take back her point about discrimination within the scheme.

Baroness Warsi (Con) [V]: My Lords, the destitution domestic violence concession is a limited way in which some of these women can access some support, but can the Minister confirm how long it currently takes for such applications to be considered, and for a payment to be made to these vulnerable women?

Baroness Williams of Trafford (Con): I cannot confirm the time but, particularly during Covid, our intention is to get funds to people and to lift any restrictions on recourse to public funds as quickly as possible, so that those people—mostly women—get the support that they need when they need it.

Baroness Butler-Sloss (CB) [V]: I refer to my interests in the register. Can the Minister take into account that, among migrants subjected to domestic abuse, there may be those in enforced marriage situations?

Baroness Williams of Trafford (Con): I agree that the two are not mutually exclusive at all. One might assume that, having been forced into a marriage, those women are more vulnerable to specific types of abuse than the general population.

Baroness Armstrong of Hill Top (Lab) [V]: My Lords, the Joint Committee, of which I was a member, was shocked by the evidence from those women with no recourse to public funds about how perpetrators exploited their immigration status. We now know that many of these women, during the pandemic, have been forced by those same perpetrators into sex for survival. It is shocking that in Britain today we are unable to support these women, so that they do not have to resort to such extreme and deplorable activity. This is urgent. What are the Government prepared to do to support them so that they are not exposed to such huge vulnerabilities?

Baroness Williams of Trafford (Con): If anyone is subjected to domestic violence or any other type of exploitation outlined by the noble Baroness, we will treat them first and foremost as victims. The Government have—particularly during the Covid situation, as she outlined—put quite substantial funding into ensuring that people in these vulnerable positions, and their children, get the help that they need, when they need it.

Baroness Burt of Solihull (LD) [V]: The Minister has told me that she believes that all domestic abuse victims should be protected, no matter what their status. Therefore will she confirm that, when amendments to the Domestic Abuse Bill to afford financial protection to all are put forward, they will be favourably received?

Baroness Williams of Trafford (Con): I do not know what the amendments are, but the noble Baroness will know, since I have responded to her previously on this, that we will look as carefully as we can at any amendments that seek to protect women at a very vulnerable time in their lives, hence the support for migrant victims scheme which will be rolled out very shortly. We will look at gaps in provisions but, to return to her initial point, people will be treated as victims first and foremost.

Lord Griffiths of Burry Port (Lab): My Lords, this is such a difficult area. On 19 October, the Government put forward the support for migrant victims scheme, which we have been alluding to. The day after, they reported to the authorities of the Council of Europe that this was evidence of their making progress towards ratification of the Istanbul convention and their need to comply with its requirements. The trouble is that I have here 58 signatures from leaders in this field who feel that this was an entirely misconceived initiative that will end up with measures that "directly contravene" Article 4.3 of the Istanbul convention, the non-discrimination principle in relation to migrant or refugee status. Can the Minister help me to see my way through these apparently contradictory remarks?

Baroness Williams of Trafford (Con): My Lords, I do not think that the Government wish in any way to contradict themselves on what they intend to do on the Istanbul convention. I understand that when the Domestic Abuse Bill becomes an Act, extraterritorial jurisdiction over specified offences, as required by the convention, will enable the convention to be ratified. However, I will look into it further and perhaps get back to the noble Lord on any further measures that are needed—or indeed any contradictions that do exist, because we would not want that unintended consequence of the passage of what I think is quite forward-leaning legislation.

Baroness Gardner of Parkes (Con) [V]: My Lords, many of these women have very little English, so huge language barriers isolate them from help that could be available to them. Will the Minister encourage local authorities and voluntary organisations to help groups and individuals to overcome these barriers? An additional problem that has been researched by charities in north Kensington is that very few such individuals have internet contact of any sort—the figures are quite alarming—so there will be no help for them at all until they become more conscious of using the internet and can afford to get some appliances.

Baroness Williams of Trafford (Con): I agree with my noble friend that accessibility to online services is crucial, and in fact we announced funding to help with online services during the Covid period. I wholeheartedly support her point about people who have very little English. I have met women in such situations who not only cannot speak English but have had their passports taken away from them. That leaves them in the most vulnerable situation imaginable, as they are not even able to explain what has happened to them.

Lord Woolley of Woodford (CB) [V]: The Joint Council for the Welfare of Immigrants argued, even before the Covid pandemic, that having no recourse to public funds had pushed families into abject poverty, unsustainable debt and homelessness. Covid has exacerbated this problem, particularly with regard to the rise of domestic violence suffered by migrant women. As a matter of urgency and decency, can we

[Lord Woolley of Woodford]
massively widen the exceptions to "no recourse to public funds" or, at best during this difficult time, abandon it?

Baroness Williams of Trafford (Con): As a matter of course during the Covid pandemic, if someone is a victim of domestic violence, they are effectively supported as such first and foremost, before any other considerations are taken into account. Certainly, "no recourse to public funds" change of conditions grants have been 89% successful. I do not take away from what the noble Lord says at all, because he is asking whether we can help these people as victims of domestic violence first and foremost.

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

1.51 pm

Sitting suspended.

Windrush Compensation Scheme

Private Notice Question

2.02 pm

Asked by ***Lord Dholakia***

To ask Her Majesty's Government what progress has been made in settling claims under the Windrush Compensation Scheme.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Windrush compensation scheme was established in April 2019 to compensate members of the Windrush generation for the losses and impacts that they suffered because they were unable to demonstrate lawful status. The first payment was made within four months of the scheme's launch and, to the end of September, over £2.8 million has been paid or offered in compensation, including multiple offers of over £100,000. More payments and offers are being made every week.

Lord Dholakia (LD): My Lords, there are serious allegations of racism and racial discrimination against those who are dealing with outstanding Windrush compensation claims. The injustice has lasted for over 70 years. The evidence from Wendy Williams has been accepted. We deal with contracts on Covid, awarding millions of pounds, without proper scrutiny. The Home Office cannot be the fit and proper body to sort out these grievances. Many people have died awaiting their claims while the Home Secretary's mind is on other matters. I ask the Minister to set out a date when all the outstanding claims will be resolved. Failing this, experience proves that the anger of the community will spill on to our streets.

Baroness Williams of Trafford (Con): I will not give some sort of defensive response to the noble Lord's point because, if serious allegations of racism are being put out, we need to take that extremely seriously. If the noble Lord can provide me with further detail, I will take that back. He also asked whether the Home Office is indeed the right department to deal with this. I think it is the right department to deal with this in the sense that people's identity needs to be established—which, of course, is the purview of the Home Office—before the claims are looked into. He is absolutely right to raise the issue of deceased people: first, it is tragic that someone is deceased before their claim is heard; secondly, it says to us that we need to be quicker at responding; but, thirdly, where someone is deceased, that claim can be dealt with in the appropriate manner with respect to their next of kin.

Lord Rosser (Lab) [V]: Wendy Williams, who carried out the Windrush review, told the Home Affairs Select Committee last month that she was surprised that only 168 people—certainly, at that time—had been compensated. She also expressed concern that there had been so little progress in reviewing the hostile environment policies and said that the Home Office could either embrace her recommendations or pay lip-service to them, and not institute fundamental cultural change. There is clearly a lack of leadership at the very highest level in the Home Office. A culture change was promised; it still has not been, and is not being, delivered. It is actions, not words, that count. Do the Government agree, or has even Wendy Williams got it all wrong?

Baroness Williams of Trafford (Con): I totally agree with the noble Lord that a culture change is badly needed. A culture change does not come in a quick timescale but over time. On the figure of 168 people, we need to move faster in processing claims, and I know my right honourable friend the Home Secretary is looking at that. We have also enlisted more resource to try to help process those claims. On complexity, yes, it is complex; people have complex lives, and each case has to be taken on the evidence and information that is brought forward. We do not want people to go short on what they receive but to get the full amount they deserve—and all these people are very deserving of the compensation they get. Regarding the slow progress on the recommendations, I do not contradict what Wendy Williams said at all. One thing she said was that we should reflect, rather than jump to action, in implementing some of the recommendations. That is not to say that we should drag our heels, but we are going as fast as we can in what is a very sensitive area indeed.

Baroness Hamwee (LD) [V]: My Lords, is it appropriate that, as reported, many officials working on the compensation scheme have immigration enforcement backgrounds, where the default response for so long has been to say "No", rather than "Yes"?

Baroness Williams of Trafford (Con): I cannot substantiate the point that the noble Baroness makes; that is possibly my ignorance rather than anything else. First and foremost, however, we must assist people to get the compensation that they deserve for the wrongs that they have suffered over the past 70 years under successive Governments.

Baroness Prashar (CB) [V]: My Lords, as a result of the complaints about the way the scheme is being administered, the Home Office is reported to have

launched an internal inquiry about racism and so on. Can the Minister please tell the House: what is the remit of this inquiry, when will it be completed and will the results be made public?

Baroness Williams of Trafford (Con): My Lords, I shall provide the noble Baroness with more details, in terms of whether it will be made public and other details, because I am afraid that I have scant information on that at the moment.

Lord Sheikh (Con) [V]: My Lords, about 12,000 people are expected to claim under the compensation scheme. Nine have died before receiving any compensation and, unfortunately, there may be more deaths before the payments are made. Can my noble friend the Minister explain the Government's plans to support the bereaved families?

Baroness Williams of Trafford (Con): I have to agree with my noble friend that someone dying before they receive compensation is absolutely tragic. Of course, we would work with the next of kin to ensure that any compensation due to that person is paid to the next of kin or to the designated chosen person. The point is that it is not acceptable that people die before they get the compensation they deserve. It is incumbent upon the Home Office to ensure that these claims are expedited more quickly than they have been.

The Lord Bishop of St Albans: My Lords, the Windrush protests are a wake-up call to all of us and to every institution in this country. Indeed, the Church of England has set up an antiracism taskforce to look at this issue and to achieve change. Is it correct that the Equality and Human Rights Commission, which is investigating this issue with regard to the Home Office, does not have a single black commissioner on the current board? What do Her Majesty's Government plan to do to make the EHRC more representative so that it can undertake this work?

Baroness Williams of Trafford (Con): I do not think it essential that there is every protected characteristic on the EHRC. However, I take the right reverend Prelate's point that—certainly in the current climate—BAME representation or indeed black representation might be a really good asset to the EHRC. I am sure he is correct, but I will check out the veracity of that and get back to him.

Lord Woolley of Woodford (CB) [V]: My Lords, this is particularly personal to me. My mother was part of the Windrush generation and gave the best part of her life, more than 50 years, to working for the NHS. The most senior black civil servant working on the Windrush compensation scheme resigned, citing racism and stating that there was a complete lack of humanity in dealing with applicants. Equally strong was Wendy Williams' Windrush review, which highlighted that people were not coming forward because the burden of proof for their legal status was far too high. Given that trust in the system is at an all-time low, particularly among black people, and that things are still going catastrophically wrong, does the Minister agree that we should pause deportation flights such as the one to Jamaica scheduled for 2 December?

Baroness Williams of Trafford (Con): On the last point, I understand that none of the people scheduled for deportation is Windrush, and actually there are some very serious criminals due to go on that flight. That said, as I said earlier to the noble Lord, Lord Dholakia, the fact that the most senior black civil servant made those claims is not something that I can stand here and be defensive about. We need to listen very carefully to what people are saying as opposed to dismissing it—although I am not saying that it is being dismissed at all. The scheme was designed with some of the claimants in mind, but it is something for us as the Home Office to reflect on in the weeks and months ahead.

Baroness Stuart of Edgbaston (Non-Afl): My Lords, we have known since 2013 that there was a documentation problem regarding the Windrush generation. We have had years of trying to put this right but the progress we have made so far is clearly insufficient and inadequate. Identity is sometimes difficult to prove, but are we making that process too difficult? Will the Minister at least undertake to update the House, shall we say on the anniversary in April 2021, on what further progress has been made?

Baroness Williams of Trafford (Con): I would be very happy to update the House. Regarding the EU settlement scheme, the attempt was to make identity assurance very easy. The noble Baroness says that we have known about this since 2013; the sad thing is that we have actually known it for decades, and we all need to reflect upon that.

Lord Loomba (CB) [V]: My Lords, we are all aware that in situations such as this where a wrong has been committed, there can be a ripple effect and wider family members suffer as well. What is being done to ensure that everyone who has suffered is compensated in due course?

Baroness Williams of Trafford (Con): As I said earlier, each case will be treated sensitively and each person who makes a claim will be assisted through that process—not to prove them wrong but to prove them right regarding the compensation they are owed. There is no cap on the level of compensation or indeed on the scheme itself. However, we need to encourage more people to come forward. There have been communications campaigns and money has been given out to community organisations to promote the scheme, but by this point we would have expected more people to have come forward for their claims to be processed.

Baroness Hoey (Non-Afl): My Lords, does the Minister recognise that many of the Windrush generation who have been treated so badly for so long are actually quite frightened about approaching the Home Office because they see it as an institution that has been responsible for many unfair deportations? Will the Home Office think about being much more proactive about going out and talking to these people, many of

[Baroness Hoey]
whom are now in the last stages of their lives? If we do not get this sorted out soon, it is going to be a real travesty of justice for all those people.

Baroness Williams of Trafford (Con): I totally take that point on board. I agree with the noble Baroness that they might be frightened and that any notion of "state" might be frightening to them. As I have said, we have done quite a lot of outreach through church leaders, faith leaders and community leaders, but I shall certainly take that back. I know we will be reflecting on how far we have got with people coming forward and trying to make that process better, because clearly, more people should be coming forward.

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

Integrated Review
Statement

The following Statement was made in the House of Commons on Thursday 19 November.

"With permission, Mr Speaker, I will update the House on the Government's integrated review of foreign, defence, security and development policy.

Our review will conclude early next year and set out the UK's international agenda, but I want to inform the House of its first outcome. For decades, British Governments have trimmed and cheese-pared our defence budget. If we go on like this, we risk waking up to discover that our Armed Forces—the pride of Britain—have fallen below the minimum threshold of viability, and, once lost, they can never be regained. That outcome would not only be craven; it would jeopardise the security of the British people, amounting to a dereliction of duty for any Prime Minister.

I refuse to vindicate any pessimistic forecasters there may have been by taking up the scalpel yet again. Based on our assessment of the international situation and our foreign policy goals, I have decided that the era of cutting our defence budget must end, and it ends now. I am increasing defence spending by £24.1 billion over the next four years. That is £16.5 billion more than our manifesto commitment, raising it as a share of GDP to at least 2.2%, exceeding our NATO pledge, and investing £190 billion over the next four years—more than any other European country and more than any other NATO ally except the United States.

The Ministry of Defence has received a multi-year settlement because equipping our armed forces requires long-term investment, and our national security in 20 years' time will depend on decisions we take today. I have done this in the teeth of the pandemic, amid every other demand on our resources, because the defence of the realm and the safety of the British people must come first. I pay tribute to my right honourable friends the Chancellor and the Defence Secretary, who believe in this as fervently as I do. Reviving our armed forces is one pillar of the Government's ambition to safeguard Britain's interests and values by strengthening our global influence and reinforcing our ability to join the United States and our other allies to defend free and open societies.

The international situation is now more perilous and intensely competitive than at any time since the cold war. Everything we do in this country—every job, every business, even how we shop and what we eat—depends on a basic minimum of global security, with a web of feed pipes, of oxygen pipes, that must be kept open: shipping lanes, a functioning internet, safe air corridors, reliable undersea cables, and tranquillity in distant straits. This pandemic has offered a taste of what happens when our most fundamental needs are suddenly in question. We could take all this for granted, ignore the threat of terrorism and the ambitions of hostile states, hope for the best, and we might get away with it for a while, before calamity strikes, as it surely would. Or we could accept that our lifelines must be protected but we are content to curl up in our island and leave the task to our friends.

My starting point is that either of those options would be an abdication of the first duty of Government: to defend our people. My choice—and I hope it will carry every Member of the House—is that Britain must be true to our history and stand alongside our allies, sharing the burden and bringing our expertise to bear on the world's toughest problems. To achieve this, we need to upgrade our capabilities across the board. We have already united our international effort into a new department combining aid and diplomacy, led with grip and purpose by my right honourable friend the Foreign, Commonwealth and Development Secretary. Next year will be a year of British leadership when we preside over the G7, host COP 26 in Glasgow, and celebrate the 75th anniversary of the first United Nations General Assembly in London. We are leading the world towards net zero with our 10-point plan for a green industrial revolution. We are campaigning for our values, particularly freedom of religion and the media, and giving every girl in the world access to 12 years of quality education.

But extending British influence requires a once-in-a-generation modernisation of our armed forces, and now is the right time to press ahead, because emerging technologies, visible on the horizon, will make the returns from defence investment infinitely greater. We have a chance to break free from the vicious circle whereby we ordered ever decreasing numbers of ever more expensive items of military hardware, squandering billions along the way. The latest advances will multiply the fighting power of every warship, aircraft and infantry unit many times over, and the prizes will go to the swiftest and most agile nations, not necessarily the biggest. We can achieve as much as British ingenuity and expertise allow.

We will need to act speedily to remove or reduce less relevant capabilities. This will allow our new investment to be focused on the technologies that will revolutionise warfare, forging our military assets into a single network designed to overcome the enemy. A soldier in hostile territory will be alerted to a distant ambush by sensors on satellites or drones, instantly transmitting a warning, using artificial intelligence to devise the optimal response and offering an array of options, from summoning an

airstrike to ordering a swarm attack by drones, or paralysing the enemy with cyberweapons. New advances will surmount the old limits of logistics. Our warships and combat vehicles will carry "directed energy weapons", destroying targets with inexhaustible lasers. For them, the phrase "out of ammunition" will become redundant.

Nations are racing to master this new doctrine of warfare, and our investment is designed to place Britain among the winners. The returns will go far beyond our armed forces, and from aerospace to autonomous vehicles, these technologies have a vast array of civilian applications, opening up new vistas of economic progress, creating 10,000 jobs every year—40,000 in total—levelling up across our country, and reinforcing our union. We are going to use our extra defence spending to restore Britain's position as the foremost naval power in Europe, taking forward our plans for eight Type 26 and five Type 31 frigates, and support ships to supply our carriers.

We are going to develop the next generation of warships, including multi-role research vessels and Type 32 frigates. This will spur a renaissance of British shipbuilding across the UK, in Glasgow and Rosyth, Belfast, Appledore and Birkenhead, guaranteeing jobs and illuminating the benefits of the union in the white light of the arc welder's torch. If there is one policy that strengthens the UK in every possible sense, it is building more ships for the Royal Navy. Once both of our carriers are operational in 2023, the UK will have a carrier strike group permanently available, routinely deployed globally, and always ready to fight alongside NATO and other allies.

Next year, "Queen Elizabeth" will lead a British and allied task group on our most ambitious deployment for two decades, encompassing the Mediterranean, the Indian Ocean and east Asia. We shall deploy more of our naval assets in the world's most important regions, protecting the shipping lanes that supply our nation, and we shall press on with renewing our nuclear deterrent. We will reshape our Army for the age of networked warfare, allowing better equipped soldiers to deploy more quickly, and strengthening the ability of our special forces to operate covertly against our most sophisticated adversaries.

The security and intelligence agencies will continue to protect us around the clock from terrorism and new and evolving threats. We will invest another £1.5 billion in military research and development, designed to master the new technologies of warfare. We will establish a new centre dedicated to artificial intelligence, and a new RAF space command, launching British satellites and our first rocket from Scotland in 2022. I can announce that we have established a National Cyber Force, combining our intelligence agencies and service personnel, which is already operating in cyberspace against terrorism, organised crime and hostile state activity. And the RAF will receive a new fighter system, harnessing artificial intelligence and drone technology to defeat any adversary in air-to-air combat.

Our plans will safeguard hundreds of thousands of jobs in the defence industry, protecting livelihoods across the UK and keeping the British people safe. The defence of the realm is above party politics, and we all take pride in how British resolve saved democracy in 1940, and in how British internationalism, directed by Clement Attlee, helped to create NATO and preserve peace through the Cold War. The wisdom and pragmatism of Margaret Thatcher found a path out of confrontation when she met Mikhail Gorbachev in 1984. In each case, Britain tipped the scales of history and did immense good for the world. Now we have a chance to follow in this great tradition, end the era of retreat, transform our armed forces, bolster our global influence, unite and level up across our country, protect our people and defend the free societies in which we fervently believe. I commend this Statement to the House."

2.17 pm

Baroness Smith of Basildon (Lab): My Lords, the first duty of any Government is the safety and security of its citizens. The Statement on defence spending is obviously welcome news. The Prime Minister's announcement of what he called, without any sense of irony, an end to the "era of retreat" is necessary, given that the Conservatives' last two defence reviews have led not only to spending cuts of £8 billion but to a reduction in the size of the Armed Forces by 40,000 full-time troops.

The enormous international uncertainty we face today reflects the diversity of the dangers we face: adversaries investing heavily in new military; the devastating effects on our health and finances of the global pandemic; economic and security uncertainty as we hurtle towards the end of the Brexit transition without knowing if, when or what the deal will be; technological developments such as AI and sophisticated internet communications that we previously only imagined; and a climate emergency—while the Government's seeking to write into legislation the right for Ministers to break the law has done little to enhance our international standing. So, there are huge challenges.

However, these uncertain and dangerous times also provide an opportunity for the Government to outline a new vision of the UK's place in the world. We have been here before: soon after the Second World War, the leadership of Clement Attlee and his Foreign Secretary Ernest Bevin was instrumental in setting up NATO. Its enduring strength in providing collective security serves as a constant reminder of what the UK can achieve on the world stage. In 2002 the significance of our landmark International Development Act was recognised throughout the world, and during the 2008 financial crisis we worked globally to secure an economic rescue plan. I know I am not alone in wanting us to show such global leadership again, because when we have the vision and the moral imperative, the UK is a force for good in the world. We must ensure that our Armed Forces are properly funded and that they are integral to that vision.

It was almost 60 years ago that Dean Acheson, a former US Secretary of State, observed that Britain has lost an empire but failed to find a role. We ceded that issue with our membership of the EU but, as we leave, the need to define our place in the world again becomes key. This is why it is so disappointing that the Prime Minister's Statement fails to provide the strategy to meet the many challenges we face today. For a Statement on an integrated review, it does not feel very integrated, lacking both a wider foreign policy context and clarity about the Government's priorities. For

[Baroness Smith of Basildon]
example, other than passing references, the Statement fails to mention the security implications of climate change and how we will respond. Can the noble Baroness tell the House when the MoD's climate change and sustainability strategy will be published?

Also, there is no commitment in the Statement to the Conservatives' election manifesto pledge to maintain 0.7% GNI on aid. Following the abolition of the Department for International Development, this could have been an opportunity to restore confidence in how we see our international role. The former Prime Minister David Cameron's statement that abandoning the 0.7% pledge would be

"a moral, strategic and political mistake"

was endorsed by the noble and gallant Lord, Lord Richards, a former Chief of Defence Staff, saying that this spending is hugely in the UK's interests. The benefits that such funding has brought across the world reinforce why an integrated strategic approach is so important, and again bring home why those cuts to the budget jeopardise Britain's soft power and influence. We have had many debates on this in your Lordships' House and that soft power is critical to how we meet the threats faced and define our place on the international stage.

People need to be placed front and centre of our defence strategy, whether our brave Armed Forces personnel or those working in supporting industries. With the current jobs crisis, we welcome the commitment in the Statement to 10,000 new jobs every year. Can the noble Baroness say where these jobs will be and how they will be recruited and monitored? Will she today rule out any more personnel cuts across the Army, the RAF and the Navy? Can she also say what lessons the MoD have learned from previous overspends and mismanagement?

Last year, the Public Accounts Committee reported on the disastrous failure of the deal with Capita for Army recruitment. That contract has seen costs soar up to £677 million in 2018 and yet it has failed to deliver, leaving the Army understrength. The PAC also highlighted problems with other contracts and added:

"We are disappointed to see the MoD replicate the contract management errors that our Committee sees all too often across government."

Our military deserves better and increases in spending must be matched by rooting out such scandalous wastes of public money.

I also ask the noble Baroness about the certainty of this funding and its impact on other areas of public spending. The costs of the pandemic are eye-wateringly large. Government borrowing between April and November was £215 billion and is projected to rise further. The deficit continues to grow. The announcement that the defence budget will grow by 4.2% above inflation each year means that, by 2024-25, it will be £7 billion higher than at present, in real terms. That is a significant increase, as she is aware. With the spending review this week, there are strong indications that the Chancellor will impose a public sector pay freeze, including for military personnel and those who have been at the heart of tackling this pandemic and protecting the public. Post Covid, we need to invest to regrow our economy and protect jobs. We all know that difficult decisions will have to be taken. Can the noble Baroness, without pre-empting the Chancellor's Statement, tell the House whether the additional costs of defence spending will be met from increased taxation or cuts in other areas of public spending?

In his Statement, the Prime Minister is correct to say that

"our national security in 20 years' time will depend on decisions"

that he is making today. Unlike the extensive consultation in 1998, the call for evidence for this review lasted just one month. We expected to see the integrated review published this month and I understand it has now been delayed until next year. I do not know if the noble Baroness is able to explain the reasons for the delay, but I hope that she will tell your Lordships' House that the delay will allow for engagement and consultation with all involved. Doing so will have an impact on the likely success of such an integrated review and strategy. We need an ambitious strategy to develop new international relationships and protect our country against serious threats in the years ahead. Defence spending is essential to this, but the Government still need to address the strategy and identify the diverse threats to peace and stability. Doing so requires a coherent, co-ordinated plan with, at its core, a vision of the UK as a moral force for good.

Lord Newby (LD): My Lords, I thank the noble Baroness the Leader of the House for answering questions on the Prime Minister's Statement. The Prime Minister begins by saying that he

"will update the House on the Government's integrated review of foreign, defence, security and development policy"

but the Statement does nothing of the sort. It is simply a statement of increased military expenditure, particularly on the Navy. The Prime Minister has successfully wrenched the nation's credit card from the Chancellor's possession long enough to provide for significant additional expenditure on defence kit. In themselves many, if not all, of the items on the shopping list are clearly desirable. Who could possibly object to having more frigates or drones, better AI or the National Cyber Force? But it seems more than somewhat bizarre to be announcing this additional spending in advance of the completion of the integrated review. Could the noble Baroness explain to the House exactly when that review will be published?

It is particularly worrying when we hear repeated rumours of a cut from 0.7% to 0.5% of GDP spent on overseas development. Can the noble Baroness the Leader confirm that these rumours are simply untrue? If she cannot, what is the rationale to spend more on military kit and to cut the aid budget? How could robbing Peter to pay Paul in this way possibly lead to a net gain in our credibility and reputation, taking account of the soft, as well as hard, power we wield as a nation?

The Statement waxes lyrical on the need to fight terrorism, and no one can disagree, but the best way to fight terrorism and protect our security as a nation is in the closest possible co-ordination with our nearest allies. Is it therefore not reckless of the Government to have completely failed to address security co-operation with our EU partners, as part of the Brexit negotiations?

Does leaving the EU systems for sharing information on criminals and terrorists, and the European arrest warrant, not present a body blow to our ability to identify, track and trace individuals who pose a direct threat to our security?

There is no update or set of principles on foreign policy, just a general statement that the world is an increasingly dangerous place. This a pretty thin basis for detailed defence procurement priorities. In the Statement, the Prime Minister says that new technological advances will

"surmount the old limits of logistics",

but there are no advances that mean that fighting ships do not require refuelling or that sailors do not require feeding. When one of our carriers is deployed to the Far East, for example, how is it to be provisioned and, given that the new frigates will not be built for a number of years, how will it be protected?

While there is quite a lot about the Navy in the Statement, there is nothing at all about the Army. What does this mean for Army expenditure? For example, are the Government committed to keeping troop levels at their current levels and are rumours about reducing the number of tanks correct? How does this increased expenditure fit into the Government's overall public expenditure plans? We will be hearing more from the Chancellor later this week but, given the weakness of public finances, the expenditure being discussed today simply cannot be funded by increased borrowing. To echo the noble Baroness, Lady Smith, which other areas of public expenditure will fall or which taxes will rise to pay for this?

The noble Baroness will no doubt say that she cannot give an answer to these questions because that would pre-empt Wednesday's Statement—but today's Statement pre-empts Wednesday's Statement. The truth is that the Prime Minister has done what he does best: making exaggerated claims for future policy developments, while leaving the Chancellor of the Exchequer to pick up the bill. That is the fundamental problem with this Statement. It is isolated from the integrated foreign, defence, security and development review and from the overall tax-and-spend strategy of the Government. With its soaring rhetoric, *Boy's Own* breathlessness and glowing references to past glories, it runs the risk of being isolated from any realistic assessment of Britain's place in the modern world.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): I thank the noble Baroness and the noble Lord for their comments. I will start by talking briefly about the integrated review, as they both asked some questions about it. We will conclude and publish the full integrated review early next year. Both noble Lords asked about the delay and, as they rightly said, the review was announced in February; it was then paused in April, due to Covid, and restarted in June. So we did have a delay in the review and it will now conclude early next year. However, we are in the final phases of it, aligning our ambition with our resources. The defence settlement outlines the first conclusions of the review, which will put us on the front foot as we equip our Armed Forces for the threats of today and tomorrow, while ensuring that long-term defence projects have certainty and are not put on hold.

When the full integrated review concludes early next year, it will set out our overarching strategy for national security and foreign policy, including defence, diplomacy, development and national resilience. It will set the direction for more detailed strategies and departmental activity in the coming years. It will also set out the way in which the UK will be a problem-solving and burden-sharing nation, and a strong direction for recovery from Covid at home and overseas. That issue was touched on at the G20 virtual summit held over the weekend, when all the leaders discussed it.

The noble Baroness, Lady Smith, rightly talked about making sure that all parties were engaged. I can certainly reassure her that this is a cross-Whitehall process, allowing all to contribute expertise and analysis—not only within Whitehall but with partners, including NATO. Our closest allies have been involved during the process and will continue to be so. She also asked about the defence review, which is ongoing. Further details will be updated in due course.

Both noble Lords asked about spending. This is the only multiyear settlement for any government department that will be announced this year. I can reassure them that it has been fully costed, building on extensive work by the Treasury and MoD to understand what future capabilities will cost and how much can be delivered through efficiencies.

The noble Baroness talked about jobs, quite rightly. We expect this settlement to create up to 10,000 jobs each year across the UK, and as many as two-thirds more in the supply chain. Both noble Lords will be aware that in 2018-19, the MoD supported over 400,000 jobs, while defence spent £19.2 billion with UK industry last year. This new settlement will support further jobs in a whole array of areas: in shipbuilding, for instance, and obviously in emerging technologies—in space and in the building of the Tempest. We hope that this spending will create jobs in a range of ways. Part of the investment will also be looking to upskill and make sure that we can provide jobs for people around the whole of the United Kingdom—Scotland obviously being key to some of the developments that we are talking about. Hopefully this will be a UK-wide investment in jobs.

Both noble Lords rightly asked about international development. We are of course extremely proud of our work there. We remain committed to supporting international development and helping the world's poorest people. Of course, our Armed Forces are also a humanitarian force for good, coming to the aid of the most vulnerable following natural disasters, bringing stability to countries marred by conflict with peacekeeping missions and bolstering efforts to tackle Covid in the developing world. Both noble Lords will both know that the spending review will be announced on Wednesday; funding will be announced then.

The noble Lord, Lord Newby, asked about the Army. I can assure him that the UK will continue to have full-spectrum Armed Forces, including an armoured capability. But we also need to ensure that we focus on how the Army is equipped and what we want it to do. This settlement will ensure that our soldiers have some of the best equipment in the world, so that they can continue to do their fantastic job.

[Baroness Evans of Bowes Park]

Both noble Lords talked about global leadership. They are absolutely right, which is why this settlement raises our defence spending to 2.2% of GDP. That is more in cash terms than any other European ally or NATO member, other than the United States. We will continue to lead internationally. Next year is a critical year for our international leadership, as we have the G7 presidency, COP 26 and the 75th anniversary of the first UNGA meeting in London. We will continue to play our part on the global stage, and this settlement will help us to do that.

The Deputy Speaker (Lord Lexden) (Con): We now come to the 20 minutes allocated for Back-Bench questions. I ask that questions and answers be brief, so that the maximum number of speakers can be called.

2.36 pm

Lord Howell of Guildford (Con) [V]: My Lords, does my noble friend agree that the battlefields of future warfare will lie increasingly right inside our societies and inside people's minds? So, while these measures are obviously extremely welcome for our Armed Forces, in the Prime Minister's own words, we must

"upgrade our capabilities across the board".—[*Official Report*, Commons, 19/11/20; col. 488.]

Will she also assure us that when the integrated review eventually appears, having looked further at our defence needs, it will fully reflect what the Trade Secretary calls the "Pacific mindset"—along with the "Commonwealth mindset"—since these are the areas where our key future alliances increasingly lie for security and defence, as well as for trade and investment?

Baroness Evans of Bowes Park (Con): I thank my noble friend. He is absolutely right that we must look across all our capabilities to ensure an integrated response across the board to the threats and opportunities of the modern world. He is also right to emphasise the importance of the Commonwealth and the Indo-Pacific region. One of our greatest strengths is our alliances, along with our deep ties with the nations of the Commonwealth. We will continue to work closely with them, and of course the Indo-Pacific is the fastest-growing economic region in the world, so it is a crucial transit point for global trade, and a home to UK allies and trading partners. They will be at the forefront of our thoughts.

Lord Houghton of Richmond (CB) [V]: My Lords, the Statement last week is to be welcomed, albeit I think that it brought relief rather than jubilation to most defence and security experts. However, I too thought that the style and content of the Statement were somewhat disappointing. It is potentially a missed opportunity—little more than a hubristic announcement of a list of new defence capabilities. Will the integrated review itself give more evidence that the capability choices that have been made are matched to reconsidered strategy, particularly in the areas of modernised deterrence, national resilience, an integrated approach and—dare I say it—a more effective use of strategic information?

Baroness Evans of Bowes Park (Con): I thank the noble and gallant Lord and, yes, I can say that as we are now in the final stages of the integrated review, we are aligning our ambition with our resources. As I said in response to the noble Baroness, Lady Smith, this defence review outlines the first conclusions of that and gives certainty to our defence projects. But the noble and gallant Lord is absolutely right: when we publish the fully integrated review, it will set out our ambition for the UK's role in the world and our long-term strategic aims for our national security and foreign policy.

The Lord Bishop of Portsmouth [V]: My Lords, I welcome this announcement, with its impact on jobs and industry, including in the diocese I serve. I note the welcome emphasis that the Government appear to give to defence and security. Will the Minister therefore recognise that previous defence reviews set out grand, strategic ambitions but were not backed by the necessary resources? Will she specifically confirm the Government's commitment to providing those resources to match the ambitions of the review, and will she further recognise that as we wait for spending commitments on development aid and public sector pay, how much the Government propose in additional investment is an accurate barometer of what they consider to be most important?

Baroness Evans of Bowes Park (Con): I reassure the right reverend Prelate that this settlement puts the defence programme on a sustainable footing and will make sure that our Armed Forces can meet today's threats at the same time as delivering on a once-in-a-generation modernisation. This £16.5 billion increase over four years is the biggest uplift in 30 years, and, as I mentioned, it cements the UK's position as the largest defence spender in Europe and the second largest in NATO.

Baroness Blackstone (Ind Lab): My Lords, I am sure that I do not need to remind the noble Baroness the Leader of the House that the Conservative Party manifesto contained a commitment to spend 0.75% of GNI on development aid. She failed to answer the direct question put by my noble friend Lady Smith and the noble Lord, Lord Newby, about whether this would be maintained. How, in the circumstances, can abandoning an election manifesto commitment of this kind even be considered—it is enshrined in law? Can she tell the House what the effect of doing so will have on the lives of millions of poor people living in dire poverty around the world, quite apart from the damage it will do to our international reputation?

Baroness Evans of Bowes Park (Con): As I have already said, we are, and should be, proud of our international development work. I have also already said that the spending review will be on Wednesday and announcements will be made there. I will not say anything further on that today, but I can certainly say that we are absolutely committed to supporting international development and helping the world's poorest people. We will remain a world leader in this area through, as I have said, hosting COP 26, our G7 presidency and hosting a major girls' education summit next year.

Baroness Smith of Newnham (LD) [V]: My Lords, I suspect that the Prime Minister's Statement divides Peers, MPs and everybody else, to an extent, into those of us who speak on defence issues and those concerned about wider issues. Therefore, while I obviously welcome what the Statement said on defence expenditure, like other Peers, I ask the Minister what has happened to the 0.7% legal commitment to development aid. In the defence sphere, the Prime Minister talked about a

"once-in-a-generation modernisation"

programme and how we are going to get away from the "vicious circle" of

"squandering billions along the way."—[*Official Report*, Commons, 19/11/20; col. 488.]

Given that the cart has come before the horse—the expenditure has been flagged up before the integrated review is complete—could the Minister explain to us how the Government intend to avoid "squandering billions" and how they will improve defence procurement?

Baroness Evans of Bowes Park (Con): As the noble Baroness says, we believe that this settlement gives a chance to break free from the vicious circle whereby we ordered ever decreasing numbers of ever more expensive items of military hardware. We have set out a number of projects that we will move forward across the Navy in particular but also with the RAF and others. We have also set out a very ambitious plan focused on using new technologies, AI, our new National Cyber Force and space. This is a broad package that we believe will truly help our Armed Forces modernise and be able to tackle the emerging and very different global threats that they are currently facing.

Lord Robathan (Con): My Lords, I certainly welcome this pledge to increase defence spending: the world is a very much more dangerous place, and I will take the noble Lord, Lord Newby, through a few more of the threats outside later, if he likes. Can my noble friend say whether I can be confident that this announcement marks a reverse in the defence cuts that have taken place over the last 30 years since the end of the Cold War? Before I sit down, I will also say that I was on the International Development Committee for six years in the other place and saw some quite excellent work done with British taxpayers' money. I also saw some shocking waste: an example that particularly springs to mind was an African country buying a fleet of Mercedes cars for its Cabinet Ministers with British taxpayers' money. I have to say, if I might, that not all money spent on international development, or indeed on defence, is well spent.

Baroness Evans of Bowes Park (Con): I can certainly say to my noble friend that this is a significant investment in defence, and, as I have said, it is the biggest uplift in 30 years. The MoD is committed to making a step-change in defence transformation so that it delivers the digitised, efficient, productive and modernised defence that we require. We will also accelerate the adoption of new technologies, ensuring, all in all, that our military has the best capacity and capability that it needs, as he rightly says, to address the ever-growing challenges that we face.

Lord Boyce (CB) [V]: My Lords, the Prime Minister's defence announcement is to be greatly welcomed, especially the multi-year settlement. Also welcome is the firm recognition of the strategic priority to keep the sea lanes open. The key to this is destroyer frigate forces, which are of barely sufficient size for this task. Their numbers are imperilled by the decay, through old age, of the Type 23 frigate. The intent to build more ships for the Royal Navy is good news, but this ageing out of the Type 23 means that this intent must be expedited. Would the Minister agree that an in-service date of 2027 for the Type 31 is an unacceptably long time to have to wait for this much-needed asset to join the fleet and that the shipbuilding industry, which is much favoured in this announcement, should be made to do better?

Baroness Evans of Bowes Park (Con): I thank the noble and gallant Lord. Certainly, this settlement will significantly expand the Royal Navy: as well as confirming the current frigate orders, as he rightly says, we have also committed to the next-generation warship, the Type 32, and to research and support vessels. We are sticking to the timescale of 2027 for both the Type 31 and the Type 26. The Type 32 will represent an investment in UK shipbuilding of over £1.5 billion over the next decade and will, of course, create and sustain more jobs. We plan for this to be a UK-led programme that will revitalise the shipbuilding sector and create thousands of jobs. We believe that this is a strong settlement for the Navy, which will enable us to invest in new technology and ships and provide our Royal Navy with the capability that it needs.

Lord West of Spithead (Lab): My Lords, I am delighted that the Government are investing an extra £24.1 billion over the next four years. It is desperately needed after the reductions since 2010. The decision to base our defence and security on a maritime strategy is also correct and welcomed. As you can imagine, it is music to my ears to have the Prime Minister say

"If there is one policy that strengthens the UK in every possible sense, it is building more ships for the Royal Navy",—[*Official Report*, Commons, 19/11/20; col. 488.]

and that we should become the "foremost naval power" in Europe. It would be very easy to express concerns about the many unknowns and possible pitfalls in this announcement: the timing of the frigate build, for example, is one of them, as the noble and gallant Lord, Lord Boyce, mentioned. However, today, I believe we should celebrate the extra money for defence in this increasingly dangerous and unstable world. Many of the details will have to await the review's outcome in January next year, but I ask the Leader of the House to confirm that, as the Prime Minister is so positive about running two operational carriers by 2023, we will still be ordering a minimum of 90—if not more—F-35Bs to ensure that we have two air groups and an operational conversion unit.

Baroness Evans of Bowes Park (Con): I welcome the noble Lord's welcoming of this announcement. He has been a vocal and consistent strong voice for the Navy within this House, and I am glad that he is pleased. He is right that the carrier strike group 21 is an ambitious global deployment. From 2023, it will be

[Baroness Evans of Bowes Park]
permanently available to be routinely deployed globally, and, in fact, HMS "Queen Elizabeth" will lead a British and allied task group on our most ambitious deployment for two decades, encompassing the Mediterranean, the Indian Ocean and east Asia. We are currently finalising our plans for the deployment with regional partners.

Baroness Northover (LD): My Lords, pandemic was on the 2015 review risk register. Does the noble Baroness recognise that failing to address that has resulted in costs to the economy which are multiples of this defence uplift? What is the point of an integrated review, dismantling DfID even before the review began and this announcement before it concludes if we do not know what challenges the Government think we face and how we might tackle them with our allies? Does she think that global Britain is enhanced or undermined by cutting the development budget?

Baroness Evans of Bowes Park (Con): As I said, we have already worked through the main findings within government to inform this announcement and they are the first conclusions of the integrated review. The Government are working to ensure that we have an integrated strategy. As I have said to a number of noble Lords, that will be published in its entirety in the new year.

Lord Lancaster of Kimbolton (Con): My Lords, the investment in space and cyber is most welcome. Many of the skills required are already held in the private sector, so will this review provide the catalyst to implement the whole-force approach? Is this not a golden opportunity to reset the relationship between defence and industry into one of genuine partnership?

Baroness Evans of Bowes Park (Con): My noble friend is absolutely right. That is certainly what we intend to do. On AI, for instance, the MoD is working with partners across government, UK industry and academia, and will invest in AI hubs to test and develop new models of collaboration and co-creation. On space, Space Command will be staffed jointly from the three services, the Civil Service and key members of the commercial sector, and will bring together three functions: space operations, space workforce generation and space capability. Such working together, as my noble friend set out, is at the centre of our approach, particularly in these new and emerging technologies.

Lord Stirrup (CB): Although the UK will still be spending a smaller percentage of its GDP on its defence than at the end of the previous decade, I welcome the financial settlement and the commitment to new and emerging technologies. However, conflict tends to bring with it rather unpleasant surprises. Will the noble Baroness the Leader therefore confirm that the four structures and processes that will be set out in the integrated review will retain the necessary agility and adaptability to enable us to respond effectively to those things that we did not or could not foresee?

Baroness Evans of Bowes Park (Con): The noble and gallant Lord is absolutely right. Flexibility and being able to adapt to emerging threats are certainly at the heart of what this review will look to do. A lot of our investment in new technologies is based on the very issues that he raises: that we need to be able to adapt, because what we face now may not be what we face in years to come. We are all cognisant of that.

Lord Wallace of Saltaire (LD) [V]: My Lords, it is 53 years since the British Government announced our withdrawal of forces from east of Suez, and we well know that our current Prime Minister wants nothing better than to move an increasing proportion of our forces back east of Suez. All the report says about that is that we will be extending our influence, but it does not tell us what influence over whom. Do we intend, as we build up our Gulf base, to defend Saudi Arabia against Iran? If we are to send a carrier task force next year into the South China Sea, is it our intention to challenge China and would that be good for our trade relations with it?

Baroness Evans of Bowes Park (Con): As I have said, the full integrated review when published next year will set out our overarching strategy for national security and foreign policy.

Baroness Helic (Con) [V]: I join noble Lords in welcoming this significant and long-overdue spending commitment. What impact will it have on job creation in all four nations of the United Kingdom?

Baroness Evans of Bowes Park (Con): As I said in a previous answer, we believe that this settlement will create jobs across the United Kingdom. For instance, in Scotland, we already spend £1.7 billion a year supporting 10,000 jobs, and we are taking forward our plans for the eight Type 26 and five Type 31 frigates currently being constructed on the Clyde. There will be further growth of jobs in Northern Ireland and, we hope, in Wales. This is indeed a good settlement for job creation in the United Kingdom. We want construction on those projects to be UK-led. As I said, we hope that 10,000 jobs a year will be created, with many more within the supply chains, across the UK.

Baroness Uddin (Non-Afl): My Lords, I am rather disappointed that one "shoddy practice" can be cited to discredit a whole generation of excellent international development work. What assessment have the Government made of the defence and security implications of the proposed US withdrawal from Iraq and Afghanistan? What consideration has been given to ensure the empowerment and education of women and girls in conflict regions where our past military interventions continue to cause death and destruction in the present day?

Baroness Evans of Bowes Park (Con): The noble Baroness will know our absolute commitment to supporting women and girls in areas of conflict. It is one of the personal priorities of the Prime Minister, and we will continue to work on it. Indeed, it was one of the issues discussed by the Prime Minister with other world leaders at the G20 over the weekend. We remain committed to supporting security and stability in both Afghanistan and Iraq and will continue to work closely with our allies and partners on a collective approach to ensure that.

Baroness Goudie (Lab) [V]: My Lords, I welcome the commitment to our Armed Forces and the Prime Minister defending our people and keeping the world safe, but it would be a moral, strategic and social mistake if we did not continue our foreign aid at the present 0.7% target. Since we have had such a target, Britain has achieved soft power and saved millions of lives in Africa by reducing the number of deaths from malaria and HIV. I hope that the Government will continue with these projects.

Baroness Evans of Bowes Park (Con): The noble Baroness is absolutely right. I have said on several occasions in response to noble Lords that we are committed to supporting international development and helping the world's poorest, but, as I said, spending issues will be covered in the spending review on Wednesday.

2.56 pm

Sitting suspended.

Arrangement of Business

Announcement

3.02 pm

The Deputy Speaker (Baroness Henig) (Lab): My Lords, the Hybrid Sitting of the House 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 shall call Members to speak in the order listed in the annexe to today's list. Interventions during speeches or "before the noble Lord sits down" are not permitted, and uncalled speakers will not be heard. Other than the mover of an amendment or the Minister, Members may speak only once on each group. Short questions of elucidation after the Minister's response are permitted but discouraged. A Member wishing to ask such a question, including Members in the Chamber, must email the clerk.

The groupings are binding, and it will not be possible to degroup an amendment for separate debate. A Member intending to press an amendment already debated to a Division should have given notice in the debate. Leave should be given to withdraw amendments. When putting the question, I shall collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make that clear when speaking on the group.

United Kingdom Internal Market Bill

Report (2nd Day)

3.04 pm

Relevant documents: 24th, 36th and 29th Reports from the Delegated Powers Committee, 17th Report from the Constitution Committee, 8th Report from the Joint Committee on Human Rights

Clause 8: The non-discrimination principle: indirect discrimination

Amendment 14

Moved by ***Lord Callanan***

14: Clause 8, page 7, line 4, at end insert—

"(8A) Before making regulations under subsection (7) the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland."

Member's explanatory statement

This amendment would require the Secretary of State to consult the devolved administrations before making regulations amending the "legitimate aims" in Clause 8 (which can mean that provision does not count as indirectly discriminatory against goods).

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, I start by bringing to the attention of the House an inadvertent error that I made in one of my replies last Wednesday. In response to the noble Baroness, Lady Ritchie of Downpatrick, I misread my note on the relationship between the non-discrimination principle and employment law requirements, and got one word wrong. I should have said:

"If the employment law requirement were to meet that test, they would not be disapplied unless they had discriminatory effects."

I reassure that House that my misspeaking in this case was, of course, entirely unintentional.

To be absolutely clear about this point, we have already delivered the relevant legislative measures to give effect to Article 2 of the protocol. I again assure noble Lords that the rights for individuals in Northern Ireland captured within the scope of the Article 2 commitment will continue to be protected going forward and will not be impacted by the outworkings of this Bill. Even if employment law requirements were in scope of the non-discrimination principle, which they would not generally be as they would have to relate to goods sold, they would not be disapplied unless they had discriminatory effects. As I said to the noble Baroness, Lady Ritchie, last week, I would be happy to facilitate a meeting between her and interested parties and the relevant Ministers and officials, and I stand by the commitment that I gave then.

On the subject of today's groupings, the amendments in my name would ensure that the Government consult with the devolved Administrations when seeking to use powers. As we made clear in Committee, if the powers are required, we will of course engage with the devolved Administrations in the spirit of the devolution memorandum of understanding. We have been listening to colleagues in the House and appreciate that there is an appetite for these commitments to be included in the Bill. We are therefore introducing these amendments to put beyond doubt our commitment to consult each of the devolved Administrations if any of the relevant powers are used. The consultation requirements and the commitment behind them are clear. However, once consultation is undertaken, the right place for final decisions should be back in Parliament, where parliamentarians from all parts of the United Kingdom can debate and vote on the proposed use of these powers.

[Lord Callanan]

It is also worth noting the separate amendment we have tabled, requiring the Secretary of State to review and report to Parliament on the exercise and effectiveness of the powers in Parts 1 and 2 within five years. That will provide an additional degree of accountability and scrutiny, and will again involve consultation with the devolved Administrations—something that I know the House is keen on. For the reasons I have set out above, I hope that noble Lords will accept the amendments in my name, and agree that Amendments 18, 32 and 43 are therefore unnecessary.

Having set out the reasonable measures that Government have tabled, I turn to Amendments 15, 20, 34, and 46. These seek to add additional processes around devolved Administration consent before use of the relevant powers. We have been listening to noble Lords and appreciate the appetite for these commitments on devolved Administration engagement to be included in the Bill. As I have already explained, we are therefore seeking to amend this clause to require consultation with the devolved Administrations prior to use of the power, putting our commitment beyond doubt. As part of this, we will of course set out reasoning for seeking to use the powers, both to the devolved Administrations and to Parliament. We will also seek to reach agreement with the devolved Administrations wherever that is possible. Because of this, it seems to us that putting into legislation the process proposed by noble Lords in their amendments would be duplicative and unnecessary. For these reasons, I hope that the amendments we have already tabled address the concerns of noble Lords, so these amendments are unnecessary.

Amendment 16 requires the publication of the results of consultation on the exercise of the power in Clause 8. While this power was removed from the Bill last week, I will speak briefly about the Government's position on the subject. The exercise of this power would require consultation with the devolved Administrations. They are perfectly capable of deciding to publish their responses if they so choose. It is not necessary to make that choice for them in this Bill. For these reasons, I ask the noble Baroness not to press that amendment either.

Amendments 26, 27 and 28 would require the Secretary of State to consult all three devolved Administrations before preparing, revising or withdrawing guidance on the operation of the UK market access principles. Amendment 27 specifically stipulates that the Secretary of State should seek the consent of the devolved Administrations. However, should formal consent not be received within a month, the Secretary of State may proceed none the less. This amendment further states that where the Secretary of State makes regulations without obtaining consent, he must publish a statement explaining why. The guidance is itself explanatory; it is important to note that it is not a power to make or amend regulations.

It goes without saying that as part of the guidance process we will engage with all the relevant stakeholders, including the devolved Administrations, because we are committed to helping regulators and traders understand the principles and make the best possible use of them. However, this guidance will not change the rules that apply, so the formal consent of the devolved Administrations should not be required. It is also unnecessary to have a legislative consultation process with the devolved Administrations alone in respect of the guidance, when the guidance will be explaining, not making, the law.

I hope that with those words I have reassured noble Lords on this matter and they feel able not to press their amendments. In the meantime, I beg to move.

Baroness Hayter of Kentish Town (Lab): My Lords, first, I thank the Minister for his correction on the unforced error, I think it is called, in what happened on Wednesday. The noble Baroness, Lady Ritchie, will be speaking later and I am sure will comment on that; I hope the House can let her even if it is not specifically in this group. When the Minister responds, I would ask him to ensure the meeting that he has kindly offered takes place before Third Reading, so that if anything needed adjustments, we would be able to look at it at that point. As I say, I am absolutely certain that it was an unforced error, but it would be nice to have that clear.

We are pleased about parts of this, and certainly the review of the use of powers. It may seem odd to the House that we are continuing with these amendments, almost all of which—the guidance being the exception—set down how regulations should be made, even as the very power to make such regulations is about to be removed from the Bill. Nevertheless, we are in agreement with the Minister that it is helpful to deal with the amendments in his name and those in mine and others' which deal with how these powers would be handled, should they be put in.

Therefore, it is helpful to have our Amendment 15, which I will formally move in due course, as well as Amendments 20, 24 and 26 in the Bill, so that the Commons and the Government will be well aware—assuming that our amendments are passed—that this House would expect any regulation about the functioning of a market across four nations to be made in partnership with those other three participants.

Amendment 15 and the others go further than what the Minister has offered in his. He has quite rightly added consultation; ours go further than that, but they do not hand a veto to any one of the devolved authorities. What they do is take further the welcome admission by the Government, in their Amendments 14, 19, 36 and 45, that it would be unthinkable to make regulations affecting devolved competences without consulting their Governments and legislatures. Our further step is to add some grip to the consultation by making it a proper involvement. The amendments say that the devolved authorities must either give their consent to the regulations within a month, or else the Government can continue but would have to explain to Parliament and the public why they were proceeding without agreement. This does not seem much to ask. It will not cause any delay, but it would ensure that there was no risk of any tokenism in the consultation. Instead, the devolved authorities will have to reply, and speedily, and the Government would simply have to explain why they wanted to proceed contrary to any of the devolved authorities' views before proceeding.

3.15 pm

I think that the Minister and your Lordships' House will understand why we need this written into statute. There is a bit of history, I am afraid, because the Bill was published with no prior warning, much less consultation, and nothing approaching the consent of the devolved authorities. We are keen to pull back from the distrust that that has sown and allow the Government to indicate the respect I am sure that they have for devolution and shared decision-making, albeit with Parliament having the final say.

It is no secret that some claim that the Prime Minister's view that

"devolution has been a disaster north of the border"

explains this Bill's denial of a say to the devolved authorities. But for those of us from west of the border, there has been a worse consequence, as it appears to tar the highly successful Welsh devolution with a particular Conservative view about Scotland. We can use the Bill—and I think the Minister will want to—through this and some later amendments, to seek to repair the perhaps unintentional damage and demonstrate a real appreciation of the joint nature of decision-making in these areas of devolved competences; of course, we are talking only about areas of devolved competences. It would be nice, therefore, if we did not have to vote on Amendment 15 and the others and the Minister would be persuaded and accept them.

Just in case the Minister does not, I indicate that we would seek to divide the House on Amendment 15 and, if passed, the others in this group, though we should note, as he made reference to, that there is a small error in the third paragraph of Amendment 27, which refers to regulations rather than guidance. That is my bad drafting. I apologise. I think he will understand, but I hope we can tidy that up at Third Reading.

For now, while welcoming the fact that the Minister has realised that consultation needs to be written on to the face of the Bill, we would just like to add that extra bit that there must be consent within a month or the Government must explain why they are proceeding without the consent of the devolved authorities.

Baroness McIntosh of Pickering (Con): My Lords, I warmly embrace my noble friend—in a metaphorical sense, he will be pleased to know—for adopting in Amendment 14 and others what was in my amendment in Committee, which is why I have appended my name to his Amendment 14. I congratulate him on moving in this regard and listening to the concerns expressed in this House so forcefully by myself and the noble Lord, Lord Foulkes of Cumnock, and as drafted for me and briefed to me by the Law Society of Scotland.

By the same token, I urge the noble Baroness, Lady Hayter, and the co-signers of Amendment 15 and others in this group not to press them. I would be interested to know the provenance of, and thinking behind, Amendment 15 and the others, because I have not picked up on any move, certainly from the Scottish Government and Parliament, to seek consent in this regard. I would be interested to know why the noble Baroness is going to press this when the Government have gone so far to meet the concerns expressed by the Law Society of Scotland and others in Committee. If we do not welcome and congratulate the Government and this Minister when they move as far as they have, it puts down a poor marker for future amendments to this Bill and others on these matters.

My noble friend has said that Amendments 18, 32 and 43 in his view are unnecessary. I think that Amendment 18 is paralleled by and complementary to his own amendment—government Amendment 19. I think that Amendment 32 is also paralleled by his Amendment 36 and his Amendment 35, which I have also signed. Amendment 43, in my name and that of the noble Lord, Lord Foulkes of Cumnock, I think is also complemented and paralleled by his Amendment 45, for which I am extremely grateful; I would like to pay tribute handsomely to my noble friend for moving in this regard.

I do have a hesitation as to why my noble friend has not accepted Amendments 26 and 28 in my name and that of the noble Lord, Lord Foulkes of Cumnock. They are actually seeking to consult in much the same way as an earlier clause that my noble friend has moved and agreed—which is extremely welcome—but, if my understanding is correct, he has not agreed to move in regard to Clause 12 to consult with the devolved Administrations before preparing guidance under Clause 12. I may be mistaken—in which case, I would be grateful if my noble friend would correct me.

I would also like to warmly welcome government Amendment 29. I would like to take this opportunity to commend the spirit of inclusion shown by my noble friend and the Government on this occasion to commit to obliging the Secretary of State to carry out a review of the use of Part 1 amendment powers and, in that regard, his commitment to consult the devolved Administrations. I wish to warmly commend his movement in that regard.

I would perhaps like to nudge my noble friend also to accept Amendments 26 and 28 as being on the same page as his own thinking. I repeat that I do hope that the noble Baroness, Lady Hayter, and the other co-signers of Amendment 15 and others will take this opportunity to withdraw or not move their amendments, given that the Government have moved as far as they have on this consultation, to which they are now committed. So I do not beg to move.

Baroness Finlay of Llandaff (CB) [V]: My Lords, I also welcome the Government's amendments in this group and the speech of the Minister. If I may, I will try to answer the concern just expressed by the noble Baroness, Lady McIntosh of Pickering. I think it is fair to say that some of us fear that the Government might be tempted to try to overturn the amendments of the noble Baroness, Lady Andrews, in the other place, and so we would like the House to fully consider all the amendments in this group that have been tabled by the noble Baroness, Lady Hayter, and myself.

I would like to speak in favour of Amendments 15, 20, 27, 34 and 46. All of these amendments are based on the same principle: that, when issuing guidance as to the implementation of market access principles, or when seeking to extend or further limit the exceptions to the application of the market access principles, the Government must obtain the consent of the devolved Governments to doing so.

[Baroness Finlay of Llandaff]

However, we are sensitive to the nervousness of the Government and wish to be helpful by providing clear reassurance in statute of coupling a consent requirement with a limited-time proviso. This states that, should consent not be forthcoming from one or more devolved Governments within a month, the Government may proceed to make the changes or issue the guidance, subject only to the need to make a statement to Parliament as to why this is necessary.

This is not an onerous requirement, and I know that what we have proposed is less than the unqualified requirement for consent that the devolved Governments in both Wales and Scotland would have preferred. But this amendment is a healthy, open compromise which can comprehensively allay the fears of the Government Front Bench as to the risk of the process somehow grinding to a halt should a Scottish or Welsh Minister try to delay. Indeed, our approach, advocated in the slightly different context of appointments to the office for the internal market by the Welsh Government, has been adopted by the Minister in government Amendments 56 and 57, so it seems difficult to see how the Government could object to this.

I therefore hope that the Minister will think again and accept these helpful amendments, rather than put us in a situation where we need to go to a vote.

Baroness Humphreys (LD) [V]: My Lords, I rise to speak to Amendments 26, 27 and 28 in this group, and in so doing I would like to thank noble Lords who tabled the amendments in this group and introduced them so clearly today.

Clause 12 of the Bill provides the Secretary of State with a power to issue statutory guidance about the practical operation and effect of the market access principles for goods. These amendments to the clause highlight what is, of course, a recurring theme in this Bill: the assumption that such decisions will be made by the UK Government, in the guise of the Secretary of State, without any input from the devolved Administrations, dismissing any attempt at building on intergovernmental relationships to come to consensus. It is this assumption and its consequences that I wish to address quite quickly today.

In a recent article published by the Centre on Constitutional Change, Greg Davies of Cardiff University argues that this Bill—and, I would contend, particularly clauses such as Clause 12 and others in this group—represents a failure of soft law and amounts to the introduction of

"a new constitutional settlement by stealth."

Since the creation of the National Assembly in 1999, our two Governments have used soft-law techniques of intergovernmental political agreements and memoranda of understanding to form and guide the relationship between them. Because soft law relies on mutual trust, good will and co-operation rather than legal enforcement, it can, this article argues,

"be exploited to sidestep more fundamental reform".

The introduction of this internal market Bill has, I believe, opened the Welsh Government's eyes to the reality of the weakness of a system that relies on soft law; they themselves have described the Bill as a "new low". So, in a Bill which will curtail the ability of devolved Governments to regulate products and services within their territories that originate from elsewhere in the UK, Clause 12, and the additional powers it gives the Secretary of State to act in areas of devolved competence, adds insult to injury.

The Welsh Government have no official voice in this Chamber, but they have the voice of many Members who value the devolution settlements and are determined to see the devolved Parliaments flourish and grow. So I am extremely grateful to the noble Lords who have given us the opportunity to debate these three important amendments today, together with other amendments in this group. In these amendments, this House is being asked to reaffirm Parliament's support for the devolved settlements, to confirm its continued confidence in the soft-law process of building intergovernmental relationships, and to reject the attempts to introduce—and reject being complicit in—what is, in effect, a new constitutional settlement by stealth.

Of course, I welcome Amendments 26 and 28 in the name of the noble Baroness, Lady McIntosh, which call for consultation with Ministers in the devolved Governments when issuing guidance relating to Part 1 of the Bill, and Amendment 27, in the name of the noble Baroness, Lady Hayter of Kentish Town, which calls for the Secretary of State to obtain the consent of Ministers in the devolved Governments to such guidance. My preference is, of course, for Amendment 27, as it places this Parliament's commitment to the soft-law process on the face of the Bill and provides for a meaningful outcome to consultation.

I also support Amendments 15, 20, 34 and 46 in this group, which also call for the consent of the devolved Parliaments. In addition, I do welcome the Government's conversion to consultation in their amendments, but I regret that they really do not go far enough. If the noble Baroness is minded to put any of her amendments, particularly Amendment 15, to the vote, I and my colleagues on these Benches will support it.

3.30 pm

Lord Hain (Lab): My Lords, although I welcome the Minister's moving of government Amendments 14, 36 and 45, I still wish to speak in support of Amendments 15, 20, 27, 34 and 46, to which I have added my name.

As the noble Baroness, Lady Finlay, said, these are modest amendments which are almost painstaking in their attempts to be reasonable. They balance the right of the devolved Governments to be asked for their consent if and when Ministers want to use Henry VIII powers to clamp down still further on the very narrow exceptions to the market access principles, with the right of the UK Parliament to act if it believes that one or more of the devolved Governments are unreasonably delaying or blocking such changes. I am happy to put my name to these amendments, but the fact that they are so modest highlights the parlous state of the union. We are faced with a Government who are so paranoid about the potential threat of a nationalist veto to their plans that they are prepared to provoke the very thing they fear: the collapse of the house of cards which is our so-called current constitution.

The noble Lord, Lord Hennessy of Nympsfield, coined the phrase "the good chaps theory of government" as a description of the way the governance of this country functioned in the absence of a codified constitution. We are faced with a Government who have defenestrated the good chaps with an insurrectionist zeal that makes Robespierre appear a model of restraint. They are unapologetic when found by the Supreme Court to be violating the constitutional rights of Parliament, responding by attacking the judiciary; they use constructive dismissal as a routine way of neutering the Civil Service; they give consultancy contracts on a breath-taking scale to their friends and relations without any proper procurement; and they tolerate a Cabinet Minister with the brass neck to remain in one of the highest offices of state after being found to have broken the Ministerial Code by bullying her officials—the list goes on.

If we are to defend devolution and indeed the future viability of the union—which I believe your Lordships' House has repeatedly shown it wishes to do—we need to compel the Government to respect the rights of the devolved Governments and legislatures. That is why it is so important that the market access principles should be brought into play only if this House and the other place are convinced that a real-world threat has emerged to the internal market which cannot be addressed by the common frameworks. That is why the consent of the devolved institutions to legislative devices which might limit their rights should always be required. Let us be in no doubt that that is precisely what the Bill would do. Even without using the Henry VIII powers to which these consent provisions would apply, the Bill poses a real and present danger to the capacity of the devolved Governments to do what they have been elected to do.

In Committee, many Members raised the issue of single-use plastics. The Welsh Government have consulted on a proposal to ban nine types of these items—a move in line with their recognition of the climate emergency which would be fully possible under EU law, and which is very broadly supported in Wales. Ministers did not give a clear answer as to whether legislation of this sort would be possible if the Bill was enacted. However, in the policy statements published on the Department for Business, Energy and Industrial Strategy—BEIS—website last week, the issue is now crystal clear. To quote from one:

> "Conversely, non-pricing policies that place an outright ban on goods being sold, for example a ban on single-use plastics, would be caught by mutual recognition. Devolved administrations could introduce a ban on the sale of a particular good, but the ban would only cover local products produced in that part of the UK (or those imported into that territory from outside the UK). Devolved administrations could not enforce that ban against sellers of goods produced in, or imported into, other parts of the UK."

That is a quote from an official government website. Will the Minister please confirm on the record that this official BEIS advice is accurate, because its implications are pretty serious? If it is, would he explain how this is consistent with his and his colleagues' previous assertions that the Bill does no more than replace constraints that existed by virtue of our membership of the EU?

The Bill is a tale of two halves. The one half consists of legitimate fears on the part of the devolved institutions that their role and powers are in real jeopardy, and the other of bogus claims that the devolved Parliaments are lying in wait to sabotage the union as the chimes of Big Ben welcome in the New Year. We must face down the half-truths of this unscrupulous and power-hungry Government and defend the rights of the devolved institutions, as these modest amendments seek to do.

Lord Foulkes of Cumnock (Lab Co-op) [V]: My Lords, I apologise for the fact that I am having to appear electronically, rather than be there in person, for logistical reasons. I am sorry not to be able to engage in a bit of banter with the noble Lord, Lord Cormack, for example, and in particular with the Minister, the noble Lord, Lord Callanan, with whom I have had a few exchanges of interest in the past. Nevertheless, I am very happy to speak today in support of the amendments in the name of the noble Baroness, Lady McIntosh, and myself.

These amendments would require—the important word—the UK Government to consult with the devolved Administrations in the areas described. Thankfully, the Government seem to be moving in that direction, as we see from Amendment 14. For once, I thank the noble Lord, Lord Callanan, for accepting that. In Amendment 15, my noble friend Lady Hayter on the Opposition Front Bench, and others, add a requirement to seek approval from the devolved Administrations while allowing the UK Government to go ahead if that is not obtained within a month. I will support that amendment if there is a Division on it, because it puts extra pressure on the Government to find agreements. There is in fact no difference in principle between the amendments, but they underline the need for some greater understanding of the nature and the extent of devolution. However, I repeat what others, including the noble Baroness, Lady Finlay, said, that we would prefer that the Bill had not seen the light of day and hope the Government and the Commons might think again in the light of their overwhelming defeat here in the Lords.

Meanwhile, we need to consider how these matters are dealt with if the Government do not take our advice and press ahead with the Bill. Some in Scotland, principally the SNP, have described the transfer of responsibilities from the European Union as a "Westminster power grab". while the UK Government see it as a "power surge" to the devolved Administrations. The fact is that neither is the reality or correct. In truth, we were all willing to see common standards for the whole of the UK decided as part of the European Union common market, with some reservations as appropriate. Now we need to determine how we deal with all these powers in what will effectively be a UK common market.

There is however a constitutional difference between the European Union and the United Kingdom. Whereas the European Union is a federation of sovereign states, as we know, the UK has been a unitary state for centuries but has rightly decided to devolve some powers to three of its constituent parts over the past two decades. I support that and agreed with it, but we are still coming to terms with the new reality, and it is proving more difficult for some than for others.

[Lord Foulkes of Cumnock]

In areas where there has been devolution of powers, those transferred from the European Union should of course go to the devolved Administrations as long as it can be done without any real distortion of the United Kingdom's internal market operation. In our amendments, there is provision for them to be consulted, but not, of course, to have a veto, which I believe to be correct. However, there needs to be genuine consultation and, sadly, as my noble friend Lord Hain said, that has not been the case with the current UK Government, who have fuelled resentment and nationalist movements in the three nations.

Finally, I hope that the Minister will spell out in greater detail in his reply the procedures by which the Government intend to consult—the arrangements for consultation; secondly, how they will take account of those consultations within Westminster and Whitehall; and, finally, confirm that they will publish reasons if they are unwilling to accept the views of the devolved Administrations. That is the least that the devolved Administrations can expect, and I hope it will not be too difficult for the UK Government to do so.

I look forward to the rest of the debate and hope that when we get to Amendment 15, if there is a Division, the House of Lords will once again show its good sense.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, first, I thank the Minister for his statement at the beginning of this group, in which he indicated that he had made an error in winding-up last week on Amendment 24, which was in my name and those of the noble Lord, Lord Hain, and the noble Baronesses, Lady Suttie and Lady Bennett of Manor Castle.

I have listened to what the Minister said today. I wrote to him at the weekend about what was said on broadcast TV, which I quote:

"If the employment law requirement were to meet that test, they would not be disapplied because they had discriminatory effect."

When the *Official Report* appeared, it stated:

"If the employment law requirement were to meet that test, they would not be disapplied unless they had discriminatory effects."

The difference between "because" and "unless" leads to direct opposites, and that requires further clarification from the Minister and from the Minister who will hold the meeting. I thank him for indicating that he will facilitate that meeting with the members of both the Human Rights Commission and the Equality Commission in Northern Ireland on this issue.

As the noble Baroness, Lady Hayter of Kentish Town, stated, if we are not satisfied with the outcome of that meeting—it is important that it takes place prior to Third Reading—I would seek to bring that issue back then. For the purposes of clarification, I think I need to point out that the withdrawal Act 2020 implemented Articles 2 and 13 faithfully. Clauses 5, 6 and 8 of the Bill threaten that implementation by allowing changes to legislation implementing the obligation to keep Northern Ireland in line with equality law in future. It does this by providing that such legislation cannot be challenged on the basis that it is indirectly discriminatory. Until last week, the Government had said that Clauses 5, 6 and 8 did not apply to such legislation. The Minister's statement today makes it clear that they will apply and may be used to challenge legislation implementing the Article 13 obligation.

3.45 pm

I, as the mover of that amendment, along with both commissions in Northern Ireland, which have a significant dedicated role in monitoring the implementation of Article 2, all consider that that would be a breach of the protocol. Therefore, it is important, and I say this with all due respect to the Minister, that we achieve that meeting prior to Third Reading. I hope that in summing up, the Minister can give me that commitment.

I move on briefly to the amendments. I support the amendments in the name of the noble Baroness, Lady Hayter of Kentish Town, because they underscore the importance of the devolution settlement and require the consent of the devolved authorities. I acknowledge that the Government have made some movement here in the whole area of consultation, which is important. The noble Baroness's amendment states that there is a need for consent from the devolved authorities within one month on any changes to the list of legitimate aims by regulation, else the Government should publish a statement why consent was not achieved.

All this comes back to the point that the devolution settlement should not be undermined, even through the use of the Henry VIII powers. Much of what happens under the Bill depends on secondary legislation and regulations, and has made the devolved Administrations in Wales and Scotland deeply uneasy about their future responsibilities. I say quite sincerely that this issue needs to be ironed out. In Northern Ireland, I speak also of those areas that do not fall within the remit of the protocol. The Government should relent on this issue, accept the amendments from the noble Baroness, Lady Hayter of Kentish Town, and further honour and respect the work of the devolved Administrations. Can the Minister tell us when the next meeting of the Interparliamentary Forum on Brexit will be, as it has not met in more than a year?

Lord Cormack (Con): My Lords, I begin by echoing my friend, the noble Lord, Lord Foulkes. I, too, am deeply sorry that he is not with us, as he was in such splendid and rumbustious form last week. All I would say to him is, "Haste you back", and I hope he will be able to take part again on the Floor of the House very shortly.

I also genuinely thank my noble friend Lord Callanan for tabling and moving Amendment 14. That has shown that he and his ministerial colleagues have listened to what was said in your Lordships' House in Committee, and for that I am sure we are all grateful. My noble friend is exactly right when he says in the United Kingdom Parliament—we are not a federation—the buck stops with Westminster. That is entirely right, but there is deep suspicion in many quarters about the word "consult", because it can have a variety of meanings and interpretations. "Politely inform" is often what people mean by "consult". That is why I am particularly attracted to the wording of Amendment 20 in the name of the noble Baronesses, Lady Hayter and Lady Finlay, and the noble Lord, Lord Hain. This requires an explanation. It is entirely proper that the buck stops here. It is entirely proper that the ultimate

decision is made in Westminster, given the present structure of our United Kingdom, where, as has been said, certain specific powers are devolved, but ultimate power remains here.

Having said all that, it is important that "consult" means consult—discuss, evaluate and determine the merits before a final decision is made. Therefore, I say this to my noble friend: thank you for coming as far as you have. I in no sense question or impugn his sincerity because I know from experience that he understands the proper meaning of "consultation", but not everybody in ministerial office does. There have even been recent occasions when advice has been totally jettisoned.

If we are to move forward with the devolved Administrations, it is important that we genuinely consult. I like the idea of giving them time but not allowing them to procrastinate indefinitely; a month seems a good length of time. Then, it is perfectly reasonable that the Westminster Parliament should insist on having its will, but that it explain precisely why. We have got to treat the devolved Administrations as bodies of articulate, well-informed public servants who are trying their best to serve Scotland, Wales and Northern Ireland.

Of course, the elephant in the room—we must all be honest enough to admit this—is that, whereas the Governments in Northern Ireland and Wales accept the union of the United Kingdom, in Scotland, they do not. In Scotland, we have a Government who, perfectly honourably—it is an entirely legitimate ambition to have, although I strongly oppose it—have one ultimate aim: to break up the United Kingdom by withdrawing from it. So, it is very important that those of us who believe in the United Kingdom do not succumb to those who want to manipulate themselves out of it, and that we are able, in the interests of the United Kingdom—while there is one—to argue for policies conducive to its continuance.

The balance and wisdom implicit in Amendment 20 commends itself to me. I hope that my noble friend will reflect on that and perhaps say that he will come back at Third Reading with a slightly amplified version of the welcome and, again, genuinely meant and perfectly sincere Amendment 14, because I do not really think we can just leave it at that.

Lord Empey (UUP): My Lords, the starting point for this group of amendments is, I suppose, that not one of the devolved Administrations has given its consent to this legislation. That is an unfortunate place to be.

However, I welcome the changes that my noble friend the Minister has introduced so far. Listening to the debate, it seems that the gap between the different amendments and the Government's position is not huge; to be honest, I would have thought it perfectly capable of being bridged. I certainly urge that efforts to ensure it is bridged be pursued, because there is no point in having unnecessary divisions if they can be avoided.

I must say to my noble friend that consultation is in the eye of the beholder. Having been a devolved Minister for just under seven years, I have a little experience of what consultation actually amounts to from time to time. Occasionally, it can be extensive, planned and productive. On other occasions, you read about it in the *Daily Mail* before you have even got into the office. There is a coherent argument for having a codified process to ensure that consultation happens, and within a framework. We all know that Ministers and departments are sometimes very good at it, but occasionally and, sadly, all too frequently, that is not the case.

I totally accept that no devolved Administration can be permitted to have a veto over what happens in the whole of the United Kingdom, because, as my noble friend Lord Cormack just stated, the buck ultimately stops with the Westminster Parliament; that is totally correct. But one is brought to a position by one's experience in these matters. What is being asked for in some of these amendments is not unreasonable and would be beneficial. We know that, as has already been referred to, vociferous nationalism is attacking at every opportunity the legitimacy of the United Kingdom. It has been used and abused. So, even though some sections in government may find it a bit tedious, having a structured consultation mechanism is a protection against those who would use it as an anti-unionist argument.

To give an example, due to the action of some of its parties, the Northern Ireland Assembly was unfortunately out of business for three years during the critical Brexit negotiations. We repeatedly asked Ministers what mechanisms they were going to use to consult the people of Northern Ireland about the huge issues arising from those negotiations; indeed, barely a day goes by now without another obstacle and tank trap appearing in the process. We were given assurances that the consultation would be very significant, but I can tell noble Lords that that did not come to pass. It was sporadic and haphazard—it certainly was not structured—and we have ended up today in the most awful mess, which, sadly, we will no doubt return to frequently in the months ahead.

We should not really have to have an argument over these issues because there is a broad level of agreement. I urge my noble friend to harness the different threads of the argument and ensure that we take a united position as we move forward with this legislation, whatever we happen to think of it. Setting out clearly that there must be consultation and that it must be done in a formal, structured way without any devolved Administration being able to frustrate the operation of the UK single market—as it will be referred to—is entirely reasonable. I hope that my noble friend will reflect on that when he sums up.

Lord Naseby (Con): My Lords, one of the pleasant features of this Bill is the extent to which probing amendments have been put down by all sides. It is clear to me from the consultations we have had between debates and the periodic guidance we have received that, for once—this is not true too often—we have on the Front Bench two Ministers who have tried very hard to find a way forward in a controversial and difficult area. I pay tribute to that; it is particularly reflected in the amendment before us today.

4 pm

I read it carefully over the weekend and underlined the word "before"; how often do you get something on

[Lord Naseby]
to the statute book that has to happen before anything is laid that would add to the particular clause? The amendment says:

"Before making regulations … the Secretary of State must"—

there is no option; that is a big change from its earlier stage in Committee—

"consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland."

In my book, this has gone a long way forward.

I looked at the alternatives very seriously—of course one does—but Amendment 15 is, frankly, unworkable. It says "must obtain". If you have someone really difficult or there is something else causing friction, which perhaps has nothing to do with the internal market Bill, "must obtain" will not be achievable. However, the noble Baroness shaking her head on the Opposition Benches has put down an amendment which she believes deals with that problem.

Amendment 16 says the Secretary of State should be forced to publish the results of the consultation. That is not the way forward; it does not produce much good will on any side. I would have thought that unacceptable.

Amendment 20 is interesting, and some noble Lords clearly support it. It strings it out a bit too much for me; if I were the Secretary of State, I would think to myself, "My goodness, I'm never going to get on with this job." Someone will find a way around it. The tightness of what my noble friend on the Front Bench is proposing is its attraction. It is short, tight and attractive. I will certainly support my noble friend.

Baroness Clark of Kilwinning (Lab): My Lords, I support Amendment 15 and the other amendments which would require the UK Government to obtain consent from the devolved institutions.

The big political issue from a Scottish perspective in what we are debating is whether this legislation takes back powers that currently reside with the Scottish Parliament to the UK Parliament without consent. It seems accepted by all involved in this debate that that could be the case; I believe that is what my noble friend Lord Hain was saying, and what the Minister clarified on the first day of Report. Any further information or response the Government could give to clarify that point would be greatly helpful, in terms of the political problems from a Scottish perspective regarding this legislation. There can always be situations where it would be completely appropriate for UK legislation to be enacted covering currently devolved areas, with the consent of all parties involved, but that is not the issue we are debating here.

The suggestion of the noble Lord, Lord Empey, of a more detailed framework for consultation was incredibly useful, for all the reasons that have been outlined by noble Lords. As I understand it, the current legislation has no arbitration or other process that would deal with disputes. The genuine belief, which has been confirmed around this House, is that, as currently drafted, this Bill undermines the devolution settlements because it potentially involves areas where the Scottish Parliament currently has competence. There could be situations such as that outlined by my noble friend Lord Hain: for example, the Scottish Parliament currently has the ability to regulate for all goods in Scotland, but this legislation would mean it could regulate only for goods made in Scotland or those imported from abroad, and not those from other parts of the United Kingdom.

If that is not how this Bill, if it becomes an Act, would work in practice, or if it is impossible that that set of circumstances could come about, the Government need to be up front about that and make commitments and guarantees, given the political debate around this legislation. As I said on the previous occasion I spoke on this Bill, the concern in Scotland is that it could lead to a race to the bottom on standards and would enable a situation where the Scottish Parliament cannot legislate on matters that it could at the moment.

The concern is that the Government are effectively seeking, in certain circumstances, to take powers back from the Scottish Parliament. The backdrop is that all parties in Scotland, with the exception of the Conservative Party, have been asking and campaigning for greater powers for the Scottish Parliament, particularly financial powers, for many years. We have had rising support for independence, which gained momentum during the independence referendum in 2014, and a Brexit which is unpopular in Scotland, where there is a high level of awareness that 62% of the people voted remain. I therefore ask the Government to take all that into account.

Lord Morrow (DUP) [V]: My Lords, I will be very brief. I am concerned about Amendments 14 and 15, which both clearly state that:

"Before making regulations under subsection (7) the Secretary of State must"

consult

"the Scottish Ministers, the Welsh Ministers and the Department for the Economy".

I asked myself why it is specifically the Department for the Economy in Northern Ireland but not in Wales or Scotland. Can the Minister clarify in winding up why it is specifically the Department for the Economy? The distinction is made in a couple of other parts of the Bill. Surely it is clear, given that the grounds for discrimination cover areas such as animal health and biosecurity, that the Department of Agriculture, Environment and Rural Affairs would have a deep interest in any changes. Thus the restriction to consult only the Department for the Economy is a bit difficult to understand.

I strongly contend that Northern Ireland should be treated in exactly the same way as other regions of the United Kingdom. Would the Minister be good enough to clarify in winding up on this group why it specifically states only the Department for the Economy, and not the Northern Ireland Assembly or other ministries? I will leave it at that.

Lord Liddle (Lab): My Lords, it is welcome that the Government, in the shape of the noble Lord, Lord Callanan, have got up today and made some concessions to the position articulated in this House in Committee. We all welcome that, but he has not gone far enough. In Amendment 15 in particular, what he describes as imposing additional processes on government would actually be very valuable—particularly in the

present political context, in which the Government have thrown a lot of doubt on their commitment to the devolution settlement.

In that context, I endorse the speech of my new Labour colleague, my noble friend Lady Clark. A serious political crisis is looming on the devolution question and, in everything we do, we have to behave with enormous sensitivity to the fact that that is a realistic prospect before us. Therefore, I do not see Amendment 15 as nitpicking, in the way that the noble Baroness, Lady McIntosh, described it; I see it as strengthening the principle that the Government have already conceded.

As a federalist and someone who believes in a federal Britain, I believe that this is an inadequate response to the devolution problem. I rather agree with the noble Lord, Lord Empey, when he says that we should have an arrangement where none of the four nations of Britain can veto a proposal that the other three agree with. I do not believe that England can always exercise that veto through the United Kingdom Parliament—that is what we have to change. If we are to keep the United Kingdom together, I believe that we have to think of new arrangements where decisions are made by a United Kingdom council that properly represents the nations, and, I hope, the regions and cities of England as well. That is a personal point about where I think we should be going.

Therefore, I do not see this as a particularly radical amendment that will address the present growing concerns about the devolution settlement. None the less, it is a sensible amendment, which I support, and I hope very much that my Front-Bench colleague, my noble friend Lady Hayter, will divide the House on it, unless we hear in the Minister's response that the Government will make a significant move in its direction.

It seems to me that the merit of this amendment is that, by saying that the Secretary of State "must" seek consent, it puts on the face of the Bill the argument that disagreement should be the exception and that we should go into this with all sides—particularly the UK Government—determined to reach consent. Where there is no agreement, to win consent for that decision it is very important that there is a requirement for an explanation of how it is consistent with the devolution settlement, where the principle that the Government have set out is that the devolved Assemblies and Parliaments will have more, not less, powers as a result of withdrawal from the EU. In that explanation, the Government would have to demonstrate why that was so. They have already listened to some extent but I very much hope that they will listen more to what those of us on this side of the House have said, and that the Minister will indicate that he might go further.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): The noble Baroness, Lady Altmann, has withdrawn, so I call the next speaker, the noble Lord, Lord Bruce of Bennachie.

Lord Bruce of Bennachie (LD) [V]: My Lords, this has been a very constructive and interesting debate, which I think needs to be developed further.

We have all welcomed that the Government have softened their position in relation to the Bill and to consultation, and I think that that is genuinely the case. Certainly, up until this point, they had given the impression that, although they had produced the Bill in a hurry and not consulted on it, they were going to drive it through without any consideration of amendments. However, I think that they have now become aware of the degree of resistance towards the whole of the Bill and, in particular, towards the implications for devolution.

4.15 pm

I hope that Ministers will reflect on the fact that there is real dismay at the Government's attitude towards devolution, which the Bill represents. That dismay is not just in the hearts of nationalists but in the hearts of those who want Scotland, Wales and Northern Ireland to stay in the United Kingdom and to do so in a way that acknowledges devolution through a partnership. However, that is not what people feel it to be at the moment and it is not what the Bill pretends it to be. Therefore, I say to the Minister that there is no need to give in to nationalists—that is not the issue, and the amendment certainly does not do that—but the Government have to recognise that more than consultation is required. As the noble Lord, Lord Liddle, said, sensitivity, understanding, genuine commitment and accommodation are needed to make devolution work.

The common frameworks have not been mentioned in the debate on this group of amendments, but they have been in the background throughout the Bill. I think that what most people who care about devolution want the Bill to build on is how decisions affecting all parts of the United Kingdom should be made, and the common frameworks principles should be followed.

Amendment 15 takes the need for consultation but adds to it by saying that there must be a requirement to secure consent. That draws on the common frameworks principles, which suggest that every sinew should be bent to secure consent. I think it has been acknowledged that the amendment is slightly compromised in that it allows delay for only a month. However, as has been said, it is a genuine attempt to find something that can be supported by all sides, rather than being an ideal mechanism. Even within the common frameworks, as within the Bill, we still have a problem. We still have an unanswered question, which is that United Kingdom Ministers, who are also English Ministers, can fundamentally override decisions of the devolved Administrations. We need to explore a way of getting around that and ensuring that—again, as the noble Lord, Lord Liddle, said—England does not have a veto. It is quite right that Northern Ireland, Wales and Scotland should not have a veto, but nor, in this context, should England, masquerading as the United Kingdom.

On occasion, Ministers have prayed in aid Australia and Canada, but these are federal countries. The UK is not yet a federal country, although it may be moving in that direction. Of course, in those countries, the states and provinces are part of the decision-making process. In Australia, on legislation which has been the inspiration for this Bill, a form of qualified majority voting is applied in a way that ensures that a majority of two-thirds or more of the states have to agree. We probably need to explore something along those lines.

Again as has been mentioned, Ministers boast of powers returning to the devolved Administrations. On the face of it, that is true—powers are coming back

[Lord Bruce of Bennachie]
from the EU that will go straight to the devolved Administrations. The problem is that laws passed legitimately under the devolution legislation can effectively be set aside by this Bill without any reference at all to Ministers. The Bill itself can be prayed in aid and applied without political interference because that is on the face of the Bill. It seems to be saying to businesses, "You can use the law if you can pick up the principles of the Bill to get round devolved decisions". That means that companies outside the UK can invoke the non-discrimination and market access clauses to allow their products to be sold anywhere in the UK, even if only one of the home nations has allowed it. In other words, if three out of the four sought to prevent the import of a particular type of product, they would not be able to do so if one of the four nations thought otherwise. Therefore, there is a real need to try to find a solution that goes somewhat further than the Government have done.

Many of the amendments pick up on the welcome recognition by the Government that they will consult. But, as has been said, consultation means different things to different people. Genuine consultation means taking on board rejections and concerns, and equal weight being given to the arguments on both sides. Unfortunately, both the Bill and Amendment 15 as it stands still allow Ministers ultimately to overrule those decisions.

We are pressing for two things. The first is something that I think that we have achieved today to a degree. It is that the Government should acknowledge that they have to move a lot further to try to ensure that decisions relating to this legislation genuinely try to secure consent across the whole of the United Kingdom and that there will be an understanding that aspects of the Bill could have unintended consequences. Actually, the Government have been quite unpersuasive of the need for this legislation and what it is that they feel is being threatened, and they have not effectively defeated the arguments put forward by the devolved Administrations as to how the Bill could be used to stop things that may be in process. For example, there could be restrictions on single-use plastics. That is a very good example. It would also have been the case with minimum alcohol pricing and with other things that we have not yet foreseen.

Amendment 15 seems to be very reasonable, because it ultimately allows the Government the final decision. In our view, it does not really go far enough, but we recognise that it is a genuine attempt to ensure a workable compromise that the Government could accept and that would demonstrate, if they did accept it, that they were getting it—that there is a real tension over devolution and that they have caused mistrust and dismay. The Prime Minister's recent comments have been disastrous in terms of the perception of the Government's attitude towards the devolution settlement. If the Government do not understand that, we are heading for a major crisis.

I welcome the Government's amendments, but I also believe that the amendment in the name of the noble Baroness, Lady Hayter, and the other amendments in the same mode have real merit and would take us further down the track. I therefore ask the Government to consider them very seriously.

Lord Callanan (Con): My Lords, I am sure that noble Lords will be happy to know that I can be brief, because of course I set out the Government's position on these matters in my opening remarks. However, to summarise, we feel that we have set out a comprehensive package of changes to the delegated powers in the Bill to address many of the concerns that have been raised about the role of the devolved Administrations. Of course, it is always a great regret for me to disappoint the noble Lord, Lord Liddle, but I have to say that on these matters I am able to go no further.

Devolved Administration consultation is now required by legislation prior to any use of the key powers in Parts 1 and 2. The Secretary of State will also be conducting a thorough review of the exercise and effectiveness of each of these powers within five years, which again will require consultation with the devolved Administrations. Our approach will ensure a high degree of transparency and scrutiny and will guarantee devolved Administration involvement whenever the powers are used or, indeed, reviewed. The alternative approaches proposed in the group would, in my view, overcomplicate these very clear commitments.

I shall reply briefly to the questions that were put to me. In response, first, to the noble Lord, Lord Hain, I can confirm that the policy statement he referred to is accurate. With regard to his second question, the design of the Bill is different from the EU single market because the Government's approach does not simply copy out EU rules, and that means that the constraints under which we operate are different.

The noble Lord, Lord Foulkes, asked about the procedure for consultation. The Bill now requires that consultation should occur as a matter of fact before Ministers exercise their delegated powers. As is normal for such legislation, it does not spell out in great detail how this must be achieved, but we will engage with the devolved Administrations as part of the process of normal policy development such as, for example, sharing draft SIs and publications and co-operating on public-facing events wherever that is possible, and then in any case more formally before a decision is made.

The noble Lord, Lord Morrow, asked why we should consult with the Department for the Economy in Northern Ireland. I can tell him that the reference to the department is consistent with the precedent of the Northern Ireland devolution settlement. Finally, perhaps I may confirm yet again to the noble Baroness, Lady Ritchie, that I will urgently seek to facilitate a meeting for her and the interested parties that she requested.

With those commitments and answers to the, I hope that noble Lords will feel able to support the Government's approach to this matter.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, I have received two requests to ask the Minister a short question. They are from the noble Lord, Lord Empey, and the noble Baroness, Lady McIntosh of Pickering.

Lord Empey (UUP): Briefly, my Lords, a question has been raised in the House on a number of occasions: why are Welsh and Scottish Ministers referred to, but a Northern Ireland department is referred to? The

reason is that, since 1921, power is devolved in Northern Ireland to the department, not to the Minister. The role of the Minister is to direct and control the department, but the department can still function without a Minister. It is a quirk that goes back 100 years, but it is there.

The noble Lord, Lord Morrow, made a relevant point. I do not know what the Minister means by "consistent with the devolution settlement", because nothing in the settlement that I am aware of determines that this particular department is responsible. But, if you want a plural, because "Ministers" are referred to in the plural in Scotland and Wales, the only collective equivalent in Northern Ireland is the Executive—or, to meet the point made by the noble Lord, you could say, "Northern Ireland departments as appropriate". But the reason for the difference is historic; it is not an error, as some people thought in the past. It is consistent with the fact that powers are devolved to the department and not to the Minister.

Lord Callanan (Con): I of course thank the noble Lord for his help in answering the question more thoroughly than I did, and I can confirm my understanding that he is correct in what he says.

Baroness McIntosh of Pickering (Con): My Lords, I am overwhelmed that my noble friend the Minister has accepted Amendment 14. Perhaps I may press him a little more on Amendment 16. If I understood him correctly, he said that it should be for all of the devolved Administrations to publish their responses to a consultation. I would beg to differ. It would be much better for all concerned, including myself, to find in one location on a national Westminster-based government website all the responses that have been published.

He did not comment—I would be grateful if he would—on why he would feel unable to give reasons for any decisions reached. I am grateful to the noble Lord, Lord Foulkes, who has also signed Amendment 16. Is there any problem the Government would have in giving reasons for any decisions if they were not prepared to accept the responses to the consultations from the devolved Administrations?

Lord Callanan (Con): I will write to the noble Baroness with further information on that point.

Amendment 14 agreed.

Amendment 15

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

15: Clause 8, page 7, line 4, at end insert—

"(8A) Before making regulations under subsection (7) the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland.

(8B) But the Secretary of State may make regulations under subsection (7) without the consent required by subsection (8A) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.

(8C) If the Secretary of State makes regulations without the consent required by subsection (8A), the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with making the regulations."

Baroness Hayter of Kentish Town (Lab): I wish to test the opinion of the House.

4.29 pm

Division conducted remotely on Amendment 15

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Amendment 15 agreed.

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4.42 pm

Amendment 16 not moved.

Clause 10: Further exclusions from market access principles

Amendment 17

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

17: Clause 10, page 7, line 23, leave out subsections (2) and (3)

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, I inform the House that, if Amendment 17 is agreed to, I cannot call Amendment 18 because of pre-emption.

Amendment 17 agreed.

Amendment 18 not moved.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, I am moving very carefully through these amendments on the grounds that I might get something wrong, but I believe that the next amendment is Amendment 19.

Amendment 19

Moved by ***Lord Callanan***

19: Clause 10, page 7, line 25, at end insert—

"(4) Before making regulations under subsection (2) the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland."

Member's explanatory statement

This amendment would require the Secretary of State to consult the devolved administrations before making regulations amending Schedule 1 (which contains exceptions from the rules about market access for goods).

Amendment 19 agreed.

Amendment 20

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

20: Clause 10, page 7, line 25, at end insert—

"(3A) Before making regulations under subsection (2) the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland.

(3B) But the Secretary of State may make regulations under subsection (2) without the consent required by subsection (3A) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.

(3C) If the Secretary of State makes regulations without the consent required by subsection (3A), the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with making the regulations."

Amendment 20 agreed.

Amendment 21

Moved by ***Lord Stevenson of Balmacara***

21: Clause 10, leave out Clause 10 and insert the following new Clause—

"Exclusions from market access principles: public interest derogations

(1) The United Kingdom market access principles do not apply to, and sections 2(3) and 5(3) do not affect the operation of, any requirements which—

(a) pursue a legitimate aim,

(b) are a proportionate means of achieving that aim, and

(c) are not a disguised restriction on trade.

(2) A requirement is considered to pursue a legitimate aim if it makes a contribution to the achievement of—

(a) environmental standards and protection,

(b) animal welfare,

(c) consumer standards, including digital and artificial intelligence privacy rights,

(d) employment rights and protections,

(e) health and life of humans, animals or plants,

(f) cultural expression,

(g) regional socio-cultural characteristics, or

(h) equality entitlements, rights and protections.

(3) A requirement is considered disproportionate if the legitimate aim being pursued in the destination part of the United Kingdom is already achieved to the same or higher extent by requirements in the originating part of the United Kingdom."

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, as Amendment 21 was debated earlier, I should perhaps make it clear that it would leave out Clause 10, as amended, and insert a new clause. The question is that Amendment 21 be agreed to. As many as are of that opinion shall say, "Content," and to the contrary, "Not content". I think I heard that the Contents have it, but I can give the House one more chance on this if it would like. No? Then this amendment is agreed to.

Amendment 21 agreed.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): We now move to the group beginning with Amendment 22. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this amendment or the other in this group to a Division should make this clear in debate.

Amendment 22

Moved by ***Lord Wigley***

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

"Market access principles: protection of devolved competences

The United Kingdom market access principles do not affect the existing powers of Senedd Cymru, the Scottish Parliament or the Northern Ireland Assembly, with regard to—

(a) their existing procurement practices and procedures, or

(b) their existing competence to legislate to secure and apply procurement policies which underpin their economic and social strategies."

Member's explanatory statement

This amendment seeks to ensure that existing policies pursued by the devolved legislatures are not undermined by this Act and aims to prevent uncertainty regarding the legitimacy of procurement rules and regulations currently in force in the devolved territories.

Lord Wigley (PC) [V]: My Lords, Amendment 22 stands in my name and that of my good and noble friend Lord Hain. It follows on fairly naturally from Amendment 21, which we have just passed. The objective of this amendment is to put on the face of the Bill an unequivocal statement that nothing in this Bill, if enacted, will diminish or constrain the devolved Governments from continuing to use their purchasing power to help achieve their economic objectives. As there have been many worries expressed in this Chamber, in the other place, in Cardiff Bay and in Edinburgh about the danger of a clawback of powers to Westminster, I believe that it would be helpful for the devolved Governments if an unequivocal statement along the lines which I propose could be included in the Bill. I know that Ministers in the devolved Governments would welcome such a definitive statement.

I have at earlier stages, and in the context of the Trade Bill, drawn the attention of the House to the way in which successive Welsh Governments—Labour, Labour/Plaid Cymru coalition and Labour/Liberal Democrat coalition—have all regarded the purchasing power of the Welsh Government as a valuable tool in implementing their policies and achieving economic objectives. It would be very strange were that not the case.

When the late Professor Phil Williams and I, with the help of many others, published in 1970—yes, 50 years ago—*An Economic Plan for Wales*, we identified that a key ingredient in Wales's economic plight, namely that the GDP per head in Wales was significantly below the UK average, was the fact that activity rates in Wales were some six percentage points below those in England and that therefore a central objective of economic policy in Wales should be to raise those activity rates to the UK average. Over the subsequent three decades, it was an uphill struggle. Only after the establishment of the National Assembly—now our Senedd, of course—were real inroads made. It was only a couple of years ago that, for a brief time, activity rates in Wales were actually higher than the UK average.

I focus on this for a very good reason: that a significant contributory factor to this success was the deliberate strategy pursued by successive Welsh Governments of using their procurement policy to support businesses within Wales. They did this within the constraints of European competition policy, and without lowering standards. When the Assembly was established, between 30% and 35% of goods and services were procured by the Welsh Government from within Wales. By now, the figure is 55% and the target, I understand, is to achieve over 70% procurement from within Wales. As the larger corporations realised this was happening, some of them opened new sales offices in Wales. In due course, this led to their also establishing local suppliers within Wales. This means that, for every pound spent by the Government, there is a multiplier effect within the Welsh economy: more jobs are created and a virtuous circle is established.

Previously, we saw on occasion the total nonsense of purchasing bodies within Wales—central government, local government, our health authorities, universities and colleges—using suppliers many miles distant when a local capability existed. I well recall during my time

as an MP a school in north-west Wales having its grass cutting done by a company from England and a hospital getting its sandwiches from a supplier in the Midlands. Now, the green agenda has at long last become more generally recognised as essential for the survival of the human race, and the concept of buying local and eliminating unnecessary product miles has become mainstream. Supporting local economies is now seen as a valid, indeed essential, objective of government policy. Last month, partly as a response to the devastation that Covid could cause to small businesses, a campaign began called Where You Shop Matters, underpinned by Visa. That campaign has gained widespread support in Wales and, hopefully, will do so elsewhere.

Clearly, it will never be possible to source all Welsh government procurement within Wales. We do not produce all the goods in Wales, and where we do, they do not necessarily compete on price, standards or punctual availability. The fact that they are made in Wales certainly should not overrule all other considerations, but, other things being equal or within a tolerable latitude of being so, economic, social and environmental good sense tells us that this is a valid governmental approach.

Let us not pretend that the sourcing of relatively mundane supplies within the local economy is going to solve all our problems; it is not. The truth is that, despite raising employee activity rates, Wales's GDP per head remains stubbornly near the bottom of the UK league table. To get to the top of that table requires innovation, creativity, investment, enterprise, self-confidence and initiative. However, as we have slowly started to depend more on ourselves and less on others, we have seen those factors move in the right direction. Within a UK single market, Wales needs the latitude to develop its own solutions to what are long-standing psychological, as well as economic, challenges. The last thing we need now is for central government in London to impose dramatic straitjackets on our capability and capacity to help ourselves.

My amendment seeks assurances that the Bill will in no way limit devolved Governments in taking initiatives in their procurement policies to create economic gain that will serve their communities. It seeks to ensure that existing procurement practices and procedures will not be constrained and that the devolved Governments may continue to legislate in a manner that helps to ensure that their procurement policies underpin their economic and social objectives. That has been permissible under European single market rules, and I ask the Minister to confirm that the Bill cannot and will not be used to undermine those policies within the UK internal market. I beg to move.

Baroness Boycott (CB): My Lords, I agree with many of the noble Lord's points. I have tabled Amendment 23 and I am very grateful to the noble Lords, Lord Whitty and Lord Randall of Uxbridge, for supporting it. It simply seeks a derogation from market access principles to allow all four nations of the UK to put in place proportionate measures to protect the environment, to support the progressive improvement of environmental standards and to tackle climate change.

The combination of the market access principles in the Bill and the absence of an agreed common framework means that, although different Administrations will not be prevented from introducing different standards, in practice we risk seeing a stifling of innovation and a chilling effect when one nation wants to introduce different, higher environmental standards for a particular good or service, or wants to introduce other measures to tackle climate change. Effectively, we are disincentivising Governments from aiming higher because incoming goods from other parts of the UK implementing lower standards will not have to meet the new ones.

Some examples bring this issue to life. The first is the sale of peat for horticulture, which should not happen anywhere, but if any of the four nations were to decide to ban the sale of peat for horticulture due to its impacts on biodiversity, that nation would still have to sell peat from elsewhere in the UK. A second example is single-use plastic. The Welsh Government are currently proposing to ban the sale of nine single-use plastic products, but we are proposing to ban only three. Given how the mutual recognition principle currently operates, Wales would have to allow the sale of the six additional products if they had been manufactured elsewhere in the UK, which would totally undermine that policy. Thirdly, the Government are planning to phase out the sale of household coal and wet wood next year in England. However, under the mutual recognition principle the sale of both household coal and wet wood from other parts of the UK would carry on in England.

In Committee, the Minister said that protecting the environment and tackling child climate change are vital. The EU provides that in certain circumstances, it is possible to go beyond its commonly agreed standards to protect the environment—for instance, banning particular kinds of packaging, such as metal drink cans. However, the Bill as drafted does not allow for environmental or climate-related exceptions. It provides for exceptions in only a limited range of circumstances, such as to prevent the spread of disease or pests or to authorise the use of a chemical in a particular part of the UK. There also exclusions for fertilisers and pesticides, which were added during the Bill's passage through the Commons.

My amendment asks for one further, crucial addition to the list of exclusions—for environmental standards and for tackling climate change. I would welcome the Minister's clarifying the decision-making process. Why was it considered necessary to introduce exclusions in certain policy areas, but not in others such as the environment and climate change? I know that that is a broad brush stroke, but it is still possible to address individual elements, which currently we are not. Surely, there can be no more important time to incentivise ambitious climate and environmental policy.

Lord Hain (Lab): My Lords, it is a pleasure to follow the noble Baroness, Lady Boycott. I endorse everything she has said; indeed, her amendment is powerfully put. I shall speak specifically to Amendment 22, tabled by my good friend the noble Lord, Lord Wigley, to which I have added my name. He spoke very eloquently about the need for the amendment, and I shall briefly add one or two points to his compelling speech.

[Lord Hain]

Procurement is clearly devolved to both Scotland and Wales, as is made clear the recent transposition of EU procurement directives being achieved via legislation in the Scottish Parliament. Does the Minister agree that that is indeed as clear-cut as I have stated and believe it to be? It would be helpful to get that on the record.

There is strong interest in the Senedd in improving the impact of procurement on the Welsh economy by encouraging suppliers to have operations located in Wales, creating employment locally and using local supply chains, a point well made by the noble Lord, Lord Wigley. That is not discrimination. A company based in Scotland or indeed Lithuania can meet these conditions, but that flexibility is important so that the Welsh Government can continue to ensure that the billions of pounds spent by the public sector each year in Wales through procurement processes creates value in the local economy for a nation that has seen massive deindustrialisation. I still live in my old constituency of Neath, which was a heavy industry and mining constituency. The consequences of deindustrialisation have been huge, dismembering those communities and depriving them of the industrial base and secure jobs they once had. The ability, using the public sector, as the Welsh Labour Government are trying to do, to create and support strong local companies is very important. Such community benefit clauses and approaches were possible even under European law.

I had an informal conversation with the noble Lord, Lord Empey, about Northern Ireland's position. Of course, Northern Ireland is still subject to the single market and customs union rules—even after the UK leaves the EU—under the Northern Ireland protocol. It is my understanding and belief that under EU law, it is still possible to use procurement in the proactive, positive way that the Welsh Government have done to support local jobs and businesses. Can we be assured that that will not be undermined, or even made illegal, by this centralising Westminster Government?

Procurement can also be used to discourage a race to the bottom—for example, by requiring bidders to have strong employment rights policies and equal opportunity policies in order to qualify for a successful procurement opportunity. It is really important that the devolved Administrations continue to have the opportunities and rights to use procurement in that proactive and creative fashion.

5 pm

Lord Whitty (Lab) [V]: My Lords, I added my name to the amendment tabled by the noble Baroness, Lady Boycott. She has made most of the points that I was going to make, so I will be reasonably brief.

If there is any area that should override the assertion of a single UK market, particularly on mutual recognition, it must be the ability of each of the jurisdictions to go faster on our environmental commitments, particularly on the horrendously difficult task of meeting our carbon and greenhouse gas emissions targets and adapting to climate change. That is the key point in this amendment.

Northern Ireland is in a different situation, since it will still be within the single market of the EU, but if, for example, the Welsh or Scottish Governments wished to go faster in limiting carbon emissions or providing alternative energy sources, and that required specific legislation within those areas, then it would be perverse for the provisions of this Bill and UK internal market rules to prevent that. There are other environmental issues—the noble Baroness, Lady Boycott, has referred to single-use plastics, which are clogging up many ecological habitats and having an effect on biodiversity and on the oceans—which might perhaps also be areas of exception.

However, my main point is on climate change. At present, the Bill does not recognise the prime importance of going faster—and, if necessary, going faster in one part of the United Kingdom than another—to achieve our climate change aims. At present, the Bill allows legitimate interests for health and pest control. These are important issues, but not as important as climate change. This single-issue amendment ought to be written into the Bill. We need a race to the top in environmental standards, not to enforce a race to stick to the bottom.

The proper functioning of the framework agreements would probably provide some way of resolving any conflict on these issues, but without framework agreements being referred to in this Bill, we need something such as the new clause that we are proposing here. As my noble friend Lord Hain said on the previous amendment, by keeping the Bill as it is, we are acting in a more rigid and top-down way than the EU single market.

Climate change needs a particular reference in this Bill, and this is the easiest way to do it in this section. I strongly support it being written in.

Lord Randall of Uxbridge (Con) [V]: My Lords, I will speak briefly to Amendment 23, in the name of the noble Baroness, Lady Boycott, to which I was pleased to add my name. We have just heard from the noble Lord, Lord Whitty, who has also signed it, and he put his finger on the case for this amendment, as did the noble Baroness herself.

As the noble Baroness, Lady Boycott, said, this amendment would ensure that there is a derogation from the market access principles of mutual recognition and non-discrimination which would allow all four UK nations to put in place proportionate measures to protect the environment and tackle climate change. I echo completely what she and the noble Lord, Lord Whitty, said. We do not need to emphasise the crisis that we are facing with climate change and the environment. It is the big issue of our time.

There are concerns that without this derogation there is a potential for stifling innovation, as there will be no incentive for a nation to set higher environmental standards for goods given that it will have to sell goods from the other three nations which may have been produced to a lower standard. I make no apology for repeating the example of a possible consequence if we do not include this amendment, and I want my noble friend the Minister to put my mind at rest on this.

A potential ban on peat for horticultural purposes is a good example, and something that I have been campaigning on for some time. It is an issue that affects climate change and biodiversity. If any of our four UK nations decided to ban the sale of peat for horticulture due to its impacts on biodiversity and emissions, and to preserve our precious peat bogs,

what would that mean for another part of the UK that had, at that time, decided not to go down that line? Can my noble friend confirm that, as I read the Bill as currently drafted, the far-sighted nation that decided to ban peat would still have to sell peat from elsewhere in the UK? I am no expert on this, so can my noble friend the Minister also clarify what the situation was while we were still within the EU? I have often heard that one of the advantages of leaving the EU was being able to do exactly what we wanted.

I use that as an example, but I could have given a number of other similar scenarios, such as single-use plastics. I know well from my time as a special adviser to the previous Prime Minister that the devolved countries do not always move at the same speed on environmental measures. I do not want their ambitions to be stifled, however accidentally.

I do not want to detain your Lordships over this excessively, as we have heard already from several others, but I will just say this: without insurance, I regard this as a very serious flaw in the Bill.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I speak to Amendment 22, in the names of the noble Lords, Lord Wigley and Lord Hain, and Amendment 23, in the names of the noble Baroness, Lady Boycott, and the noble Lords, Lord Whitty and Lord Randall of Uxbridge. I too will be brief, because those introducing the amendments—which the Green group support—have done a great job of explaining the urgent need for them both.

Amendment 22 deals with public procurement. I spoke quite extensively—for three minutes, anyway—on a statutory instrument on this issue on 16 November, so I will not go on at great length. I will just point out that we have seen many states in Europe make great progress on this issue, and, as the noble Lord, Lord Wigley, set out, Wales has also made significant progress—perhaps the most progress of the nations of the United Kingdom. We have also seen great progress in England for what is known as the Preston model. Public procurement is absolutely crucial for improving the quality of our public health and our environment, for tackling climate change and for supporting small independent businesses. We are setting the model here for what we might hope to be future devolution within England—for Yorkshire, perhaps, and Cornwall, so they should also be able to leap ahead with the resources and powers to do so.

On Amendment 23, as the noble Lord, Lord Randall, just said, it is crucial that no nation in the United Kingdom is held back by others being laggards—and we know which ones that is likely to be. The point of devolution is to allow nations to diverge, to take different paths and to act according to their local circumstances. The noble Lord gave the very good example of peat, something on which we keep hearing promises of action but where we have yet to see the action needed. We hope that we will see real leadership on this and then see the laggards follow.

Lord Empey (UUP): My Lords, I raise an issue that has already been referred to by the noble Lord, Lord Hain, pertaining to Amendment 22. It came to my attention two weeks ago, and I suspect that many Members are not aware of it, but we need to make ourselves aware very quickly. I attended Grand Committee when we were discussing the SI on common rules for exports. It was introduced by the noble Lord, Lord Grimstone. Bear in mind that the SI dealt with circumstances in which the UK Government could require one of the devolved regions or a company not to export certain items, if they were deemed to be required for the national purpose. For instance, the UK Government could say to a manufacturer of PPE anywhere in the UK, "We need that in the United Kingdom. We cannot let it go abroad." However, in his opening remarks, the Minister said that the European Commission would exercise these powers in Northern Ireland.

In a different context last week, I asked the noble Lord, Lord True, about this and in what other areas the European Commission would exercise powers. He was unable to answer and said he would write. I put down a Written Question to which I have not yet received a response, but I am trying to get at the significant change taking place to the internal governance of the United Kingdom. In this example, a Minister of the Crown is telling us that a foreign power—which the European Commission will become on 1 January—will exercise powers in a part of the United Kingdom. I do not believe that that SI, and we have had hundreds of them, is the only SI to which this applies. I have asked for research to be undertaken on this, but the question arises in this case specifically, so perhaps the Minister will address it. If he cannot address it today, I would be grateful if he would write and place his response in the Library.

As Northern Ireland will be left in the EU, and subject to the single market and customs union regulations, and state aid rules, where, ultimately, does the power reside? If the procurement rules in the rest of the United Kingdom change, or if they change in the European Union but not in other parts of the United Kingdom, who will ultimately decide on these matters? Public procurement is an EU competence at present. It is not entirely devolved, because competition policy was a reserved matter, as I understand it, but there is a question over who actually decides. In my opinion, the constitution of the United Kingdom is being changed by statutory instrument. Very few people even seem to be aware of all this. Things like this amendment tease out who decides.

The subsequent Amendment 23 has some noble aims and objectives. A question also arises there as, if European Union environmental standards change, how will they be translated into regulations that could affect what happens in Northern Ireland versus Great Britain? There are big questions to be asked here. If the Minister cannot deal with them today, I would be grateful if he would write to me and put the letter in the Library for Members to see. There are changes taking place to our country, and people seem almost to be oblivious to their full extent and what they will mean in the long term.

5.15 pm

Baroness McIntosh of Pickering (Con): My Lords, I speak briefly on both these amendments. I have a lot of sympathy with what the noble Baroness, Lady Boycott, and co-signatories are pushing in Amendment 23. I presume that, in responding, the Minister will say that the Government are putting forward an economic

[Baroness McIntosh of Pickering]
Bill to create an internal market to compensate for us leaving the internal market of which we have been a member for 46 years.

Amendment 23, like Amendment 21, does not have regard to the one remaining part of the original Article 36 of the Treaty on the Functioning of the European Union that has been left out of Amendment 21. I gather this was an oversight that will be corrected at Third Reading. In my view, the fatal flaw is that any reference to public safety or security has been left out. It is interesting to note that environmental standards and protection of the environment—which, I would say, includes climate change—and many of the other issues in Amendments 21 and 23 are dealt with elsewhere. It is bizarre to leave out any reference to public safety and security when we are in the middle of a pandemic, which is why I could not vote for Amendment 21 at this stage.

I am full of praise for the noble Lord, Lord Wigley, for bringing forward Amendment 22. I presume that the Minister, in responding, will say that it is not this Bill but the Trade Bill that will prevent the Welsh Government or Yorkshire councils from seeking to favour their own produce in public procurement. I am particularly mindful of the work that Deliciouslyorkshire does. Obviously, all food in Yorkshire is delicious, but Deliciouslyorkshire is a marketing organisation that promotes foods made in Yorkshire.

I was very enthusiastic about one of the potential benefits, if there were to be any, of leaving the European Union in that we would be able to source more of our foods locally. Now I understand that, in the global procurement agreement in the Trade Bill, we will have to meet exactly the same threshold as we were required to meet in the European Union public procurement policies and tenders for bids. Am I right, or is the noble Lord, Lord Wigley, right? Will there be opportunities for the Welsh Government and Yorkshire councils to promote and source more of their own foods in, for example, local hospitals, prisons and schools than would otherwise have been the case?

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I support Amendments 22 and 23, but I shall refer in particular to Amendment 22 in the names of the noble Lords, Lord Wigley and Lord Hain. Again, this is about ensuring that no straitjacket or limit is placed on the procurement practices of devolved Administrations. It is about protecting their functions, with particular reference to the market access principles, which should not override devolution settlements. The noble Lords, Lord Hain and Lord Empey, referred to the situation of Northern Ireland which, in terms of goods for procurement purposes, will be subject to the Northern Ireland protocol and, therefore, the EU.

While I believe there is a need to ensure that there are no borders anywhere, whether in the Irish Sea or on the island of Ireland, notwithstanding that, there are areas of clarification required. Can the Minister say, or perhaps write to us on it at a later stage, whether any procurement practices would apply to the devolved Administration in Northern Ireland which would be subject to UK oversight as per the Bill? Will there be any at all?

Secondly, on the previous group I asked the Minister whether he could provide an update on the interparliamentary Brexit forum, which consisted of representatives of the devolved Administrations and the UK Government. It has not met since September 2019. Maybe he could provide us with an update on when its next meeting is likely to take place.

Further to the point made by the noble Lord, Lord Empey, I am reminded of those made by the UK constitution monitoring group. It said that government Ministers have occasionally asserted that the United Kingdom Internal Market Bill is not a constitutional measure at all but is concerned only with economic policy. It would therefore perhaps be better to characterise it as a key building-block in an emerging economic constitution for the UK, post Brexit. However that may be, the group believes that the Bill raises fundamental questions about the governance of the UK following withdrawal from the European Union, in particular whether it will be possible to establish a common understanding of the future role and importance of the devolved institutions in UK governance. Would the Minister like to comment on that statement in his wind-up, and will he assure the House that market access principles will not be used to override the devolution settlement?

Lord Liddle (Lab): My Lords, I will speak briefly in favour of both these amendments, particularly Amendment 22 on the question of public procurement. When I was Europe adviser in Downing Street, I formed a view that the British authorities—in Whitehall and the Government Legal Service—took a more legalistic approach to implementing the state aid rules, the non-discrimination rules and so on of the European single market than did most other member states. It was quite an effort to get the system to think differently about these questions.

One of the most notable achievements where we thought differently was towards the end of the Labour Government, when my noble friend Lord Adonis, who is not in his place, insisted that the award of a big contract for railway carriages and new trains would go to Hitachi but on condition that it built a plant to construct them in Shildon, County Durham. That was a success in breaking the established orthodoxies; it came rather late in the day, but there we are. Then when my noble friend Lord Mandelson was trying to bring back the concept of industrial policy, also towards the end of the Labour Government, one of the big questions was that of public procurement. I really am not a protectionist; I believe in open markets and that, on the whole, the benefits of free trade are very considerable. But there are circumstances in which public procurement can be used to support local business in a way that is justified.

One of the ways of doing this, of course, is that if you have innovative local firms with a lot of potential to grow, they can easily be squeezed out of the market by competition from big companies which can produce at much cheaper prices. I believe that one reason why we have not been as innovative as we should is that we have not used public procurement to support small and medium-sized enterprises with great potential for growth. This was one of the things we were trying to do towards the end of the Labour Government.

However, I also believe that that kind of policy is difficult to run from London. That makes this kind of public intervention, which is about not spending subsidies on lame ducks but trying to grow the economic potential of a local area, one that is best decided upon as close as possible to that area. That is why it is a terrible mistake to try to limit the powers of the Welsh and Scots on these matters. In fact, I would like to see proper devolution in England so that English authorities could do this outside London. This amendment has my wholehearted support, and I hope that the Government will give it a very considered response.

Baroness Noakes (Con): My Lords, I have spoken in several debates on Report about the impact of further restrictions on the scope of the UK's internal market for goods covered by the market access rules. The plain fact is that, the more that is taken out of the ambit of the rules on mutual recognition and non-discrimination, the more likely it will be that consumer detriment will follow, whether by way of increased costs or reduced choice. With that background, let me turn briefly to the two amendments in this group.

In respect of the amendment of the noble Lord, Lord Wigley, on procurement, I have to confess that I am not an expert on procurement rules—unlike the noble Lord, Lord Liddle—so I will have to tread carefully not to display the extent of that ignorance. But my instinct is that if we try to take procurement out of the UK's internal market rules, we will end up harming the UK's internal market, which would be harmful for all parts of the United Kingdom.

The noble Lord, Lord Wigley, explained what had been happening in Wales in entirely reasonable terms, but it seems a relatively short step from that to applying discrimination in an unreasonable way—and for no reason other than to support nationalist views. I am sure that would not happen in the Welsh Government, but I can think of somewhere else where it might.

In addition, when we talk about benefits for one nation, we have to see the disbenefits to that nation's businesses if they in turn are locked out from public procurement markets in other parts of the United Kingdom. In particular, we have to understand that Scotland, Wales and Northern Ireland export more goods into other parts of the United Kingdom than England does into the other three nations. If we have an internal market that works on parochial or nationalist principles, that is likely in the long run to harm Wales, Scotland and Northern Ireland, as much as it may appear to give them gains in the short-term, so I do not support his Amendment 22.

I turn briefly to Amendment 23, which I am not sure would work in practice. Paragraph (b) of the proposed new clause refers to

"a proportionate means of achieving a legitimate aim"—

but the term "legitimate aim" has no definition here. It is defined in Clause 8, but that deals only with indirect discrimination, so I do not think that the amendment would work on its own terms. In addition, we had a good debate on the substance of these issues in the group of amendments that we discussed on the first day of Report, and this amendment does not take us any further than that, so I hope that the noble Baroness, Lady Boycott, will not press it.

5.30 pm

Baroness Randerson (LD) [V]: My Lords, I speak in support of the amendments. The internal market must be based on high environmental standards, as well as supporting progressive improvement, but there is nothing in the Bill to ensure that this happens—hence the amendment. There is no reference to common frameworks to support higher standards, and there is no non-regressive provision to prevent standards falling. Taken together, this could easily lead to a deregulatory race to the bottom, and have a chilling effect on attempts to improve environmental standards.

It is important to remember that improving environmental standards can be controversial in practice, even though there may be no debate about the science behind them. For example, in the early days of the pandemic, the Government very commendably made money available and encouraged councils to put in place new cycle lanes and pedestrianised areas—a policy which we would all agree is good for our health and for the climate. However, many councils found this very difficult to do in practice, and some backed down in the face of fierce opposition from motorists. Wandsworth council, for example, was one of those concerned.

So in this Bill, while devolved Administrations will not be legally prohibited from introducing new environmental standards, under the market access principles, incoming goods from the rest of the UK will not have to meet these new and higher standards—hence fundamentally undermining attempts at improvement. This is in contrast with EU law, which has created coherent shared mechanisms. The EU also allows countries to go beyond commonly agreed standards to protect the environment, such as by banning particular types of packaging. However, there is no possibility of derogation from mutually recognised requirements in the Bill, as envisaged by the Government.

Amendment 23 refers specifically to environmental standards, but the principle also applies to public health and to standards across the board. That undermines efforts at innovation, a key factor in all successful markets. In Committee, the Minister confirmed that exclusions are

"intentionally narrowly drafted, to ensure that there are no unnecessary trade barriers."—[*Official Report*, 28/10/20; col. 339.]

Can the Minister explain how the Government have come to the conclusion that setting higher environmental standards or higher standards of public health creates a barrier to trade?

In the other place, the Government created an exclusion for pesticides, which was not initially in the Bill. Can the Minister explain why this is important, but not other environmental factors? Just as over the decades we have become increasingly aware of the dangers of pesticides, so we have been on a similar journey of discovery over plastics. Well over a decade ago, the Welsh Assembly voted to introduce a charge for single-use plastic bags. The reason was that there was concern that they did not break down in the environment, that they lasted for hundreds of years and that animals died after getting tangled up in them. After some protest, England followed, because it saw the success in Wales of that policy. A decade on, we

[Baroness Randerson]
know so much more about plastic and the microscopic particles that we all ingest, either directly from plastic bottles, or indirectly, for example from fish which have themselves ingested particles.

My point is that yesterday's experiment becomes today's norm. Wales wants to ban nine different types of single-use plastic next year, and England—via the UK Government, of course, but the Government for England in this case—seems to be thinking of banning only three. If the Bill is passed without amendment, the efforts in Wales to lead in this field will in practice be totally undermined.

I will finish with another example. Next year the UK Government want to ban the sale of house coal in England. This Bill would mean coal from Wales could still be sold in England and would thus undermine standards that the Government wish to set for England. It is important to remember that what applies to one nation applies to another. I support the amendment.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, this has been a very interesting debate for a number of reasons, which I shall come back to as I conclude. The noble Baroness, Lady Noakes, as she often does, focused on the key issue in play here: where we best situate the balance in an internal market that is as integrated as we currently have, which needs and respects clearly harmonised rules but also allows for joint processes which allow individual parts of the market to develop at different rates in different places. I think we agree that that is the key issue but differ on where the balance must lie and whether it has to be uniform as much as the Bill seems to suggest it will be.

The main interest in this debate has been in focusing our minds on areas that we have not really touched on in recent groups. We have looked at goods and services and at qualifications and how they might be harmonised, and we are coming back to services and qualifications later in our debates this evening. The points made by the noble Lord, Lord Wigley, about whether current policy might be adapted because of the impact of this Bill when it becomes an Act need an answer, and I would be grateful if the Minister could respond in particular to that point. Is there a particular hook in this Bill that will cause difficulties across the devolved authorities?

Secondly, on the point made by my noble friend Lord Hain, could it have an adverse effect on current processes so that, for instance, we would lose the local benefit policies to which he referred? Thirdly, on the point raised by my noble friend Lord Liddle, if there are good and valuable initiatives on local growth and support for sectors that are perhaps subsets of the national economy that are appropriate and best organised and run from a local point of view, how will they be affected by the way in which the Bill imposes a straitjacket on the various initiatives that we want to see come forward? I look forward to hearing from the Minister.

Lord Callanan (Con): My Lords, as the Government set out in Committee, we intend to consult shortly and deliver measures on procurement through a wider package of procurement reform. The aim is for primary legislation to be made in the second Session. Therefore, I hope that this will offer some reassurance to noble Lords that this amendment is unnecessary, because the market access principles will not typically operate in the area of public procurement, as they are about how business is regulated. The procurement rules cover how public authorities carry out their procurement activities. Therefore, I reassure the noble Lords, Lord Wigley and Lord Liddle, the noble Baroness, Lady McIntosh, and others that there will be no impact on public procurement.

Turning to Amendment 23, we have obviously had these debates before; in fact, I recall having them during the passage of the various Brexit Bills with many of the same speakers. As we explained on previous occasions, the exclusions we have drafted for goods in Schedule 1 are narrow and tightly defined to protect the functioning of important policy areas. This protects the ability of the devolved Administrations and the UK Government to preserve the proper functioning of important policy areas, while at the same time avoiding any harmful or costly barriers to trade within the UK internal market.

More generally, I understand that this amendment is designed to strengthen the devolved Administrations' ability to take different approaches to public policy related to aspects of the environment. We have made it clear that the Bill contains derogations for the protection of the life of humans, animals and plants, which aligns with protection of the environment in many cases.

Secondly, the Government support and respect the devolved Administrations' right to set policy in their areas of devolved competence. The Government also recognise the benefits of locally targeted policy and the potential for policy innovation. For example, on the environment, between 2018 and 2019 the UK nations all introduced a ban on microbeads in rinse-off personal care products, working together to take a landmark step in the fight against plastic waste. There is no reason why the provisions in this Bill would hinder similar collaborative initiatives.

However, it is important to acknowledge the unprecedented and significant flow of powers to the devolved Administrations, as well as the incoming ability of the UK legislatures to create new policy in areas previously overseen by the EU. This Bill aims only to ensure frictionless trade, movement and investment between all nations of the UK. The policies that different parts of the UK choose to pursue in future is a matter for each Administration.

A number of noble Lords, including the noble Baronesses, Lady Boycott and Lady Randerson, raised yet again the sale of coal across the English-Welsh border, and my noble friend Lord Randall introduced the new issue of peat. The same thing applies in both cases: there is a clear distinction between sale and use. Under mutual recognition, the use of coal or, indeed, peat—it is probably a form of coal, is it not?—could be banned, regardless of its origin in the UK. Requirements related to the use of goods are not within the scope of the mutual recognition principle. If the requirement instead relates specifically to the sale of coal or peat, the interaction with mutual recognition is slightly more complex and depends on whether the requirement in question counts as a relevant requirement for the purposes of mutual recognition. Broadly speaking,

mutual recognition captures requirements that are intrinsic to the good itself, such as requirements for the composition of the good, whereas non-discrimination captures, among other things, requirements for the circumstances or manner in which a good can be sold. I clarified these matters in detail in a letter to the noble Lords, Lord Purvis and Lord Fox; it is in the House Library, I think, if Members require further details.

My noble friend Lord Randall asked me about the situation in the EU and whether we could ban the sale and use of such things. As noble Lords know, the machinery in the EU is wholly different: for example, there are technical notification requirements through which a member state may be delayed in implementing its legislation; or, indeed, the European Commission may step in and open negotiations on a harmonising measure. Any derogation applied by a member state is open to challenge, of course; the Scottish Government had to fight very hard to get their minimum unit alcohol pricing accepted.

The system established under this Bill is different. Pricing and other manner of sale requirements are totally out of scope. Furthermore, requirements governing how a consumer can use a good that may originally have been caught by Article 34 of the Treaty on the Functioning of the European Union are also totally out of scope.

The noble Baroness, Lady Ritchie, asked whether the Bill is a threat to devolution. No: the proposals are designed to ensure that devolution can continue to work for everyone. All devolved policy areas will stay devolved. The proposals ensure only that there are no new barriers to UK internal trade.

The noble Baroness also asked about the Interparliamentary Forum on Brexit. Of course, the clue is in the name: it is an interparliamentary forum. Such decisions are for the legislatures rather than the UK Government to take forward directly, so it is not my place to comment on that.

For all the reasons I have set out, I hope the noble Lord feels able to withdraw his amendment.

5.45 pm

The Deputy Speaker (Lord Lexden) (Con): I have received requests to ask short questions from the noble Lords, Lord Purvis of Tweed and Lord Randall of Uxbridge. I call the noble Lord, Lord Purvis.

Lord Purvis of Tweed (LD): My Lords, I am grateful for what the Minister said in referring to the noble Baroness, Lady Boycott, and to his correspondence with my noble friend Lord Fox and me.

I consulted the House of Lords Library on how the Minister's letter referring to the sale of coal—not its use—interacts with the Air Quality (Domestic Solid Fuels Standards) (England) Regulations, which this House passed on 7 October and which are the governing legislation. The regulations specifically ban the supply and sale of coal and wet logs in England. One concern is that the Bill would not ban such sales if the goods originated in Wales, Scotland or Northern Ireland, where bans are not in place. That is clear; in fact, the Minister's letter confirmed that this issue falls within the scope of mutual recognition. In addition, the other terms of the regulations bring this issue within the scope of indirect discrimination.

However, more concerning is that the regulations have been made but are not yet in effect—they come into effect on 1 May 2021—so the Bill will take effect before them. That is a requirement under this legislation, so the regulations the House passed banning the sale of coal and wet logs in England will have no effect because they are now within the scope of the Bill. Clause 5(3) states:

"A relevant requirement … is of no effect".

Can the Minister clarify that, regardless of whether this is allowed or not, the ban in England will have no effect because of this legislation?

Lord Callanan (Con): Again, it is about the difference between sale and use. England can proceed to ban a sale in England but if the sale is allowed in Wales, it could still take place under the mutual recognition principle; but, presumably, use would be prohibited. My letter explains this in great detail.

Lord Randall of Uxbridge (Con) [V]: I do not want to labour the point, but I am a little dense on this issue. As I understand it, my noble friend is saying that you could ban the use but not the sale of coal or peat, which is my particular interest. I wonder how that will be affected. I am sorry to labour this point—I am sure my noble friend has lots more important things to discuss—but I would be grateful for any elucidation he can give.

Lord Callanan (Con): My noble friend is essentially right, but it would depend on whether it was legal for the good to be sold in the other nations of the United Kingdom. Again, the difference between sale and use is the important distinction here.

The Deputy Speaker (Lord Lexden) (Con): I call the noble Lord, Lord Wigley, to conclude the debate.

Lord Wigley (PC) [V]: My Lords, first, I thank the dozen or so noble Lords who participated in this debate, which was very focused and has raised a number of issues that will need to be taken further. I was grateful to the noble Baroness, Lady Boycott, for introducing her amendment, many parts of which overlap with mine; I certainly support her amendment in its own right, irrespective of how it interplays with mine. I am sure that she and other colleagues will accept the principle of product miles being an important element in the consideration of environmental and economic policy.

I was taken by the references the noble Lord, Lord Liddle, made to regional policy in England. This was touched on by the noble Baroness, Lady McIntosh, as well. That is absolutely valid, because circumstances vary from area to area, certainly between the south-east and the north of England, and between other areas. Where there are different circumstances one needs different policies and mechanisms of government that can deliver those policies in line with the areas' requirements.

Therefore, in advocating these powers for the three devolved nations, I also accept entirely the argument that there should be an ability to fine tune policy for

[Lord Wigley]
the regions in England. It is for those regions to stand up and be counted, and to demand the powers to do so. After all, the facility in Wales of having our own Government has enabled us to take new initiatives that have helped to solve some problems—not all of them, but some of them. The noble Baroness, Lady Bennett, whose support and that of the Green group I welcome for both amendments, has underlined on a number of occasions the need for there to be devolution to the regions of England.

I listened carefully to the comments made by the noble Lord, Lord Empey, in particular, who raised a question that I do not think has been fully answered by the Minister regarding how the use of orders might be undertaken in Northern Ireland. That leads me on to the question, in responding to the Minster's argument that there will be a separate policy statement on procurement reform, of whether that new policy and the legislation associated with it will be driven through by statutory instrument. We might be in a position where Wales and Scotland could, like Northern Ireland but for different reasons, be subject to that sort of policy.

What I want from the Minister before I conclude this short debate is some assurance that, in drawing up the consultation and procurement proposals he has in mind for a later stage, that will not go through the back door, which he is not admitting to doing through the front door in this Bill. I would be grateful if he could respond specifically on that question: that the procurement reform will not undermine the thrust of the argument we have had in the debate. I would be grateful for his comments on that before I conclude.

Lord Callanan (Con): The Government intend to deliver measures on procurement through a wider package of procurement reform. The aim is for primary legislation to be made in the second Session, as I said in my answer. I hope that is enough reassurance for the noble Lord.

Lord Wigley (PC) [V]: I am grateful to the Minister for clarifying that this will happen in the second Session, but I very much hope that it will not open a totally different view of the devolved competencies and the balance of powers needed not only between the three devolved nations, but regionally in England. I hope that that can be given greater thought.

I will not press the amendment, but I believe that the approach encapsulated in it can be combined with some of the other amendments we have already passed that will be part of the revised Bill that goes back to the House of Commons. If that is the case, there may be opportunities for Welsh MPs to pick up this matter in the House of Commons so that we can come back to it again when we consider how the House of Commons responded to the Bill as it finds it. Having said that, I beg leave to withdraw the amendment.

Amendment 22 withdrawn.

Amendment 23 not moved.

Clause 11: Modifications in connection with the Northern Ireland Protocol

Amendment 24 not moved.

Amendment 25

Moved by ***Lord Judge***

25: Clause 11, page 8, leave out line 17 and insert "the European Union (Withdrawal) Act 2018"

Member's explanatory statement

This amendment is consequential on the removal of Part 5 (Northern Ireland Protocol) at Committee Stage.

Lord Judge (CB) [V]: My Lords, Amendment 25 and the other amendments in the group are consequential on the amendments made in Committee when Part 5 was removed. To give your Lordships a simple example, Amendment 25 concerns Clause 11(8), which says:

"In this section 'qualifying Northern Ireland goods' has the same meaning as in section 43."

Clause 43 has now gone and the provision is therefore meaningless. The fact of the matter is that the remaining amendments relate to provisions in the Bill that are absent of content now that the link formerly with Part 5 has been removed. I beg to move.

Amendment 25 agreed.

Clause 12: Guidance relating to Part 1

Amendment 26 not moved.

Amendment 27

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

27: Clause 12, page 8, line 31, at end insert—

"(4A) Before issuing, revising or withdrawing any guidance under subsection (4), the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

(4B) But the Secretary of State may issue, revise or withdraw any guidance without the consent required by subsection (4A) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.

(4C) If the Secretary of State makes regulations without the consent required by subsection (4A), the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with making the regulations."

Member's explanatory statement

This amendment ensures that the Secretary of State must consult with the devolved administrations before revising or withdrawing guidance under Clause 12.

Amendment 27 agreed.

Amendment 28 not moved.

Amendment 29

Moved by ***Lord Callanan***

29: After Clause 12, insert the following new Clause—

"Duty to review the use of Part 1 amendment powers

(1) In this section "the Part 1 amendment powers" are the powers conferred by sections 6(5), 8(7) and 10(2) (powers to amend certain provisions of Part 1).

(2) The Secretary of State must, during the permitted period—

(a) carry out a review of any use that has been made of the Part 1 amendment powers,

(b) prepare a report of the review, and

(c) lay a copy of the report before Parliament.

(3) In carrying out the review the Secretary of State must—

(a) consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland;

(b) consider any relevant reports made, or advice given, by the Competition and Markets Authority under Part 4; and

(c) assess the impact and effectiveness of any changes made under the Part 1 amendment powers.

(4) The permitted period is the period beginning with the third anniversary of the passing of this Act and ending with the fifth anniversary.

(5) If any Part 1 amendment power has not been used by the time the review is carried out, this section has effect—

(a) as if the report required by subsection (2), so far as relating to that power, is a report containing—

(i) a statement to the effect that the power has not been used since it came into force, and

(ii) such other information relating to that statement as the Secretary of State considers it appropriate to give, and

(b) as if the requirements of subsection (3) did not apply in relation to that power."

Member's explanatory statement

This new Clause would require the Secretary of State to carry out a review of, and to lay a report to Parliament about, the use made of the amendment powers in Part 1. The review cannot start within three years of Royal Assent, and the steps required would need to be completed within five years.

Amendment 29 agreed.

The Deputy Speaker (Lord Lexden) (Con): My Lords, we now come to the group consisting of Amendment 30. I remind noble Lords that Members other than the mover and the Minister may speak only once, and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division should make that clear in the debate.

Clause 16: Services: overview

Amendment 30

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

30: Clause 16, leave out Clause 16

Member's explanatory statement

This probing amendment is intended to clarify the extent to which the Government has considered how the provisions of the bill in respect of services will work in practice.

Baroness Neville-Rolfe (Con): My Lords, I seek clarification on the use of Clause 16 on services, on which hang the plentiful exclusions in Clause 17 and Schedule 2, and the related operation of mutual recognition, and of direct and indirect discrimination for services. I spoke to the amendment from the noble Baroness, Lady Hayter, in Committee but her concerns have been met by the interests of consumers being added to the objectives of the CMA in implementing this legislation by the Government's judicious amendment to Clause 29, which we will touch on later, so I return to the charge alone. I refer to my interests in the register because of my involvement now and historically in various businesses, although I am not sure where their interests would lie.

The Government's concession does not help to answer my questions about services, which are about the practical application of the services clauses. This is important because services make up over 80% of GDP, although I note that a large chunk—financial services, health and social services, legal services, transport, audio-visual and some others—are excluded from the reach of some or other of the clauses in Part 2. In a digital world, services are increasingly attached to goods, such as cars, white goods and smartphones, so the distinction between goods and services is also now blurred. Many service businesses sit outside London, including in the former red wall seats, and millions of them are small businesses—the sector closest to my heart for its innovation, dynamism and espousal of family values.

Services are at the heart of our economic success—it probably all dates back to the time when Napoleon accused us of being a nation of shopkeepers. However, they are also a mystery and ill understood, as I know from the excellent work we do on the EU Services Sub-Committee, of which I am honoured to be a member. Moreover, if you google services you find yourself lost between various motorway service stations and public services such as the NHS. It is our duty as a House to try to shine some light on this potentially confusing new area of law on services in the internal market.

Unfortunately, I do not really understand what Clause 16 and its associates are intended to achieve. I do not think I am alone in this. The Minister talked in Committee of the value of the non-discrimination rule and said that it is

"a fundamental safeguard for businesses, ensuring that there is equal opportunity for companies trading in the UK, regardless of where in the UK the business is based."—[*Official Report*, 28/10/20; col. 357.]

But then there are exclusions on a major scale, suggesting that millions of businesses, and perhaps non-business entities, will not benefit from this principle.

6 pm

I ask my noble friend again for some examples of businesses and sectors that will benefit from the Bill and how. For example, what does this mean for the coffee shop or hairdresser chain setting up across Wales and the Midlands? If they were in audio-visual—for example, cable TV—or healthcare services, both of which benefit from exemptions, what would be the difference? What protections does British Airways have from regional airlines and vice versa? Why do sectors such as property, intellectual property, education and architecture need to be the subject of the regulations in this part of the Bill when so many other areas are apparently exempted? Are those sectors excluded from the services provisions by inclusion in Schedule 2 also excluded from the penalties associated with information gathering by the Competition and Markets Authority in Clauses 38, 29 and 30?

I need hardly mention that my position is that the office for the internal market should not be located in the body popularly known as the CMA for a number of reasons, including the need for the right culture in this important new body, as distinct from the appropriate culture for a competition regime. I have yet to hear any

[Baroness Neville-Rolfe]
argument for why it should be located in the CMA. I understand that the amendments on this issue may not now be taken until Wednesday and I may not be able to be present at the relevant time, so I wanted to briefly make my position clear ahead of that debate.

Finally, I turn back to the services provisions. There must be a good answer to all of this, or the Government and my noble friend would not be trying to rush the new powers and exemptions through. However, as someone with wide experience of government and business, I am not yet satisfied. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I am grateful to my noble friend for moving this amendment and giving us the opportunity to have a general debate on Clause 16. I will take this opportunity to ask my noble friend if he could elaborate a little on the background to this clause.

I understand that, in their consultation, the Government wrote:

"the UK Government's proposals are an adaptation of existing rules in the Provision of Services Regulations 2009 which contain regulations on mutual recognition and non-discrimination. Rules included in the UK Internal Market Bill will look to retain the effect of the Provision of Services Regulations".

I am sure my noble friend Lady Neville-Rolfe was being very honest when she said that this is not clear and that she does not entirely understand the background to it. I do not think that she is alone. Against that background, is it entirely fair to have only given businesses the opportunity to consult on these provisions for one month? My understanding was that the normal consultation period is at least two, if not three, months, and I wondered why the consultation on these provisions was restricted to four weeks.

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, I thank the noble Baroness, Lady Neville-Rolfe, for drawing this clause to our attention, and I agree with the comments that have been made. In particular, I agree with the question about how you distinguish between goods and services when, nowadays, many things are never sold but rather licensed or rented and must sit either with one foot in each camp or, possibly, goods become services and vice versa.

Other confusions also arise around things that originally can be excluded but then are not when there is a substantive change to their regulation. There was some discussion, in which I was not involved, on this in Committee. What constitutes a substantive change? If you have authorisation requirements and a list of 10 things, does it mean that five have to be changed or does it mean a significant change to one? If you had to add on another one because there are some changes in circumstances, who is to know whether it is then out or in?

There are certainly a lot of things that are not yet clear and, if it does—as the noble Baroness, Lady Neville-Rolfe, has said—interfere with our services, which are the majority of our trade, then we will be in a very difficult situation. I would welcome further clarification, or indeed amendments, to make matters clearer. I am not sure whether removing the clause actually helps because the knock-on effect elsewhere would of course be substantial, but I think that there is something that needs to be fixed.

Baroness Noakes (Con): My Lords, I am glad that my noble friend Lady Neville-Rolfe's Amendment 30 is only a probing amendment. I very strongly believe that the UK's internal market will be more robust as a result of this Bill and that it needs to cover all aspects of trade and professional activity occurring between the four parts of the United Kingdom.

However, like my noble friend, I have been struggling to work out just how important Part 2 is to businesses throughout the UK at the moment, and I also understand that there is relatively little current data on trade in services across the four nations. Given the exemptions that will apply to Part 2, the Government presumably do not think that the Bill will have very much real-world impact, at least in the short to medium term. I can see that it may be necessary to protect service providers in the future, if one or more of the devolved nations chooses to make it difficult for out-of-nation services providers, and, to that extent, I can see why we may well need Part 2 of this Bill. It would be good to hear from the Minister what he sees as the biggest problems that this Bill is trying to tackle.

Lord Naseby (Con): My Lords, I think the House should be very grateful to my noble friend for putting this probing amendment down. All of us who have worked in the services industry, as I did before going to the other place, understand it very well. However, despite this, it is very difficult to comply with this part of the Bill.

The underlying problems I have are that, first, the services industry is a real growth market for the UK and shows every sign of continuing to be so. We must be very careful not to undermine it. I note my noble friend's mention of consultation, which I am a great believer in; I have probably spoken about it on more amendments than anybody else. At any rate, consultation of only one month is not acceptable in any industry, particularly not at this crucial point.

I have two technical questions, having read and thought about this. First, what happens to those service industries that have no regulator, which would be a fair number of them? Sometimes they are in a licensed area, and sometimes they are not in any particular area, so it is not clear to me what happens to them. Secondly, will the register, when it appears, automatically approve every existing business in the services industry and transfer them across? If not, is there to be an appeal mechanism? Again, I ask these questions on a probing basis and look forward to my noble friend giving us some guidance.

Lord Purvis of Tweed (LD): My Lords, it is very telling that three of the Minister's noble friends were seeking clarification as to the purpose of this part of the Bill. The fact that answers are still being sought on Report in the House of Lords should be quite worrying for the Government. The noble Baroness, Lady Neville-Rolfe, is clearly an optimistic person. She believes that there are good reasons and it is just that, at this late stage of the legislation, the Government have not said

what they are. We will give the Minister another chance to explain, in clear terms, what these good reasons are, and I wish the noble Baroness luck in trying to find out.

I also agree with the comments made about the grey area of businesses and people who are service providers and sellers of goods in the 21st-century economy. As the noble Baroness said, the previous reports of her committee show that a colossal part of the UK economy now sells goods and associated services. As my noble friend said, it is now commonplace for a huge enterprise such as Rolls-Royce to provide engine services but to retain the good and sell the service of providing that engine to many other markets; or, in effect, to provide generators on leasehold for UK engineering. That is just one example; there are many others, such as the sale of cars to many different households.

If a good is sold but the service is provided by the business enterprise, which part of this legislation will take precedence? If there is a dispute regarding a person who is selling a good that can be sold only if it is part of a service provision, what takes priority in this legislation? Is it the service component or the good component? Regarding those operating in other areas, be it creative services or other key areas, what legislative requirement would be considered first if there is going to be a restriction? We already know that there have been problems within the part of the legislation dealing with services. The next group of amendments, on teaching, illustrates that—the Government have had to clarify the position on education services. I am glad they have, to an extent; that is welcome.

The provision of water services brought into sharp focus the distinction between goods and services. When we raised in Committee the fact that Wales and Scotland operate under a different legislative model for the provision of water services, the Minister kindly wrote to me saying that the distinction in the legislation is between water services that are connected with an infrastructure and those that are not. How does that distinction come about in reality under Part 2? If Scottish Water, a service company that has one shareholder—the Minister—and the infrastructure of which is owned by the Minister, seeks to deliver different services in the future, that will come under the scope of this legislation. It is exactly the same enterprise and the same entity, but if he wanted to sell the infrastructure, that is excluded. I simply do not understand that. The Minister said in his correspondence to me that the question of whether the process needs to be extended is being looked at actively. The question is: when the Government have finished the process of looking at the areas to exempt, what will be left? That was the point made by the noble Baroness, Lady Noakes. What are the problem areas the Government are seeking to identify?

I turn to an issue that has not been addressed sufficiently in Committee. I asked the Minister why the legislation excluded the Isle of Man from consideration as part of the UK for goods but not services. Under the Bill, any services provided from the Isle of Man are considered to be within the United Kingdom; goods sold from the Isle of Man are not. We all know that service provision from the Isle of Man is huge—financial services, et cetera. That is no surprise, because if you are a service provider who wants to operate in a part of these islands that has no corporation tax and a wholly different set of beneficial conditions for your business, why would you not want to be based in the Isle of Man? If the Isle of Man is considered to be covered by this legislation, why have the Government brought forward amendments for consultation that do not include the Government of the Isle of Man? If services being provided from the Isle of Man fall within the scope of this legislation, there is a clear gap. Why would you not consult the Manx Government regarding any regulations that are going to be put in place?

6.15 pm

This leads me to my final point, which has been raised before but has not been sufficiently clarified. Enterprises not based in the United Kingdom, or that "brass plate" in the United Kingdom as service providers, can use some of these measures to challenge the legislation in Wales, Scotland and Northern Ireland. I do not think the Government have made it sufficiently clear that the only persons able to use the powers in this legislation are UK persons. If that is not clarified with absolute certainty, I fear that the many loopholes in the legislation will be seen by many enterprises outside the United Kingdom. I am therefore grateful to the noble Baroness, Lady Neville-Rolfe, for bringing this issue to our attention again, and I hope the Minister can finally clarify the position.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, this has been an interesting debate. It has revealed many gaps in our knowledge and understanding of the Bill, which, perhaps, is very comfortable for the Government. I would go a bit further than some of the previous speakers and say that the Government are making heavy weather of this part of the Bill, not displaying to their best advantage the knowledge and understanding they should have in this area. I presume that the starting point must have been that if there is to be an internal market, it must be regulated so that it works well. It is therefore necessary for the legislation to have regard to our services sector, which, as the noble Baroness, Lady Neville-Rolfe, said, accounts for some 65% of our economy. If that is right and it is such an important part of our economy, why is this Bill so sketchy about it? Do the Government not know much about our services sector? Is it not important that we get that right? The noble Baroness, Lady Noakes, again put her finger on it: is this just a protection against possible future unknowns? If so, does that explain why there is so little in the Bill itself to reflect that?

Others have made these points very well. The noble Lord, Lord Purvis, was right to say that we have to think harder than the Bill does about the way modern companies operate in providing goods. Companies are rarely without a service component, and the Bill does not deal with that bipartisan, hybrid approach. The noble Baroness, Lady Bowles, asked about services that are licensed or rented. In the virtual space of the internet, one is rarely talking about purchase. One is

[Lord Stevenson of Balmacara]
talking about usage, and there is nothing here about intellectual property, copyright or associated interests. What about those companies? Do they get affected by this legislation?

What sort of world are we living in if our Bills cannot embrace the fact that, in the digital world, services are not delivered by companies based in specific parts of the UK? That point was made by a number of speakers. Most operate in more than a single place, and it would be difficult to drill down to a point where the physical geography can be identified—the "brass plate" question that was raised earlier.

At the end of the day, it would be more helpful to the House if the lists given in Schedule 2 did not try to discriminate against services. The services listed in the schedule are not covered by the Bill, and it would be more of a challenge but more interesting for us if the Bill listed the services to which the Bill does apply, thereby making it easier to discuss this issue. I challenge the Minister to write to us before Third Reading with a comprehensive list of the services he believes are caught by this Bill and to explain to us, in simple language that we can understand, the impact the Bill will have if implemented.

Lord Callanan (Con): I thank my noble friend for tabling this amendment, which seeks to clarify the extent to which we have considered how the provisions of the Bill in respect of services will work in practice. I shall endeavour to do my best to answer my noble friend's concerns, because I know that she appreciates and promotes just how critical the services sector is to the United Kingdom, and I share that view. It is vital, constituting more than 80% of our GDP and four out of five jobs nationwide.

The principles of mutual recognition and non-discrimination in Part 2 underpin an internal market framework which will limit the emergence of new barriers following the return of powers from the EU. This will support UK businesses trading services in other parts of the UK, and authorities regulating these services. The Bill will complement the existing services regulatory framework while building in certainty for businesses and regulators.

The mutual recognition principle means that businesses authorised to provide services in one part of the United Kingdom will not need to satisfy further authorisation requirements to provide those services in the other parts of the United Kingdom. This principle of mutual recognition applies to authorisation requirements. It does not cover matters such as non-mandatory membership of organisations, which cannot prevent a service provider from offering a service but which might be desirable to join for other reasons.

A similar form of mutual recognition already operates as part of the existing UK-wide regulatory framework for services under the Provision of Services Regulations 2009. Regulators complying with that legislation will already be subject to the principle of mutual recognition. Similarly, the non-discrimination principle is a fundamental safeguard for businesses, ensuring equal opportunity for companies trading in the UK regardless of where in the UK that business is based, from where it provides services or where its staff are based.

As my noble friend Lady McIntosh highlighted, with the non-discrimination provision, regulators have until now had to follow rules in the Provision of Services Regulations 2009 which prevent discrimination towards service providers from other European Economic Area states. These rules will be revoked at the end of the year when the transition period comes to an end, as they will no longer be relevant to the UK's situation. It is only right that rules that have previously prevented discrimination towards businesses from the other EEA states should now be applied to ensure the continued flow of services across our United Kingdom.

To help provide clarity, Clause 16 sets out a list of requirements and provisions that are neither regulatory nor authorisation requirements and therefore are not covered by the principles in Part 2. First, those requirements dealt with in other parts of the Bill—namely the mutual recognition principle in Part 1, which relates to goods, and provisions covered by Part 3, on professional qualifications—are not within scope of Part 2. This is because it is not desirable for one set of requirements to be subject to several rules from different parts of the Bill.

Secondly, existing requirements are out of scope because Part 2 applies only to new or substantively modified requirements that come into force, or otherwise come into effect, after this section comes into force. However, for the mutual recognition principle only, existing requirements will be brought within scope of the Bill where a corresponding authorisation requirement in another part of the UK introduces a new or substantively changed requirement.

Thirdly, a requirement which applies both to service providers and non-service providers is not in scope of Part 2. This part of the Bill is concerned only with the requirements which seek to regulate service providers and not all requirements which might affect service providers.

Finally, there are administrative requirements on service providers that we consider are reasonable in all circumstances, and therefore they are also not in scope of this part. Such administrative requirements could include, for example, where a service provider may be required to notify a local regulator of their presence, or where they are required to provide proof that they are in fact authorised to provide that service in another part of the UK. These requirements are necessary for regulators to continue operating effectively under the rules in this part, but it is our view that they are limited enough in scope so as not to create any unnecessary barriers to trade.

I can therefore assure my noble friend that the Government have considered carefully how the provisions in Part 2 will work in practice, and that Clause 16 is an essential part of their operation.

My noble friend asked whether penalties apply to businesses that are excluded from the Bill. If a given matter is out of scope of Parts 1 to 3, it is also by definition out of scope of the OIM's functions and responsibilities.

My noble friend Lady McIntosh raised the four weeks' consultation, as did a number of other noble Lords. The consultation followed the principles for a government consultation and represented an ambitious

plan to engage businesses of all sizes across all four nations, as well as many academic experts and representatives of the devolved Administrations.

My noble friend Lady Neville-Rolfe asked also about Schedule 2, which lists a number of services with the aim of reflecting those outside the scope of the Provision of Services Regulations 2009, which is the current services framework. The Government also recognise that it is appropriate for legal services to be excluded from the provisions on the mutual recognition of services to reflect the separate legal systems in England, Wales, Scotland and Northern Ireland.

The noble Lord, Lord Purvis, asked whether service providers from the Isle of Man were subject to the measures in Part 2. The answer is no. Part 2 applies only to businesses and individuals that a have a permanent establishment in the United Kingdom as defined by the Corporation Tax Act 2010, which does not include of the Isle of Man. It is also the case for all Crown dependencies.

The noble Lord also asked when the services principles apply and when the goods principles apply. The services principles apply only where the goods principles do not. Only one set of principles will apply as to a particular requirement.

I hope that I have answered the questions of noble Lords and of my noble friend. I hope that she feels able to withdraw her amendment.

Baroness Neville-Rolfe (Con): I thank noble Lords for an interesting debate and I am grateful for the support of my noble friend Lady McIntosh, the noble Baroness, Lady Bowles, and, of course, my noble friend Lady Noakes, who rightly pointed out the probing nature of this amendment, which I obviously do not seek to press. She also said that it was right that we include the services sector in the internal market, which is obvious from its very scale—a point that she, the noble Lord, Lord Stevenson, and the Minister emphasised—I think that it is about 80% of GDP. The Minister was also right to emphasise the value of mutual recognition and the loss of the EU-based services regulations of 2009, which to some extent we are trying to replace.

The single most important thing about the services element of the Bill, in Clause 16, is to understand the Government's intentions, particularly in view of the minimal nature of consultation in framing it. My noble friend Lord Naseby was right to emphasise the importance and use of consultation. He also asked a question about the proposed registers which I am not sure we got a complete answer to.

The trouble is, we still do not know why these provisions are needed in individual cases—I gave some examples that I did not really get an answer to, such as hairdressers and other businesses—and why they vary from sector to sector. As the noble Lord, Lord Purvis, said, I am an optimist—I have been a strong supporter of the Government on this Bill against the advice of respected friends—but perhaps the Minister can kindly reflect on whether he can do anything further on services, with services now being so linked to goods as we have all agreed, to allay my fears. Some sectors, from property to restaurants, appear to face new regulations, possibly draconian, without much of awareness of it. The noble Lord, Lord Stevenson, suggested a letter outlining what was covered within the services sector. Perhaps the Minister could reflect a little further on how we might communicate this and reassure people about the value of these provisions in creating a single market with mutual recognition, which I strongly support. But we need to make sure that people understand what their duties are and that such duties are not overly draconian and will be sensibly enforced. I beg leave to withdraw the amendment.

Amendment 30 withdrawn.

6.30 pm

The Deputy Speaker (Baroness Henig) (Lab): I should inform the House that, if Amendment 31 is agreed to, I cannot call Amendments 32 to 35.

Clause 17: Services: exclusions

Amendment 31

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

31: Clause 17, page 12, line 35, leave out subsections (2) to (4)

Amendment 31 agreed.

The Deputy Speaker (Baroness Henig) (Lab): Amendments 32 and 33 have been pre-empted.

Amendments 32 and 33 not moved.

The Deputy Speaker (Baroness Henig) (Lab): Amendment 34 has also been pre-empted.

Amendment 34

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

34: Clause 17, page 12, line 42, at end insert—

"(3A) Before making regulations under subsection (3) the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland.

(3B) But the Secretary of State may make regulations under subsection (3) without the consent required by subsection (3A) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.

(3C) If the Secretary of State makes regulations without the consent required by subsection (3A), the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with making the regulations."

Baroness Hayter of Kentish Town (Lab): I beg to move Amendment 34.

The Deputy Speaker (Baroness Henig) (Lab): No, you cannot; it has been pre-empted by Amendment 31. I am sorry.

Baroness Hayter of Kentish Town (Lab): I think the agreement is that it will stand in its place anyway.

The Deputy Speaker (Baroness Henig) (Lab): My advice was that, if Amendment 31 was agreed to, Amendments 32 to 35 would have been pre-empted. That was certainly the legal advice that I read out right at the beginning.

Baroness Hayter of Kentish Town (Lab): The issue is that, although the regulations have been taken out—as with my Amendments 15 and 20 that have already gone before, and indeed Amendment 19 in the name of the Minister—the agreement was that the way we deal with them would nevertheless stand. That is why Amendments 15, 19, 20 and 27 were all allowed.

If it has been pre-empted, may I suggest that we vote on it? I gather that the Government will not resist, and I am sure that the clerks can then disallow it should they find that we should not have done it. I beg to move.

Amendment 34 agreed.

The Deputy Speaker (Baroness Henig) (Lab): Amendment 35 has been pre-empted.

Amendment 35 not moved.

Amendment 36

Moved by ***Lord Callanan***

36: Clause 17, page 12, line 45, at end insert—

"(5) Before making regulations under subsection (2) the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland."

Member's explanatory statement

This amendment would require the Secretary of State to consult the devolved administrations before making regulations amending Schedule 2 (which contains exceptions from the rules about market access for services).

Amendment 36 agreed.

The Deputy Speaker (Baroness Henig) (Lab): We come to the group beginning with Amendment 37. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this or any other amendment in this group to a Division should make that clear in debate.

Schedule 2: Services exclusions

37: Page 461, line 30, at end insert—

"Teaching Services	provision of teaching services in schools or colleges"

Member's explanatory statement

This amendment would add the profession of teacher and teaching services to the scope of the exclusions from the Bill, in the same way that the legal professions and legal services are excluded.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I will also speak to Amendment 50 in my name, which is also signed by the noble Lord, Lord German, to whom I am grateful for his support. Also in this group is Amendment 51, tabled by the Government, for which I thank the Minister. It is clear that the Government were listening during the debate in Committee, and I note that in the letter that the noble Lord circulated this afternoon to interested Peers he acknowledges the representations made by stakeholders on this issue. I can only express my appreciation that we have seen movement from the Government on this. This is also a demonstration of the usefulness of having a House of review.

I wish to thank the General Teaching Council for Scotland, as I did in Committee, for assisting me in the analysis particularly of the differences between the government amendment and those I had tabled. I also note and thank the noble Lord, Lord Foulkes of Cumnock, with whom I consulted about this matter, as a former chair of the education committee and a member of the General Teaching Council for Scotland. He empowered me to say that he supports the push to see that the full powers of the General Teaching Council for Scotland are retained. I wish, however, at the moment to retain the possibility of taking Amendments 37 and 50 to a vote, depending on the answers to two questions that I wish to put to the Minister, of which I have given him prior notice.

The first, and perhaps the most crucial one of all, is about the word "school" in the Government's amendment. I remind noble Lords that government Amendment 51A says that the mutual recognition provisions do not apply to "school teaching". Could the Government confirm that they intend that this will be interpreted in a broad sense, so that it encapsulates any educational institution in which teaching is delivered? The original amendments, Amendments 37 and 50, refer to the "teaching profession", which obviously has a potentially broader scope.

I note also that the Minister's letter circulated to Peers says that the Government have tabled an amendment to remove the teaching profession from the recognition provisions. Clearly, "the teaching profession" and "school teaching" are not necessarily the same thing, and I think it is crucial that we make this very clear. I am not a lawyer, but I doubt that a letter from the Minister to Members of your Lordships' House has a huge amount of legal standing. I think we need to get on the record precisely what the government amendment means.

The second question is perhaps more technical, and that is a remaining question about the application of the mutual recognition principle and the scope of the exclusions in Schedule 2 Part 1. I seek confirmation from the Minister that the above exemption would not be restricted by the provision in Schedule 2 covering:

"Services provided by a person exercising functions of a public nature or by a person acting on behalf of such a person in connection with the exercise of functions of a public nature".

Teaching in local authority schools, which would constitute a service provided by a person exercising a public function, would appear to be covered by that. But, obviously, education and teaching extend far beyond that. In particular, what about teaching in independent schools? Teaching is not solely carried out in a public service context, which casts doubt on how the exclusion applies in the context of teaching services as a whole.

Given that the General Teaching Council for Scotland register is not employment based and that the GTCS has no role whatsoever in where a registered teacher

ultimately becomes employed—indeed, this often changes over the course of registration—it is important to know that the Government's intention, and the effect of the law, is to cover all of these elements.

I have focused here particularly on the Scottish case, and I believe the noble Lord, Lord German, will address Welsh issues in particular, but I hope that the Government have also taken full account of the particular situation of Northern Ireland and the teaching profession there.

Finally, I would like to ask a somewhat broader question of the Minister. In Committee, I noted that it would appear that there are also issues potentially with other professions, particularly social work—but there may well be others. I ask the Minister to confirm that the Government have fully consulted with all the professions which may have different arrangements—sometimes long-term, continuing arrangements—in the devolved nations regarding registration or qualification requirements. If the Minister is not able to answer now, perhaps he could write to me about that question.

I note the comments made in the last group by the noble Lord, Lord Stevenson of Balmacara. We are, at this stage of the Bill, still left with very considerable uncertainties and concerns and a real lack of clarity, which has to be a worry given the importance of the Bill and these issues and the pressing nature of the deadline approaching us. I beg to move.

Lord German (LD): My Lords, I rise to support Amendments 37 and 50 and slightly to push the point that the noble Baroness, Lady Bennett, just mentioned, that the words "teaching profession" appear in a letter which was circulated to colleagues in the House of Lords today but the words "school teaching" are used in the amendment. People who teach in further education colleges are called teachers or lecturers, but teaching is what they do. In fact, sometimes they are called teachers in universities as well. That clarification is needed, but at the moment we clearly have two separate terms. I recognise that the Government have moved in this direction and are thinking about this issue following representations made to them, and I welcome that.

However, there is a problem with the words "school teaching" only. I consulted the Education Workforce Council, which has responsibility for the registration of teachers in Wales. It registers petitioners in seven workforce categories across four settings: schools, further education, work-based learning, and youth work. While there are no minimum qualifications for further education staff in Wales as part of EWC registration at present, that might change. In England, there is no registration system for further education staff or any minimum qualifications. It might therefore be that this is not future-proofed in this legislation, where further education might well become a regulated profession as in other forms of education.

The other issue that comes out of this is the four settings that the Welsh council regulates. I would like to ask the Minister about youth work. If you are a registered professional working in youth and it is requirement for you to be registered if you are to be in this area, is that included in the government amendment which refers to "school teaching"? The definition of "teaching" and "school" is quite wide.

I would like the Minister to have a look at the common framework in this area because there is already a mutual recognition of professional qualifications common framework. I would be grateful if she could update the House on how that common framework is progressing. If it is progressing and it is part of the common framework procedure on which we have already passed an amendment, clearly it will make a substantial change to this section of the Bill as well. The principle of automatic recognition imposed under the Bill may well prevent Welsh Ministers, for example, regulating in future on professionals qualified elsewhere in the UK who have lower qualifications or standards than those which would be required in Wales.

Finally, I turn to an issue which has come out of this discussion. Social care is also an area where there are professions. Social care regulation in Wales is also undertaken by a separate regulator. It is one of its primary functions. Under the Regulation and Inspection of Social Care (Wales) Act 2016, from 2022 a range of social care professions will be mandated by the Welsh Government. In other words, you will not be able to operate as, for example, an adoption service manager, a fostering service manager, a residential family centre manager or an adult care home worker unless you have had your registration approved by Social Care Wales.

6.45 pm

Many of those workplaces are in the private sector and not the public sector. Has the Minister considered the care sector as one of those professions where we will be in some difficulty? I do not know, and have not been able to check, whether the English care sector will require registration for those who work in those professions I have just outlined—and there are more. If it will not do so, as I understand it, that will mean that a residential family centre manager, an advocacy manager or a fostering service manager who was not registered, or had no registration system, in England could then work in Wales even though it was mandatory for them to be registered with Social Care Wales.

It worries me that, on all these matters, we are some way off bottoming out the detail of this section of the Bill. It is now quite clear that it raises issues around other parts of the education services and the professional services in the care sector. I would be grateful for any observations the Minister can make to clarify this, if, looking forward—as this Bill must do, because it must be in place for forward legislation—we will come across more difficulties in what we might now regard as essential areas of our life.

Lord Naseby (Con): My Lords, I have a couple of probing questions. I find the word "school" difficult to work out in terms of what happens on the ground. There are universities, many of which have teachers—some have professors, et cetera—and I do not quite see how you can exclude them, particularly the Open University, where some noble Lords may have taken courses. I have friends who have taken courses at it and, from the evidence of two people I spoke to at the weekend, there are teachers there. As someone who takes an interest in flying, having flown in the RAF, I thought also of flying schools. There are also driving schools. I am not sure whether the Government are anticipating

[Lord Naseby]
that whole area. I look forward to my noble friend's response; if she cannot respond this evening, perhaps I could have a note in writing.

Lord Flight (Con): My Lords, I am not clear what being "excluded" means. I do not know whether other territories are excluded or how far they go up and down the range of teachers. More particularly, what is the reason for having excluded groups? Why should lawyers be excluded? Are any other groups excluded? This area wants a bit of tidying up and further explanation.

Lord Purvis of Tweed (LD): My Lords, I am grateful to those who have spoken in this debate, because we have all narrowed into one area on which we are seeking some clarification: the distinction between the language in the Minister's email referring to the teaching profession and that in this amendment, which are not the same.

If the Government's intention with the amendment is that they wish to exclude the teaching profession from the provisions, that will be universally welcomed. At this stage, therefore, from these Benches I thank the Government for listening to the debate in Committee and for acting, and also for engaging with the various stakeholders, primarily in Scotland and Wales. I am also grateful to the Ministers, the noble Lords, Lord Callanan and Lord True, for listening and acting on meetings that I and my noble friend Lord Fox had with them, at which we raised these matters, on which we had been in correspondence.

That said, some further clarification on specific points would be helpful. As my noble friend Lord German indicated, the reference in the government amendment to the profession of "school teaching" is not really language that is used. It is certainly not used by the General Teaching Council for Scotland in registering teachers, and clearly it is not used in England, although I thought that perhaps it was. I searched "school teaching" on legislation.gov.uk, but, to my knowledge, it is not used in any legislation, although I am sure that officials in the Box can clarify that for the Minister. It does not seem to be a term, so we might find ourselves inadvertently creating a new term or definition in this legislation. I am sure that this can be tidied up but, if we agree to this amendment, as we will, I will be grateful to know how the Minister intends to do so.

To give an illustration, the General Teaching Council for Scotland registers those who seek to be teachers in primary or secondary education, those who want to be registered as teachers for additional support needs or in named schools only, and, since 2017, college lecturers and those who teach in independent schools. Therefore, in the categories of teaching within the overall teaching profession, at no stage does the term "school teaching" apply.

I will give the Minister an example of why "school teaching" is problematic within the context of Scotland. Innovations that the Scottish Parliament brought in when I served on the Education Committee meant that there is now much more blended learning in Scottish secondary schools. Students who are nearing the end of their time in secondary school can now start to study for further education qualifications on practical courses provided by college lecturers within the school setting. That is very progressive and is working. An inadvertent difficulty might be that we create a false distinction between those who simply teach within a school setting and those who are in the profession of school teaching.

I hope that the Minister will be able to clarify the points that have been raised about the difference between the categories and that she will set out the intention behind the amendment. If it is the intention that the registry bodies—in their functions of carrying out the registration of teachers and in setting standards and qualifications—are excluded, that will be reassuring. I think that that is the intention behind the amendment. I hope that it is, and if the Minister is able to confirm it, that will be reassuring for many of us.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, the key word of this debate has been "clarity" and the fact that clarity is required. I think that the Minister needs to get to the Dispatch Box and answer as many of the questions as she can, but I assume that government Amendment 51A is intended to answer the points raised by the noble Baroness, Lady Bennett of Manor Castle. But questions have been raised that do not seem to point in the same direction, so I look forward to hearing from the Dispatch Box that the amendment does what it is required to do. If not, perhaps the Minister will confirm that she will come back at Third Reading with a better version of it, to make sure that the doubt is removed.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I will start with some of those questions, particularly because there was a common theme from the noble Lords, Lord Purvis and Lord German, and the noble Baroness, Lady Bennett, about the definition of teachers and why we have excluded them. By referring to "school teaching", it is intended that primary and secondary school teachers, as well as teachers in maintained nurseries in England, will be within the scope of the amendment. Where further education teachers are employed to teach in a school, we suggest that they too are likely to be covered by this exclusion. However, it is not intended to cover further or higher education teachers in institutions that are not schools.

The exclusion is worded to refer specifically to school teachers rather than teachers more generally. In answer to my noble friend Lord Naseby, we do not intend to include pilates teachers or flying teachers in the scope of this. The latter is a much wider term that could be interpreted so broadly that it could be difficult to establish what would be within the scope of this exclusion.

In response to the noble Lord, Lord German, on care workers, social care workers are in scope of Part 3 as they are not included in the list of excluded professions. If the competent authority believes that the automatic principle is not appropriate, it can adopt an alternative recognition system.

I shall go back to my speaking notes. I begin by reassuring noble Lords that this Government are committed to maintaining excellent teaching standards across the UK. Given the attention dedicated to the issue in this House and representations from interested

parties, we have given further consideration to the status of school teachers in Part 3 of the Bill. As part of this, it is important to note that, under the alternative recognition process in Clause 24, relevant authorities are able to assess individuals' qualifications and experience on a case-by-case basis and can refuse access to the profession if they do not meet the required standards. This means that relevant authorities in each part of the UK will still be able to set and maintain professional standards, and are able effectively to hold professionals to those standards.

However, having taken into account the representations that have been made and the long history of differences in the regulation of teaching in schools across the UK, the Government have now decided to exclude school teachers from the scope of Clause 22. To this purpose, Amendment 51A seeks to add school teachers to the list of professions excluded from the recognition provisions in Part 3 of the Bill in the same way as legal professions are excluded. As government Amendment 51A meets the intended purposes of Amendment 50, I reassure noble Lords that Amendment 50 is now duplicative and unnecessary.

I shall explain why Amendment 37 is also unnecessary. The amendment would add "teaching services" to the list of services in Schedule 2 that are excluded from the mutual recognition principle in Part 2 of the Bill. However, the amendment does not address the noble Baroness's concerns. I understand from Committee that the noble Baroness, Lady Bennett, is concerned that the Bill will allow individuals to teach in a part of the UK even if they do not meet the required standards in that part. However, the recognition of qualifications and the ability to practise a regulated profession such as teaching are wholly governed by Part 3 of the Bill.

Clause 16(5)(b) excludes from the scope of Part 2 provision that limits the ability to practise a profession by reference to qualifications or experience. Additionally, services provided in the exercise of a public function, including education services, are already excluded from the scope of Part 2 by virtue of the entries in Schedule 2 in respect of

"services provided by a person exercising functions of a public nature."

Most aspects of teaching services are therefore already covered under this public function exclusion from the mutual recognition and non-discrimination principles in Part 2. For example, the exclusion covers most activity carried out within state-funded schools and further education colleges, so they would not be affected by the amendment either. The amendment would therefore have an effect on only a very limited number of service providers.

My noble friend Lord Flight asked, as did the noble Lord, Lord German, why other professions were not excluded. Legal professions, as we know, have been excluded from the Bill's provisions because they carry out roles that rely on their expertise in the underpinning legal systems, which are different across the UK. School teachers have been excluded after considering the representations on the matter carefully and taking into account the long history of differences in their regulation across the UK, and to put beyond all doubt that teaching regulators will retain control over who can teach in a part of the UK.

So, in answer to the noble Lord, Lord German, the devolved Administrations will still have control over who can have access the profession in their jurisdiction. A relevant authority may consider that automatic recognition is not appropriate for that profession because of a difference in policy environment or specific regulatory needs in that part of the UK. If so, it is possible for it to disapply automatic recognition by putting in place an alternative process to recognition that complies with the principles set out in the Bill.

The noble Lord, Lord German, also asked about common frameworks. We continue to work constructively with the devolved Administrations on developing a common framework. We are working to make sure that any arrangements sit alongside the work to review the regulatory landscape for regulated professions, as set out in the call for evidence on the recognition of professional qualifications and the regulation of professions.

I do hope that I have managed to answer most of the questions, but I will look at *Hansard* and if there is anything else that I need to reply to I will of course do so in writing. I hope that the Government's Amendment 51A will have allayed the noble Baroness's concerns on this matter and that she will feel able to withdraw her amendment.

7 pm

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, I have one request to ask a question of the Minister, from the noble Lord, Lord Purvis of Tweed.

Lord Purvis of Tweed (LD): My Lords, I am grateful to the Minister for her thorough response. When she comes to read *Hansard*, perhaps she could reflect on the point that the General Teaching Council for Scotland, the regulatory body, now also includes college lecturers. Perhaps she would reflect on the point that it is the regulatory body, rather than the type of teaching that the registers are responsible for. I am sure that there is no intention to have an anomaly, but I would be most grateful if she could look at this.

Baroness Bloomfield of Hinton Waldrist (Con): I will of course be delighted to do that and I will take the point back to the department.

Baroness Bennett of Manor Castle (GP) [V]: I thank the Minister for her answer and I apologise for not noting the changeover in Front Bench responsibilities.

To be honest, I am not entirely reassured, and I want to put a specific question to the Minister that follows on from what the noble Lord, Lord Purvis of Tweed, has just said about further education. The suggestion of Pilates teachers is something of a red herring, or perhaps a straw man or woman. I am not a lawyer, but perhaps a term like "registered teachers" would allow for an arrangement whereby those who are currently covered by the General Teaching Council for Scotland, or indeed those teachers who are covered by the Education Workforce Council in Wales, would be covered by such a term.

[Baroness Bennett of Manor Castle]

I do not think that we have gone into the detail of the question asked by the noble Lord, Lord German, about the common frameworks and how they work with the Bill, which is a question that noble Lords have been wrestling with right through this Bill. I will quote the noble Lord, Lord German, who said that we are trying to "bottom out the detail" of the Bill. I do not think that we are there yet, and the government amendments do not quite get us there.

Before I make a final call on this amendment, perhaps the Minister could say why a term like "registered teachers" would not do the job more clearly and fully than the term "school teachers".

Baroness Bloomfield of Hinton Waldrist (Con): We are talking about semantics here. We are trying to be clear that who we intend to exclude from this provision are school teachers working in a school environment, whether or not they come from a higher education college in order to work in that environment. I do not believe that I can go further than what I have said already.

Baroness Bennett of Manor Castle (GP) [V]: I thank the Minister for her answer. I am still not sure that we are where we need to be or that we have dealt with the issues raised by the noble Lord, Lord German, regarding youth work and the social care professions. However, I am not sure that pushing a vote on Amendments 37 and 50 would get us to where we need to be. I hope very much that, as the noble Lord, Lord Stevenson, said, the Government will look at the lack of clarity and problems that have been exposed in this debate and seek to tidy up the Bill, as the noble Lord, Lord Purvis of Tweed, has said. For the moment, I beg leave to withdraw the amendment.

Amendment 37 withdrawn.

Amendment 38 agreed.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): We now come to the group beginning with Amendment 39. I remind noble Lords that Members, other than the mover and the Minister, may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this, or anything else in this group, to a Division should make that clear in debate.

Clause 19: Direct discrimination in the regulation of services

Amendment 39

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

39: Clause 19, page 13, line 17, at end insert "but only to the extent that it directly discriminates against the service provider."

Member's explanatory statement

This amendment clarifies the meaning of Clause 19(1) regarding the effect of a statutory requirement under Clause 16.

Baroness McIntosh of Pickering (Con): My Lords, in moving Amendment 39 I will speak also to Amendment 40, relating to Clauses 19 and 20. The amendments clarify the meaning of Clause 19(1) regarding the effect of a statutory requirement under Clause 16 and a similar provision in Clause 20 on indirect discrimination.

If I understood the Minister correctly, in summing up the debate on the amendment of my noble friend Lady Neville-Rolfe, he said that the service provider and regulatory requirement were, in his view, deemed limited enough in scope not to cause barriers to trade. I would like to probe and penetrate his thinking further.

The Law Society has drafted—and I am delighted to thank my noble friend Lord Foulkes of Cumnock for supporting these two amendments—the insertion, at the end, that no effect is only

"to the extent that it directly discriminates against the service provider"

in Clause 19, or indirectly in Clause 20.

When this was debated in Committee with earlier amendments, we expressed reservations about the meaning of "no effect" as it lacked clarity. In summing up the debate on Amendments 81 and 84, my noble friend Lord Callanan said:

"In Clause 21, a legislative requirement is one imposed 'by, or by virtue of, legislation'."

He went on to say:

"This extends beyond legislation to rules produced by bodies with powers delegated to them in respect of a particular field of regulation, and it may include licences or requirements contained therein. My noble friend's Amendments 81 and 84 would appear to have the same effect. However, in my view, the term 'of no effect' is the more appropriate to apply in respect of a licence or a non-legislative rule."—[*Official Report*, 28/10/20; col. 358.]

Having taken note of my noble friend Lord Callanan's comments, I now seek to clarify that lack of effect would relate only to that element of the regulatory requirement that directly, or in the case of Clause 20, indirectly, discriminates against a service provider. It is hoped that the Government accept this amendment, as it is meant as a helpful clarification of Clause 19, and the related amendment to Clause 20. I beg to move.

Lord Foulkes of Cumnock (Lab Co-op) [V]: My Lords, I hesitate to add to the excellent introduction that—if I may call her this—my noble friend Lady McIntosh of Pickering gave, except for one thing. We are dealing here with, in one case, direct discrimination and, in another, indirect discrimination, and only in these circumstances. Noble Lords will recall that, in a debate last week, as we were vividly reminded by the noble Baroness, Lady Ritchie of Downpatrick, the Minister got into a fankle—if I may be excused for using a Scottish word—on the question of discrimination. I hope that he will spell out these two areas carefully, so that the House is clear exactly what the Government think about this.

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, I do not have a great deal to add to what has been said by the previous speakers. It is an unfortunate circumstance that the word "regulation" appears in multi-use in legislative and indeed non-legislative meaning; it can be a set of regulations or an individual regulation in a set. So I understand the concerns raised that it might be possible for regulation, or regulatory requirements, to span both a discriminatory measure and a non-discriminatory measure. Therefore, I think it would be

helpful for the wording in Clauses 19(1) and 20(1), which use the slightly ambiguous term "regulatory requirement", to refine it down, so as to disapply only the discriminatory part. There could be other ways to rework that wording to give the same effect, but it would be useful to put it beyond doubt because the word "regulation" is really rather confusing.

Lord Purvis of Tweed (LD): My Lords, I have only one element to ask the Minister about; it refers to some questions that were asked in Committee with regards to regulations that have no effect. Is it the entire regulation or the component part of that regulation that would be considered to have no effect? As my noble friend indicated, many regulations are fairly extensive and will have many component parts to them; the Government or the legislation may consider that the direct discrimination part could be only one part. Is it the Government's intention that the entire regulation would have no effect? Indeed, how would the process be carried out to identify the specific element of that? The questions raised by the Law Society of Scotland and put forward so well by the noble Baroness, Lady McIntosh, justify a very clear response. As we have said previously in Committee, the scope for those seeking legal redress within this legislation is huge, so ensuring as much clarification on this element as possible would be very helpful.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, the general theme here, I suggest, is that we need the Minister to respond very clearly and precisely on this matter. My noble friend Lord Foulkes used the rather nice and elegant Scottish word "fankle" to describe where we are at, suggesting that this needs to be undone. I was going to use the Gaelic word "bùrach". I suddenly thought that *Hansard* might have difficulty with it, so I checked it on a handy electronic device close to me—and came up with a rather interesting extension, which I leave with the Minister. You can use the word "bùrach", which in Gaelic means a "right mess", but I think a more appropriate term in this case is a "clusterbùrach" which, as the article on my device goes on to say, is

"a Scottish term for a hopelessly intractable mess made by hapless politicians."

Lord Callanan (Con): The noble Lord, Lord Stevenson, has been very helpful, adding to my knowledge of grammar. The north-east version of that would be "cluster", followed by a word I cannot use in the House, which would not be "bùrach". If only I had known, I would have brought my thesaurus along to aid noble Lords in their pursuit of these matters.

These amendments seek to ensure that the drafting of the non-discrimination clauses means that the discriminatory requirement is of no effect only to the extent that the requirement discriminates against the service provider in question. However, I am pleased to tell my noble friend Lady McIntosh that Amendment 39 is already addressed by this clause and is therefore unnecessary. In the case of Amendment 40, as this clause concerns indirect discrimination in the regulation of services, the amendment as drafted would make Clause 20 entirely inoperable and leave indirect discriminatory requirements to take effect.

I start with Amendment 39, which obviously concerns direct discrimination. Direct discrimination is where a regulatory requirement treats a service provider less favourably than other service providers; the reason for that is their connection, or lack of connection, to a certain part of the United Kingdom. Clause 19 already limits the application of these measures—this addresses the point made by the noble Lord, Lord Purvis—so that only the affected service provider may benefit from the requirements having no effect. While I understand my noble friend's concern, the definition of a regulatory requirement already ensures that only the offending requirement is of no effect. This amendment therefore replicates what is already drafted in Clause 19, so I am sure she will understand that I am unable to accept it.

Turning to Amendment 40, the test for indirect discrimination requires that a requirement is not directly discriminatory, and the amendment would mean that indirectly discriminatory requirements are of no effect only to the extent that they directly discriminate. This would render Clause 20 entirely ineffective. Therefore, I am sure that my noble friend will accept that I cannot accept either of her amendments for the reasons I have set out, and I hope that she will agree to withdraw them.

7.15 pm

Baroness McIntosh of Pickering (Con): I am looking at Clause 19, and I must be being very dense this evening, but I do not see where it already lays out what I am seeking to achieve in Amendment 39. It would be helpful if my noble friend could point me in that direction separately.

I am grateful to all those who have spoken, especially the noble Lord, Lord Foulkes, and the noble Baroness, Lady Bowles, for supporting the arguments in favour of elucidation. I do not think the question of the noble Lord, Lord Purvis, was answered as to whether it relates to an entire regulation or only component parts of it. I am sure he is getting quite used to not having his questions answered on this Bill, so I will not elaborate that point further given the time.

I greatly enjoyed the interchange on various words that could be put in play. I am reminded of what we used to say during the time of a different leader, when we used to call it a right Eton mess, which has another connotation in that regard.

I still believe that there are strong arguments to bring into play the intention behind Amendments 39 and 40, and I may bring them back at a later stage but, for the moment, I beg leave to withdraw the amendment.

Amendment 39 withdrawn.

Clause 20: Indirect discrimination in the regulation of services

Amendments 40 and 41 not moved.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): We come to Amendment 42. I should inform the House that, if Amendment 42 is agreed to, I cannot call Amendments 43 or 44.

Amendment 42

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

42: Clause 20, page 14, line 38, leave out subsections (8) and (9)

Amendment 42 agreed.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): Amendments 43 and 44 have been pre-empted.

Amendments 43 and 44 not moved.

Amendment 45

Moved by ***Lord Callanan***

45: Clause 20, page 14, line 41, at end insert—

"(9A) Before making regulations under subsection (8) the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland."

Member's explanatory statement

This amendment would require the Secretary of State to consult the devolved administrations before making regulations amending the "legitimate aims" in Clause 20 (which can mean that provision does not count as indirectly discriminatory against service providers).

Amendment 45 agreed.

Amendment 46

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

46: Clause 20, page 14, line 41, at end insert—

"(9A) Before making regulations under subsection (8) the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland.

(9B) But the Secretary of State may make regulations under subsection (8) without the consent required by subsection (9A) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.

(9C) If the Secretary of State makes regulations without the consent required by subsection (9A), the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with making the regulations."

Amendment 46 agreed.

Amendment 47

Moved by ***Lord Callanan***

47: After Clause 20, insert the following new Clause—

"Duty to review the use of Part 2 amendment powers

(1) In this section "the Part 2 amendment powers" are the powers conferred by sections 17(2) and 20(8) (powers to amend certain provisions of Part 2).

(2) The Secretary of State must, during the permitted period—

(a) carry out a review of any use that has been made of the Part 2 amendment powers,

(b) prepare a report of the review, and

(c) lay a copy of the report before Parliament.

(3) In carrying out the review the Secretary of State must—

(a) consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland;

(b) consider any relevant reports made, or advice given, by the Competition and Markets Authority under Part 4; and

(c) assess the impact and effectiveness of any changes made under the Part 2 amendment powers.

(4) The permitted period is the period beginning with the third anniversary of the passing of this Act and ending with the fifth anniversary.

(5) If either of the Part 2 amendment powers has not been used by the time the review is carried out, this section has effect—

(a) as if the report required by subsection (2), so far as relating to that power, is a report containing—

(i) a statement to the effect that the power has not been used since it came into force, and

(ii) such other information relating to that statement as the Secretary of State considers it appropriate to give, and

(b) as if the requirements of subsection (3) did not apply to that power."

Member's explanatory statement

This new Clause would require the Secretary of State to carry out a review of, and to lay a report to Parliament about, the use made of the amendment powers in Part 2. The review cannot start within three years of Royal Assent, and the steps required would need to be completed within five years.

Amendment 47 agreed.

Amendments 48 and 49 not moved.

Clause 25: Other exceptions from section 22

Amendment 50 not moved.

Amendment 51

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

51: Clause 25, page 19, line 25, at end insert—

"( ) Section 22(2) does not apply if the provision has been agreed through the common frameworks process."

Amendment 51 agreed.

Amendment 51A

Moved by ***Lord Callanan***

51A: Clause 25, page 19, line 38, at end insert—

"(7) Section 22(2) does not apply in relation to provision that limits the ability to practise the profession, or any profession, of school teaching."

Member's explanatory statement

This amendment adds school teaching to the professions the regulation of which is excluded from Clause 22.

Amendment 51A agreed.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this or anything else in this group to a Division should make that clear in the debate.

Clause 29: Objective and general functions

Amendment 52

Moved by ***Lord Callanan***

52: Clause 29, page 23, line 16, at end insert—

"(2A) That objective includes, in particular, supporting the operation of the internal market—

(a) in the interests of all parts of the United Kingdom, and

(b) in the interests of consumers of goods and services as well as other classes of person with an interest in its operation.

(2B) The CMA must also, in carrying out its functions under this Part, have regard to the need to act even-handedly as respects the relevant national authorities."

Member's explanatory statement

This amendment would set out in more detail the considerations that the CMA (including while acting through the Office for the Internal Market) must have regard to in exercising its functions under Part 4.

Lord Callanan (Con): My Lords, noble Lords will have noticed that we have listened carefully to the many constructive points put forward in Committee as well as from the devolved Administrations on the provisions in the Bill to establish the office for the internal market, tasked with overseeing the smooth operation of the internal market. As set out in my recent letter to colleagues on government amendments for Report, we have made a number of important changes throughout Part 4 to make it clear in statute that the OIM will work in the interests of all parts of the United Kingdom and for all Administrations on an equal basis. I believe that these changes take into careful consideration the points raised in Committee and put beyond any doubt concerns around the consumer focus of the OIM—I hope that the noble Baroness, Lady Hayter, will welcome this—and the devolved Administrations' involvement in the OIM's governance arrangements.

Amendments 56 and 57 ensure that there is an enhanced role for the devolved Administrations in OIM appointments, requiring Ministers to seek consent with all Administrations within a one-month timeframe. This builds on the model proposal developed by the Welsh Government and tabled by the noble Baroness, Lady Finlay, previously. We believe that this strikes a delicate balance by ensuring that the OIM can operate independently and that all Administrations can have a meaningful input in the appointments process. At the same time, we have been clear that it is essential that the OIM operates independently and at arm's length from Ministers from all Administrations. Therefore, we do not believe that reserving the right for each Administration to make appointments to the CMA board as set out in Amendment 54 is the correct way forward. Likewise, it is important that appointments are made through fair and open competition, which is what our amendments ensure.

We believe that Amendment 57 and our changes made to Schedule 3 ensure a fair, independent and equitable process for all Administrations. It will ensure that consensus is always a first preference, but recognises that, if it is not reached, appointments can still proceed after an appropriate time has elapsed. This represents a pragmatic way forward and avoids the risk of prolonged deadlock over appointments that would prevent the OIM fulfilling its duties under the Bill.

We agree with previous arguments in Committee that all OIM appointees should reflect a range of expertise from all parts of the United Kingdom. That is why we have tabled Amendment 55, which clarifies this in the Bill, making clear the desirability that panel members have a variety of skills, knowledge and expertise. It is important to remember that the OIM will be a neutral custodian of the UK internal market through its non-binding reporting, advisory and monitoring functions. If there are potential concerns in future about how the OIM conducts its duties, Amendment 61 ensures that the CMA's annual plans, proposals and performance reports are laid before the devolved legislatures as well as Parliament, ensuring equal scrutiny and oversight of these developments, which can be discussed between Ministers from all Administrations where that is appropriate.

Finally, I am aware that there has been considerable interest in this House in ensuring that the OIM operates in the interests of consumers. We have listened carefully to these discussions and are confident that our amendments throughout Part 4 resolve the concerns expressed and put it beyond all doubt that the OIM will operate in the interests of UK consumers.

For all the reasons I have set out, I hope that noble Lords can accept the Government's amendments and consequently will not press their own. I beg to move.

Lord Thomas of Cwmgiedd (CB) [V]: I shall speak to Amendment 54 but, before doing so, I thank the Minister for the substantial progress that has been made in relation to the office for the internal market, and for the recognition that it is necessary for the strength of the union and for equality and fairness between the people of the four nations of the United Kingdom that that office has representations from all four nations. However, the purpose of Amendment 54 is that that principle should be applied to the Competition and Markets Authority. This is a non-ministerial department with very substantial powers, which it has exercised since its creation in 2013, but Part 4 of the Bill gives it further and more substantial powers and a role in the operation of the internal market. What precise form those powers will take may ultimately depend on further changes to the Bill, but there can be no doubt that the powers are substantial.

Amendment 54 is therefore a modest amendment, seeking to build upon what the Government have agreed to in relation to the office for the internal market. At present, the Competition and Markets Authority has its chair and members appointed by the Secretary of State and the panels under the Act. But it seems that there is no reason at all why the principles that have been brought to bear for the office for the internal market should not be applied to the CMA itself. As I shall try to explain in a moment, it is essential that the CMA should have representatives of each of the four nations.

It was said at a previous sitting that this would be politicising the body. That is not so. First, the CMA is an independent, non-ministerial department, and people

[Lord Thomas of Cwmgiedd]
appointed by the Secretary of State, including its chair, are independent. The persons under this provision would be independent in exactly the same way. They are not going to be representatives of the devolved Governments in exactly the same way that the persons appointed by the Secretary of State are not representatives of Her Majesty's Government but independent people.

Secondly, it is very important to ensure that now that the CMA will have an important role in the internal market, it will have at least one member from each of the nations who understands the issues in the internal market as it affects that nation. Thirdly, the amendment will not politicise the position in any way because the appointment will be by an independent public appointment process, in the same way that the chair and members appointed by the Secretary of State are appointed by an independent appointments process. That is the purpose of the first amendment.

Amendment 58, which is also in this group, is now covered by government Amendment 57 if Amendment 54 is agreed to. Amendment 59 is agreed to be consequential on Amendment 54. Before explaining briefly my reasons for tabling Amendment 54, I wish to make it clear that at the appropriate time this evening, unless the Minister is prepared to come forward with some alternative proposals, I propose to take this amendment to a Division.

7.30 pm

My reasons for moving this amendment can be very briefly stated. First, as I have said, the composition of the CMA should now reflect its different position and role under this Bill. Secondly, it is critical that it commands the confidence of all the people of all the nations of the United Kingdom and therefore that it has representations from them.

Thirdly, the CMA will have an important role which it will exercise independently and will make decisions or reports in a way that may go against one part or another of the United Kingdom. If it is to command confidence, it must be able to show that it has understood the position in each of the four nations, and therefore it needs persons appointed who understand each nation—particularly Scotland, Wales and Northern Ireland—so that they can bring to bear the expertise they will have developed to make judgments and reports and to exercise their function, obviously in relation to the interests of the UK as a whole, but bringing their particular national expertise.

Fourthly, it is important to recall that the Secretary of State who makes the appointment—this is an issue running through all the devolution arrangements—is not only the Minister for the United Kingdom but the Minister for England. It cannot be right that he can ensure that England is represented without provision to ensure that the other three nations are represented as well.

Fifthly, this amendment, like all the amendments I have tried to bring forward in this Bill, is designed to strengthen the union and ensure that each nation is accorded proper respect, equality of treatment and a person on this important body who understands the problems in each nation and can bring that expertise to bear for the good of the United Kingdom as a whole.

On the last occasion I briefly mentioned one analogy, with the Supreme Court of the United Kingdom. I did so because the CMA has certain quasi-judicial and independent functions. When Parliament enacted the Constitutional Reform Act 2005, it made a statutory provision that made certain that there had to be two judges from Scotland and one from Northern Ireland. Wales was dealt with as part of England, but I will say no more about that today, save to observe that in the Supreme Court at present there is a Welsh judge. The experience of the Supreme Court, both in the way it has operated and in the confidence it commands across the United Kingdom, and the way it has had to grapple with problems—particularly devolution problems—in each of those nations, has shown how important it is for that body to have persons on it who understand and can be seen to understand the position in each nation.

Exactly the same principles should apply to the CMA. I therefore beg to move this very modest amendment; all it does is ensure equality between the nations.

Baroness Finlay of Llandaff (CB) [V]: My Lords, I thank the Minister for his letter and for explaining the Government's thinking today. It is a privilege to follow my noble and learned friend Lord Thomas of Cwmgiedd, and I am of course delighted that the Welsh Government suggestion that I promoted has been picked up.

I will speak in support of Amendments 54, 58 and 59, to which I have added my name. They deal with the need for appropriate engagement of the devolved Governments in the constitution of the Competition and Markets Authority, if that body remains the long-term home of the office for the internal market. These amendments would give an appropriate role in the appointment of the CMA's board to the devolved Governments. They require the devolved Governments to play ball, which is crucial for that important body to function.

These are very modest amendments. They recognise that the CMA was established to deal wholly with reserved matters but is now being asked to take on responsibility for matters of the utmost sensitivity relating to devolved competence. Not to accept such amendments would be like setting up an agency within HMRC, for example, with responsibility for advising all the Governments of the UK on the best methods of reforming local taxation—a fully devolved responsibility—without making any changes at all to HMRC's constitution.

The only two objections the Government seem to have had are, first, that it is too difficult to change the CMA's constitution to enlarge the board—but they are already fundamentally changing the role and remit of the organisation—and, secondly, that somehow involving the devolved Governments would risk making the CMA political. I strongly suggest otherwise. Involving the devolved Administrations creates inclusion and cohesiveness for the long term across the union and dilutes political agendas. That is why Amendment 54 is so important. I commend the Government Front Bench on their amendments to this part of the Bill, which reflect points raised in Committee. Their amendments represent progress and deserve to be fully supported. When combined with Amendments 54, 58 and 59, they solve a serious problem.

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, I welcome the government amendments as I would welcome any improvement, but unfortunately they do not go far enough to compensate for all the implications of the OIM being within the CMA. I shall say more on that in later groups, and I do not need to rehearse all of it now, save to say that these amendments do not sufficiently change the nature of the CMA, its culture and what it was originally set up to do, so it is no longer—or it never was—the right home for a body that has to operate with the much more sensitive and different objective of the OIM.

I recognise that requiring the CMA to support the operation of the internal market in the interests of all parts of the UK, to act even-handedly with respect to the national authorities and to recognise consumers among the other classes of interested persons all featured in debate in Committee. Indeed, I rather recognise some of the wording. Amendment 55, reflecting the balance of the panel, is also welcome. Again, I seem to recall saying similar things. But I would like the Minister to clarify one thing. I am still concerned about what is controlled by this panel amendment. If the panel size in the amendment is a minimum of three, as it is for the CMA, how can you guarantee that all those interests are represented by three? In Committee, I introduced an amendment to say that the investigating panel should be a minimum of five because I thought that that was the number of people you would need to do an investigation. So both the pool from which the investigations can be drawn and the panel need to have all these characteristics. Is that how it is going to work going forward or are we restricted to the three individuals?

Amendment 56, requiring the consent of the devolved Administrations, looks good until you get to Amendment 57 and the override of one month. While I acknowledge that that can give time for discussions or whatever else may go on, absent any other conditions or explanations of why that override has been operated, it just looks like a convenient delay that you can put up with and then have your way in the end. So I do not think that that goes far enough. As I said, I do not object to the CMA having representatives of the devolved Administrations appointed to the board, but the OIM should not be in the CMA.

Lord Wigley (PC) [V]: My Lords, I am glad that the Government have moved a little on matters relating to the CMA and the IOM, but it is not quite far enough. I support Amendment 54. The Government have opted to give the CMA a central role. They could have opted to use not the CMA, but a whole new body created to cover this essential work that would have fully understood the world of devolved politics. They have chosen not to do so, although, to be fair, they have certainly moved on the IOM.

The consequence is that the Government lay the CMA open to criticism that it is simply unaware of the detailed issues that might concern devolved Governments. If the CMA had a nominee from each of the three devolved Governments it would avoid finding itself in a whole new world, as seen through the prism of Cardiff, Edinburgh and Belfast. This is an amendment to save the CMA from getting into an almighty and unnecessary tangle—or, as we would say in Welsh, since we are all quoting from Celtic languages tonight, into a smonach. I suspect that the CMA has not a clue what a smonach is; I rest my case. Amendment 59 is merely a consequential provision to deal with occasional vacancies on the CMA's board, so I support that also.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): The noble Lord, Lord Cormack, has withdrawn from the debate, so the next speaker is the noble Lord, Lord Bruce of Bennachie.

Lord Bruce of Bennachie (LD) [V]: This is another group of amendments where the Government have made concessions, which is welcome because it demonstrates that they are listening in ways that, frankly, at early stages of the Bill did not appear to be the case. However, I think that all speakers so far made the point that we face a consequence of the Government's proposal to locate the office for the internal market in the CMA. That is the fundamental issue.

I have signed the amendment from the noble and learned Lord, Lord Thomas of Cwmgiedd, and I am grateful to him for introducing it in such systematic detail. Obviously, it is designed to take account of how the Government are changing the role of the Competition and Markets Authority. I detect from the mood of Ministers that there is a slight resentment in saying that we really should not be thinking of a UK-wide devolved composition for the CMA because that is not what it was set up to do—which was fair when it was set up, but it is no longer fair. It is now absolutely clear that the Government should recognise either that the office for the internal market should be a separate, stand-alone body—in which case it absolutely should have representation from the devolved Administrations, which the Government's own amendments clearly acknowledge—or that they are fundamentally changing the character of the CMA, which requires its constitution to be fundamentally changed.

I have said repeatedly in contributions to the debate on the Bill that I am unconvinced of the case for it. Even where there is a case—I can see that some issues may require legislation—it is very much a sledgehammer to crack a nut. Indeed, it anticipates problems that might never arise but creates all kinds of problems and suspicions in the process.

If the Government go down this route, the CMA, operating with the OIM, could take decisions that will clearly have a direct effect on the effective powers of the devolved legislatures, allowing it to overrule laws that have been passed by local consent. Even if there was no suspicion of the Government's intent—and I am sorry to say that there is intense suspicion—there is real concern about unintended negative consequences through a lack of understanding, or knowledge of sentiment or factual evidence, in any or all of the devolved areas.

7.45 pm

For example, building regulations are different in Scotland, under rules that were established prior to the devolution settlement; they go back decades. Given the climate in Scotland, Scottish lawmakers may well want to consider further changes to the design to improve efficiency, provide for different insulation, require passive

[Lord Bruce of Bennachie]
design or introduce appropriate low-carbon measures. It may seem a fair judgment to allow a developer from, say, Surrey or a prefabricated kit-house builder from Germany to operate in Scotland, using standards appropriate to either Surrey or Germany in each case.

However, without consideration of the reasons for divergence, the standards chosen for good reason in Scotland could be compromised. I am absolutely certain that that would cause considerable resentment and, obviously, undermine the competitiveness of Scottish-based builders. Nobody objects to builders from outside Scotland coming in to do the work, as long as they apply the standards that the Scottish people's representatives have set out. Again, it has been argued by me and many others that it would be better to rely on the common frameworks principle and consider legislation as and if it becomes a problem that distorts the market.

There is a real problem that the Government, using reserved powers to negotiate treaties without reference to the devolved Administrations, which we have had separate debates about, would look to the CMA, drawing on the Bill—which would then be the Act—to enforce access into Scotland without consideration of the impact. Of course, this could happen in Wales and Northern Ireland. As my noble friend Lady Randerson said in a previous debate, it is, of course, theoretically possible that that could happen in relation to a decision in Wales or Scotland that England was required to accept, but I think most people recognise that the strength of England makes it much more likely to be the other way around.

Fundamentally, the problem is that the CMA is being used for a purpose for which it was never designed. The office for the internal market, which many of us do not believe is really necessary, should not, if it is necessary, be simply tagged on to the OIM. Amendment 54 acknowledges the fact that, by proposing the office for the internal market as a component of the CMA, it is not good enough to have representation of the board of the OIM; it has to be representation at the board level of the CMA. This is, first, to demonstrate a genuine understanding of the UK-wide role that it now has and, secondly, to protect the CMA from the possibility not only of being accused of getting things wrong but of actually getting things wrong. I will throw another word into the mix: it is very likely that we could finish up with a downright stramash.

Baroness McIntosh of Pickering (Con): My Lords, I welcome government Amendment 52, in the name of my noble friend the Minister. In particular, I am looking at its proposed new subsection (2B), which states:

"The CMA must also, in carrying out its functions under this Part, have regard to the need to act even-handedly as respects the relevant national authorities."

Would my noble friend the Minister not agree that this seems to dovetail completely with Amendment 54, in the name of the noble and learned Lord, Lord Thomas of Cwmgiedd? This seems very attractive because this dovetails entirely with, and supports, the Government's call for there to be one board member from each of the Administrations. I would like to hear from my noble friend a very good reason for why it would not be the case that those appointments would be made as set out in Amendment 54.

Baroness Noakes (Con): My Lords, I thank my noble friend the Minister for the Government's amendments in this group, which are very welcome. However, I will focus on Amendment 54, in the name of the noble and learned Lord, Lord Thomas of Cwmgiedd. Any chairman of a board, whether it is a public or private company or a public body, will say that the most important thing about the board is getting a balance of skills and experience on it. In addition, nowadays, most boards feel the need to achieve a degree of diversity, generally expressed in terms of sex and race.

Putting together a balanced board is a complex task, and trade-offs often have to be made between the different characteristics that the different candidates can bring. The more that seats on the board are allocated to particular sources or interests, the more difficult it is to achieve balance. In something like the CMA, the board is not there to bring representative interests to bear; it is there to make sure that the CMA is run properly, so it should have people who can understand whether it is achieving its objectives or running itself effectively. Those are the most important characteristics.

If one has direct appointment to a public body such as the CMA, that can actually unbalance a board—you could end up with a lack of certain skills or experience, or an overrepresentation of certain commercial backgrounds, for example. When you have a single appointor, which in the case of the CMA is the Secretary of State, the challenge of getting a balance can be worked out between the Secretary of State, his department and the chairman of the relevant body. That is what happens in most public bodies. By taking away some of the appointments, you just make that process much more difficult to achieve.

I continue to believe, despite what noble Lords said earlier, that direct appointment by the devolved Administrations will inevitably be political, because they will be seen as representatives. Indeed, the noble and learned Lord, Lord Thomas, used the word "representatives" when he introduced this amendment earlier. A representative is never completely independent if he or she feels the need to represent.

One of the changes made by the Scotland Act 2016 was direct appointment to the board of Ofcom, and that was followed by similar legislation for Wales and Northern Ireland. I was deputy chairman of Ofcom at the time, so I understand the impact that that can have on board balance—but I do not want to talk about that beyond what I have already said about the difficulties in managing a board when direct appointments are made.

I would like to draw attention to Section 65 of the Scotland Act 2016, where the devolved Administrations were allowed to appoint a member directly. However, that appointment had to be made in consultation with the Secretary of State, which allowed one avenue for conversation to try to make sure that some degree of orderly balance was maintained in relation to the appointments. Amendment 54 does not even go so far

as to recognise that precedent, and it is a very extreme action to be taken in relation to the CMA. I hope that the noble and learned Lord, Lord Thomas, will not press his amendment.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): The noble Lord, Lord Liddle, has withdrawn, so I call the next speaker, the noble Baroness, Lady Randerson.

Baroness Randerson (LD) [V]: My Lords, I am pleased to see some amendments from the Government in this group. It may be the start of a little bit of emotional intelligence on the Government's part, to see the damage that has been done to trust and confidence between the UK Government and the devolved Administrations on this issue.

However, on its own, government Amendment 55, for example, is too weak, in saying that in order to be appointed to the OIM panel, all you need is knowledge of the internal market in the different countries of the UK. That implies to me that anyone who worked, for example, for Tesco—I am not picking on Tesco; other supermarkets are available—in its London head office would, of course, know that there are different markets in different parts of the UK. However, they would not have the depth of knowledge to understand, for example, the importance of signage in the Welsh language in different parts of Wales or the difference in marketing approach required in different parts of Northern Ireland, bearing in mind the history of those parts. It is a subtle business, and it needs strength and understanding in depth.

The truth is that the OIM is being shoehorned into the CMA simply because the Government have made a promise that they are not going to create any more such bodies. They can go ahead saying, hand on heart, that the CMA is the body and the OIM is simply an arm of it—no new body has been created. But, to be honest, it is not a neat and natural fit.

Amendment 56 goes a little way towards seeking the consent of the devolved Administrations to an appointment, but it still leaves all the cards in the Government's hand. Taken alongside Amendment 57, it makes it clear that if the devolved Administrations withhold agreement, after one month the Government can go ahead anyway—yet they might be withholding agreement for a very good and clear reason. I urge the Minister to look again at the stronger amendments, Amendments 54 and 59, tabled in the name of the noble and learned Lord, Lord Thomas of Cwmgiedd. If the Government mean what they say about genuinely wanting to respect the devolved Administrations and treat them with respect, what harm do the Government think it would do to allow them to appoint one board member each? The Government's response is that it would make the CMA political. That in itself portrays the fact that the Government have a political approach of their own to this problem.

In conclusion, as the noble and learned Lord, Lord Thomas, pointed out, UK government Ministers are in fact—[*Inaudible*]—and then they change hats to become Ministers of the UK. This is a problem, and if anyone does not understand that that is a problem, it underlines a lack of understanding and experience of devolution. Anyone who had that experience and understanding would realise that the Government must give a little bit more to satisfy trust among the different Governments of the UK.

Lord Naseby (Con): My Lords, I congratulate my noble friend on the Front Bench. Once again we see the benefit of a good Committee stage, with someone listening and coming back with a series of amendments which all strengthen the Bill. I particularly like the clarification in Amendment 56, and I was delighted to read Amendment 61. However, regarding Amendment 54, I have had the privilege of chairing four different companies and sitting on other boards, some of which had certain dimensions to them as a business that any wise chairman would wish to make sure were covered.

I am also a political animal. Anybody who has sat for a marginal seat and kept it understands the sensitivity of varying wards, varying interests et cetera, and I ask my noble friend to reflect a little on Amendment 54. Certainly I do not believe that there is anything in Amendment 59 worth having, but Amendment 54 is crucial. Whether the wording is right or not, nevertheless, the devolved powers are a very important dimension of the whole of this internal market. Somehow, as other noble Lords have said, they must have ownership of it. The CMA board is in essence one of the absolutely key elements of that. I do not expect an answer tonight, but I suggest that the Minister and his colleagues should sit back and argue this through. I understand what my noble friend Lady Noakes said. In one sense she is right but, with my political hat on, I am not so sure. So I ask the Minister to reflect a little on Amendment 54, although I do not expect him to accept it tonight.

8 pm

Baroness Neville-Rolfe (Con): My Lords, I thank my noble friend Lord Callanan for his amendments, which, as many have said, represent a real readiness to listen. The changes all seem very sensible, especially the proposal for the CMA to lay an annual plan before Parliament and before the devolved legislatures. Perhaps a similar procedure could be derived in relation to the common frameworks, over which there has been so much grief and debate. In my experience, when things go well, such reports become routine and are not even debated, but they are a good way of keeping the Executive —public servants, any boards involved and the Ministers they serve—objective, efficient and thoughtful.

However, I am afraid that I do not support Amendment 54. Board members of the CMA should not be "representative" of a territorial interest in the way this would inevitably turn out. The interests of the four nations should be taken into account in coming up with a balanced, objective board, but this is not the right way to do it. My noble friend Lady Noakes summarised the balance issues very well from her own wide experience. The amendment would also jeopardise the very objectivity and pursuit of the public interest which is vital to a better CMA.

By the way, Tesco's head office is not in London; that was a bad example for the noble Baroness, Lady Randerson, to choose. At least in my time, we had a

[Baroness Neville-Rolfe]
very high degree of sensitivity to Welsh issues, sold more Welsh food elsewhere in the UK than anybody else, and indeed from time to time had Welsh individuals of great independence sitting on the board.

Lord Fox (LD): That is just proof that you can take the Peer out of Tesco but not Tesco out of the Peer.

My noble friend Lady Randerson hinted that she thought the Minister might be developing emotional intelligence—or perhaps we will see signs of that later. However, I think that most of your Lordships have welcomed the government amendments in this group. They are showing movement in the right direction and are an improvement on what you would expect those of us on these Benches to condemn as a deeply flawed Bill.

My noble friends Lady Bowles and Lord Bruce both made the point about where the OIM is and its presence in the CMA. We are not debating that in this group, although we will be some other time. However, Amendment 54 and consequential Amendment 59 should be seen as the safety belt in the event that the OIM remains within the CMA.

The noble Lord, Lord Naseby, made a powerful speech against Amendment 54. I did not see him in his seat when the noble and learned Lord, Lord Thomas of Cwmgiedd, was giving his strong endorsement of his amendment. He may have been oscillating somewhere between virtual and physical; if he was, I apologise. In his speech, the noble and learned Lord, Lord Thomas, put forward a very important point. The CMA is getting considerably more powers as a result of the Bill. The point he did not make but inferred is that those powers move from being reserved powers to those that step into the realm of devolved powers—there can be no doubt about that.

There is therefore a significant change in the nature of the task that the CMA is overseeing. The Government may say it is too much trouble to change the nature of the governance of the CMA, but its focus is changing from reserved issues to those which cover devolved matters, so that change should be reflected in its governance.

My noble friend Lord Bruce talked about unintended rather than intended consequences. The Government need to create a board that can reduce the number of unknown unknowns that it encounters. Amendment 54 is a perfectly reasonable amendment, which would make sure that there are people on the board who understand the nature of the markets in the devolved countries.

To take the point made by the noble Baroness, Lady Noakes, one would hope that the careful construction of a board would understand the need for that. I have to tell your Lordships—and perhaps the principles of my noble friend Lady Bowles could be passed to some Cabinet members—that the construction of boards and organisations over the course of the last 12 months has been nothing like a careful assembly of the right people. It has been a gathering of friends and known people to do the bidding of the Secretary of State. Therefore, it is right for the opposition to be very suspicious about the future board of the CMA, which will have this extraordinarily bumped-up role. That is the reason for Amendment 54 and also for consequential Amendment 59.

The noble Baroness, Lady Noakes, is correct. In a sensible world, what she suggests would happen. However, we cannot trust that to go forward, and trust is going to be very important with regard to the devolved authorities and how they work with the CMA if, indeed, the office for the internal market is located within it.

The noble Lord, Lord Wigley, the noble Baroness, Lady Finlay, and my noble friend Lady Randerson gave wise advice: rather than politicise the CMA, this is helping to inoculate it from political suspicions. That is why, if the noble and learned Lord, Lord Thomas, seeks to put it to the House, we Liberal Democrats will support Amendment 54.

Baroness Hayter of Kentish Town (Lab): I join others in thanking the Minister for some significant moves in the amendments that he has introduced today. As others have said, it is testament to his having listened. He sometimes thinks that means "listened at length", but he listened, considered and responded, and we welcome all the changes. I am particularly pleased about the acknowledgement in the amendments of the interests of consumers in the mapping out of the new internal market. The House will be pleased about the recognition of the need for experience across the kingdom in the appointment of the OIM panel and the need to seek the consent of the devolved authorities to such appointments.

Similarly, we welcome, perhaps unsurprisingly, the new requirement for the CMA to lay its key documents before all four legislatures. It is possible that they already do it, albeit perhaps as a courtesy rather than a legal requirement. We also strongly welcome Amendments 56 and 57, which require devolved authorities to give their consent within a month to appointments to the OIM panel. We like that—consent within a month; we have heard it before. We pinched the idea from the Minister's words, but it is a good one. As we proposed in our amendments, if the Government proceed with an appointment despite consent not being forthcoming, they will have to explain why they are doing so. Therefore, we will not move Amendment 59.

However, the Minister will not be surprised to hear that, although we welcome these changes, we would like to nudge them a little further. On Wednesday, as others have said, we will seek to move the OIM out of the CMA. Just in case it remains in the CMA, it is vital, as the noble and learned Lord, Lord Thomas of Cwmgiedd, and others have said, that the CMA, in accepting this new role, amends its structure to accommodate the change. It is impossible to think of any other national organisation, when its remit changes, not revisiting its governance and appointments. It should not just continue with business as usual when taking on a whole new responsibility.

Indeed, although we welcome Amendments 56 and 57, we were surprised that they did not apply to the CMA as well as to the OIM panel. For an overarching body with a purview of the development of the new internal market architecture, not having to feel the pulse of,

understand and have input from the constituent parts is a little odd, to say the least. For all its board members to be appointed by just one of the four Governments is particularly hard to understand, because it is a body covering the competences of all four Governments. If it was covering only the reserve competences, one could understand, but it will cover powers that affect the area of all four Governments.

As was said by, I think, the noble Baroness, Lady Noakes, if you are appointed by one place you somehow feel like a representative from it. I must say something about other boards and committees that I have sat on. It may not be a board of this nature, but the National Consumer Council included someone from the Northern Ireland Consumer Council, as I think it was called, someone from the Welsh Consumer Council and someone from the Scottish Consumer Council, but once they got on the board, they had responsibility to it as a board member. Just because we brought in someone with different responsibilities, it did not suddenly make them a representative. Similarly, the chairs of the different sub-committees of the Financial Reporting Council sat on the board. They came with that experience but, once they sat on the whole-council board, their responsibilities included that.

It is slightly hard to say that just because people are appointed by different Governments, they are then answerable only to them. Given that they would be appointed by only one Government, and given that people are saying that if you are appointed by the Welsh Government, you are then a representative of the Welsh Government, surely if you are appointed by the UK Government you also are not independent. It does not quite make sense to me.

We will shortly vote on Amendment 54 in the name of the noble and learned Lord, Lord Thomas. The Opposition will be happy to support it, to ensure that the CMA really does act on behalf of the whole of the United Kingdom.

Lord Callanan (Con): I can be brief, on the basis that I went through the amendments in detail in my opening remarks. I thank all noble Lords who took part in this debate very much.

I say to the noble Lord, Lord Wigley, and the noble and learned Lord, Lord Thomas, that the Bill is not a smonach at all. As I am from the north-east, I can say that, despite all this, I still consider them both marras and not at all workie tickets—I suspect that all this is driving our *Hansard* copywriters into a bit of a radgie.

I reiterate that my amendments to Part 4 will ensure beyond doubt that the OIM will operate in the interests of both UK consumers and all four Administrations on an equal basis. I thank my noble friend Lady Noakes in particular for her important observation that the CMA board appointments are there first and foremost to ensure that the organisation operates effectively.

I wish to emphasise strongly that changing the wider CMA structures would be wholly unnecessary and create a deeply unhelpful precedent in so far as DA appointees would have a say on reserved matters. In contrast, the OIM panel will undertake the work of the OIM. It is in that context that the government amendments have been brought forward. I believe that this directly addresses the points made in this House, ensuring that the devolved Administrations have greater involvement in OIM appointments. I therefore hope that the House will be able to accept these amendments.

There were a couple of questions. The noble Baroness, Lady Bowles, asked me to define the panel requirements. Amendment 55 makes clear the Government's view that a balance of expertise in the round on the panel from which task groups are drawn is important. Schedule 3 makes it clear that such task groups must

"consist of at least three members",

and therefore may contain more. We have argued consistently against a hard distinction between panel members and assigning specific members to specific parts of the UK. In my view, it would be a failure if there was seen to be an "English panel member" and a "Welsh panel member" who are then somehow adversarial.

Finally, I say in response to the noble Lord, Lord Bruce of Bennachie, that I have consistently made it clear that the functions of the OIM cover advice, monitoring and reporting only and cannot force regulatory change of any kind.

With those remarks, I hope—though without much expectation—that noble Lords will not press their amendments and I commend those in my name.

8.15 pm

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, I have received a request from the noble Baroness, Lady Finlay of Llandaff, to ask a short question of the Minister.

Baroness Finlay of Llandaff (CB) [V]: Does the Minister agree that good governance requires a balanced board but it also requires that each appointee fulfil the person specification as set out to ensure such balance, that they declare any interest in a relevant discussion and that they may have to withdraw during that discussion? That is all laid out for the running of an open and transparent process within a board as well as for an open and transparent appointments process. Does he further agree that it would be an incredibly narrow person specification that expected people to have only one skill, relating only to their devolved Administration experience, and that they would be coming forward with a broad range of skills to complement a balanced board?

Lord Callanan (Con): There were a number of questions there, but of course I believe that there should be an open and transparent appointments process, and that individuals appointed should possess a broad range of skills—that seems self-evident.

Amendment 52 agreed.

Amendment 53 not moved.

Schedule 3: Constitution etc of Office for the Internal Market panel and task groups

Amendment 54

Moved by ***Lord Thomas of Cwmgiedd***

54: Schedule 3, page 47, line 26, at end insert—

"(2A) After sub-paragraph (1)(b) insert—

"(c) one person appointed to membership of the CMA Board by each of—

(i) the Scottish Ministers,

(ii) the Welsh Ministers, and

(iii) the Department for the Economy in Northern Ireland.""

Member's explanatory statement

This amendment provides for each of the devolved administrations to appoint a member to the CMA Board.

The Deputy Speaker (Baroness Morris of Bolton) (Con): I shall now put the Question on Amendment 54. We have heard a Member taking part remotely say that they wish to divide the House in support of the amendment, which I shall take into account.

8.17 pm

Division conducted remotely on Amendment 54

Contents 285; Not-Contents 224.

Amendment 54 agreed.

Division No. 2

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8.31 pm

Amendments 55 to 57

Moved by ***Lord Callanan***

55: Schedule 3, page 47, line 27, at end insert—

""(2ZA) In making appointments under paragraphs (iv) and (v) of sub-paragraph (1)(b) the Secretary of State must have regard to the desirability of securing that—

(a) a variety of skills, knowledge and experience is available among the members of the OIM panel, and

(b) there is an appropriate balance among the members of that panel of persons who have skills, knowledge or experience relating to the operation of the United Kingdom internal market in different parts of the United Kingdom."

Member's explanatory statement

The amendment would require the Secretary of State to have regard to the desirability of having a variety of skills, knowledge and experience in the Office for the Internal Market panel and for a balance between members with specific skills, knowledge or experience in the internal market as operating in different parts of the United Kingdom.

56: Schedule 3, page 47, line 29, leave out "consult" and insert "seek the consent of"

Member's explanatory statement

The amendment would require the Secretary of State to seek the consent of the devolved administrations to any proposed appointment to the OIM panel.

57: Schedule 3, page 47, line 32, at end insert—

"(2B) Sub-paragraph (2C) applies if consent to an appointment is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority.

(2C) In that event the Secretary of State—

(a) may make the appointment without the consent of the authority or authorities concerned; and

(b) must, if the appointment is made, inform each authority which did not give consent of the reasons for the decision to proceed with the appointment.""

Member's explanatory statement

The amendment relates to Lord Callanan's proposed amendment at page 47, line 29 and would give the Secretary of State the option to proceed with an appointment to the OIM panel after an interval of at least one month, even if one or more of the devolved administrations have not given their consent.

Amendments 55 to 57 agreed.

Amendment 58 not moved.

Amendment 59

Moved by ***Lord Thomas of Cwmgiedd***

59: Schedule 3, page 48, line 28, at end insert—

"(2A) After sub-paragraph (2) insert—

"(2A) Sub-paragraph (2) applies to a member of the CMA Board appointed under paragraph 1(1)(c) as if the reference to the Secretary of State were a reference to whichever of the Scottish Ministers, the Welsh Ministers or the Department for the Economy in Northern Ireland appointed the person.""

Member's explanatory statement

This amendment means that, if a CMA Board member appointed by one of the devolved administrations wishes to resign from membership, they must do so by giving notice to the devolved administration in question.

Amendment 59 agreed.

Amendment 60 not moved.

Amendment 61

Moved by ***Lord Callanan***

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

"Laying of annual documents before devolved legislatures

(1) Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (the Competition and Markets Authority) is amended as follows.

(2) In paragraph 12(3)(annual plan to be laid before Parliament), for "Parliament" substitute "—

(a) Parliament,

(b) the Scottish Parliament,

(c) Senedd Cymru, and

(d) the Northern Ireland Assembly".

(3) In paragraph 13(2)(proposals for annual plan to be laid before Parliament), for "Parliament" substitute "—

(a) Parliament,

(b) the Scottish Parliament,

(c) Senedd Cymru, and

(d) the Northern Ireland Assembly".

(4) In paragraph 14(3)(a)(performance report to be laid before Parliament), for "Parliament" substitute "—

(i) Parliament,

(ii) the Scottish Parliament,

(iii) Senedd Cymru, and

(iv) the Northern Ireland Assembly"."

Member's explanatory statement

This new Clause would require the CMA to lay its annual plan, proposals for its annual plan and its performance report before the devolved legislatures as well as Parliament.

Amendment 61 agreed.

Consideration on Report adjourned.

House adjourned at 8.32 pm.