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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

The following abbreviations are used to show a Member's party affiliation:

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

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

House of Lords

Thursday 10 December 2020

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Newcastle.

Introduction: Lord Spencer of Alresford

12.08 pm

Michael Alan Spencer, having been created Baron Spencer of Alresford, of Alresford in the County of Hampshire, was introduced and took the oath, supported by Lord Strathclyde and Lord Marland, and signed an undertaking to abide by the Code of Conduct.

Arrangement of Business

Announcement

12.15 pm

The Deputy Speaker (Lord Lexden) (Con): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, others are participating remotely, but all Members will be treated equally. I ask all Members to respect social distancing. If the capacity of the Chamber is exceeded, I will immediately adjourn the House. Oral Questions will now commence. Please can those asking supplementary questions keep them to no longer than 30 seconds and confined to two points? I ask that Ministers are also brief in their answers.

War Widows Pensions

Question

12.16 pm

Asked by ***Baroness Crawley***

To ask Her Majesty's Government what progress they have made in resolving the issues faced by those war widows who were required to surrender their War Widows Pension due to marriage or cohabitation.

Baroness Crawley (Lab) [V]: My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare my interest as a vice-president of the War Widows' Association.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con) [V]: My Lords, the Government continue to examine alternative methods to see whether we can mitigate the impact on those survivors who remarried or cohabited before the introduction of the pensions-for-life changes in 2015. Much progress has been made and the issue remains a priority for the Ministry of Defence, but it is very complex.

Baroness Crawley (Lab) [V]: I thank the noble Baroness for her Answer, but I am very disappointed. I am sure that she herself is tired of having to repeat it. It is shameful that 200 war widows are still waiting for their pensions to be reinstated. In the last five years, 100 widows have, sadly, died while waiting. What has happened to the plan that was meant to have gone from the Secretary of State for Defence to the Treasury, and when will we see a timetable for meaningful action in this matter?

Baroness Goldie (Con) [V]: I thank the noble Baroness for her question. I pay tribute to her commitment and passion on this issue and I understand her frustration. It might help her if I explain the nature of the complexity. Quite simply, it has been the policy of successive Governments not to make retrospective payments by government to individuals. That has been an established position and I think that many Members of your Lordships' Chamber who have been Ministers will understand that. It means that, although I, the Secretary of State and the Permanent Secretary at the Ministry of Defence and the Chief of the Defence Staff all personally want to try to find a solution to this, we are not able to act unilaterally. We are investigating a number of options, but as yet none of these has been confirmed as avoiding the challenges to which I have referred.

Lord Davies of Brixton (Lab): My Lords, what bearing does the Minister think the Armed Forces covenant has on this issue? The covenant, quite rightly, says:

"Families … play a vital role in supporting the operational effectiveness of our Armed Forces."

So our moral obligation is not just to members of the Armed Forces; it is also to their families. Times and attitudes change. Rules from the past are no longer regarded as acceptable. We should not let concern about retrospection be a barrier to what we all now regard as the right thing to do.

Baroness Goldie (Con) [V]: Of course, I reaffirm that the Government recognise the unique commitment that service families make to our country and we remain sympathetic to the circumstances of those who remarried and cohabited before 1 April 2015. But the Ministry of Defence is not able to act unilaterally because, in doing that, it could well compromise the position of other government departments and it might unintentionally interfere with or prejudice active litigation in which other departments are involved. That is why I thought it important to explain to the noble Baroness, Lady Crawley, the nature of the complexity. This is not something that the current Government have dreamed up and it is not an artificial obstruction that the Ministry of Defence has created; it is, I am afraid, the consequence of established policy covering such matters as payments when a request is made to make these retrospectively.

Lord Campbell of Pittenweem (LD): But does the Minister understand the contrast between the actions of a Government, who, up till yesterday, were willing to break the law but today will not modify slightly a policy to benefit 200 citizens whose spouses gave their service on behalf of this nation?

Baroness Goldie (Con) [V]: It is not a question of whether the MoD chooses to break the law, which it would never wish to do; it is a question of established government policy. The noble Lord has been a Minister in government and I think he will understand why that policy exists. That is why the MoD cannot act unilaterally on this. It has been investigating a range of options. I have discussed this matter personally with the Secretary of State, the Chief of the Defence Staff and the Permanent Secretary to try to find a way round the obstacles. That means exploring a range of options, including hardship payments and ex gratia and statutory schemes. That is what we are currently engaged in doing, but these are complex, challenging issues and they have to be dealt with carefully.

The Deputy Speaker (Lord Lexden) (Con): I repeat the request for brevity.

Baroness Fookes (Con): My Lords, as president of the War Widows' Association, I am enraged by the failure of government to find a solution. Is it the Government's intention to procrastinate for so long that these few elderly widows will all be dead?

Baroness Goldie (Con) [V]: No. I say to my noble friend that of course it is not. I have no wish to be evasive. That is why, at the risk of incurring the displeasure of the Deputy Speaker, I thought it important to give the noble Baroness, Lady Crawley, as full an explanation as I could of the complexities. I am being very frank with the Chamber. This is not about a lack of will on the part of the MoD to find a solution; it is about recognising the challenges of getting a route towards a solution. That is the difficulty. These are not manufactured complexities; they affect the whole of government.

Lord Ramsbotham (CB) [V]: My Lords, I salute the noble Baronesses, Lady Crawley and Lady Fookes, and it is an honour to follow the noble Baroness, Lady Baroness Fookes, who has given so much to the cause. I share her disappointment that the Government have not found a solution to this problem, which has been on the table for so long.

Baroness Goldie (Con) [V]: I merely seek to reassure the noble Lord that active investigations are taking place, options are being explored and indeed, the President of the War Widows' Association met with the Secretary of State on 30 November. Therefore, very recently he was able to explain to her personally that this is nothing to do with lack of political will or of a personal determination to find a solution. It is a question of trying to navigate a way through the reefs and shoals of the complexities.

Lord Touhig (Lab) [V]: My Lords, in an interview in *The Yorkshire Post* on 8 May, the Veterans Minister, Mr Mercer, said:

"You've got to remember that the military is as much about families as anything else … which is why we take families welfare so seriously."

The whole House will applaud him for that. Therefore, can I ask the Minister if she will go back to her Department and remind the Veterans Minister of his words, and together park their tanks on the Treasury lawn and insist that the Chancellor of the Exchequer do as my noble friend Lady Crawley and others have asked and resolve this problem once and for all?

Baroness Goldie (Con) [V]: I echo the sentiments of the noble Lord and share the sentiments of my colleague Johnny Mercer. The noble Lord is realistic in recognising that the difficulties to which I have referred are not of the MoD's making. He gives a powerful message. I am sure it will be relayed, and I shall play my part in promoting its relaying.

Baroness Garden of Frognal (LD): My Lords, I too am a vice-president of the War Widows' Association. As a military wife I moved 24 times, so I had no chance of a career. Military wives were totally dependent on their husbands' incomes and pensions. It was particularly distressing when the pension the husband had built up for his widow was cancelled if she remarried. With so few widows still in the frame of this cruel policy, how can the Government use retrospection as an excuse for inaction when the 2019 Northern Ireland victims' payments Act allows payments to be made in respect of past periods?

Baroness Goldie (Con) [V]: I understand the noble Baroness's frustration and anger and I have no wish to seek to diffuse that. All I can say is that the difficulty to which I have referred real: it is not of the MoD's making, and the MoD is trying to find a way round it. I am not familiar with the scheme to which she refers, but I shall make inquiries about that.

The Lord Bishop of Peterborough [V]: My Lords, David Cameron, under whose premiership the new rules came in, has admitted that the current situation is a mistake and was not intended. It is manifestly unjust and betrays those who have served our country. The ridiculous rule that people could rectify the situation by divorcing and then remarrying undermines the institution of marriage. Does this not make it entirely justifiable to overturn, or at least suspend, the policy to which the Minister refers?

Baroness Goldie (Con) [V]: I thank the right reverend Prelate; he too delivers a powerful message. I totally uphold the institution of marriage. He refers to an anomaly that many of us find completely unacceptable, and I can only reiterate what I have said. I undertake to ensure that his sentiments are conveyed to the department, and they will form part of our endeavour to find a solution.

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

International Human Rights Day

Question

12.27 pm

Asked by ***Baroness Anelay of St Johns***

To ask Her Majesty's Government what plans they have (1) to participate in, and (2) to promote, the United Nations' International Human Rights Day on Thursday 10 December.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, we are marking International Human Rights Day with activities in the United Kingdom and overseas. My right honourable friend the Foreign Secretary will have more to say on our plans later today. Tomorrow, I will be hosting an event with human rights groups. We fully support this year's UN theme of ensuring that human rights are central to Covid-19 recovery efforts. The pandemic has exacerbated many global challenges, underscoring the need for British leadership to protect, promote and strengthen human rights. We are committed to acting as a force for good in the world.

Baroness Anelay of St Johns (Con): My Lords, human rights defenders are the most effective partners for achieving sustainable human rights change. Will my noble friend ensure that support for them will now be built into all FCDO priority campaigns, and will he consider committing to a strategic approach to supporting human rights defenders, as exists for other human rights work?

Lord Ahmad of Wimbledon (Con): My noble friend makes a very important point and I share her view that human rights defenders go across all pillars of human rights priorities. Earlier this week I had a very constructive meeting with Amnesty International on this very issue. I assure my noble friend that I am looking to our key partners in that sphere to see how we can strengthen the various human rights pillars, be it media freedom, freedom of religion, addressing gender-based violence or LGBT rights. There are so many areas where human rights defenders play a brave role in the field, and it is right that we defend them.

Lord Cashman (Non-Afl) [V]: My Lords, today is International Human Rights Day, but not for trans people. In the United Kingdom, trans women and trans men face unrelenting organised attacks, defamation and blatant misrepresentation, which has created a climate of fear, sadly whipped up by some Members of your Lordships' House. The attack is now on trans teenagers and their parents. Will the Minister discuss with other ministerial colleagues across government what legal protections can be afforded to trans people in the United Kingdom to allow them to live their lives without fear or harm and enjoy their human rights?

Lord Ahmad of Wimbledon (Con): The noble Lord highlights a very disturbing issue. It is right that, when we go out and defend human rights—particularly the rights of the LGBT community—we stand up for rights at home. I will certainly take those concerns forward. If he is aware of particular issues or cases, I ask him to write to both me and my right honourable friend the Minister of State for the Home Office. I assure him that, as a co-chair of the Equal Rights Coalition alongside Argentina, we are sharing best practice and promoting LGBT rights equality globally. Even in countries such as Pakistan, we have seen transgender legislation being brought forward, which is encouraging for a country that is substantially challenged on a whole range of human rights.

Baroness Hodgson of Abinger (Con) [V]: Does the Minister agree that it is often women and children who bear the brunt of day-to-day human rights abuses, especially during conflict? Covid has contributed to putting women in more danger of being abused and of their rights being pushed back, so it is imperative that the excellent UK work on PSVI and women, peace and security continues. Can my noble friend the Minister confirm that gender issues and putting women and girls at the heart of international development—beyond just education, worthy though that is—will remain central to the work of the merged department and the decreased aid budget?

Lord Ahmad of Wimbledon (Con): In the interests of brevity, the short answer to my noble friend is: absolutely. PSVI and women, peace and security are central to our thinking and we have raised these issues and priorities, including ICAN support for the protection framework for women mediators. They will be central to our work in places such as Yemen, Afghanistan and South Sudan.

The Earl of Sandwich (CB) [V]: I thank the Minister for what he does for human rights every day. Does he share my concern about continuing discrimination in India against Muslims, Christians and other minorities such as the Dalits and the Adivasis, and the impact that this has on India's international status and Commonwealth profile? Is there anything that the FCDO has done or can do about this?

Lord Ahmad of Wimbledon (Con): My Lords, I can confirm for the noble Earl that we raise human rights concerns across the globe. We have very constructive relations with India; in that respect, we raise our candid concerns about human rights in India. I assure him that the issue of human rights, particularly freedom of religion, is enshrined in the Indian constitution, and we continue to engage very constructively on this agenda with India.

Lord Anderson of Swansea (Lab): My Lords, I commend the Minister's commitment in this field and that of his predecessor, the noble Baroness, Lady Anelay. Does he agree that there is great value in giving young people an appreciation of the importance of human rights? To that end, would he consider relevant educational initiatives, such as including a human rights component in curriculums and encouraging schools to invite speakers with a known human rights commitment to speak to them—particularly those with personal experience of human rights violations?

Lord Ahmad of Wimbledon (Con): I thank the noble Lord for his kind words. I join him in paying tribute to my predecessor in this role, who played a vital role on a whole range of human rights priorities. The noble Lord has some very practical suggestions. I assure him that I will take them back and write to my opposite number in the Department for Education to see how we could best take that forward.

Baroness Northover (LD): My Lords, the Minister will have read the concluding statements from Andy Heyn, the consul-general in Hong Kong, on the restriction

[Baroness Northover]
on dissent that he has seen during his time there and the fundamental changes that that has brought about in Hong Kong. What chances does the Minister see for the continuation of the vital independence of the judiciary there?

Lord Ahmad of Wimbledon (Con): My Lords, the noble Baroness and I have had many a conversation on this issue. Of course, the instigation of the national security laws has caused great concern, including about the appointment of judges, which now sits with the Chief Executive. That is a concern. I cannot say what the future holds; that would be mere speculation. What is important is that we continuously remind the Hong Kong authorities of the importance of the independence of the judiciary.

Baroness Helic (Con) [V]: My Lords, as we mark Human Rights Day, hundreds of political prisoners, many of them women, are incarcerated by our ally and trade partner, the Kingdom of Saudi Arabia. One of them is Loujain al-Hathloul, who has been in prison since 2018. As I speak, she is appearing in front of a terrorism court in Saudi Arabia. I know that the UK Government have raised the case with the Government of Saudi Arabia, but can my noble friend the Minister tell the House what answer was received and what steps will be taken next? Will Ministers use the opportunity of a new Administration in the United States to work actively to secure Ms al-Hathloul's release and that of other activists like her?

Lord Ahmad of Wimbledon (Con): My Lords, I share my noble friend's concern. I and my right honourable friend the Minister for the Middle East and North Africa have consistently raised the issue of human rights defenders, particularly women human rights defenders. At least five women human rights defenders remain in detention in Saudi Arabia. We raise these cases. My noble friend makes a practical suggestion; again, with a new Administration coming in, we continue to look at how we can work constructively with Saudi Arabia in raising these concerns on a regular and consistent basis.

Lord Collins of Highbury (Lab): My Lords, I would like to follow up on the question from the noble Baroness, Lady Hodgson, on sexual violence, and the Minister's response. The 2020 report of the UN Secretary-General found that domestic legislation in many countries meant that justice was still too often not served. What is the Minister's department doing about that? Is it offering technical support to countries, either multilaterally or bilaterally, to address this issue?

Lord Ahmad of Wimbledon (Con): As the Prime Minister's representative on PSVI, this is an issue very close to my heart. I assure the noble Lord that we are looking at all elements, including technical support. As we move out of conflict, that is when the laws, regulations and constitutions of countries are created. They must be all-inclusive, which is why women mediators in particular have to be central and pivotal to that cause.

Lord Woolf (CB) [V]: My Lords, I refer to my interests as disclosed in the register. Does the Minister agree that the reason why this country should wholeheartedly support this United Nations international Human Rights Day is that this country's unwritten constitution has developed the observance of the rule of law and human rights and has become increasingly critical of efforts to restrict their applicability?

Lord Ahmad of Wimbledon (Con): At this juncture, I have to say, I totally agree with the noble and learned Lord. We are proud of our traditions in this respect.

Lord Leigh of Hurley (Con): On 2 December, the UN General Assembly once again neglected the human rights repression by serial abusers such as Iran, China and Russia and devoted an entire session to deriding Israel. The five resolutions voted on in that session are yet more distractions from tragedies unfolding in many countries but, unlike Canada and our other allies, the UK voted against only one of them. Does the Minister agree that it is time for the UK to stand up not just against item 7 but against oppressive regimes by introducing resolutions that condemn human rights abuses?

Lord Ahmad of Wimbledon (Con): I totally agree with my noble friend that we need to consider and show leadership on resolutions against repressive regimes. He is right to raise the issue of the Human Rights Council and item 7. We have seen an incremental change and I feel very strongly on a personal level that resolutions, particularly those of a technical nature, need to be looked at. This is not just about creating bureaucracy; it is about creating effective change on the ground. We must hold regimes, wherever they are in the world, that are repressive towards human rights to account and make sure that the perpetrators of crimes are brought to justice.

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

Carbon-neutral Homes

Question

12.39 pm

Asked by ***Baroness Thornhill***

To ask Her Majesty's Government what progress they have made towards (1) the target for carbon neutral homes by 2050, and (2) improving energy efficiency standards for existing buildings.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): Between 2010 and 2019, UK energy consumption per household has reduced by 21%. Through our energy company obligation, we have upgraded over 2.2 million properties since 2013, and this year we announced a £2 billion green homes grant to help up to 600,000 more homes reduce their emissions.

Baroness Thornhill (LD): I thank the Minister for his Answer and I hope he will agree that, with these things, the devil will be in the detail. For example, the Government's ambition to install 600,000 heat pumps by 2028 is laudable, but how do they intend to incentivise owner occupiers to meet the £10,000 upfront cost of installing them in their homes? The retrofitting of homes, which is a massively significant issue, has actually stalled. Can the Minister explain why the Government believe that this has happened and say how far the £2 billion grant that he just mentioned will actually go, given that a report in 2017 to the energy efficiency group estimated that £5.2 billion would be needed every year until 2035 to get all our homes up to the EPC band C level, which at the moment 75% of our homes fail?

Lord Callanan (Con): we are making considerable progress towards the target, but we recognise the role that energy efficiency will play in the decarbonisation of buildings. We remain committed to meeting our legally binding carbon budgets and will set out further action in the forthcoming heat and buildings strategy.

Baroness Blackstone (Ind Lab): My Lords, I declare my interests as set out in the register. The Scottish Government have published proposals for point-of-sale standards to require all owner-occupied homes to meet a rating of EPC band C from 2024. Do the Government plan to implement the Committee on Climate Change's recommendation that all homes—not just owner-occupied ones—are at least at band C by 2028?

Lord Callanan (Con): We are constantly improving the number of homes: 34% of homes are now above EPC band C, which is up from 9% in 2009. Our various funding schemes. such as the ECO scheme and the green homes grant scheme, will all contribute towards raising those numbers.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I am sure the Minister is well aware that, since 2017, 1 million homes have been built that will need retrofitting. Yesterday, the MCS Charitable Foundation released its *Energising Advice Report*. It recommends having a publicly funded one-stop shop for advice to homeowners on how to retrofit their homes—something to make it easy for them. Is that sort of advice something the Government might accept?

Lord Callanan (Con): I thank the noble Baroness for drawing my attention to the report, but we already have a digitally led advice service, Simple Energy Advice, which provides tailored advice to homeowners and landlords on energy performance improvements that they can make to their homes. It also signposts further funding and directs them to suitably qualified tradespeople

Lord Lilley (Con): I draw attention to my interests in the register. Carbon-neutral homes will require a massive expansion of carbon-neutral electricity. How confident is my noble friend in the optimistic projections of the future cost of renewables and carbon capture and storage, given that most large projects—from the Channel Tunnel through nuclear electricity to HS2—feature enormous cost overruns?

Lord Callanan (Con): I understand my noble friend's scepticism on this, but I point him to offshore wind, the cost of which has plummeted over recent years. It is possible that we can meet the standards, but of course we have to be fully aware of the potential for cost overruns in the future.

Lord Redesdale (LD): My Lords, I draw attention to my interest in the register as the CEO of the Energy Managers Association. Covid has led to millions of employees working from home, and while this would not have had a major effect during the first lockdown, due to the lack of heating, the second lockdown is of course during the winter and there has been a marked increase in the amount of gas used by people working from home and putting their heating on at times when they would not have in the past. Have the Minister and BEIS looked into the amount of carbon emissions that this has led to in the UK? Are plans afoot to allow companies to install energy efficiency measures if they are contributing to the fuel cost—as they can under the Treasury rules—so that the home becomes a place of work?

Lord Callanan (Con): The noble Lord makes some interesting points. I think we are all aware of the limitations of working from home, but companies should be as open and transparent as possible in their reports about the energy and emissions that they are responsible for. This includes employees who work from home.

Baroness McIntosh of Pickering (Con) [V]: My Lords, will my noble friend join me in congratulating National Energy Action on all it does on home insulation and warm homes? I have the honour to be the honorary president of National Energy Action. Is it fair that new homes are still being built using gas boilers, which will eventually be banned, given that there will be an enormous cost for the occupiers of those homes in retrofitting new boilers at some future date?

Lord Callanan (Con): We are consulting on these matters at the moment. The noble Baroness makes a very good point and I happily pay tribute to the work that National Energy Action does.

Lord Krebs (CB) [V]: [*Inaudible*]—climate change risk assessment concludes that the risks from overheating in residential and public buildings as a result of climate change are a top priority for urgent action. Can the Minister update us on progress in reducing this risk, and explain what the Government meant when the noble Baroness said on Tuesday that the Committee on Climate Change's recommendations for the most cost-effective path for getting to net zero by 2050 are "often a bit more ambitious than our plans"?—[*Official Report*, 8/12/20; col. 1109.]

Lord Callanan (Con): I did not hear the first part of the noble Lord's question as he was cut off. On the second part, I have not seen the remarks that he refers to, so I shall write to him on that.

Lord Grantchester (Lab) [V]: Point 7 in this scatter-gun 10-point environment plan identifies another two missing strategies: the national retrofit strategy and the fuel poverty strategy. What assessment have the Government made of the "help to fix" interest-free loan scheme proposed by the Chartered Institute of Building to deliver the future homes standard, and will the fuel poverty strategy still be forthcoming before the end of the year?

Lord Callanan (Con): We are committed to reviewing the decent homes standard for social housing around energy performance and decarbonisation. We will be consulting on further regulations for homeowners in 2021.

Lord Stunell (LD) [V]: In Greater Manchester, there are over 1 million homes needing energy efficiency upgrades but only about three homes are being assessed daily, so a householder who applies for a grant today is likely to face a three-month wait to get the go-ahead to start work. It will take more than a thousand years, at the current rate, to bring all Greater Manchester's homes up to EPC level C. Does the Minister now accept that recruiting and training green home assessors, and upskilling the construction workforce, has to be his top priority, and that underpinning that has to be a decades-long investment plan to give certainty to those who are ready to invest their lives in this key endeavour?

Lord Callanan (Con): I agree with the noble Lord that we need to invest further in training opportunities and upskilling. There are many jobs available in this sector and that is exactly what we are doing under the green home grant scheme. As well as grants to home-owners and the local authority delivery scheme, we are also investing in training places to bring those new jobs into fruition.

Lord Best (CB) [V]: My Lords, much of the problem of poor energy efficiency in homes is found in the private rented sector. Although the Government have launched their fund for the decarbonisation of social housing, what combination of sticks and carrots are they planning to deploy to secure decarbonisation and energy efficiency in the private rented sector?

Lord Callanan (Con): The noble Lord makes a very good point. Our stick is that we are consulting on raising the minimum energy efficiency standards of privately rented homes, and our carrot is that landlords can apply through the green homes grant scheme to get grant aid to help them.

Lord Randall of Uxbridge (Con) [V]: Does my noble friend agree that the climate change commission's recently published sixth carbon budget just gives further impetus to Her Majesty's Government bringing forward more measures to accelerate the rate at which targets can be met?

Lord Callanan (Con): Since committing in law to eradicating our contribution to climate change by 2050, we have announced a series of ambitious plans to cut emissions, including through the Prime Minister's recent 10-point plan. We will of course consider the committee's most recent advice carefully as we take further opportunities to cut emissions and build the low-carbon future that we all wish to see.

The Deputy Speaker (Lord Lexden) (Con): My Lords, all supplementary questions have now been asked and we move to the next Question.

Puberty-blocker Drugs

Question

12.50 pm

Asked by ***Lord Young of Norwood Green***

To ask Her Majesty's Government what assessment they have made of the administration of puberty-blocker drugs to children under the age of 16.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con) [V]: My Lords, the Government are committed to providing the best possible care for children and young people accessing gender identity services. Earlier this year, the National Institute for Health and Care Excellence was asked by NHS England to undertake a thorough review of the latest clinical evidence on the use of puberty suppressants and cross-sex hormones. An independent group, under the chairmanship of Dr Hilary Cass, will make recommendations about the existing clinical policies based on this evidence.

Lord Young of Norwood Green (Lab) [V]: My Lords, I wish to make my position clear: I am opposed to all forms of transphobia and transgender discrimination, but this should not override the rights of women as defined in law. I welcome the Minister's statement on the guidance and the research, and I am sure he agrees with me on the importance of the NHS guidance. Does he also recognise that this needs to be ported? What actions will the Government take to ensure that local services, such as CAMHS, are sufficiently resourced to provide psychological support to all children and young people with gender-related distress?

Lord Bethell (Con) [V]: My Lords, the noble Lord puts his point extremely well. I share his concern for those with trans or gender concerns of any kind. I reassure him that provision of gender identity services at all levels is an absolute priority for the NHS. In the recent court case, we have seen a clarification of the guidelines attributed to some of those services, but it in no way mitigates against or suggests a lack of commitment on the part of the NHS to such services.

Baroness Nicholson of Winterbourne (Con): Will the Minister confirm that since no baby can be born in the wrong body and human sex cannot be changed post-birth, the extensive plastic surgery, castration, double mastectomies and concomitant lifetime of heavy unnatural drug use that follow the introduction of puberty blockers are not the right way to assist a troubled child to gain mental stability and a contented and healthy future?

Lord Bethell (Con) [V]: I reassure my noble friend that people with gender dysphoria cannot access gender reassignment surgery under the age of 18, so young people are not eligible for the type of procedure that she describes. Gender identity services are clinically led and focus on enabling the young person to choose the path which suits their needs. They support children to explore their feelings, recognising that there is not a one-size-fits-all approach. This seems an appropriate approach in the circumstances.

Baroness Fox of Buckley (Non-Afl): My Lords, I warmly welcome the court ruling that children cannot consent to treatment to suspend puberty. Will the Minister join me in saluting the bravery of Keira Bell for taking this action and echo her message that being a tomboy or not liking stereotypically girly things does not make girls or young women any less female? Crucially, will he clarify that this ruling does not undermine the 1985 Gillick judgment giving young women the legal right to reproductive healthcare without parental consent and that the false and scaremongering misinformation circulated by certain organisations, including Amnesty International and Mermaids, is driven by a particular agenda rather than a concern for transgender people's rights?

Lord Bethell (Con) [V]: My Lords, I salute the court's thoughtful and lengthy judgment, which brought enormous clarity to an area which is very important but which has also caused concern and ambiguity. The court has made it clear that children under a certain age are not ordinarily able to make the kind of decisions that have previously been asked of them, but there are openings. No one under the age of 16 can now be referred on to puberty blockers unless a court rules that it is in the child's best interest. These are helpful clarifications and we look forward to further work to clarify this area.

Baroness Wheeler (Lab): My Lords, the mental health and well-being of young children and teenagers who present with gender dysphoria are paramount. Given the NHS England announcement on puberty blockers, what support are the Government giving to children and teenagers affected by the revised guidelines and their families and schools? On medical matters, will a young person under 16 concerned about gender dysphoria who approaches a GP continue to be covered by the duty of doctor-patient confidentiality?

Lord Bethell (Con) [V]: I reassure the noble Baroness that patient-doctor confidentiality remains paramount and is respected. To update her, the Tavistock has immediately suspended new referrals for puberty blockers and cross-sex hormones for under-16s. In future, they will be permitted only where a court specifically authorises it. I reassure the noble Baroness that those already on the programme will continue their medication until the review has been finalised.

Baroness Barker (LD): The legal team that brought the recent case has, over recent years, brought several cases designed to oppose LGBT rights and to restrict the reproductive rights of women and girls. All those actions are consistent with campaigns run by organisations including the Heritage Foundation and the Alliance Defending Freedom—extreme evangelical right-wing American organisations. Will the Minister tell the House which NHS England boards and committees approved the amendment of the gender identity service specification on 1 December, prior to the court requiring them to do so, and in the light of the fact that this judgment can and will be appealed? If he does not have that information now, will he write to me?

Lord Bethell (Con) [V]: Well, my Lords, it is not appropriate for me to comment on those who have brought these cases, and outstanding judicial proceedings exist and are in place at the moment, so it is not possible for me to comment from the Dispatch Box in response to the noble Baroness's remarks. All I can say is that the NHS, NICE and the Tavistock all have the interests of patients at their heart; we are not ideological about that. We are absolutely committed to the best interests of patients, and I would be glad to write to the noble Baroness to answer in any way that I can the questions she asked.

Baroness Gale (Lab) [V]: Is the Minister aware that the ruling and the NHS England response to it have caused significant uncertainty and distress among young people and families currently supported by the Tavistock clinic and those on its waiting list? Can the Minister say what steps the Government are taking to ensure continuation of care for young people currently in the care of the Tavistock who are affected by the NHS England response to the court ruling?

Lord Bethell (Con) [V]: I am sure that the noble Baroness's testimony is entirely right, and it concerns me that anyone has any concerns in this matter. I reassure her that the Tavistock is doing absolutely all it can to reassure current patients and those who are on the referral list; its communications have been excellent throughout. The provision of puberty-blocker services to existing patients has continued, and it will remain in close contact with those patients as the review plays out.

Lord Dobbs (Con) [V]: My Lords, I hope this is an appropriate moment to reflect on the life of Jan Morris, that glorious writer who died just over two weeks ago. She was born a man, served in the British Army, fathered four children with her beloved wife Elizabeth and then transitioned from male to female in the 1970s—a challenge she bore with extraordinary humour and patience. So perhaps I may recommend that my noble friend reads all her books in his spare time. Would he agree that Jan Morris's example of seeing the world in glorious colours, rather than narrowly in black and white, and of always showing kindness and tolerance even to those who disagreed with, and perhaps disapproved of, her, is an example that should inspire all sides of this debate and give comfort to those, in particular children and their parents, who find themselves struggling with the same difficult situation she did?

Lord Bethell (Con) [V]: [*Inaudible*]—to be more affected by their warmth and kindness. Jan was an absolute model of warmth and kindness. Having worked

[Lord Bethell]
in the nightclub industry, I have met, worked with and enjoyed the company of many trans people, which has always proved to be an extremely uplifting experience. I am a massive supporter of the trans movement in the round.

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

1.02 pm

Sitting suspended.

Prohibition on Quantitative Restrictions (EU Exit) Regulations 2020

Motion to Approve

1.07 pm

Moved by ***Lord Callanan***

That the draft Regulations laid before the House on 9 November be approved.

Relevant document: 35th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 8 December.

Motion agreed.

Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020

Motion to Approve

1.08 pm

Moved by ***Lord Stewart of Dirleton***

That the draft Regulations laid before the House on 30 September be approved.

Considered in Grand Committee on 8 December.

Motion agreed.

Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020

Motion to Approve

1.09 pm

Moved by ***Baroness Williams of Trafford***

That the Regulations laid before the House on 18 November be approved.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I will refer to this instrument as the consequential amendments SI. Parliament has approved the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, which will end free movement on 31 December, at the end of the transition period. The Act gives the Government full control of UK borders for the first time in decades, delivering on our promise to the British people. It represents an important milestone in paving the way for the new UK points-based immigration system, to operate from 1 January 2021.

The consequential amendments SI is the next step in ending free movement, and completes the legislative changes necessary for this historic act. It is made under the regulation-making power in Section 5 of the Act, the scope of which we and the other place debated extensively during the passage of the legislation. I was pleased to share with noble Lords an illustrative text of the SI in early September.

The SI amends primary and secondary UK legislation as a consequence of, or in connection with, the provisions in Part 1 of the Act, which end free movement and make provisions for the new status for Irish citizens. It amends legislation relating to immigration, nationality, benefits and services. It amends devolved matters where changes are required for an immigration purpose, to reflect the end of free movement.

As noble Lords will have noted, the SI is lengthy, given the breadth of amendments to domestic legislation required. The effect of the legislative changes is to align the immigration treatment of EEA citizens and their family members who are not protected by the withdrawal agreements and the UK's implementation of these agreements, with that of non-EEA citizens under the UK's immigration system. Once free movement has ended, newly arriving EEA citizens and their family members will be subject to the same UK immigration law as non-EEA citizens. They will need to meet the requirements of the new points-based immigration system set out in the immigration rules made under the Immigration Act 1971.

The SI provides clear protection for Irish citizens and EEA citizens and their family members who have been granted status under the EU settlement scheme. It also removes references in domestic legislation to the UK's membership of the European Union and EU-derived law that has been retained by the European Union (Withdrawal) Act 2018, as amended by the European Union (Withdrawal Agreement) Act 2020, at the end of the transition period.

Most of the changes will come into force at 11 pm on 31 December, at the end of the transition period. There are some exceptions, which include the provision to bring EEA citizens within scope of the immigration skills charge, which came into force on 1 December to coincide with the opening of the new skilled worker route. It means that the charge will apply to EEA citizens who arrive in the UK from 1 January 2021 under this route.

Another exception consists of the various provisions that bring EEA citizens within the scope of the sham marriage and civil partnership referral and investigation scheme. They will come into force on 1 July 2021, after the deadline for applications to the EU settlement scheme, at which point it will be easier for the Anglican Church to differentiate between EEA citizens who have status under the EU settlement scheme and those who do not.

The consequential amendments SI reflects the repeal of free movement at the end of the transition period, as enacted by Parliament's approval of the Immigration

and Social Security Co-ordination (EU Withdrawal) Act. It makes the statute book coherent, and terminates arrangements relevant to the operation of free movement law in UK legislation, which will no longer be appropriate, while implementing our obligations under the withdrawal agreements. It is an essential step in fulfilling our promise to end free movement. I beg to move.

1.13 pm

Baroness Ludford (LD) [V]: My Lords, the Home Secretary is a keen proponent of the ending of free movement. One of her recent triumphant tweets coincided with articles in both the *Daily Mail* and the *Daily Telegraph* about how outrageous it was that British owners of second homes in an EU country would have to get a Schengen visa for stays of more than three months. I have no idea why they have only just found that out. Of course, they are blaming the nasty, punishing, perfidious EU—although that was the known situation for third countries. There was a certain bitter irony in those reports. They were a salutary reminder that free movement, and its termination, is a two-way street—a curb on the liberties of Britons as well as on those of foreigners. That seems never to have been recognised by Brexiters.

Let us remember the huge contribution that the 4 million or so EEA citizens have made to every aspect of life in the UK, from health and social care, to business, to farming and horticulture, to the arts and much more. The same goes for UK citizens living in EEA countries. I am still reeling from the utter meanness of the Government in refusing to allow UK citizens living abroad beyond March 2022 to decide whether to move back here without facing the same hurdles to family reunion as migrants. I am still amazed that this Government could so persecute their own citizens.

The 64 pages of this complex SI, which Parliament cannot amend, perfectly illustrate the justification for our opposition to the huge and broad powers that the Government gifted themselves in Clause 4 of the Bill, which became Section 5 of the Act. Our Constitution Committee rightly called them "constitutionally unacceptable".

The SI extends the hostile environment to cover EU citizens, except those who have been granted settled status by 30 June next year. Even the horrors of the Windrush scandal failed to prompt the Government to end the hostile environment that created so much pain for those victims.

There is much concern, which I share, about the position of EU citizens who have not applied to the settlement scheme by 1 July next year. Even those who have applied for settled status but have not received a decision will on that date lose their right to a job or to rent, as well as access to services such as homelessness assistance and benefits. That is of great concern. In the other place the Minister promised a written response to some pertinent questions raised about that situation, and I regret that we do not have that in time for today's debate.

I would therefore like to ask the Minister very specifically about the compatibility of this SI with Article 18.3 of the withdrawal agreement, in the chapter on citizens' rights. It says:

> "Pending a final decision by the competent authorities on any application … and pending a final judgment handed down in case of judicial redress sought against any rejection of such application … all rights provided for in this Part shall be deemed to apply to the applicant".

How is this SI compatible with the withdrawal agreement, in denying rights to all those who lack status on 1 July next year?

Finally, may I ask about the right to work in the Civil Service? The Explanatory Memorandum seems to suggest that while newly arriving EEA citizens will lose that right from January, some Turkish citizens will retain it. I would be grateful if the Minister could tell me if I have correctly understood that—and if I have, if she could justify why EEA citizens are second class in comparison with Turkish citizens.

1.17 pm

Lord Horam (Con): My Lords, the title of this statutory instrument is quite a mouthful, even when delivered in the dulcet tones of my noble friend. It has been brought about by the UK's exiting the European Union and therefore also leaving the free movement of people system, which prevails within the EU. This is a historic step for this country, and it is perhaps worth pausing for a moment to reflect on that. Free movement of people is one of the four fundamental freedoms of the European Union, and it is easy to see why, when devising the single market structure, it was included along with the other three. But it has always been controversial.

Interestingly enough, the person who most accurately put his finger on the problem with free movement of people is Bernie Sanders, the former self-declared socialist candidate for the US presidency. Questioned about free movement in an interview in 2005, he said that that meant

> "doing away with the concept of the nation state".

He is right, of course. The simple fact is that the world has organised itself into nation states. With nation states come borders, and with borders come border controls.

Moreover, if you are not well-off and have few skills, you welcome that. Your country is there to protect you. It is okay if you are Sir Philip Green, who appears to live mostly on a yacht off Monaco; borders do not matter to people like that. But if you are an NHS porter in Darlington, they do.

That is why it surprised many people that the Blair Labour Government bought so heavily into free movement. Noble Lords may recall that they even eschewed the seven-year transition period allowed under the rules, which other European Union countries adopted. That Labour Government also, of course, increased immigration from other non-European sources, for example by dropping the primary purpose rule and by expanding the work visa system. Net immigration, which had been steady at tens of thousands a year and not caused a problem for decades, surged to hundreds of thousands a year.

The results were devastating for some working-class communities. For instance, as Paul Embery, the Labour and trade union activist, writes in his book, *Despised*, the non-UK-born population of Barking and Dagenham, where he lives, increased by 205% between 2001 and 2011.

[Lord Horam]

Local services were overwhelmed; the demographic shifts were rapid and huge. Local papers were filled with complaints but no one listened. When a Labour supporter in Rochdale raised the question of immigration in the 2010 election, Labour's Prime Minister simply called her a bigot—when, of course, he thought she was out of earshot. The Conservatives promised to do something, and had some initial successes in closing down bogus colleges, for example, but they appeared to run out of steam under pressure from business interests—and, of course, they could do little about European Union immigration, as much as David Cameron clearly tried.

There were two political results from this. The first has been Brexit, which has not been entirely about immigration, but I think that leave leaders would admit that the campaign could not have been won without it. One of the supreme ironies of the Brexit saga has been to listen to Labour and Liberal remainers in your Lordships' House complaining bitterly about Brexit without understanding how much it was their doing. Secondly, there has been the collapse of support for Labour among the working class—as instanced in the last election, when they realised that, on this issue, Labour was not on their side. The party that was built to represent the working class got only 33% of its vote in 2019, while the Conservatives got 48%. What a shocking indictment of the Labour leadership that is.

It would have been better if Labour, Conservative or Liberal politicians had got a grip on the problem at an earlier stage, and better if the politicians of the European Union had been less dogmatic in their defence of free movement. Now we are closing in on a defining moment in the UK as free movement ends and we move to a new system, as my noble friend has explained, with immigration controls. One can only hope that present politicians of all strands understand the lessons of the past 20 years and listen more to the views of the British people. It is not rocket science.

1.22 pm

Lord Green of Deddington (CB) [V]: My Lords, first, I endorse the remarks of the noble Lord, Lord Horam. I agree entirely with everything he said. These regulations just cross the t's and dot the i's of the main Immigration Bill, all very well summarised by the Minister. However, the passage of the main Bill did not allow for any serious discussion of a key element —the new points-based system—and the Government still have not found time for the House to debate the issues that this raises, despite the fact that the new system is already open for applications and will come into effect on 1 January. Therefore, I want to take this opportunity to outline very briefly some of the main and important effects.

As the House will know, the new system for work permits has three broad elements. First, it introduces lower salary and lower skills requirements; secondly, it removes any requirements first to advertise jobs in the UK; and, thirdly, it provides a new route for workers under the age of 26 at remarkably low salary rates not much higher than the national living wage. More generally, it opens the work permit system to the entire world, while excluding most low-skilled workers.

The effect of these changes will be huge. They involve opening approximately 7 million UK jobs to new or increased international competition. Meanwhile, the number of people worldwide who will meet these new requirements runs, literally, into hundreds of millions. Obviously, they will not all come, but the number who do so could be very large indeed. The obvious and sensible course would be to set a cap now, at least initially. Unfortunately, there is nothing in the new Immigration Rules about how such a cap might be introduced, so I hope that the Minister will take the opportunity to comment on this when she winds up.

Finally, the Government have repeatedly promised to "control" immigration. In fact, as I have indicated, the new system is far more likely to lead to a very considerable increase in net migration. For the time being, attention is elsewhere—on Covid and Brexit—but that could well change, to the detriment of a Government who have failed to keep a key promise to an important sector of the electorate.

1.26 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I want to take this opportunity to thank the Minister for her explanation of these regulations, which make a series of changes that the Government describe as necessary following the ending of free movement. Those changes will come into effect at 11 pm on New Year's Eve.

I regret and am opposed to the ending of free movement, and would like to see a debate take place in your Lordships' House on the new points-based system. It is important that it takes place and that we fully understand the impact of that system—and the impact that it will have on our wider healthcare and business communities.

Like the noble Baroness, Lady Ludford, I regret the ending of free movement. Having people come into the UK from many countries allowed our society to be enriched and more inclusive. Ending free movement ensures that that inclusivity will be dissipated, which I deeply regret.

In respect of the regulations, I have some questions for the Minister. The Delegated Powers and Regulatory Reform Committee stated in its report in August that

"very significant delegations of power … relating to ending free movement … and … relating to social security co-ordination … have potentially significant implications for EEA citizens in the UK and UK citizens in EEA countries."

In that regard, does the Minister recognise that those provisions and these regulations will have significant impacts on our health and care services, our agri-food industry and wider business activity in the UK? Have the Government undertaken an assessment of the potential impact of the ending of free movement on our principal sectors, health and social care services, farming and the agricultural community and the various sections of business activity in the UK? Many of the workers involved in those sectors come from other EEA countries and, as a consequence, Britons going to EEA countries could face severe repercussions. Have the Government fully thought out this particular policy? Why were these regulations made according to the affirmative procedure rather than the usual draft affirmative procedure, particularly when it is not possible to amend statutory regulations?

I look forward to the Minister's answer to those two questions and to how the Government will ensure that the NHS in particular has the human resource capacity to deal with the continued consequences of the pandemic and rollout of the vaccination programme as a result of the implementation of these regulations, which will severely reduce our workforce—but also that particular ingredient of expertise in the wider health and social care sector, among the nursing and medical professions.

1.30 pm

Baroness Neville-Rolfe (Con): My Lords, I thank the Minister for her clear explanation, and I thank my noble friend Lord Horam for his fascinating historical perspective. I agree with all he said and all that was said by the noble Lord, Lord Green, the leading expert in this field.

The bad news is this: the country will expect this Government to bring about a significant reduction in immigration. That is, after all, what they implied they would do. But the current government plans will not bring this about. Accordingly, there is a real risk that this failure, as much of the electorate will see it, will be reflected in voter disillusion at forthcoming elections.

This is a minority view in elite circles and especially in your Lordships' House. But time will tell. Meanwhile, we need to establish the facts, which successive Governments have proved very coy either to establish or to acknowledge. Therefore, I ask the Minister to explain how the Secretary of State plans to monitor the operation of these regulations, and the whole new points-based system, to establish quickly who is coming into the country in the various categories and from where.

Let us start with the numbers registered under the EUSS—some 4 million people, generously offered a home here under the withdrawal Act. Where in the EU have they come from, in both large and small numbers? Then add those waiting to be processed. "Processed" is probably the wrong word, but there is asylum, family reunion, arrival by boat across the channel, leave to remain, students—most of whom, I acknowledge, will return home—and other categories. What do the totals, both from the EU and elsewhere, look like, and what is the breakdown by occupation? Perhaps we could then see similar figures for those leaving the UK to get a net picture.

How up to date are the figures currently held by the Home Office? Given the huge numbers, it is vital that the Secretary of State has up-to-date figures. There is a parallel with critical movements or sales figures in a company. I remember doing home affairs at No. 10 in the 1990s, when the numbers were relatively small, and there were a lot of lags in the figures.

We are putting faith in the Government, which I support, and they have refused, to my concern, to introduce a cap or any other realistic measures of the kind proposed by the noble Lord, Lord Green of Deddington. The flow must be tightly monitored so that changes can be introduced when the need arises. I would like evidence that the data needed is being collected, perhaps by a powerful data and economic division reporting weekly to the Secretary of State, and not by the MAC, whose main interest is the supply of labour and talent to demanding employers.

I suspect, as has been said, that Covid will slow the numbers down as there are now so few jobs on offer, even for young UK citizens. But we need to spot when that changes, as the noble Lord, Lord Green, suggests, and act fast if it becomes a problem, hence my emphasis on reliable, up-to-date numbers. I would like the data to be published, but that might take time given cultural issues in a department such as the Home Office.

The use of data by Ministers to inform immigration policy is the most important thing of all. Better statistics would also help other departments to plan the infrastructure, health, education and housing needed. Lack of planning for such services, the resulting bottlenecks and fear for their jobs are reasons many normal people dislike immigration. My noble friend Lord Horam cited a graphic example from Barking and Dagenham, and we must make sure that is not repeated.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, I understand that the noble Lord, Lord Bhatia, and the noble Baroness, Lady Uddin, have withdrawn, so I call the noble Baroness, Lady Hamwee.

1.34 pm

Baroness Hamwee (LD) [V]: My Lords, the Minister in the Commons said that he

"would not expect employers on 1 July suddenly to check that every member of their staff has EUSS status." —[*Official Report*, Commons, Delegated Legislation Committee, 8/12/20; col. 12.]

I know someone from the EU who, several years ago, became a British national. A few days ago, she was asked by a confused and anxious HR manager to prove her status. She was, and is, understandably distressed. Her sister has been in the UK for 15 years but does not want to take British nationality. I hoped that she had applied to the settled status scheme; she had, but the Home Office keeps asking her for her reference, having repeatedly failed to give her one. Is this the legacy?

This SI renders the statute book coherent, we are told. It is coherent in a narrow, technical sense, but is it accessible? I understand free movement is about to end; I understand the Government will emphasise that the SI merely implements the recent Act; I understand this SI will become law. But we have an important task today. This is not to ignore that the inability to amend an SI means we are almost always reduced to an empty gesture, that the instrument's sheer size presents parliamentarians with an exercise I, for one, feel incapable of fulfilling, or that it raises some considerable concerns. It is incumbent on the Government to do all they can and support others to do all they can, to ensure that people affected are clearly informed as to their position.

I do not deny that to have processed over 4 million applications is really going some. But 42% of the grants, so far, are of pre-settled status, with the difficulties and uncertainties that go with that. By definition, we do not know how many people have not applied. We can be pretty sure that the great majority of them are individuals least able to look out for themselves. Many are likely to have the most difficulty in satisfying the Home Office of their entitlement, and many are likely to be the most in need of support, by way of benefits and housing.

[Baroness Hamwee]

The Government accept there is a big communication job to be done: before the end of the transition period; in the first six months of 2021; and after 30 June. Can the Minister update us on this? I hope it is not going to be more of the same, because we know where it leads when one repeats oneself. I make the point about the different time periods because the rights that follow are different, and different again depending on the basis for the grant of status, whether residence or exercising treaty rights.

The organisations to which potential applicants are directed—and this is no criticism of them—may well have difficulty advising on which rights an individual has in his particular circumstances. There is no duty on them to direct him to where advice may be had. And there is no duty on a public body approached by an EEA national without settled status to direct him to the scheme so that he can be put in a position where that public body can respond; for instance, to deal with a benefit claim. It is no answer that this is complicated. That is precisely why it is incumbent on the Home Office to ensure accurate advice is available.

There is further scope for confusion from an apparent inconsistency between these regulations and the health regulations. I am certainly not arguing for reducing access to the NHS, but to give access to—I think—all NHS treatment but not to housing support is bewildering and illogical. We know the impact of poor housing, and especially homelessness, on health.

I have a specific request of the Home Office: a chart, made available to anyone who needs to understand who is entitled to what, setting out what the rights and protections are for those granted status, applied for at different times, and for those with and without treaty rights—every permutation. If it has already been produced, can it be made widely available?

I understand that among those one would expect to be able to advise, there is uncertainty and unease as to just what the regulations will mean in practice. I have sympathy with the Minister in the Commons, who offered to write with answers to various scenarios that were posed during the debate on Tuesday. That illustrates the complexity, and noble Lords will appreciate that any letter will arrive after the SI is in law.

Noble Lords have indicated very different views today. As the noble Baroness, Lady Ritchie, said, and, as my noble friend made clear, we are enthusiasts for free movement. My noble friend raised the compatibility, or otherwise, of the SI with Article 18.3. The Explanatory Memorandum published with the SI is helpful, but it can go only so far and is itself puzzling in part, to me at least. We are told that certain existing regulations are revoked

"because they omit provisions made as a contingency in the event of a no deal exit, which are no longer required".

Is this foresight or wishful thinking? There are difficulties and concerns with the substance and with the form, but the Home Office is in a position to help with the translation.

1.41 pm

Lord Rosser (Lab) [V]: The Explanatory Memorandum for these regulations says that their purpose is to amend or revoke a range of some 80 or so existing pieces of domestic primary and secondary legislation, using powers primarily under Section 5 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, which ends free movement at the end of this month. The Section 5 powers can be used to modify, by regulations, Acts of Parliament—Henry VIII powers—statutory instruments and retained EU law. Nobody could accuse the Government of being shy about using this power, which diminishes the role that Parliament can play in amending, challenging and questioning the detailed changes to the laws of this land which the Government are making in some 55 pages of amendments and schedules in these regulations.

There does not appear to be anything in these regulations that would be different depending on whether there was a deal or no deal, so all of this will have been known to the Government months ago. Why then are these regulations, all 55 pages of amendments and schedules, including involving the use of Henry VIII powers taking away rights and protections, being brought forward for approval by the Government so late in the day? I ask them in their response to give a clear assurance, on the record, that the legislative changes in these rushed regulations will work as intended and are in scope of the Section 5 power, and that further amendments, which could and should have been in these regulations, will not be needed. I will wait to see whether they give that clear assurance on the record and, if they do, whether it is caveat free.

I will raise a few specific points. Will the Government say whether all the detailed legislative changes in these regulations arise from the ending of free movement? I ask that because there is a change to the Immigration Act 1971 which widens the power to exclude people arriving from the common travel area—Ireland, the Channel Islands and the Isle of Man—so that exclusions on "conducive to the public good" grounds need no longer solely be on a national security ground but on a much wider basis, and also that notice of exclusion need no longer be in writing. This does not appear to be a necessary consequence of the withdrawal agreement, so why is a Henry VIII power being used here to make a non-Brexit related change, and why is the change being made?

Further, there also appears to be an amendment to the Borders, Citizenship and Immigration Act 2009, replacing "a qualifying CTA entitlement" with

"the relevant status as an Irish citizen".

That language suggests that the CTA covers only the UK and the Republic of Ireland, as it omits the Isle of Man and the Channel Islands. Will the Government comment on the significance of the wording to which I have referred?

There is also an amendment made to the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011, which would omit the paragraph saying that there is

"no fee payable for an appeal against a decision made under section 5(1) of the 1971 Act (a decision to make a deportation order)."

This would appear to have the possible effect of making it more costly and difficult to appeal a deportation order. Once again, this would appear to be a change being made, this time to an SI, which is unrelated to

our leaving the EU and the ending of free movement. Will the Government confirm whether this is the case, and what the real purpose is behind the amendment to this particular SI? Will they also say how many, and which, of the amendments and schedules, in whole or in part, in these regulations are not directly related to our leaving the EU and the end of free movement?

The amendment to the Aliens' Employment Act 1955 leaves EU citizens and family members with leave to enter or remain on a basis outside the EU settlement scheme—for example, as family members or as skilled workers—with restricted access to Civil Service jobs, as has already been mentioned. This issue was raised in the Commons, when the government answer was that it was right that someone who works in the Civil Service has the appropriate immigration permission for the UK. That does not answer the question, though, of why the Government are placing this restricted access on people who are lawfully resident. I would be grateful for a response from the Government to that question.

The regulations relating to changes to marriage and regarding sham marriage come into force on 1 July 2021, as the Minister said. In the Commons, the Government said that this will make it easier for those conducting legal ceremonies, since the grace period for the EU settlement scheme will have ended by then. Was this delayed coming-into-force date the result of representations to the Government, or was it a delayed date that the Government decided to introduce off their own bat? I ask that since there has been no public consultation on these regulations—apparently not even with the Law Commission—so organisations or bodies that might, for example, have been able to make a credible case for a later introduction date for some of these regulations have not been given the opportunity by the Government to do so. In reality, this was presumably because of the way these rushed regulations have been brought forward so late in the day.

Finally, what views did the devolved Administrations express on these regulations? I await the Government's response to the questions raised in this debate.

1.47 pm

Baroness Williams of Trafford (Con): I thank all noble Lords for their questions. I am sure that the noble Lord, Lord Rosser, will forgive me—he asked so many questions that I am not sure I can get through all of them this afternoon.

The noble Baroness, Lady Ludford, talked about the complexity of the SI—a point reiterated by the noble Baroness, Lady Hamwee. The changes are required to fully implement the end of free movement by removing references to retained EU law and preferential arrangements for EEA citizens and their family members. Domestic legislation includes these references as a result of decades of membership of the EU. So the SI contains these consequential provisions; it is not a self-contained new policy, and it needs to operate on the statute book as it is now. As a result, yes, the SI is lengthy and includes amendments to a wide range of primary and secondary legislation. However, the overarching effect is simple: the SI aligns EEA citizens and their family members, except Irish citizens and those protected under the withdrawal agreement, with non-EEA citizens. This will pave the way for the points-based immigration system that will treat people on the basis of their skills and their contribution, not their nationality.

The noble Baroness talked also about the examples raised in the House of Commons. I actually did look at the *Hansard* of the questions raised there. I would not have wanted to reply to those questions because obviously, every single case is different and there may be elements in people's circumstances that do not elicit a one-size-fits-all response. That also goes to the point made by the noble Baroness, Lady Hamwee—if there will be a chart setting out the rights in all sorts of eventualities. I would have thought that that would be the wrong thing to do because, as I say, everyone's case is slightly different. We have the Settlement Resolution Centre and GOV.UK, which assist people, and we have also launched a further awareness campaign so that people know their rights.

The noble Baroness also brought up the issue of over 4 million people now applying. The EU settlement scheme is clearly a system that works, given the number of people who have already applied. Yes, some have pre-settled status—that is absolutely to be expected—and there are some with full settled status as well. She asked whether the SI is compatible with Article 18(3), and I can confirm that it is. She asked about the EEA, Turkish citizens and the Civil Service, as did the noble Lord, Lord Rosser. As he said, the SI makes changes to the Aliens' Employment Act 1955, which will lead to changes in the Civil Service nationality rules concerning who is eligible to work in the Civil Service.

The effect is that newly arriving EEA citizens from 1 January next year will no longer be eligible to work in the Civil Service on the basis of exercising free movement rights, since we are ending free movement. But the instrument protects those EEA citizens and their family members with status under the very successful EU settlement scheme, those who would have been eligible for status at the end of the transition period but have other leave to remain granted before the end of the transition period, and Turkish nationals in specified circumstances in relation to the EC Association Agreement with Turkey. Separate provision has been made in the grace period SI, of course, to protect existing rights to work in the Civil Service during the grace period.

The noble Baroness, Lady Ritchie of Downpatrick, questioned not only the affirmative SI process but the illustrative draft SI process. It was requested and made available ahead of Committee stage of the immigration Bill to facilitate scrutiny of the legislation, so if there is any doubt about parliamentary scrutiny, that was an opportunity for Parliament—both Houses—to scrutinise this SI.

The noble Lord, Lord Rosser, asked whether some of the provisions are unrelated to the end of free movement, and about the compatibility with Section 5. The power to make regulation is provided by Section 5 of the immigration Act, as he said, and that provision is to make changes appropriate as a

"consequence of, or in connection with"

the ending of free movement and provisions in the Act relating to the rights of Irish citizens, so all the provisions in the SI are made accordingly.

[Baroness Williams of Trafford]

The noble Lord, Lord Green of Deddington, and my noble friend Lady Neville-Rolfe asked about the cap. It is a very pertinent point. We have ended free movement and introduced the new points-based immigration system. It is absolutely right and fair that in the coming months and years, we look at how that all pans out. My noble friend made a point about the data, which is so important here. It will be kept under review. The noble Baroness, Lady Ritchie of Downpatrick, asked for a debate on the points-based system—obviously, over to noble Lords on that. These things are allowed for in your Lordships' House, and I look forward to having a debate, perhaps in the first quarter, on how that new system is working. The resident labour market and the key sectors will be kept under very close scrutiny, and we will of course retain the ability to make any changes necessary.

The noble Baroness, Lady Ritchie of Downpatrick, also asked about the impact assessment on health and social care. Noble Lords will recall that back in the debates on the immigration Bill, the noble Lord, Lord Rosser, asked if we could publish an independent review on the impact on the sector of ending free movement, and I undertook to do that.

My noble friend Lady Neville-Rolfe asked about monitoring. She asked me not to talk about the MAC all the time, but I think it will monitor the impact of the new system. She asked for a breakdown by country and sector of who was applying to the EU settlement scheme. I do not have that at the moment, but I can look into it for her and see if we have any information to date.

I hope I have answered all noble Lords' questions. I will have to write to the noble Lord, Lord Rosser, on some of his points because I could not write them down quickly enough. On that note, I beg to move.

Motion agreed.

1.56 pm

Sitting suspended.

Arrangement of Business

Announcement

2 pm

The Deputy Speaker (Lord Rogan) (UUP): My Lords, the Hybrid Sitting of the House will now resume. I ask Members to respect social distancing. I will call Members to speak in the order listed in the annexe to today's list. Members are not permitted to intervene spontaneously; the Chair will call each speaker. Interventions during speeches or "before the noble Lord sits down" are not permitted.

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

Covert Human Intelligence Sources (Criminal Conduct) Bill

Committee (4th Day)

2.02 pm

Relevant documents: 10th Report from the Joint Committee on Human Rights, 19th Report from the Constitution Committee

Clause 1: Authorisation of criminal conduct

Amendment 50

Moved by ***Lord Davies of Gower***

50: Clause 1, page 3, line 2, at end insert—

"(8A) A person may grant a criminal conduct authorisation to authorise criminal conduct that has already been committed if the following requirements are met—

(a) the conduct by or in relation to the person who is specified or described as the covert human intelligence source to whom the authorisation relates was necessary on grounds falling within subsection (5), in the view of the person granting the authorisation, to avert or mitigate a threat to the physical safety of the person specified or described as the covert human intelligence source, or to avert or mitigate a threat to the physical safety of some other person engaged in the conduct;

(b) the conduct was brought to the attention of the authorising officer immediately or at the first available opportunity, by the person who is specified or described as the covert human intelligence source to whom the authorisation relates;

(c) the person granting the authorisation is satisfied that the threat to the physical safety of the person specified or described as the covert human intelligence source, or a threat to some other person engaged in the conduct, could not have reasonably been averted or sufficiently mitigated by other conduct which would not have constituted crime.

(8B) Subsection (8A)(c) is without prejudice to the need to take into account other matters so far as they are relevant (for example, the requirements of the Human Rights Act 1998)."

Lord Davies of Gower (Con) [V]: My Lords, this amendment in my name seeks to address the current inadequacies in respect of protection afforded to undercover operatives. I apologise at the outset to the noble Lord, Lord Cormack, but I intend using the word "CHIS", which I also find unsuitable—I prefer the phrase "undercover operative", but I will refer to CHIS throughout my speech.

I seek to address the current inadequacies in respect of the protection afforded to an undercover operative when faced with a potentially life-threatening situation while engaged in an operation by inserting new subsections (8A) and (8B) into the new Section 29B of the Regulation of Investigatory Powers Act 2000. The effect of this new insertion would be to allow authorisation in certain circumstances after the event, and I will explain the circumstances as I progress.

It seems clear to me from noble Lords' contributions to the Committee—I say this acknowledging the many and varied concerns expressed by noble Lords in their contributions—that there is a tendency, indeed more than a tendency, to overlook the threats and dangers that these undercover operatives are faced with at crucial times during their deployment. It is that, and that alone, which I seek to call attention to and address with this amendment.

We have heard a great deal from noble and learned Lords who have considerable experience at unravelling the machinations of the criminal law, and we have, quite understandably, also heard a great deal from noble Lords who have concerns for human rights. However, little has been said that provides for the security and protection of the undercover operative, and I suggest that the operational safeguards for a CHIS are not being addressed in this Bill. We now have an opportunity to do so.

I should add at this point that I am of course very mindful of the criminal conduct authorisation requirements, which are set out in subsection (5) of new Section 29B, and the amendment recognises that. The amendment does not for one moment propose or recommend that a CHIS should be given carte blanche to commit serious crime—given a free ticket, as it were. It is intended to ensure that those who are prepared to risk themselves for the benefit of the state should be afforded the comfort of knowing that, when they embark on a particularly serious operation, they have the full support of the law behind them at the outset, given that they may be operationally forced into a situation where they are required to take a course of action to avert or mitigate a threat to their physical safety or that of some other person which results in them committing a criminal offence not previously authorised or foreseen.

It will doubtless be maintained that the law caters for and provides protection at present—we have heard during the course of the Bill that prosecutors and the courts offer a degree of protection in such situations—but I maintain that that is not good enough.

We have also heard, with good reason, during Second Reading and in Committee, of the need to respect the requirements of the Human Rights Act. I say that it should apply collectively and that we should be very clear that the legislation applies to all, and so we must demonstrate that in the Bill. To rely on a prosecutor's decision or a judges' disposition on a particular day, in the hope that, after the event, they will support any previously unauthorised but necessary and vital action by an undercover operative taken to protect him or herself, or another, is just unacceptable to my mind.

Having managed quite a number of successful CHIS operations in my 32 years as a front-line detective, I have seen at first hand informants, agents and undercover operatives place themselves at incredible risk. While I do not doubt for one moment that the view of those currently at the head of organisations responsible for conducting such operations has been sought and will have perhaps influenced the course of the Bill, that does not alter the reality of the situation for the operative on the ground when challenged with the protection of life.

Unlike many policing procedures and operations that can be fine-tuned, undercover operations can be very unpredictable, to say the least. These operations present themselves in a variety of ways. It may be the activity of a drug-related gang—perhaps so-called county lines gang activity, where, sadly, juveniles are invariably involved as couriers; it may be an imminent threat of harm during a kidnap scenario requiring an instantaneous response; it could be an armed gang involved in robberies on high-profile celebrities while at home with their families; or it could just be a straightforward test purchase scenario that takes an ugly turn in order to test the veracity of the CHIS. These are not hypothetical cases: they are real-life scenarios that I can vouch for. Frankly, the list is endless. However, one thing is for sure: these organised criminals are, in the main, extremely violent people, often under the influence of extremely dangerous drugs which render them devoid of any sense of responsibility or fear.

My concern is that we should not tie the hands of undercover operatives. We should not allow them to undertake these extremely dangerous, often life-threatening roles with one hand tied behind their backs, in the sense that they fear prosecution if they follow a particular course of unanticipated action in order to protect life or prevent serious harm. They should not have the sword of Damocles hanging over them.

Of course, undercover operatives will be briefed and tasked; they will know what is before them, as well as can be expected on the available intelligence. However, once in theatre, as it were, they are on their own. Yes, there will be back-up not too far away, but this will not be instantaneous and will not allow for the situation where a CHIS, whether part of the criminal gang or a deployed undercover operative, may be put to an immediate test of their genuineness by organised criminals through circumstances that were not foreseen or allowed for in the planning, briefing and authorising stages.

Organised criminals are not, in the main, rational-thinking people. I can think of many scenarios, such as a test purchase, whereby an undercover operative is forced to partake in a class-A substance as proof of being genuine and, in the ugliest of scenarios, perhaps has a knife pressed to his or her body, with unthinkable consequences, for failing to surrender to the test. Surely, in situations such as that, where the CHIS must retain his or her credibility, they must be afforded support in the Bill. The operative should not have to rely on the good will of a prosecutor or the court. On the one hand, we are seeking in the Bill to legitimise criminal activity, yet, on the other, failing after the event to acknowledge and support the actions of a CHIS in life-threatening situations. There could be, say, an ambush attack from a rival gang, during which the undercover operative must take some immediate and previously unauthorised action to avert or mitigate a threat to life. The scenarios are endless and allowance should be made in the Bill for such eventualities in order to provide protection through law for CHIS. The question as to who authorises such previously unauthorised action is perhaps a matter for further consideration. I accept fully that that decision may rest with a person other than the initial authorising officer.

[Lord Davies of Gower]

It is therefore my belief that human rights and our obligation to provide a duty of care would be properly served by the amendment. I beg to move.

Lord Morris of Aberavon (Lab) [V]: My Lords, I will be brief. In earlier consideration of the Bill, the House has been concerned with prior authorisation—I repeat, prior. I do not resile for a moment from the importance of prior authorisation and I hope that we will have the opportunity to consider it in due course.

The noble Lord, Lord Davies, who has considerable experience in these matters, raises a narrow point relating to post-authorisation for the protection of officers. I should be interested in the Minister's reply. My understanding is that the noble Lord seeks to deal with threats to the physical safety of the persons named in the amendment in narrow and possibly important circumstances. Its thrust, while dealing with another aspect, is in the spirit of your Lordships' consideration of authorisation—in this case post, as opposed to prior, authorisation. Hence, my understanding is that he seeks to plug a possible gap by urging upon noble Lords the need for a statutory requirement for speedy, post-hoc authorisation in certain circumstances.

I have two questions for the Minister. First, how likely is such a situation to arise? Secondly, can we properly be told whether such situations have arisen in the past? In the circumstances, while I pay tribute to the noble Lord for raising this matter, I should like to hear the Minister's reply on the need for the amendment and its practicalities.

Lord Paddick (LD): My Lords, the noble Lord, Lord Davies of Gower, who has great experience of these issues, spoke about our having thus far overlooked the dangers faced by undercover operatives. Little has been said about operational safeguards. Indeed, perhaps I may take this opportunity to mention that I was contacted by a noble friend this morning who emphasised the bravery of undercover operatives, who place themselves at considerable risk in many such situations.

The amendment highlights the limitations of the whole idea of granting pre-event immunity from prosecution within what the Government variously describe as criminal conduct authorisations that are tightly bound, specific, tightly drawn and within strict parameters. What the noble Lord, Lord Davies of Gower, has described is all too possible: that a CHIS—whether a highly trained agent, an undercover police officer or a 16 year-old child informant—encounters a situation that, even if foreseen as a possibility, the handler and authorising officer felt unable to authorise and grant immunity for in advance.

2.15 pm

I have previously described covert human intelligence sources being sent into uncertain, rapidly changing scenarios, almost always in uncontrolled environments where rescue is impossible, and often involving chaotic individuals. That describes in a sentence the sort of scenario that the noble Lord outlined. Imagine a 16 year-old involved in county lines. He has been sent to do drug deals hundreds of miles from where he lives and is caught selling a small quantity of drugs to a user. He is recruited as a police informant but the police want to arrest those higher up the network. He tells them that his supplier is due to deliver a large quantity of drugs the next day and is persuaded to go back to the squat from where he is operating to await delivery. He is given a criminal conduct authorisation to hand over the cash that he was found with in exchange for the new supply of drugs. When his supplier arrives, he is not alone. He has another young member of the drug gang with him. The supplier says the teenager he is with has broken the rules of the gang and must be punished, and hands the CHIS a knife, ordering him to stab the teenage gang member in the leg. It is common practice for gang members to be "disciplined" in this way. The supplier says that he has his suspicions about the CHIS because he could not get hold of him yesterday. That was because the CHIS was in police custody. He has to prove that he is not a police informant by stabbing the teenager. The CHIS panics because he has not been authorised to stab anyone. When he refuses, his behaviour gives him away and he is fatally stabbed.

That is a realistic scenario. I am not sure that the wording of the amendment would cover such a situation. It does not avert or mitigate a threat to the physical safety of another person if the stabbing is carried out by the CHIS. In any event, how do you explain to a 16 year-old child what that means? However, if you explain that, whatever he needs to do to protect himself, provided it is reasonable, he is unlikely to be prosecuted, that is a much easier, simpler and more understandable instruction. The Government might say that actions beyond the precise definition of the CCA will still be looked at sympathetically by the prosecuting authorities, but try telling a 16 year-old, or a not very bright adult for that matter, "You have legal immunity provided you only do what the CCA authorises you to do but if you go beyond the CCA if you have to, you may not be prosecuted." It makes the whole thing far more confusing and difficult to understand. If the Government are minded not to accept the amendment, can the Minister explain the difference between the police or the security services, without any judicial approval, granting immunity from prosecution by granting a CCA, and the police or the security services, without any judicial approval, granting immunity for something unforeseen but arguably necessary, after the event?

I turn to the extraordinary letter from the Minister, dated 3 December. It states that the Government's approach is "not without precedent". To say that the security services intercepting the communications of someone suspected of terrorism, having sought and secured prior authority from an investigatory powers commissioner and a Secretary of State, is equivalent to the police granting legal immunity to a criminal who is asked to commit a potentially serious crime that may seriously harm innocent people, with no prior approval of any kind outside of the police, is, frankly, preposterous.

I have a great deal of sympathy for the noble Lord's amendment because it highlights the unworkability of granting immunity in advance through a criminal conduct authorisation. However, our position is that the police should not be allowed to grant legal immunity to commit crime or, indeed, to say that something that

clearly is a crime is no longer a crime—whether in advance or, as the amendment suggests, after the event. For that reason, we cannot support the amendment.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 50 in the name of the noble Lord, Lord Davies of Gower, seeks to amend the Bill to allow for a criminal conduct organisation to retrospectively authorise action if it was to save someone from harm. Clearly, the noble Lord speaks with considerable knowledge and experience from his time as a serving police officer. I have great respect for the work that he has done in the past, and I pay tribute to those brave officers whom the noble Lord referred to, who every day put themselves at risk of considerable harm to protect us and keep us safe, and who also work to turn people so that they become informants. As the noble Lord, Lord Paddick, said, the whole question of child CHISs has been discussed, and we will return to it on Report. These are very serious issues.

So I see the point that the noble Lord is making, but we should not use this Bill, when it becomes law, to retrospectively authorise conduct. That would not be right. I see the point that the noble Lord, Lord Paddick, made, but on previous conduct we have a position now, and that must be the position going forward. I do not see this Bill being used for what the noble Lord seeks to do. I hope that the Minister when he responds will set out the Government's thinking on this. I hope he will say that they do not support the amendment as it stands, because it would not be the right thing to do, but will set out carefully how the Government will address this issue in the future

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, my noble friend Lord Davies has called for the Bill to enable an authorising officer retrospectively to authorise conduct in certain situations. The noble Lord referred to his experiences in the field, as it were, and it will have been obvious to all noble Lords that he drew on a considerable wealth of practical wisdom which informed his thoughtful contribution to this debate.

We on this side thank him also for his thoughtful engagement with the Minister in the other place on this matter. However, while I understand the concerns behind this amendment, it is not the intention of the Bill to allow any retrospective authorisations. All criminal conduct authorisations are granted by an experienced authorising officer, who will scrutinise each authorisation to ensure that it has strict parameters, that it is necessary and proportionate to the threat it seeks to disrupt and that the criminality authorised is at the lowest level possible to achieve the aims of the operation.

The noble Lord, Lord Kennedy of Southwark, and other noble Lords asked for an outline of the Government's position. It is clear that this must be a matter of balancing. We consider that, by allowing retrospective authorisations, we remove the ability of the authorising officer to scrutinise the criminal conduct before it takes place, or we remove from the centre of our consideration that advance consideration. While I share the sentiment that we would not want undercover operatives to be placed in difficult positions simply for acting in the public interest, none the less, one of the key components in the present arrangement is control. The authorising officer must have confidence that proper thought has been given to the consequences of the authorisation, and we do not believe that an after-the-fact analysis, when the activities were not under the control of the public authority, should be retrospectively authorised where an authorisation has such an important legal effect.

As now, in the rare situation described here, authorities will make their assessment of the public interest in relation to the actions of the CHIS, the undercover operative, and rely upon prosecutorial—and, ultimately, judicial—discretion, which is no small thing, if I may draw on my own experience and set it against the experiences of the noble Lord, Lord Davies, proposing this amendment, the noble Lord, Lord Paddick, and others who have spoken. I repeat that it is a matter of balance of important considerations. We consider it important—indeed, essential—to emphasise that illegal criminal conduct should be authorised in advance of any actions.

The noble and learned Lord, Lord Morris of Aberavon, sought to explore two questions in particular: how likely a situation is to arise where conduct would be sought to be justified retrospectively, and how often has it arisen in practice? To address those matters, it is appropriate to refer again to the code of practice, which has been a matter of discussion before your Lordships earlier in Committee. Referring to the code of practice, which has the force of law, your Lordships will see that while criminal conduct authorisations must be specific in nature and contain clear parameters, they will not be granted in terms that are too narrow. I refer your Lordships to chapter 7 of the code of conduct in that regard. As to how often these matters have been raised in the past, I cannot provide the noble and learned Lord with specifics on the matter, but I will undertake to explore the matter with him in writing.

The noble Lord, Lord Paddick, presented a highly specific example, drawn no doubt from his experience in the field, in the same way that the noble Lord, Lord Davies of Gower, drew on his. There is a sense that such a very specific example itself allows us to emphasise the need for discretion in the matter, to acknowledge that the situations in which CHISs will be exposed to danger are very broad and to allow me to reply with a degree of confidence that the very breadth of the situations which may possibly be encountered is such as to necessitate the anticipatory use of the authorisations we seek to put in place.

I say further that, in the course of preparation of the Bill, the matter was discussed with operational partners who would control and handle the operation of such persons in the field. They have told us that they are content that the approach which we seek to take is the correct one.

Lord Davies of Gower (Con) [V]: My Lords, I am very grateful to those who have contributed to this short debate and am very grateful to the noble and learned Lord, Lord Morris, for the points he made. As he says, it is a narrow but very important issue. I am grateful to the Minister for responding to that. I accept that it is a matter of balance, but I am also very

[Lord Davies of Gower]
grateful to the noble Lord, Lord Paddick, who speaks with authority on this matter and has great experience of such issues. For the time being, I am content with the Minister's response. Therefore, I beg leave to withdraw my amendment.

Amendment 50 withdrawn.

Amendments 51 to 56A not moved.

2.30 pm

The Deputy Chairman of Committees (Lord Rogan) (UUP): We now come to the group beginning with Amendment 57. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in this group to a Division should make that clear in the debate. I should inform the House that, if Amendment 57 is agreed to, I cannot call Amendment 58.

Amendment 57

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

57: Clause 1, page 3, leave out lines 10 to 16

Member's explanatory statement

This amendment is tabled to discuss the extent to which the operation of criminal conduct authorisations can be amended by regulation.

Lord Hodgson of Astley Abbotts (Con) [V]: My Lords, in moving Amendment 57, I will also speak to Amendment 74.

These two probing amendments are designed to explore how the Government plan to use their regulatory powers in the Bill. I am informed on this because I am the chairman of the Secondary Legislation Scrutiny Committee of your Lordships' House. Along with the Delegated Powers and Regulatory Reform Committee—chaired by my noble friend Lord Blencathra—my committee has been concerned by the increasing use of skeleton Bills, where only the broadest frameworks are set out in primary legislation and all the practical details are left to regulation.

As a result, Parliament too often has only a general idea of what it may be approving when it passes the primary legislation. The Government may—they probably will—argue that all regulations have to be approved by Parliament, but Members of your Lordships' House are well aware of the weakness of the scrutiny of regulations, which is that they are unamendable. The House is left with only what I call the nuclear option of complete rejection. Unsurprisingly, in these circumstances, neither House has felt able to press the button, except in the most exceptional circumstances.

Our two committees—my noble friend Lord Blencathra's and mine—have written to Jacob Rees-Mogg, as Lord President of the Council and Leader of the House of Commons, to express our concern and make suggestions for improvement. Let me take an example from earlier debates in Committee. My noble friend the Minister and other noble Lords—notably my noble friend Lord King and the noble Lord, Lord Carlile of Berriew—referred Members to the revised code of practice as providing a reassurance against bad behaviour in the operation of CCAs. Indeed, the noble Lord, Lord Carlile, urged every Member of the Committee to read through the code. I followed the noble Lord's advice and read it, all 73 pages of it. I agree that, at least to my untutored and inexperienced eye, it appears extensive and comprehensive, but its weakness is that it is made by regulation—in this case, Section 71 of the Regulation of Investigatory Powers Act 2000. So its contents depend on ministerial policy decisions and can be changed, at any time, by the tabling of an unamendable regulation.

I do not doubt for a moment the good intentions of my noble friends on the Front Bench, nor the good intentions of the Front Benches of the other parties in this House or the other place, but none of them will be in their seat for ever. Amendment 57 is designed to explore the risk of what I described in my remarks at Second Reading as "mission creep", or, more specifically, how wide the room for manoeuvre is for a future Secretary of State using the powers available under Clause 1(5)(10) on page 3 of the Bill.

I pose three simple questions for my noble friend the Minister to answer when he replies. First, can the Secretary of State, under this clause, add to or remove bodies from the list of relevant authorities given on page 4 of the Bill? Secondly, is there any limit to the changes that the Secretary of State may make, under this clause, to the authorisation levels for CCAs, given in annexes A and B of the draft revised code of practice? This issue has been raised on a number of occasions, notably by the noble Lord, Lord Anderson of Ipswich. Thirdly, is there any limit to the changes that the Secretary of State may make to the purposes for which a CCA is sought? That was a discussion on Amendment 22. In particular, what is meant by "impose requirements" in line 13? That issue was raised by the noble Baroness, Lady Hamwee.

Before I finish, I turn briefly to Amendment 74. This poses the same questions for Scotland as Amendment 57 does for the rest of the United Kingdom, but there is one additional point of concern: whether, as a result of two systems existing, what is known as forum shopping can take place. Historically, in cases involving extradition, prosecuting authorities were in the habit of surveying the legal options open to them and picking the route, courts and jurisdiction that, on past experience and record, were most likely to give them a favourable result. As I see it, the two CHIS systems begin in identical form but, over time, can and probably must be expected to diverge. How far that will be is impossible to predict now, but the possibility of forum shopping emerges. Can my noble friend comment on the interchangeability of CCAs granted under Scottish law being used in the rest of the United Kingdom, and vice versa? I beg to move Amendment 57.

Baroness Hamwee (LD) [V]: My Lords, I am very glad that the noble Lord decided to probe these two provisions. I have seen the correspondence published by the three committees. I was struck when the noble and learned Lord, Lord Stewart, in responding to the previous group, referred to the code of practice having the force of law. I do not dispute that, but it is of course law that can be changed by government Ministers without coming to Parliament.

The point just made by the noble Lord, Lord Hodgson, about forum shopping is interesting. As he said, I have asked for assistance on the meaning of some terms during the passage of the Bill. I questioned what is envisaged by the terms "conduct" and "requirements". I read both to restrict, rather than expand, the scope of what may be done. I would be grateful to have that confirmed or, if not, to understand why not. In short, we should not be expanding opportunities for criminal conduct authorisations without, at the very least, understanding exactly what we are doing.

Lord Rosser (Lab) [V]: First, I wish the noble Lord, Lord Hodgson of Astley Abbotts, well in his campaign against skeleton Bills, as that issue is getting worse, not better.

The Bill provides that the Secretary of State may, by order, prohibit the authorisation of certain conduct and impose extra requirements that must be satisfied before an authorisation can be given. As the noble Lord, Lord Hodgson, said, Amendments 57 and 74, in his name, would remove those provisions and, as he confirmed, their purpose is to probe the extent to which the operation of criminal conduct authorisations can be amended by regulation.

Earlier in Committee, the noble and learned Lord, Lord Stewart of Dirleton, stated that the order-making provisions in the Bill

"allow for additional requirements to be imposed before a criminal conduct authorisation may be granted, or for the authorisation of certain conduct to be prohibited."

He continued:

"I assure the Committee that they can only be used to further strengthen the safeguards that are attached to the use of criminal conduct authorisations. They could not be used to remove any of the existing safeguards ... The requirements that can be imposed under these powers concern matters of practicality and detail, and therefore it is appropriate that they are contained in secondary legislation."—[*Official Report*, 1/12/20; col. 676.]

When the noble and learned Lord said that the order-making powers could not be used to remove any of the existing safeguards, did the Government mean that the wording in the Bill would make it contrary to law to do that, or did they mean only that the intention was not to use the order-making powers to remove any of the existing safeguards? That, of course, is a very different thing, as intentions can change.

No doubt in their response the Government will address that point and give specific examples of the purposes or intentions for which these order-making powers to prohibit the authorisation of certain conduct and impose extra requirements that must be satisfied before an authorisation can be given would—and, equally, would not—be used by the Secretary of State.

Lord Stewart of Dirleton (Con): My Lords, these amendments have been tabled to discuss the extent to which the operation of criminal conduct authorisations can be amended by regulation.

As I set out in response to the amendments to the order-making powers tabled by the noble Lord, Lord Paddick, there are good reasons why these powers have been included. I do not wish to repeat the detail of what was said on group 7 of the amendments, other than to highlight again that the provisions have been drafted to resemble closely the terms of Section 29 of the Regulation of Investigatory Powers Act, which provides the underlying authorisation for CHIS use and conduct.

To answer the point raised by the noble Baroness, Lady Hamwee, I repeat what I said earlier and provide the Committee with reassurance that these powers could be used only to impose further safeguards and not to remove them. That point was raised also by the noble Lord, Lord Rosser.

My noble friend Lord Hodgson of Astley Abbotts posed the question of whether the Secretary of State can add bodies to, or remove them from, the list of authorising bodies. The addition of bodies can be accomplished only through the affirmative procedure. The changes to the bodies listed will reflect changes over time in investigative functions and the threats that the country faces. The rank of authorising officers is set by secondary legislation and will be dealt with in line with Section 29 authorisations.

The noble Lord, Lord Rosser, posed the question of whether the terms of the provision are such as to make it impossible for the powers to be extended rather than removed, or whether that is merely the intention of the Government. He correctly remarked on the fact that the persons occupying posts will change from time to time. As I see it, the legislation will not simply rely on the intention of the Government but will have force beyond that. I think that I also addressed the matter when answering the point raised by the noble Baroness, Lady Hamwee. She focused on the meaning of the words "conduct" and "requirements". I am able to confirm that her understanding was correct. Indeed, as a consequence of what I have said, the interpretation of those words restricts, and does not permit addition to, the provisions in the Bill.

2.45 pm

Lord Hodgson of Astley Abbotts (Con) [V]: I am grateful to all who have participated in this short debate and to my noble and learned friend for his answer. I thought that my first question would be a ball of easy length that he would smite over the boundary, saying that nothing could be added to the list of authorised bodies. I discover that actually the situation is worse than I thought, in the sense that apparently, via regulation, bodies can be added. That seems quite a serious point.

I understand the point about secondary legislation, and it is good to hear that the powers are restrictive, not expansionary.

I did not hear anything about forum shopping. Can my noble and learned friend enlighten the Committee about forum shopping between the Scottish system and the systems in the rest of the UK?

Lord Stewart of Dirleton (Con): I beg the Committee's pardon for that. I had intended to reply to my noble friend on that point.

The risk of forum shopping must always be considered a live one. It is the inevitable consequence of the existence of separate systems of criminal law in the adjoining jurisdictions. On his real and appropriate concern that this disagreeable practice should not be permitted, given the existence of different systems in

[Lord Stewart of Dirleton]
the adjoining jurisdictions, there must be constant vigilance to see to it that that does not happen. That constant vigilance will be required of those in each system over time to prevent this practice taking place. I hope that that allays my noble friend's appropriate concern about this matter.

Lord Hodgson of Astley Abbotts (Con) [V]: I am grateful for that. We have vigilance, not legislation, as regards forum shopping, and that was certainly an issue that bedevilled our record, and the records of other countries, in extradition proceedings in another era.

I said that these are probing amendments, and they are. I just wanted to test the ground and am grateful to those who have helped me to do so. I beg leave to withdraw the amendment.

Amendment 57 withdrawn.

Amendments 58 to 62 not moved.

Clause 1 agreed.

The Deputy Chairman of Committees (Lord Rogan) (UUP): We now come to the group beginning with Amendment 63. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in this group to a Division should make that clear in the debate. I should inform the Committee that if Amendment 63 is agreed to, I cannot call Amendments 64 to 69.

Clause 2: Authorities to be capable of authorising criminal conduct

Amendment 63

Moved by ***Lord Paddick***

63: Clause 2, page 4, leave out lines 10 to 23

Member's explanatory statement

This amendment would restrict the authorities that can grant criminal conduct authorisations to police forces, the National Crime Agency, the Serious Fraud Office and the intelligence services.

Lord Paddick (LD): My Lords, I shall speak to Amendments 63, 65 and 80, in my name and that of my noble friend Lady Hamwee, in this group. They attempt to get to grips with the plethora of organisations that the Bill seeks to authorise to grant criminal conduct authorisations. I remind noble Lords that this is to grant legal immunity to covert human intelligence sources, informants or agents, and authorise them to commit acts that, under any other circumstances, would be a crime, but because these public authorities have said so, they are no longer crimes.

Unlike existing legislation that limits legal immunity to agents of the state engaged in property interference, intrusive surveillance, equipment interference and interception—all exclusively targeted on the most serious criminals and only with prior approval given by an investigative powers commissioner and often a Secretary of State—this Bill seeks to give public authorities the power to grant immunity to anyone, often criminals, for almost any crime that can be imagined with no prior authorisation outside their own organisation. One would hope that the number of public authorities would therefore be extremely limited, and that evidence would be produced to justify their inclusion.

I am taken back to a recent statutory instrument—the Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) Regulations 2020—which added to the list of public authorities that can access communications data; that is, who contacted whom, from where, and when, but not the content of the communication. In the overall scheme of things, it is fairly low-level data. The Home Office had agreed to include more public authorities on the basis of detailed business cases submitted by each authority.

When I asked to see the business cases, I was told that I could, although the Home Office arranged for me to see them only 45 minutes before the statutory instrument was due to be approved on the Floor of the House. Will the Minister allow Members of this House to see the business cases that form the basis of the Home Office deciding which public authorities should be allowed to grant criminal conduct authorities, preferably not 45 minutes before we consider this issue on Report?

Our Amendment 63 would limit those public authorities that can grant CCAs to the police, the National Crime Agency, the Serious Fraud Office and the intelligence services, as it appears to us to be self-evident why these organisations may need to grant authority to agents or informants to commit crime. The other public authorities require justification, hence my request that noble Lords be able to see the business case justifying each of the other public authorities, albeit redacted and viewed in private.

Our Amendment 65 specifically singles out the Home Office, although it might be seen as a typical example—an example of a type of public authority—for further scrutiny. On the face of it, it sounds that, in theory, if not in practice, the Home Secretary could authorise a criminal to commit a crime and give that criminal legal immunity, whether directly or by ordering one of her officials to do so on her behalf. Giving power to politicians to authorise criminals to commit crime and to be able to grant those criminals immunity from prosecution, with no prior independent oversight, raises some worrying spectres.

Our Amendment 80 is consequential. At this stage, I will listen carefully to the concerns of other noble Lords and to the response from the Minister. I beg to move.

Baroness Massey of Darwen (Lab) [V]: My Lords, the noble Lord, Lord Paddick, has spoken with great clarity and authority on the amendments in this group. I will speak to the human rights perspective of Amendment 63 as set out in the Joint Committee on Human Rights' report on the legislative scrutiny of the Bill. Chapter 6 is concerned with public authorities granted power to authorise crime, as stated by the noble Lord, Lord Paddick.

Paragraph 75 of the report states:

"We accept that the authorisation of criminal conduct by the security and intelligence services and the police may on occasion be necessary … However, the Bill proposes granting the power to make CCAs … to a substantially wider range of public authorities".

That concerns us. It goes on:

"This provision of the Bill, coupled with the ability to authorise criminal conduct in the interests of preventing disorder and preserving economic well-being … extends the power to authorise criminal conduct well beyond the core area of national security and serious crime."

There are two key questions here from a human rights perspective. As the report states,

"the first key question is whether the exceptional power to authorise crimes to be committed without redress is truly necessary for each and every one of these public authorities. The second key question is whether the benefit of granting that power would be proportionate to the human rights interferences that are likely to result."

The Government have provided little justification for the authorisation of criminal conduct by such bodies as the Gambling Commission, the Food Standards Agency and others. The Home Office published brief guidance and a series of operational case studies, which provide examples of authorisation by CHIS in the cases of the Medicines and Healthcare products Regulatory Agency, Her Majesty's Revenue & Customs and other hypothetical examples of where CAAs might be used by the Environment Agency and the Food Standards Agency.

The question must be asked as to why the police or other bodies focused on the prevention of crime should not take full responsibility for authorising criminal conduct that may fall within the purview of these organisations. We are all aware that the police, in carrying out their responsibilities, have vast networks of agencies whom they consult in the course of their duties. They know whom to consult for specific issue as and when such consultation is needed. It is inappropriate and irrelevant to name other specific agencies, whose role is not protecting national security and fighting serious crime.

One of the witnesses to the inquiry carried out by the Joint Committee on Human Rights said:

"If the government believes it is necessary for each of these bodies to have the power to grant authorisations, it should be explicit about whether those bodies already possess non-binding 'powers' to authorise the commission of crimes and provide more detail as to how, and how often, those powers are used. In the absence of such an account, there is no reason to accept that all of those bodies require the powers the Bill would give them."

No such detail is supplied by the Government. It is therefore impossible to assess how agencies whose primary function is not serious crime or national security can, or indeed would want to, be involved formally in granting CCAs. I look forward to the Minister's explanation.

Lord Dubs (Lab) [V]: My Lords, I support Amendment 63. I very much agree with the comments made by the noble Lord, Lord Paddick, and my noble friend Lady Massey, so I shall be brief.

Like my noble friend, I speak as a member of the Joint Committee on Human Rights. It seems to me that authorisation that goes beyond the police, the National Crime Agency, the Serious Fraud Office and the intelligence services is a step too far. There has to be clear indication by the Government as to why such authorisations are necessary; so far, that indication has not been forthcoming. The list of agencies covered by this provision is so wide—not just Customs and Excise, the Environment Agency, the Food Standards Agency and many other bodies. There is no justification for extending the provisions of the Bill to that extent.

I am very concerned about one other matter. As the Joint Committee on Human Rights noted, under Section 35 of RIPA, the Secretary of State will have the power to make an order adding other public authorities to the list of those permitted to authorise covert criminal conduct. I accept that this power has been used sparingly in the past, but—[*Inaudible.*]—if additional authorities that have little or no relationship to those permitted to make CCAs—[*Inaudible.*]—regulatory oversight.

In a previous amendment, the noble Lord, Lord Hodgson, indicated that using subordinate legislation to extend powers was going rather too far, and it applies in this instance as well. Surely, it is bad enough having a list of these bodies that—[*Inaudible*]—but adding to them in the future by a parliamentary process that allows for very limited scrutiny. We all know that subordinate legislation can go through, we cannot amend it and it is—[*Inaudible*]—because of our relationship with the Commons; therefore, this is potentially an abuse of power. For all those reasons, I support Amendment 63.

3 pm

Lord Cormack (Con): My Lords, the noble Lord, Lord Dubs, referred to this as a potential abuse of power and, although I am entirely convinced that that is the last thing in Ministers' minds, I say nevertheless: be careful what you wish for. I am very troubled by this section of the Bill, which is why I put down three amendments—Amendments 64, 66 and 69—to delete from the list of bodies authorised the Department of Health and Social Care, the Competition and Markets Authority, the Environment Agency, the Financial Conduct Authority, the Food Standards Agency and the Gambling Commission. However, putting those down as probing amendments, I became increasingly convinced that I had not gone far enough, so I say unequivocally that I prefer the amendment of the noble Lord, Lord Paddick, which he introduced a few minutes ago.

This is a troubling Bill. I think that there has been a universal acceptance across your Lordships' House, because it is the paramount duty of any Government to protect the state and those who live in it, of the need for, and the unavoidable necessity of, the Bill. However, it goes too far. We had a very interesting and challenging series of debates a week ago today, when we talked about whether certain crimes should be on a list of prohibited crimes. We also talked about authorising children—those under the age of 18.

Both those aspects of the Bill troubled me, and I have put amendments down, but this also troubles me: giving almost a carte blanche to a whole range of bodies, some of which are not concerned with the most heinous crimes or with the ultimate protection of the state and citizens. I urge my noble friend the Minister to accept that these are very important and valid points. We certainly will need to come back on

[LORD CORMACK]
Report, and I would like to consult the noble Lord, Lord Paddick, and others on precisely which amendments we go for.

There are two developments in modern legislation that trouble me, as I know they trouble the noble and learned Lord, Lord Judge, more than anything else: the proliferation of Henry VIII clauses and of the granting of almost unlimited powers to Ministers of the Crown, as well as what I call the "Christmas tree Bill"—of which this Bill has some aspects. Having been persuaded that legislation was necessary, and I understand why that was so, the Government have said, "We'll give as many people as possible as much permission as possible to do what they like, and we will give a particular power"—the noble Lord, Lord Paddick, underlined this graphically—"to the Home Office". Therefore, power is ultimately given to a party politician whose motives, I am sure, would always be pure in his or her eyes, but it would not necessarily be conducive to enhancing public confidence in the machinery of government. All these issues are touched on in this clause.

We must be very wary of what power we give and to whom we give it. Although we have said before—and I do not for a moment resile from it—that some of the agents, of whom the noble Baroness, Lady Manningham-Buller, spoke movingly a couple of weeks ago, are among the bravest of the brave, there are others who swim in murky waters and have a criminal background. It is not sufficient for the Food Standards Agency or the Environment Agency to say, "We'll employ a thief to catch a thief"—because that is what it could come down to.

I urge my noble friend, who is due to reply, to take these points as serious points that require the most careful examination before and during Report stage. I am very grateful for the letter I received this morning from my noble friend, inviting discussions and co-operation; she has a very good track record in that regard and is an exceptionally conscientious Minister. Of course, we are not talking about current Ministers here; we are talking about giving an extended power for an indefinite period, whatever the complexion or orientation of the Government.

I strongly support the improvement on my amendments by the noble Lord, Lord Paddick, and I hope we can, on Report, ensure that this Bill is sufficiently trimmed down and that the right number of baubles are removed from the Christmas tree so that we have something in which we can all have a degree of confidence.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I am delighted to follow my noble friend, and I associate myself with the comments made previously by the noble Lord, Lord Paddick, who spoke so powerfully, in introducing his Amendment 63. As he said, Clause 2 breaks new ground, giving powers to grant legal immunity and to authorise agents to commit acts that otherwise would be criminal to these other bodies that we have before us this afternoon, which can say that such acts are not to be considered criminal offences.

I echo the comments of my noble friend Lord Cormack. I was hugely moved by the words of the noble Baroness, Lady Manningham-Buller, who paid such justified tribute to those who work in the services that are largely contained in new Part A1 inserted by Clause 2. No one can take away from the risks that they run and the huge efforts they have made on our behalf to keep us all safe, not least those of us working in Parliament and public life; we are extremely grateful for that.

On reflection, as my noble friend Lord Cormack has said, I prefer Amendment 63 but would like to speak to the amendments I have tabled for the purposes of debate today: Amendments 67 and 68 and to oppose the Question that Clause 2 stand part of the Bill. I have absolutely no argument that the bodies listed in categories A1 to E1 of new Part A1—any police force, the National Crime Agency, the Serious Fraud Office, any of the intelligence services and any of Her Majesty's forces—should not automatically be considered for preferment and allowed to fall under the provisions of this Bill. I assume that that was primarily what was in mind when the Bill was initially drafted.

I thank the Minister for the offer to meet; that would be extremely useful before we get to Report. On a number of occasions I was heavily involved, both as a local MP and as chair of the EFRA Select Committee next door, with rural crime. It grieves me greatly that many of these rural crimes are simply not taken as seriously as crimes that occur in towns, market towns or cities, such as London and other major cities in the UK. I am talking specifically of very serious rural crimes with a very heavy criminal content of organised gangs. I pay tribute to the work the Environment Agency has done in this regard by installing covert cameras and trying to solicit as much information and intelligence as it can. With the cost now of disposing of building waste and other hazardous waste, it is becoming extremely attractive to dispose of it on rural property, often privately owned. It is a public duty to remove this waste if on a highway or byway, but the cost of removing it to a private landowner is never considered and it is very difficult for them to resist this type of activity.

The other activity in which I was involved was taking evidence, particularly from the Food Standards Agency, on the passing off of horsemeat as beef and other meat. This is an ongoing activity. I pay tribute to Professor Elliott and others who have been heavily involved. I also pay tribute to the Food Standards Agency, and others agencies, which continues, as do local authorities—both environmental health officers and trading standards officers—to keep safe the food that we eat and ensure that, whatever we purchase, it is what it says it is on the tin or label. This is potentially a multi-million-pound fraud.

I have a simple question for the Minister: why are we seeking to extend the provisions of the Bill, in the terms set out by the noble Lord, Lord Paddick, in Amendment 63, to grant immunity from prosecution to bodies such as the Environment Agency and the Food Standards Agency? It would be perfectly proper for this action to be taken by any police force or the Serious Fraud Office. There was a problem with horsegate—the passing off of horsemeat as beef. I think it was the City of London Police fraud office that was asked to intervene, because no other body was deemed fit to have the wherewithal and capability to deal with that fraud.

I share the unease and anxiety of others who have spoken in the debate this afternoon. We are perhaps inviting unintended consequences and being a hostage to fortune by opening up to criminal activity those acting as authorising agents for CHIS to act on their behalf in bodies such as the Environment Agency and the Food Standards Agency. I would like to understand more the grounds for including these bodies and what activities will be covered.

To continue the theme, I am also deeply concerned that, in amending the Investigatory Powers Act 2016 to provide the exercise of these new powers to authorise criminal conduct falling within the statutory oversight duties of the investigatory powers provision, the secondary legislation that will be required will contain all the information and detail on the specific rank of officeholders within the bodies I have referred to who would be permitted to grant criminal conduct authorisation for the first time. I am very uneasy that this is not on the face of the Bill and that the detail will be provided in subsequent secondary legislation, albeit coming in very short order. I would much prefer that this is not included in such Henry VIII clauses in regulations; it should be in the Bill.

I support the main thrust of the provisions of the Bill, without a shadow of a doubt. However, I query many of the bodies included in the broader Clause (2) —in particular the Environment Agency and the Foods Standards Agency, which I have mentioned—and the fact that we are leaving so much to be decided at a later date; that concerns me greatly. I look forward to reassurance from my noble friend. These are intended as probing amendments.

3.15 pm

Lord Sikka (Lab) [V]: My Lords, it is my great honour and pleasure to join the debate. I wish to speak to Amendment 70, which seeks to constrain ministerial discretion to amend the list of relevant authorities.

We all know that, as time goes by, Ministers and Governments are tempted to expand the list of regulators. In this case, they would be tempted to expand the list of relevant authorities contained in the Bill. How would they do that? They could bring about primary legislation and allow Parliament sufficient time to scrutinise it, or they could have a rushed amendment through a statutory instrument. I do not favour the second choice.

I am a relative newcomer to the House, but a little amount of research has shown me that, in the last few years, the Government have made considerable use of statutory instruments to rush through legislation, often with little time or detailed parliamentary scrutiny. Statutory instruments can vary in length and breadth. As my noble friend Lord Cunningham of Felling noted on 10 January 2019 in the official record, one statutory instrument was 636 pages long and weighed 2.54 kilos.

The increased length of secondary legislation has not been accompanied by commensurate increase in the time and resources available to Parliament. The House of Lords Secondary Legislation Scrutiny Committee, in its report published on 20 February 2019, expressed considerable concern about the extensive use of secondary legislation and argued that it prevents Parliament effectively fulfilling its scrutiny function. The participants in such debates often receive little briefing to help them prepare for the debate beyond the standard explanatory memorandum provided with the draft secondary legislation. This is often at very short notice. The impact assessments which have accompanied some of these statutory instruments have been deficient.

On 22 May 2019, in the other place, the Shadow Chancellor pointed out, at Hansard col. 6, that statutory instruments often contain "deficiencies, ambiguities and errors" which cannot be properly scrutinised by a rushed passage through Parliament. The deficient parliamentary process in turn leads to more statutory instruments to correct previous errors, and thus an overload is created.

The use of statutory instruments diminishes parliamentary powers to scrutinise the Government and their legislation. During the debate on the present CHIS Bill, many noble Lords have indicated their unease at the daunting list of relevant authorities contained in the Bill and their possible scrutiny and public accountability. There have been concerns about the use of children and vulnerable people who may be used and then discarded, left alone with their families to face private nightmares, flashbacks and mental health problems. Noble Lords have raised concerns about the rule of law, the rights of negatively affected individuals, human rights, and much more. Any future amendment to the list of relevant authorities will raise the same issues again. Such matters cannot be dealt with through statutory instruments and minimal parliamentary debates. They require public consultation, primary legislation, full debate and scrutiny by Parliament, which forces Ministers to justify their policies and practices. For these reasons, I urge the House to support my amendment.

Baroness Chakrabarti (Lab) [V]: My Lords, it is a pleasure to follow all those who have spoken in this group. The size of the group and the number of speakers are indicative of the seriousness with which the length of the list of agencies is viewed by Members of the House. I thank the Minister for her fortitude and patience on this fourth day in Committee on this important Bill, and for her letter earlier today inviting Members of the House to further briefings.

I repeat that she has made the case for the value of putting this kind of policy on a statutory footing, and I do not think anyone is really disagreeing with that in principle. The problem is that the detail of the Bill, by accident or design, creates a real constitutional over-reach with a grave risk of what the noble Baroness, Lady McIntosh of Pickering, called unintentional consequences. That is not to impute the Government with bad motives in this respect but it is to be really concerned about the unintended consequences of the overreach contained in various components of the Bill, in part because it grafts a criminal conduct regime on to what was previously just a surveillance regime, with no extra safeguards to speak of in terms of authorisation; in part because it creates no statutory limits on the types of offences that might be authorised; and of course in part because of this very long list of agencies that do very different work.

[Baroness Chakrabarti]

Ultimately, I say that the real overreach which makes that combination of challenges particularly problematic is that what is at stake is that the status quo, whereby an authorisation leads to a public interest defence—in practice, almost a presumption that the person authorised would not be prosecuted—will be replaced with total landmark immunity, lawful for all purposes, civil and criminal. That is what makes the list of agencies and the ability to amend it by Henry VIII powers so very grave and ripe for abuse well into the future by a Government of any stripe, whether, as I say, by accident or design.

I ask the Minister to reflect on whether Amendment 63, which is my favourite in this group, can be considered for adoption by the Government. I ask the Government to reflect and adopt some constitutional humility rather than overreach, and to accept that we are genuinely trying to help to improve this legislation so that it can do what it needs to, which is to put criminal conduct on an open, accessible, primary legislative footing, but not create the graver dangers of abuse well into the future.

Baroness Whitaker (Lab): My Lords, it is a great pleasure to follow my noble friend Lady Chakrabarti. I echo her thanks to the Minister for her offer of a briefing. I support Amendments 67 and 70. On Amendment 67, I have little to add to the clear exposition by the noble Baroness, Lady McIntosh of Pickering. This is a really intrusive provision, and the criterion of economic well-being, to which it seems to be related, is too loose to be safe as far as the liberty of a citizen goes. The authorising officer is not even a relevant professional; it is the chair of the Competition and Markets Authority.

On Amendment 70, my noble friend Lord Sikka has covered the ground most persuasively. I simply add my voice to the alarm, echoing the concerns of the noble Lord, Lord Hodgson of Astley Abbotts, that such procedures, which are important to democracy and to liberty, should be capable of amendment only by statutory instrument outside the full parliamentary powers of scrutiny.

Lord King of Bridgwater (Con) [V]: My Lords, I am pleased to follow the noble Baroness, Lady Whitaker, although I am afraid I do not take exactly the same approach as she has on this matter; in fact, I oppose the amendments. I understand that for many people they are probing amendments, and many might take a different view when the Minister has explained some of the background to them more fully.

I am reacting slightly to the comments of the noble Lord, Lord Paddick. The noble Lord's speech introducing this group of amendments might have given some people listening the impression that something very new is being launched, but with his own background and personal experience he knows that we are talking about a well-established practice—the use of covert sources—which, as we know, has been a vital source of information in the prevention of much crime and terrorism in our history. We are not introducing something new here but putting an established practice on a statutory basis and putting in place a much tougher regime for its operation, one that has to be voted on by Parliament, which of course was not the previous situation.

The issue of additional authorised bodies is spoken about as though this is some huge expansion, when it is my understanding—the Minister may be able to confirm this—that it is actually a reduction in the number of bodies that can apply to use the covert-intelligence-source approach. It is not new; each of the bodies listed has previously shown an operational requirement and has been using it in practice to some great benefit for the country. Here I echo what the noble Lord, Lord Paddick said, and which others have echoed, which is an appreciation of the Minister's email to me—and maybe her letter to others who are more present on the scene—regarding what can be advanced as evidence of where this has been valuable to the organisations concerned.

The suggestion following on from that is that we do not really need all these bodies to be involved and that we should just give it all to the police. As I understand it, in many of these cases the introduction of a covert intelligence source in a particular area of responsibility, whether it be the Environment Agency or the Department of Health and Social Care, may often be to try to find out what is happening in the first place. That is not at a stage where you are producing masses of evidence of something that can be handed straight over to the police; it is about trying to assess whether there is some real threat or danger in these areas.

Many have cited the importance of a code of practice. I think there is general recognition that it is a pretty strong document. It is a huge improvement on what did not exist before, and it has to be voted on by Parliament, so we will have to approve its coming into operation. It will of course be binding on all parties.

The reason why I have taken part in these debates in Committee is that at present we are living in an exceptionally dangerous world. I have previously quoted the evidence from the Minister, James Brokenshire, on the amount of crime of very different sorts that one year's covert intelligence had helped with. I see that included in that was the fact that no fewer than 27 different terrorist attacks were prevented by covert intelligence in the last three years.

3.30 pm

As we listen to the evidence now being given to the Manchester Arena inquiry, the thought that—according to the evidence of the head of MI5, I believe—there were 27 other terrorist attacks that would not have been prevented without covert intelligence, should make people realise the importance of some of the issues that we are dealing with.

If I have one particular sympathy, it is that I was sorry to see that some people have suggested leaving out our Armed Forces. As we sit here now, our forces are deployed in some pretty dangerous quarters of the world. They are in Afghanistan and Iraq, and they are going to the Sahel. Given the dangers that they may face in certain areas, we would not wish the way in which they could draw on intelligence to protect themselves to be in any way restricted.

The Home Office has come in for some attacks. But we should think about the challenges of mass migration, and the illegal migration into this country that it is trying to cope with. When we look at the situation in

Greece, we see how this can overwhelm countries. The importance of maintaining our defences in these areas is enormous.

I will add one brief word. I am sitting in the west country at the moment, looking at some pretty devastating scenes of what is called ash dieback, where the face of our countryside has been changed because of the import into this country of a dangerous disease. This is a constant challenge now. The role of the Environment Agency and Defra is critical in protecting our countryside and our way of life.

In my judgment this would certainly be the wrong time to lower our defences and limit still further the number of bodies that can use this important intelligence source. It is vital that, if covertly sourced intelligence exists, it exists under the tightest of rules, with strict oversight. We know that the roles of the Investigatory Powers Commissioner, the judicial commissioners and the tribunal together make up a powerful range of oversight. I support that, and would not wish to see it undermined by niggling away at it and complicating the operation of this most important area.

I will add one last thought. The Investigatory Powers Commissioner has to make an annual report to the Prime Minister, and the Prime Minister has to publish that report and lay it before Parliament. So there is continuing annual oversight of this—something that has never happened on the same scale before. That is a very important addition.

Lord Anderson of Ipswich (CB) [V]: My Lords, like the noble Lord, Lord King, whose experience I respect and whom it is a pleasure to follow, I have no objection in principle to the issue of criminal conduct authorisations by bodies, other than the police and agencies, that are engaged in the investigation of serious crime. That, I would suggest, should, however, be on three conditions: that those bodies have demonstrated a real need for that power; that they are properly trained to use it; and that there are sufficient safeguards against its unnecessary or heavy-handed use.

Before coming to those conditions, may I make two practical points in favour of granting these powers to those whose investigations make them necessary? First, if such bodies are already running CHIS, there is a strong argument for continuity of control. I have made in other contexts the point that the decision to issue a criminal conduct authorisation is very much part and parcel of the CHIS tasking exercise, and best taken in the knowledge that only prolonged contact can bring of the nature of the investigation and the personalities and risks involved. Yes, one could require the police to be brought in to grant the authorisation, but the involvement of a second authorising body risks a dilution of that experience and is no guarantee of better decision-making.

Secondly—this point arises from contact I have had with those whose job it is to inspect the use of the powers on the ground—it might be rash to assume that a request to the police to issue an authorisation on behalf of, let us say, the Food Standards Agency or the Gambling Commission would necessarily be allocated the resources or progressed with the urgency that might be required. That would be regrettable, but questions of priorities do arise when one organisation is asked, effectively, to do a favour for another.

Turning to my conditions, the first is that each of these bodies should have demonstrated a real need. I shall listen with great interest to the Minister, but I do understand the difficulties in explaining that sensitive topic in a public forum. Accordingly, it seems to me that this is one of the questions that might usefully be the subject of an independent classified review by some respected person such as the Independent Reviewer of Terrorism Legislation, whose conclusions could be presented to Parliament.

That is a procedure for which there are precedents in the national security field. The noble and learned Lord, Lord Thomas of Cwmgiedd, the noble Lord, Lord Russell of Liverpool, and I have each proposed it in previous debates on this Bill, and the noble and learned Lord, Lord Thomas, has written to Ministers about it in some detail. If, as I assume, this Bill may not reach Report stage until the new year, it may still not be too late for this to happen; perhaps the Minister could comment. Today's offer of meetings with major users of the power is welcome, but not, I think, a substitute.

The second condition relates to training. There is plainly a need to mitigate any risk that bodies that use these powers only rarely will tend not to use them wisely, or in accordance with accepted current practice. So I assume that those designated as handlers, controllers and authorising officers in the other authorising bodies will be trained alongside their police equivalents. Perhaps the Minister will confirm that this is the case, and confirm also that they will not be excluded from elements of that training that could at least arguably be relevant to the exercise of their functions. This was an issue that I encountered in another context during my investigatory powers review *A Question of Trust*.

The third condition relates to safeguards. I have been left in no doubt by Ministers that the Government have set themselves firmly against prior independent authorisation, for reasons that I have myself described as understandable. In that context, I am grateful to the Minister for her indication last Tuesday that the Government are open to discussions on the concept of real-time notification of CCAs to judicial commissioners. The real-time element is crucial, because it is clear in this field that prevention of abuse, where possible, is always going to be easier than cure.

I hope that in the Minister's response today, or at any rate as part of those welcome discussions, we will be assured that less frequent users, in particular, will be required where possible to pre-consult with a judicial commissioner. There is a precedent for this under the Investigatory Powers Act in the power to submit proposed novel or contentious uses of other covert powers to IPCO for guidance. Such a requirement would help ensure that any uncertainties are resolved, and that any authorisation that may subsequently be issued by those bodies is consistent with best practice.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 63, moved by the noble Lord, Lord Paddick, and other amendments in this group seek to draw attention to the range of organisations that will be given powers to grant criminal conduct authorisations to individuals involved in criminal conduct. There is a

[Lord Kennedy of Southwark]
list of organisations on page 4 of the Bill, and I found it surprisingly long. Perhaps I just did not know how many organisations were involved in this activity.

Could the Minister tell the House how many organisations are currently involved in intelligence and providing authorisations after the event, and also set out for us why they in particular need those powers? Some colleagues have argued that these should be matters just for the police and the security services—that they should have the powers and other organisations should come to them for approval and authorisation. On the face of it, that could seem quite a sensible way forward.

For example, why do the Gambling Commission and the Environment Agency need these powers? There may well be very obvious and sensible reasons why they do, but it is important that those reasons are set out clearly. Initially, restricting the list could appear attractive, because these are serious powers, and we want to ensure that people are exercising them properly.

I think the noble Lord, Lord Cormack, expressed views held across the whole House about the concern here. We need to take on board, whatever the House decides in the end, that there is concern about the use of these powers, and they must only ever be used proportionately and by a minimum number of organisations.

My noble friend Lord Sikka drew the attention of the House to another point, and other noble Lords mentioned it as well. It is not due to this Minister, or to this or any other Government, but the risk that we run when we grant powers is that they are given to Governments of the future as well. Things can change. We might like the Minister who is in position today, or whoever has a particular position, but they will not always be in that position. We are granting powers to a potential range of Governments in future—and why are they necessary?

Then there is the whole question of statutory instruments. I have regularly attended debates on them, and it is quite frustrating the limited amount of power that we have as a Parliament, or as the House of Lords, to deal with them. There are many times when you want to vote them down, but you do not because you recognise that the fatal Motion is not often the way to do things. So you are limited as to what you can do—that is a fair point.

We need a very detailed response from the Minister, explaining why these organisations in particular need these powers, whether there are others, and why the Government need the power to extend that further under the limited provision of a statutory instrument, and not through primary legislation.

I accept the point that the noble Lord, Lord King of Bridgwater, makes: people need to be kept safe in this country and lots of organisations are doing very difficult and dangerous things. No one is against that. Equally, the noble Lord, Lord Anderson of Ipswich, made the point about the real need for training and safeguards. That seems sensible to me; if any organisation is to have these powers, you have to be confident that it will use them properly, proportionately and effectively.

I look forward to the Minister's response. There are a number of areas to cover here for the House.

Baroness Williams of Trafford (Con): I thank all noble Lords who have taken part in this debate. To echo the words of my noble friend Lord King, we live in a very dangerous world. I made the point last time that 27 terrorist attacks have been prevented in the last three years.

I absolutely appreciate that it might not be immediately obvious why some public authorities require this power. Again, I urge noble Lords to read the case studies that have been published to reassure themselves about the contexts in which they might seek to use the power. Alongside law enforcement and the intelligence services, some of our wider public authorities have important responsibilities for investigating and preventing criminal activity and protecting the economic well-being of the United Kingdom. We should not underestimate the important role that these public authorities play in keeping the public safe.

To answer the point raised by the noble Lord, Lord Paddick, I am happy to share business cases with him and other noble Lords, should they wish me to do so—I promise that I shall not give him only 45 minutes to read them.

I think that noble Lords have fully accepted that there will be occasions where undercover operatives play a critical role in providing the intelligence needed to identify and prevent criminality. As organised crime groups increasingly expand into areas overseen by those public authorities, the need for that robust investigative tool is more important than ever.

My noble friend Lord King made a very important point: the list is not an expansion but in fact a reduction. The information about how many organisations have been taken off the list has not appeared, but I can get that number for noble Lords, if it is to hand, before Report.

To answer the point made by the noble Lord, Lord Anderson, the officers in the public authorities are experts in their fields and are best placed to take appropriate and proportionate action to tackle the harms caused by criminal groups operating in the areas that they regulate. To answer his other point, they will have received specific training, which reflects the specialist remit in which they operate. I note that having the capability to carry out their investigative work themselves allows the police to focus on their priorities, as my noble friend Lord King and the noble Lord, Lord Anderson, noted.

3.45 pm

I shall provide some more detail on some of those public authorities that have been specifically mentioned today: the Environment Agency, the Food Standards Agency and the Home Office. Organised crime groups are becoming increasingly involved in areas that the Environment Agency regulates, such as the waste sector. The agency's statutory duties include the protection of the environment, natural resources and, of course, human health. As such, it is the investigating authority for offences that create serious risk of harm to people and the environment, such as illegal landfills, the misdescription of hazardous waste and illegal waste exports.

To speak to the point made by my noble friend Lady McIntosh of Pickering on just using the police—notwithstanding the points made by my noble friend

Lord King and the noble Lord, Lord Anderson—the recently established Joint Unit for Waste Crime, which is hosted and led by the Environment Agency, brings together various agencies such as the NCA, the police, HMRC and others to share intelligence in a multiagency way, as quite often happens, and crack down on organised crime groups using the waste sector. I am happy to point out that it has already had a number of operational successes.

I can now give the answer on the reduction in the number of agencies on the list: it is a reduction of 22.

To get back to my point, serious and organised waste crime has been estimated to cost the UK economy up to £1 billion a year. An independent review in 2018 found that the perpetrators are often involved in other serious criminal activities, such as largescale fraud and, in some cases, modern slavery. Just as the police need these powers to investigate crimes such as drug smuggling or child sexual exploitation, so too does the Environment Agency need the appropriate tools to gather intelligence about, and tackle, serious and organised waste criminals.

The Food Standards Agency has a specialist food crime unit and a law enforcement capability within the agency. The unit was established in 2015, following a review of the 2013 horsemeat incident that my noble friend Lady McIntosh of Pickering mentioned, and is responsible for protecting consumers and the food industry from food crime. The presence of substandard food produce within the marketplace undermines confidence in the UK food industry, and a robust approach to policing that is essential. At a time when demand on other law enforcement agencies is high, the Food Standards Agency has the sole responsibility for policing food crime. Customers should have confidence that their food is safe, and that it is what it says it is. The FSA needs the right tools to keep the public safe from consuming products that endanger their health. The ability to authorise an undercover operative to sometimes, where necessary and proportionate, participate in crime will support that mission. I urge noble Lords to read the published case studies for both those agencies to get a sense of how the power will be used in practice.

Noble Lords were interested in the inclusion of the Home Office. Its inclusion relates specifically to the work of Immigration Enforcement, which uses CHIS to collect information and evidence, while maintaining cover, in relation to organised immigration crime, document fraud, clandestine entry into the UK, human trafficking and money laundering.

I can provide noble Lords with a real-life example. Immigration Enforcement investigated the activities of the proprietor of a car wash in West Yorkshire. The subject of the investigation made an unsolicited approach to an undercover operative purporting to be a lorry driver and offered him £1,500 for each person he was willing to smuggle into the UK from mainland Europe. A series of subsequent deployments secured evidence to show that the suspect was intrinsically involved in the organised clandestine smuggling of Iraqi migrants from Turkey through mainland Europe. The subject was later arrested, convicted of conspiracy to assist unlawful immigration and sentenced to five years' imprisonment. We know of other such cases that did not result in some of those poor people getting out of those situations alive. I hope that this reassures noble Lords as to the types of activity that these wider public authorities will be authorising and, indeed, the importance of this capability in tackling these wide-ranging issues that have the ability to impact on us all.

To reiterate two further points of reassurance, an authorisation must be proportionate to the activity that it seeks to prevent, and the Investigatory Powers Commissioner will have oversight of the use of this tactic by all these wider authorities. As part of this, and recognising the concerns of some about the experience of using public authorities, I note that inspectors from the IPC's Office can identify whether a public body is failing to train and assess its officers to a sufficiently high standard and make recommendations in response to this—again, going to the point made by the noble Lord, Lord Anderson. I hope that, in setting out the operational necessity of providing this power to wider public authorities, I have also reassured my noble friend Lady McIntosh of Pickering that Clause 2 should stand part of the Bill.

I turn finally to Amendment 70, which seeks to prevent the list of public authorities being amended by statutory instrument. Although the list can be amended by statutory instrument, the addition of new public authorities will, of course, be subject to the affirmative procedure and will therefore be debated in both Houses to ensure that there is proper oversight. I hope that this reassures the noble Lord, Lord Sikka, that this amendment is not necessary.

With those words, I hope that the noble Lord will feel happy to withdraw his amendment.

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, I have received no requests to speak after the Minister, so I call the noble Lord, Lord Paddick, to conclude the debate on this group of amendments.

Lord Paddick (LD): My Lords, I thank the Minister for her words and I thank all noble Lords who contributed to this debate.

I do not think that the Minister addressed the points made by the noble Baroness, Lady Massey of Darwen, and the noble Lord, Lord Dubs, from the human rights perspective. What justification is there for public authorities to grant CCAs where it is difficult to see such CCAs being proportionate to the crimes that they seek to address? Authorising an undercover operative to commit a crime is very serious and needs to be proportionate to the harm that it seeks to address. Obviously, it will help when we see the business cases; I am very pleased that the Minister has agreed that we can look at them.

Can public authorities be added by statutory instrument? The Minister said that it will be via the affirmative procedure. I have already given the example of where authorities were added to those that could access communications data and the House was not able to properly scrutinise that statutory instrument because we were not given access to the business cases until the last minute. If that repeats itself, we will not be able to scrutinise adequately the addition of public authorities by statutory instrument.

[LORD PADDICK]

The noble Lord, Lord Cormack, talked about being very troubled and the Bill going too far, which leads us on to the noble Lord, Lord King of Bridgwater; I look forward to the jousting between the noble Lord and myself on these sorts of issues. The noble Lord said that I gave the impression that there was something very new in what is being discussed here and that it was a well-established practice. If only he were right. The point is that the granting of legal immunity to people who are being authorised to commit crime is a completely new scenario that no public authority in the past has been able to do—except the Crown Prosecution Service, after the event. I accept that this is a very dangerous world, as the Minister started her remarks with, and that 27 terrorist attacks have been prevented as a result of actions—but not, I would humbly suggest, by the actions of the Gambling Commission or the Food Standards Agency.

The Minister talked about the horsemeat scandal and how it had the potential to undermine public confidence in the food supply. How can getting a CHIS to commit a crime be proportionate to addressing an undermining of confidence, in the human rights sense of proportionality? She talked about the Home Office and the power being specifically required for Immigration Enforcement—so why not, on the face of the Bill, authorise Immigration Enforcement within the Home Office, rather than the Home Office in its entirety? In the communications data statutory instrument, which authorises public authorities to access communications data, the Military Police, not the Armed Forces generally, is authorised. Why not authorise just Immigration Enforcement and not the Home Office?

The noble Baroness, Lady McIntosh of Pickering, asked: why not call in the police to deal with criminality that these other public authorities have responsibility for? The noble Lord, Lord Anderson of Ipswich, gave some very good reasons why that might be the case, such as that it might not be high on the list of police priorities. But that then comes back again to the question of necessity. He felt that they needed to demonstrate a need—we will look to see whether these agencies have demonstrated the need when we look at the business cases—and that training was essential; he was hoping that it would be alongside police colleagues, but the Minister did not seem to think that that would be the case. He raised this other interesting issue about the fact that, if these agencies do not use this power very much—that is, if they are not exercising it—they will need to be trained more frequently because they are not used to using it. This raises more concerns, in my mind, about these other agencies. The noble Lord also talked about safeguards, as we have discussed in other parts of the Bill.

Clearly we will return to this issue on Report. At the moment, I beg leave to withdraw the amendment.

Amendment 63 withdrawn.

Amendments 64 to 70 not moved.

Clause 2 agreed.

Amendment 71 not moved.

Clause 3 agreed.

Schedule 1: Corresponding amendments to the Regulation of Investigatory Powers (Scotland) Act 2000

Amendments 72 to 74 not moved.

Schedule 1 agreed.

Clause 4: Oversight by the Investigatory Powers Commissioner

Amendment 75 not moved.

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, we come to the group beginning with Amendment 75A. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in this group to a Division should make that clear in debate.

4 pm

Amendment 75A

Moved by ***Baroness Jones of Moulsecoomb***

75A: Clause 4, page 5, line 10, at end insert—

"(4B) Where the Investigatory Powers Commissioner becomes aware of any potentially unlawful or improper conduct undertaken in connection with a criminal conduct authorisation, which is not authorised by the criminal conduct authorisation, the Commissioner must refer the matter to the police for investigation."

Member's explanatory statement

This amendment would introduce a requirement for the Investigatory Powers Commissioner to refer potentially unlawful or improper conduct undertaken through a criminal conduct authorisation to the police for investigation.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I am afraid I am going to disappoint a lot of noble Lords for whom I have huge respect, but I am afraid I do not think this Bill is necessary. That is not to say that the old system was good, because it clearly was not, but this Bill is worse. It could have been better, but it is not, so I would like to see it scrapped. However, in the meantime, our job in your Lordships' House is to try to improve it and to get the Government to listen and understand why they are improvements.

In the previous group, the noble Baroness, Lady Chakrabarti, talked about overreach. That is part of the problem I have with this Bill, but it is not the only part. As some noble Lords have said, it is a dangerous world and we have to do what we can to keep people safe, which is all very true—and all the examples the Minister gave of how to use these powers are very reasonable. However, at some point, we have to ask ourselves, "What are we prepared to lose to keep ourselves completely safe?" In the previous group, the noble Baroness, Lady Whitaker, talked about liberty and democracy, and those are some of the things we are losing with this Bill. It is an erosion. Your Lordships' House is very concerned about the erosion of democracy—about more and more powers going into statutory instruments.

The two amendments I have tabled require that unlawful conduct that goes beyond the criminal conduct authorisation, or that should not have been authorised

in the first place, be reported to the police or a relevant oversight body—for example, the Independent Office for Police Conduct. My Amendments 75A and 75B reveal a deafening silence in the Bill about what happens when something goes wrong. I hope the Minister can explain that to us. What happens when an authorisation is granted that clearly should not have been? What happens if somebody goes beyond their authorisation and commits additional criminal offences? Amendment 75A would require that the authorising authority refer to the police any criminal conduct that was not authorised. Amendment 75B would require "unlawful or improperly granted" criminal conduct authorisations to be referred to the relevant oversight body—for example, the IOPC.

This is a gaping hole in the Bill: we are talking about state-authorised crime, and the police and other government authorities must not be complicit in criminality that goes beyond the legal authorisation in this Bill. Otherwise, it creates an additional quasi-authorisation where handlers can just sweep things under the carpet when it is dangerous to admit they have done them. They can pretend they did not happen. I hope the Minister will recognise these gaps in the Bill and work to address them on Report.

Baroness Chakrabarti (Lab) [V]: My Lords, once more, it is a pleasure to follow the noble Baroness, Lady Jones of Moulsecoomb, who has brought so much to the scrutiny of this Bill. What I want to say about her amendment is: why not? Why not improve the Bill by providing for greater clarity and specificity about the process that would be employed when things go wrong? In life, in all institutions, whatever the good intentions, sometimes things go wrong. It is our duty as legislators to be clear about what the process would be in those circumstances. Once more, her amendments and the review proposed in Amendment 79 by the noble Lord, Lord Paddick, and the noble Baroness, Lady Hamwee, are no-brainers. I look forward to hearing from the Minister about why there should not be greater clarity and specificity about safeguards.

It is also a pleasure to precede the noble Lord, Lord King. Since he is about to follow me, I want to address some remarks to him and the Minister. He spoke incredibly eloquently in the last group about the dangerous nature of our world in these times and incredibly passionately, and eloquently, once again, about all the terrible terrorist and serious criminal plots that have been foiled with the use of covert human intelligence sources—by undercover operatives and agents. With respect, however, the noble Lord, Lord King, seemed to conflate three very distinct propositions that we cannot afford to conflate when discussing this precise legislation.

The first is the concept of using covert human intelligence sources, which I think we all agree have to be used; it is the use of such sources that has presumably helped to foil all those terrible plots and keep us as safe as we can be. There is no such thing as a risk-free society but, of course, we want to be as safe as we can be. That is the first concept: using undercover operatives at all. We all agree that sometimes has to happen.

The second concept is authorising those undercover operatives to commit crimes. The noble Lord, Lord King of Bridgwater, will have to accept that is a further step and is not to be conflated with authorising an agent to go undercover. To authorise him or her to commit criminal offences is, perhaps, a necessary evil to keep their cover, but it is, none the less, a further evil that is a challenge to the rule of law. I agree with him that that already happens, and the suggestion is that should be put on a statutory footing. I will give him that.

However, the third concept that he completely elided with the previous two is that of granting an undercover agent of the state—who may be from the terrorist community but turned, or from the criminal community but supposedly turned—total immunity from civil liability and criminal prosecution. To send them into those situations with an advance immunity that even uniformed police officers and soldiers do not have is what is new in this legislation. That is why the legislation is causing such grave concern. It is not just the status quo on a statutory footing; it is going further. That is the challenge, not just to the rule of law but to the safety of our communities—that anybody, let alone a civilian who may be from the criminal fraternity, should be given this kind of licence or golden ticket to commit crime with immunity. I would be grateful to hear from the very distinguished noble Lord, Lord King, and the Minister on that. The status quo would just be that they had a public interest defence, which is a very strong presumption against prosecution. That is the current system; why should it not be replicated in this Bill?

Lord King of Bridgwater (Con) [V]: My Lords, I am grateful to the noble Baroness, Lady Chakrabarti, for drawing attention to the points I made, and I am sorry if I sounded too aggressive on some of them. The point I did not make, which I shall make now, is on how much crime is committed. One would expect that, in most cases, it would not be the commission of crime so much as association with people while they committed crimes, with the person in question not necessarily being directly involved but having some complicity, which is one of the problems.

The requirements, as I understand them, if they are in that situation and a criminal conduct authorisation is issued, are that it has to be proportionate, it may not be issued if what is sought to be achieved can be done in another way, and it has to be part of an effort to prevent more serious criminality. Those three conditions are perhaps not mentioned very much but are important.

I have left out some issues that I might have discussed. We have just talked about possibly leaving the Department of Health and Social Care out of the Bill. Think of this moment when organised crime, throughout the world, is seeing how it can get into the vaccines business in one way or another. The challenge that that will pose will feature in our news broadcasts and papers in the days ahead. It will obviously be a big issue. One recalls that the NHS was practically brought to a grinding halt from its systems being hacked and disrupted.

There is this, as well, if it is not too dramatic. At the time of Brexit, when we may be moving towards no deal, there is an idea to take from HMRC its ability to keep every possible assistance. In trying to deal with some of the problems it will have, it will need all the help it can get.

[Lord King of Bridgwater]

My concern about these amendments, and referral to the police or judges to overview the operations of CCAs, is that a clear structure is set up. The Investigatory Powers Commissioner is a very senior judge and the judicial commissioners are very senior. My concern all the way along is that nobody has challenged how vital covert intelligence sources can be, in a range of different fields. The question is whether we can still keep those covert sources coming. The more we expand the range of people who have access to that information, the bigger the danger of leaks, and then there will be fewer sources available in the future. That is why I think the structure set up of the Investigatory Powers Commissioner and his judicial commissioners, with a tribunal and an annual report to Parliament on its operations, has important safeguards. Going much further than that starts to undermine the security of the information and imperil the safety of some brave people, who are giving evidence to help keep our country safe, in a range of different fields.

Lord Paddick (LD): My Lords, it is a pleasure to follow the noble Lord, Lord King of Bridgwater, with whom I completely agree on maintaining the status quo on the involvement of covert human intelligence sources and the ability of the police and security services to authorise these people to engage in crime. I have no argument with him on those issues. But, as the noble Baroness, Lady Chakrabarti, said, the issue for us is the police granting immunity from prosecution or from any legal action at all.

My noble friend Lady Hamwee and I have Amendment 79, but I will take the amendments in this group in order. Amendment 75A from the noble Baroness, Lady Jones of Moulsecoomb, is intended to require the Investigatory Powers Commissioner to identify unlawful or improper conduct through a CCA to the police for investigation. I have a great deal of sympathy for what the noble Baroness is trying to achieve, but I am not sure that her amendment achieves what she sets out to.

The amendment talks about conduct that is not authorised by the criminal conduct authorisation, but we are also concerned with conduct that is unlawful or improper that is authorised by a CCA, by accident, inexperience or corrupt practice. This does not appear to be covered by the amendment. Of course, if it is the result of police malpractice, referring the matter to the police may not be enough to ensure that it is properly dealt with.

4.15 pm

Rather than relying on my own experience, I have spoken to experienced handlers and controllers, as the noble Minister has—although, as will become apparent, not the same ones. There is genuine concern about the potential for corrupt practice when criminals and police officers are working together, as they do for the majority of police covert human intelligence sources. I was a police officer for over 30 years and I cannot tell you the distress it causes me to say what I am about to say, but it needs to be said.

Examples are cited of criminals who have gone beyond what they have been authorised to do and, in some cases, have engaged in criminal enterprises of their own but, because of their value to the police as a covert human intelligence source, a "text"—apparently the technical term for the brown envelope secretly handed to the presiding judge, informing the judge that the defendant is a valuable police informant—has been handed to the judge and, as a result, the defendant has been acquitted or given a nominal sentence, even when they have conducted a criminal enterprise. Some cases are likely to be covered by the noble Baroness's amendment, but not all of them.

Amendment 75B is probing and I look forward to the Minister's reply.

Amendment 79 in this group calls for a review of the use of covert human intelligence sources in crime. We are getting many different and contradictory narratives here. The noble Baroness, Lady Manningham-Buller, talks about agents run by MI5 being "brave men and women". She cannot

"accept that they are people who lack civic responsibility, that they do it for the money or that they are engaged in very questionable activity."—[*Official Report*, 24/11/20; col. 211.]

I know from having been briefed by the security services at GCHQ and Vauxhall Cross exactly the sorts of people that the noble Baroness is talking about. I have no doubt at all that the agents that she has experience of are exactly as she describes.

From my personal hands-on experience as a controller of police covert human intelligence sources, and from having handed over considerable sums of money to criminals who have been police informants, I tell the Committee that many police covert human intelligence sources lack civil responsibility, do it for money, and are engaged in questionable activity. I quote from an email sent to me by a former police colleague:

"From my wealth of experience of handling, actively tasking and using participating informants I can say that these people are among some of the most devious and manipulative people on the planet. Often desperate or open to manipulation by over-zealous or even corrupt officers."

The agents run by MI5 are very different from many police informants.

The Minister, in her letter dated 3 December, says that she has

"talked to officers who train MI5 and police handlers—experienced agent handlers and controllers",

who describe the current situation as "unsatisfactory" and that

"they have lost intelligence gathering opportunities and, on occasion, been unable to recruit CHIS, or had CHIS walk away from their role, because clear protection from prosecution had not been provided".

I quote my former police colleague again:

"I'm always sceptical of anyone from within the discipline and who has a vested interest in promoting and enhancing their topic … The present system, with all its inherent difficulties is the only feasible way of maintaining control of a sometimes-volatile situation. As frustrating as it may be for those running covert operations of this nature … it is those of us that have experienced this world who know exactly why the current restraints are there and how they maintain control of investigations."

In answer to my question, "How many intelligence-gathering opportunities have been lost as a result of the current system?", the Minister says, "Police authorities do not gather statistics on intelligence opportunities lost". In answer to my question, "How many CHIS

have been prosecuted for authorised criminal conduct?", the Minister says, "We do not collect these statistics. I understand the numbers are low, but it is not unprecedented." Will the Minister please provide a detailed example of where this has happened? Was it because the criminal conduct should not have been authorised, or is she relying on someone telling her, "I've heard of a case but I don't know anything about it"? Or maybe the Minister will say, "The people you're talking to are from the past and the police can be trusted now?"

Today we learn that the second largest police force in England has not recorded one in five crimes reported to it—including 25% of violent crime—and has written off crimes without proper investigation. In seven out of 10 cases of domestic violence, it recorded that the victim did not want to pursue the case, without any evidence that this had actually happened. How many of those victims went on to sustain serious harm in another assault? Was children's safeguarding also missed in cases that were not properly investigated?

This is the Minister's police force. The point I am trying to make here is: who do we believe? What is the problem that the Bill is trying to solve? What is the nature and extent of the problem? We have no idea, and with the greatest respect, I am sure that the Government have no idea either. We are relying on anecdote and subjective opinions because no one, not least the Government, knows the facts. Our Amendment 79 would establish the facts.

Lord Rosser (Lab) [V]: Two amendments in this group stipulate the action that the Investigatory Powers Commissioner must take on becoming aware of unlawful or inappropriate conduct linked to a criminal conduct authorisation, or on becoming aware of an inappropriately granted or unlawful criminal conduct authorisation. I will listen with interest to the Government's response to these two amendments.

A third amendment requires a review within six months by a High Court judge that would consider the grant of criminal conduct authorisations in relation to children or vulnerable people, the conduct of covert human intelligence sources, the oversight and monitoring of, and reporting on, such conduct, the oversight of persons allowed to authorise criminal conduct authorisations, and the sanctions available if they misuse those powers.

Under the terms of the Bill, the Investigatory Powers Commissioner has the power to conduct investigations, inspections and audits, but would not appear—I will listen to what the Government say in response—to have the capacity to investigate every time a criminal conduct authorisation is used. The Commissioner also covers the use of the power to grant criminal conduct authorisations in the annual report, which must also be laid before Parliament but which may be redacted. Of course, we do not know how much the annual report will reveal in practice. As an annual report, it will be reporting a long time after any particular issues with criminal conduct authorisations may have arisen.

It is surely important to have as much transparency as possible in how, and in what kind of circumstances, covert human intelligence sources and criminal conduct authorisations are used and granted, since the powers and activities provided for in this Bill are considerable and potentially wide ranging. They have to be applied appropriately, and the greater the transparency that is possible, the more likely that is to be the case and the greater the public confidence in how the powers are being deployed, and with what objectives in mind.

The review referred to in Amendment 79, which would be laid before Parliament, would be one way of contributing to that transparency and ensuring public confidence. If the Government are not going to accept the amendment, I hope that in response they will indicate a willingness to look further at the powers, duties and role of the Investigatory Powers Commissioner to ensure that transparency in how and in what circumstances the powers given in the Bill are exercised is maximised as far as possible. I await the Government's response.

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords who have spoken in this debate. I know that the noble Lord, Lord Paddick, would not expect me to respond to the case that he brought before the House this afternoon, but I would be happy to sit down and discuss it with him, if he would like. I think what he wants from Amendment 79 is to require a review of all criminal conduct authorisations to be undertaken by a High Court judge, with the review to be commenced six months after the Act has come into force.

The IPC, supported by judicial commissioners, already has oversight of all criminal conduct authorisations. He and his judicial commissioners have all held high judicial office and are entirely independent of the Government. The commissioners are supported by expert inspectors and others, such as technical experts, who are qualified to assist them in their work. They are responsible for inspecting the full range of agencies and departments that will use this power and will ensure that they are complying with the law and following good practice. This includes investigating systems and processes, checking records and paperwork, interviewing key staff and investigating any known errors.

The frequency of these inspections is decided by the Commissioner, and the inspectors must have unfettered access to documents and information to support the Commissioner's functions. This allows inspectors to undertake thorough and robust investigations of each police authority's use of the power, covering the entire chain of events and decision-making.

A report is issued after each inspection that sets out IPCO's conclusions and recommendations and identifies any areas of vulnerability or non-compliance. It also identifies areas of good practice which may be of interest to other similar organisations. The report will enable organisations to take action on the basis of IPCO's recommendations. This process provides for systemic review of all public authorities' use of the power and allows for continuous improvement in the authorisation and management of the capability.

Amendments 75A and 75B seek to put obligations on the IPC to report conduct to other bodies. Criminal conduct authorisations will be subject to the existing error-reporting processes for investigatory powers, which require public authorities to report all relevant errors

[Baroness Williams of Trafford]
to the IPC. This would include situations where undercover operatives' conduct has taken place without lawful authorisation or there has been a failure to adhere to the necessary safeguards. Where it amounts to a serious error, the IPC must inform the person of an error relating to them where it is in the public interest.

4.30 pm

As I have said, the IPC is entirely independent of government. He has wide-ranging powers to carry out his oversight functions, as set out in the Investigatory Powers Act. This includes the ability for judicial commissioners

"to provide advice or information to any public authority or other person in relation to matters for which a Judicial Commissioner is responsible".

This is subject to various considerations such as consulting the Secretary of State where providing that advice or information might be contrary to, for example, national security. I should add that the primary responsibility for reporting agent crime falls on the public authority, which has its own specific policies to deal with this. However, IPCO could advise the public authority that it ought to refer criminal conduct to the appropriate authorities or ultimately report it itself, subject to the statutory process set out in the Investigatory Powers Act. These amendments are therefore not considered necessary.

The noble Lord, Lord Paddick, talked about the problems with the iOPS system at the Greater Manchester Police, which resulted in crimes not being followed up or certainly not being reported. I know that the GMP has said that it will robustly look into this matter. It is absolutely not acceptable but the force is taking measures to deal with it.

The noble lord, Lord Rosser, asked me to look further at the real-time oversight that the IPC could provide. I have undertaken to work with the noble Lord, Lord Anderson, and others on that. I therefore hope that noble Lords will withdraw or not move their amendments.

Baroness Jones of Moulsecoomb (GP) [V]: The noble Baroness, Lady Chakrabarti, used an interesting phrase, "necessary evil". I wonder how many necessary evils it takes to get an overload of evil, which is not a phrase that I use often. However, particularly in relation to the current "spy cops" inquiry, we know that evil things have taken place under the old system. I therefore have no doubt that it would be better to have a different system, but it is not this Bill.

The noble Lord, Lord King, said that if this matter could be dealt with in a different way—that is, by not giving consent for criminal behaviour—then it would be. However, in my experience, that does not necessarily happen because people become tired; they are human and feel fractious. They want to do something in the quickest way, which is not always the best option. For example, the use of tasers in the UK used to be rare but now that they have been rolled out further, their use has increased exponentially. That has nothing to with the greater number of tasers: it is because police officers no longer have to negotiate with people who are wielding knives or going through mental health problems. They can just taser them. It is not always true that if something can be done in a better way, it therefore is.

The noble Lord, Lord Paddick, said that authorised action was also a problem and I very much agree. I have only met undercover police spies who were whistleblowers—knowingly, that is. They were incredibly brave and well-motivated in their job. However, they found it overwhelmingly difficult and saw or did things that they felt that they should not have been doing or been involved with. I do not make a blanket criticism of people who act as undercover police spies. However, while we need to protect them, we also need to protect ourselves, the general public and the rule of law.

The noble Lord, Lord Paddick, also asked: who do we believe? That is a problem. It is possible to believe every word that the Minister said in defence of the greater controls already in the Bill. However, I am influenced by the fact that I have seen such controls flouted. I come, therefore, from a different, untrusting point of view. People do not always act honourably and play by the book. My two amendments, or Amendment 79, which I also support, would, therefore, be a good idea.

The noble Lord, Lord Rosser, in his usual calm and collected way, asked for further information. I look forward to him putting pressure on the Government to explain themselves more fully.

I will check *Hansard* but I am sure that I will still have concerns. In the meantime, I beg leave to withdraw my amendment.

Amendment 75A withdrawn.

Amendment 75B not moved.

The Deputy Chairman of Committees (Lord Rogan) (UUP): We now come to the group consisting of Amendment 75C. I remind noble Lords that anybody wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this amendment to a Division should make that clear in the debate.

Amendment 75C

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

75C: Clause 4, page 5, line 16, after "authorisations)", insert "including—

(i) information on the number and types of criminal conduct authorisations requested and the number granted;

(ii) whether these authorisations produced any operational benefits;

(iii) any material damage or civilian harm incurred as a result of acts authorised"

Member's explanatory statement

This amendment is intended to probe the adequacy of information provided to Parliament on criminal conduct authorisations, and to probe how the efficacy of these authorisations will be evaluated.

Lord Hodgson of Astley Abbotts (Con) [V]: My Lords, with this last group, the horse is heading for the stable. If I talk for too long, I shall probably be talking

to myself alone. I shall therefore cut to the chase but would, before my remarks on the amendment, add my thanks to the ministerial team for its tolerance and patience. I am also grateful to it for the email I received today inviting me to engage in further detail about how the Bill will operate.

The amendment of the noble Baroness, Lady Jones, who has just spoken, imposed duties on the Investigatory Powers Commissioner when he becomes aware of unlawful or improper conduct. My amendment imposes different requirements on him—in this case, what he must include in his published reports, particularly the annual report. The amendment touches on some of the issues that underlie Amendment 79, tabled by the noble Lord, Lord Paddick, but comes at them rather differently.

During earlier stages of Committee, many amendments were discussed that sought to rebalance the powers proposed in the Bill to ensure that the IPC is notified of any CCAs, that victims could bring complaints to the Investigatory Powers Tribunal, and that prosecutors are left with discretion to bring cases when it is in the public interest to do so. Despite those debates, there are a couple of gaps in what we have discussed so far.

First, our discussions to date place the onus on the victim to alert the regulatory bodies of any mistakes or wrongdoing. Even within the UK, some victims may not be aware of the avenues open to them for redress. However, when the misconduct takes place overseas—an issue I raised in earlier debates—the chances of a victim being able to bring a case must surely be vanishingly small and unlikely. Apart from anything else, the victim would have no way of knowing that the conduct complained about was authorised under this CHIS Bill. Further, they would not know that they needed to bring their case to one of the CHIS-authorising bodies in the UK and that the victim's own regulatory system would have no role to play. Secondly, in our discussions so far, there has been little emphasis on the value of post-authorisation evaluation of the impact and effectiveness of the CHIS CCA system.

My amendment therefore imposes a duty on the IPC to include in his or her report an impact assessment on, first, the number of CCAs requested and granted; secondly, the operational benefits that have resulted; and, thirdly and finally, an assessment of the damage or harm, particularly to individuals, that occurred as a result of those CCAs that were granted.

Noble Lords' email boxes will testify that this Bill is an area of considerable public interest and concern, and perhaps I may give the House a brief personal example. About 10 or so years ago, I had an extremely efficient and competent PA who worked with me at my office in the City. She was the daughter of an Iranian diplomat, and her whole family had been forced to flee that country when the Shah was dethroned. Happily for her, she met a man she fell in love with, got married and had a family. I, sadly, lost a very good PA, but that is not really the point. We have kept in occasional touch, and the CHIS Bill has touched a very raw nerve. She explained to me in some detail that it is very similar to legislation introduced in Iran, with the best of intentions, that was gradually corrupted and perverted. I am not—repeat, not—suggesting that we face an Iran-like situation, but I argue that, to reassure my ex-PA and others like her that the original purposes of the legislation still hold good and that it is proving effective, a degree of public transparency and sunshine would be very helpful.

My noble friend may argue that the Intelligence and Security Committee will provide the necessary reassurance. Well, yes and no. I do not for a moment doubt that the ISC is made up of a fine body of Members of your Lordships' House and the other place and that they will do their very best, but even they can be warned off and frustrated in their inquiries. For example, in its inquiry into the Belhaj and al-Saadi families—who, your Lordships will recall, were rendered by MI6 agents to the Gaddafi regime—the ISC was refused access to key witnesses, so its investigation was largely stymied.

To conclude, in one of our debates on Tuesday, the noble Lord, Lord Campbell-Savours, said that transparency influences conduct, and I agree. Amendment 75C proposes that the Investigatory Powers Commissioner should be required to provide a measured level of public reassurance available to a wider audience than just the ISC in the reports produced, and I beg to move.

The Deputy Speaker (Lord Rogan) (UUP): The noble and learned Lord, Lord Thomas, has withdrawn, so I call the noble Baroness, Lady Chakrabarti.

Baroness Chakrabarti (Lab) [V]: My Lords, not for the first time in consideration of this Bill in Committee, the noble Lord, Lord Hodgson of Ashley Abbots, comes to your Lordships' House with an excellent amendment, a very good idea and an even better speech, which I cannot improve on. Transparency does influence conduct, and the information that he suggests ought to be included in reports speaks to common sense. We ought to know on a regular basis the number and nature of criminal conduct authorisations issued under the new legislation, the operational benefits that have been obtained from those authorisations and, crucially, the kind of damage to property and people—the incidental harm—that has come about as a result of those criminal conduct authorisations.

I do not want to labour the point—it has been a long Committee—but I want to have one final attempt at putting a question to the Minister to which I do not think I have yet heard the answer. This is my last opportunity to put this in Committee before we go forward to Report.

Why is it necessary to go further than the status quo in the scheme for this legislation? Why cannot undercover operatives, whether they are highly trained police or MI5 officers, or whether they are—and perhaps they are in greater number—members of the civilian community, including the criminal community, just be subject to the current law, which is that when they are authorised to do this work, including with criminal conduct, they will know that their conduct will be second-guessed after the fact? They currently have the ultimate incentive —and we have the ultimate safeguard—to behave proportionately and as well as possible, which is that they might, just possibly, if they over-step the mark,

[Baroness Chakrabarti]
be subject to legal sanction after the event. That is the law that applies to uniformed police officers and people driving police cars and ambulances at high speed, with a very strong public interest defence. It is probably a presumption against prosecution, but it is that tiny risk of being judged after the fact that makes most people behave well according to the criminal law. Why should that be replaced with a total, advance and blanket immunity from prosecution and civil liability? Why quite go so far and therefore cause some of the greatest concerns that have been excited by this legislation?

I hope that the Minister will not mind me putting that fundamental, simple question one more time. I look forward to her answer, and indeed to our further work at the next stage of the Bill's passage.

4.45 pm

Baroness Hamwee (LD) [V]: My Lords, the horse will be out of the stable again in January: refreshed, I hope. I am sure that the Minister will welcome the pause after the marathon she has had to undergo. I am not for a moment suggesting she is anything like a horse—I am sorry, perhaps I should not have followed that simile.

My noble friend Lord Paddick recently spoke to Amendment 79, and it is clear that several noble Lords have concerns in this area, so we will come back to it. Noble Lords clearly agree on the importance of evaluating what goes on and of transparency, as has already been mentioned. However, I cannot help thinking in the context of the precise formulation of this amendment of what the noble Baroness, Lady Manningham-Buller, talked about a week or two ago, to which my noble friend referred: the problem of the extent to which one can report in detail without endangering those who are protecting us and whom we, in turn, do not wish to endanger. I cannot help thinking that if a lot of the material listed in Amendment 75C were to be published, an awful lot of it might be redacted. However, I am with the noble Lord, Lord Hodgson, in spirit, and I think that his last point about material damage or civilian harm is an important one that we must not lose sight of. We still need to explore how best and to what extent we can achieve what is obviously troubling a number of us.

Lord Rosser (Lab) [V]: The purpose of the amendment moved by the noble Lord, Lord Hodgson of Astley Abbotts, is described as being to probe the adequacy of information provided to Parliament on criminal conduct authorisations and to probe the efficacy of the authorisations.

I think that this comes back to the issue of transparency. To be a little more particular, will we be told in advance, during the passage of the Bill, precisely what kind of information about criminal conduct authorisations will be provided to us and to the public by the Investigatory Powers Commissioner in the annual report or other reports? At the moment, I am not clear about what information will be provided and what it will cover, and whether it will give us a feel for what is happening over criminal conduct authorisations or whether we will be told that the information provided will be limited and that, on grounds of security, it cannot be disclosed.

I hope that, at least in their response either to this amendment or on Report, the Government will be prepared to spell out what information will and will not be provided so that we all know where we stand on this issue.

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords for the points they have made. To take the penultimate point raised by the noble Lord, Lord Rosser, I hope that I can provide some of that clarity this afternoon.

My noble friend Lord Hodgson is interested in the information that will be included in the IPC's annual report. The commissioner has a very clear mandate to inform Parliament and the public about the use of investigatory powers. He must provide a report to the Prime Minister, which the Prime Minister must publish and lay before Parliament. The Investigatory Powers Act already sets out, in detail, what should be included in that report, and I refer my noble friend and the noble Lord, Lord Rosser, to Section 234(2).

I reassure my noble friend that there is already a requirement for the report to include statistics on the use of the power and information about the results of such use, including its impact. The report is therefore extensive but, as would be expected for such sensitive information, safeguards are in place to ensure that that information is protected where necessary. In consultation with the commissioner, the Prime Minister may exclude from publication information which could, for example, be prejudicial to national security. However, public authorities will receive this information and will respond to recommendations made by the IPC.

Turning to a matter that has nothing to do with the amendment, the noble Baroness, Lady Chakrabarti, asked: why go further than the status quo? The status quo is that there is legal uncertainty around undercover operatives, and this Bill creates that legal certainty.

Lord Hodgson of Astley Abbotts (Con) [V]: My Lords, I thank all those who have taken part in this short debate and, in particular, I thank my noble friend for her very helpful reply.

Just to deal with a point raised by the noble Baroness, Lady Hamwee, I was not expecting there to be a detailed crawl through every single CCA. Clearly, that would be inappropriate, but an overview would be appropriate because, as the noble Lord, Lord Rosser, pointed out, we do not want a situation where we have no information or too much information. We come back to the issue that has been at the back of many of our conversations during Committee: how do we find the right balance between ensuring that those who look after our safety are protected and ensuring that there is a sufficiency of transparency so that they feel the pressure to behave properly at all times.

I will read very carefully what my noble friend said about what is already proposed and what is already in legislation. I said that this was a probing amendment and therefore, for the time being at least, I beg leave to withdraw it.

Amendment 75C withdrawn.

Amendment 76 not moved.

Clause 4 agreed.

Amendments 77 to 79 not moved.

Clause 5 agreed.

Schedule 2: Consequential amendments

Amendment 80 not moved.

Schedule 2 agreed.

Clause 6: Commencement and transitional provision

Amendments 81 to 83 not moved.

Clause 6 agreed.

Clause 7 agreed.

House resumed.

Bill reported without amendment.

4.56 pm

Sitting suspended.

Arrangement of Business

Announcement

6.30 pm

The Deputy Speaker (Lord Russell of Liverpool) (CB): The Hybrid Sitting of the House will now resume. I ask Members to respect social distancing.

UK-EU Withdrawal Agreement

Statement

The following Statement was made in the House of Commons on Wednesday 9 December.

"With permission, Mr Speaker, I would like to update the House, and indeed the people of Northern Ireland, on the implementation of the Northern Ireland protocol as part of the withdrawal agreement with the European Union. Throughout 2020, we have worked intensively to ensure that the withdrawal agreement, in particular the Northern Ireland protocol, will be fully operational on 1 January 2021. Our aims, and the proportionate and pragmatic way that we intended to pursue them, were set out in the Command Paper that we published in May, *The UK's Approach to the Northern Ireland Protocol*. This set out three key commitments that we believed needed to be respected in all scenarios.

We had to ensure that Northern Ireland businesses retained unfettered access to the rest of the UK market. Northern Ireland's place in the UK's customs territory had to be protected, and that meant that goods that stayed in the UK were not subject to tariffs. We had to ensure that the important Great Britain-Northern Ireland trade flows, on which lives and livelihoods depend, were not disrupted; we needed to ensure a smooth flow of trade with no need for new physical customs infrastructure.

I am pleased to say that on Monday the European Commission Vice-President Maroš Šefčovič and I, as co-chairs of the joint committee set up to negotiate the implementation of the protocol, came to an agreement in principle on a deal that meets all those commitments and puts the people of Northern Ireland first. I would like to begin by paying tribute to Maroš Šefčovič and his team for their pragmatism, collaborative spirit and determination to get a deal done that would work for both sides. I would also like to thank the First Minister, the Deputy First Minister and all the Members of the Northern Ireland Executive for their crucial intervention at significant moments to ensure that the rights of the people of Northern Ireland were protected.

I turn now to the first government commitment. This deal protects unfettered access for Northern Ireland businesses to their most important market. As the Prime Minister underlined, this had to be protected in full, and that meant removing any prospect of export declarations for Northern Ireland goods moving from Northern Ireland to Great Britain. That is what our agreement will do. There will be no additional requirements placed on Northern Ireland businesses for these movements, with the very limited and specific exceptions of trade in endangered species and conflict diamonds.

On the second commitment, the deal safeguards Northern Ireland's place in the UK's customs territory. As recently as July, the Commission had envisaged a default tariff scenario in which

'all goods brought into Northern Ireland'

were

'considered to be at risk … and are as such subject to the Common Customs Tariff.'

If that had been implemented, it would have raised the prospect of a 58% tariff on a pint of milk going from Scotland to a supermarket in Strabane or a 96% tariff on a bag of sugar going from Liverpool to the shops of Belfast. As we have repeatedly made clear, this could never have been an acceptable outcome.

Instead, I am pleased to say that, under the agreement we have reached, Northern Ireland businesses selling to consumers or using goods in Northern Ireland will be free of all tariffs, whether that is Nissan cars from Sunderland or lamb from Montgomeryshire. Internal UK trade will be protected as we promised, whether we have a free trade agreement with the EU or not.

Thirdly, this deal would keep goods flowing between Great Britain and Northern Ireland in January and provide some necessary additional flexibilities. It protects Northern Ireland's supermarket supplies. We heard throughout the year that traders needed time to adapt their systems. That is why we have a grace period for supermarkets to update their procedures. Our agreement prevents any disruption at the end of the transition period to the movement of chilled meats. British sausages will continue to make their way to Belfast and Ballymena in the new year, and we have time for reciprocal agreements between the UK and the EU on agri-food, which can be discussed in the months ahead. This deal also protects the flow of medicines and vet medicines into Northern Ireland. That means we will grant industry a period of up to 12 months to adapt to new rules under the protocol, which will avoid any disruption to critical medical supplies.

[Lord Russell of Liverpool]

So those are three commitments entered into, and three commitments that we have upheld. But this agreement goes further still, providing additional flexibility that will enable us to make the most of the opportunities that face us as the transition period ends. As you know, Mr Speaker, this House has been concerned about the risk of so-called reach-back from the state aid provisions that the protocol applies. The concern that many colleagues had was that a company in Great Britain with only a peripheral link to commercial operations in Northern Ireland could be caught inadvertently by the tests within the protocol's text. That would not have been acceptable, nor was it what the protocol had envisaged. That is why I am pleased that the agreement we have addresses that risk. It means that firms in Great Britain stay outside state aid rules where there is no genuine and direct link to Northern Ireland and no real foreseeable impact on Northern Ireland-EU trade. That is an important step forward in dealing with an issue raised by a number of Members across the House.

This deal also ensures that Northern Ireland will be out of the common agricultural policy, which means that the Northern Ireland Executive have full freedom to set their own agricultural subsidies for Northern Ireland's farmers. It also means appropriate and flexible arrangements, so that more than £400 million of spending each year is totally exempt from state aid rules. As well as that, the deal ensures that support for fishermen in Northern Ireland will be exempt from EU state aid rules, which means more than £15 million of flexibility for Northern Ireland's fishermen over the next five years. And, of course, Northern Ireland's services industries are totally outside the scope of the protocol and its state aid measures.

The agreement also respects the protocol provisions, which were endorsed by Parliament, that allow some EU officials to be present at Northern Ireland ports as UK authorities carry out our own procedures. Let me be clear: there will be no Belfast mini-embassy or mission, as some in the EU originally sought, and the EU officials will not have any powers to carry out checks themselves. There will instead be sensible, practical arrangements, with co-operation and reciprocal data sharing, so that both sides can have confidence in these unique arrangements. We also want to leave no doubt about our ongoing commitment to peace and prosperity in Northern Ireland. My right honourable friend the Northern Ireland Secretary will set out in the coming days further measures of financial support to help businesses and communities to prosper and thrive from the end of the year and beyond.

We have been able to deliver a package which now means that the protocol can be implemented in a pragmatic and proportionate way. It takes account of the Belfast/Good Friday agreement in all its dimensions, and it protects the interests of both the EU single market and, more importantly, the territorial and constitutional integrity of the whole United Kingdom. This agreement will be approved officially at a Joint Committee meeting in the coming days. Of course, the agreement we have reached also enables the Government to withdraw Clauses 44, 45 and 47 of the United Kingdom Internal Market Bill and avoids the need for any additional provisions in the Taxation (Post-transition Period) Bill. Having put beyond doubt the primacy of the sovereignty of this place as we leave the EU, we rest safe in the knowledge that such provisions are no longer required.

We know that we now need to get on and give further clarity to business as to the specifics of what this deal means for them and how it will work in practice, and we will do that through the publication of further guidance. That will sit alongside the ongoing intensive work that we will take forward to implement the protocol. Above all, we will always work with the interests of the people and businesses of Northern Ireland in mind, as this agreement and the important flexibilities it will provide reflects. We must all remember that, if the protocol is to work, it must work for the whole community in Northern Ireland. Whether it is to be maintained in the future, as the protocol itself sets out, is for the people of Northern Ireland to decide through the democratic consent mechanism that my right honourable friend the Prime Minister negotiated. On that critical note of the primacy of democracy, I commend this Statement to the House."

6.31 pm

Baroness Hayter of Kentish Town (Lab): Well, yesterday's Statement already seems an age away as we now contemplate a no-deal exit with even bigger threats to our economy and to Northern Ireland's by the introduction of tariffs on our food and consumables, and a big hit to our exports as they face charges and bureaucracy that for some could spell disaster. We know that the border plan still leaves Northern Ireland businesses uneasy, as the temporary measures to ease transition from 1 January only highlight the long-term red tape and costs that will then appear.

Mr Gove's three-month "grace period" for supermarkets from export health certificates—at £200 a piece—on animal products, and his six-month exemption from meat having to be frozen before export, simply indicate what we will face without a deal, when all goods for Northern Ireland would need import declarations. Northern Ireland trade groups worry that, while Mr Gove focuses on tariffs, it is the bureaucracy created that will change the relationship of Northern Ireland businesses and consumers with those in Britain. Even as Ministers keep repeating the PM's December mantra:

> "We're a UK government, why would we put checks on goods going from NI to GB or GB to NI?",

in fact civil servants and business know full well that paperwork and checks are exactly what is coming down the line.

I turn more broadly to the so-called negotiations with the EU, which are sounding more and more like the prelude to a no-deal exit, with the Prime Minister this evening even asking us to prepare for that. We on this side of the House are desperately aware of businesses struggling through the pandemic that do not know whether they will face tariffs in three weeks' time, or even whether their import/export channels will work.

At the start of Brexit we on this side were worried about workers' rights and jobs, but today we seem closer to the concerns of businesses—traditionally upheld by the Conservatives—that simply despair at

the Government's disregard for their futures. Again and again over the United Kingdom Internal Market Bill, Ministers have said that businesses need certainty—but that is the last thing the Government have provided. It is not simply about tariffs and paperwork; it is about data adequacy, so that information flows can continue, and about driving licences and rules. I have to say that I personally am less than happy about the suspension of drivers' maximum hours. I do not fancy driving down the M20 alongside lorry drivers who have been driving well beyond their regulated hours.

Nor is the lack of a deal just about the economy. Our security is also at stake. SIS II, Europol and the European arrest warrant are tools that are essential for our safety. And as for waving through changes to customs rules that the Government admit will put the security of the UK border at risk, does the Minister agree that the new customs safety and security procedures regulations sound like a smuggler's charter, in addition to compromising our border security?

I hope the Minister is not tempted to repeat the nonsense that his colleague in the Commons voiced earlier today, about Labour undermining negotiations by asking these questions. It is the Prime Minister who is undermining negotiations, whether by Part 5 of the United Kingdom Internal Market Bill or by unrealistic demands that only the EU, and not the UK, must compromise. It takes two to tango. The EU knows where the problem is, and it is not in this Parliament.

Today, Mrs Mordaunt urged

"all colleagues, whatever their political … imperative, to put our nation first over the next few days".

Hear, hear to that. But please will she also address that to Mr Johnson, so that he puts our nation first, and agrees a departure deal to safeguard our security, our businesses, our consumers and our environment? His words tonight bring no reassurance, as he triggers the preparations for no deal. That is not a good signal to negotiators; it is not a good signal to business.

It is interesting that, after the referendum, Ministers from this Dispatch Box claimed that it was immigration, and the desire to end free movement, that led so many to vote for Brexit. But today we are told it is all about sovereignty—that that is why people voted for Brexit. Sovereignty is a word the Minister uses quite often—but is it a sovereign nation that jeopardises trade, security and well-being by refusing to work alongside our near neighbours and main market?

Ursula von der Leyen speaks of a partnership agreement. Partnership: I like the sound of that. So I ask the Minister, given that there are 27 sovereign member states willing to put their citizens first by supporting trade and engagement, should not the UK be willing to put our citizens first, protecting their security and economic well-being by constructing a future partnership deal that avoids: the food price rises we are warned of; the tariffs on exports; the no entry to EU countries due to Covid, with which we have now been threatened; new driving licences and insurance documents; expensive or unavailable health insurance; customs posts and traffic delays; and threats to our manufacturers who are dependent on imports? Is that really too much to ask from this Government? Will the Minister, even at this late hour, urge the Prime Minister not simply to go the extra mile that he has promised but to go as far as is needed to get a deal that is in the interests of the whole of this country?

Lord Purvis of Tweed (LD): My Lords, I am grateful to the Government Chief Whip for facilitating a substitution on our Bench, and I am glad that the Minister is keen today. Will the noble Lord allow this House to debate the content of the technical papers as a result of the agreements that have been reached? We know that the Statement in the House of Commons was just one part. The statement from both the Vice-President of the Commission and the Chancellor of the Duchy of Lancaster was very brief, but it alluded to a series of technical papers that will have far-reaching consequences for the operation of Northern Ireland and GB trade, as well as the other areas that are the responsibility of the joint committee. Will we be able to debate them?

During the passage of the Trade Bill, I have said repeatedly that one of the founding principles of my party was fair, free and open trade. We want to see businesses, large and small, across all countries in the UK, prosper. I do not think anybody could fail to have been moved, listening to "The World at One" on the BBC today, when a businessman in Northern Ireland, representing family businesses, laid bare the reality of the new costs that the Government are imposing on businesses doing their work. He said that, for his business, even with a deal with the European Union, he was looking at extra administrative costs of £150,000—or, as he put it, four or five people whom he will not be employing.

The totality of these costs was highlighted by the announcement today of a further £400 million, which is going to offset the cost of bureaucracy and business burdens rather than being invested in people and our economy in Northern Ireland.

The Chancellor of the Duchy of Lancaster said in the Statement that he wanted to see the border operating model for Northern Ireland

"fully operational on 1 January 2021".

We know from the euphemisms about a grace period, or, on the border operating model, a phased introduction, that it will not be fully operational. In fact, it will not even be partially operational. It will not be ready. Ministers in this House and the other place have repeatedly blamed businesses for not being ready, when the Government themselves are not. I hope that the Minister will be able to answer specific questions today from across the House.

There was reference during Commons questions on the Statement to new border facilities for Northern Ireland

"in order to ensure that these limited and proportionate SPS checks"—

checks on live animals—

"can be carried out at the port of Foyle, Warrenpoint, Belfast and Larne".—[*Official Report*, Commons, 9/12/20; col. 851.]

These are in addition to what we have always had at the port of Belfast, which has typically been checks on live animals coming across from Scotland. When will these four new ports be operational? Why is there

[Lord Purvis of Tweed]

the need for this expansion, if the Government's mantra is that there are no additional checks? What extra checks, other than SPS, will be carried out on goods going from GB to Northern Ireland under this agreement?

The director at the port of Larne, Roger Armson, spoke to the Northern Ireland Assembly in October, raising concerns about the lack of clarity on the new system for IT at the border and the goods vehicle movement system. He said that given that 40% of cargos head south, it is vitally important to secure clarification. There is still no clarification, so can the Minister say when they will be able to have it?

In the Statement, the Minister said that the agreement will

"allow some EU officials to be present at Northern Ireland ports as UK authorities carry out our own procedures."

This is the first time that foreign entity staff will be supervising UK staff at our ports. Where will they operate from? This Minister—the noble Lord, Lord True—said on 12 May:

"There is no reason why the Commission should require a permanent presence in Belfast to monitor the implementation of the protocol".—[*Official Report*, 12/5/20; col. 655.]

We now know that there is, so how will it operate for these foreign inspectors?

The Minister could not answer simple questions with regard to goods that are packaged in Northern Ireland going to GB, and vice versa. He said that there is no clarity in the first phase but he was hoping that there would be some information very early in 2021. He said, "This is what I am advised". What can he advise the House now as to when businesses will be clear about the information that they need to put on their goods—goods that are either packaged in Northern Ireland or goods that are going to be moved from GB to Northern Ireland? We need answers.

In its paper on Monday this week, the Chamber of Commerce agreed that it needs answers. That paper made grim reading. Of 35 sets of key questions which they had signposted with a traffic-light system, only 11 were marked green—meaning that they have been given satisfactory answers. There were 19 at amber and five at red. One of the red questions was about what food labelling will be in place. We know that there is a grace period but is it purely, as the Statement said, to allow supermarkets to prepare? To prepare for what? Has the decision been made about whether foodstuffs going from GB to Northern Ireland will have to have EU or UK labelling? A grace period is only that if we know what happens at the end of the three months. Where is the clarity?

It is not just businesses that have not had answers. On 12 November, I asked the noble Lord, Lord True, what labelling would be required for goods. I will quote from *Hansard*:

"My Lords, I will write to the noble Lord on his very specific point about labelling."—[*Official Report*, 12/11/20; col. 1141.]

I have not had a response. I reminded the Minister's office on 30 November and had a courteous reply from his private secretary, saying that the letter had been commissioned and that he would chase it. I still have not received it. It is not only businesses that are not getting answers but parliamentarians.

We knew that there would be no contingency arrangements for Northern Ireland in the event of no deal when the Government made their announcement earlier this year about some of the potential new checks that would be put in place, plus the new infrastructure and new costs on business. As the noble Baroness, Lady Hayter, indicated, we know that there are no contingency arrangements in place for Northern Ireland when the Prime Minister comes to prepare for no deal, so all these questions are valid.

Regarding the rest of the UK and the announcement from the Commission today regarding contingencies, we will potentially have what is often euphemistically referred to as an Australian deal. But even Australia and the EU have an air agreement and a number of agreements that do not require contingencies to be put in place in just a matter of days' time. The Commission said that the United Kingdom would be subject to these arrangements if they are equivalent. I quote the Commission's paper:

"These arrangements would be subject to the United Kingdom conferring equivalent rights to air carriers from the Union, as well as providing strong guarantees on fair competition and on the effective enforcement of these rights and guarantees."

That is the same for air, haulage operators and others.

Will the Government give such equivalent rights, so that if we are to prepare for the worst we can at the very least ensure that there is equivalence for the contingency arrangements that will be in place? That will remove at least one element of confusion on top of other burdens and costs that businesses will have to face in just a few days' time.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, there was a very large number of questions there, but most appeared to be in the "dissatisfied" column. I know the House finds this not particularly pleasant to hear, but the United Kingdom Government have made it clear for a very long time that we would not accept an agreement that did not recognise the decision of the people of United Kingdom twice to vote for a sovereign separation from the European Union which should involve our right to control our laws, our borders and our waters.

I infer from the noble Baroness's remarks that the Labour Party would accept a deal that would not provide us with control of our borders, our laws and our fish because the line she put forward was effectively "agreement at any cost". We are working tirelessly to get a deal. The Prime Minister made that clear. As I said, we have been clear from the outset that we cannot accept a deal at any cost. As has been made clear this week, there are still differences between the two parties. To repeat what I just said, we cannot accept a deal that will compromise control of our money, our laws, our borders and our fish.

I say in response to both the noble Baroness and the noble Lord that we have been preparing for a long time for all contingencies. We have discussed matters with the devolved Administrations, businesses and affected partners. We have issued advice on a border control operating scheme. We have issued advice to various sectors in Northern Ireland. We are engaged in constant discussions and meetings with those who will potentially be affected. We are also preparing for

an Australian-style outcome if necessary. We have invested £705 million in jobs, technology and infrastructure at the border, and provided substantial grants to boost the customs intermediary sector and so on.

The majority of the changes, referring to the impact on businesses, will occur from 1 January 2021 regardless of whether a free trade agreement is made with the EU. Of course, I accept one could always do more to perfect communication, and we are investing an enormous amount of resources to get the case over, to reach businesses and to reach those affected. We are absolutely committed to ensuring businesses have all the information they need to get ready. But I was not sure if the noble Lord was objecting to the idea of phasing the introduction of some arrangements. We believe that that is a sensible and pragmatic approach.

On security, we see no reason why security arrangements should be seriously affected. There is a common interest for all the countries in Europe in relation to security.

On labelling, I may be misremembering, but I believe I wrote to the noble Lord on 30 November with a detailed answer to his question on labelling. If he has not received the letter, I apologise, but I am informed by my office that it was sent.

I was also asked about supermarkets. It is not only supermarkets that we wish to help with the new trader assistance approach; we will reach beyond large operators, but the grace period is offered to supermarkets.

It was implied that EU officials will be issuing directions to United Kingdom staff, but I can assure the House that that is not the case. The House is constantly asking the Government to honour the terms of the protocol, and as the House knows, within the protocol, the EU has the right to ensure and see that matters are being appropriately conducted. But that has never meant, and will never mean, that the EU necessarily has to have an office, embassy or mission building in Belfast. I stand by the comments I and other Ministers have made.

On the announcement today of a new deal for Northern Ireland, the £400 million is on top of other resources announced for assistance with making preparations. So, there is no double counting there; this is new resource.

As far as debates are concerned, both the noble Baroness and the noble Lord will understand that that is a matter for usual channels. There will be another Statement on Monday, I believe, but I hear the noble Lord's comment about a wider debate. However, he will understand that limited time is available.

Looking at the clock, I am not sure whether I am bound by the 20 minute-rule. Last time I went on after 20 minutes, I was told I should not have done. I cannot get used to the rules of the hybrid House. I thought I should answer the noble Baroness first; I in no way meant to belittle the noble Lord on the Liberal Democrat Benches.

Of course, I reject absolutely the general comments about the United Kingdom Government's stance and the accusatory remarks made about the Prime Minister. The Prime Minister has been candid, on the one hand, about our position. In a negotiation, each side needs to understand the other's position. The purported subject of the Statement repeated to the House—the Joint Committee agreement on the Northern Ireland protocol—is a good example of pragmatic co-operation. So, there is evidence that the United Kingdom Government are prepared to seek agreement and negotiate in good faith.

The position, I am afraid to say, does remain, as has been made clear on innumerable occasions—this is not a change or a novelty—that we simply are asking the EU, with the greatest respect, to accept free trade agreement arrangements with us that are similar to those it has agreed with other nations around the world. We do not think that that is an unreasonable request or aspiration. We also ask that they respect and understand the decision of the British people that they wish to have—I make no apology for using the word—sovereign control of their laws, their borders and their waters.

I believe a pragmatic and good outcome is the main burden of this Statement in relation to the agreement on the Northern Ireland protocol. As far as the broader negotiations are concerned, those are continuing, albeit amid the candour on both sides about the difficulties that remain. Let us see how events turn out over the next few days.

The Deputy Speaker (Lord Russell of Liverpool) (CB): We now come to the 30 minutes allocated for Back-Bench questions. There are 18 speakers listed. I appeal to all noble Lords, out of courtesy to one another and to the House, to be extremely brief. I am sure that the Minister will also be succinct.

6.55 pm

The Earl of Kinnoull (Non-Afl) [V]: My Lords, the Statement and its associated Command Paper are very welcome, particularly as they are evidence that both sides in the UK-EU joint committee are now working together in a pragmatic and friendly way. I congratulate all involved. However, we still have no satisfactory structures in place for parliamentary scrutiny, either of the joint committee itself or of new EU law applying to Northern Ireland under the protocol. What steps is the Minister taking to facilitate such scrutiny?

Lord True (Con): My Lords, I am a poor and feeble plant, but by standing here I am seeking to assist scrutiny. I understand the broader thrust of the question from the noble Earl, but he will also understand that arrangements for the scrutiny of government across the board by committees in your Lordships' House is not a matter for the Executive. It is matter for your Lordships' House and it is not for me to declare. As far as my ministerial responsibility is concerned, I am ready to appear before whatever committee, and this House, at any time that is requested.

Lord Robathan (Con): My Lords, many people will have been very disappointed that the noble Baroness, Lady Hayter, had not a word or hint of criticism of intransigence on the EU side—only of those working to the best of their ability for the interests of the British people. For instance, what about Macron's stance on fish? By the way, I voted to leave the EU for sovereignty, not for any other reason. This update is

[Lord Robathan]
welcome. It is not perfect; I am not sure I give it a full three cheers and changes may be required in the future, but at least there was a spirit of compromise on negotiation from both sides. Can my noble friend confirm that the protocol allows for further changes depending on how things work out?

Lord True (Con): That is certainly true. At the end of the day, the maintenance of the protocol will remain a matter for democratic decision by the people of Northern Ireland. I am grateful for my noble friend's opening remarks.

The Deputy Speaker (Lord Russell of Liverpool) (CB): The noble Lord, Lord Bird, has withdrawn, so I call the noble Lord, Lord Clark of Windermere.

Lord Clark of Windermere (Lab) [V]: My Lords, all Members of the House are aware that the Isle of Man lies half way between the United Kingdom and Northern Ireland, yet it has never been a member of the European Union in its own right and is not included in the UK membership of the EU. That relationship is dependent upon protocol 3 of the UK's Act of accession. That protocol also allows the island to be part of the European Union customs area. Will the Minister double check—or indeed treble check—that the interests of the Isle of Man are covered by and included in this agreement?

Lord True (Con): My Lords, I will certainly check, as the noble Lord asks. I am not briefed in detail on the Isle of Man but I will make sure that I write to him and that the letter is made available to others present.

Lord Empey (UUP): My noble friend will be aware of my views on the protocol, which I believe is a dagger pointed at the heart of the union. But I wish to ask him two technical questions. First, the Statement mentions a three-month delay for the implementation of food into supermarkets. What about the majority of goods that travel between Great Britain and Northern Ireland? Are they, the bulk of traffic, getting any help with an implementation period? Secondly, with regard to goods between GB and NI, for normal goods—non-supermarket goods—will there no longer be a requirement to obtain power of attorney, to have a customs-compliant commercial invoice and to make an entry into the TSS system? It is the technicalities and the bureaucracies that are causing business the greatest anxiety.

Lord True (Con): My Lords, on the specific technical points on power of attorney and so on, I will seek very specific responses, and I undertake to write to the noble Lord on that. Obviously, the three-month grace period is to allow authorised traders—such as super-markets, but other organisations will able to partake—and their suppliers to adapt to certification requirements. Alongside that, the Trader Support Service and the movement assistance scheme will provide support across the board.

Baroness Neville-Rolfe (Con): My Lords, I welcome the limited progress outlined in the Statement on arrangements for the transport of goods, food and drink across the Irish Sea and, in some cases, to or from the Irish border. This was always the job of the joint committee: "pragmatic co-operation", in my noble friend's words. However, I would like to know whether some trial shipments by sea and land, and by small and large business—dummy runs, if you like—using the agreed systems, the paperwork, the labelling, the VAT and the tariffs have been attempted across both borders. If so, what were the results?

Lord True (Con): My Lords, so far as individual, specific, in-person dummy runs are concerned, I cannot categorically answer that, but I will find out if I can supply my noble friend with an answer. What I can assure her of is almost daily—literally daily—discussions and consideration at the highest level of the technical and specific impacts of the new regime, or regimes, that come in either on 1 January or in the course of next year. Indeed, the Government have conducted privately a number of specific exercises to test various contingencies.

Lord Berkeley (Lab) [V]: My Lords, today the House of Lords EU Goods Sub-Committee has written to Michael Gove, seeking information on government preparedness which, from the evidence the committee received—and I have the honour to be a member of it—appears to be hopelessly late, ineffective and failing on many fronts. The letter lists multiple concerns: IT, communications, transport, and many others. But can I press the Minister today to answer just one small, but very important, question mentioned in the letter? Will he commit the Government to placing toilets at regular intervals adjacent to the queuing lanes on the M20? Everybody thinks they will be needed—deal or no deal.

Lord True (Con): My Lords, I do not carry ministerial responsibility for public conveniences—

Noble Lords: Yes, you do.

Lord True (Con): I do not carry ministerial responsibility for public conveniences, if I am allowed to complete the sentence. So far as the planning contingencies for what may or may not happen after 31 December are concerned, I assure the noble Lord that all eventualities are taken into consideration.

Lord Wigley (PC) [V]: My Lords, does the Prime Minister now realise that he cannot have his cake and eat it? But I limit myself to the Statement before us, which explicitly asserts that lamb may be sold from Montgomeryshire to Northern Ireland free of any tariff. If that meat is then sold on to the Irish Republic, will it be liable to the 76% tariff for fresh or chilled sheepmeat carcasses applicable in a no-deal scenario? At what point will that charge be levied, and by whom?

Lord True (Con): My Lords, the arrangements we are discussing today relate to the protocol and movements between GB and NI and, indeed, NI and GB. Obviously, a future tariff regime between the United Kingdom and the European Union depends on the outcome of free trade negotiations, which are still continuing.

Baroness Meyer (Con): My Lords, I welcome this agreement, which is a significant breakthrough. However, given that Northern Ireland will continue to follow EU customs rules after 31 December, can my noble friend the Minister confirm that in a case where the ECJ seeks to claim jurisdiction in Northern Ireland, Parliament will if necessary be able to assert sovereignty and authority and overrule the ECJ?

Lord True (Con): My Lords, Parliament voted in the withdrawal treaty Act to include a section asserting UK sovereignty. As for the specifics of any course of justice or jurisdiction, it will have to follow the appropriate course, in line with the protocol.

Lord Singh of Wimbledon (CB) [V]: My Lords, with the prospect of a deal with the EU fast receding, the Prime Minister's visit to India next month has the potential for increased trade with the subcontinent. Can the Minister assure the House that any plans to increase food imports from India will respect the human rights of small farmers already reeling from new laws allowing big business to dictate commodity prices?

Lord True (Con): My Lords, I will not go into the specifics of negotiations with India, although I know the noble Lord has a particular interest and I respect and understand that. The objective of Her Majesty's Government is to extend free trade agreements as widely as we may, because we believe free trade is one of the greatest sources of the uplifting of poverty and the human condition that has ever been devised. I welcome the recent announcement of a further free trade agreement, with Singapore.

Lord Whitty (Lab) [V]: My Lords, the problems for Northern Ireland business are not solely those relating to the ports. For example, on Tuesday we debated an SI amending the REACH arrangements for the use of chemicals. It is clear that businesses both operating in and supplying Northern Ireland will have to engage in a dual process of registration in both the European and British systems. The arrangements announced today do nothing to ameliorate that. What help will the Government give to users of chemicals in Northern Ireland, and indeed in other regimes that require a duality of approach and therefore administrative costs to Northern Irish businesses?

Lord True (Con): My Lords, the movement of chemicals brings particular complexities, as the noble Lord rightly points out, but the Government are committing an enormous amount of resource to the support of Northern Ireland businesses in terms of the movement of goods. That had already been announced. Indeed, I was criticised by the noble Baroness opposite for the scale of support the Government are giving to Northern Ireland and to business generally in confronting the new regime.

Lord Morrow (DUP) [V]: Under Article 8 of the Northern Ireland protocol, Northern Ireland will remain part of the EU VAT regime as well as being subject to the UK VAT rules. In practice, that will increase the amount of debt that businesses in Northern Ireland have to collect, which will in some cases lead to higher payments, with a knock-on effect for the consumer. For those in the second-hand car sales trade, the threat is particularly grave. Cars brought in from GB will now have VAT imposed on the full value rather than on the profits made on the sale. Can the Minister tell us why this disruption to the UK internal market was not prioritised in negotiations and why there is no mention of relief for affected businesses in his Statement? Can he outline what unilateral support the Government will provide to small and medium-sized businesses caught by these damaging rules?

Lord True (Con): My Lords, I repeat the very substantial announcements of financial support for Northern Ireland and Northern Ireland business that I referred to in earlier responses. On VAT, as part of implementing the VAT elements of the Northern Ireland protocol, the UK and the EU Commission have needed to agree how EU VAT rules will apply in the unique circumstances created in Northern Ireland, where traders will continue to be part of both the UK and the EU system. That agreement has been reached and is laid out in the Statement. Further guidance on these topics is being published for traders.

We have heard a concern raised about the application of EU second-hand margin schemes. Obviously, these changes will not affect stock bought in advance of 1 January, even if it is sold later, but we acknowledge that this is not a long-lasting solution to these issues. We aim to minimise disruption for Northern Ireland traders to the extent possible, and we continue to explore options.

The Deputy Speaker (Lord Russell of Liverpool) (CB): The noble Lord, Lord Balfe, has withdrawn, so I call the noble Lord, Lord Rooker.

Lord Rooker (Lab) [V]: I am grateful to the Minister. To be honest, listening to him, I can hear that he is in an incredibly difficult situation with things moving outside the Chamber. I will confine myself to a single point. Northern Ireland will be treated differently—as it always has been—on the customs union and the single market, while it is out of the common agricultural policy, as the Statement says. My question is simple: what is the position of the rapid alert system for food and feed? Some eight to 10 notifications are issued per day around the European Union. How does Northern Ireland figure in RASFF? Is it out or will it be part of RASFF after 31 December, irrespective of whether there is a deal? Food production per head of population in Northern Ireland is far more significant than in England or, indeed, in Scotland, so it is an absolutely crucial issue for Northern Ireland industries. Will they be part of RASFF or not?

Lord True (Con): My Lords, regrettably, I cannot give a specific answer to that question. I am certain that there is a specific answer and the weakness is in me. I assure the noble Lord that he will get an answer to that question.

Lord Moylan (Con): My Lords, I am no longer trepidatious about the prospect of leaving the European Union with no deal. If that is the course recommended by the Prime Minister, I will heartily support him.

[Lord Moylan]

On this Statement, it is clear that Northern Ireland will remain in some ways subject to the European Union acquis and thus to the European Court of Justice. Will my noble friend agree to set out—no doubt in writing afterwards—a comprehensive and systematic statement of those parts of Northern Irish life that will remain subject to the European Union acquis so that we all have a firm grasp on it?

Lord True (Con): My Lords, I will undertake to do that, yes.

Lord Liddle (Lab): My Lords, I regard this agreement in the joint committee as good progress on a difficult issue and I notice that, in his Statement yesterday, Michael Gove in fact paid tribute to the Vice-President of the European Commission on the pragmatic approach that the Commission had adopted. When it comes to the wider context of our relationship, does the Minister not agree that the Government are making things far worse by insisting on claiming that the European Union is trying to deny us of the sovereignty we have won as a result of Brexit? It is doing nothing of the sort. It is saying that you can have your sovereignty, but if you want to divert from the rules that we presently have, this represents unfair competition. If it represents unfair competition, you have to recognise that the special and privileged access to the single market that this trade deal will give you can be constrained. Why do the Government not simply recognise that fact, rather than harping on about sovereignty? We will have as much sovereignty to diverge as we want, but we cannot have our cake and eat it.

Lord True (Con): My Lords, the Government, as I said at the outset, have asked for nothing more than an agreement similar to the Canada free trade agreement and other agreements that the EU has struck with other nations. It is for the noble Lord to decide, if the EU wishes to refuse that request, whether that is reasonable or unreasonable.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I urge my noble friend and the Prime Minister to push the boat out, so to speak, to get an agreement. If the European Court of Justice is not to be the dispute resolution mechanism for the Northern Ireland protocol, what resolution mechanism does he have in mind?

Lord True (Con): My Lords, on the details of the mechanism proposed under the protocol, as well as the protocol statement that has been made, my noble friend will find that a number of draft decisions are also being laid before Parliament setting out in greater detail the arrangements agreed, which include provision for the settlement of disputes.

Baroness Fox of Buckley (Non-Afl): My Lords, we are assured in the Statement that the primacy of sovereignty is now beyond doubt. This sounds very positive to me, but I am not convinced that there are not worrying cracks in the Statement that sovereignty can seep through. I echo noble Lords who asked for more detail on EU intervention, but my main point is that, in debates here and in the other place, it has been suggested that that this agreement was pushed through in order to make a deal possible from the EU's point of view. Can the noble Lord reassure us that he understands that those "red wall" voters who loaned their votes to the Government did not do so for a trade deal? 2016 was not about a trade deal. If it happens, fine, but it is about sovereignty, and sovereignty is not in trade or in technicalities, as discussed here. Does the noble Lord understand it, as some of us do, to be about democratic control at home and not just about trade? Maybe it is time to walk away in order to retain that democratic, sovereign control.

Lord True (Con): My Lords, I find myself between a rock and a hard place, because many of those who have asked questions today have been critical of the Prime Minister for stating what he has said about sovereignty and the need to protect our right to control our borders, to make our own laws and to control our fish. That is a statement that he and the Government have repeatedly made: we ask the EU to recognise and negotiate with us in good faith as an independent sovereign nation, which is what we wish to be. On the other hand, the protocol recognises that we are seeking to be pragmatic, and there are many benefits that your Lordships have not brought out: export declarations have been put in the bin; we have protected supermarkets; and businesses will be able to use VAT returns as they do today, without any burdensome process for splitting some of the issues. So there are pragmatic positives. However, I must tell the noble Baroness that the Prime Minister should be taken at his word on what he is saying.

Baroness Gardner of Parkes (Con) [V]: My Lords, I welcome the Statement and, in particular, the straightforward and clear way in which it has been set out. I am conscious that time is limited, so will focus on just the transition period of up to 12 months being granted to industries to ensure the continuity of supply of medicines and veterinary medication. These are vital supplies and I am pleased that they have been addressed at the outset. However, a period of up to 12 months might not be enough. I suggest that a minimum of, ideally, 12 months, with a review after six months, would be better, and I ask for the Minister's view on this.

Lord True (Con): My Lords, I will take advice on my noble friend's suggestions of a six-month review. As my noble friend said, we have sought to secure agreement to a pragmatic approach not only on medicines but on other things in implementing the protocol, but it is particularly important in relation to medicines regulation. It will give industry the time and flexibility that it needs and ensure that medicines, including veterinary medicines, can continue to flow to Northern Ireland. Work is ongoing across government to prepare for the end of the transition period to which my noble friend referred, and we will publish further guidance for industry on moving medicines to Northern Ireland in the forthcoming period.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, first, perhaps I may press the Minister further on where these European officials will be accommodated

to do their work at the ports. Secondly, could the trader assistance scheme be extended to independent retailers, many of whom are small supermarket owners? Can further assistance be provided to retailers in respect of the export declarations? Some six months down the road, that could cause major problems for them, to the point where they might be out of business.

Lord True (Con): My Lords, I can certainly assure the noble Baroness on the question of smaller suppliers. I was trying to look it up quickly, but one has so little time; I think it is paragraph 33 of the protocol statement that refers to the fact that the Government will certainly not discriminate against smaller suppliers. So far as the office is concerned, I responded to that in my first answer. We have always been clear that it would not be acceptable for the EU to establish some kind of mini embassy in Northern Ireland, which is what some in the EU had suggested. The protocol provides for EU officials to be permitted to fulfil the roles allowed under the protocol. Of course, we will not bar the EU from renting office space or accommodation for its staff if it wishes—but there will be no EU flags flying above a brass-plated embassy entrance in Belfast.

United Kingdom Internal Market Bill

Returned from the Commons

The Bill was returned from the Commons with reasons and amendments. It was ordered that the Commons reasons and amendments be printed.

House adjourned at 7.23 pm.

Grand Committee

Thursday 10 December 2020

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.30 pm

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

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

Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2020

Considered in Grand Committee

2.31 pm

Moved by ***Lord Bethell***

That the Grand Committee do consider the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2020.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con) [V]: My Lords, these regulations will provide an agile and robust regulatory environment for Covid-19 test providers. This is essential to ensuring that everyone has access to simple, effective and high-quality testing services that they can count on.

The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2020 will remove all CQC regulatory requirements for Covid-19 test services. Existing exemptions leave inconsistencies, resulting in some Covid-19 testing providers being within the scope of CQC regulation while other providers are exempt. We want to tidy this up. We will simplify the regulatory system for Covid-19 test providers, making it easier to understand for both suppliers and consumers.

The second SI is the Health Protection (Coronavirus, Testing Requirements and Standards) (England) Regulations 2020, which will impose requirements on private test providers to become accredited by the United Kingdom Accreditation Service and to attain specific stages of a process towards this accreditation within a given timeframe, starting on 1 January 2021.

I will say a word on context. Last week, the Medicines and Healthcare products Regulatory Agency recommended authorising Pfizer/BioNTech's Covid-19 vaccine. While we wait for the vaccine deployment, testing and contact tracing remains one of the most effective ways of controlling the virus. During this important period, the more rapidly we can identify people at risk of infection, the quicker we can get life back to normal. In the last nine months we have built the largest diagnostic network in British history, which is helping us to tackle the spread of the disease and create the long-term capability to ensure that we are prepared to tackle future pandemics. However, we will only defeat the virus if the public and private sectors work together. The private sector has a critical role to play and has shown this time and again throughout this pandemic. I thank those in the diagnostics, logistics, data and associated industries for their contribution to our pandemic response.

In addition, it is not right to look to the NHS to provide every test for every circumstance. Private sector testing can support NHS Test and Trace by offering tests to those who have a reasonable need for testing but are outside the conventional clinical or epidemiological use cases. It can also help to drive innovation. The Government are therefore supporting the development of a private testing market. We want to ensure that everyone has access to simple, effective, high-quality and affordable testing services that they can count on, whether from the Government or a private provider.

As the demand for testing continues to grow and the number of providers increases, we need to reassure the public that quality control is as important as ever. That is why we want to support private providers to ensure that they can enter the market in a timely manner and meet the demand now without compromising the quality of their testing service.

There is currently a requirement in England to register with the CQC if you are involved in the removal of bodily cells, tissues or fluid samples or the analysing and reporting of these samples for Covid-19 testing. This requirement is subject to a number of exemptions, depending on the type of Covid-19 test sampling and analysis and on the entity undertaking the sample collection. This has resulted in inconsistent requirements for test providers, which have been a source of confusion. Test providers have emphasised the complexities surrounding entering the Covid-19 testing market and we have listened to them.

The first statutory instrument that I have laid before your Lordships will remove the requirement for Covid-19 testing providers to register with the CQC by exempting Covid-19 testing as a regulated activity under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. As the CQC is an English regulatory body, this does not apply in the other nations of the UK. These requirements will be removed, preventing

confusion over the scope of regulations from causing restrictions in total testing capacity. It is imperative that a quality service is provided and testing capacity is not restricted; the change from CQC to UKAS will create an agile and robust regulatory environment.

The United Kingdom Accreditation Service, known as UKAS, is the sole national accreditation body in the UK, independent of, but appointed by, the Government. Accreditation by UKAS is the recognised gold standard for organisations offering test services. Since the beginning of the pandemic, we have been working with UKAS to ensure that Covid-19 test providers can access advice on quality assurance and become accredited. It has taken time to ensure that we get this right. Recognising this, and the urgent need for high-quality private testing, on 27 November my department and UKAS launched an adapted three-stage UKAS accreditation process for private test providers, to ensure that new and innovative providers can be accredited faster, without compromising on rigorous safety standards.

The second instrument that I have laid before your Lordships will require all providers offering test services on the English market to complete stage 1 of the UKAS accreditation scheme and attain UKAS applicant status from 31 December. After 31 December, new entrants to the market will be required to achieve UKAS applicant status before offering test services on the English market. The instrument also requires providers to achieve stage 2 UKAS appraisal and stage 3 UKAS accreditation statuses. Providers will need to complete stage 2 UKAS appraisal by 31 January 2021 or, if entering the testing market after 31 December, by whichever is later of 31 January 2021 or four weeks after gaining applicant status. Providers will then need to complete stage 3 UKAS accreditation by 30 June 2021 or, if entering the testing market after 31 December, by whichever is later of 30 June 2021 or four months after gaining appraisal status. Providers will be prevented from offering test services if they fail to meet these requirements. We have engaged closely with providers to ensure that these timelines are achievable.

Stage 1 UKAS applicant status requires applicants to self-declare that they meet 10 minimum standards, set by clinicians. Having gained applicant status, stage 2 UKAS appraisal requires test providers to demonstrate that they are progressing towards accreditation. The last stage, stage 3 UKAS accredited status, requires applicants to achieve full accreditation. As a result of the legislation that I have laid before your Lordships, test providers that provide tests commercially will be required to undergo this staged accreditation process. Employers that provide test services only to their own staff and organisations that supply tests at no cost will not be required to gain UKAS accreditation, although I would advise that they do so to ensure that their test services meet the highest possible standards. From 15 December, international arrivals will be able to opt in to "test to release" and all test services used for this purpose will be required to be working towards full accreditation.

Before I set out my final justification for these SIs, I must thank the JCSI, which scrutinised them so quickly. I will explain how the tests for the presence of antibodies are covered by these regulations. Current forms of tests for antibodies are not covered by existing CQC legislation and will not be covered by the UKAS legislation. As such, these regulations do not leave any regulatory gap for testing for antibodies that did not already exist. However, providers of tests for the presence of antibodies to Covid-19 can choose to apply for accreditation if they wish to do so.

Fundamentally, the new UKAS scheme will simplify the process of looking for a commercial test. Consumers will be able to identify providers capable of delivering a quality end-to-end test service, giving individuals and businesses the assurance they need. We strongly advise that consumers and organisations procure test services only from the gold standard providers which are on their journey to UKAS accreditation. They will be clearly listed on GOV.UK.

The legislation that I have introduced will simplify the testing landscape for test providers and regulate the market consistently, protecting consumers and helping test providers. I am enormously supportive of employers who have already chosen to begin testing their staff, but it must be done properly, using the right tests for the right purposes. These regulations will help employers and individuals to identify the right test services for their purposes and will help test providers to enter the market.

Finally, I apologise for not being with your Lordships in the Grand Committee this afternoon. I have been asked to isolate because a member of my household has tested positive. I am extremely grateful for noble Lords' forbearance in this matter. I beg to move.

2.42 pm

Lord Hunt of Kings Heath (Lab) [V]: My Lords, I have every sympathy with the Minister being in isolation and thank him for introducing these SIs. Clearly, Covid-19 testing is a critical part of the response to the pandemic, so these regulations are important in ensuring that there is a robust process in place to ensure transparency, effective monitoring and appropriate accountability.

In proposing the new regulatory regime, the Government have argued that it is necessary to remove barriers to entry into the market and that, by removing the CQC's responsibility and replacing it with an accreditation process through the UKAS, they will achieve the agility in the market that is required, alongside rigorous safety standards.

I say at once that I am a long-standing admirer of the UKAS, but it is reasonable to ask whether it has the expertise to undertake this important task. Under the CQC, providers of testing services were required to meet the fundamental standards of quality and safety set out in the 2014 regulations. The CQC monitors the quality, safety and effectiveness of care and can take action when it identifies that people using services are at risk of harm. How much of this is UKAS going to be able to do? Does it have the expertise and capacity to do it? What happens if there is a problem? Who is able to intervene and stop the service?

I also ask the Minister about timing, and the three stages he referred to. Clearly, one of the concerns is that the current process takes too long. I note from the UKAS website, which I was referred to by the Library,

that it indicates a normal lead-in time of approximately three months to arrange the first assessment visit. Will that apply in this case?

Finally, could the NHS be contracting with the private organisations covered by the regulations? The Minister will be aware of the NAO report a couple of weeks ago on the £8 billion of contracts awarded by the Government using emergency procurement regulations. It found specific examples where there was insufficient documentation on key decisions and actual conflict of interests had arisen, which diminished public transparency. If the public sector could procure those private services, can we be assured that the contractual process will be rigorous?

2.45 pm

Baroness Altmann (Con): My Lords, I thank my noble friend for his clear explanation of the two SIs. Like the noble Lord, Lord Hunt, I completely understand that there is urgency in trying to ensure that we have adequate but safe testing capacity. I want to ask my noble friend a few questions in the time available.

First, I note that the instrument applies only to England. What is the position on testing in Scotland, Wales and Northern Ireland? Secondly, the Explanatory Memorandum says that it could take up to 10 weeks to register with the CQC if large numbers try to register at the same time. What timeframe does it take at the moment? Might the new system speed things up, and by how much?

The United Kingdom Accreditation Service end-to-end testing regime for Covid-19 will require extra resourcing, staffing and capacity, I assume. I wonder what budget has been set aside for that. We are told that the cost will be lower for the UKAS. Do we have an idea of how much might be saved by this alternative system? I believe that guidance will be issued for prospective providers. Could my noble friend give us an idea of when that guidance might come through?

I confess that I have some concerns about the potential quality control in the new system. Coming from the pensions world and having seen so many scams, I fear that we may be opening ourselves up for an opportunity for fraudsters to make a lot of money on these testing regimes. I note that much of the system is self-assessed, which does not fill me with enormous confidence that there will be the necessary medical director, clinical scientist or systems. How will it be monitored and enforced?

The 2014 regulations have a statutory review clause, but today's regulations do not. Why is that? Might it be wise for them to do so, given that this is potentially such a large issue?

2.48 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a pleasure to associate myself with the comments just made by the noble Baroness about the risks of deregulation and self-regulation. We have seen a great deal of concerning and tragic events flowing from that in the building industry. However, my first question, of which I have given prior notice, addresses what follows from testing: self-isolation. The Minister himself is self-isolating today, and I wish him and his family all the best. It is very difficult for many people to do, for financial reasons, because of care responsibilities, or for other reasons. In recognition of that fact, the Government have brought in a £500 payment for people ordered to self-isolate, with the money paid through local authorities. I credit Martin Lewis's MoneySavingExpert website for what I understand is its original research, published yesterday, in doing spot checks and identifying at least five local authorities where the allocation of money has run out. It is reported that therefore people are being told they cannot get a payment. Can the Minister confirm that? If so, do the Government plan to fix this as a matter of urgency?

On my second point, I appreciate the fact that the Minister took time to explain in his introduction how he saw the idea of a market operating in Covid-19 testing. I have problems with the whole idea of a market in healthcare, but at least it was outlined clearly. In that outline, he said that everyone should have access to affordable tests. The explosion in the use of food banks started before Covid-19 but has certainly increased. People are unable to afford to buy even food. It is clear that lots of people would not be able to afford the price of a Covid test that they might have very good reason to want. Will the Minister consider perhaps approaching the suppliers of these tests and seeing if they could supply some to each food bank in the land, so that they would be genuinely available to everyone who might have good cause to need them?

Secondly on the issue of markets, the purpose of trading in a market is generally to make a profit on the good or service provided. Given the clear high demand and need for Covid tests, how are the Government ensuring that windfall profits are not made? Indeed, I ask the Minister directly: what percentage profit does he consider it would be reasonable to make on a Covid test?

Finally, given that this statutory instrument is essentially a deregulatory one, how are the Government ensuring that the use and promotion of lateral flow testing, which has been reported in the real world to have up to a 50% false negative rate, is used appropriately? Clearly it can be useful at population level to identify asymptomatic infections, but does the Minister agree that it would be deeply dangerous if it was used to give people an all-clear to mix and mingle, with or without precautions?

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): The noble Lord, Lord Randall, has withdrawn, so I call the noble Lord, Lord Bourne of Aberystwyth.

2.51 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, it is a great pleasure to follow the noble Baroness, Lady Bennett, who is always incisive. I thank my noble friend the Minister for setting out the measures so clearly and I wish him and his family all the best in the difficult situation he finds himself in. His workload is massive and this added pressure is extraordinary.

There is a clear need for testing for Covid-19, as my noble friend has set out, and that will continue for some time, notwithstanding the very good news about vaccinations. I support the measures. It is important that there is an appropriate regime for accrediting

those who are carrying out testing on a commercial basis, and I recognise that the existing Care Quality Commission system had gaps in it. But the regime that is applicable under the commission meant that some test providers were within the ambit of the commission and others were not, so that was difficult to navigate. The new system seems more streamlined and straightforward. It is to be provided by a body that we know is effective, the UK Accreditation Service. It will reduce barriers but will ensure that testing is of high quality. We should all welcome that.

Notwithstanding that, I have some questions which may tie in with some that have already been asked. The first was raised by the noble Lord, Lord Hunt: does the UKAS have the resources, expertise and capacity to handle this? I seek some reassurance from the Minister in that regard. My second point relates to liability. As is referred to in the Explanatory Memorandum, there is to be liability for failing to comply with the obligations in the instrument, and I understand that. I am not sure whether this will apply to companies or just to individuals. If it applies to companies, will it also apply to company directors? What if there are repeated breaches? Is there a scale of fines that are to apply? I believe that a fine is applicable on summary conviction. Is that a repeated fine and does it escalate? I would be grateful for some guidance from my noble friend on the matter.

Thirdly, I refer to a point made by my noble friend Lady Altmann about the cost of applications. I am not clear on how costly it was under the CQC system for applicants, and how costly it is going to be under the new system. I think that it will be cheaper, but perhaps my noble friend the Minister could give guidance on what those costs will be. With those considerations, I am otherwise supportive of what seems a very sensible move.

2.54 pm

Baroness Wheatcroft (Non-Afl) [V]: My Lords, I thank the noble Lord, Lord Bourne, who always makes very perceptive comments and asks piercing questions, and I thank the Minister for introducing these statutory instruments. I echo the feeling that he works very hard and now has an extra burden; I hope that his family will recover soon.

I understand why there is a need for private sector testing—the NHS simply cannot cope—but I have concerns about the risk that these instruments could enable widespread private sector testing. Too often during the course of this pandemic, we have seen the private sector as the first port of call, with massive contracts going, for example, to Serco and Deloitte. Deloitte, it should be remembered, was running the testing centre at Chessington World of Adventures. Perhaps it was in the spirit of adventure that it approached the task, but it came in for criticism after losing the test results of NHS staff.

I share concerns that the private sector will see this as a money-making opportunity and cut corners. Like the noble Lord, Lord Hunt, I wonder whether the UKAS has the scope to cope with policing the new burdens being placed on it. I echo the fears of the noble Baroness, Lady Altmann, that there will be scope for fraudsters to enter this market.

There was some consultation before these proposals were made, and we are told that the feedback was "largely" in favour. Can the Minister tell us the concerns of those who were not in favour and how they are being addressed? I think, for instance, that the BMA has grave concerns about this. While we are told that the list of gold-standard providers will be available on the government website, I wonder how the Government propose to make all those who want tests aware of this. Certainly, on my very brief attempt, I failed to find the information on the website.

Can the Minister address the issue of costs? Will there be an upper limit or will providers just be able to prey on those who are desperate for a test for various reasons?

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): The noble Baroness, Lady McIntosh, has withdrawn, so I call the next speaker, the noble Baroness, Lady Uddin.

2.57 pm

Baroness Uddin (Non-Afl): My Lords, I express my good wishes to the Minister and hope his family gets well very soon. I thank him for the precise manner in which he laid out the two SIs for our consideration.

I share the concerns expressed by the noble Baronesses, Lady Bennett and Lady Altmann, and, like others, I do not share the Minister's confidence that adequate safeguards exist to effectively monitor private companies —some of them at least—given the fiasco that was impactfully detailed by the noble Baroness, Lady Wheatcroft.

I have a couple of general points to make. On social care for children and adults living with disabilities and autism, it is being widely reported anecdotally and in the media that families and carers are suffering an intolerable burden without adequate support from organisations and local authorities which, because of serious budget shortfalls, are failing in their statutory obligations and to safeguard their duty to protect the most vulnerable who may be experiencing abuse and neglect. Noble Lords will be equally concerned to learn that organisations such as Barnardo's, the NSPCC and Include Me TOO, which provide specific services for ethnic-minority children, are overwhelmed with demands for services, as many families have depleted resilience to cope and to navigate the new maze of inconsistent and inadequate access to their rightful services.

The Minister speaks with confidence about the critical importance of effective testing services being available to those who require them. My inquiries in my local area, particularly among Bangladeshi communities, continue to alarm me. Many of them remain confused about at what point to trigger testing and what options might be available to them, therefore overwhelming GPs and local hospitals. I have spoken about this in the House on a number of occasions, and to the Minister personally, because there is simply not enough information being relayed to the communities in a bilingual format. I have also spoken to the Minister about re-examining the messaging and what else might need to be done to ensure that there are proper, consistent and effective messages going out about what needs to happen and where the services can be accessed.

Finally, I hope the Minister's department is collecting adequate data on the kinds of communities—particularly their ethnicities and age ranges—where there are serious gaps in both testing and services. It is high time that we have effective equality impact assessment of all these different SIs as well as the provisions that the Government are providing.

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): My Lords, the noble Lord, Lord Wei, has withdrawn, so I now call the noble Baroness, Lady Jolly.

3.01 pm

Baroness Jolly (LD) [V]: My Lords, I welcome the Government's move to introduce this legislation, which simplifies and standardises the regulation of private sector testing for Covid-19. The Minister's introduction was most helpful and I hope that he manages to avoid the virus. For the asymptomatic who require a test and can afford it, making tests accessible and of a high standard is extremely important.

We have two pieces of legislation before us today. I turn first to the health protection regulations. This instrument is to ensure that all private providers offering Covid-19 testing services on a commercial basis in England provide services that are of a sufficiently high standard. It is designed to simplify the complex regulatory environment for Covid-19 testing. Under the proposal, the United Kingdom Accreditation Service would provide a national accreditation service on the wider aspects of testing, including the processing, analysing and reporting of tests. The SI imposes an obligation on providers to make an application to a three-stage scheme to ensure consistency of standards; to offer assurance to the public about the quality of private tests through UKAS; and to ensure that the testing organisation would get accreditation from UKAS.

The second SI removes all coronavirus testing from the CQC regulatory environment, as I outlined above. But let us be clear: when anyone has Covid-19 symptoms, or has been asked to take a test by the local council, there are no problems. They can go the testing station or apply for the testing kit and there will be no cost. The free testing service is not for proof of freedom from Covid for travel or other purposes, such as being sure that you are safe to mix with friends and family at Christmas.

These tests have to be purchased privately and I wonder what their margin is. According to Which? last week, the going rate for a private test from a high street pharmacy is about £120. If a negative test is a prerequisite for a flight or something you feel you should do to make a family Christmas safe, the private sector is your only option, but for many, of course, that is not financially possible and so risks may be taken. Certainly, when our children were small, there was no way we could have afforded the equivalent of nearly £500; likewise if you had hoped to get away over the Christmas holidays for some sun. I note that the CMO has said that he is anticipating a surge in cases after Christmas. Testing might be nice to have, but masks will be essential.

It looks as though one of the beneficiaries of these SIs could be pharmacies. I have two points that I would like clarification on from the Minister. First, the Health Secretary has noted that 25% of individuals taking NHS tests were not eligible. This legislation seeks to enable private testing to complement government testing and reduce pressure on test and trace. Could the Minister please provide more detail on this? Specifically, how does increasing the accessibility of private sector testing allow the Government to shift to a wider testing strategy and, crucially, the testing of asymptomatic individuals?

Secondly, someone who cannot afford a private test from a high street pharmacy and cannot access NHS testing will be left in isolation, often without appropriate financial support. In general, we will always be limited by capacity to some extent, but it is vital that we move away from the current model of testing only those with symptoms. Mass testing in Liverpool showed that testing those without symptoms can help us to interrupt the flow of transmission. I would like reassurance from the Minister that encouraging private sector testing will not create or exacerbate inequalities.

A well-off asymptomatic individual may be able to end a period of isolation and return to work or travel by paying for a private test. As with all areas involving communication with the public, we have to be aware that an Anglo-Saxon approach is probably not ideal. This is a contributing factor to the low isolation compliance—a huge challenge in controlling the virus. What is the wider strategy to ensure that the NHS and Lighthouse Labs work in harmony so that those who most need tests can access them free of charge?

Of course, I appreciate that working with the private sector is vital in this pandemic and making the pathway to test provision simpler may increase competition and reduce prices. This would: allow providers to enter the market more quickly and at lower cost; provide more comprehensive oversight of the entire market; and ensure quality of testing standards. In addition,

"novel, non-clinical testing technologies and methods"

would not need to be individually exempted from regulation.

I will finish where I started: for those who are asymptomatic who require a test and can afford it, making tests accessible and of a high standard is extremely important. However, we must be wary of exacerbating inequalities through access to testing. How do the Government intend to prevent this? I look forward to the Minister's comments.

3.07 pm

Baroness Thornton (Lab): My Lords, it is quite clear that the smaller first statutory instrument is a tidying-up regulation and I thank the Minister for introducing it. The other regulation is, as the Minister put it, about developing a private market for testing. The questions that have been addressed to him in this short debate will have told him that there are some concerns about how that works.

My first question is: why is the CQC not the obvious body to do this? What has led to it being the UKAS? The time it takes to be accredited does not seem that different.

That leads to my next question, which was raised by my noble friend Lord Hunt: what additional resources and staffing has the UKAS been given to carry out

this new responsibility? I looked at its website. Obviously, it is a creditable and important body. I am not undermining it at all, but I am questioning it taking on this new responsibility, which involves more expertise and more funding. Because it is a public health issue we are talking about here—the spread of Covid—what are its responsibilities when somebody gets a negative result? What happens when someone is infected with Covid? I would like to know what responsibility is being placed on the UKAS for it to place on the private sector deliverers of this service when they test someone who tests positive for Covid? It seems absolutely vital that that person is placed in the test and trace system. Can the Minister explain to the Committee what the "trace" bit of this is?

The noble Baronesses, Lady Wheatcroft and Lady Altmann, raised the potential for fraud and testing scams. How will the Government make the public aware of the need for test providers to be properly accredited? Also, how will they ensure, as part of the monitoring and regulation, that the certificates that are issued cannot be falsified or sold on, and what are their powers to intervene if they suspect or it is reported that that is happening? It is inevitable that some investigative journalist or programme will indeed try to do that in order to test the system. If it is found wanting, it will be a very serious undermining of what should be safe private testing.

There are a number of commercial providers offering Covid-19 "fit to fly" tests in the UK. As other noble Lords have mentioned, Which? found that the costs varied considerably, from £60 at London's Gatwick Airport drive-through test—the cheapest test—up to £214 at a clinic in London. Of course, for a family of four going on holiday, that is a significant amount of money. Is there an intention to cap the price of these tests to make sure that individuals and families are not priced out? I think it is important for the Minister to explain the link and relationship between public sector procurement of these tests and the private services. We now have a long list of procurement problems—to put it mildly—in the testing and tracing regime and possibly billions of pounds of public money have been wasted; we will find out. We do not want to add to that with this new regulatory framework.

3.12 pm

Lord Bethell (Con) [V]: I thank noble Lords enormously for an incredibly thoughtful discussion and I will seek to answer as many of their piercing and thoughtful questions as I can. If I miss any I will be pleased to write to noble Lords to clear up any loose ends. I will forgo the normal warm words at the beginning of such a speech and move directly to addressing the questions raised by noble Lords.

It is absolutely vital, as we open up our economy, that NHS supplies are saved for the situations where they are most needed. That is the principle behind what we are doing here today. To be clear: we are continuing to massively upgrade our commitment to testing. The PCR testing capacity for clinical and symptomatic testing is now reaching towards 800,000 a day—a colossal number—and the turnaround times have come down dramatically. In my household's case, the test was taken at lunchtime yesterday and the result came at 7 am today—a phenomenal logistical achievement. We are also committed to the kind of community testing that the noble Baroness referred to, with the testing of asymptomatic individuals using technology such as the lateral flow devices that noble Lords will be aware of. This is exemplified by, but not limited to, the kind of testing in universities and schools that we have been piloting this autumn and will be rolling out in a very big way over Christmas.

As I have said before, we are investing massively in NHS testing, free at the point of use and available free of charge to all those who meet the use cases defined by the CMO. To ensure that this is possible, we need to enable the provision of new and innovative testing programmes that are as reliable and effective as possible. However, the NHS cannot possibly have pressure put on it to provide every test that every person in every part of this country wants at every time of the day. That has never been the case in this country and cannot be the case in the future. If tests are needed that are outside the use case or if someone is seeking to enable activities that fall outside the responsibility of our public health regime, it is right that those tests are sought from outside the NHS. It is therefore right that we seek to regulate the provision of those tests by the private sector.

The legislation that I have set out will ensure this, providing public confidence in testing and supporting private providers to enter the market. As I have set out, we need to create an agile regulatory environment for test providers, and we can do this by removing all CQC regulatory requirements for test providers, replacing them with the gold standard UKAS accreditation for commercial test providers. It is not our intention to cap the price, but it is our expectation that, given the billions of Covid tests now being manufactured around the world, the price will fall dramatically, and it is our intention to ensure that the quality meets clinical standards.

These measures will simplify the complex regulatory system for Covid-19 test providers; simplify the process around looking for a commercial test; and give individuals and employers essential assurances over the tests they procure. In response to the noble Lord, Lord Hunt, and my noble friend Lord Bourne, accreditation by the UKAS is the recognised gold standard for organisations that offer test services. My officials have worked really closely with colleagues at the UKAS to ensure that the accreditation scheme for Covid-19 test providers is as agile as necessary to deal with this growing market. The adapted three-stage approach is a direct result of this, ensuring that new and innovative providers can be accredited in a timely fashion, while preserving the UKAS gold standard. My officials will continue to work with the UKAS to ensure that this process is as seamless as possible, that test providers are given the support that they require to move through the scheme, and that correct enforcement procedures are in place.

Regarding contracting private industry to supply testing services, I hope that I will not shock either the noble Lord, Lord Hunt, or the noble Baroness, Lady Bennett, if I tell them that we are already engaged with the private sector in the purchasing of healthcare services for the NHS in the UK—not least in the provision of primary healthcare, which is conducted by the private sector in the form of GP practices, and through social

care. That is also true in testing services. Time and again, throughout this pandemic, the private sector has shown that it has a critical role to play. While I note the comments of my noble friend Lady Wheatcroft, my experience of private-industry contractors has been largely positive; where there have been problems, we have to look at the whole partnership of government, universities, NHS and private industry for responsibility, not seek to scapegoat any particular party in this national collaboration. It is vital, as we look to open up our economy, that NHS Test and Trace supplies are focused where they are needed most. To ensure that this is possible, while utilising new testing innovations, the Government are supporting the development of the private testing market. To do this, we are bringing forward the regulations that I have laid before noble Lords today.

In response to the noble Lord, Lord Hunt, and to my noble friend Lady Altmann, I make it clear that the existing lengthy and costly on-boarding process is one reason for introducing this more agile system. The existing system is suited for major complex laboratories, many of which have been around for many years, and new entrants to the market are rare. We hope to have a more agile regime that will encourage innovation, but I will be glad to write to noble Lords with details of the intended costs.

My noble friend Lady Altmann is absolutely right to be concerned about fraud. She is right that there is a self-assessment at the beginning of the process, which is quicker and cheaper, to encourage new entrants and to avoid bottlenecks as this industry scales up. However, this is quickly augmented by a mandatory requirement to follow a rigorous on-boarding process with full administration. I am convinced that this will provide the necessary supervision of this industry, although I take her comments seriously and we will keep a careful eye on this threat. To answer my noble friend Lord Bourne, the test providers will be prevented from offering services if they do not have the right authorisations. If they break the rules, there are substantial—unlimited, I think —fines set by magistrates and applied to the company to ensure enforcement.

The legislation that I have introduced will simplify the regulatory landscape for test providers and regulate the market consistently. I thank Covid-19 test providers for their pivotal work at this time. We encourage the development of these sorts of test services in order to reduce pressure on the NHS and ensure that the test and trace programme can focus on situations where it is needed most; but it must be done properly, using the right tests, for the right price and the right purposes, and with the right enforcement regime. I beg to move.

Motion agreed.

Health Protection (Coronavirus, Testing Requirements and Standards) (England) Regulations 2020

Considered in Grand Committee

3.20 pm

Moved by ***Lord Bethell***

That the Grand Committee do consider the Health Protection (Coronavirus, Testing Requirements and Standards) (England) Regulations 2020.

Relevant documents: 37th Report from the Secondary Legislation Scrutiny Committee and 34th Report from the Joint Committee on Statutory Instruments (special attention drawn to the instrument)

Motion agreed.

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): I remind Members to sanitise their desks and chairs before leaving the Room.

3.20 pm

Sitting suspended.

Arrangement of Business

Announcement

3.45 pm

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

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

The time limit for the following debate is one hour.

Customs Safety and Security Procedures (EU Exit) Regulations 2020

Considered in Grand Committee

3.46 pm

Moved by ***Lord Agnew of Oulton***

That the Grand Committee do consider the Customs Safety and Security Procedures (EU Exit) Regulations 2020.

Relevant document: 36th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Cabinet Office and the Treasury (Lord Agnew of Oulton) (Con): My Lords, we are here to discuss a further statutory instrument that is part of the Government's package of SIs to prepare for the end of the transition period. This instrument concerns safety and security declarations, as did the SI debated

here and in the other place last month. This statutory instrument was debated and agreed in the other place earlier today. If there is disruption at the border after the end of the transition period to which the Government have to respond, these powers will allow the Government to manage those issues. Noble Lords will be aware that the Secondary Legislation Scrutiny Committee reported the regulations as an instrument of interest in its 36th report, published on 3 December.

Allow me to set out the context of the current regime for managing the safety and security risk of goods entering and leaving the UK. The UK subscribes to the World Customs Organization's SAFE framework of standards, which sets out minimum requirements for participating customs administrations to regulate, monitor and secure the international supply chain. Customs authorities are required to collect and risk-assess data on consignments of imported and exported goods for security purposes. The UK does this through safety and security declarations, which goods carriers are required to submit.

These declarations are currently required under the Union customs code and are retained in law in the UK after the end of the transition period by the European Union (Withdrawal) Act 2018. While part of the EU, the UK required safety and security declarations only for goods leaving or entering the EU. From the end of the transition period, the default position is that carriers will be required to complete safety and security declarations for goods moved into and out of Great Britain where those goods are moving to or from the EU, as well as the rest of the world.

As we announced in June, the Government are staging in controls at the border after the end of the transition period. As part of that we have introduced a six-month waiver on the requirement to submit entry summary declarations for goods imported from the EU into Great Britain. The requirements for entry summary declarations for goods imported from the rest of the world will not change. That waiver will allow businesses affected by Covid-19 additional time to prepare to meet their requirements for safety and security, and the full range of customs controls, at the end of the staging-in period. While the Government have waived the safety and security requirement for imports from the EU and other countries where they are not currently completed until 1 July 2021, the requirement for safety and security declarations for exported goods is in place from 1 January 2021.

Before goods leave the country, carriers are required to submit safety and security data to HMRC for risk assessing. As well as managing safety and security issues, this data is also used to meet other international obligations, such as controls on the movements of live animals. This data is normally contained in a customs export declaration. Where there is no requirement for a customs export declaration—for example, in the case of the movement of an empty truck—the safety and security requirements are met through the submission of an exit summary declaration.

This SI gives the commissioners of Her Majesty's Revenue & Customs the time-limited power to waive, by public notice, the requirement for the submission of safety and security information for goods exported from Great Britain. The deadline for the pre-departure submission of this information could also be altered by public notice. Any waiver would be introduced only where necessary to preserve the flow of goods at the border. Prior to any use of this power, the Government would consider risks such as border security and manage them against risks posed by the border disruption. Without this power, in some scenarios traders may be left with no option to compliantly export goods from Great Britain if they are unable to collect and submit the appropriate data to current time limits.

These powers are limited so that they can be used only if necessary to mitigate border disruption, and only within the first six months after the end of the transition period. Within this, any mitigation can be further limited; for example, by time, location, sector of trade or type of goods. Measures could therefore be applied depending on need. The Government will update Parliament as appropriate when introducing the waiver.

The Northern Ireland protocol means that there are no safety and security requirements for goods moved between Northern Ireland and the EU. The protocol applies EU UCC rules in Northern Ireland, and therefore the public notice powers introduced by this instrument would not affect goods movements into or out of Northern Ireland. Goods moved between Northern Ireland and the rest of the world will continue to be subject to safety and security requirements.

The Government continue to work with stakeholders to support their readiness for the end of the transition period. Introducing these powers is an important step in preparing for every eventuality after the end of the transition period. They will give the Government some capacity to intervene in safety and security requirements for exports, if necessary. These powers would be used only in exceptional circumstances, where it was absolutely necessary to ensure that goods could continue to move across the border. The powers would be used only after due consideration of the risks arising from the waiving of these requirements. I beg to move.

3.52 pm

Lord Bradshaw (LD) [V]: My Lords, obviously I do not approve of what is happening. I think that the loss of security that the country will suffer as a result of leaving the European Union is vast and will be of great comfort mainly to people of the criminal fraternity and others seeking to evade various rules.

Can the Minister please tell us what goods he has in mind being covered by this SI? Can he give some practical examples? If they are the sorts of things which are a threat to security or are dangerous goods, it is very serious that these are going to be dealt with in this way, where Parliament has virtually no say over what is happening.

The fact that the Government have not prepared for us leaving the European Union in a proper way is their fault. Whatever they are doing to cut and paste a solution to the failures of their policy certainly does not have my support, unless the Minister can be very explicit about what is involved in this and whether it really is absolutely essential that this sort of power is given.

3.54 pm

Lord Moynihan (Con): My Lords, the central requirement for government in the context of customs safety and security procedures is, as the Minister said, to establish the continuity of procedures so that the economy can continue to operate effectively in the context of the end of the transition period.

This is more important than ever today. As reported earlier by the BBC, a global shipping crisis is impacting the UK severely. Understandably, many businesses are stockpiling in advance of a possible no deal. Port backlogs are driving up shipping rates. UK ports are reported to be close to broken. The surge in demand and backlog of empty shipping containers are causing bottlenecks. The impact of the three Cs—Christmas, coronavirus and customs—while businesses are still lacking in confidence about what will happen in the case of a no-deal Brexit, is growing.

Accordingly, I hope my noble friend the Minister will take this opportunity to provide the Government's view on how this crisis can be resolved, any action the Department for Transport intends to take to remedy the situation, and what proportion, if any, of the substantial port costs will be passed on to consumers. The case of Honda is important; is it the Government's intention to intervene, given the suspension of production at its Swindon plant? What further capacity for moving containers through ports can the Government provide? Should we look towards more expensive prices for consumers, or unsustainability for businesses where the onward price cannot be increased?

On customs procedures in the event of a no-deal Brexit, I will raise an important issue that I fully appreciate might require my noble friend, despite his lexicon of knowledge, to consult further with Defra and DCMS, although he did refer specifically to the control of the movement of live animals. In that context, can he confirm that EU law on the movement of horses and equines will continue to provide a shared framework to allow Ireland, France and the UK to ensure that, from 1 January 2021, there will be a specific arrangement for the movement of racehorses through customs posts and immigration control, as at present; in other words, will he ensure that that law will be placed on the statute book in the UK?

Will the tripartite agreement—TPA—be in place? As I understand the situation, this agreement will lapse in three weeks' time, thereby removing the free movement of racehorses between Ireland, the UK and France, and massively impairing horseracing in this country. This would draw a curtain over Cheltenham and racing in general. Trainers would understandably not submit their highly tuned racehorses to potentially lengthy delays at the borders, which would impair the movement of horses and potentially do such significant harm that trainers would not enter them in races. Any increased certification and controls would have to be electronically managed in advance. A successor agreement to the TPA may be agreed in respect of north/south movement of horses only if Northern Ireland continues to provide the necessary guarantees on maintaining high-health status, and if the UK can continue to guarantee that all other controls are carried out, including on horses coming from Great Britain into Northern Ireland, as well as from Ireland and France into the UK.

For the movement of equine animals between the UK and the EU countries I mentioned to continue after the transition period, the UK would need to be listed by the Commission as a third country eligible to export horses to the EU, and vice versa. From 1 January, when the transition period ends, racehorses entering Great Britain from Ireland or France will, I assume, only be permitted departure and entry clearance under this and related regulations. Specific controls for movement from Great Britain to Ireland, including blood testing and residency requirements, will also apply depending on the sanitary group—the health status category—the Commission assigns to the UK and the purpose and duration of the equine movement. Will this impede the current seamless free movement of racehorses across borders, as permitted by the tripartite agreement?

This categorisation has to be clear in three weeks' time. Equine animals moving to and through the UK will be subject to UK government customs requirements. Customs controls will also apply to equine movements between Ireland and the United Kingdom. In the circumstances, is my noble friend confident that all involved should now prepare for the seamless and unimpeded movement of racehorses between Ireland, France and the United Kingdom? Is the industry ready and prepared for racehorses moving from the UK to Ireland and France? What new documentary, identity and physical health checks will be required?

Will the border be frictionless when it comes to the movement of horses from Northern Ireland to the rest of Great Britain? Are transporters of horses on both sides of the Irish, French and UK borders compliant with the relevant authorisations and certificates, irrespective of the outcome of the current round of negotiations; in other words, can my noble friend assure me that a new TPA will be in place on 1 January 2021 come what may, without any impact on Cheltenham, Ascot, the Derby or the British horseracing calendar next year?

4 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I thank the Minister for explaining these regulations. I note that they will introduce powers to allow a temporary waiver of the requirement for pre-departure declarations, or temporary modification of the time limit for their submission, by public notice. Obviously, some of this work would involve HMRC. I have some questions for the Minister. There have been some interesting expositions already by previous speakers.

The noble Lord, Lord Moynihan, who has just spoken, raised the issue of the equine industry. Coming from Northern Ireland, where the equine industry is quite important to our local economy, both in Northern Ireland and on the island of Ireland, I would not like to see any impediments put in the way of that industry. There are clear links between the equine industry in Ireland, north and south, and Britain, and vice versa, and it is important that the proper procedures are in place from 1 January to ensure that free movement. I also agree with the noble Lord, Lord Bradshaw, that there are certain issues here in relation to security: your Lordships' House has to be assured that these regulations will ensure a complete diminution of criminal and paramilitary activity in terms of the transport of

goods. I would like to ascertain from the Minister what advice he has received from HMRC and the various police constabularies throughout the UK on this issue.

The regulations state that they will still apply to the whole of the UK. How can this be when the Northern Ireland protocol applies to Northern Ireland customs and goods, where the union customs code applies, particularly now that we have a clear definition and an explanation of what has been approved in principle before it is finally approved by the joint committee? Will the instrument apply only to businesses and intermediaries exporting goods from GB to Northern Ireland? What administrative arrangements will need to be put in place to deal with this issue? I note that the Secretary of State for Northern Ireland announced earlier today quite substantial funding for businesses in Northern Ireland to deal with all the extraneous issues that will emerge from the implementation of the Northern Ireland protocol. I also note that the Minister referred in his speech to Northern Ireland-GB issues.

The Minister referred to the Secondary Legislation Scrutiny Committee. Its 36th report stated that

"it is not clear whether suspending pre-departure safety and security requirements on exports could lead to any adverse impacts."

Will the Minister advise us of the exact position? The committee also noted that

"while this instrument enables HMRC to waive temporarily the requirement for pre-departure declarations for goods leaving GB, any use of this power would not help with potential disruption caused by the need for declarations for the same goods entering the EU."

What is the Minister's view of this statement? Will a solution be in place at the end of the transition period?

Finally, will the Minister say what arrangements are in place to publicise the use of these new powers? What will be the frequency of reports to both Houses of Parliament on the use and application of these new powers? What explanatory documents will be published online?

4.05 pm

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, as the noble Lord, Lord Moynihan, has already reminded us, the news yesterday and today has highlighted fullness at our ports due to Covid, Christmas and Brexit stockpiling and a build-up of empty containers here while Asian exporters have a shortage. It is a useful reminder that logistics must be thought out well ahead—they are only going to get more complicated from January.

This SI is about outgoing not incoming goods, but I have a few questions about how it works and what can be taken into consideration. On the face of it, it looks simple enough: if there is disruption, flow rate can be made simpler by waiving pre-departure notices or modifying the time limits for submissions; it can be done on specific sectors and types of goods or at specific places to allow targeted mitigation; and the power lasts only six months.

Paragraph 2.2 of the Explanatory Memorandum says that the powers can be used only for border disruption, and paragraph 2.6 narrows that to:

"in the event that requirements for pre-departure declarations cause border disruption".

However, I cannot find an exactly corresponding provision in the regulations. Regulation 2(2) states that it is

"to relieve disruption at or near places from which goods are directly removed from Great Britain",

but it makes no mention as to cause. I presume that the legislation is correct and, therefore, that wider causes of disruption could trigger the use of the power even if that is not the current intention. Perhaps the Minister can confirm that. If the Explanatory Memorandum reflects the intent in practice, why does it not make that clear? Is it intended to have a wider contingency, or is it that it is difficult to assert causality in legislation? I understand that but, if so, why not draft the Explanatory Memorandum accordingly and give the causes more as practical examples of intention?

Looking at the legislation rather than the Explanatory Memorandum, and given the present circumstance that I just mentioned about congestion caused by imports, would a similar event, maybe through knock-on effects, qualify as a disruption near a place where goods are removed from Great Britain, because the ports have both incoming and outgoing goods? Do queues in Kent, incomplete or full Farage lorry parks count as a disruption near a place where goods are removed from Great Britain? Could, and would, this provision be used because of events that have no relation to the export of goods, such as civil protest or industrial action? If a major cause is congestion, what steps are being taken to distribute both exports and imports to other ports with capacity, to minimise the need for these powers and congestion in general? Can that be done at short notice?

A previous statutory instrument on no-deal planning made it clear that the waiver would be exercised only in relation to exports to countries where previously there was no need for documentation—basically the EU—but there is no similar mention or emphasis here. Presumably this means that waivers can be in respect of any and all countries. If that is the case, are there some countries for which there would never be a waiver because of greater security concerns? What international provisions are there about disruption? Is there anything in SAFE to enable this kind of suspension for disruption and are there examples of when and why it been done elsewhere?

I turn to a more general point: alongside requiring pre-departure declarations, there is a provision for risk assessment time, which is in Article 264 of EU Regulation 952/2013. The SI makes provision for that to be stipulated in connection with notices relating to the time limit for lodging pre-departure declarations. What is the usual current risk assessment time? Obviously it does not apply at the moment for EU goods, but it applies elsewhere, so there must be some available information. Is there a uniform target time? What is the time relationship between when the pre-departure declaration must be lodged and the risk assessment time?

Finally, what is the timescale for changing or bringing out a notice? How quickly would it be disseminated and expected to have an effect, and for what duration would it typically be expected to run? What happens to the live animal aspects, which the Minister mentioned, saying that they would use the same documentation?

If the documentation is suspended, what happens to checks on live animals: are they abandoned, or will they run separately?

I do not really have any fundamental objection to the SI but, as the Minister will be able to tell from my questions, more surrounding information is really needed to put it in proper operational context. Brexit is an extraordinary event, but it is of some comfort to know whether international norms cater for extraordinary events or whether contingency measures that we have to take cause strain to those norms and, therefore, to other international relationships.

4.11 pm

Lord Tunnicliffe (Lab) [V]: My Lords, I am grateful to the Minister for introducing this latest statutory instrument from Her Majesty's Revenue and Customs. Having dealt with the issue of imports three weeks ago, we now turn to the export of goods. As he outlined, HMRC is establishing a new power, described as a "contingency option", to temporarily waive the requirement for pre-departure declarations if it is felt that this will lessen the disruption at the border. This power would also allow temporary change to the time limit for submission of these declarations. As with the import measures discussed previously, the potential grace period is limited to six months, which is designed to provide time for hauliers and ports to adjust to the realities of life outside the EU and beyond the transition period.

Paragraph 7.4 of the Explanatory Memorandum notes that there are potential risks to border security if these powers are used. Can the Minister explain the process that HMRC will use in relation to this contingency measure? Can he confirm whether that process has been decided? The phrasing of the Explanatory Memorandum suggests that it is in progress, but that would be surprising, given that the power will be available to Ministers in just three weeks' time.

Given the risks involved, it is doubtful that the Government would want to extend the power beyond the envisaged six months. However, if HMRC were to decide to extend the intended sunset, would that be done by a further statutory instrument? While there may be a rationale for making it available, this unilateral power will get us only so far; it may help to limit disruption on the roads of Kent, but the problem will merely be shifted to the other side of the English Channel, where other forms will be needed for goods to move any further. This represents as much of a change to current arrangements as the need for pre-departure safety and security declarations, which have hitherto not been required under the terms of the Union customs code. It is regrettable that the haulage industry and others have not been afforded more time to prepare themselves for these new processes; it is worth remembering that such an option was on the table, only to be rejected by No. 10.

While we do not oppose this instrument, we remain deeply disappointed and troubled by the Government's handling of the ongoing negotiations with the EU. They are now operating to a deadline of Sunday but, given the nature of the briefings last night, it is hard to be optimistic. We must therefore assume, as this SI does, that there will be no trade agreement. Let us not forget that, over three years ago, the former International Trade Secretary told the nation that the task of negotiating a comprehensive trade deal with the EU would be

"one of the easiest in human history".

Since then, every deadline set by the Government for either a withdrawal agreement or a trade deal has been missed. Before leaving for his last-ditch dinner in Brussels yesterday, the Prime Minister pre-emptively sought to blame the EU for supposedly negotiating in bad faith. However, while the Government may not like its contents, the EU's mandate is consistent with the political declaration signed by the Prime Minister in October last year.

The Minister is no doubt familiar with the reasonable worst-case scenario outlined in a Cabinet Office document earlier this year. A leak of that document has allowed all noble Lords to find out just how severe disruption could be in the event of no trade agreement. On exports, it warns that between 40% and 70% of trucks travelling to the EU might not be ready for new border controls; flow across the short Channel could be reduced to between 68% and 80% of normal levels; and queues on the roads of Kent could reach 7,000 trucks, equating to a two-day delay.

This is not what we were promised. At no point have the public been warned of the potential issues with imports if there is no trade deal. The document states that the flow of medicines and medical products could be reduced to between 60% and 80% of normal levels for a period of three months. Food supplies could be threatened, with low-income groups disproportionately impacted by price hikes. There is even a warning that some local areas could experience disruption in fuel supplies.

The Prime Minister promised the nation an oven-ready deal, not an outcome that prevents shops from stocking oven-ready meals. To avoid the chaos envisaged by the leaked document and this SI, it is vital that he gets his act together and secures a trade deal by Sunday.

4.17 pm

Lord Agnew of Oulton (Con): I thank noble Lords for their contributions. I am grateful for the chance to respond to the points raised.

The noble Lord, Lord Bradshaw, asked about the impact on the country's security of this statutory instrument which, to reassure the noble Lord, is for the export of goods, and so, in that direct context, is not of concern. However, the powers contained within SIs can be limited to apply only to certain types of goods. This has been provided for to allow targeted mitigation and to minimise security risks by providing a waiver only where necessary. Movements of prohibited and restricted goods are controlled by information contained in the customs export declaration and other licences, and the powers in this SI relate only to the safety and security declaration requirements. Even if a waiver were put in place that covered all goods, Border Force would continue to have access to additional intelligence to control border risks. It is also worth noting that we do not currently collect any safety and security data on exports to the EU, so any waiver here would not result in an increase in risks.

The noble Lord also spoke about this being a cut-and-paste solution. Safety and security declaration data is not currently gathered on all exports to the EU, so a waiver of these movements would retain the status quo. These powers could also be used to waive requirements for exports for the rest of the world if needed, but associated safety and security risks are minimal, since these goods are leaving Great Britain.

The Government intend to use these powers only where absolutely necessary to mitigate border disruption. Any waiver would be limited—for example, by time, location, sector of trade or type of goods—allowing targeted mitigation. Prior to any use of the power, the Government would consider the safety and security risks and manage them against the risks posed by the border disruption.

The noble Lord, Lord Moynihan, asked specifically about the movement of horses. The use of a public notice is the only method that would allow the Government to react as swiftly as may be needed to any disruption at the border after the end of the transition period. Without these powers, traders may be left in an unacceptable situation, where they are unable to compliantly export goods from Great Britain. The tripartite agreement to which the noble Lord referred is a specific agreement and, as I understand it, discussions are ongoing, but I will write with further information.

The noble Baroness, Lady Ritchie, asked about security and the risks of enabling increased criminality. I reassure the noble Baroness that the Government take border security extremely seriously and would use these powers only where absolutely necessary and within limits to alleviate border disruption. The Home Office would be consulted and would continue to be involved in the event that the powers were used to ensure that risks were kept to a minimum. Border Force would also continue to have access to other intelligence. The noble Baroness asked about the application to the whole of the UK. Just to be specific: while this is UK legislation, these powers could be used only to apply to goods moving out of Great Britain.

On publicising the use of the powers, this would be published as an online notice in the first instance, and Parliament would be updated as appropriate. We would also support the introduction of any measures with other methods of communication to ensure that traders were made aware as quickly as possible. The noble Baroness asked about causes of disruption. A waiver could be for exports to any country or any cause of disruption. This is necessary to be able to manage different scenarios. Equally, the powers allow for a waiver to apply only to certain exports. In the event of any use of these powers, we would need to weigh up the associated risks and take the appropriate action. The powers are restricted to the first six months of next year, since they are intended specifically to tackle border disruption as a result of the new safety and security requirements.

As to the question of how quickly it would take us to issue the notice, powers allow for a public notice to be published implementing a change in less than two days. A notice would last for a maximum of six months, for the first half of next year. However, the powers would also allow for the notice to be put in place for a shorter period of time within that to ensure that we have the maximum flexibility to manage these risks appropriately.

The noble Lord, Lord Tunnicliffe, asked how HMRC will use this contingency measure. We have established a process to ensure that we are able to assess any need for this contingency and balance risks. The process includes evidence-gathering and consultation with other departments, including the Home Office. We have been clear that these powers will be used only where absolutely necessary to avoid border disruption, and the Government will update Parliament in the event that we use the powers.

The noble Lord asked about any extension to the sunset clause. I reassure him that the powers can be used only within the first six months of next year and only to mitigate disruption. The Government have no plans to extend this contingency beyond the first six months of next year, as we do not anticipate that there will be any risk of disruption, as a result of the safety and security requirements on exports after that period. The Government could consider extending these powers further, but this would require a further statutory instrument which would be subject, as this one has been, to the appropriate parliamentary scrutiny.

I hear and understand the noble Lord's concerns about the cliff-edge nature of the negotiations. I would like to offer a little more optimism in that, behind the scenes, a great deal of agreement has been achieved. There are some outstanding issues, but I remain confident that we will secure a deal with the EU in the next few days.

The Government are introducing this SI as a step towards being as prepared as we can be for all possible scenarios at the end of the transition period. We have been clear that these powers will be used only with due consideration of the risks, and only as is necessary to ease potential disruption at the border within the first six months of next year. I commend these regulations to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): That completes the business before the Grand Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the Room. The Committee is adjourned, and I wish you all a nice weekend.

Committee adjourned at 4.25 pm.