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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Grand Committee

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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

Tuesday 13 April 2021

Noon

Prayers—read by the Lord Bishop of Gloucester.

Arrangement of Business

Announcement

12.07 pm

The Lord Speaker (Lord Fowler): 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.

Death of a Former Member: Baroness Williams of Crosby

Announcement

12.07 pm

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of the distinguished former Member, the noble Baroness, Lady Williams of Crosby, on 12 April. On behalf of the House, I extend our very sincere condolences to the noble Baroness's family. I hope that there will be an opportunity for tributes to be paid in the very near future.

Retirements of Members

Announcement

12.07 pm

The Lord Speaker (Lord Fowler): My Lords, I should like to notify the House of the retirement, with effect from 9 April, of the noble Baroness, Lady Kinnock of Holyhead, whom we know so well, and, with effect from 12 April, of my friend, the noble Lord, Lord Ryder of Wensum, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I thank the noble Baroness and the noble Lord for their very much-valued service to this House.

Clerk of the Parliaments

Retirement of Ed Ollard

12.08 pm

Moved by ***Baroness Evans of Bowes Park***

To resolve that this House has received with sincere regret the announcement of the retirement of Ed Ollard from the office of Clerk of the Parliaments and thinks it right to record the just sense which it entertains of the zeal, ability, diligence, and integrity with which the said Ed Ollard has executed the important duties of his office.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, I am delighted to move this Motion to give the House an opportunity to pay tribute to the outgoing Clerk of the Parliaments, Ed Ollard.

From 1983, when he joined as a fast-stream clerk, Ed served this House with distinction. He provided outstanding service in a variety of senior roles within the House, including as Private Secretary to the Leader and Chief Whip, Finance Director and the Clerk of Committees. Before he became the 64th Clerk of the Parliaments, he served as Clerk Assistant to Sir David Beamish for six years.

In these varied roles, Ed provided Members across the House, and its political leadership, with courteous and professional procedural advice and was a source of authoritative leadership to the staff of the House. He was generous and resourceful, often going way beyond the call of duty. On one such occasion, he went so far as to provide clothing to the Government Chief Whip, my noble friend Lord Ashton. I am happy to confirm to noble Lords that this did not involve Lycra, but my noble friend did borrow a white bow-tie from Ed to save his blushes at a reception in Buckingham Palace.

Between 1992 and 1994 Ed served as Private Secretary to the then Leader of the House, my noble friend Lord Wakeham, and Viscount Cranborne. Some noble Lords will recall this as a particularly demanding parliamentary Session, as the Maastricht Bill was passing through the House. Ed must have had a strong sense of déjà vu over the last few years as we worked through legislating for our exit from the European Union.

Across the various posts he held, Ed oversaw a number of significant changes which helped modernise our processes for the benefit of the whole House, including overhauling the clerks' Table with modern equipment, overseeing the transformation of House publishing and printing, and playing a central role in implementing the recommendations of the Ellenbogen report on bullying and harassment—an issue he was deeply committed to addressing as the senior officer responsible for the staff of the House.

But by far the most significant changes Ed presided over have been those implemented since March 2020 in response to Covid. These changes will be familiar to noble Lords across the House, but what may be less well known is the vast amount of work he did behind the scenes to bring our hybrid proceedings to life. Over Easter last year, Ed helped develop and oversee the initial setting up of our virtual proceedings, in less than three weeks, and then our move to hybrid proceedings. It was a huge but critical task that ensured that this House has been able to undertake its business during these unprecedented times, and while we all may have had our frustrations with the hybrid way of working, none of us can deny how essential the changes Ed helped deliver have been in allowing us to continue our important function during this pandemic. For that, we all owe Ed an immense debt of gratitude.

Ed has left the House as we undergo a significant period of change. Over the next few weeks, we will have a new Speaker and a new Chief Operating Officer, and we will, I hope, be taking further steps forward as we slowly return to the normal way of doing business.

[Baroness Evans of Bowes Park]
I look forward to working with the new Clerk of the Parliaments, Simon Burton, as we navigate the future and welcome him to his role.

As he leaves this role, I am sure Ed will find more time to enjoy his favourite pastimes of watching Charlton Athletic—I could not say so myself, but I am sure some will think that only a Clerk of the Parliaments who has served over the last few years in this House can enjoy such a thing, but that is up to Ed—and, of course, following the Tour de France and cycling himself. I suspect the sightings of Lycra on the West Front Corridor will decrease quite significantly now Ed has left us. On a more serious note, I am sure the whole House will join me in thanking Ed for his distinguished service and we wish him, his wife Mary and their family all the best for the future. I beg to move.

Baroness Smith of Basildon (Lab): My Lords, it is an honour to have the opportunity to pay tribute to Ed Ollard as the outgoing Clerk of the Parliaments on his retirement. I admit that this is something of a first for me: it is not the first time that I have spoken to recognise somebody's service on retirement, but it is the first time I have ever done so for somebody who is younger than I am.

Ed started his career in the House of Lords in 1983. Noble Lords might be aware that this was the year in which it was first decided to televise proceedings in your Lordships' House. We cannot hold him responsible for that, but I refer to it to illustrate that he started his career here at a time of great change, and his career here has ended at a time of great change, although I know he shares our optimism that many of the current changes will be temporary.

When Ed announced his retirement last September, we knew that his choice of date was for our convenience, not his. As I said at the time, for a man who cycled into the office each day—hence the Lycra—the choice to continue to do so in the wet and cold winter months could have been only through a sense of duty. Those of us who saw his Lycra-clad arrival, and then his appearance in the Chamber, could only marvel at his Superman-style changes as he swapped one pair of tights for another.

As we heard from the noble Baroness, his career has been one of diligent and resourceful service. Taking account of Queen's Speeches, royal visits, addresses from Heads of State, restoration and renewal, security issues and the pandemic, it is true to say that there is never been a quiet moment. He has seen many challenges, not least over the past year. The hybrid way of working, despite its necessity, is frustrating to us all. Ed's guidance, advice and suggestions, as we navigated our way through the difficulties to ensure that we could continue our work, were always thoughtful and considered.

On many occasions, I have been grateful for his advice. I say "grateful," but it was not always what I wanted to hear. However, I was never in any doubt that he had the interests of your Lordships' House, its Members and its staff at heart. It is to his credit that he has never been precious about the issues that I raised with him. I can remember calls from sunnier climes during recesses, including one occasion when I had to seek advice about the House being recalled. On another occasion, I was locked in the car park and the police could not find the key to the barrier. Ed was on call with good humour, courtesy and advice at all times—and he found the key.

12.15 pm

Although the role of the Clerk of the Parliaments has been around since the 14th century, some core abilities are needed, whatever the times. I confess that I discreetly probed some staff about my comments today, and I was told that in times of crisis, as Kipling wrote, he kept his head when everyone else was losing theirs. His Tudor predecessors certainly needed that skill.

Ed's departure coincides with further great change. As the noble Baroness said, we have a new Clerk of the Parliaments; we will be appointing a new Chief Operating Officer and a new Clerk Assistant, and we will be electing a new Lord Speaker. They will have to take forward the transition to more normal ways of working and the work, as outlined by the noble Baroness, of the external management review. As Simon Burton takes the reins, we wish him well and look forward to working with him. Today, however, we genuinely and warmly thank Ed for his contribution and his distinguished service, which was always undertaken with modesty and good humour. I wish him well watching Charlton Athletic. I have some fondness for the team: my dad played for a youth team generations ago. I join the Lord Privy Seal in wishing Ed Ollard, our Clerk of the Parliaments, and his wife Mary a long and happy retirement.

Lord Newby (LD): My Lords, it is a great pleasure to follow the Leader of the House and the noble Baroness, Lady Smith, in paying tribute to Ed Ollard for his work as Clerk of the Parliaments and his long career in your Lordships' House.

To the outside world, I am sure that the House of Lords looks a rather timeless place, where tradition counts for everything and nothing ever changes. During Ed's career, and particularly during his time as Clerk of the Parliaments, very much has changed. When he started work here, there were approximately 250 life Peers and 450 hereditary Peers. Among Peers with political affiliations, the Conservatives had almost exactly twice as many as Labour and ourselves combined. Even when I joined in 1997, I was told by our then Chief Whip not to expect to be able to do anything or change anything because of this overhang of such a huge Conservative majority. How things have changed: the removal of most of the hereditaries, the greater politicisation of the House and the willingness to challenge not just the Government of the day but the way we do things have transformed the nature of the Lords. The pandemic has brought with it revolutionary changes in the way in which we conduct our business, which a little over a year ago could not have even been contemplated.

During his time as senior clerk, and most particularly Clerk of the Parliaments, Ed has had to manage these fundamental changes of procedure and the way we operate in the Chamber. He has also had to confront, as a result of the Ellenbogen report, the need for widespread change in the way we do things outside the Chamber, while preparing us, I hope, for the rigours of

the R&R process. I worked closely with Ed since he became Clerk of the Parliaments, and have seen at first hand, to quote from the Motion before us today,

"the zeal, ability, diligence, and integrity"

with which he has undertaken this role. He embodies the best traditions of the British Civil Service and has set high standards for professionalism and probity, for which we should all be very grateful. Personally, I have been immensely grateful for the consideration he gave me when I contacted him on the most disparate range of issues, one of which, for at least one member of my group on that day, was the most important thing in their life, but certainly not the most important thing in his. He will have a worthy successor in Simon Burton, with whom I look forward to working as closely as I have with Ed.

In his interview in the *House* magazine, Ed says that his plans for the future consist of going to the beach as soon as Covid restrictions allow. On the assumption that he did not only have UK beaches in mind, I am sure that he is aware that the places that are likely to open up their beaches soonest include Caribbean islands and the Maldives. I have, therefore, attempted to picture Ed suitably attired, perhaps in a floral shirt, sipping an umbrella-topped cocktail in one of those places. I am afraid that my imagination has failed me, but I hope that on whichever beach he chooses, he enjoys a very well-deserved break now and a very long and full retirement thereafter.

Lord Judge (CB): My Lords, this is the second time in less than 24 hours that I have stood up to say that I agree with everything that has been said by everybody who has spoken before me, and, more importantly, all of them have agreed with each other. Long may it continue, making Simon Burton's role so much easier to perform. Can we hang on to that?

I will not repeat the many admirable qualities that Ed Ollard has brought to this office. I join the others who have spoken on behalf of the Cross-Benchers and enthusiastically adopt what they have said, but there is something that this House seems not to know about Ed Ollard. He is a master of quizzes. Did your Lordships know that he has been given a trophy as the champion quiz man in this place? It is a lovely little cup that was presented to him by members of the staff. He knows all sorts of outrageously stupid things, meaning that he has a mind crammed full of completely useless intelligence. However, I have set him a few questions for his retirement. Which institution has been described in the past as "addled", "drunken", "mad", "merciless", "useless" and, just but once, "good"? I am sure that he knows the answer to that. Then there is a trick question. How many Members of the House of Lords can stand on the head of a pin? Well, he has spotted the trick there, but here is one that even he will need a whole week to get round to answering: how long is a piece of string?

I do not anticipate much of an answer, but I do anticipate the continuing accumulation of this wonderful, useless knowledge, so that when teams are being picked—remember when we were small, we all lined up and hoped that we would be picked for the best team—Ed Ollard will always be picked first for any quiz. He will have time to learn more and more of what it is lovely to think of as fulfilling knowledge as well as trivia.

The Lord Bishop of Gloucester: My Lords, I am very glad that I do not have to answer those questions, because I do not know the answers. However, I want to add a few words from these Benches, paying tribute on behalf of the Lords spiritual. My colleagues and I have greatly benefited from Ed Ollard's sound judgment, diligent support and practical guidance in his time as the Clerk of the Parliaments. We on these Benches are immensely grateful for his calm and steady stewardship during, as others have said, this very unpredictable time. Navigating a unique transition to a hybrid Parliament, the role of the Clerk of the Parliaments has been challenging. He has met it head on, and it is a testament to his adaptability that your Lordships' House has functioned so well and effectively during this pandemic. We warmly welcome Simon Burton to the role and very much look forward to working with him, but today, we want to say a huge "thank you" to Ed Ollard and to wish him all the best for the future.

The Lord Speaker (Lord Fowler): My Lords, before I put the Question on the Motion in the name of the Lord Privy Seal, I add that Ed has been invaluable during my time as Lord Speaker. The advice he has given on a range of issues has been an enormous support. His approach was always cautious. On more than one occasion, he counselled that what I was proposing would not be appropriate, and what was worse was that he was always right. Importantly, he always spoke with authority, and the Deputy Speakers also thank him for the enormous support that he gave.

When Ed assumed office as the Clerk of the Parliaments in 2017, little did he know what lay ahead. His advice and practical guidance acted as a bedrock during one of the most tumultuous periods in recent political history, as the United Kingdom left the European Union and the House found itself at the heart of a landmark Supreme Court case. Recently, of course, he has led the radical procedural changes and wholesale operational transformation that has enabled the House to keep working during the Covid-19 crisis. It was an enormous achievement.

On behalf of the House of Lords Appointments Commission, the Deputy Speakers and the whole House, I express very sincere gratitude and wish Ed a very happy and well-deserved retirement.

Motion agreed nemine dissentiente.

Clerk of the Parliaments

Introduction of Simon Burton

12.26 pm

The letters of appointment for Mr Simon Burton as the next Clerk of the Parliaments were read and he made the prescribed declaration:

"I, Simon Burton, do declare that I will be true and faithful and troth I will bear to Our Sovereign Lady the Queen and to Her Heirs and Successors. I will nothing know that shall be prejudicial to Her Highness Her Crown Estate and Dignity Royal, but that I will resist it to my power and with all speed I will advertise Her Grace thereof, or at the least some of Her Counsel

[LORD FOWLER]
in such wise as the same may come to Her knowledge. I will also well and truly serve Her Highness in the Office of Clerk of Her Parliaments making true Entries and Records of the things done and passed in the same. I will keep secret all such matters as shall be treated in Her said Parliaments and not disclose the same before they shall be published, but to such as it ought to be disclosed unto, and generally I will well and truly do and execute all things belonging to me to be done appertaining to the Office of Clerk of the Parliaments".

After which he took his seat at the Table.

Arrangement of Business

Announcement

12.31 pm

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

United Nations Biodiversity Conference

Question

12.31 pm

Asked by ***Lord Teverson***

To ask Her Majesty's Government what preparations they are making for the United Nations Biodiversity Conference (COP 15) to be held in Kunming, China, in October.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con) [V]: My Lords, it has recently been confirmed that the CBD COP 15 will now take place between 11 and 24 October in Kunming, China. Despite the continued delay due to Covid-19, we are engaging fully in the preparations and negotiation process. We continue to lead work internationally, including on the Leaders' Pledge for Nature, through the UK-led Global Ocean Alliance and in our role as ocean co-chair of the High Ambition Coalition, to secure support for our objectives. We are also working closely with non-state actors, including the private sector and NGOs, to help shape UK priorities, and will continue to engage in opportunities at all levels in the lead-up to COP 15. Domestically, we are extending our protected areas, bringing forward new legislation to restore and enhance nature and introducing new funding to support that process.

Lord Teverson (LD): My Lords, I particularly welcome the Minister's comments about oceans and maritime issues. It is really important that COP 15 is successful—we need it to be. Will it be attended by a senior Minister or the Secretary of State? What is the most important matter that the Minister and the Government wish to be resolved and acted upon following the conclusion of this conference?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, the UK is playing a key role. I think it is fair to say that we are doing more heavy lifting than almost any other country in the world to secure the maximum possible ambition from the CBD. Clearly, our number one goal is to leave the convention with meaningful, robust and ambitious targets commensurate with the scale of the challenge we face. In addition, we need the world to raise its collective finance for nature and nature-based solutions to climate change. We also need mechanisms to enable people—individuals, civil society and other Governments—to hold countries to the promises they make.

Lord Lucas (Con) [V]: My Lords, in demonstrating our commitment to biodiversity, can we in the UK put more emphasis on the diversity part? To take the example of what we are doing with woodlands, it is wonderful that we are planting lots of trees, but it is a very limited range of species from a very limited selection of genotypes. We need to take diversity seriously if we are to push that in the world.

Lord Goldsmith of Richmond Park (Con) [V]: My noble friend makes an extremely important point. As the Minister in charge of developing the tree strategy, I am absolutely determined that as we use public money, which will be necessary to achieve the targets we set, we do so in a way that delivers the maximum possible solution. That means not simply having hectare after hectare of monoculture but ensuring that we maximise biodiversity at every opportunity and deliver not just a win for climate but a win in terms of boosting our declining biodiversity in this country.

Lord Birt (CB) [V]: My Lords, many species of plant, animal and other life forms have been in steep decline over centuries, yet the COP measures hitherto have not been transformative. Are the UK and the world systematic, ambitious and bold enough? Do we not need a national and global census of all life forms and clear, actionable plans to safeguard the myriad wonders of our natural world?

Lord Goldsmith of Richmond Park (Con) [V]: I wholeheartedly agree with the noble Lord about the scale of the crisis. We will be familiar with the numbers; they are shocking at every possible level, whether we are talking about terrestrial or ocean biodiversity. He is also right to say that targets have been set and missed many times in the past. What must be different about this convention is that, in addition to having those strong targets and ensuring we have the finance necessary to deliver them, we must have mechanisms enabling countries to be held to their promises—just as we have with climate and carbon emissions reduction commitments. We do not currently have them in relation to biodiversity. That is the bit that is missing and that the UK is pressing hardest for.

Baroness Young of Old Scone (Lab) [V]: My Lords, biodiversity decline and climate change are twin crises and need equal and urgent concentration, so why are the Government continuing to refuse to accept a legally

binding state of nature target in the current Environment Bill, in the way that there are already legally binding targets for climate change in UK legislation? Does the Minister agree that we will not get much credit for any heavy lifting or leverage at Kunming if the Government have just had a messy public punch-up as the Environment Bill goes through, refusing to adopt legally binding biodiversity targets here in the UK?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, it is absolutely right to say that climate change and biodiversity are two sides of the same coin. They represent the gravest threat we face, and we cannot tackle one effectively without also tackling the other. There is no pathway to net zero emissions without a major increase in support for nature and nature-based solutions, so I wholeheartedly agree with the noble Baroness. It is not the case that the Government are refusing to include the mechanism she proposes—the target around biodiversity and state of nature. This is a live issue and one we are engaging with very actively. I hope that when we bring the Bill to the House, we will be able to have a meaningful discussion about that.

Baroness Parminter (LD) [V]: Targets for previous CBDs have been missed, as the Minister has acknowledged. None was legally binding, unlike the Paris climate agreement. Do the Government support the post-2020 CBD framework, including legal obligations for all countries to deliver against global targets?

Lord Goldsmith of Richmond Park (Con) [V]: The Government are keen to push for the maximum possible ambition. There is no area in the discussion where any country is having to drag us kicking and screaming. We are the country pushing hardest for that ambition, but there is a line somewhere between the maximum ambition and what is deliverable. Things that may appear relatively mundane and not particularly radical to the UK are nevertheless big sells for certain countries. Our job is to use every diplomatic skill and lever we have to bring the rest of the world with us, and we will take the world as far as we possibly can. Where that takes us is hard to predict.

Baroness Hayman of Ullock (Lab) [V]: In recent decades, freshwater species have seen their populations decline twice as fast as land and marine species. Sadly, English rivers are in a particularly bad state, with just 14% deemed to be of good ecological standard. Ahead of the UN biodiversity conference, does the Minister agree that it is more important than ever for the UK, as the host of COP 26, to lead by example? Can he confirm whether Defra will use the Environment Bill to deliver the department's recent pledge to finally do something about tackling sewage pollution in rivers?

Lord Goldsmith of Richmond Park (Con) [V]: It is absolutely right that to speak with authority internationally, the UK needs to get its own house in order. That is not the case at the moment. Our biodiversity has been in decline; our environment is denuded. However, we have put in place a number of ambitious steps to try to turn that trajectory: the first Environment Bill for 20 years, with a whole host of ambitious measures; the green recovery challenge fund; getting NGOs restoring nature and tackling climate change in communities up and down the country; a £640 million Nature for Climate Fund; big and ambitious tree-planting targets; peatland restoration targets; and, above all, a commitment to switch the old land use subsidy system so that instead of incentivising destruction, it incentivises good environmental stewardship. The tools and the commitment are there, but we have some way to go.

Lord Benyon (Con) [V]: My Lords, the ground-breaking UN report, *The Economics of Ecosystems and Biodiversity,* said that we need to reflect on both

"the value of nature, and on the nature of value."

The loss of species and the decline in the ability of natural systems to provide for humanity's needs is not just an environmental catastrophe—it is an economic one as well. As has been said, the two COPs happening this year have complementary ambitions. Will my noble friend the Minister encourage the UK position to reflect the fact that Governments alone cannot solve this problem? We have to engage, empower and deploy the power of markets and the private sector, on a global scale, to make the difference that is needed.

Lord Goldsmith of Richmond Park (Con) [V]: That is absolutely right. A big part of our campaign as president of COP is to encourage donor countries to step up with more finance for nature. We are showing leadership ourselves, having doubled our international climate finance to £11.6 billion. We are committing to spend about a third of that on nature-based solutions and we want others to do something similar. Even if we succeed, however, that will not be anything like enough finance for nature; we will need more. That means mobilising private finance on an unprecedented scale and ensuring high-integrity carbon markets; we need a breakthrough around the Article 6 negotiations. Above all, we need to mainstream nature through the way we do business and align, for example, the big multilateral development banks not just with Paris commitments but with nature as well.

Baroness Boycott (CB): The link between agriculture and biodiversity is absolutely clear. What plans do the Government have to take targets to reduce the land use for agriculture to the meeting? Can the Minister tell us his view on the need to cut down the amount of land used for livestock and livestock feed? Currently, humans and the animals that we plan to eat make up 96% of all the animals on Earth, which is not a biodiverse way forward.

Lord Goldsmith of Richmond Park (Con) [V]: This will be an important part of our work in the run-up to COP. The noble Baroness may perhaps consider that the top 50 food-producing nations spend about $700 billion a year subsidising often destructive land use. One of our goals—an important one—is to try to encourage as many countries as possible to shift the way those incentives are used so that they support nature. We are also trying to break the link between commodity production and deforestation—commodity

[Lord Goldsmith of Richmond Park]
production is responsible for about 80% of the world's deforestation. We are leading in global dialogues with producer and consumer countries to that end.

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

Clergy: EU Visas and Residence Permits
Question

12.42 pm

Asked by ***The Lord Bishop of Leeds***

To ask Her Majesty's Government what assessment they have made of the impact of new (1) visa, and (2) residence, permit regimes for United Kingdom citizens working in the European Union on the numbers of Church of England clergy securing such permits.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, the withdrawal agreement protects UK nationals who were lawfully resident in the EU before the end of the transition period. Thirteen member states require them to apply for new resident status. British citizens travelling to the EU for work may need visas or permits from relevant member states. Member states are, of course, responsible for implementing their domestic immigration systems, and the UK does not hold information on the specific occupations of UK nationals abroad.

The Lord Bishop of Leeds [V]: I thank the Minister for his Answer. This is of course a question that goes wider than the Church, but let us consider a diocese in Europe supporting UK citizens which is now unable to assign clergy for locum duty, for example, because of the lack of clarity regarding work permits. How do the Government intend to support UK citizens in what was an inevitable outcome of the withdrawal agreement? Can the Minister give any practical encouragement to the Bishop in Europe as he seeks to resolve these issues?

Lord Ahmad of Wimbledon (Con): My Lords, I assure the right reverend Prelate that, as he may well be aware, we are working very closely with the Church of England—for example, on citizens' rights—as it is one of the implementing partners of the UK nationals support fund. In addition, through our embassies, we are providing direct and relevant support as well as an extensive communications programme for all citizens across the European Union.

Lord McConnell of Glenscorrodale (Lab): My Lords, in questioning the Minister for the Foreign, Commonwealth and Development Office, I hope that it is appropriate to say that my noble friend Lady Kinnock of Holyhead was an inspirational internationalist all her working life. Her lifetime of public service has helped changed lives throughout the world and we wish her well in her retirement. On the issue of visas for clergy, the Church of Scotland also has deep concerns about the position of locum ministers serving congregations throughout the European Union following Brexit. It also has concerns about split ministries, where the minister involved may be part-time in two different, perhaps neighbouring, countries, in two different churches. Will the Government guarantee to involve the Church of Scotland in any discussions about resolving these issues, including, of course, other Churches and faiths?

Lord Ahmad of Wimbledon (Con): My Lords, I can of course assure the noble Lord that we will work with all organisations, including the Church of Scotland. If there are specific issues that he wishes to raise with me, I will be happy to answer them directly.

Lord Cormack (Con): My Lords, are the problems experienced by the Churches not yet a further example of the increasingly tetchy relationship between the UK and the EU? I commend to my noble friend the very perceptive article in today's *Times* by our noble friend Lord Hague, who points out how very important it is that we get on well and constructively? We have not left Europe. These are our friends and neighbours; it is incumbent upon them, and us, to ensure that we have a relationship which enables the normal decencies of life to be observed.

Lord Ahmad of Wimbledon (Con): I agree with my noble friend Lord Cormack, and indeed with my noble friend Lord Hague. That is why we work very constructively, including on citizens' rights, with the European Union. The Specialised Committee on Citizens' Rights oversees the implementation and application of citizens' rights; this is part of, and central to, the withdrawal agreement.

Baroness Ludford (LD) [V]: My Lords, the loss of free movement has harmed the lives and livelihoods of so many. Given that families and the ability to work have been severely impacted by the pandemic, are the Government considering alleviating one aspect of the childcare crisis—namely, the loss of au pairs—by providing a usable, dedicated visa route, so that this cultural exchange programme, which also assists families, can continue?

Lord Ahmad of Wimbledon (Con): My Lords, the noble Baroness will be aware that, as part of the trade and co-operation agreement, we have agreed various protocols. There is not a specific resolution for each and every profession but, as I said in response to an earlier question, we are looking at this very constructively with our European Union friends to ensure that we can unlock any issues or particular challenges for workers, as the noble Baroness has suggested.

Lord Flight (Con): My Lords, many religious communities are not yet aware of how they will be affected by Brexit. They have relied on EU members to fill temporary posts; this will be hit when free movement ends on 31 December,

along with routes for the previous temporary priest cover for summer holidays, for example. They can no longer sponsor a worker in the tier 5 category to fill the post of temporary minister of religion. Do the Government anticipate that the basis of an individual's visits will fall within the visitors' visa rules?

Lord Ahmad of Wimbledon (Con): My Lords, I will write to my noble friend on the specific question he raises and, of course, place a copy in the library.

Lord Singh of Wimbledon (CB) [V]: My Lords, the Question reminds us that we have inextricable ties of culture, trade and even religion with our former partners in the European Union. Does the Minister agree that, rather than looking selectively to the concerns of Anglicans, we should be looking to better working arrangements for all branches of Christianity, as well as other faiths and cultures, in reducing onerous visa requirements and enhancing better living and working arrangements with our former partners in Europe?

Lord Ahmad of Wimbledon (Con): My Lords, I will first perhaps correct the noble Lord by saying that we do not regard the European Union as former partners; we continue to have a strong partnership with the European Union on a range of different issues. On the issues of religion and communities across Europe, yes, diversity is a strength of the continent and we should encourage those who wish to visit different parts of it. In this regard, the noble Lord will be aware of what has already been agreed: the ability to visit different countries on a rolling basis without the necessity of visa requirements. Anyone wishing to visit the European Union from the UK can do so for 90 days on a revolving 180-day basis.

Lord Collins of Highbury (Lab): My Lords, I would like to broaden the Question a little. The Church of England has a long and established history of engaging with other Churches in Europe and further afield, as well as with other faith groups. One campaign that it is involved in is VaccinAid, a campaign that aims to help to fund Covid vaccine rollout. What has the Government's response been to ensure that that programme continues and that the Church of England's practical support in Europe and further afield is aided?

Lord Ahmad of Wimbledon (Con): My Lords, as I have already said in response to an earlier question, we are working very closely with the Church of England. We have set up a specific fund that helps to support UK citizens and are working with partner organisations, of which the Church of England is one, on the programme that the noble Lord has raised. I will write to him on the specifics of that.

Lord Wallace of Saltaire (LD) [V]: My Lords, I want to press the Minister on reciprocity. There are expatriate communities in this country that also have religious services—the Swedish Church in London, in which I have sung, and other Lutherans; French and Polish congregations; Jewish congregations with visitors from the continent—so there are clear mutual interests. Are we negotiating on the basis of reciprocity or are we asking for greater freedom of access for UK citizens in the EU than for EU citizens in the UK?

Lord Ahmad of Wimbledon (Con): My Lords, the noble Lord raises an important issue on reciprocal arrangements. There are a whole range of areas where we have seen reciprocal arrangements put in place. The whole purpose of the Specialised Committee on Citizens' Rights, which is supported both by the UK and by the EU—officials are meeting regularly—is to unlock those very issues that can provide for the kind of access that he is suggesting.

Baroness Warsi (Con) [V]: My Lords, the questions that I was going to ask have been answered by the Minister in response to the noble Lords, Lord Collins and Lord Wallace, so I am going to allow the noble Baroness, Lady Janke, to ask her question within the allocated time.

Baroness Janke (LD) [V]: My Lords, French Minister Clément Beaune recently said in a parliamentary answer that it could be possible to find an opt-out or more flexibility on the 90-day rule for visa-free travel in Europe but that the British had little appetite for negotiating this point. What does the Minister make of that? What action are the Government taking to get a fair deal for UK citizens on visa-free travel in European countries?

Lord Ahmad of Wimbledon (Con): My Lords, I believe that what we have negotiated is a fair deal. It allows anyone from the UK to travel to the European Union—the Schengen area specifically—for 90 days without the requirement of a visa. This period extends 90 days for a period of up to 180 days on a rolling basis. In essence, 50% of that 180 days can be on a visa-free basis. That is a substantive agreement reached with the European Union. On the question of rights, whether of UK citizens within the EU or otherwise, as Members will be aware, two different systems operate, where in certain instances UK citizens have to declare their intent to reregister, while other instances are provided through the natural law applying to existing UK citizens. On both processes, both streams of work are very efficient and effective, and where we find a challenge there is a joint committee to try to resolve those issues.

The Lord Speaker (Lord Fowler): My Lords, thanks to the generosity of the noble Baroness, Lady Warsi, all supplementary questions have been asked and we can move to the third Oral Question.

Central Bank Digital Currency

Question

12.54 pm

Asked by ***Lord Sarfraz***

To ask Her Majesty's Government what assessment they have made of a Central Bank Digital Currency.

Baroness Penn (Con): My Lords, the UK, like many countries globally, is actively exploring the potential role of central bank digital currencies. A CBDC would be an electronic form of central bank money, like cash, that households and businesses could use to make payments. The Bank of England published a discussion paper in March 2020 exploring the possibility of a UK CBDC, and the Treasury and the Bank are working together to consider next steps.

Lord Sarfraz (Con): My Lords, I thank the Minister for her Answer. Does she agree that a digital pound held in an electronic wallet could considerably reduce bank fees and currency risks for businesses buying and selling overseas and, when combined with smart contracts, reduce friction in trade finance? Does she agree that a digital pound could benefit individuals who suffer from exchange losses in foreign transaction fees when travelling?

Baroness Penn (Con): I agree with my noble friend that CBDCs could present a number of benefits, which the Treasury and the Bank are continuing to explore. These may include supporting resilience, innovation, competition and payments, potentially including reducing costs in domestic and international payments. The Bank of England's paper last year noted the potential for CBDCs to enable smart contracts, including in relation to the supply and delivery of goods.

Lord Vaizey of Didcot (Con) [V]: My Lords, while we have been issuing discussion papers, for the last seven years the Chinese have been undertaking practical tests of a digital currency in retail and wholesale markets. When will the Bank of England and the Government start to undertake practical tests for a pound sterling digital currency?

Baroness Penn (Con): My Lords, the Treasury continues work with the Bank of England on its discussion paper and next steps for that. The Bank has also been part of a coalition of central banks, including the Federal Reserve and the European Central Bank, in considering the roles of CBDCs internationally and the importance of cross-border interoperability of such CBDCs.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, further to the question asked by the noble Lord, Lord Vaizey, what specifically is being done to learn from experience in other countries, including the digital yuan in China, the e-krona in Sweden and in particular the sand dollar in the Bahamas, which is already in operation?

Baroness Penn (Con): The noble Lord is correct that a number of countries have launched pilots of central bank digital currencies, which the UK is looking at closely. As I noted previously, the UK is also leading international work to ensure that there are standards for CBDCs and that they are interoperable across different jurisdictions.

Lord Fox (LD): My Lords, I shall bring this down to ground a little. A central bank digital currency paves the way for the abolition of cash, but the market is already doing that: across the country, increasingly over the past year, many businesses refuse to accept cash or cheques and accept only digital—either a card or an app. There are about 5 million people in this country who are excluded because they are cash-dependent. What are the Government doing to ring-fence those people to make sure that they can continue to participate in the economy? What will they do as this move to digital gets even faster?

Baroness Penn (Con): My Lords, I reassure the noble Lord that the Government recognise that cash remains important to millions of people across the UK and have committed to legislating to protect access to cash in this country.

Lord Balfe (Con): My Lords, while I can understand that a CBDC will help business if it can be got off the ground, can the Government assure us that the status and backing of this currency will be as firm as the real currency that we currently enjoy?

Baroness Penn (Con): I can absolutely reassure my noble friend on that point. A central bank digital currency would need to be a risk-free currency backed by the central bank, and it would need to coexist with and complement existing forms of money.

Lord Tunnicliffe (Lab) [V]: My Lords, I had not heard of CBDCs until I was faced with this Question. The briefing paper by the Bank of England in March 2020 is particularly useful. It is clear that the system very much depends on the successful integrity of information technology. A successful cyberattack on the systems would be catastrophic. What additional measures are the Government taking to complement the work of the Bank of England and the Treasury to ensure that any systems introduced are cyber robust?

Baroness Penn (Con): My Lords, the Government have a leading cybersecurity programme. In addition to that, the Bank of England has committed to publishing a further paper this year on the potential financial stability impacts of digital currencies because, as the noble Lord notes, as well as the opportunities presented by these currencies there are risks that they could pose.

Lord Moynihan (Con): My Lords, CBDCs are here to stay and more than 60 central banks are studying how they could affect the role of traditional forms of money through proofs of concept. Some 36 central banks are exploring both retail and wholesale CBDCs. Will the Minister prioritise government work into how the retail use case can improve payment safety, increase domestic payment efficiency and ensure financial stability and inclusion in the metaverse?

Baroness Penn (Con): I reassure my noble friend that that is exactly what the Government's work with the Bank of England is seeking to do. It is focusing on the retail and consumer side of a central bank digital currency rather than wholesale.

The Lord Speaker (Lord Fowler): I call the noble Lord, Lord Desai. No? I call the noble Lord, Lord Moylan.

Lord Moylan (Con): My Lords, it is no surprise that China is a leader in central bank digital currency because essentially this involves us all having a bank account with the central bank over which the Government can, without the most rigorous safeguards, maintain panoptic surveillance. In China it is used as a means of social and economic control. Will my noble friend agree that the British people, jealous of their liberties, should be very anxious about the introduction of such a project here?

Baroness Penn (Con): I agree with my noble friend on the importance of privacy considerations in these matters. We know that more than 80% of central banks globally are doing some form of work on CBDCs and different nations will take different approaches. In the UK, Her Majesty's Treasury and the Bank of England are looking at all the public policy considerations of a CBDC very carefully, including privacy.

Baroness Gardner of Parkes (Con) [V]: My Lords, can the Minister comment on the extent to which the increased use of digital payments during the pandemic is expected to accelerate the development of central bank digital currency in the UK?

Baroness Penn (Con): The increase in digital payments during the pandemic has happened without the introduction of a central bank digital currency. However, the Government continue to look at the potential benefits of introducing a digital currency which may improve the resilience and innovation of payment systems within the UK.

The Lord Speaker (Lord Fowler): Is the noble Lord, Lord Desai, there? He is not. All the supplementary questions have now been asked and we move to the next Question.

China: Convictions of Democracy Campaigners in Hong Kong

Question

1.02 pm

Asked by ***Lord Jordan***

To ask Her Majesty's Government what representations they have made (1) to the authorities in Hong Kong, and (2) to the government of China, about the recent convictions of democracy campaigners in Hong Kong.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, we remain deeply concerned about the targeting of politicians and activists in Hong Kong and are following these cases closely. The apparent focus of the Hong Kong and Chinese authorities seems now to be on retribution against political opposition and the silencing of dissent. We continue to raise our concerns directly with the Hong Kong and the Chinese authorities, including this week with senior members of the Hong Kong Government. We urge the Chinese and Hong Kong authorities to respect the rights and freedoms enshrined in the joint declaration.

Lord Jordan (Lab) [V]: I thank the Minister for his reply. This Friday my friend Lee Cheuk-yan, leader of Hong Kong's independent trade unions, along with other democrats, is likely to be sentenced to years in jail for the crimes of peaceful protest, exercising freedom of assembly and freedom of speech. China's blatant disregard for agreements and promises and its suppressions of freedoms must be halted.

I ask the UK Government, as a signatory of the Sino-British joint declaration, to lodge a formal complaint at the UN International Court of Justice against China for violating its international obligation. As China's prosperity is built on trade with the west, I ask the UK Government, together with the United States and the European Union, jointly to tell China that if it continues to deny people their basic human rights, trading arrangements will be put at risk.

Lord Ahmad of Wimbledon (Con): On the general thrust of the noble Lord's suggestions, I assure him once again that we are not just working directly in raising these issues with the Chinese and Hong Kong authorities but are also doing it on a range of different issues with our key partners, including the United States and European Union.

On the ICJ, the noble Lord will be aware that the application of any decision of the ICJ requires the agreement of both parties. I suggest that in this instance China may not agree with any decision taken at that level. We are keeping the situation, which is fluid, under review to see what further steps we can take.

Baroness Kennedy of The Shaws (Lab): My Lords, may I first take this opportunity to thank the Minister. Within hours of discovering that I had been sanctioned by the Chinese for my work in this House and beyond in relation to the gross human rights abuses perpetrated by the Chinese Government against the Uighurs and the people in Hong Kong, he was a great support.

Can the Minister say whether the decision by the Chinese Government to sanction UK parliamentarians and convict—as we have heard from the noble Lord, Lord Jordan—decent, good pro-democracy activists in Hong Kong will finally lead to the announcement of Magnitsky sanctions on Hong Kong officials? They are clearly responsible for the dismantling of the city's autonomy and for covering up human rights abuses.

Lord Ahmad of Wimbledon (Con): I am sure I speak for every Member of your Lordship's House in paying tribute to the noble Baroness and other parliamentarians, as well as others outside Parliament, who continue to raise their voices in the interests of the Uighur community within China.

On the noble Baroness's specific points about Magnitsky sanctions, while I cannot speculate, recently we have taken specific steps against those operating in

[Lord Ahmad of Wimbledon]
Xinjiang, as I am sure the noble Baroness acknowledges. As I said earlier to the noble Lord, Lord Jordan, we continue to see what further steps we may take.

Baroness Northover (LD): My Lords, it is welcome that BNO passport holders have a route to UK citizenship, but the current crackdown shows how vital it is that younger people who may not have that entitlement are also protected. What action is being taken to extend these rights to those who do not hold BNO passports?

Lord Ahmad of Wimbledon (Con): I will first share with the noble Baroness that the BNO passport route and applications for BNO are functioning smoothly and effectively. On her second point about those who do not qualify for BNO status, if there are specific individuals who raise issues of concern and security and claim asylum within the confines of the United Kingdom, we look at those cases directly and individually.

Lord Garnier (Con): My Lords, I agree with the noble Lord, Lord Jordan, and the noble Baroness, Lady Kennedy, whose work in this field is hugely appreciated and acknowledged. Will the Government not only to make representations but, with our allies, to take real and practical steps to bring home to the PCR and the Carrie Lam Administration in Hong Kong that repression will not work? It makes them look ridiculous and should not be pursued.

Lord Ahmad of Wimbledon (Con): I totally agree with my noble friend's second point and I assure him that we are working directly with partners. He will be aware that on 9 January the Foreign Secretary released a statement with Australian, Canadian and US counterparts on the mass arrests. On 13 March the Foreign Secretary issued a statement declaring a breach of the joint declaration. We continue to work with partners on further steps we may need to take.

Lord Alton of Liverpool (CB) [V]: My Lords, I join the noble Baroness, Lady Kennedy, in thanking the Minister for his support following the imposition of sanctions. I declare that I serve as vice-chair of the All-Party Parliamentary Group on Hong Kong and as a patron of Hong Kong Watch. Has the Minister noted that, following the Chinese Communist Party's sanctions on European Union parliamentarians, major parties in the European Parliament have indicated that until sanctions against their MEPs are lifted they will not ratify the European Union comprehensive agreement on investment with China? While sanctions attempting to curtail free speech are imposed on UK parliamentarians, are the Government willing to make a commitment today to take similar action and see how concerted measures can be taken to ensure that parliamentary free speech is not impeded?

Lord Ahmad of Wimbledon (Con): My Lords, I note what the noble Lord has said. Again, I pay tribute to his work in standing up for the rights of people in both China and Hong Kong. We will continue to observe and work with our partners to see what further steps we can take. I cannot answer the specific point he raised on trade, and nor would he expect me to at this juncture, but, in terms of our relationship, we are keeping all things actively under review.

Lord Collins of Highbury (Lab): My Lords, I also pay tribute to my noble friend for the terrific work that she has done and for standing up to the bullies of the Chinese Communist Party. I also pay tribute to the noble Lord, Lord Alton. It is important that we are able to respond quickly and effectively, and that means working with our allies. It is now more than a month since the US applied sanctions to Hong Kong officials. Why is it taking us so long? Why are we not working with the United States to ensure that these bullies are stood up to?

Lord Ahmad of Wimbledon (Con): My Lords, I assure the noble Lord that we are working with the United States. However, in applying any sanctions to anyone across the world, or to any organisation, we need to ensure that, with the robust test that we have set up with the Sanctions and Anti-Money Laundering Act, they are fully justified and can be defended.

Lord Campbell of Pittenweem (LD): My Lords, on page 63 of the integrated review the Government say:

> "We will not hesitate to stand up for our values and our interests where they are threatened, or when China acts in breach of existing agreements."

How successful have we been in standing up for our values and interests in relation to Hong Kong?

Lord Ahmad of Wimbledon (Con): My Lords, we have been successful. For example, following the action we have taken in the context of the Human Rights Council, there has been an increase in the number of countries supporting the United Kingdom's statements, not just on Hong Kong but on Xinjiang as well.

Baroness Stuart of Edgbaston (Non-Afl): My Lords, domestic Ministers are currently making preparations across various departments to welcome Hong Kong British national (overseas) passport holders and to ensure that their settlement works well across the four nations. However, I am concerned about some of the families and friends that they leave behind in Hong Kong. Is the Foreign Office making representations to ensure that the families of any of those who take up visas and settle in the UK are not facing retribution?

Lord Ahmad of Wimbledon (Con): My Lords, I reassure the noble Baroness that BNO status is a generous scheme and extends to family members. As I said in answer to the noble Baroness, Lady Northover, if specific issues arise with individuals who do not qualify, wherever they may be in the world, the United Kingdom has always been generous in providing protection and I am sure will continue to be so.

Lord Blencathra (Con): My Lords, does my noble friend recognise that the obliteration of democracy in Hong Kong and the persecution of the innocent is simply following the playbook of Germany in the

1930s? A one-party state is tolerating no dissent, treating Taiwan like the Sudetenland, threatening its neighbours, exterminating a religious minority and building a massive military machine preparing for war. Will my noble friend the Minister please tell China that we will form every alliance possible in the world to challenge it?

Lord Ahmad of Wimbledon (Con): My Lords, I say to my noble friend that Hong Kong's prosperity and its way of life rely on the respect for fundamental freedoms, an independent judiciary and the rule of law. I further assure him that we will continue to bring together our international partners—a point made by the noble Lord, Lord Collins—to stand up for the people of Hong Kong, to call out the violation of their rights and to hold China to the obligations it freely assumed under international law. We will continue to work in that respect.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed and it brings Question Time to an end. We move now to the Private Notice Question on Northern Ireland and the Good Friday agreement. I call the noble Baroness, Lady Ritchie of Downpatrick.

Northern Ireland: Violence

Private Notice Question

1.14 pm

Asked by ***Baroness Ritchie of Downpatrick [V]***

To ask Her Majesty's Government, further to the ongoing violence in Northern Ireland, what representations they are making to the Northern Ireland Executive to uphold the Belfast/Good Friday Agreement.

Viscount Younger of Leckie (Con): My Lords, the UK Government take their responsibilities to protect the provisions of the Belfast/Good Friday agreement extremely seriously. The Northern Ireland Executive are united in their condemnation of recent unrest. The Government will continue to work alongside the Executive to support a peaceful, prosperous Northern Ireland. The Secretary of State for Northern Ireland has met political, community and faith leaders to call for calm and the Government will continue facilitating further constructive discussions over the coming days.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: Mindful of the fact that all the church leaders on the island of Ireland have issued a statement urging political unity, what immediate action will be taken by the British and Irish Governments, acting jointly as co-guarantors of the Good Friday agreement, and working and talking with the political parties in Northern Ireland? Will they hold an immediate meeting of the British-Irish Intergovernmental Conference to address the need for renewed political stability, an end to street violence and tension and a strategy to end poverty and marginalisation —in so doing, adhering to the key principles of the Good Friday agreement, those of peace and reconciliation?

Viscount Younger of Leckie (Con): As the noble Baroness will respect, the immediate priority is to provide the Executive and the PSNI with the support needed to manage the current unrest. However, we continue to consider a range of options to support their efforts in the medium term. These include the British-Irish Intergovernmental Conference—the BIIGC, to which the noble Baroness referred—which is an important element of strand 3 of the Belfast/Good Friday agreement and stands to promote bilateral co-operation at all levels and in all matters of mutual interest.

Lord Caine (Con): My Lords, does my noble friend agree that the recent disgraceful, totally unjustified and counterproductive violence in Northern Ireland has a number of different causes, many of them going back many years? To suggest that this is solely about Brexit is wilfully ignorant of the situation in Northern Ireland. Is it not the case that this Government remain wholly committed to upholding all strands of the Belfast agreement and, in addition to a robust criminal justice response, the Executive urgently need to focus on those policies designed to build a genuinely shared future for all the people of Northern Ireland?

Viscount Younger of Leckie (Con): My noble friend makes some sensible points. He is right that the reasons for the unrest are complex and multifarious, some to do with localised issues. The House will know that 10 April this year marks 23 years since the Belfast/Good Friday agreement was signed—an achievement of which the UK, Ireland and the US are justifiably proud and which led to transformative change. Today it falls to the people of Northern Ireland to decide what sort of society they want. It is clear that they are choosing the right path, which is to build an inclusive, prosperous and hopeful society that builds on the hard-won peace.

Baroness Goudie (Lab) [V]: I support what my noble friend Lady Ritchie has said. Should the Government not decide today to pledge themselves to calling and meeting urgently the parties involved 23 years ago—the British Government, the Irish Government and the United States, perhaps including the EU—and maybe bringing in other moderators to help put the deal together? We cannot now, 23 years on, go on like this. We need to take the next steps to implement parts of the Good Friday agreement that have not been implemented and to ensure that the people of Northern Ireland have a decent and peaceful life and that children can be educated.

Viscount Younger of Leckie (Con): To reassure the noble Baroness, and to go further than I did before, much work is going on. The Northern Ireland Secretary is in contact with Northern Ireland's party leaders. The collective priority at present is to work together to ensure public safety. The noble Baroness will know that the Northern Ireland Executive issued a joint statement on 8 April, which is a very welcome sign of solidarity against the despicable violence and which declared their support for law and order and policing. I assure the noble Baroness that nothing is off the table and they are doing their very best to resolve the current unrest.

Baroness Suttie (LD) [V]: My Lords, I also strongly condemn the recent criminal violence. Sadly, 23 years on from the signing of the Belfast/Good Friday agreement, segregation, division and poverty are still far too much a part of society in Northern Ireland. Does the Minister regard it as acceptable that only 7% of young people in Northern Ireland are in integrated education? Will he undertake to work closely with the Northern Ireland Executive as a matter of urgency to promote measures to overcome these divisions in the education sector?

Viscount Younger of Leckie (Con): The noble Baroness makes a very important and specific point about education. It is appalling that there are reports of teenagers coming on to the streets when, in fact, they should be going back to school—schools have opened—and then back home. I applaud the achievements of the community leaders, who are working extremely hard in the various parts of Northern Ireland where there has been unrest to encourage these pupils to go home and to stop adults encouraging them.

Lord Empey (UUP) [V]: I join others in saying how deeply disappointing it is that, 23 years later, we are witnessing unjustifiable violence on the streets. However, Her Majesty's Government have responsibilities with regard to the agreement, and I contend that, in fact, they themselves have set an example and have broken it by changing the economic status of Northern Ireland without either consultation or consent contained in the terms of the protocol. Will the noble Viscount encourage his right honourable friend in the other place to hold all-party discussions? Trying to do deals behind closed doors with a limited number of parties has not worked in the past, and the same mistakes are being repeated time and again.

Viscount Younger of Leckie (Con): I am listening to the noble Lord's experience and knowledge. As he will know, the Belfast agreement provided a foundation for growth and a framework for peace. I reassure him that my right honourable friend in the other place, Brandon Lewis, has been working extremely hard. He has met the five parties and other community leaders to help the Northern Ireland Executive to resolve these matters.

Lord Kilclooney (CB): My Lords, having been very much involved in the negotiations leading to the Belfast agreement, I ask whether the Minister can confirm that it has already been breached by the protocol and that the economic and political status of Northern Ireland has changed without the agreement of the people of Northern Ireland, which was a requirement of the Belfast agreement? Since there is this terrible trouble on the streets, which could continue, will the Minister please encourage the European community to identify the real causes of the unrest in Northern Ireland?

Viscount Younger of Leckie (Con): I am happy to report that there has been calm over the last two days, particularly last night, as the noble Lord will know. As he will also know, the protocol was designed to protect the Belfast/Good Friday agreement, east/west as well as north/south. The gains of the peace process prevent a hard border on the island of Ireland and safeguard Northern Ireland's place in the United Kingdom.

Lord Murphy of Torfaen (Lab) [V]: My Lords, when we negotiated the Good Friday agreement 23 years ago, we knew that the only way to success was through intensive dialogue and negotiation. While I agree that the Secretary of State for Northern Ireland is doing his best to talk to the political parties there, is it not now time, as the noble Baroness, Lady Ritchie, has said, that the Government meet the Irish Government at prime ministerial level in what is known as the BIIGC—a specific body, set up by the Good Friday agreement to deal with matters like this one? Frankly, we need the spirit of the agreement now in these difficult times.

Viscount Younger of Leckie (Con): As the noble Lord will know, I alluded to the BIIGC earlier. The Government are very aware of the ongoing concerns of some in the unionist and loyalist community over recent months. However, I echo the words of the noble Lord: the right way to express concerns and frustrations is through dialogue, engagement and the democratic process, not through violence or disorder. As I said earlier, the Secretary of State for Northern Ireland met with community, faith and political leaders last week. I reassure the noble Lord that my right honourable friend in the other place is in regular touch with the Irish Government.

Baroness Ludford (LD) [V]: My Lords, Brexit may not be the only cause of the disorder in Northern Ireland, but it is a catalyst. There have been encouraging press reports in recent days about the progress of technical talks on resolving outstanding issues in the operation of the Northern Ireland protocol. Can the Minister tell us a bit more about this, saying when these technical talks might move to a political phase and result in an agreement to streamline checks and paperwork, while respecting the law?

Viscount Younger of Leckie (Con): I am happy to give whatever information I can to help the noble Baroness. The UK Government are committed to working rapidly with the EU through the Joint Committee to address the outstanding concerns about the protocol to restore confidence on the ground. It is welcome that the UK and EU are able to use the Ireland/Northern Ireland Specialised Committee, which they did as recently as 26 March, to take stock of outstanding issues. Following that, the UK Government have proposed a work programme to the EU—the first step in working jointly to make progress across the full range of issues that remain. However, as the noble Baroness will tell me, this is urgent.

Lord Moylan (Con): My Lords, the human rights flaw at the heart of the Northern Ireland protocol is that, outwith the Good Friday agreement, binding law and regulation can be amended in a foreign state—in the EU—and then have direct effect in Northern Ireland without any democratic say by the people there. Does

my noble friend agree that a first step to addressing this would be to change the protocol so that all binding law and regulation in Northern Ireland is made in a democratic forum where Northern Ireland electors are represented—that is, in this Parliament or, if it is a devolved matter, in the Northern Ireland Assembly? This would strengthen the Good Friday agreement in spirit and action.

Viscount Younger of Leckie (Con): All sides need to continue to work together to ensure that the protocol can deliver these objectives and ensure that Northern Ireland continues to build on the gains of the peace process. We need to create the conditions that allow people and businesses to adapt to and implement the new requirements of the protocol. Ultimately, the protocol's fate depends on the political representatives of the people of Northern Ireland. The Stormont Assembly will vote on it in 2024, as agreed in the protocol.

Lord Eames (CB) [V]: My Lords, the noble Baroness, Lady Ritchie, has emphasised the widespread anxiety throughout Northern Ireland at the recent events on our streets, and the noble Lord, Lord Murphy, has endorsed that emphasis. Does the Minister agree with me that, at present, all parties must take the utmost care in their use of language, which can so easily be used as an excuse for violence? We must use every means possible to prevent us drifting back to the dark days of the Troubles. Does he agree that we need to emphasise care in what we say?

Viscount Younger of Leckie (Con): Notwithstanding the barking in the background of the noble and right reverend Lord's call, it was a serious question. He is absolutely right: as well as the work that my right honourable friend in the other place is doing with community leaders, measured language is very important. We do not want to see again these disgraceful scenes and the reckless, dangerous and criminal behaviour on the streets. Of course, this week's events do not reflect the true spirit of Northern Ireland—the creativity, the optimism, and the determination never to return to the conflict and division of the past.

Lord Dubs (Lab) [V]: My Lords, does the Minister agree that at least some people in Northern Ireland believe that the British Government are not as interested in what is going on there as previous British Governments used to be? Furthermore—[*Inaudible*]—the Government made repeated statements that the protocol—[*Inaudible*]—not impose any constraint. The Government have to think harder about how we treat the people of Northern Ireland—[*Inaudible*]—honestly and properly.

Lord Parkinson of Whitley Bay (Con): I am afraid that we missed the point from the noble Lord, Lord Dubs, because of connection problems, so I suggest that we move on to the next speaker on the list, with apologies to him.

The Deputy Speaker (Lord Duncan of Springbank) (Con): I am sure that the Minister will agree to write to the noble Lord, Lord Dubs, in response to the question. I call the next speaker, the noble Baroness, Lady Hoey.

Baroness Hoey (Non-Afl): My Lords, no one in government should underestimate the frustration, the disappointment and even the anger across Northern Ireland at the protocol, but it is not the only reason for the recent violence, which we all the condemn. There is an underlying feeling that the east-west relations aspect of the Belfast agreement has been disregarded and that north-south relations have been given more importance. When will Her Majesty's Government stop taking the neutral position that they seem to adopt? Like the Irish Government, who speak up for Irish nationalism, when will the United Kingdom Government start speaking up for the British union?

Viscount Younger of Leckie (Con): We have been doing just this. The union is very important. We have said again and again that Northern Ireland is a firm part of the United Kingdom. On the noble Baroness's question relating to east-west, I suspect that she is referring to the current challenges and the details that need to be sorted out as a result of Brexit. Much work has been done to ensure that food supplies, parcels et cetera are delivered to Northern Ireland from Great Britain and that supermarket shelves are full, as they should be.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, the time allowed for this Question has now elapsed. My apologies to the noble Lords, Lord Hain and Lord Dubs. We will have a brief pause to allow the Chamber to reassemble in readiness for the next business.

Arrangement of Business

Announcement

1.32 pm

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, we come to Report on the Overseas Operations (Service Personnel and Veterans) Bill. I will call Members to speak in the order listed. Short questions of elucidation after the Minister's response are discouraged. Any Member wishing to ask such a question must email the clerk. The groupings are binding. A participant who might wish to press an amendment other than the lead amendment in a group to a Division must give notice in debate or by emailing the clerk. 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 wants their voice accounted for if the Question is put, they must make this clear when speaking on the group.

Overseas Operations (Service Personnel and Veterans) Bill

Report

1.33 pm

Relevant documents: 9th Report from the Joint Committee on Human Rights, 30th and 36th Reports from the Delegated Powers Committee

Clause 2: Presumption against prosecution

Amendment 1

Moved by ***Lord Tunnicliffe***

1: Clause 2, leave out Clause 2 and insert the following new Clause—

"Ability to conduct a fair trial

The principle referred to in section 1(1) is that a relevant prosecutor making a decision to which that section applies may determine that proceedings should be brought against the person for the offence, or, as the case may be, that the proceedings against the person for the offence should be continued, only if the prosecutor has reasonable grounds for believing that the fair trial of the person has not been materially prejudiced by the time elapsed since the alleged conduct took place."

Member's explanatory statement

This new Clause replaces the presumption against prosecution with a requirement on a prosecutor deciding whether to bring or continue a prosecution to consider whether the passage of time has materially prejudiced the prospective defendant's chance of a fair trial.

Lord Tunnicliffe (Lab) [V]: My Lords, as we open the debate for the Report stage of the overseas operations Bill, I want to remind colleagues that, like many across this House, we remain determined to protect our troops from vexatious claims and shoddy investigations. We want it to be done in a way which directly tackles the problems head on, and which is in line with our international obligations. As I move Amendment 1 and speak to Amendment 6, it is with these aims clearly in mind.

I am sure that the Government will try to portray Amendment 1 as a wrecking amendment, but nothing is further from the truth. It aims to protect troops directly by removing the presumption and ensuring that prosecutors have regard to whether there can be a fair trial given the time allowed.

As drafted, the Bill is silent on the cycle of reinvestigations, and we cannot wait for the outcome of yet another MoD review before we deal with it directly. That is why we also fully support Amendment 6, which states, importantly, that there must be compelling evidence to justify a new investigation. It would place an effective framework around investigations, still allowing them to pursue new leads or witnesses when appropriate. This approach is complemented by Amendment 1, but we accept that Amendment 6 might be seen as the priority.

Ministers have identified problems with vexatious claims and shoddy investigations but are pursuing an indirect approach, and many colleagues do not understand why. We have the Bill in front of us now, so let us amend it now to solve the problems for good. I beg to move.

Lord Thomas of Gresford (LD) [V]: My Lords, I thought it would be interesting to look back at the Conservative Party's manifesto for the 2019 election. It said that

"we will introduce new legislation to tackle the vexatious legal claims that undermine our Armed Forces and further incorporate the Armed Forces Covenant into law."

You will note that nothing is said there about a presumption against prosecution or anything about the criminal law, so the proposals in this Bill have been dreamed up without consultation. Certainly, there was no consultation with the former Judge Advocate-General, Jeff Blackett, who is internationally respected for his expertise in this field. As far as I can ascertain, there was no consultation either with the Director of Service Prosecutions or any of his highly respected predecessors. How, incidentally, in the light of the manifesto commitment can the Government resist the amendment that we shall later discuss in the name of the noble Lord, Lord Dannatt, on the Armed Forces covenant?

The hole in this Bill is that it does not directly address the scandal of delayed investigations and reinvestigations of service personnel. Amendment 6 would fill that gap with a code of investigation procedures. Investigations are fraught with difficulty in overseas operations. They operate in an insecure environment; potential witnesses may be reluctant to speak; there are language and cultural difficulties; and forensic services of the quality to be found in the UK may be unavailable for pathological examinations, DNA sampling, fingerprints and so on. I recall a case from Iraq in which the body of an alleged victim had been buried on the same day, in accordance with Muslim custom, in a cemetery in Najaf which covers 1,500 acres. No Iraqi witness could pinpoint the exact place and, accordingly, there could be no pathological investigation of the cause of death—indeed, in that case, it was an issue as to whether anybody had been killed at all.

It is obvious, therefore, that investigations may be protracted. It is equally obvious that the possibility of prosecution cannot be held over a service man or woman indefinitely. There has to come a point where a decision is made: should this case proceed, or should it stop? Amendment 6 proposes a workable and practicable code in which the service police or other investigator is supervised and monitored by the Service Prosecuting Authority under the direction of the independent Director of Service Prosecutions. Within six months of the report of allegations to the service police, an investigator has to be satisfied that there is sufficient evidence of criminal conduct to refer the investigation to the SPA. Once he is so satisfied, he must make that report within 21 days, submitting his case papers to date for consideration.

Under the proposed subsection (4), the SPA has power to

"order the investigation to cease if it considers it unlikely that charges will be brought."

Alternatively, the SPA will advise and direct the investigator on the issues he needs to clarify and the direction in which his inquiry should proceed. If the investigation proceeds, the code in Amendment 6 requires that it be reviewed by the SPA every three months, when a fresh decision will be made on whether to cease or proceed with the investigation. On its conclusion, the investigator must send his final report, with accompanying case papers, to the SPA.

The case cannot be reopened at the whim of the investigators. The consent of the Director of Service Prosecutions would have to be sought and granted only on the grounds that there is new and compelling evidence or information that might materially affect the previous decision to close the investigation and might lead to a charge being made. A decision to reopen would, of course, be challengeable by judicial

review. As a final back-up, the Judge Advocate-General is given power to give practice directions for these procedures.

So there we have it: a code tailored for the particular circumstances and difficult environment of overseas operations. I shall be moving Amendment 6 in due course. But I also add my support to Amendment 1. The position of the DSP has evolved. Amendment 1 emphasises an important part of his role—considering the public and the service interest in deciding to prosecute and, namely, whether a fair trial might be prejudiced by delay.

The answer to the problem of delay is not to introduce the concept, novel to serious offences in the criminal law of this country, of presumption against prosecution after an arbitrary period of five years has elapsed. Let us take a likely scenario: an ex-soldier confesses to shooting a wounded prisoner, but no evidence emerges for 10 years because the "wall of silence" of his comrades —a phrase used by the trial judge in the case of Baha Musa—has protected him.

Blanket walls of silence appear in other contexts. I once prosecuted a prisoner and extracted a confession from a fellow prisoner of the abduction and murder of a little girl four years before. The first prisoner said nothing of the man's confession for five years. But then he became an evangelical Christian and finally reported it to the prison governor. The Government say that for such a heinous crime as shooting a wounded prisoner, the presumption would probably be waived, but by whom? Who would decide whether the threshold of heinousness had been passed? If the presumption would be waived routinely so that every murder in theatre should be prosecuted, then murder as a crime should appear in the schedule to this Bill. But if that is resisted—if there are to be degrees of murder so that the presumption would be waived in one instance but not another—what are the criteria?

I turned to the Bill to see what factors are referred to. First, it is immaterial

"whether or not there is sufficient evidence to justify prosecution"

according to Clause 1(2). Secondly, the status of the person killed is not a factor for consideration. As to whether the victim is a combatant or a civilian, captured or wounded, man, woman or child, no factors relating to the murdered person are mentioned in Clauses 1 to 3.

What the prosecutor must consider, however, is the adverse effect of operations on the perpetrator, the conditions he was exposed to and the strains and stresses of combat. But here is the most surprising thing: it is not the effect on the individual under suspicion that is considered—how he personally was affected by the exigencies of service, how he suffered from "shellshock", to use the First World War phrase. It is not like the case of Sergeant Blackman, who remembered, after he had been convicted but in time for his appeal, that he had personally been suffering from stress, and his responsibility was thereby diminished. No; Clause 2(3) provides that

"the prosecutor must have regard to the exceptional demands and stresses to which members of Her Majesty's forces are likely to be subject while deployed on overseas operations, regardless of their length of service, rank or personal resilience."

The test is objective. The presumption against prosecution applies even if the personal resilience of the soldier who commits murder or a war crime is such that he is unaffected by the stresses of combat. It is a charter for the callous, psychopathic killer hiding in a military uniform.

1.45 pm

Lord Boyce (CB) [V]: My Lords, I shall speak to Amendment 6. The Bill sets out to make better provision about legal proceedings for our Armed Forces when they are or have been engaged on overseas operations. The Bill's significant emphasis on presumption against prosecution as a way of relieving some of the stress of legal proceedings implies that that solves the problem. However, it is the investigation and reinvestigation process that is so debilitating and wears people down. Prosecution may even come as a form of relief. It is important to bear in mind that even when the presumption is in place, there is no total lifting of the threat of prosecution after five years. This can still happen if the Attorney-General sees fit.

However, that is all by the way. As I have mentioned, the investigation process needs to be addressed to ensure that it remains relevant, that a watchful, supervisory eye is kept on the process so that it does not drift, that there are timelines with which investigators have to comply and that reinvestigations are launched only after the most careful judicial oversight. Amendment 6 sets out to cover all these points, as was so well articulated by the noble Lord, Lord Thomas of Gresford. For that reason, it has my support.

Lord Mackay of Clashfern (Con) [V]: My Lords, I shall say something about Amendments 1 and 6. Before I do, I draw attention to a ministerial Statement that has been put in the Library about overseas operations in which the MoD indicates its support for service personnel in these situations. The Statement—I hope your Lordships have access to a copy of it—says that the Overseas Operations Bill was introduced

"to provide greater legal protections to Armed Forces personnel and veterans serving on military operations overseas. The Bill would provide a better … legal framework for dealing with allegations and claims arising from future overseas operations and recognising the unique burden and pressures placed on our service personnel.

As part of the debate on this Bill, there has rightly been a focus on the support which MoD provides to those personnel who may find themselves subject to investigations and prosecutions. We are grateful to right honourable and honourable Members of both Houses for the interest they have taken in this issue and their commitment to ensuring that service personnel and veterans who are impacted by historical allegations are properly supported.

As a matter of MoD policy, service personnel are entitled to legal guidance at public expense when they face criminal allegations that relate to actions taken during their service and where they were performing their duties. This principle is at the heart of the MOD's approach to supporting our people and is enshrined in the relevant Defence Instruction Notices. It is a responsibility that the MOD takes extremely seriously, and we keep our policies under review to ensure that they are appropriate and tailored.

Since the early days of Iraq and Afghanistan, the Armed Forces have learned lessons on better resourcing and professionalising support to those involved in inquiries or investigations arising from operations, and the mechanisms for providing this support

[Lord Mackay of Clashfern]

have been transformed in recent years. The way this is delivered and by whom will depend on the specific circumstances of the case, the point which has been reached in the proceedings and, most importantly, the needs of the individual concerned.

Any individual who is investigated by the Service Police is entitled to legal representation as well as the support of an Assisting Officer who can offer advice on the process and procedure and signpost welfare resources. The individual's Commanding Officer and Chain of Command have overall responsibility for the person's welfare and for ensuring access to the requisite support.

Individuals who are interviewed as suspects under caution will be entitled to free and independent legal advice for this stage of the investigation. Subsequently, legal funding for service personnel and veterans facing criminal allegations can either be provided through the Armed Forces Legal Aid Scheme (AFLAS) or through the Chain of Command.

Where the Chain of Command accepts funding responsibility this is means-test exempt and therefore no personal contribution will be required. The Armed Forces Criminal Legal Aid Authority (AFCLAA) will act as a conduit for the provision of publicly funded legal representation on behalf of the chain of command, including all aspects of financial and case management. However, if available evidence suggests the individual was doing something clearly outside the scope of their duty, then it would not be appropriate for that person to receive this Chain of Command funding.

All other serving personnel and veterans facing criminal proceedings prosecuted through the service justice system, and who are not covered by the Chain of Command funding, may apply for legal aid through the AFCLAA and may be required to make a personal contribution, determined by means testing, if funded through the Armed Forces Legal Aid Scheme. This is in line with civilian legal aid scheme.

There is an important exemption from the means testing requirement, which has been waived in criminal cases arising from our Iraq or Afghanistan operations heard in the Service Court. Separately, legal advice and support is also available whenever people are required to give evidence at inquests and inquiries and in litigation and this is co-ordinated by MOD.

We also recognise that for service personnel and veterans who are involved in these processes, legal guidance by itself is not enough. This is why we have developed a comprehensive package of welfare support to ensure we deliver on our commitment to offer ongoing support to veterans.

As part of delivering on this commitment, the Army Operational Legacy Branch (AOLB) was established in 2020 in order to coordinate the Army's support to those involved in legacy cases. Fundamental to this is ensuring that welfare and legal support is provided to all service personnel and veterans involved in operational legacy processes. The AOLB provides a central point of contact and optimises the welfare network already in place through the Arms and Service Directorates and the network of Regimental Headquarters and Regimental Associations. Veterans UK are also closely engaged in providing support to veterans and, when required, the Veterans Welfare Service will allocate a welfare manager to support individual veterans. Although the AOLB has been established to provide an Army focus to legacy issues, the support it provides is extended to the other services.

This is provided in addition to the range of welfare and mental health support that is routinely offered to all our people. The potential impact of operations on a service person's mental health is well recognised and there are policy and procedures in place to help manage and mitigate these impacts as far as possible. The MOD recognises that any operational deployment can result in the development of a medical or psychiatric condition and that service personnel may require help before, during and after deployment. All Armed Forces personnel are supported by dedicated and comprehensive mental health resources. Defence Mental Health Services are configured to provide community-based mental health care in line with national best practice.

In terms of support for those who have left the forces, veterans are able to access all NHS provided mental health services wherever they live in the country. As health is devolved and services have been developed according to local populations' needs, service specification varies. This can mean bespoke veteran pathways or ensuring an awareness of veterans' needs. All veterans will be seen on clinical need. What is important is that best practice is shared between the home nations and there are several forums in place to provide this.

The Office for Veterans' Affairs works closely with the MOD and departments across government, the devolved Administrations, charities and academia to ensure the needs of veterans are met."

I am sorry that that was a rather long but, I think, very comprehensive statement of what is required. Of course, it is not only applicable to operational situations overseas but is also important in reference to all the Armed Forces. It would therefore seem right that this kind of thing should be legislated for in the Armed Forces Bill when it comes along.

I turn briefly to Amendments 1 and 6 in light of that provision. In my submission, Amendment 1 departs from a very clear statement of the situation in which particular prosecutions should not start or be continued, towards a very vague one where the decision is put on the shoulders of the prosecutor, who must decide whether a fair trial is likely to be damaged by the delay.

2 pm

I should have thought that primarily that kind of decision is for the tribunal, which has responsibility. The prosecutor will be responsible for prosecution, but he does not know, and cannot know, the full detail of the effect, if any, of the passage of time on the defence. Therefore, in my submission—apart from the fact that it is completely vague— you cannot tell when the investigations are going on, whether it is true or not. It is a very big and difficult thing to establish during the course of the investigations.

It is important to remember that what this Bill is trying to do in the provisions to which Amendment 1 relates is to ensure that the investigations are not dragged on for more than five years. The Bill provides a very considerable spur to the speed with which investigations are done in order to be effective. It is completely easy to define, in the sense that you can tell when you are doing the investigation whether it is five years since the incident. You do not need to be thinking about whether the time passing has damaged the possibility of a fair trial. Apart from anything else, it is not very easy for the person who is conducting the investigation to have a balanced view of the situation for the defence. In my submission, Amendment 1 is not an improvement on what is in the Bill already.

On Amendment 6, the provisions that are set out in the statement which I read indicate quite clearly that the situation that is provided is much better than what would be done by the sort of detail which is provided in Amendment 6. The whole system indicates, as set out in that statement, that the matter is dealt with as a detailed attachment to the particular case and that what is required in each particular case may be very different in one from another. Therefore, in my submission,

Amendment 6 is not an improvement on the Bill and I do not think that there is room for, or need for, an elaborate system of care other than what is provided in detail by the statement that I have read.

Baroness Chakrabarti (Lab) [V]: My Lords, I wish to offer whole-hearted support to Amendments 1 and 6 which were tabled by the noble Lord, Lord Thomas of Gresford, and my noble and learned friend Lord Falconer of Thoroton. The noble and learned Lord, Lord Hope of Craighead, also put his name to Amendment 1, and the noble and gallant Lords, Lord Boyce and Lord Dannatt, put their names to Amendment 6.

First, I wish to say something about the statement to which the noble and learned Lord, Lord Mackay of Clashfern, has referred. I was going to comment on it later in the context of the new duty of care in Amendment 14, tabled by the noble Lord, Lord Dannatt, but as the noble and learned Lord, Lord Mackay, has taken the trouble to read the statement in full, and it is therefore no doubt fresh in the minds of noble Lords, perhaps this is a convenient moment to express two considerable concerns that I have in relation to the statement by the Secretary for Defence. The first is in relation to legal aid and the second is in relation to mental health support.

In relation to legal aid, there is a very serious ambiguity—perhaps not even an ambiguity, perhaps a straightforward gap—in the support that is being offered to service personnel in relation to legal aid. I refer your Lordships to the part of the passage that reads,

"where the chain of command accepts funding responsibility, this is means-test exempt and therefore no personal contribution will be required. The Armed Forces Criminal Legal Aid Authority will act as a conduit for the provision of publicly funded legal representation on behalf of the chain of command including all aspects of the financial and case management, however"—

I emphasise "however"—

"if available evidence suggests the individual was doing something clearly outside the scope of their duty then it would not be appropriate for that person to receive this chain-of-command funding."

So this non-means-tested automatic funding that does not require a personal contribution is not available to personnel and veterans facing the gravest peril from investigation and prosecution. This is hardly comfort to those to whom this Bill is supposed to be addressed. It is those who face the gravest allegations who principle suggests should have the greatest legal support, for it is those who are facing charges that they were doing something clearly outside the scope of their duty who are losing sleep at night as they may face dishonourable discharge and very serious criminality and consequence. This is the very group who are being let down and denied automatic non-means-tested legal provision. I have to disagree with the noble and learned Lord, Lord Mackay, about the Defence Secretary's statement offering very much comfort at all to serving Armed Forces personnel or indeed veterans for the reason I set out: those in greatest jeopardy are left with least protection by way of legal aid.

Secondly, in relation to mental health provision, we know and the statement makes clear that to put someone in harm's way in these circumstances is almost automatically to expose them to great jeopardy in relation to their mental health. Here is an ambiguity rather than a clear gap because at various points in the passages of the statement referring to mental health provision there are caveats about "where needed" "pathways in the community", "best practice" and "local population needs". I do not know what these words mean and no doubt the Minister will be able to clarify them in a moment, but to me it looks as if, subject to signposting and pathways, these people are being left, broadly speaking, to take their chances in a Cinderella part of the NHS. It does not seem clear from this statement that all serving personnel and veterans are given automatic mental health support. It is all "subject to clinical needs" or "subject to local population needs" and all of those caveats. That is what I would have said later about the need for the duty of care in the amendment tabled by the noble Lord, Lord Dannatt.

Returning to Amendments 1 and 6, Amendment 6 and the proposed new clause seem to me to address exactly what the Bill was supposed to: the problem of delayed, shoddy and, therefore, repeated investigations, which cause so much concern to members of the Armed Forces and veterans. Tackling this head-on, with some comprehensive statutory provision to push investigations to be timely and adequate, is a very good idea. Of course, the amendment has very distinguished and gallant supporters.

In relation to Amendment 1, respectfully, I could not disagree with the noble and learned Lord, Lord Mackay, more than I do. It replaces the presumption against prosecution with a very common-sense consideration of fair trials and whether they have been compromised by the passage of time. The noble and learned Lord, Lord Mackay, says that you cannot expect a prosecutor to make those determinations and that it is not appropriate, but this is what prosecutors up and down the land do every day. It is completely within, and absolutely core to, a prosecutor's duty to consider whether it is possible, in light of the passage of time and the possible deterioration of evidence, for the accused to have a fair trial. This would be crucial to both the evidential test and, indeed, the public interest test, which all prosecutors have to consider. If that is the case—if these are normal prosecutorial factors—this might lead some noble Lords to ask why they should be put in the Bill. They should be because we have been told repeatedly during the passage of the Bill to date that a lot of what is required is comfort—clear statutory comfort to personnel and veterans that they will not be let down by the system and that they will be protected.

Putting this fair trial consideration, and including the passage of time, alongside the new provisions offered on investigations is a very good idea. As others—the noble Lord, Lord Thomas, in particular—have said, the five-year rebuttable presumption is rebuttable. Perhaps with the triple lock it is very difficult to rebut that presumption, but it will still leave concerns in the minds of personnel and veterans that a lengthy or late investigation may lead to a prosecution. It is so much better to protect people in the way offered by those who tabled these amendments. It is a far greater protection against late, shoddy and repeated investigations than

[Baroness Chakrabarti]
the so-called triple lock that is causing so much concern. Normally, when employers and people seek to protect those who have been under especial pressure at work and in their service, it is support, not immunity, that is offered. That is the common-sense approach offered in these amendments.

Lord Hope of Craighead (CB) [V]: My Lords, I add my support to Amendment 1, to which I have put my name. As a former prosecutor, I do not think that the task it sets the prosecutor is likely to be all that difficult, given that it must proceed on the information available to the prosecutor at the time the decision has to be taken. It may be that the information is relatively slender at the very beginning, when he is considering whether to bring proceedings, but such as it may be, it is the information that he should take into account. If one considers the stage at which proceedings are continuing, which this clause also covers, he is likely to be in possession of a good deal more information. So I do not think that there is anything wrong in the wording of Amendment 1. The essence of it lies more in what it takes out than the simple wording of what it seeks to put in. What it takes out is the presumption. I have no difficulty with the way in which the presumption is expressed in Clause 2, but I do object to it in principle.

2.15 pm

The interests of justice work both ways. Of course, one must have regard to the interests of the person against whom proceedings are contemplated or are in progress. But there are the interests of the complainant, too—the victim, as the noble Lord, Lord Thomas of Gresford, reminded us. In the ordinary course, the prosecutor's decision-taking process is even-handed, with no bias towards one way or the other. Here it is being tipped one way, without regard to what this means for the complainant on the other side. There seems no room here for any regard to be had to the gravity of the offence or its consequences, and that makes me very uneasy. It is even more troubling where the proceedings are already in progress and the question is whether they should be continued. There is no guidance here at all. As the noble Lord, Lord Thomas, said, where are the criteria? For example, does it matter how far the proceedings have got? To apply the presumption to proceedings already under way, whatever stage they have reached, seems very odd.

Then there is the effect of the presumption on our treaty obligations. I refer in particular to the torture convention, which we will come to discuss with Amendment 3. As it happens, I do not have my name down to speak in that group, although I fully support that amendment, so perhaps I can take this opportunity to say something about it briefly, as the point is relevant here too. I expressed my strong feelings in Committee about the way that the Bill as it stands runs counter to the absolute and unqualified obligation on this country under the 1987 UN convention against torture to take jurisdiction against any alleged offender found within its territory. This is an international crime from which there is no safe haven. It seems to me that the practical effect of the presumption will be to derogate from the convention, which the convention itself does not permit. If it is applied, the member or former member of the armed services whom it is intended to benefit will have no assurance that he will be immune from prosecution in some other country which is a party to the convention. Taking a holiday in Spain, for example, could expose that person to that risk. For that to happen would be humiliating to our reputation as a county that stands by the rule of law. Agreeing to Amendment 3 would remove that objection but, as the Bill stands, it is a strong reason for objecting to the presumption.

Lord Morris of Aberavon (Lab) [V]: My Lords, I speak briefly in support of Amendments 1 and 6. There is little I need to add to the words of my noble friend who moved Amendment 1 and the particularly forceful speech of the noble Lord, Lord Thomas of Gresford.

As a criminal law practitioner all my professional life, I spell out my concern that, whatever the circumstances, there must be a fair trial in accordance with the principles of our criminal law. Defendants can be materially prejudiced by the passage of time and, as my noble friend Lady Chakrabarti said, prosecutors take this into account every day in their decisions. Certainly, in authorising prosecutions that came within my particular field as Attorney-General, I took this into account as a prosecutor. This is my concern. I hope it is the concern of Her Majesty's Government regarding the current backlog of criminal trials in our courts.

I will give a simple illustration of what can happen in practice. First, memories fail. Secondly, circumstances are embroidered, sometimes innocently. Ask two or three people for their recollection of a fairly simple set of circumstances, and they frequently vary. I have spent many happy hours in our courts pointing out discrepancies in the accounts of different witnesses of very simple circumstances. The deeper one dug, the greater the rewards. They were frequently meat and drink to a defence lawyer who did not have much greater ammunition.

I will mention rape trials as an example. Whenever the defences consent, in my experience, the chances of a London jury convicting when no complaint is made within three weeks are not high. This is a very serious matter, which we will have to address at some stage. Time is of the essence in seeing that justice is done to both complainant and defendant.

I hope that the drafters of the Bill, in particular this clause, have sufficient experience of the dangers of justice not being done when there has been a passage of time. I support these amendments and believe that they are sufficiently important to be put in the Bill.

Lord Thomas of Cwmgiedd (CB) [V]: I support both Amendments 1 and 6. In the light of all that has been said, I need not add anything in respect of Amendment 1, but will make some brief remarks on Amendment 6. Investigating offences and prosecuting them are inextricably intertwined. To ensure fairness to all concerned—complainants, victims, defendants and prospective defendants—an integrated approach is essential.

By and large, in our civilian justice system, the CPS and police forces have, over the years, come to work very closely together to the benefit of all. In the military justice system, there can be no doubt that the creation of the post of DSP has, particularly through the work of the highly respected holders of that independent office, greatly improved the quality and fairness of service prosecutions. It is now clear that the conduct of investigations has given rise to most of the issues and, in that respect, reform is needed. This amendment is therefore greatly to be welcomed.

The amendment does not deal with instances in which there has been an error in failing to identify cases where there is evidence of criminal conduct but nothing has been done. It is not appropriate to address that at this stage; no doubt it can be covered when Sir Richard Henry Henriques has reported. However, in cases where the investigator has concluded that there is evidence of criminal conduct, the interposition and proposed role of the Director of Service Prosecutions should bring significant improvement.

In my experience of the military justice system, there are many reasons why delays in prosecution occur, but often the causes are lack of focus, insufficient concern about timeliness, and a lack of accountability—particularly the latter. It is clear that the delays that occurred in relation to Iraq arose in large part from these factors, although, as the Minister pointed out in Committee, there have been great improvements since and in the work of IHAT. The risks of a lack of focus, a failure to act with expedition and timeliness, and a lack of accountability remain, as they are endemic to any system. This clause should address those issues.

I will make one last observation. I particularly welcome the provision for the Judge Advocate-General to give practice directions to investigations of overseas operations. Although that would not be usual for a judge in the civilian system, the Judge Advocate-General has a unique role. This was particularly demonstrated by the highly successful and distinguished tenure of that office by Judge Blackett. When holder, he ensured that changes were made to keep the service justice system in line with modern procedure. The power to make practice directions for investigations is consistent with the Judge Advocate-General's unique role and, I hope, will ensure that problems are promptly addressed as the way in which cases are investigated changes, with changes to the way in which matters should be done as well as the advent of technology.

Baroness Smith of Newnham (LD): My Lords, I support both amendments, but in particular Amendment 6 in the name of my noble friend Lord Thomas of Gresford. Both seek to focus on prosecution, but also deal with the issue that the Government stated at the outset that they wanted to deal with; that is, as my noble friend Lord Thomas of Gresford pointed out, vexatious claims. The way the Bill is presently drafted does little to deal with repeated investigations. These amendments, in particular Amendment 6, are intended to deal with precisely the problem that the Government say that they wish to deal with. I would be grateful if the Minister could explain to us how she feels that the Bill, as drafted, is going to do what the Government claim that they want to do, because nothing in the Bill is going to stop vexatious investigations.

These amendments are not intended to undermine the Bill. In moving Amendment 1, the noble Lord, Lord Tunnicliffe, said that the Government would perhaps think that it would rip the heart out of the Bill. Neither is intended to do that; they are intended to be helpful and ensure that vexatious and unnecessary prosecutions cease and that prosecutions are dealt with expeditiously, where appropriate. Unlike the noble and learned Lord, Lord Mackay of Clashfern, these Benches do not think that prosecutors will find it too difficult to do the job outlined for them in Amendment 1. I support the amendments, and we will call a vote on Amendment 6, as my noble friend Lord Thomas of Gresford pointed out earlier.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, first, I thank your Lordships for your contributions. As has been indicated, Amendment 1 seeks to replace the presumption against prosecution with a requirement that the prosecutor, when deciding whether or not to prosecute a case, should consider only whether the passage of time has materially prejudiced the prospective defendant's chance of a fair trial.

I say as a general comment that my noble and learned friend Lord Mackay of Clashfern and the noble Baroness, Lady Chakrabarti, dwelled at length on the important matter of support for our Armed Forces, as covered by the Written Ministerial Statement tabled today. The noble Baroness raised specific issues which, with her indulgence, I propose to deal with when we debate Amendment 14 in the name of the noble Lord, Lord Dannatt.

I will explain why the Government are resisting Amendment 1. In doing so, I will cover much of what I said on this in Committee. First, we are not suggesting that service personnel or veterans have been subject to unfair trials. Our concerns have always been about the difficulties and adverse impacts on our personnel from pursuing allegations of historical criminal offences. Your Lordships are familiar with the character of such difficulties and adverse impacts—repeated inquiries and uncertainty hanging over the heads of our personnel for years as to whether any prosecution is to be brought.

Secondly, we are reassured that a person's right to a fair trial—the nub of this amendment—is already protected in law by, among other safeguards, the Human Rights Act 1998 and Article 6 of the European Convention on Human Rights.

Thirdly, the amendment would remove the high threshold of the presumption against prosecution. We have specifically introduced this measure to provide the additional and overdue protection that we believe our service personnel and veterans so rightly deserve, while ensuring that, in exceptional circumstances, individuals who have done wrong can still be prosecuted for alleged offences.

Fourthly and lastly, Part 1 of the Bill already addresses the potentially negative effects of the passage of time, by requiring a prosecutor to give particular weight to the public interest in finality in Clause 3(2)(b).

2.30 pm

The intention behind the measures the Government have introduced in Part 1 is to ensure that we help to provide reassurance to our service personnel and veterans in relation to the threat of legal proceedings arising

[Baroness Goldie]
from alleged events occurring many years earlier on operations overseas. This has meant balancing the need to introduce protective measures for service personnel and veterans while remaining compliant with our domestic and international legal obligations. I accept that, as the noble and learned Lord, Lord Hope, argued, there may be different assessments of what may be perceived as issues of principle. The Government believe that the combination of Clauses 2 and 3 provides the appropriate balance between victims' rights and access to justice on the one hand, and a fair and deserved level of protection for our service personnel and veterans on the other. This amendment, which would remove the presumption, would weaken that protection and undermine that balance.

The noble and learned Lord, Lord Hope, argued that the presumption is vague and unspecific. With the greatest respect, I do not agree. The concept of a presumption is widely understood in law, and it falls to facts and prosecutorial judgment as to whether the presumption is rebutted, whereas this amendment is in time undefined and in other content vague. I would therefore argue that it is itself unspecific and is an unhelpful substitute for the more clearly articulated and understood legal concept of a presumption.

Amendment 6 seeks to introduce artificial timelines for the progress of investigations and a power for the Judge Advocate-General to intervene to direct investigations. I say to the noble Lord, Lord Thomas of Gresford, that nothing was "dreamt up" in relation to the Bill. There was a consultation on the proposed approach. As I said during the debate on this issue in Committee, I remain unpersuaded of the need to introduce the limitations on the investigative process proposed in the amendment. These limitations do not apply in civilian life to civilian police force investigations; nor, interestingly, do they apply to service police investigations in the UK, so it seems that in that regard alone, the amendment creates an anomaly. However, it would also seem somewhat premature to propose changes to the investigative process while Sir Richard Henriques' review of investigative and prosecutorial processes in relation to overseas operations is still in progress. I agree with the noble and gallant Lord, Lord Boyce, that investigations are critical. Sir Richard Henriques may have useful suggestions to make, and I suggest that we await his reports.

I set out previously and in some detail the Government's concerns about this amendment, and I do not intend to cover all that ground again. However, I will set out briefly the key reasons why the Government are resisting it. Overseas operations should not be compared with the largely benign policing landscape of the United Kingdom, and we should not underestimate the challenges of conducting complex, robust and thorough investigations in a non-permissive, potentially dynamic and dangerous environment. Where the service police have reason to believe that an offence may have been committed, they have a legal duty to investigate it. Artificial timelines and restrictions placed on them in respect of the conduct of investigations would clearly impinge on their statutory independence.

Closing down or restricting the investigative timeline risks failing to exculpate our own forces or failing to provide much-needed closure to the families of deceased personnel. What if new evidence is claimed to have emerged which can be ascertained only by investigation? It would also bring a clearly increased risk of the International Criminal Court stepping in and determining, justifiably, that we are either unwilling or unable to properly investigate alleged offences on overseas operations.

There is already a well-established relationship between the prosecutor and the police, which ensures that a balance may be struck between further investigation and assessments of a realistic prospect of a conviction. The prosecutor can offer advice to the police but cannot direct them. That is a healthy separation of function. I submit that it would be inappropriate to fetter this discourse or to introduce a third party—the Judge Advocate-General—into the existing process. I reiterate that the same healthy relationship exists between the civil police and the Crown Prosecution Service without the need for a member of the judiciary to be involved.

The noble Baroness, Lady Smith, asked how the Bill addresses the issue of investigations. It creates a clear framework which everyone can understand around time limits for pursuing matters, whether criminal prosecutions or civil litigious matters, so that everyone involved in the process—whether the victim, the advising lawyers, the MoD, the accused or related witnesses—will now all understand that making progress with their criminal prosecution or their civil litigation claim will be made easier the sooner they set about doing that. As I have already observed—I remember saying this specifically at Second Reading and may possibly have repeated it in Committee—there is no doubt whatever that the best service you can provide to a victim or claimant is to ensure that the allegations are investigated as quickly as possible while minds are fresh and evidence is still available, and before the lapse of time may eradicate or taint what evidence there is.

For these reasons, the Government are not able to accept either amendment and in these circumstances, I ask the noble Lord to withdraw Amendment 1.

Lord Tunnicliffe (Lab) [V]: My Lords, after listening to the debate, it is clear that we are united in seeking to protect our troops from vexatious claims and shoddy investigations. Both amendments in the group seek to do this and would approach the issue head on, unlike the presumption. However, I am convinced from my previous research and from listening to the debate that Amendment 6, which has direct effect, has the appropriate priority. It seems that, while one hears little accusation of unfairness by prosecutors, as a number of noble Lords have pointed out, there is a requirement for prosecutors to ensure that prosecutions are fair. There has been much concern about the investigations, so I favour the clarity of Amendment 6. We will not divide the House on Amendment 1 and will support the noble Lord, Lord Thomas, whom we urge to test the opinion of the House on Amendment 6. I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

The Deputy Speaker (Baroness Henig) (Lab): We now come to the group beginning with Amendment 2. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Clause 5: Requirement of consent to prosecute

Amendment 2

Moved by ***Baroness Ritchie of Downpatrick***

2: Clause 5, page 3, line 27, leave out paragraph (b)

Member's explanatory statement

This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, all the amendments in this group apart from Amendment 18 are in my name. Amendments 2, 9, 10, 15, 16, 17 and 30 are the core amendments and the others in my name are consequential.

The purpose of this suite of amendments is to limit the extent of the Bill's application to the courts in Northern Ireland in order to remedy its incompatibility with the provisions of the Belfast agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.

These amendments are supported by the Committee on the Administration of Justice in Northern Ireland, and Rights and Security International, based in London. They are concerned that the Bill as drafted directly conflicts with binding provisions under the 1998 Belfast/Good Friday agreement and would roll back broader reforms of the peace process in Northern Ireland.

I raised these issues in Committee and took note of the Minister's response. In the longer term, it would be preferable if I could secure a meeting with the Minister, along with the two rights-based organisations, to discuss these pertinent issues. For now, I shall continue.

Both these organisations concur with the Joint Committee on Human Rights and others that the Bill, as it applies to the UK as a whole, breaches the UK's legal obligations under international humanitarian law, human rights law and international criminal law. Amendments to remove provisions in the Bill to address these breaches would also, by default, remove the incompatibility with the Belfast agreement. Should these amendments not be made, the issue of incompatibility with the Belfast agreement would remain and would, I fear, set a dangerous precedent if left unchallenged. I therefore urge the Minister to meet me, and representatives of both organisations, to discuss these issues further.

The Belfast agreement includes a UN-lodged international treaty, under which the UK is legally bound to implement the provisions within its competence. Paragraph 6—the Rights, Safeguards and Equality of Opportunity section of the agreement—includes the following undertaking:

"The British Government will complete incorporation into Northern Ireland law of the European Convention of Human Rights (ECHR) with direct access to the courts and remedies for breach of the Convention".

As currently drafted, the Bill undermines this provision by limiting direct access to the Northern Ireland courts and to remedies for breaches of the ECHR in relation to proceedings in connection with overseas operations. It should be noted that the commitment to incorporate the ECHR in Northern Irish law is not limited to events in Northern Ireland.

Under Article 2 of the Ireland/Northern Ireland protocol to the UK-EU withdrawal agreement, "Rights of Individuals", the UK has made a legally binding commitment that there will be no diminution of rights in the Rights, Safeguards and Equality of Opportunity section of the 1998 agreement as a result of the UK's departure from the EU. This commitment is given domestic legal effect through the European Union (Withdrawal Agreement) Act 2020. It would clearly make a mockery of this Brexit-related commitment to the Belfast agreement if the Government, while simultaneously championing it, concurrently diminish rights under the same section of the agreement for other reasons. That would be the case under this Bill.

Quite clearly, the Bill would set a difficult precedent, especially in the light of the Government's stated intentions to review the Human Rights Act and of the Written Ministerial Statement of 18 March 2020 to introduce legacy legislation for Northern Ireland that provides a level of equivalence to the current Bill.

Clause 5—in so far as it applies to Northern Ireland—would have the practical effect of reversing one of the key criminal justice reforms of the peace process. In the criminal justice review which flowed from the Belfast agreement, superintendence of the Director of Public Prosecutions by the Attorney-General was removed to ensure the independence of the prosecutor. That change was made in the context of the Attorney-General's controversial role in decisions not to prosecute members of the Armed Forces. Clause 5 would, in effect, restore the situation whereby the UK Advocate-General for Northern Ireland would wield a de facto veto over prosecutorial decisions in cases falling under the scope of the present Bill, returning to the situation of what would be seen as political intervention in such cases. That is why my amendment seeks to leave out lines 27 to 29, which deal specifically with Northern Ireland.

2.45 pm

As I already pointed out, I raised these concerns during Committee on the Bill on 9 March. The Minister graciously responded that

"nothing in the Bill could be interpreted as undermining the commitments contained in the Belfast agreement, and nothing that would diminish the essence of the protections that the Human Rights Act currently offers to the people of Northern Ireland."—[*Official Report*, 9/3/21; col. 1585.]

But I feel that that response was totally unrealistic, hence we have Amendment 2 and all the other amendments.

It is simply not possible to read the provisions of the current Bill as being compatible with the clear wording of the codified duties to incorporate the ECHR into Northern Ireland law under the Belfast agreement. The current Bill does not allow for either direct access to the courts or domestic remedies for ECHR breaches in the cases that fall under its remit. It is also worth pointing out that there is a view within human rights organisations that Clause 11 of the Bill, as currently drafted, explicitly limits the application of the Human Rights Act, thus limiting the incorporation of the ECHR into the law of Northern Ireland.

[Baroness Ritchie of Downpatrick]

In response to the Minister's assertion in Committee that the Bill is already compatible with the Belfast agreement—many would contend that this is not the case, in particular the CAJ and RSI, as well as some noble Lords who spoke in that debate—I tabled the amendments in this group, apart from Amendment 18 which is in the name of other noble Lords, to seek to limit the scope of the Bill so that it does not apply to Northern Ireland because of the direct connection with the ECHR. I hoped that these amendments, which would prevent the Bill being incompatible with the Belfast agreement, would prompt a broader debate on the viability of diminishing the incorporation of the ECHR into law in the UK as a whole, as part of attempts to address the broader problems that have been identified in the Bill.

In summary, I make one final request to seek a meeting with the Minister, together with the rights-based organisations, to clarify fully the issues and to demonstrate clearly how this Bill contravenes the Belfast/Good Friday agreement, particularly in relation to the ECHR. I beg to move.

Baroness Hoey (Non-Afl): My Lords, Amendment 18 stands in my name and that of the noble Lord, Lord Lexden. It is a simple amendment to Clause 15, seeking to put into legislation the promise made by the Government that the same protections in relation to prosecutions of veterans of overseas operations will apply to those who served in Northern Ireland—that is, to the 300,000 service personnel involved in Operation Banner from 1969. The amendment requires the Government to report on progress to that end before the necessary commencing regulations under subsection (2) are made. I hope that progress will come early rather than later, although I recognise that it will require courage within government—the same kind of courage as was displayed by the Parliamentary Under-Secretary, Johnny Mercer MP, who took this Bill through Committee in the other place.

On Second Reading, I explained that the Army and the police stopped a civil war breaking out in Northern Ireland, for which they get little thanks, just vexation, prosecutions and unending reinvestigations—largely due, ironically, to the overinterpretation of the right to life in Article 2 of the European Convention on Human Rights. They paid a colossal price in blood: some 700 soldiers, including in the UDR, and 300 RUC officers were murdered. The equivalent number of police officers killed on a UK-wide basis would be 10,000; that figure says it all.

In reality, the Bill is limited in its provisions. Reinvestigations will not be ended but I hope that they will be curtailed. It does not constitute an amnesty, although it is worth pointing out that, since the Belfast agreement, we have already had many elements of an amnesty, including the early release of all paramilitary prisoners and the letters of comfort for IRA members on the run.

Now the only matters investigated and coming to prosecution are those involving Army veterans, half a dozen of whom are awaiting trial in relation to events 50 years ago. That process has taken a very long time. Much of the investigation evidence appears to be based on files in the National Archives at Kew, where the Troubles archaeology proceeds apace. The IRA did not leave any paperwork to be excavated, of course.

The Bill before us carries in Clause 1 a permission for prosecutors to consider

"whether or not any proceedings against a person for a relevant offence should be continued".

This is a key provision that must be extended to Northern Ireland and just might enable the persecution to cease. Our Amendment 18 is grouped with 17 others, all in the name of the noble Baroness, Lady Ritchie of Downpatrick, from whom we have just heard. Those 17 amendments are a pre-emptive strike against the extension of the Bill to Northern Ireland, which is what my amendment wants. It is being pushed hard by the legal academics at Queen's University and the CAJ, who all seem to be more obsessed with persecuting veterans than real justice.

In the Member's explanatory statement, the noble Baroness states that the Bill is incompatible

"with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law".

However, in my view, she misinterprets the 1998 Belfast agreement. It said nothing about the prosecution or non-prosecution of members of the security forces. Yes, the UK Government undertook to incorporate the ECHR into British law; they duly did so in the November of that year when the Human Rights Act received Royal Assent. As the noble Baroness, Lady Goldie, said at Second Reading,

"nothing in the Bill could be interpreted as undermining the commitments contained in the Belfast agreement, and nothing that would diminish the essence of the protections that the Human Rights Act currently offers to the people of Northern Ireland."—[*Official Report*, 9/3/21; col. 1585.]

The Government gave a promise. I strongly want to believe that promise but I am afraid that some of the things that have happened in Northern Ireland recently show even more that there is a need for this Government, and us in your Lordships' House, to show that we mean what we say. That is why I very much hope that the Minister will be able to accept my amendment and put it into the Bill.

Baroness Chakrabarti (Lab) [V]: My Lords, I will speak briefly in support of the collection of amendments in the name of the noble Baroness, Lady Ritchie of Downpatrick. It does not take me to remind your Lordships that this is a very difficult moment in Northern Ireland and not one to be doing anything to undermine, or anything that could be interpreted as undermining, the Good Friday agreement.

I hear the endorsement from the noble Baroness, Lady Hoey, of the Government's position: that the Bill must do nothing to jeopardise the ECHR and the agreement. With respect, however, that view is not shared by human rights analysts in the United Kingdom, in Northern Ireland and internationally. Of course, in this respect, even the perception of jeopardising the convention, and therefore the agreement, is a significant problem.

In the context of Northern Ireland, the problem stems from going down this road of de facto—or attempted—immunities and statutes of limitation in the first place. The amendment in the name of the

noble Baroness, Lady Hoey, further demonstrates the difficulty with opening this Pandora's box and going for limits on prosecution and on suits against the Government rather than bolstering the robustness and timeliness of investigations and providing adequate support for veterans and serving personnel.

Lord Mackay of Clashfern (Con) [V]: My Lords, all the amendments that the noble Baroness, Lady Ritchie of Downpatrick, has put before your Lordships would delete from this Bill its application to Northern Ireland. In other words, the result of these amendments would be that this defence Bill would not affect Northern Ireland.

It is vital that all defence legislation for the United Kingdom applies to the United Kingdom because the purpose of that body of legislation is the protection and defence of the whole United Kingdom. Therefore, whatever solution may be necessary for what the noble Baroness speaks of, it certainly cannot be to delete from the defence legislation of Northern Ireland an Act that will affect the defence legislation of the rest of the United Kingdom. I strongly suggest that this is not a feasible way of proceeding. I am all in favour of her having a meeting with the Minister in early course—I hope that the Minister will have time for that—but I do not think that we in your Lordships' House can possibly accept this solution.

So far as the amendment in the names of the noble Baroness, Lady Hoey, and the noble Lord, Lord Lexden, is concerned, the question of how to deal with this matter is very tricky indeed. I have been anxious about it for a long time, and I do not see it getting any easier to solve. I do not feel able to comment on the wisdom of that amendment at this time, but I would be happy to hear what the Minister has to say about it.

Lord Hendy (Lab) [V]: My Lords, it is a privilege to follow the noble and learned Lord, Lord Mackay of Clashfern, although on this occasion I do not reach the same conclusion as he does. I support the amendments in the name of the noble Baroness, Lady Ritchie of Downpatrick, for the reasons that she has eloquently given. I wish to add to that only by emphasising that it is not acceptable to undermine the commitment to the European Convention on Human Rights provided by the Belfast agreement. Recent events have emphasised the importance of upholding and, as my noble friend Lady Chakrabarti pointed out, being seen to uphold, both the letter and the spirit of that agreement.

3 pm

Baroness Suttie (LD) [V]: My Lords, this has been an important short debate. As the noble Baroness, Lady Ritchie, set out very clearly in her speech, these amendments aim to limit the extent of the Bill in so far as it applies to the courts in Northern Ireland. The Good Friday/Belfast agreement provides that the Government will complete incorporation of the European Convention on Human Rights into Northern Ireland law, ensuring direct access to the courts and remedies for breach of the convention. When we debated a different set of amendments in Committee last month, a number of noble Lords raised very real concerns that the Bill, as it currently stands, could potentially be interpreted as undermining this requirement.

As the noble Baroness, Lady Ritchie, pointed out, there are, in particular, concerns that the Bill will not allow for either direct access to the courts or domestic solutions for any breaches of the ECHR for cases that fall under its remit. When we previously debated these matters in Committee, it was made clear that this Bill does not deal with matters relating to Northern Ireland, but I would be grateful if the Minister would none the less address the specific issue of incorporating the ECHR into law in Northern Ireland.

In light of the recent tensions and, indeed, violence in Northern Ireland, it is more important than ever that the Government reconfirm their continued and unequivocal support for the Good Friday/Belfast agreement, including in all of its practical applications in terms of rights. In Committee on 9 March, I raised a number of other concerns about the Government's general approach towards legacy issues and asked whether they remain fully committed to the balanced and well-considered approach set out in the Stormont House agreement. Some 23 years since the Good Friday/Belfast agreement was signed, and well over a year since *New Decade, New Approach* was published, it is increasingly important that the Government make clear their policies and general approach to legacy matters. This is all the more urgent given recent events, where, all too tragically, we have been witnessing a return to the politics of blame and division.

I appreciate that the Minister, who is always so generous in her replies, is not actually from the Northern Ireland Office, but I asked in Committee whether I could receive a more detailed reply on this subject, perhaps in a letter, or have a meeting with the Northern Ireland Office to discuss these matters in more detail. Unfortunately, neither has been forthcoming, so I would like to add to the request of the noble Baroness, Lady Ritchie, for a meeting so that we can discuss and explore these matters further.

Lord Tunnicliffe (Lab) [V]: My Lords, important issues have been raised on this group and I thank colleagues for tabling these amendments. The Good Friday agreement is central to the ongoing peace process in Northern Ireland; we all have a vital role to play in safeguarding that agreement and building on its promise, and we must ensure that this Bill, or any other, protects it.

The Bill raises important concerns over access to justice and it should be improved for the entire United Kingdom. The Government have also promised legislation to address the legacy of the past in Northern Ireland. Ministers need to get this delicate legislation right: it must be in the spirit of the Stormont House agreement; we need victims to be at the heart of legacy proposals; and the Bill must maintain a broad-based consensus on proposals, as outlined in *New Decade, New Approach*, which restarted power-sharing. I look forward to hearing from the Minister actual details about this, rather than the usual "when parliamentary time allows" line.

Baroness Goldie (Con): My Lords, once again I thank your Lordships for contributions to an important issue which is, for obvious reasons, very much to the forefront of our minds at the moment.

[Baroness Goldie]

Amendment 18 in the name of the noble Baroness, Lady Hoey, seeks to create a new condition that must be satisfied before the provisions in the Bill can be commenced. That condition is for the Government to publish a report on the progress made in relation to legislation addressing the legacy of the Troubles. I thank the noble Baroness for her eloquent address, to which I know we all listened with both respect and interest, but I think she will understand that the Government cannot accept an amendment, no matter how well intentioned, that puts conditions on the timing of the implementation of provisions that seek to provide certainty and reassurance to our service personnel and veterans who have served on overseas operations, which is a different issue from the position of Northern Ireland.

I understand the concerns that sit behind this amendment, so I reassure noble Lords that the Government remain committed to making progress on legacy issues and we will not allow our brave service personnel who served in Northern Ireland to be forgotten. In order to make further progress, the Northern Ireland Office must continue to engage with the Irish Government, the Northern Ireland parties, and civic society, including victims' groups. The Secretary of State for Northern Ireland and the UK Government recognise the importance of working with all parts of the community as part of this process.

I hope noble Lords will recognise that, sadly, the pandemic has had an impact in causing a loss of momentum, but I reassure your Lordships—in particular with regard to what the noble Lord, Lord Tunnicliffe, said just a few minutes ago—that this Government will bring forward legislation to address the legacy of the Troubles that focuses on reconciliation, delivers for victims, and ends the cycle of investigations. The Government—in particular, the Northern Ireland Office—are committed to making progress on this important issue as quickly as possible. In these circumstances, I hope that the noble Baroness, Lady Hoey, will be minded to not move her amendment.

The other amendments in this group, in the name of the noble Baroness, Lady Ritchie of Downpatrick, seek either to remove references to Northern Ireland in parts of the Bill or to stop certain provisions extending to Northern Ireland. The Bill extends to England and Wales, Scotland and Northern Ireland for a reason. Defence is a United Kingdom competence and our Armed Forces personnel are drawn from all parts of the United Kingdom, in whose name they serve. That is why the effects of the provisions in the Bill are substantively the same throughout the entire United Kingdom. It is right and desirable that the objectives of the Bill should apply throughout the United Kingdom; my noble and learned friend Lord Mackay of Clashfern made that point well.

However, as different pieces of legislation in the different nations of the UK are impacted by the Bill, to ensure technical compliance and drafting accuracy the necessary amendments have been effected in respect of the relevant law in England and Wales, in Scotland and in Northern Ireland. I say gently to the noble Baroness, Lady Chakrabarti, that the Bill is not a de facto immunity, and I think many people are coming to accept that as being an extravagant interpretation of the Bill.

Clause 10 and Schedule 4, which this group of amendments seeks to remove in their entirety, amend only the Limitation (Northern Ireland) Order 1989. These provisions introduce new factors that the Northern Ireland courts must consider when deciding whether to allow certain claims relating to overseas military operations to be brought after the primary time limit expires and set the maximum time limit for such claims at six years. It is necessary to extend similar provisions across the whole of the UK to ensure consistency. Your Lordships would acknowledge, I think, that it would be deeply unsatisfactory if the changes that the Government are introducing in relation to claims brought in England and Wales and Scotland could be circumvented by a claimant bringing their claim in Northern Ireland instead.

I am absolutely sure that the intent of these amendments is not to create legal loopholes. No one could listen to the noble Baroness, Lady Ritchie, without understanding her commitment and sincerity about the concerns that she has articulated. The stated reason for these amendments is a concern that the Bill will undermine a specific provision in the Belfast agreement stipulating that the United Kingdom Government would complete the incorporation into Northern Ireland law of the European Convention on Human Rights, with direct access to the courts and remedies for breach of the convention rights. The noble Baroness, Lady Suttie, sought reassurance on this point.

As I said when this issue was debated in Committee, the commitment to incorporate the ECHR into Northern Ireland law has already been met by enacting the Human Rights Act 1998, which provides for direct access to the domestic courts to vindicate convention rights, and the Northern Ireland Act 1998, which provides that the Northern Ireland Assembly may legislate only in a way compatible with the convention rights, and that Northern Ireland Ministers must also act compatibly with these rights. As currently drafted, the Government consider the Bill compatible with the convention rights. Your Lordships will acknowledge that review of the Human Rights Act is not the responsibility of the MoD.

Statutory limitation periods, which seem to be what these amendments are mainly concerned with, are generally considered legitimate restrictions on the right of access to a court. That right of access is not absolute, and the European Court of Human Rights has upheld the compatibility of limitation periods, even if these periods are in themselves absolute, including the absolute six-year limitation period for claims resulting from intentional torts in England and Wales. That was the finding in Stubbings and Others v the United Kingdom. Limitation periods do not impair the essence of the right of access to a court. Such periods ensure legal certainty and finality, avoid stale claims and prevent injustice where adjudicating on events in the distant past involves unreliable and incomplete evidence because of the passage of time. As such, nothing in the Bill would diminish the essence of the protections that the Human Rights Act currently offers the people of Northern Ireland. I reassure noble Lords that the

measures in the Bill do not undermine the United Kingdom's commitment to human rights and to the European Convention on Human Rights.

For the reassurance of the noble Baroness, Lady Ritchie, I repeat that this Government remain fully committed to the Belfast agreement, the constitutional principles it upholds, the institutions it established and the rights it protects. This agreement has been the foundation for the welcome political progress, peace and stability in Northern Ireland over the last 22 years and will be protected going forward.

The noble Baronesses, Lady Ritchie and Lady Suttie, have asked whether I am agreeable to meeting them. I am very happy to agree to meet them if I can help them, but it may be—and I would ask them to reflect on this—that they would find engaging with the review of the Human Rights Act, and perhaps meeting with the Northern Ireland Office, more relevant to their specific concerns. If they still wish to meet me, however, I would, of course, be happy to do that. With the explanation offered by these remarks, I urge the noble Baroness to withdraw her amendment.

3.15 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I thank all noble Lords who have contributed to this debate, some in favour of my amendment and others not. That is the very nature of debate: it is about achieving an opinion that can be either for or against a particular Motion or amendment—or, in this instance, several amendments.

The noble Baroness, Lady Hoey, outlined her amendment in relation to Operation Banner. She obviously viewed my amendments as a pre-emptive strike at removing the references to Northern Ireland from the Bill. The noble Baroness, Lady Chakrabarti, believed that it was important not to undermine human rights provisions, particularly in relation to the Belfast/Good Friday agreement—a view also taken by the noble Lord, Lord Hendy. The noble and learned Lord, Lord Mackay of Clashfern, who is very much a learned lawyer, said that this was about protecting the defence of the UK. While I understand that argument, I am none the less concerned that there will be contraventions of the Belfast agreement in terms of the ECHR.

The noble Lord, Lord Tunnicliffe, agreed about the importance of the Belfast agreement, particularly at the moment, in developing political stability—a view shared by the noble Baroness, Lady Suttie—and the importance of that political stability. As I said earlier during my Private Notice Question, there is a compelling need for the British and Irish Governments to meet as part of the intergovernmental conference, a provision within the Good Friday agreement to deal with all these issues, including this one, which will become very pertinent to legacy issues and veterans.

The Minister has kindly agreed to the meeting request of the noble Baroness, Lady Suttie, and me. I suggest, in relation to that, that we might meet the noble Baroness, the noble and learned Lord and the Minister at the Northern Ireland Office, because these are issues to do with the Belfast agreement and Northern Ireland. While my views and concerns have not been assuaged to any degree, I feel that these issues would be better explored in such a meeting, to which the noble Baroness has very kindly agreed. On that basis, I beg leave to withdraw my amendment.

Amendment 2 withdrawn.

The Deputy Speaker (Lord Lexden) (Con): My Lords, we now come to Amendment 3. Anyone wishing to press this amendment to a Division must make that clear in debate.

Clause 6: "Relevant offence"

Amendment 3

Moved by ***Lord Robertson of Port Ellen***

3: Clause 6, page 4, line 11, at end insert—

"( ) An offence is not a "relevant offence" if it amounts to—

(a) torture, within the meaning of section 134 of the Criminal Justice Act 1988 (torture); or

(b) genocide, a crime against humanity or a war crime as defined in section 50 of the International Criminal Court Act 2001 (meaning of "genocide", "crime against humanity" and "war crime")."

Member's explanatory statement

This amendment provides that the presumption against prosecution does not apply to war crimes, crimes against humanity, genocide or torture.

Lord Robertson of Port Ellen (Lab) [V]: My Lords, Amendment 3 is in my name and that of the noble Lord, Lord Alton, and my noble friends Lord Campbell and Lord West. The amendment will provide that the presumption against prosecution does not apply to war crimes, crimes against humanity, genocide and torture.

Maybe after a lifetime in politics I was affected by some uncharacteristic naivety in thinking that the Government, faced by almost universal and expert opposition on this aspect of the Bill, would by now have changed their mind. Reasonable and knowledgeable people can only be dismayed by the obduracy of Ministers in this situation, and it is why there is a more than normal responsibility on this House to ask the Commons to look again, reflect and change the Government's mind, before lasting and serious damage is done to the interests of our Armed Forces and the reputation of this country.

The objective of the Bill is clear and understandable: it is to protect our troops in foreign operations from vexatious prosecutions. Who could reasonably object to that? Certainly not me. But sadly, the Bill does not do what it claims to do and instead actually harms those whom we seek to protect. At best it would prevent only 1% of prosecutions, but it would not prevent seemingly endless investigations. Not only would this legislation not do what it claims to do but it would single out our Armed Forces for a privileged protection previously unknown in British law—what the Law Society, in its submission to us today, calls a "quasi-statute of limitations".

For the first time in the history of British law we would be creating a two-tier justice system in which troops acting for us abroad would be treated differently from other civilians in society. That is serious enough, and alone should make Ministers worry about what

[Lord Robertson of Port Ellen]
they are embarking on, but, additionally, by saying that there is a presumption against prosecution for the most serious of all crimes—namely genocide, crimes against humanity and torture—the Bill undermines some of the most basic international legal standards for which this nation was renowned.

It does not end there. As a result of this quasi-statute of limitations, our troops might, for the first time, have to appear in front of the International Criminal Court. The chief prosecutor of the ICC, Mrs Fatou Bensouda, has said that

"were the effect of applying a statutory presumption be to impede further investigations and prosecution of crimes allegedly committed by British service members … the result would be to render such cases admissible before the ICC".

The next chief prosecutor of the ICC is a British nominee, Mr Karim Khan, and the irony might be that among his first cases could be a British one.

Like so many of my predecessors as Defence Secretary or NATO Secretary-General, in these positions I had to take weighty decisions about foreign deployments and sending people into harm's way. These were never easy or lightly thought decisions, and there were many sleepless nights involved. No one should underestimate my feeling when I say that I believe that this Bill is bad for our troops, bad for our British legal system and very bad for our national reputation.

I ask the Minister today to reflect for a moment on a few additional factors. First, there was unanimous criticism from the noble and gallant Lord, Lord Craig, the noble Lord, Lord Dannatt, and my noble friend Lord West, in the last debate that we had. Field Marshal Lord Guthrie, former Conservative Defence Secretary and Foreign Secretary Sir Malcolm Rifkind, and former Conservative Attorney-General Dominic Grieve, have all publicly opposed this measure. What about General Sir Nick Parker, former commander of British land forces, who urged Ministers not to damage the reputation of British Armed Forces overseas? Then there is Bruce Houlder QC, a former Director of Service Prosecutions, who told the *Financial Times* that the five-year limit would be "an international embarrassment". On top of all these salvos, just yesterday the UN High Commissioner for Human Rights, Michelle Bachelet, issued a statement of real significance, saying that this Bill

"in its current form, risks undermining key human rights obligations that the UK has committed to respect."

I remind the House of the report of the non-partisan committee of both Houses of the British Parliament, the Joint Committee on Human Rights, which considered this Bill and said that

"we have significant concerns that the presumption against prosecution breaches the UK's legal obligations under international humanitarian law (the law of armed conflict), international human rights law and international criminal law. It risks contravening the UK's obligations under the UN Convention Against Torture, the Geneva Conventions, the Rome Statute and international customary law."

Those are devastating comments.

Perhaps, in my naive hopefulness, I allowed myself to think that no Government, still less one ostensibly committed to the interests of our Armed Forces, would pursue a measure which would harm them, their reputation and the reputation of our country as a stalwart upholder of the highest international legal standards. That is why I hope that now, at the last minute, the Minister will recognise the forces of reason arrayed against her and, in good military parlance, make a tactical retreat. I beg to move.

Lord Alton of Liverpool (CB) [V]: My Lords, I am a signatory to the amendment tabled by the noble Lord, Lord Robertson of Port Ellen. I wholeheartedly endorse his comments. He has made the case so well, having spoken with all the advantage and experience of high office in government and NATO, that I can be relatively brief.

In Committee, the noble and learned Lord, Lord Falconer of Thoroton, pointed, as the noble Lord, Lord Robertson did, to the broad coalition inside and outside this House which spans from well-experienced military personnel to the United Nations, human rights charities and former Defence Secretaries. Those diverse voices have cogently argued that we should extend the exclusions from the presumption to cover genocide, torture and crimes against humanity. Echoing those concerns when speaking earlier today on a previous amendment, my noble and learned friend Lord Hope of Craighead also set out some of the compelling reasons why the House should support Amendment 3.

I will say a few words about the crime of genocide. Following the overwhelming support which the House gave to the all-party amendments on genocide that I recently moved to the Trade Bill, the House will have noted that many of the same arguments advanced during those debates about strengthening the rule of law also apply to Amendment 3.

Reflect for a moment that the International Criminal Court's prosecutor has urged the United Kingdom

"to ensure that the exemption clause extends to all crimes within the jurisdiction of the Court".

Are we seriously going to ignore this admonition? What calculation have we made of the reputational damage and the danger of being accused of being Janus-faced when we call out genocide in places such as Xinjiang, against the Uighurs, or Myanmar, against the Rohingya, but do not hold ourselves to the same stringent test?

Showing contempt or disdain for the ICC is something that we usually associate with authoritarians and dictators. We should be leary of being found in such disreputable company. It also stands in stark contradiction to the vaunted claims in the integrated review that the United Kingdom will be a world leader in promoting British values and a rules-based international order. Global Britain will be measured by its actions and not as a slogan.

The ICC's chief prosecutor has said that, as this Bill stands, the result would be to

"render such cases admissible before the ICC",

and that the UK would

"forfeit what it has described as its leading role, by conditioning its duty to investigate and prosecute serious violations of international humanitarian law, crimes against humanity and genocide on a statutory presumption against prosecution after five years."

As we have just heard from the noble Lord, Lord Robertson, the United Nations Commissioner for Human Rights, Michelle Bachelet, added her voice only yesterday,

urging us, as parliamentarians, to heed warnings that, in its current form, the Bill risks undermining key human rights obligations that the United Kingdom has committed itself to respect. She urged us to ensure that the law

"remains entirely unambiguous with regard to accountability for international crimes perpetrated by individuals, no matter when, where or by whom they are committed".

She went on to pay tribute to our courts and what she called

"the independence and fairness for which they are known around the world".

She urged us to maintain and strengthen our judicial approach to atrocity crimes—to strengthen, rather than diminish, their standing and reputation.

3.30 pm

It disturbs me that there are some within government—not the noble Baroness, I should say—who have become increasingly indifferent to our obligations under the 1948 convention on the crime of genocide and the 1998 Rome statute, which created the International Criminal Court. In their hostility to making these international treaties and obligations effective, an alarming pattern is emerging. We already have the spectre of the Chinese Communist Party using the British Government's formula that genocide can be determined only by "competent courts", knowing that no such court is able to do this and that this formulaic response is a guarantee that nothing will be done.

Genocide is the crime above all crimes. I end by urging Ministers to urgently change course to take our responsibilities seriously in holding the perpetrators of the worst crimes imaginable to account. If we set a precedent with the Bill as drafted, I fear that other countries will soon follow. The noble Lord's amendment deserves our overwhelming support today.

Lord Campbell of Pittenweem (LD): My Lords, I support Amendment 3 and have added my name to it. I have the advantage of having heard the last two contributions to this debate, which is, to some extent, a rehearsal of that which we held in Committee. I will take issue with the noble Lord, Lord Robertson, on one point—I have often known him to be hopeful but never naive.

I am tempted to adopt a speech that I made in Committee and sit down, but I will not do that because, like those who have spoken already, I do not understand the intransigence of this Government. I do not recall any noble Lord, other than the noble Baroness herself, making any speech in favour of the Government's position either at Second Reading or in Committee. How much does it take? How much evidence is necessary to persuade this Government to change their mind?

Of course, we have heard the weight and the quality of the evidence of the noble Lord, Lord Robertson, with his extensive experience. We heard, essentially, the forensic destruction of the government case, line by line, by the noble and learned Lord, Lord Falconer of Thoroton, in Committee, and we continue to hear the well-known and, one might think, well-informed opposition of Lord Guthrie of Craigiebank and General Sir Nick Parker. Some of these have been mentioned already, but no one has mentioned Elizabeth Wilmshurst —that most courageous opponent of the legality of military action against Saddam Hussein's Iraq, who resigned from her position in the Foreign Office—and Sir Malcolm Rifkind, who has been both Secretary of State for Defence and Secretary of State for Foreign Affairs. How is it that, in the face of the mounting volume of evidence against them, the Government insist on holding to this position? I fail to understand.

In Committee, I quoted from the Bingham Centre for the Rule of Law. At that stage, its approach to this was to provide an executive summary, in the course of which it said that

"murder, torture and other grave war crimes face substantial legal barriers before there can be a prosecution … The Bill undermines our obligations under the Geneva Conventions and the UN Convention Against Torture".

Again, I ask: what further evidence is required to persuade the Government that they are in the wrong place? Since then, the Bingham centre has produced a more detailed analysis of this proposed legislation. If your Lordships wish to see it reinforce what it has previously said, you will find that on page 16 of that analysis.

What do we know now? The chief prosecutor of the International Criminal Court has made pretty clear a view that might result in a British citizen, a member of the British Armed Forces, possibly being taken to the International Criminal Court—can you imagine it? This country takes pride in our being advocates for the rules-based order in the face of other countries that simply want to ignore it or toss it aside.

I refer to the interests of the United Nations and the official responsible for human rights. Can you imagine the embarrassment of a prominent member of the Security Council asserting the rules-based order, in the teeth of Russian and Chinese unwillingness? I would love to know what the permanent representative of the British mission at the United Nations thinks about the position now being adopted.

Perhaps we should not be surprised. To plagiarise Lewis Carroll, laws mean what we want them to mean. That is certainly the position that was adopted when we came to Part 5 of the Internal Market Bill. What does this do for our standing and influence? How can we make those who breach international law understand the consequences of what they are doing if we are, on the face of it, doing exactly the same ourselves?

I have some sympathy for the noble Baroness because she has gallantly sought to defend the Government's position. However, I finish by offering her some advice: Oliver Cromwell, in a substantial disagreement with the General Assembly of the Church of Scotland, wrote on 3 August 1650—the language is perhaps of its time:

"I beseech you, in the bowels of Christ, think it possible that you may be mistaken."

The language may no longer be appropriate, but the sentiment is surely something to which she should give effect.

Lord Hannay of Chiswick (CB) [V]: I wish to speak briefly in support of Amendment 3 in the name of the noble Lord, Lord Robertson of Port Ellen, and others. I say at the outset that I will not be able to match the eloquence of the noble Lord, Lord Campbell, who preceded me and whose views I totally share.

[Lord Hannay of Chiswick]

I speak in support of this amendment, as I did in Committee, on the grounds of both principle and pragmatism. The arguments of principle that underpin this amendment are clear. Unamended, the Bill would effectively—de facto if not de jure—open the door to a time limitation on the inquiry into and, where justified, the prosecution of the most heinous of crimes set out in the Rome statute, establishing the International Criminal Court—war crimes and genocide—and those set out in the convention against torture.

I say gently to the Minister that I was a bit disappointed that, in one of her replies to earlier amendments, she suggested that the suggestion that this was a de facto limitation was quite wrong. I question what she said then because if it is not a de facto limitation, what on earth is the point of the Bill? I really do not understand it. I happen to support the main thrust of the Bill.

Neither the Rome statute nor the torture convention provides for any such time limitation on the crimes covered by them, nor in my view should they do so for crimes of that extraordinary seriousness. I suggest that to allow such a limitation into our domestic legislation is not consistent with this Parliament's ratification of the Rome statute and of our acceptance of the jurisdiction of the ICC. At a time when there is so much evidence worldwide of these sorts of crimes being committed—the noble Lord, Lord Alton, has spoken movingly about them—we should not be playing fast and loose with our own obligations to inquire into them and to prosecute.

The arguments of pragmatism are equally compelling. Unamended, the Bill will actually increase, not decrease, the chances of British service personnel falling within the purview of the ICC. We know that because we have been explicitly warned of it by the court's prosecutor, who has hitherto relied on our willingness to prosecute crimes under the Rome statute as a sufficient reason not to pursue such cases through the ICC machinery. If that commitment were in any way removed or questioned, the chances of action by the ICC would sharply increase. I was glad to hear the Minister, in responding to earlier amendments, recognise that that risk really exists. It would be a supreme and shameful irony if action by the ICC had to be taken by the recently appointed ICC prosecutor, a British national.

I hope that the House will amend the Bill in the sense proposed to remove from it any limitations of time for crimes set out in the Rome statute and the torture convention and will do so without in any way calling into question the original objective of the Bill: to lift the shadow of vexatious inquiries and prosecutions for lesser offences from our service personnel.

Baroness Blower (Lab) [V]: My Lords, it is a pleasure to follow the noble Lord, Lord Hannay of Chiswick. I support Amendment 3. As your Lordships may know, I have no legal or military experience and therefore enter this debate today as someone who has listened to and participated in all previous stages of the Bill, and has been powerfully persuaded that my own concerns about the Bill at the outset were rightly felt.

As did the noble Lord, Lord Campbell of Pittenweem, I shall quote from the conclusion of the recent executive summary of the briefing from the Bingham Centre:

"The UK has a long and proud reputation of decisive action against war crimes. This Bill weakens that reputation. It makes it harder, not easier to stamp out abuses that our own troops have committed. We do not protect British troops and British values by hiding from the truth or acting with impunity."

Although it invokes "British values", surely these are international values, based on the international rule of law.

The UN Commissioner for Human Rights, Michelle Bachelet, quoted previously by my noble friend Lord Robertson, this week urged the UK Government to heed the warnings that the Bill in its current form risks undermining the human rights obligations that the UK has committed itself to respecting. As a former teacher, when people make a commitment to respect something, I expect them to follow through.

The UN press release says:

"In its present form, the proposed legislation raises substantial questions about the UK's future compliance with its international obligations, particularly under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment … as well as the … Geneva Conventions. These include obligations to prevent, investigate and prosecute acts such as torture and unlawful killing, and make no distinction as to when the offences were committed … 'The prohibition of torture in international law is both clear and absolute,' Bachelet said. 'Article 2 of the Convention against Torture is unequivocal, stating that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."' The obligations in the Convention to investigate and prosecute such allegations recognize none of the new distinctions that the Bill would now bring into law."

Surely that is a reason for amendment.

3.45 pm

Michelle Bachelet concludes:

"The ability of the UK's courts to resolve the most serious allegations against military personnel, with the independence and fairness for which they are known around the world, should be maintained and strengthened, rather than be cut back on such problematic grounds".

I join the noble Lord, Lord Campbell of Pittenweem, in asking why the Government cannot be persuaded that they are simply in the wrong place on this? Perhaps the Minister could offer a response to these views so clearly held by the UN and many others and, even at this stage, indicate a change of heart.

Baroness Chakrabarti (Lab) [V]: My Lords, it must be a rare thing in nature, and in life, for so many doves and hawks to fly together. I agree with every speech that has been made so far in this part of the debate, with perhaps the small caveat that I disagree with the protestations by the noble Lord, Lord Hannay, that he lacked the eloquence of my noble friend Lord Robertson of Port Ellen—he certainly did not.

I need not repeat the various points particularly regarding the coalition of disapproval in relation to refusing to, at the very least, put war crimes, crimes against humanity, genocide and torture in an excepted category. Like others, I cannot understand the Government's intransigence, especially as they are so well served in relation to the Bill in your Lordships' House by the noble Baroness, Lady Goldie.

As the Minister spoke gently to me with her usual charm earlier in the debate, I will speak respectfully to her in return. Five years is a very short time indeed in the context of war, covert operations or peacekeeping

operations that may be ongoing five years after an alleged atrocity, so in practice this triple lock will make it very difficult to prosecute some of the gravest offences that unfortunately sometimes arise in conflict. As we have said repeatedly during the passage of this legislation, the Government have already conceded the need for certain excluded offences, particularly sexual offences, which have been placed in Schedule 1 to the Bill so do not become subject to the five-year limitation. So it is inexplicable that in the light of everything that has been said to the Government, in the most constructive tone possible, they should not listen to your Lordships' House and add the offences mentioned in this amendment to that list.

Whenever the Minister has been asked about the distinction between these grave offences and sex offences, she has presented a response from the department about the importance of sending signals and giving confidence in relation to sex offences and overseas operations. We need that comfort and those assurances on these grave offences, not least to avoid the perversity of a situation where, in the context of sexualised torture—sadly, we know this has been perpetrated in conflict situations even by allied forces in recent decades—a veteran or a serving member of personnel could be prosecuted for indecent assault when the allegation is of sexualised torture because the five-year period had passed. That is absolutely perverse.

I urge the Minister yet again to listen to this coalition of opinion from people who do not always agree with me by any stretch of the imagination on human rights matters. Hawks and doves are in complete agreement about this. I urge her to think again. My noble friend Lady Blower may not be a lawyer or a military person, but she is an educator. As she spoke I wondered how we will explain this legislation to our children and grandchildren, let alone to the various hard men of the world cited by the noble Lord, Lord Alton, who will be applauding the opportunity that the duplicity of our position on these crimes presents them whether in China, Myanmar or elsewhere.

I can only support these amendments and hope that the distinguished signatories to them will, if the noble Baroness does not concede, test the opinion of the House.

The Deputy Speaker (Lord Lexden) (Con): I call the next speaker, the noble Lord, Lord Judd. We have no connection at the moment, so I call the noble Baroness, Lady Kennedy of The Shaws.

Baroness Kennedy of The Shaws (Lab): My Lords, once again I am taking the opportunity to express my concerns about this Bill, particularly the five-year window for prosecution and the ability that that will have for the Government to meet their long-standing human rights obligations.

I support Amendment 3. I want to remind everyone that there is already an exclusion in this legislation for rape and other sexual offences. It is there correctly. I suspect that the Government, in putting this Bill together, had their ears bent by women in their own ranks saying, "You can't possibly put off rape allegations simply because they haven't been put forward within the five-year window." There are many reasons why you could not bring a prosecution within that window of five years in relation to sexual offences, which we are now much more willing to recognise as one of the horrors of war. The reasons why people do not come forward and are not able to put their case within short order may be fear or lack of resources. They are often in denial about the horror they have experienced. They may be experiencing coercion or threats or a desire to avoid reliving the past. I am afraid I know all this directly. The reason why evidence is gathered over time to become strong enough to bring cases—it does not happen with speed—is because it is difficult, hard work involving sensitivity to victims. The same is true for victims of torture and other grievous war crimes.

Without the present exemption, the vast majority of rape victims, largely women, would be barred from accessing justice through no fault of their own. Victims of other forms of abuse and violence, such as torture, should be afforded the same opportunity to seek justice on their own terms and in their own time. For example, we are now gathering evidence from places such as Syria—a war that started in 2011. The triple I investigatory processes are gathering that evidence. Prosecutions will happen much further down the line; that is the nature of this.

We have led the world in advocating for the rule of law. I have met the most wonderful lawyers in the ranks of the British Army working for the British Army. They are champions of the rule of law. We should recognise that we have been at the heart of creating the well-established principles and provisions of international human rights law and international humanitarian law. It is a source of pride to me and should be to everybody. We lose our moral authority by going down this road.

I work closely with the United Nations Human Rights Council on matters of law. Senior officials are shocked, deeply alarmed and disappointed to their hearts that the UK of all nations should be retreating from this high ground, so I want to emphasise the implications of this on our standing in the world. The United Kingdom has ratified the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the United Nations convention against torture. We have heard about the convention in relation to genocide, of which I have spoken many times in this House. They all mandate the absolute prohibition of torture. The absolute nature of the prohibition is at odds with the restrictions in this Bill.

I speak with sadness that we have come to this place. In answering the questions, "What has persuaded the Government? How have they come to be in such a wrong place?", I think this Bill was put together at a time in relation to matters to do with Iraq, and of course with memories and considerations in relation to Ireland. Courage was given to this Bill by the fact that in the United States of America there was someone like Donald Trump, who had such little respect for the rules-based international order and wanted something somewhat different. He was not interested in international law or international courts. We stand as one of the nations that has been true to those things. We have been one of the few nations that has not experienced fascism, and perhaps that has given us the experience of sticking with law and knowing why it is so important.

[Baroness Kennedy of The Shaws]
The value of our commitments becomes meaningless and rings hollow across the international stage by bringing this Bill into being.

The people who experience torture end up deeply traumatised. The families of those who have experienced the horrors of these terrible crimes are traumatised. It takes time to work with them to put together evidence to consider prosecutions. The United Nations Human Rights Committee has also found that a state's lack of response to an investigation of a complaint is in itself a violation of the prohibition of torture.

We are coming up against a whole body of law that we have been at the heart of creating. What are we thinking about? I wonder whether there are other lawyers in government like Elizabeth, the great lawyer in the Foreign Office who was really alarmed over the Iraq war, who are experiencing the same anxiety that something of serious consequence is being lost here. In its present form, this Bill will not only violate individual procedural human rights and create a culture of impunity for torture and inhumane treatment, but will diminish our capacity to influence in the international human rights sphere, as the noble Lord, Lord Alton, described.

I urge this House and the Government to have a rethink because the consequences of this legislation will be far-reaching. Here we are trying to speak in a world that is currently dealing with the horrors perpetrated on the Uighurs and those in Myanmar and the anxieties and fears about what is going on in Hong Kong. We need to have our voice strong in the world right now. Look at Belarus, look at the different places where horrors are taking place; we need to be a voice for values.

4 pm

Lord Stirrup (CB): My Lords, in speaking to this amendment, I start by saying that I accept a number of the arguments that the Government have advanced against it. I do not think that the Bill is intended to provide UK forces with a blank cheque for torture or genocide; nor do I consider that, as currently worded, it has that legal effect. Investigations into and prosecution of those suspected of such offences should and could be pursued even after the five-year limit, provided that the evidential case is sound. I am in no doubt that those involved in such decisions would consider the facts carefully and conscientiously before coming to a decision one way or the other.

I do not regard the exclusion of sexual offences, and not of torture or genocide, as attributing any hierarchy of seriousness to these crimes. I accept that in claims of torture or genocide, the admitted outcome—the death or wounding of individuals—might reasonably be the consequence of legal military action. Sexual assault, on the other hand, can never be the result of anything but a criminal act. There is a logic behind the distinction. Nor do I accept the argument that the Bill as worded would make our own military personnel more likely to be tortured themselves. During the first Gulf War, I commanded aircrew who were shot down, captured and tortured. The Iraqis did not have, nor did they require, the incentive and cover of this Bill for their actions. I seriously doubt that future captors of UK military personnel would be likely to say to themselves, "Well, I would not ordinarily have tortured these prisoners but, in view of the UK overseas operations Act, I now will." Regimes that are going to torture captors will; those that are not, will not. I do accept, however, that this Bill might make it harder for us to protest such actions or subsequently to hold the perpetrators to account.

My concern about this part of the Bill has less to do with its legal intent and effect, and more to do with the perceptions it may create and the consequences of such perceptions. I have said that in my view, the Bill does not diminish the seriousness with which we view or treat torture or genocide, but it is clear that many people disagree, and that they will not be persuaded by any words of mine or of the Government. This is important. What people think about such matters is crucial, regardless of whether we regard their interpretation as correct. Reputations, national as well as personal, depend on perception as well as on fact, and the UK's reputation in the international arena is not something to be taken lightly or to be hazarded without great cause.

One possible consequence of a diminished reputation for an unswerving opposition to torture or genocide could be the increased interest of the International Criminal Court in accusations against UK military personnel—an outcome that I would regard as disastrous. I have heard the arguments against this likelihood, and I am unconvinced by them. I have in the past heard similar arguments advanced about the negligible impact that human rights legislation would have on military operations, only to see those confidently expressed opinions proved dramatically wrong. The Government no doubt feel that they are on firm legal ground with regard to the International Criminal Court, but that view has yet to be tested. Meanwhile, risk must be measured as a combination of probability and consequence. Even if the chance of challenge by the ICC is not large, the severe damage it would cause demands that we do all we can to guard against it.

The risks that I have identified might nevertheless be borne if they were sufficiently outweighed by the advantages that Clause 6 offers, but I do not believe this to be the case. The underlying problems that need to be addressed are the protracted and repeated investigations of speculative and malicious claims, along with the extension of human rights legislation into areas for which it is ill-suited. The Bill, of necessity, comes at these issues obliquely and is therefore likely to be of limited value. I know that the Government believe that the measures proposed on prosecutions will have an impact on the timeliness of investigations. I hope they are right, but the potential benefit is not obviously overwhelming. So, while I support the Government's aim, and while I understand the logic behind the drafting of Clause 6, I believe that the current wording poses risks that far outweigh the potential benefits. Unless I hear in this debate a far more compelling argument than has so far been made against it, I shall support Amendment 3.

Lord Dubs (Lab) [V]: My Lords, it is a pleasure to follow the noble and gallant Lord, Lord Stirrup, as well, indeed, as my noble friend Lady Kennedy in the arguments they have put forward. The House has

enormous respect for the Minister. I share that respect but it is noticeable that, despite her arguments, she had no support in Committee. I looked at her closing arguments then and found this one:

"In the course of their duties on overseas operations, we expect our service personnel to undertake activities which are intrinsically violent in nature. They fight, they use force".

That seemed to be the justification for this provision: that force has to be used. I do not believe that force is the same as torture. If there were to be confusion between the two, it would be up to the courts to make a decision. It would not be up to a government Minister to say whether an action was unacceptable or, indeed, appropriate for it to be excused altogether by the provisions of this Bill.

In her closing remarks—she was trying to be helpful—the Minister also said:

"I undertake to consider with care the arguments that have been advanced and to explore if there is any way by which we can assuage your Lordships' concerns."—[*Official Report*, 9 /3/21; cols. 1575-77.]

I am not sure that anything has happened about that commitment. I understand why Ministers make such commitments and why she did so; perhaps she was not comfortable with the Government's whole argument. However, I am not clear what she has done to assuage our concerns; I do not believe she has.

As has been said before, the reputation of this country is at stake. One thing we surely value very much is our reputation for adhering to the rule of law—for having a proper system for considering it and, indeed, being implacable in our opposition to any breach of it. That reputation is surely worth preserving, yet it is now at stake. We deal all the time with countries that do not observe the rule of law, be it Hong Kong, China in respect of the Uighurs, or Myanmar in respect of the Rohingyas—or, indeed, of their own citizens. There are too many examples of the rule of law being breached; we can ill afford to join the ranks of countries that breach it. We have had severe warnings that we might find our service men and women up before the International Criminal Court—which would be mortifyingly embarrassing and absolutely appalling were it to happen.

I am a member of the Joint Committee on Human Rights, which made a detailed assessment of the Bill and its various provisions and produced a report. At paragraphs 63 and 64, the report says that

"we have significant concerns that the presumption against prosecution"

runs the risk of contravening

"the UK's legal obligations under international humanitarian law (the law of armed conflict)"

and

"international human rights law ... It risks contravening the UK's obligations under the UN Convention Against Torture, the Geneva Conventions, the Rome Statute and international customary law."

The report goes on to say:

"At a minimum, the presumption against prosecution should be amended so that it does not apply to torture, war crimes, crimes against humanity or genocide."

Nothing could be clearer than that.

We have also heard quoted today Michelle Bachelet, the UN High Commissioner for Human Rights. She said:

"No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

I can think of no clearer comments than those I have quoted. I fully support this amendment.

Lord Morris of Aberavon (Lab) [V]: My Lords, we have heard some very distinguished speeches this afternoon and the passionate speech from the noble Lord, Lord Campbell of Pittenweem, destroyed any case that the Government might have. As an old soldier—a national serviceman—and a Defence Minister many years ago, I yield to no one in my concern to protect the armed services from vexatious investigations and prosecutions. As Attorney-General, I played a very small part in encouraging the late Robin Cook's successful advocacy for the setting up of the International Criminal Court. As an active member some years ago, I advocated successfully at the IPA conference in Cape Town for the international recognition by all nations of the offence of torture. I believe I was kicking at an open door when the paper that I had prepared was accepted. All civilised countries now accept that the offence of torture is unique; likewise, of course, genocide.

My noble friend Lord Robertson comprehensively and eloquently moved the amendment. The Bill proposes a presumption against prosecution of torture and other grave crimes after five years, except in exceptional circumstances. As my noble friend states, this risks the creation of de facto immunity after that time. That is the bottom line. Unfortunately, the result is that our troops risk being open to prosecution by the International Criminal Court. The effect of the Rome statute is that the court can prosecute where there is no robust domestic civil process. Perhaps the Minister will say specifically what the danger is of our troops being brought before the International Criminal Court?

As a former law officer, I had the task of advising Her Majesty's Government on international law; I cannot see how we can avoid process before the International Criminal Court. May I make a practical suggestion to the Minister? Before Third Reading, will she consult the law officers and get their views—if they have not given them already, as I suspect they may have—on the point raised by so many Members of this House, without opposition, that we are in danger of allowing our troops to be hauled before the International Criminal Court?

I strongly support the exclusion of the most serious crimes, such as torture, war crimes and genocide, from the immunity proposals. Put simply, in international law—I can only emphasise this—there is no expiry date for the prosecution of torture, war crimes and crimes against humanity. I am grateful to my noble friend for moving this amendment. The bottom line is that there is no expiry date for the prosecution of these offences. It may not have been the intention, but the unfortunate consequence is that our troops might find themselves before the International Criminal Court.

4.15 pm

Baroness Smith of Newnham (LD): My Lords, this amendment has had no opposition. I thought very briefly that the noble and gallant Lord, Lord Stirrup,

[Baroness Smith of Newnham]
was perhaps going to speak against it because he raised concerns about the nature of some aspects of what has been said. The Minister has heard nobody from her own Benches, or rebel Labour, Liberal Democrat or Cross-Bench Peers, speaking against the amendment. Nobody has given any reason why this amendment should not be supported. That has been true at virtually every stage. The only noble Lords who perhaps could have given the Minister some succour at an earlier stage, at Second Reading, were the noble Lord, Lord Lancaster, and, in particular, the noble Lord, Lord King of Bridgwater, who listened very carefully to what the Minister said. However, even the noble Lord, Lord King, said that maybe the Government needed to think again about torture and genocide.

If there is a presumption that sexual violence and exploitation should be left out of Part 1 of the Bill, what possible justification can the Government have to leave out genocide, torture, war crimes and crimes against humanity? As the noble Lord, Lord Dubs, said, the Minister, at previous stages of the Bill but also in her written response to the Delegated Powers and Regulatory Reform Committee, has said that the Government would never ask our Armed Forces to perpetrate crimes of sexual violence or sexual exploitation. Good—that is obviously what we want to hear. However, the Minister does not say the same thing about war crimes and torture. She merely says that the Government take them very seriously. While, clearly, the Bill does not make it impossible that prosecutions could be brought against allegations of torture, genocide, war crimes and crimes against humanity, surely the logic of the Minister's response to the Delegated Powers and Regulatory Reform Committee is that the Government, if not endorsing or requesting that people perpetrate torture and war crimes, somehow do not view them in the same way.

Occasionally on these Benches we have very different views from the Minister. We know that we are never going to change the Minister's mind; nevertheless, we listen and we understand where the Government are coming from. Perhaps the Government have a point of principle. On this occasion, it is almost incomprehensible what the Government's point of principle can be. If somebody has committed torture or a war crime, that needs to be investigated and prosecuted. The fact that the Government merely take it very seriously simply is not good enough. This amendment rights a complete defect in the Bill. We support the amendment and I believe that many noble Lords from all sides of the Chamber support it.

I ask whether the Minister did go away and think carefully after Committee. As several noble Lords have said, we respect the Minister but we have not yet heard any sense of reflection from the Government. We have not had a scintilla of a change. We have heard nothing that makes anybody feel that the Government are likely to change their mind. If the Government cannot find a way of changing their mind, it is essential that this House asks the other place to think again.

Lord Tunnicliffe (Lab) [V]: My Lords, there is almost universal support in this House for ensuring that torture, genocide, war crimes and crimes against humanity are excluded from the presumption. It is clear what the ICC thinks: if we do not do so, as has been quoted many times, the UK would

"forfeit what it has described as its leading role, by conditioning its duty to investigate and prosecute serious violations of international humanitarian law, crimes against humanity and genocide."

That is why there is such strong support for Amendment 3 and, importantly, for its approach to protect these offences so that they cannot be removed by statutory instrument at a later date. I hope that the Minister has listened closely to the powerful debate and the broad coalition that spans military figures and human rights experts, and will promise that government amendments will come forward at Third Reading. Otherwise, we support my noble friend Lord Robertson in his important amendment and urge him to divide the House.

Baroness Goldie (Con): My Lords, first, I thank the noble Lord, Lord Robertson, and all other noble Lords for their thoughtful contributions. We heard some exceedingly powerful speeches on these issues in Committee, and they were echoed today. I recognise the understandable concern and emotion that accompany the arguments that have been adduced. This is an extremely important matter, perhaps the most passionately debated part of the whole Bill, and I do not underestimate the scale of my task to address the arguments advanced by the noble Lord, Lord Robertson, and his supporters, but it is my job to try. The noble and gallant Lord, Lord Stirrup, made a telling point about perception, and it is my job to try to address that issue as well.

I reassure the House that the Government have given considerable and careful consideration to the offences that are excluded from the measures in Part 1. The intent of the Bill, as drafted, ensures that the Part 1 measures will apply to as wide a range of offences as possible, in order to provide that necessary reassurance to our service personnel that the operational context will be taken into account, in so far as it reduces a person's culpability, in the circumstances of allegations of criminal offences on historical overseas operations. The broad objective of the Bill is to support our Armed Forces personnel, and I accept that that has been recognised across the Chamber. The divergence of opinion is on how we can deliver that reassurance.

In considering the provisions of the Bill, the Government gave careful thought to the physical environment of an overseas operation. As noble Lords who have served on such operations will know, the range of activity is diverse and the threat of danger ever present. It is a lethal environment in which our Armed Forces are called upon to deal with unimaginably challenging situations, and it is predictable that, arising from such activity, allegations of wrongdoing may be made. The one type of activity which can never have any place in such an operation is the commission of a sexual offence, so I say to the noble Baroness, Lady Smith, that is why sexual offences are excluded from the Bill. She referred to that as a presumption: it is not a presumption—it is an explicit exclusion.

Some have argued that such an exclusion means that the Government are relegating other crimes to a lower classification of gravity. We are not. We are acknowledging that in an overseas conflict, because of the inherent nature of such activity, there is a predictability

about allegations being made that crimes have been committed. The Government are neither defining nor categorising what these crimes may be, we are merely creating a clearer framework and structure as to how such allegations are to be handled. It goes without saying that of course we shall take other offences, such as war crimes and torture, extremely seriously. I repeat that the Government's decision to exclude sexual offences only, as I set out in detail in Committee, does not mean that we will not continue to view with the utmost gravity other offences such as war crimes and torture.

Nor will the Bill somehow provide an excuse for poor behaviour or enable impunity for very serious crimes allegedly committed by our Armed Forces personnel. I am very grateful to the noble and gallant Lord, Lord Stirrup, for his comments in that respect and I am pleased that many noble Lords recognise that the presumption against prosecution does not amount to either an amnesty or a statute of limitations, nor the creation of a de facto immunity. I say to the noble Lord, Lord Hannay, that a bar on prosecution in gremio of the Bill would be an amnesty—it would be a statute of limitations and a de facto immunity—but there is no such provision in the Bill. I remind noble Lords that the severity of an alleged offence will continue to be an extremely important factor for a prosecutor in determining whether to prosecute. We should remember that the presumption is, of course, rebuttable.

A number of noble Lords, including the noble Baronesses, Lady Chakrabarti and Lady Kennedy, referred to the five-year period. I just observe that the period was informed by the response to the consultation carried out on the Bill. Interestingly, the period of five years was visited at an earlier stage, in Committee, and has not been revisited.

I have listened to the very real concerns expressed by many in this House, including references to many third parties holding similar views, that the Bill undermines the United Kingdom's continuing commitment to, and damages our reputation for, upholding international humanitarian and human rights law, including the United Nations Convention against Torture. I say to the noble Lord, Lord Dubs, that I seek to assuage these concerns and to reassure once more on this point: the United Kingdom does not participate in, solicit, encourage or condone the use of torture for any purpose, and we remain committed to maintaining our leading role in the promotion and protection of human rights, democracy and the rule of law. Our Armed Forces will continue to operate under international law, including, of course, the Geneva conventions, and we will continue to expect that others will do the same.

I would like to explain further why the Government's view is that Amendment 3 should be resisted. First and foremost, we are concerned that it would undermine the reassurance that we are seeking to give to our service personnel and veterans by excluding a considerable list of offences from the application of the measures in Part 1. The Bill does not prevent such offences being investigated nor prosecuted. Indeed, in relation to prosecution, the gravity of the crime will be a cogent factor. It is perhaps also worth adding that, in the interests of clarity and to preserve the structure of the Bill as currently drafted, we believe that all the excluded offences should be listed in the same place in the Bill, and that the appropriate place is Schedule 1, instead of being spread across the Bill, as the noble Lord's amendment would provide.

I have endeavoured to present the Government's position and, in these circumstances, I ask the noble Lord, Lord Robertson, to consider withdrawing his amendment.

Lord Robertson of Port Ellen (Lab) [V]: My Lords, I do not have to repeat the respect that the House has for the Minister, but she does not speak with any great enthusiasm. That is not surprising because her case is so weak that enthusiasm and passion certainly cannot be part of her argument. I do not want to take up a lot of the time of the House at this stage, but let me quote what General Sir Graeme Lamb, the former director of Special Forces in the British Army, said in the weighty Policy Exchange document that was critical of this Bill. He said

"good intentions are not enough as the Bill as it stands may fail to protect our troops adequately … it does nothing to address the problem of repeat investigations."

Then there was Bruce Houlder, the former Director of Service Prosecutions whom I quoted in my original speech, who told the *Financial Times* that the five-year limit would be an "international embarrassment". I did not quote what he added, which was that

"the idea that we then treat torture and other grave crimes including homicide as excusable, and legislate in effect to make it difficult in the extreme to prosecute after five years, is really outrageous."

The Minister has not quoted anybody in support of her contention that what the Government are saying is reasonable. I and other noble Lords and noble and gallant Lords have quoted endless examples of those who say that what is happening here today in this Bill is outrageous. Even today's *Daily Mail* editorial condemns the Government for apparently legitimising torture in the way that the Bill does.

In light of the fact that the Minister has given no defence whatever, I insist that we test of the will of the House on this amendment.

4.30 pm

Division conducted remotely on Amendment 3

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Amendment 3 agreed.

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4.44 pm

Amendment 4 not moved.

Clause 7: General interpretation etc

Amendment 5 not moved.

Amendment 6

Moved by ***Lord Thomas of Gresford***

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

"Investigation of allegations related to overseas operations

(1) In deciding whether to commence criminal proceedings for allegations against a member of Her Majesty's Forces arising out of overseas operations, the relevant prosecutor must take into account whether the investigation has been timely and comprehensively conducted.

(2) Where an investigator of allegations arising out of overseas operations is satisfied that there is sufficient evidence of criminal conduct to continue the investigation, the investigator must within 21 days refer the investigation to the Service Prosecuting Authority with any initial findings and accompanying case papers.

(3) An investigation may not proceed after the period of 6 months beginning with the day on which the allegation was first reported without the reference required in subsection (2).

(4) On receiving a referral under subsection (2), the Service Prosecuting Authority must either—

(a) order the investigation to cease if it considers it unlikely that charges will be brought, or

(b) give appropriate advice and directions to the investigator about avenues of inquiry to pursue and not pursue, including—

(i) possible defendants to consider,

(ii) possible explanations to consider for the circumstances giving rise to the investigation, and

(iii) overseas inquiries and seeking the help of overseas jurisdictions.

(5) Where the investigation proceeds, the Service Prosecuting Authority must monitor and review its progress at intervals of three months and must on each review make a decision in the terms set out in subsection (4).

(6) On the conclusion of the investigation, the investigator must send a final report with accompanying case papers to the Service Prosecuting Authority for the consideration of criminal proceedings.

(7) After receipt of the final report, the facts and circumstances of the allegations may not be further investigated or reinvestigated without the direction of the Director of Service Prosecutions acting on the ground that there is new compelling evidence or information which might—

(a) materially affect the previous decision, and

(b) lead to a charge being made.

(8) The Judge Advocate General may give Practice Directions as he or she deems appropriate for the investigation of allegations arising out of overseas operations.

(9) For the purposes of this section—

"investigator" means a member of the service police or a civil police force;

"case papers" includes summaries of interviews or other accounts given by the suspect, previous convictions and disciplinary record, available witness statements, scenes of crime photographs, CCTV recordings, medical and forensic science reports."

Lord Thomas of Gresford (LD) [V]: My Lords, the Minister's response to Amendment 6—on the necessity of monitoring investigations to ensure that they are timely, effective and not continuously repeated—was to defend the status quo when the current system has manifestly not prevented delays, shoddy investigations and reinvestigations casting a shadow over serving members of the Armed Forces and veterans. I beg leave to test the opinion of the House.

4.46 pm

Division conducted remotely on Amendment 6

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Amendment 6 agreed.

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4.58 pm

The Deputy Speaker (Baroness Fookes) (Con): We now come to the group beginning with Amendment 7. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Clause 8: Restrictions on time limits to bring actions: England and Wales

Amendment 7

Moved by ***Lord Thomas of Gresford***

7: Clause 8, leave out Clause 8

Lord Thomas of Gresford (LD) [V]: My Lords, in speaking to these amendments, my first point is that legitimate claims for misconduct by British troops involved in overseas operations are a fact that has to be faced, however unpalatable that is. According to a Written Answer given to me by the noble Baroness, Lady Goldie, on 15 June last year,

"in excess of 1,330 claims"

have been brought against the MoD since 2003, and they have been settled at a cost of some £32 million. Nobody suggests that these were not proper claims. Indeed, the noble Baroness said:

"The claims received focus predominately on alleged unlawful detention but many incorporate allegations of mistreatment at the hands of British military personnel."

5 pm

These claims by foreign nationals are not for negligence, as is the case with claims by British soldiers against the MoD. The House should not assume, because a discredited solicitor who has been removed from the role brought a number of claims that were successfully struck out under our legal system as vexatious, that every claim is tainted. There may be some who believe that our courts should not be open to civilians of a different colour or creed complaining of the misconduct of our military, but that is not a majority view.

Secondly, it must be appreciated that the normal limitation period for damages for personal injury is three years. For claims for damages under the Human Rights Act, for unlawful detention, for example, it is for one year. The consent of a judge must be obtained to disapply the limitation period for the commencement of actions, and based on the principle that it is equitable to both parties to disapply the time limit. In exercising his discretion, the judge has to take into account all the circumstances of the case. Particular factors are set out in Section 33(3) of the Limitation Act, the second of which is:

"the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11 … or … section 12"

of that Act. The length of the delay, the reasons for it, and the strength and importance of the case to both sides are involved in the judge's exercise of his discretion.

Clause 8 of this Bill, headed "Restrictions on time limits to bring actions: England and Wales", alters the 1980 Act in its provisions to restrict the court's discretion to disapply time limits for actions in respect of personal injuries or death that related to overseas operations of the Armed Forces. It will be noted that no distinction is made between actions brought by citizens of the country in which the overseas operations are taking place—foreign nationals—and actions by our own military personnel in that country for damages for, for example, negligence. It follows that every soldier injured on Salisbury Plain has greater rights to commence actions for damages for negligence than soldiers injured in overseas operations in similar circumstances. I have failed to discover any principle to justify this discrimination. This will be addressed further on Amendment 13.

Other provisions in Schedules 2 and 3, and in Clause 11 on human rights actions, provide that, in considering whether to disapply the ordinary limitation period of three years or one year, the court is to have particular regard not only to the factors of delay to which I have referred, but specifically to the ability of members of Her Majesty's forces who remember relevant events fully or accurately or who have recorded or retained records of such events.

They must also have regard to the impact of the proceedings on the mental health of a witness or potential witness who is a member of Her Majesty's forces. These are extraordinary provisions that require the court to consider extending or disapplying the ordinary time limits to weigh in the balance the legitimate claim of a victim injured by

"mistreatment at the hands of British military personnel"—

to use the words of the noble Baroness in the Question I referred to—against the difficulties of a military person in remembering or recording the events, or the possible effect on his mental health in giving evidence, when he might be the person who had inflicted the complained-of mistreatment on the claimant in the first place. On the one hand, there are injuries to the plaintiff or claimant; on the other, the effect on the memory or mental health of the person who inflicted the injuries.

I remember attending the Montgomeryshire assizes in Welshpool in my youth, when behind the judge's chair there was a three-foot-high statuette of the figure of Justice, blindfolded, of course, and holding the scales in her hand—except that they were tipped down permanently to one side. That is what these provisions are like.

I do not propose to seek a vote on these two amendments in my name. Had I wished to do so, I would have wished to include "Leave out Clause 11," which deals with the Human Rights Act claim. My name is attached to the amendment in the name of the noble and learned Lord, Lord Falconer, but there are specific inquiries I wish to make to clarify what is not clear in these clauses.

What is the meaning of the "relevant date" or "date of knowledge" from which the six-year long-stop starts to run? How is that date impacted by delayed knowledge of the manifestation of harm resulting from the act which is the subject of the claim—somebody contracting an illness much later? What is the effect of delayed knowledge of the claimant's ability to bring a claim before the UK courts at all? What happens if the six-year period is interrupted by events totally outside the control of the claimant—for example, sickness, recovery from wounds or inability to secure legal advice?

The Government must face the impression given by these sections of the Bill that they are publicly in denial of any misconduct on the part of British troops while settling hundreds of meritorious claims behind the scenes in secret, selecting a category of cases simply on the basis that they arise out of overseas operations and applying to this category a unique bar—a brick wall—where the discretion of the court can no longer be exercised. However just and equitable it would be, it does nothing for the reputation of this country, for the rule of law or for justice. I beg to move.

Lord Faulks (Non-Afl) [V]: My Lords, Amendments 7 and 8 are, in effect, wrecking amendments, while Amendment 13 seeks to distinguish the position of service personnel and other potential claimants. I expressed the view in Committee that I was not convinced that the provisions in Part 2 would make all that much practical difference. The primary limitation period for personal injuries is three years, as the noble Lord, Lord Thomas, has just pointed out, except in so-called delayed date of knowledge cases, as provided by Sections 11 and 14 of the Limitation Act 1980. There is a discretion to disapply the limitation period under Section 33 of the 1980 Act. As he also pointed out, claims under the Human Rights Act have to be brought within one year, with a discretion to extend in rather limited circumstances.

My experience of personal injury claims as a barrister is that courts need considerable persuasion before they extend the three-year period and that the burden rests on a claimant to persuade a court that that primary limitation period should not apply. Limitation periods exist to reflect the difficult balance that has to be struck between allowing everyone to put a line under actual or potential claims and the fact that some claimants will have good reason for delay.

The provisions in Part 2 provide a long-stop, subject to a delayed date of knowledge provision. It seems that claims arising out of overseas operations present particular difficulties for all those involved, and I respectfully differ from the comment made by the noble Lord, Lord Thomas, about Salisbury Plain, particularly in overseas operations where the theatre of operations has moved on or changed its location and it may be extremely difficult to investigate, on either side, the basis of any such claim.

As I said, the provisions are not likely to have much practical effect, but they will nevertheless have some indirect effect in encouraging appropriate claims to be brought with as much speed as is practical. They will also provide a degree of reassurance to our service personnel that a time will come when they will be involved in one way or another in so-called late claims. The noble Lord, Lord Thomas, referred to some uncertainty over what the date of knowledge might be which would defer claims. Subject to what the Minister says, I understand it to be concerned with cases where, for example, there is latent disease that could not be reasonably known about by a claimant at the time; for example, somebody who sustains mesothelioma as a result of exposure to asbestos dust or who has some other illness or injury that becomes manifest only some years after the event in question.

I am not attracted to Amendment 13 either. In Committee, the noble Baroness, Lady Chakrabarti, suggested that I was concerned only with claims brought by the military and not with those brought by the non-military or civilians in, say, Iraq or Afghanistan. That was not in fact what I said or thought. It is therefore something of an irony that this amendment would make that very distinction. I am unaware of any such provision in any other area of the law of limitation of actions—that is, a provision that distinguishes between classes of claimant. There are of course provisions distinguishing the position of a claimant who has not attained his or her majority or who lacks mental capacity. However, it would set a most unfortunate precedent somehow to elevate a particular claimant to have a special status.

The provisions in Part 2 ought to apply in precisely the same way across the board to whomsoever is involved in claims arising out of overseas operations and provide equal protection for all of them. This

[LORD FAULKS]
amendment is discriminatory and should not be included in the Bill. Surely our service personnel want to be treated fairly, rather than to be given some special privileged litigation status. I will listen with great interest to what the noble and gallant Lords who are to follow in this debate have to say about the matter, but for the moment I am unconvinced that any of these amendments should be made to the Bill.

Lord Hope of Craighead (CB) [V]: My Lords, I will add just a few words to what the noble Lord, Lord Thomas of Gresford, said in support of Amendment 13. The provisions to which it is addressed which are of particular interest to me are in Schedule 3, which seeks to amend the legislation that applies in Scotland to the same extent to that in Schedules 2 and 4, which apply to the other jurisdictions. The crucial point is the imposition—for such it is—of an absolute prescription of six years.

As we know, the three-year limitation period that applies at present is accompanied by protections that enable the court to extend the limitation period if it is justified by the circumstances—the date of knowledge exception. It seems that the Bill applies a hard-edged cut-off that makes no allowance whatever for extenuating circumstances. I could understand it if this proposal had been accompanied by a carefully conducted research programme into how the three-year limitation has worked in practice over the years, identifying on how many occasions the period has been extended for more than three years, and why and at what point the extensions have been sought and justified. We are, of course, in this case, and indeed throughout the Bill, dealing with the consequences of operations that have been conducted overseas, maybe under very difficult circumstances. Gathering together enough information to determine whether a claim would be justified, let alone to bring together all the information needed to justify bringing the claim before the court out of time, may take much more time and effort than is needed in the more benign domestic cases. That is the reason for seeking the discrimination to which the noble Lord, Lord Faulks, referred.

5.15 pm

Without this amendment, the proposal in the Bill is a bit of a hostage to fortune. We simply do not know what its effect would be—maybe not very great, as the noble Lord, Lord Faulks, said, but if it is there, it would seem to be unfair. I cannot see anything wrong in bringing out a class of individuals to whom this amendment is directed. In principle, what is wrong with identifying a particular class of claimants, particularly where they can be seen to be, in particular situations, disadvantaged, as we are contemplating in this Bill? For these general reasons, I am inclined to support Amendment 13.

Lord Hendy (Lab) [V]: My Lords, it is an honour to follow the noble and learned Lord, Lord Hope of Craighead. I too support the amendments. In particular, I support wholeheartedly Amendments 7 and 8, which, if accepted, would obviate the need for Amendment 13. I differ from the noble Lord, Lord Thomas of Gresford, and the noble and learned Lord, Lord Hope of Craighead, in relation to Amendment 13, which in my view does not go far enough.

Clauses 8 and 9 would have the effect of preventing a number—a small number, I accept—of meritorious civil actions being brought by service personnel, or their estates and dependants, against the Ministry of Defence, where the latter has negligently caused their injury or death. I see no justification for imposing harsher limitation provisions for actions in respect of personal injuries or death that relate to overseas operations of the Armed Forces than in relation to other civil claims. The factual matrix in which a claim arises will always be a crucial factor in the determination of the court's discretion to allow late claims. The imposition of the time bar in Clauses 8 to10 will undermine the confidence of military personnel who might be injured or die on overseas operations. They knowingly and bravely take the risk of injury or death in enemy action, but they do not consent to risks created by the negligence of the Ministry of Defence, as in the case of my former client, the mother of a soldier killed by a high-explosive shell fired at his tank from another British tank, which had mistaken it for the enemy. After interminable investigations, belated disclosure of documents and the work of our expert, the case was made that the Ministry of Defence was at fault for a long-standing failure to fit identification equipment and for a consistent failure to train tank commanders properly in identification.

The Ministry of Defence eventually settled the case with a substantial payment but no admission of liability. It took years. Had the proposed regime of Clauses 8 to 10 been in place, my client's action might never have got off the ground. I feel I owe it to those who might in the future be in the sad position of my former client, having lost a son or daughter, to resist the inclusion of these clauses.

What can be the justification for imposing a bar on such claimants, a bar which does not apply to any other claimants other than in relation to members of the Armed Forces who suffer personal injury or death on overseas operations? The ostensible purpose is to bar vexatious claims but, with respect, that is nonsense. Bill or no Bill, there will always be unmeritorious claims. The courts have a powerful armoury of mechanisms for throwing them out. They do not need the blunt instrument of Clauses 8 to 10. Although those clauses would time bar some vexatious claims, they would equally time bar meritorious claims. That is not forgivable. It is no answer to say that there would be few of the latter. There should be none.

In any event, as the noble Lord, Lord Thomas of Gresford, pointed out, all claims are subject to the Limitation Act, which imposes strict time limits on them. These may only be exceeded by express permission of the court—an exercise of the court's discretion which is subject to specified and comprehensive conditions under that Act.

The imposition of the time bar in Clauses 8 to 10 is likely to undermine the confidence of military personnel who might be injured or die on overseas operations. They should not be subject to hurdles to which other claimants are not.

I agree with the sentiment of Amendment 13, which seeks to exempt service personnel from the time bar of Clauses 8 to 10. However, its shortfall is that it fails to bring the estate and dependants of such personnel within the exemption, thus allowing the time bar to apply to those in the position of my former client. Amendments 7 and 8 are therefore preferable. I had hoped that those who tabled them would have pressed them to a Division.

Lord Boyce (CB) [V]: My Lords, Amendment 13 is about the six-year time limit imposed by the Bill on those who have been engaged on overseas operations, and the ability of such servicepeople to bring any grievances against the MoD after that time. As we have already heard, this would have the perverse effect of limiting the rights of individual service personnel by restricting their access to legal remedies for harms caused by their employers. This would not apply to their counterparts not engaged on overseas operations.

In Committee, the Minister's comment that, based on past statistics, this might apply only in a very small number of instances was specious. The Armed Forces are all of one company and thus should all be treated the same. Even if only one person were to be affected, he or she should not be discriminated against. It cannot be just for such situations to be allowed, so I support Amendment 13.

Viscount Trenchard (Con): My Lords, I had intended to involve myself deeply in the passage of this important Bill through your Lordships' House, although I hesitate to speak on matters about which I am much less qualified to pronounce than the learned and gallant noble Lords who have made such a great contribution to our debates on the Bill. I have found it difficult to keep up with and to remain fully involved in this Bill as well as in the Financial Services Bill. For most of my working life, I have been a full-time banker; on the other hand, my military experience is limited. I was a TA soldier for 10 years and, more recently, have been honoured to act as an honorary air commodore in the Royal Auxiliary Air Force.

I very much welcome the Government's decision to introduce the Bill and to deliver on our manifesto commitment to end vexatious legal claims. I also understand and agree with the Government's intention in Part 2 to ensure that claims are brought sooner. This should mean that service personnel and veterans will not be subjected to criminal investigations that may be triggered by civil claims. I therefore cannot support Amendments 7 and 8 in the names of the noble Lord, Lord Thomas of Gresford, and the noble Baroness, Lady Smith of Newnham, which have the effect of wrecking this part of the Bill in its entirety.

However, I am impressed by arguments by the noble and gallant Lord, Lord Boyce, and the noble Lord, Lord Thomas of Gresford, that the courts should continue to be allowed to hear personal injury claims against the Crown even after the six-year time limit has expired. I know enough about the culture within the Armed Forces—a major reason for the high regard in which they are held—to agree that it may also create situations where someone may be told that he cannot make a claim, when actually he can, but he will still believe and accept that he cannot. I am therefore sympathetic to the purpose of Amendment 13 but look forward to hearing my noble friend the Minister's response to the powerful arguments put forward in its support.

Baroness Chakrabarti (Lab) [V]: My Lords, I support these amendments, with a very strong preference for Amendments 7 and 8, although I understand that they will not be pressed; half a loaf is better than no bread. It is clear to me that a combination of rules and discretion is what the law is. This is the protection against arbitrary action, and I have heard no compelling argument whatever at any point in the proceedings relating to this legislation for limiting the discretion of the courts completely, particularly in the light of the sorts of cases described by my noble friend Lord Hendy.

However, I was interested in the newly expressed concerns of the noble Lord, Lord Faulks, about discrimination; his view of equal treatment under the law is novel to me. He seems to be concerned about discrimination in relation to a Bill, which he supports, that is inherently discriminatory. He is concerned about giving extra protection to a particular class of claimant—namely, veterans and personnel, who are supposed to be protected by this legislation. But he is not concerned, it would seem, about giving special protection to a class of defendants—the MoD, the Executive—which is the initiator of the legislation as well as the civil defendant. He is not concerned about giving special protection and limitations to criminal defendants in the military, but he is concerned to give the protection offered by Amendment 13 when it is not being offered to overseas civilians, yet he does not support Amendments 7 and 8. This is not levelling up; it is levelling down.

As I say, I would very much prefer Amendments 7 and 8 to be pressed, but in their absence I will support Amendment 13. The Government brought forward this legislation with a promise to give protection to service personnel and veterans but, instead, if they do not go along with at least Amendment 13, it will protect the Exchequer—the Ministry of Defence—from the very people that it claims to protect.

Lord Stirrup (CB): My Lords, I will speak to Amendment 13, to which I have attached my name. Its purpose is to ensure that service personnel are not debarred by time from pursuing claims against the Government for harms suffered on overseas operations. It seems strange to me that a Bill with the avowed purpose of providing government reassurance to service personnel seems intent on preventing those very personnel from seeking redress from that same Government. This may not be the intention, but it is one of the potential consequences of the Bill as it is currently worded.

In responding to a similar amendment in Committee, the noble and learned Lord the Advocate-General for Scotland, argued against it because it would have very limited effect. At Second Reading, the Government said that some 94% of service personnel and veterans who brought claims relating to events in Iraq and Afghanistan had done so within six years. He later confirmed that this figure included those who had

[LORD STIRRUP]
brought a claim within six years of the date of knowledge. My response is to repeat the question that I posed on that occasion, and which was never answered: are we to assume then that, had the proposed timescale been in effect, the Government believe that it would have been acceptable for the other 6% to lose the opportunity to pursue their cases?

5.30 pm

The Government also say that the vast majority of claims by service personnel relate to events in the UK, not to overseas operations. I really fail to see the relevance of this point. To argue that only a small number of service personnel would suffer injustice does not seem to me a respectable position for a Government to take at any time, let alone in a Bill that is supposed to provide support and reassurance to those people.

The noble and learned Lord the Advocate-General for Scotland also said in Committee that one of the purposes of Part 2 was to introduce a longstop that would encourage the earlier laying and investigation of civil claims and any associated criminal investigations. This seems remarkably similar to the aim of Part 1. There is, however, a very different approach to the matter of timescales. Part 1 does not introduce a significant legal watershed. Complaints can still be brought to prosecution subject to certain tests that ought to be applied with or without the Bill. The time limit placed on complaints brought by service personnel or veterans is of a very different character. It is not a high bar: it is an impassable wall.

I accept that Part 1 deals with criminal prosecutions and that Part 2 is concerned with civil claims, and that this might therefore give rise to different rules. It seems strange, however, that in a Bill that is supposed to support our Armed Forces, their civil claims are subject to more stringent rules than the complaints brought by others against them. Perhaps the major objection that the Advocate-General advanced against an amendment of this nature, however, was that it would treat service personnel and veterans as a separate class from others. Just so—is this not exactly what the Bill overall seeks to do? If such a distinction is insupportable in this part of the Bill, why not in the rest of it? Part 1 seems to offer no particular protection to MoD civilians employed on operations, even though they could conceivably be accused of criminal offences, yet that is not regarded as a flaw in the Bill.

There is a widespread impression that the MoD is using the Bill to protect itself from claims, rather than—or, at least, in addition to—protecting service personnel and veterans. The easiest way for the Government to correct this—as they would see it—misleading impression is surely to accept Amendment 13.

Lord Browne of Ladyton (Lab) [V]: My Lords, it is a great pleasure to follow the noble and gallant Lord, Lord Stirrup. Not for the first time, I found his contribution compelling and I hope the Minister did as well.

During the passage of this legislation, it has become clear that the application of this six-year unextendable deadline for claims by members of our own Armed Forces— principally against the MoD—is probably an unintended consequence. In Committee, the noble and learned Lord, Lord Stewart of Dirleton, the Advocate-General for Scotland, said:

"The purpose of the limitation longstops is not to stop service personnel from bringing claims".

He went on to say that

"excluding claims from service personnel from these measures is likely to be incompatible with our obligations under the ECHR. That is because there would be an unjustifiable difference in treatment between different categories of claimants—for example, between service personnel and the Ministry of Defence civilian personnel who deploy alongside them on overseas operations … There is therefore no objective or functional reason why claims from service personnel and veterans should be excluded from the longstops".—[*Official Report*, 9/3/21; col. 1596.]

A plain reading of that explanation is that the Government are compelled by obligations under the ECHR to apply these longstops to all personnel in respect of claims that arise from their deployment on overseas operations. It is that argument that I wish to test.

On 11 March, in the debate on Amendment 32 in my name—supported by the noble and gallant Lord, Lord Houghton of Richmond, and the noble Lord, Lord Clement-Jones—I raised the issue of discrimination in Part 1 between those who are deployed on overseas operations but operate remotely, such as UAV pilots, and those who are deployed on overseas operations and operate physically in the theatre. The purpose of the amendment was to explore whether the consequences of the stated intention of the integrated review—that new technology be integral to the future of UK defence—has been fully thought through in this legislation, and whether the discrimination between those operating remotely and those deployed in the theatre is sustainable in the light of the implications of this technology being used by service personnel deployed in overseas operations.

In response to the debate on that amendment and in a subsequent letter of 25 March, the noble Baroness, Lady Goldie, sought to assure me and others that the Bill was future-proofed and that the full implications of new technology and its deployment had been thought through. I am far from convinced that that is the case and will continue to press the Government for a comprehensive review of these issues.

As well as writing, the noble Baroness graciously offered and arranged for me a virtual meeting with her and senior officials to discuss many of the complex issues raised in the debate and referred to in her letter. That discussion is ongoing. I await a further letter of clarification, and I have been offered and have accepted a second detailed briefing with senior officials. It is likely that we will return to this in the Armed Forces Bill.

However, relevant to this debate, the letter of 25 March includes the following:

"When we were developing the policy intent for the Bill, we considered very carefully those flying UAVs in an overseas operation but from within the UK. We determined that, although UK-based UAV pilots would be considered to be part of an overseas operation, it could not be said that they would be at risk of personal attack or violence (or face the threat of attack or violence), as would be the case for an individual deployed in the theatre of operations. Nor would the difficulties of recording decisions and retaining evidence be the same as when deployed

within the theatre of an overseas operation. We therefore determined that personnel in these roles should not be within the scope of this Bill. It is important to recognise that this decision is not limited only to UAV pilots. There may be others, in future … to whom these measures would equally not apply … When this technology is used by service personnel deployed on an overseas operation, they will be covered by the Bill, but it is important to make a distinction between those that are deployed in a high threat environment, and those that aren't, due to the very different operating conditions."

I repeat:

"We therefore determined that personnel in these roles should not be within the scope of this Bill … this decision is not limited only to UAV pilots … There may be"—

unspecified—

"others, in future, who participate in an overseas operation remotely … to whom these measures would equally not apply."

This explanation makes it clear that, in respect of all parts of the Bill, the Government have decided that there will be a difference in treatment between different categories of claimants; for example, between different categories of service personnel deployed on the same overseas operations—that is, those who are in the theatre and those who are not. My question is simply: how is this difference in treatment justifiable, and how is it compatible with our obligations under the ECHR if it is not compatible when expressed as in Amendment 13?

Lord Tunnicliffe (Lab) [V]: My Lords, in essence, Amendment 13 in the names of my noble and learned friend Lord Falconer, the noble and gallant Lords, Lord Stirrup and Lord Boyce, and the noble Lord, Lord Thomas, would reintroduce the normal approach to limitation: if a claim is not brought within 12 months —or three years if it is a personal injuries claim—under the Human Rights Act, the court can extend indefinitely if it is just and equitable to do so. This will allow personnel to bring claims after the Government's proposed six-year longstop.

While the Minister argues that the longstop will apply only to a small number of personnel, I was struck by the comment from the noble and gallant Lord, Lord Stirrup—repeated again today—that

"to argue that only a small number of service personnel would suffer injustice does not seem a respectable position for a Government to take at any time".—[*Official Report*, 9/3/21; col. 1594.]

We wholeheartedly agree with him. We have to correct this unfairness and avoid a breach of the Armed Forces covenant, as suggested by the Royal British Legion. While a soldier injured through negligence by a piece of equipment on Salisbury Plain can bring a claim under normal rules, it is wrong that different rules apply for the same act of negligence if it occurs in an overseas operation.

I also want to highlight a concerning Answer I have received to a Parliamentary Question. When asked about government investigations against civil claims, the Minister revealed that the MoD is launching three times more investigations against personnel who pursue civil claims than it did five years ago. These examine

"the true extent of a claimant's alleged injuries"

and

"the veracity of a claim".

This Answer, along with the six-year limit in this Bill, indicates that government is increasingly more suspicious of civil claims from troops against the MoD. We should not provide additional limitational hurdles in respect of military personnel bringing claims against the MoD. Therefore, the Bill clearly needs to be amended. When Amendment 13 is called, I intend to seek the opinion of the House.

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, Amendments 7 and 8 seek to remove Clauses 8 and 9 from the Bill. Clause 8, in conjunction with Schedule 2, introduces new factors to which the courts must have particular regard when deciding whether to allow personal injury or death claims connected with overseas military operations to proceed after the primary time limit expires, and sets the maximum time limit for such claims at six years. The Government's intent behind that is to help ensure that claims for compensation for personal injuries or deaths arising from overseas military operations are brought more promptly, and to help achieve a fair outcome for victims, for the service personnel and veterans who might be called upon to give evidence, and for the taxpayer.

Sections 11 and 12 of the Limitation Act 1980 set a three-year primary time limit for claims for personal injury or death, as do equivalent provisions in the other jurisdictions of the United Kingdom. This three-year time limit is not absolute, as the House heard from the noble Lord, Lord Thomas of Gresford, when introducing the debate. Section 33 of the 1980 Act gives the courts discretion to allow claims to proceed beyond that time limit if it is considered that it is equitable so to do.

When assessing whether it is fair to allow a claim beyond the initial three-year limitation period, courts must have regard to all the circumstances of the case and, in particular, to six factors which are set out in Section 33 of the 1980 Act. In broad terms, these relate to the steps taken by the claimant to bring the claim, the reasons for delay and the effect of the delay on the quality of the evidence.

The Government's view is that these factors do not adequately recognise or reflect the uniquely challenging context of overseas military operations—a factor, I think, which is recognised more or less universally across your Lordships' House. The Government are concerned that, unless the courts are directed to consider factors that are relevant to overseas operations, they may wrongly conclude that it is fair to allow older claims connected with overseas operations to proceed beyond the primary time limit.

5.45 pm

This clause, in connection with Schedule 2, therefore introduces the three new factors, of which your Lordships have heard once again today, that the Government consider properly reflect the operational context in which the claims arose and to which the courts must have particular regard. These are the extent to which the assessment of the claim will depend on the memories of service personnel and veterans; the impact of the operational context on their ability to recall the specific incident; and the impact of so doing on their mental health. These new factors reflect the reality of overseas military operations; the fact that opportunities to make detailed records at the time may be limited; that increased reliance may have to be placed on the memories

[Lord Stewart of Dirleton]
of the personnel involved; and that, as some of them may be suffering from mental health illnesses due to their service, there is a human cost in so doing. Clause 8, in connection with Schedule 2, also introduces, as your Lordships are aware, an absolute limit of six years for claims for personal injuries or death connected with overseas military operations.

In introducing the debate in your Lordships' House, the noble Lord, Lord Thomas of Gresford, styled the three new factors as being "extraordinary". I would rather say that they are an effort to recognise—to acknowledge—the unique context of which I have spoken, and which I think the House generally acknowledges.

This change, introducing an absolute longstop or time limit of six years for claims for personal injuries or death connected with overseas operations, brings the matter in line with claims for other torts or delicts that may occur on operations, such as false imprisonment, as set out in Section 2 of the Limitation Act 1980. It will give service personnel and veterans a level of certainty that they will not be called upon indefinitely to recall often traumatic incidents that they have understandably sought to put behind them.

Importantly, the existing date of knowledge provision in the 1980 Act, and in equivalent legislation in the other jurisdictions, means that for situations where an illness connected with an overseas operation does not manifest itself until many years after the incident—for example, post-traumatic stress disorder—the six-year time limit does not start until the date of knowledge, which may be the date of diagnosis. It is the same with other latent conditions such as the noble Lord, Lord Faulks, was describing when he gave your Lordships the example of mesothelioma, a cancer arising out of exposure to asbestos.

Lastly, the clause, in conjunction with Schedule 2, amends the Foreign Limitation Periods Act 1984 so that claimants cannot benefit from more generous time limits allowed under foreign law. This change is needed for consistency and will ensure that no claim is brought after six years.

To go back to the questions that the noble Lord, Lord Thomas of Gresford, put in relation to the date of knowledge, a claimant's date of knowledge is the date on which they first had knowledge that their injury was significant and attributable to a negligent act or omission by an identifiable defendant. An injury is significant if the claimant would reasonably have considered it sufficiently serious to justify bringing a legal claim. A claimant must take reasonable steps to establish the significance of their injury by seeking medical or other expert advice and whether their injury was attributable to the negligent act or omission of an identifiable defendant. That means that a service person's date of knowledge will be the date on which they establish, such as by obtaining a formal diagnosis, that they have suffered a significant injury as a result of their service, and that they suspect that the Ministry of Defence acted negligently.

The changes that this clause and Schedule 2 introduce go only so far as is necessary to ensure a fair outcome. They do not affect the way in which the time period is calculated, nor do they affect those provisions that suspend time in appropriate circumstances. They are also consistent with court rulings that claimants do not need to be provided with an indefinite opportunity to obtain a remedy—the very reason why courts have limitation periods in the first place. As my noble friend Lady Goldie remarked in relation to another group earlier, the courts have recognised that limitation periods have an important role to play in ensuring legal certainty and finality and in preventing injustice. As my noble friend Lord Faulks said, there is a difficult balance to be struck where limitation periods are involved, but such a balance must be struck. The changes that this clause, in conjunction with Schedule 2, introduces are proportionate and strike an appropriate balance between victims' rights and access to justice on the one hand and fairness to those who defend this country on the other.

I shall not repeat the same arguments for Clauses 9 and 10, which amend the relevant legislation in Scotland and Northern Ireland, but I will just add that the Limitation Act 1980 covers only claims brought in England and Wales. It is therefore necessary to extend similar provisions across the whole of the United Kingdom to ensure that the same limitation rules apply to the same claims. It would be deeply unsatisfactory if the changes which the Government are introducing to help achieve a fairer outcome in relation to claims brought in England and Wales could be circumvented by bringing a claim in Scotland or Northern Ireland—a species of forum shopping—instead.

Amendment 13 would carve out claims by service personnel and veterans from the limitation longstops in Part 2. I acknowledge the concerns that some of your Lordships have in relation to the impact of the new absolute limitation periods on the ability of service personnel and veterans to bring claims, but I cannot be clearer in stating, as the noble and gallant Lord, Lord Stirrup, anticipated I would, that I believe the impact on them in practice will be minimal.

The limitation longstops in Part 2 have been introduced to help address the difficulties that the Ministry of Defence has faced in defending civil claims arising from historic overseas military operations. They also provide greater legal certainty, as well as greater certainty to service personnel and veterans that they will not be called on many years after operations have ended to give evidence about traumatic events relevant to a claim.

What is also important for service personnel, however, is that these measures may help reduce criminal investigations many years or decades after operations have ended. This is because the longstops will likely encourage any civil claims to be brought sooner, and any associated criminal allegations are also therefore likely to be investigated sooner. This reduces the risk of criminal investigations arising many decades later as a result of allegations made in civil claims. Without the hard longstops, there is no certainty for service personnel, as civil claims brought after six years may well lead to criminal investigations many years after the event. This is why Part 2 protects service personnel, not the Ministry of Defence. I offer that assurance once again to the noble and gallant Lord, Lord Stirrup.

Noble and gallant Lords will know that the circumstances of overseas military operations are specific and unusual. It is this context that we need to consider

when comparing claims arising from overseas operations to those arising in non-operational contexts. When considering civil claims connected with overseas operations, the Ministry of Defence has faced difficulties arising from the lack of accurate contemporaneous records. When deployed on an overseas operation, the Armed Forces are in the unique circumstance of being under almost constant threat of attack, where decisions need to be made extremely quickly and under great stress. This can make it difficult to be certain about what happened during a particular incident and to capture the level of detailed information and accurate records needed to help determine a claim.

This lack of accurate records means that claims connected with overseas operations are often heavily reliant on the memories of current and former service personnel who frequently interact with hundreds of people during a single deployment and may deploy multiple times. In many of the hundreds of recent cases against the Ministry of Defence connected with overseas operations, it has been found that service personnel simply cannot remember particular events giving rise to claims, let alone the claimants themselves. This is part of that unique context we were describing where there are difficulties attached to stale claims which are different from those attached to stale claims in the domestic context.

It is in the interest of claimants who bring claims in connection with overseas operations to do so in a timely fashion because it is much more likely that the facts of the situation can be determined more accurately, thus offering a greater chance to achieve the justice which is the intention underlying all claims.

Encouragingly, the vast majority of service personnel and veterans already bring timely claims. Analysis of relevant figures indicates—again, the noble and gallant Lord, Lord Stirrup, anticipated me—that around 94% of claims from service personnel and veterans arising from operations in Iraq and Afghanistan were brought within six years of the date of the incident or the date of knowledge. That means that carving out claims by service personnel from the longstops would have very little practical impact.

It would also mean that the longstop measures in Part 2 would no longer be compatible with our obligations under the European Convention on Human Rights. Here I am anticipated by the contribution of my noble friend Lord Faulks, who anticipated my submission in relation to this discriminatory aspect, and I seek to answer the noble Lord, Lord Browne of Ladyton, on this point, which he also raised. It would be incompatible because in disapplying the longstops to claims by service personnel connected with overseas operations, we would be discriminating, with no justifiable reason, against non-service personnel who also bring claims connected with overseas operations. I am sure your Lordships would agree that we do not want to render the Bill incompatible with our ECHR obligations. To avoid this, we need to ensure that this amendment does not form part of the Bill.

It is also our view that personnel deployed on overseas operations are not in an analogous situation with those who are not so deployed. We therefore consider that the difference in treatment between their claims is justified. This is because the circumstances in which claims connected with overseas operations arise are specific and unusual.

Additionally, the difficulties that arise from claims connected with historic overseas operations relating to the lack of accurate contemporaneous records and increased reliance on the fading memories of personnel do not arise in the same way in claims not connected with historic overseas operations. This is the point of principle that the noble Lord, Lord Thomas of Gresford, called upon me to produce. This is the compelling reason sought by the noble Baroness, Lady Chakrabarti.

6 pm

We consider that six years is a reasonable and sufficient period to bring a claim, while also proving that much-needed legal certainty. We consider that a six-year absolute time limit is compatible with our ECHR obligations, and, importantly, an absolute time limit of six years also has precedent in English and Welsh law. Section 2 of the Limitation Act 1980 already has a six-year time limit for bringing claims for intentional torts. To refer again to the case mentioned by my noble friend Lady Goldie, in Stubbings v the United Kingdom, the European Court of Human Rights confirmed that this absolute time limit is compatible with the UK's ECHR obligations.

It is true, of course, that based on our analysis of historic claims, 6% of service personnel historically brought their claims after six years from the date of incident or knowledge. I accept that the Government have a role to play in ensuring that potential claimants know about the measures we are introducing with this Bill. We will therefore educate service personnel at crucial points in their careers to remind them that a claim in connection with an overseas operation will have to be brought within the relevant time periods. For example, service personnel will be taught about these time limits at pre-deployment training, as well as during their resettlement training.

The noble Lord, Lord Hendy, referred to acting in a professional capacity at the Bar in relation to a member of a constituent's family sadly killed by friendly fire while on operations. The noble and gallant Lord, Lord Stirrup, posed the question of whether we are to assume that the Government would consider it acceptable that 6% of meritorious claims should be lost. Grouping these two questions together, I answer no, but I am reluctant to argue in relation to cases taken in the abstract as opposed to particular examples where a meritorious claim would have been lost by the application of a six-year absolute time period.

It is worth reminding ourselves that limitation longstops will cover only a very small subset of the personal injury claims brought by current and former service personnel against the MoD. Additionally, personnel will continue to have access to the Armed Forces compensation scheme.

I note the observation made by the noble and learned Lord, Lord Hope of Craighead, regarding the desirability of establishing "a hard-edged cut-off". However, for the reasons that I have advanced, we consider that this reflects adequately these unique circumstances, which are the very justification for the

[Lord Stewart of Dirleton]
Bill. The noble Lord, Lord Tunnicliffe, asked about the operation of the covenant, and as I approach my conclusion, let me state that Part 2 of the Bill will not breach the Armed Forces covenant. The covenant states that those who serve in the Armed Forces, whether regular or reserve, those who have served in the past, and their families, should face no disadvantage compared to other citizens in the provision of public and commercial services. Once again, for the reasons I have put forward, we are not talking about incidents which took place on Salisbury Plain. We are talking about incidents giving rise to claims which took place in the unique circumstances of deployment on overseas operations.

The primary focus of the Armed Forces covenant is to ensure that service personnel and veterans are not disadvantaged in comparison with civilians in the same position. Indeed, the longstops in Part 2 will apply in the same way to all claimants bringing claims connected with overseas operations against the MoD, whether they are military personnel, civil servants, contractors or local nationals. No disadvantage arises from service as a member of the Armed Forces in relation to these measures because everyone, whether military or civilian, who is deployed on an overseas operation or affected by one is treated equally in this respect.

Finally, I refer to the questions posed by the noble Lord, Lord Browne of Ladyton. Much of his submission to your Lordships this afternoon dealt with his ongoing discussions with my noble friend Lady Goldie and others. I have not contributed to these and my views have not been sought. On that basis, I hope that the noble Lord and the House will forgive me for not attempting to present an answer at this stage.

The noble Lord, Lord Thomas of Gresford, said that he would not seek a vote on his amendments. I conclude by urging the noble Lords responsible for the other amendment to withdraw it.

Lord Thomas of Gresford (LD) [V]: My Lords, I am grateful to all noble Lords who have spoken, particularly the noble Lord, Lord Hendy, and the noble Baroness, Lady Chakrabarti, for their support for my Amendments 7 and 8. I am also grateful to the noble and gallant Lord, Lord Stirrup, for pointing to the difficulties for MoD civilians who are deployed on overseas matters.

The argument put forward by the noble and learned Lord, Lord Stewart, is that Amendment 13 would not apply to them. It would discriminate against them because they are not included—so what do you do? You do not add in the MoD civilian employees; you reduce the rights of the combatants—it seems completely topsy-turvy. Another argument is: everything is okay because, when the guillotine comes down, there will only be a few people left on the other side. I do not think that that is a proper basis for a policy.

I am grateful to the noble and learned Lord, Lord Stewart of Dirleton, for answering the questions that I posed, and I shall study his answers with care. When he said that these proposals encourage civil claims to be brought more promptly, I reflected that, not an hour or two ago, the Government resisted the code that I proposed, in Amendment 6, to do precisely that in criminal matters. I argued there for matters to be brought more promptly, and the Government resisted those proposals—but I am pleased to see that the amendment passed.

The noble and learned Lord, Lord Stewart, said that there are factors unique to overseas operations that prevent, rather than allow, the extension of time. Overseas operations are extremely difficult, as was discussed in earlier debates; it is extremely difficult to pursue a claim, to get the evidence right and to get the advice, witnesses and so on. You would have thought that overseas operations would allow for more time to bring an action, not less.

The balance, apparently, is to be struck such that the problems of investigating witnesses' memories are to come before the death or mutilation of a victim. The Welshpool figure of justice, with the scales of justice permanently tilted in one direction, comes to mind.

I have indicated that I beg leave to withdraw Amendment 7 and shall not move Amendment 8, but we shall certainly support Amendment 13 when it is put.

Amendment 7 withdrawn.

Clause 9: Restrictions on time limits to bring actions: Scotland

Amendment 8 not moved.

Clause 10: Restrictions on time limits to bring actions: Northern Ireland

Amendment 9 not moved.

Clause 11: Court's discretion to extend time in certain Human Rights Act proceedings

Amendment 10 not moved.

The Deputy Speaker (The Earl of Kinnoull) (Non-Afl): We now come to the group consisting of Amendment 11. Anyone wishing to press this amendment to a Division must make that clear in the debate.

Clause 12: Duty to consider derogation from Convention

Amendment 11

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

11: Leave out Clause 12

Lord Hope of Craighead (CB) [V]: My Lords, I understand that this may be quite a short debate, but I should like to say a few words by way of introduction, to explain again why I am unhappy with Clause 12. I still find it hard to know what to make of it. As I said in Committee, at first sight the clause is simply unnecessary. The power to derogate from our obligations under the European Convention by means of a derogation order under Section 14 of the Human Rights Act 1998 already exists. Of course, we must remember, as we were reminded last time, that derogation orders are open to judicial review, so derogation is not something

to be undertaken lightly. Nevertheless, once again I question the need for this clause. Where there is a power, as there is here, there is already a duty to consider whether, should circumstances require, it should be exercised. This clause adds nothing to the existing law.

However, there is a much more troubling aspect to this issue than that. Is the clause there simply to send a message? If so, to whom, why, and what is the message? We must remember that there is a threshold that must be crossed if the order is to meet the criteria in Article 15 of the convention. Clause 12 says that this is where the operations

"are or would be significant".

Article 15 of the convention, on the other hand, says that derogation may be resorted to only in time of war or other public emergency

"threatening the life of the nation".

It is hard to see how conducting operations overseas in themselves, if that is all we were doing, could satisfy that test, even if they are or would be significant.

The fact that the clause shrinks from using the words of Article 15 makes me wonder whether the meaning and effect of Article 15 has been properly analysed. I wonder whether the clause is really facing up to what would be needed to justify derogation in this kind of case where we are operating overseas. There is a real danger that it will lead those who may be encouraged by this clause to resort to a derogation order when its use could not be justified. The message, if there is one, seems to be offering something that the Government cannot deliver.

There is no sign either that the Government have appreciated the other limitations in Article 15.2 of the convention. That provision states that no derogation from Article 2, the right to life, can be made except in respect of deaths resulting from lawful acts of war; or from Article 3, the prohibition of torture; or from Article 4.1, the prohibition of slavery; or from Article 7, no punishment without law. There remains Article 5, the right to liberty and security, which is what the 2001 order case, which pointed to the way that derogation orders are subject to judicial review, was about. Is this the purpose of the clause? Is it simply so that our Armed Forces can lock up any person they detain during their operations without trial indefinitely? If so, why does the clause not come out into the open and confine its scope to that article, for that is really all it could achieve?

I suspect that the Minister is unable to give clear and convincing answers to these questions, as she has chosen to make a statement immediately after me. I look forward to that statement and I very much hope that she will be able to give me an undertaking that this clause will be removed from the Bill. That, I think, is the only way that the real danger to which I have referred can be avoided. I beg to move.

6.15 pm

Baroness Goldie (Con): My Lords, I am grateful for the opportunity to make a contribution which I hope may assist the progress of the debate on this amendment. I am very conscious that I have been unable to radiate much cheer this afternoon, so I will try to do better. As the noble and learned Lord has stated, Article 15 of the European Convention on Human Rights provides that, subject to certain conditions, states may derogate from—that is, temporarily suspend—relevant human rights obligations. Clause 12 would require any Government in future to consider whether to make a derogation under Article 15 in relation to significant overseas operations.

I am very grateful to the noble and learned Lord, Lord Hope, for his analytical clarity in addressing the issue surrounding Clause 12. He has been persistent in his focus on this issue and I thank him for that close attention. He is correct that the ability under Article 15 to derogate in appropriate circumstances would remain and would not be affected by the removal of Clause 12 from the Bill. It is also the case that the removal of Clause 12 would not prevent the Government from making a conscious decision when committing the Armed Forces to significant overseas operations as to whether it is necessary to avail themselves of the suspension mechanism created by Article 15 of the ECHR. It is important to recall that, if the UK did decide to so derogate in relation to a specific future overseas military operation, it would not prevent Armed Forces personnel or the MoD from being held to account.

Having listened closely to the issues raised about the way in which the Government have presented this clause—as I promised the noble and learned Lord in Committee I would do—and, although the Government consider that there was a place for originally including the clause in the Bill, I have detected that the House is sympathetic to the representations of the noble and learned Lord, and that there is a general consensus across the House for the removal of this clause. I am therefore pleased to confirm that the Government will accept the noble and learned Lord's amendment to remove Clause 12 from the Bill.

Lord Thomas of Gresford (LD) [V]: My Lords, I am relieved to hear the Minister's statement concerning Clause12 and its removal. The noble and learned Lord, Lord Hope, asked who the message was to be sent to. The proposal to give notice to a potential enemy that British forces would not be bound by the restraints of the European Convention on Human Rights was truly alarming. It would have exposed our troops in the field to reciprocal treatment.

I followed the noble and learned Lord, Lord Hope, in Committee in pointing out the utter uselessness of this clause anyway, in that it could not deal with those most pertinent and significant rights in the covenant from which no derogation is possible. It did not even try to mirror the circumstances of war or national emergency contained in Article 15, which permit derogation only in very strict circumstances. I do not propose to repeat that analysis.

The Government have thought again on the desirability of this clause. I urge them to think again on the desirability of the whole Bill. I urge them to pull the whole Bill and bring it back in the next Session after proper consultation. I do not say this from any party-political position but wearing the hat of the chair of the Association of Military Court Advocates. I cannot say that I am speaking for that association because no meetings have been possible during the pandemic, but you will appreciate that its members' primary concern

[Lord Thomas of Gresford]
is with defending the ordinary service man or woman in courts martial, many of which relate to overseas operations.

For the reasons which I gave in relation to Amendments 1 and 6 and will not repeat at this stage, this Bill does not protect our service men and women. The only body protected by the Bill is the Ministry of Defence, probably for the ignoble reason given in Committee by the noble Lord, Lord Hendy: to save a bob or two. It is badly thought out, with many omissions and with repercussions that were not understood, not least in its failure to carry out the manifesto commitment of the Government to give statutory force to the military covenant—a matter which we shall shortly discuss. So, they should pull it now, and by all means bring it back in the next Session in a form which will be of use to and protect serving seamen, soldiers and airmen, without the ill thought-out provisions which expose them to danger. I say to the Government: pull the Bill.

Lord Craig of Radley (CB): My Lords, I too welcome the Minister's statement. As I have reminded the House, the Government's justification for this clause to amend the Human Rights Act 1998 was to reflect the undertaking of a ministerial Statement by the then Defence Secretary, and repeated in this House by the noble Earl, Lord Howe, on 10 October 2016. If the Government still stand by it, it is worth recalling parts of that Statement. It explained that in overseas operations our personnel have had to face growing legal uncertainty and an unprecedented level of litigation. The Statement said that

"the resulting uncertainties have been distressing to many current personnel and veterans, and military advice is that there is a risk of seriously undermining the operational effectiveness of the armed forces".—[*Official Report*, Commons, 10/10/16; col. 3WS]

I draw attention to the risk mentioned in that Statement—the risk of seriously undermining the operational effectiveness of the Armed Forces when engaged in conflict.

The Bill does not adequately address the growing concern that commanders of whatever rank may, for fear of later legal challenge or charge, be unsure or inhibited in the orders or directions they give to engage and defeat an enemy in the course of conflict. Statements about combat immunity in relation to human rights legislation lack the precision required for conflict. To state that a court should be

"very slow … to question operational decisions made on the ground by commanders, whatever their rank or level of seniority"

lacks precision for commanders at the time, on the spot. Even before a case reaches court, the accused will be subject to worries and uncertainty for weeks, months and even years while evidence is collected, witnesses identified and prosecuting authorities decide whether to take the case to court for trial. Some might even describe this as mental torture.

In Smith, the judgment was that there is a "middle ground" between close combat on the one hand and political direction on the other about the allocation of resources, where the actions or omissions of individual service personnel can be determined only on the evidence ex post facto—that is, a review far removed in time, place and emotion from the possible extreme dangers of the moment.

I am not questioning these well-argued legal judgments but drawing attention to a mismatch—and I think it is important to draw attention to it—between the disciplinary dictates of the Armed Forces Act and human rights legislation that may arise when service personnel are at or near to war. I drew attention to this in 1998, when debating what is now the Human Rights Act 1998. Regrettably, this Bill does not address this issue, in spite of the Defence Secretary's Statement. One must hope that the human rights review now being undertaken by Sir Peter Gross—he has assured me that the issue of combat immunity will be considered—will provide a workable solution.

Meanwhile, Clause 12 provided for no more than was originally and clearly stated at the time the Human Rights Bill was being debated in 1998. As the noble and learned Lord the Lord Chancellor, said, and these words are well rehearsed already:

"I also remind your Lordships and the noble and gallant Lord—

that is me—

that under Article 15 of the convention a state may, in time of war or other public emergency threatening the life of the nation, take measures derogating from its obligations under the convention to the extent required by the exigencies of the situation."—[*Official Report*, 5/2/1998; col. 768.]

The noble and learned Lord further asserted that the human rights convention was a flexible instrument. I fear that is now rather a dubious claim. Clause 12 added nothing to what was made clear in 1998, and I welcome the Government's acceptance of the amendment from the noble and learned Lord, Lord Hope.

Baroness Chakrabarti (Lab) [V]: My Lords, I too thank the noble and learned Lord, Lord Hope of Craighead, for his persistence with this, and I especially thank the Minister, for her gracious concession.

It was just a few weeks ago that the former Prime Minister Mrs May warned the Government, in another place, of what she described as the

"fine line between being popular and populist".—[*Official Report*, Commons, 15/3/21; col. 78.]

I wonder whether that line is quite so fine. To be more explicit than the noble and learned Lord, dog whistles are bad enough in politics, but they are a lot worse in legislation and worse still when they are by way of legislative amendment to the Human Rights Act—our modern Bill of Rights. To turn the power to consider derogation into an express statutory duty, but not to import the appropriate legal test for such a derogation, was a very dangerous dog whistle indeed. I am very glad that it has been withdrawn. Like the noble Lord, Lord Thomas of Gresford, I hope that the Government continue in this positive vein and consider other fundamental concerns about the Bill in general.

I do not want to be churlish. This is an important concession from the Government; to treat the Human Rights Act in this way, and to set a precedent for creating duties to derogate and put them in the Act, would have been very dangerous and would have sent a bad signal about the Government's commitment to human rights at home and internationally.

Lord Thomas of Cwmgiedd (CB) [V]: I thank the Minister for her pragmatic approach to this. I entirely agree with the analysis of the noble and learned Lord,

Lord Hope of Craighead, that the real issue was Article 5 and the right and ability to detain on the battlefield. There was a real problem there and, with respect to the Government, they were right to consider it. The unfortunate thing is that they chose the wrong route. I do not think that they considered carefully enough the decisions of the Supreme Court in Al-Waheed and Serdar Mohammed. But, if a problem remains, I am sure that it will be looked at sympathetically because, for the protection of our troops, it is necessary to take a realistic view of the ability to detain on the battlefield or in close proximity to it. Again, I thank the noble and learned Lord, Lord Hope of Craighead, for his clear analysis of this, and the Minister, for her wise decision.

Baroness Smith of Newnham (LD): My Lords, like others, I welcome the Government's concession on this amendment and thank the noble Baroness for having listened, gone away and come back with a helpful proposal. Like the noble Baroness, Lady Chakrabarti, I suggest that it would be good if Ministers talk to their colleagues in another place and consider whether, rather than insisting that amendments that have passed through your Lordships' House today have to be subjected to votes in the other place and brought back and forth for ping-pong, the Government could perhaps consider their own amendments to deal with the views that have been put forward on genocide and other matters. I do not expect an immediate concession on that from the noble Baroness, but I at least put it out there.

While my noble friend Lord Thomas of Gresford has clearly made his views known to the House—to kill the Bill—I do not expect that to happen. I do not expect my colleagues to push for a vote to kill the Bill, but, if we could amend it significantly to deal with the real concerns of our service men and women and veterans, it would be all the better for it.

6.30 pm

Lord Tunnicliffe (Lab) [V]: My Lords, I have nothing to add but to congratulate to the noble and learned Lord, Lord Hope, on his tenacious pursuit of this point and to thank the Minister for this moment of warmth and light.

Baroness Goldie (Con): To all noble Lords who have contributed, I am pleased that this gesture has been received positively. I have listened carefully to the other observations, and these will be relayed to my colleagues in the MoD.

Lord Hope of Craighead (CB) [V]: My Lords, I am grateful to all noble Lords who have contributed to this short debate, and especially to the Minister for her kind words and generous concession, which has solved my problem.

I would like to take a moment to refer to the remarks made by the noble and gallant Lord, Lord Craig of Radley, who has kindly supported me all the way through my attempt to deal with Clause 12. He has raised again a concern among certain people, which I entirely recognise, that the ability to bring claims under the Human Rights Act risks undermining operations on the ground because decisions taken by the people engaged in them are exposed to the risk of being said to be in breach of the convention rights.

I delivered the leading judgment in the case of Smith v The Ministry of Defence, which the noble Lord, Lord Hendy, referred to earlier this afternoon. One of his clients was the mother of a solider who was, unfortunately, killed by friendly fire from a tank operating in the same battlefield. I spent considerable energy, in delivering my leading speech, to make it clear that the ratio that had driven me to reach the conclusions I did was concerned with actions by the MoD far removed by the battlefield. I made it clear that decisions made in the circumstances of combat by people usually under great stress and pressure was not what the Human Rights Act claim was about. It was about decisions taken, as the noble Lord, Lord Hendy, explained, long before the operations began which could legitimately be criticised as breaching the convention right.

The decision that I led has been misunderstood because of a dissenting judgment, which has received more weight than it should have since it was only a dissent. So, I would encourage those who still have a lingering doubt to look carefully at my judgment, which was a majority judgment. They will see that it contains the reassurance I think the noble and gallant Lord, Lord of Craig of Radley, is seeking.

That said, I come back to the Minister. I am well aware that a speech of the kind she has made this afternoon cannot be made without discussion behind the scenes. She listened carefully to what I said last time, and we owe her a great debt for taking up the points I made, understanding them and putting them across to others to achieve the result we have achieved this afternoon. We owe her a considerable debt and are fortunate to have her in the House as a Minister. I commend Amendment 11, the effect of which is that Clause 12 should not stand part of the Bill.

Amendment 11 agreed.

Amendment 12 not moved.

Amendment 13

Moved by ***Lord Tunnicliffe***

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

"Restrictions on time limits: actions brought against the Crown by service personnel

Nothing in this Part applies to any action brought against the Crown by a person who is a member or former member of the regular or reserve forces, or of a British overseas territory force to whom section 369(2) of the Armed Forces Act 2006 (members of British overseas territories' forces serving with UK forces) applies."

Member's explanatory statement

This new Clause amends Part 2 of the Bill so that it explicitly excludes actions brought against the Crown by serving or former service personnel from the limitations on courts' discretion that the Part imposes in respect of actions relating to overseas operations.

Lord Tunnicliffe (Lab) [V]: My Lords, I beg to move Amendment 13 and wish to test the opinion of the House.

6.35 pm

Division conducted remotely on Amendment 13

Contents 300; Not-Contents 225.

Amendment 13 agreed.

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Brougham and Vaux, L.
Browning, B.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Cameron of Dillington, L.
Carrington of Fulham, L.
Carrington, L.
Cathcart, E.
Chisholm of Owlpen, B.
Clarke of Nottingham, L.
Colgrain, L.
Colville of Culross, V.
Colwyn, L.
Cork and Orrery, E.
Cormack, L.
Courtown, E.
Couttie, B.
Cruddas, L.
Cumberlege, B.
Davies of Gower, L.
De Mauley, L.
Deighton, L.
Dobbs, L.
Duncan of Springbank, L.
Dunlop, L.
Eaton, B.
Eccles of Moulton, B.
Eccles, V.
Empey, L.
Evans of Bowes Park, B.
Fairhead, B.
Fall, B.
Farmer, L.
Faulks, L.
Fellowes of West Stafford, L.
Fink, L.
Fleet, B.
Fookes, B.
Foster of Oxton, B.
Framlingham, L.
Fraser of Craigmaddie, B.
Frost, L.
Fullbrook, B.
Gadhia, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garnier, L.
Geddes, L.
Gilbert of Panteg, L.
Glenarthur, L.
Godson, L.
Gold, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Grade of Yarmouth, L.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Hailsham, V.
Hammond of Runnymede, L.
Hannan of Kingsclere, L.
Harris of Peckham, L.
Haselhurst, L.
Hay of Ballyore, L.
Hayward, L.
Henley, L.
Hoey, B.
Hogan-Howe, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kamall, L.
Keen of Elie, L.
Kerr of Kinlochard, L.
Kilclooney, L.
King of Bridgwater, L.
Kirkham, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lang of Monkton, L.
Lansley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Lothian, M.
Lupton, L.
Mackay of Clashfern, L.
Mancroft, L.
Manzoor, B.
Marland, L.
Marlesford, L.
Maude of Horsham, L.
McColl of Dulwich, L.
McGregor-Smith, B.
McInnes of Kilwinning, L.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Mobarik, B.
Moore of Etchingham , L.
Morgan of Cotes, B.
Morris of Bolton, B.
Morrissey, B.
Moylan, L.
Moynihan, L.
Naseby, L.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Norton of Louth, L.
O'Shaughnessy, L.
Parkinson of Whitley Bay, L.
Patel, L.
Patten of Barnes, L.
Patten, L.
Penn, B.
Pickles, L.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Powell of Bayswater, L.
Price, L.
Rana, L.
Randall of Uxbridge, L.
Ranger, L.
Reay, L.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ridley, V.
Risby, L.
Robathan, L.
Rock, B.
Rose of Monewden, L.
Sanderson of Welton, B.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Sheikh, L.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Spencer of Alresford, L.
St John of Bletso, L.
Stedman-Scott, B.
Stewart of Dirleton, L.
Stroud, B.
Stuart of Edgbaston, B.
Sugg, B.
Suri, L.
Swinfen, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Tebbit, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Tugendhat, L.
Udny-Lister, L.
Ullswater, V.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Verma, B.
Vinson, L.
Wakeham, L.
Warsi, B.
Wasserman, L.
Waverley, V.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Wolfson of Aspley Guise, L.
Wolfson of Tredegar, L.
Woolf, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

6.48 pm

The Deputy Speaker (The Earl of Kinnoull) (Non-Afl): We now come to the group consisting of Amendment 14. Anyone wishing to press this amendment to a Division must make this clear in the debate.

Amendment 14

Moved by ***Lord Dannatt***

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

"Duty of care to service personnel

(1) The Secretary of State must establish a duty of care standard in relation to legal, pastoral and mental health support provided to service personnel involved in investigations or litigation arising from overseas operations, as defined in subsection (6) of section 1.

(2) The Secretary of State must lay a copy of this standard before Parliament within six months of the date on which this Act is passed.

(3) The Secretary of State must thereafter in each calendar year—

(a) prepare a duty of care update, and

(b) include the update in the Armed Forces Covenant annual report when it is laid before Parliament.

(4) The duty of care update is a review about the continuous process and improvement to meet the duty of care standard established in subsection (1), in particular in relation to incidents arising from overseas operations of—

(a) litigation and investigations brought against service personnel for allegations of criminal misconduct and wrongdoing;

(b) civil litigation brought by service personnel against the Ministry of Defence for negligence and personal injury;

(c) judicial reviews and inquiries into allegations of misconduct by service personnel;

(d) such other related fields as the Secretary of State may determine.

(5) In preparing a duty of care update the Secretary of State must have regard to, and publish relevant data in relation to (in respect of overseas operations)—

(a) the adequacy of legal, welfare and mental health support services provided to service personnel who are accused of crimes;

(b) complaints made by service personnel or their legal representation when in the process of bringing or attempting to bring civil claims against the Ministry of Defence for negligence and personal injury;

(c) complaints made by service personnel or their legal representation when in the process of investigation or litigation for an accusation of misconduct;

(d) meeting national standards of care and safeguarding for families of service personnel, where relevant.

(6) In subsection (1) "service personnel" means—

(a) members of the regular forces and the reserve forces;

(b) members of British overseas territory forces who are subject to service law;

(c) former members of any of Her Majesty's forces who are ordinarily resident in the United Kingdom; and

(d) where relevant, family members of any person meeting the definition within paragraph (a), (b) or (c).

(7) In subsection (1) "duty of care" means both the legal and moral obligation of the Ministry of Defence to ensure the wellbeing of service personnel.

(8) None of the provisions of this section may be used to alter the principle of combat immunity."

Member's explanatory statement

This new Clause will require the Ministry of Defence to identify a new duty of care to create a new standard for policy, services and training in relation to legal, pastoral and mental health support provided to service personnel involved in investigations or litigation arising from overseas operations, and to include a duty of care update in the Armed Forces Covenant Annual Report.

Lord Dannatt (CB): My Lords, in opening this short debate on Amendment 14, I first thank the noble Baroness the Minister and the Minister for Defence People and Veterans for meeting me and other noble Lords on matters pertaining to this and other amendments. Indeed, I am grateful to the noble Baroness for meeting me twice on these matters.

It is perhaps no surprise that I am of the view that we share common objectives for the Bill, which I hope will become an Act within this parliamentary Session. These common objectives include the better protection of serving and veteran soldiers, sailors, airmen and marines from repeated and extended investigations and unjustified prosecutions arising from their service on behalf of the nation on overseas operations.

We also share the common objective of properly supporting such personnel while they are going through an investigation and prosecution process—after all, when a soldier lays their life on the line at the behest of their employer, I am sure that we can agree that he or she has a right to expect that employer to exercise a proper duty of care towards him or her as they go through any investigative or judicial process.

If we are broadly agreed on the common objective, where we are not yet fully agreed is on the scheme of manoeuvre—the campaign plan, if you like—to reach that common objective, but we are making progress, and many of the constituent parts of a successful plan are beginning to emerge. Amendment 6, which we earlier debated and voted to stand part of the Bill, for the time being at least, is an important and welcome addition to the provision of safeguards into the investigation of allegations relating to overseas operations. Moreover, the Minister has today released a Written Ministerial Statement asserting that the purpose of the Bill is to provide better legal protection to Armed Forces personnel and veterans serving on military operations overseas. The Statement references and underlines a defence instruction and notice whose basic principle is that the department

"is committed to standing behind its people who act reasonably and in good faith in the course of their duties".

If we are agreed that a good employer will discharge a proper duty of care towards its people, then the pieces of this jigsaw—this campaign plan—are beginning to come together. Amendment 14 would join those parts of the jigsaw into one picture, to bring these hard-fought battles and engagements into line in a comprehensive campaign plan for the benefit of our people in uniform and for those who have worn a uniform in the past.

Defence priorities change; the fortunes of military charities fluctuate; Ministers come and go; but the law does not change. Amendment 14 would bring into law the good ideas and intentions of well-meaning Ministers and officials with whom we are currently united in common cause but who are strangely reluctant to enshrine the fruits of their endeavours in a Bill which will become an Act of Parliament and thus part of our law—a law to protect our people for all time from vexatious investigations and prosecutions.

I have heard an argument that says that if we enshrine a duty of care in law it will present the possibility of creating grounds whereby disaffected parties could take the MoD to court if in their opinion the terms of the legally binding duty of care had not been adhered to, but is that really an honourable or credible argument against creating a duty of care in the first place? Surely in any walk of life, rules and regulations setting out what is and what is not acceptable are a commonplace occurrence. If you act within the rules, all is fine, but if you step outside, then sanctions follow. I am no lawyer, but I am sufficiently aware of the way our civilised society is organised to know that

if I step outside the law, whether it is in a transaction on the high street or in my behaviour on a rugby field, I will be sanctioned. Is the Ministry of Defence so frightened that if it establishes a duty of care that passes into law and then it acts outside that law some of its employees might sue it? Surely the correct approach is for the Ministry of Defence to lay down a duty of care within the next six months, as Amendment 14 suggests, and then commit to live within that legally based statement of the duty of care for the benefit and transparency of both the employer and employees. Is that too much to ask? I beg to move.

Lord Hope of Craighead (CB) [V]: My Lords, I offer my support for this amendment for all the reasons given by my noble friend Lord Dannatt. I thought that it would be right for me as a lawyer to ask myself whether the amendment was asking the Secretary of State to do something that our legal system would find hard to recognise or put into effect. It is a long amendment, full of what no doubt was thought to be necessary detail; but the key words to which I have directed my attention are to be found in proposed new subsection (1), read together with the definition in proposed new subsection (7). They are the words "duty of care", which are used to define the obligation that is already owed to service personnel, both moral and legal, to ensure their well-being.

There are a number of things that need to be said to explain why the amendment has my support. First, this is a duty of care, not an absolute duty. It sets a standard that the amendment is talking about at the right level. An absolute duty is a duty that must be complied with irrespective of the circumstances. What has been talked about here is a duty to take reasonable care to achieve that standard. It is not driving the Secretary of State to achieve something that cannot be achieved with the exercise of ordinary care.

Secondly, the concept of setting a standard to be applied in addressing the needs of a particular group within our community is not new. It is familiar in the context of healthcare, for example, with regard to the care of the elderly.

Thirdly, and most importantly in view of the point made by my noble friend some moments ago, the method used should not be seen as encouraging a resort to litigation any more than the setting of standards does in healthcare. What is sought is to set a standard of behaviour, not a set of statuary rules. If litigation has to be resorted to, the complaint would be of a failure in a duty to take reasonable care, using the standard simply as setting out the criteria for what that duty required. There is nothing novel in that approach.

The Ministerial Statement that the noble and learned Lord, Lord Mackay of Clashfern, very helpfully read out to us when speaking on amendments in the first group this afternoon is, of course, to be welcomed. I do not for a moment doubt its sincerity, but Ministers come and go, and Ministerial Statements are, I fear, a bit like the Cheshire Cat. This amendment seeks to bring it up to a higher level of formality. Added to that, it seeks to ensure that the matter is kept under continuous review and public scrutiny. All that seems to me to be for the good. Therefore, if the amendment is put to a vote, I will support it.

Lord Faulks (Non-Afl) [V]: My Lords, I have thought carefully about this amendment since Committee, when it was moved by the noble Lord, Lord Dannatt. I also reread the debate that took place on that occasion. The amendment received a great deal of support around the House, which was plainly directed towards our Armed Forces and reflected a general desire to ensure that they were, and would be, properly protected against any of the consequences that followed from vexatious claims and repeated investigations. That is of course what lies behind the Bill as it is.

When I first saw the amendment, I thought that it was essentially probing. To that extent, it could be said that the amendment succeeded, albeit rather at the 11th hour, in provoking the Statement issued today and read out by the noble and learned Lord, Lord Mackay of Clashfern. During the debate in Committee, however, the noble Lord, Lord Dannatt, said that the duty of care standard—the expression used in the amendment—which would be established by the Secretary of State in this amendment, if properly worded, would prevent the outrageous behaviour of Phil Shiner and others. In response to the Minister's reply to the debate, the noble Lord also said that the duty of care would end recurrent vexatious claims and almost unending investigations.

7 pm

My difficulty with this amendment is that I am not convinced that it would in fact do so. The Secretary of State's duty of care standard could set out what he or she thought were the obligations that were owed to service personnel involved in investigations or litigations arising out of overseas operations, and that is clear from the Statement made today, which set out in some detail the various ways in which our Armed Forces are supported. The comment made by the noble and learned Lord, Lord Stewart, about educating the Armed Forces to bring claims promptly was also helpful in that regard. However, the Secretary of State could not create by the duty of care standard any change in the law or provide any defence which did not exist either at common law or in statute. Any actual changes would have to be incorporated in the Bill or in some other piece of legislation.

There are ways in which the Bill could be improved, and in the course of debates various measures have been suggested, although none of them addressed the real mischief. That could really be achieved only if the Government and Parliament were to decide that the Human Rights Act should have no extraterritorial application. As I said in Committee, if that was the law—the then Labour Government who brought in the Human Rights Act thought that it was, and Lord Bingham in the Al-Skeini case thought that was the decision—the investigations which in turn generated vexatious litigation and repeated investigations would never have taken place. However, the European Court of Human Rights in the case of Al-Skeini, responding to an appeal brought by Mr Shiner, among other lawyers, was persuaded that the ECHR applied outside the individual state's territory and indeed outside territories which were within the European convention: that is, outside the scope of members of the Council of Europe.

[LORD FAULKS]

As the noble and gallant Lord, Lord Craig, pointed out, Sir Peter Gross and his committee are considering this very point at the moment, and I hope that in due course there will be a suitable amendment to the Human Rights Act which will provide considerable assistance in the future in preventing many of the abuses that took place in the past, such as the appalling victimisation of Major Bob Campbell. In the meantime, I fear we must satisfy ourselves with what modest gains can be obtained from this legislation. The presumption against prosecution after five years would provide some reassurance to our service personnel, as indeed was acknowledged by Major Campbell himself when he gave evidence before a House of Commons Committee. The long-stop provisions in Part 2 should put a more or less final line under potential litigation, which will have effect across the board whether the claimants are civilians, members of our Armed Forces, or actual or potential witnesses to some claim.

It seems that the amendment is effectively saying, "Bring us a better Bill." I am sure that noble Lords have considerable sympathy for any such request—or is it more like an order? However, if this amendment becomes part of the Bill, I fear that it will be something of a declaration, without any true effect. Therefore, with very considerable reluctance, because I share the concern of all those who support the amendment, I fear I cannot support it.

Lord Boyce (CB) [V]: My Lords, as speakers ahead of me, and especially my noble friend Lord Dannatt, spoke eloquently in support of this amendment, I will not tax your Lordships' patience by repeating all that has been said. However, I wish to reinforce the point that we need something of a more permanent nature by which the Government may be held to account rather than a set of conventions and understandings, including defence instructions and notices. These can be easily changed or cancelled without any significant effort or recourse to Parliament. That is why, although I have very carefully read the Ministerial Statement that the Minister laid before us this morning, which sets out what is available to Armed Forces personnel, serving or veteran, I am afraid that it does not offer the guarantee of permanency of the responsibility of the MoD for the duty of care that this amendment proposes.

I also share, by the way, some of the concerns about the Statement expressed earlier today by the noble Baroness, Lady Chakrabarti. Furthermore, regarding that Ministerial Statement, I am incidentally unclear of the definition of "legacy cases" that the Army Operational Legacy Branch has been created to deal with. That also raises the interesting question of why exemption from means testing for legal aid cannot be applicable for criminal cases arising from all overseas operations, not just Iraq and Afghanistan.

This Bill, which sets out to relieve the strain on personnel under investigation, must surely reflect the fact that the MoD has a statutory obligation for the care of such people. I therefore support Amendment 14.

Baroness Chakrabarti (Lab) [V]: My Lords, it is a privilege to follow the noble and gallant Lord, Lord Boyce, in support of the vital amendment tabled by the noble Lord, Lord Dannatt. It is vital because there does not seem to be anything quite like it on the statute book.

While the Bill, controversially, attempts to protect the MoD from civil suit and individual members of the Armed Forces and veterans from criminal prosecution, it does not provide actual support for them. It does not provide mental health support, legal support or anything else mentioned in the amendment of the noble Lord, Lord Dannatt.

I will not repeat what I said earlier, but even the Statement that was made today clearly to reassure your Lordships that the amendment tabled by the noble Lord, Lord Dannatt, is not necessary gives me cause for concern. There are holes in the automatic non-means-tested legal advice and support, which should be automatic and non-means-tested for any serving member of the Armed Forces or veteran, whether they are facing investigation or prosecution or are a potential witness. That was the biggest problem I found.

Even the mental health support was less than specific or certain and seemed to be about signposting people to general NHS services, even though we all accept that people serving overseas are under particular strain. If their mental health is under particular strain and they are especially exposed to the law, as the Government maintain, why do they not get specific statutory and automatic support?

This is perhaps one of the most important parts of the debate today, and this amendment is possibly one of the most important that has been tabled. I sincerely hope that the noble Lord, Lord Dannatt, will press it to a vote.

Lord Stirrup (CB): My Lords, I start by adding my thanks to the Minister for the time and trouble she has taken since Committee to listen to the concerns that my noble friend Lord Dannatt and the other movers of this amendment, of whom I am one, have sought to address. The Government have argued, and no doubt will continue to argue, that what we are trying to achieve is both unnecessary and dangerous. I am unconvinced and I shall try to explain why.

In her response in Committee, the Minister pointed to the mechanisms and processes already in place to support service personnel and veterans. There are indeed both official and charitable structures set up for this purpose; they do a great deal of excellent work, as today's ministerial Statement made clear. But as I tried to explain in Committee, the situation of those accused of criminal activities and subject to the corresponding and prolonged investigations is particularly difficult. I pointed out that the stresses on these individuals and their families are profound and enduring.

These people are not just accused of a crime; they are charged with trampling underfoot the values and ethos that are an essential element of the special body of which they have been a trusted part. They are suspected of betraying their comrades and bringing them into disrepute. I ask noble Lords to imagine what sort of impact all of that has on people who are members of such a close and unique community.

It is alas true that in some cases the opprobrium will be deserved, but we also know that in such circumstances the innocent and the guilty will suffer

alike. Even a subsequent and unequivocal demonstration of innocence will not entirely remove the shadow from their lives or allow them to feel quite the same ever again.

Given such horrendous and, in some cases, undeserved consequences, is it so unreasonable to seek a special degree of support for these people? Is it unreasonable to ask that the requirement for and processes to deliver such support should be codified? After all, Part 1 of this Bill is itself mostly about codifying procedures that nearly everyone agrees a competent prosecuting authority would follow in any case. If these need to be set out in the Bill, why not the processes for ensuring the appropriate source of support for service personnel and veterans? To argue in favour of the former and against the latter would strike me as strangely inconsistent. Just to be clear, I do not believe that defence information notices constitute adequate codification.

The dangers that the Government seem to think lurk within this amendment apparently derive from the legal rights it would afford to those it seeks to protect. The accused could sue the Government if they thought that they had been inadequately supported—and who is to say what level of support should be considered adequate? The only beneficiaries, it appears, would be the legal profession.

Well, my first response would be that if the Government failed to provide the appropriate support, then they should be liable. It seems that in this day and age, we are keen to afford justiciable rights to just about everyone—except our service men and women. As to the definition of adequacy, I entirely accept that Amendment 14 as worded may not have adequately circumscribed this, but is it really beyond the wit of government lawyers to come up with a form of words that would do the trick? Surely, the concept of reasonableness and the appropriate kinds of test are not alien to our legal system.

The noble Lord, Lord Faulks, has said that this amendment would do nothing to prevent future Shiners, and I agree with him. I also agree wholeheartedly that tackling the difficulties caused by the extraterritorial application of the Human Rights Act is essential. None of this, though, obviates the need to support those who need our help.

The Government's argument appears, in essence, to be, "We don't think this amendment is necessary because we already do what it suggests, but we're rather afraid of being sued for not doing what the amendment proposes." This does not strike me as a tenable position. I urge the Government to think again.

Lord Houghton of Richmond (CB): My Lords, I speak in this debate to support the amendment moved by my noble friends. I do so because it is the closest to resolving, or at least ameliorating, the problem—and it is a problem, as many have rehearsed. It is essentially a practical one, relating to training, leadership, command oversight, operational reporting and improved investigative capacity and competence.

I fear that I remain convinced that the resort to legal exceptionalism which this Bill contemplates, and which appears to have initiated so much of the debate in the House, is an ill-considered course of action. It will make our service men and women more, not less, exposed to the challenges of the law. Law, in the context of this debate, is not simply the legislative framework within which war is conducted; it has become a weapon of that war. In the jargon, it is a new vector of attack. By way of emphasising my point, while this Bill has been maturing, we have seen the product of an extended review of the country's security, defence, development and foreign policy. The results have been the integrated review paper and the companion MoD document, *Global Britain in a Competitive Age*.

These are both excellent pieces of work and speak to the radically different character of future war. At the heart of both documents are the themes of systemic and enduring competition between nations, between political systems, across multiple spheres. The documents emphasise the lack of clarity over where the threshold of conflict sits, the impossibility of differentiating between peace and war, home and away, friend and foe. They speak of the far greater reliance, in future, on technical advantage, automated processes, autonomous systems. They move the comprehension of conflict beyond the recent sense that it is periodic, adversarial, away fixtures.

7.15 pm

In the context of these reviews, does not the Bill have a spectacularly old-fashioned feel about it? It is specifically designed just for overseas, for high-intensity conflict, confined to individual accountability. In the context of the reviews, what contribution does the legal dimension of the Bill make to our avowed national commitment to universal human rights, to the less defined character of future conflict, to the potential introduction of autonomous weapons systems cued by artificial intelligence? The defence procurement process is often accused of bringing complex modifications of yesterday's equipment to yesterday's war. I fear that the legal aspects of the Bill feel somewhat akin to the half-brother of that process.

By contrast, I hope that this amendment, in bringing about a more formalised duty of care, will initiate the provision of a more proactive understanding of the changing character of war, and a greater need to exercise command with responsibility before, during and after conflict. I also hope it will help ensure that our Armed Forces, in pursuit of technological advantage, do not fall foul of the promise of novelty and find themselves with capabilities for which no legal framework exists. In this respect, I join my friend the noble Lord, Lord Browne of Ladyton, in believing that this House needs the opportunity to debate these issues outwith the constraints of the Bill, which I fear does nothing to address them. Indeed, might the Government pull the Bill? Might they adopt a duty of care as the answer to this problem and then return to the more important debate—that is, to reassess the legal framework in which war is conducted in the light of the findings of the integrated review and ask some more fundamental questions about it?

Baroness Smith of Newnham (LD): My Lords, we have heard some important speeches making it clear why this amendment is so important. However, I confess that, having listened to the noble Lord, Lord Faulks,

[Baroness Smith of Newnham]
and the noble and gallant Lord, Lord Houghton of Richmond, I almost got to the point that my noble friend Lord Thomas of Gresford got to on the previous group: ought we to be killing the Bill, or asking the Government to kill it? Although I did not think at the previous stage that this amendment was necessarily a probing amendment, the more I looked at Amendment 14, the more it looked like the Government needed to be thinking about these issues more generally, not just in the context of overseas operations.

The Liberal Democrats will be supporting the amendment, but I think it raises issues which, if the Government have thought about them, have not yet been made clear to your Lordships' House and perhaps to the other place. As the noble and gallant Lord, Lord Houghton, pointed out, since the Bill was introduced in the other place, we have had the integrated review, the defence White Paper and the defence industrial strategy. There seems to be a whole swathe of legislation coming forward. We also, I assume at some point, are going to have legislation dealing with historic issues associated with Northern Ireland, and surely the duty of care links to the issues of Northern Ireland.

I did not speak on the second group of amendments, but it was interesting to hear the very different approaches to saying that we need to think about Northern Ireland again. They did not fit into a Bill on overseas operations, quite clearly, yet some of the issues, and that sense of repeated investigations, apply as least as much to Northern Ireland as to overseas operations. Are the Government proposing at some point to bring these themes together? Are they going to be in the Armed Forces Bill 2021? Are we going to see questions of duty of care that ought to be embedded not just in this Bill but more broadly? If not, could the Minister take this away and talk to her colleagues in the MoD Main Building and in the other place?

The Armed Forces Bill is coming up this year. As we have heard, issues about hybrid warfare and artificial intelligence need to be thought about, and potentially thought about differently, but this Bill does not really get into them. I fully understand that the Minister might say that this is intended to be a very small and discrete Bill. That may be so, but if those matters are not being considered in this Bill, are they being considered elsewhere? If not, could she undertake to go away and think about them?

Lord Tunnicliffe (Lab) [V]: My Lords, we fully support Amendment 14.

By my count, the noble Lord, Lord Dannatt, and the noble and gallant Lords, Lord Boyce and Lord Stirrup, have about 120 years of service in the Armed Forces between them. They have all argued passionately for a duty of care standard to be in the Bill. As a former acting pilot officer, I have to say that I am very proud of the stance they have taken. It shows that the former leadership of the Armed Forces is capable of being both compassionate and wise. When colleagues of such experience speak, we should listen. I am unsure why the Government remain so resistant to this. We stand foursquare behind our troops and a duty of care would ensure that our Government did so too. We will support the amendment if it is pushed to a vote.

As Amendment 14 refers to legal support, I want to seek some clarity on legal aid. I thank the Minister for writing to me on this issue, but the position stated in the letter is a little different from the position of the Minister in the Commons. The letter says:

"We cannot categorically say that Service personnel will receive legal aid"

but Johnny Mercer said:

"There is … full legal support, paid for by the MOD, for everybody swept up in these investigations."—[*Official Report*, Commons, Overseas Operations (Service Personnel and Veterans) Bill Committee, 22/10/20; col. 351.]

Can the Minister confirm that? The letter also says that cuts which were applied to the national legal aid system were also applied to the Armed Forces legal aid scheme as they mirror each other, but the Armed Forces Minister said that the Armed Forces system is "bespoke". Can the Minister confirm how much money for legal aid has been cut in the last decade from the Armed Forces legal aid scheme? This confusion between Ministers demonstrates exactly why we need protection in the Bill.

Ministers say they have made progress, but ultimately Ministers move on. Let us put a duty of care in the Bill so that personnel have full confidence that Ministers are serious about helping them through difficult times. I look forward to the noble Lord, Lord Dannatt, seeking the decision of the House. We will undoubtedly fully support the amendment.

Baroness Goldie (Con): My Lords, this has been an interesting debate and I am very grateful for all the contributions that have been made. Amendment 14 proposes that the Ministry of Defence should establish a statutory duty of care standard for current and former service personnel and, where appropriate, their families, and that the Secretary of State should be required to provide an annual update in the *Armed Forces Covenant Annual Report*.

This is obviously a matter of great importance which commands the interest of us all, and I am very grateful to the noble and gallant Lords, Lord Stirrup and Lord Boyce, and the noble Lords, Lord Dannatt and Lord Tunnicliffe, for their commitment to ensuring appropriate protection for our service personnel and veterans and for the conversations we had following the debate in Committee. In terms of the sentiments expressed by the noble Lord, Lord Dannatt, and the broad objectives which he and the noble and gallant Lords seek to achieve, I doubt if there is a cigarette paper between us—where we diverge is on the mechanism for delivery—so I can see why many are attracted to this amendment and feel the Bill could be enhanced by it.

I start by saying that we take our responsibilities to our service personnel and veterans extremely seriously. I have listened to the concerns raised in Committee and I have met further with the noble and gallant Lords. I thank them for their willingness to have these meetings, which have been constructive. I understood from the meetings that further reassurance was needed about the breadth and depth of support now available to those who are subject to investigations and prosecutions. As has already been referred to, a Written Ministerial

Statement was published which set out as a matter of record the diversity and depth of the support that is and will continue to be available.

Although in Committee I provided an overview of the support that we give to our personnel and veterans, I am happy to summarise the key points from the Written Ministerial Statement for the benefit of the House. First—and importantly—as a matter of MoD policy, service personnel are entitled to legal support at public expense where they face criminal allegations and civil claims that relate to actions taken during their service and where they were performing their duties. I say to the noble Lord, Lord Tunnicliffe, who asked whether there was a discrepancy between the descriptions given of the availability of legal aid, that I am not sure what the nature of the difference is between what I had said and what my honourable friend the Minister for Defence People and Veterans said in the other place, but it may have been the simple distinction that there has to be a need to be performing duties. Obviously, a member of the Armed Forces could commit a crime while not engaged in their duties, and one would imagine that that would then become the responsibility of civil authorities if it took place in this country. If it took place overseas, other interventions might be necessary.

Legal advice and support are also available wherever people are required to give evidence at inquests and inquiries and in litigation, and this is co-ordinated by the MoD. This principle is at the heart of the MoD's approach to supporting our people and is enshrined in the relevant defence instruction notices. I know that the noble and gallant Lord, Lord Stirrup, was slightly caustic about that, but these are the notices which make clear to our Armed Forces personnel what they can expect, in terms of support, from the MoD and their chain of command and what facilities are available to them. It is a responsibility that the MoD takes very seriously, and we keep our policies under review to ensure that they are appropriate and tailored to need.

At an earlier stage this afternoon, the noble Baroness, Lady Chakrabarti, raised a couple of issues about legal aid, and I will try to clarify what some of this provision is. Any individual who is investigated by the service police is entitled to legal representation as well as the support of an assisting officer, who can then offer advice on the process and procedure and signpost welfare support. Individuals who are interviewed as suspects under caution will be entitled to free and independent legal advice for this stage of investigation. Subsequently, legal funding for service personnel and veterans facing criminal allegations can be provided through the Armed Forces Legal Aid Scheme or through the chain of command for as long as is necessary.

As regards legal aid funding, the Armed Forces Criminal Legal Aid Authority will provide legal aid in circumstances where service personnel are not entitled to regular legal aid because of where they are employed or resident as part of their military duties. Where service personnel's employment or residence has not disadvantaged them, they can apply for regular legal aid as well, as would a civilian, and are therefore not placed at a disadvantage. Personnel are entitled to apply for legal aid regardless of whether they are considered to have acted outside the scope of their duties, but the MoD can still decide to pay for legal representation in respect of an allegation arising from an act committed in the course of the service personnel's duties. There is extensive provision. I know that the noble Lord, Lord Tunnicliffe, was interested in this issue, and I can undertake to provide both the noble Lord and the noble Baroness, Lady Chakrabarti, with more detailed information if that would be helpful to them.

7.30 pm

There is also comprehensive welfare support available. The Army Operational Legacy Branch was established last year to co-ordinate the Army's support to those involved in legacy cases. The AOLB provides a central point of contact and optimises the welfare network already in place through the commanding officer and chain of command, arms and service directorates, and the network of regimental headquarters and regimental associations. Although the AOLB has been established to provide an Army focus to legacy issues, the support that it provides is extended to the other services. Veterans UK is also closely engaged in providing support to veterans and, where required, the Veterans Welfare Service will allocate a welfare manager to support individual veterans.

At an earlier point, the noble Baroness, Lady Chakrabarti, specifically raised mental health support. I reassure her that much support is provided. This support is in addition to the range of welfare support and mental health support that is routinely offered to all our Armed Forces people. As the noble and gallant Lord, Lord Stirrup, acknowledged, the potential impact of operations on a serviceperson's mental health is well recognised and there are policies and procedures in place to help manage and mitigate these impacts as far as possible. All Armed Forces personnel are supported by dedicated and comprehensive mental health support. Defence mental health services are configured to provide community-based mental health care in line with national best practice. Veterans are able to access all NHS-provided mental health services, wherever they live in the country.

As your Lordships will understand, some of this will occur in the devolved nations. Health is a devolved responsibility and so, within these nations, services have been developed according to local populations' needs and the service specification will vary depending on what the individual devolved authorities have determined. This can mean bespoke veteran pathways or ensuring an awareness of veterans' needs. All veterans will be seen on clinical need. Additionally, the Office for Veterans' Affairs works closely with the MoD and departments across government, the devolved Administrations, charities and academia to ensure that the needs of veterans are met.

Significant progress has been made to ensure that our service personnel and veterans have access to a comprehensive package of legal, pastoral and mental health support. We therefore believe that it is unnecessary to establish a statutory duty of care.

I turn to the issue of investigations, about which the noble Lord, Lord Dannatt, is rightly concerned. As I have said, I recognise the depth of the concerns of noble Lords and their commitment to ensuring that service personnel and veterans are appropriately supported

[Baroness Goldie]
should they be subject to legal proceedings as a result of their service on overseas operations. I should like to make it clear, however, that the amendment would not lead to the prevention or limitation of investigations, or, for that matter, to the reinvestigation of allegations of wrongdoing by our personnel. As I have said in response to other amendments in relation to investigations, where the service police have reason to believe that an offence may have been committed—whether as the result of a reported allegation of a criminal offence or a civil claim for compensation which then suggests that a criminal offence may have been committed—they have a legal duty to investigate. This is the right and proper thing to do, and the passage of time does not change this duty.

As I have also previously observed, investigations can both exculpate or incriminate. It would therefore be inappropriate to seek to introduce any measures that would grant impunity to our service personnel after a certain period of time; that would effectively be a statute of limitations and I do not believe for one moment that this is what the noble Lords are seeking to do. With all due respect to the noble Lords, I strenuously reject any suggestion that service police investigations or reinvestigations have been, or are, vexatious. Investigations have to take place to determine the truth or otherwise of an allegation, and the service police are cognisant of the need to investigate as effectively and efficiently as possible.

However, investigations or reinvestigations of historical allegations are always likely to present particular challenges, including in terms of the timescale for the completion of an investigation. It is therefore entirely appropriate that we provide comprehensive support to our people when they are subject to investigations, particularly when these are many years after the events in question. This is exactly what the MoD's policies on legal, welfare and pastoral support have been developed to provide.

I will make brief reference to the service police complaints commissioner. I draw your Lordships' attention to the measure in the Armed Forces Bill to create a new officeholder in that role and to take powers to replicate the regime set out in Part 2 of the Police Reform Act 2002.

The issue of independent oversight was examined as part of the service justice system review, which found that a degree of independent oversight was missing, in comparison with civilian police forces, and recommended that a new niche defence body be created to deliver this. Following consideration of this recommendation, we believe that the service police should mirror the arrangements used in the civilian system, with differences only where they are considered necessary to take account of the service context.

This will allow us to put in place a system to deal with complaints and other serious matters relating to the service police, modelled on the one in place for civilian police in England and Wales. Under the new regime, anyone will be able to make a complaint, so long as they have been adversely affected by the matter complained about. I hope that this provides additional reassurance to the noble and gallant Lords in respect of the conduct of investigations by the service police.

I move on to the issue of unintended consequences, an area where I detect already that there is not an agreed analysis or conclusion. The Government are concerned that this amendment could result in unintended and undesirable consequences. Whether an individual wants or needs pastoral, welfare and mental health support is a personal issue. A statutory duty of care standard could, if not very carefully drafted, end up as a one-size-fits-all approach not flexible enough to cope with the needs and wishes of individuals. It could even engender an approach whereby support is provided only in accordance with the standard, which might leave personnel without the right support at the right time for them.

Additionally, we are deeply concerned about the potentially negative effect of this amendment if it is included in this legislation. In our opinion, it is clear that it is likely to lead to an increase in litigation, which will also mean more of our people being subject to potentially lengthy and stressful court proceedings, which is profoundly undesirable and certainly contrary to the objectives of the Bill.

The noble Lord, Lord Dannatt, said that the MoD should be prepared to meet valid claims and do the right thing by its Armed Forces personnel. I agree: it should, and it does. However, a lawyer's paradise could be accidentally created by this amendment because notions of pastoral and moral duties are very difficult to define adequately, and there is a real risk that attempting to do would lead to more, rather than less, litigation and greater uncertainty.

The noble and learned Lord, Lord Hope, feels that that is not a risk, while my noble and learned friend Lord Mackay of Clashfern considered that the Written Ministerial Statement provided clear evidence of wide-ranging support for the discharge of the duty of care. The noble Lord, Lord Faulks, clearly has anxieties about the reach of human rights law, unless the Human Rights Act is amended. He therefore feels that this amendment is purely decorative. I illustrate these differing views merely to say that it would be bold to assume that there is one categoric view that is absolutely correct—we have to be cautious.

Over the last few decades, successive Governments of different political hues have been in office, and none have seen fit to do this. It may be that difficulties were acknowledged in relation to how you adequately draft and frame a duty of care so clearly articulated that there can be no ambiguity or doubt about how far it is intended to reach.

There is another area of concern. As investigations and allegations often arise in the operational theatre involving the commanding officer, the Royal Military Police and service personnel, this amendment could have other unintended consequences. These might impact on the operational theatre and, again, lead to an increase in litigation.

The concern that this provision could impact the doctrine of combat immunity—which excludes civil liability in combat circumstances—is implicitly acknowledged by noble and gallant Lords who have sought to exclude this possibility by virtue of subsection (8) of the amendment. I can add only that we are uncertain as to how the proposed duty of care would operate in

the theatre of combat. Again, I think we should be very wary of the possible unintended consequences of the innovatory creation of such a statutory duty.

Finally, there was a question as to whether this Bill was the correct or best forum for wider discussions about the duty of care owed to service personnel. The Armed Forces Bill, which was introduced into the other place on 26 January 2021, will further incorporate the Armed Forces covenant into legislation. That Bill is a more appropriate mechanism for any discussion of the wider duty of care owed to our people.

Turning to the suggested reporting requirement, I am happy to reassure your Lordships that, in the context of many of the areas listed in this amendment, we already publish a comprehensive annual report on the Armed Forces covenant. There is already a well-established process through which service personnel can make complaints. The Service Complaints Ombudsman reports annually to Parliament on this. We continually review these policies and processes to ensure that they provide the best support and care possible for our personnel.

We are clear about our responsibilities to provide the right support to our personnel, both serving and veterans, and to seek to improve and build on this wherever necessary. I do not believe that setting a standard for a duty of care in the Bill is necessary, nor does it per se require an annual report to Parliament.

In the light of the further information I have made available about these important issues, if the noble Lord, Lord Dannatt, wishes to pursue this further, I ask him to look at the Armed Forces Bill as an appropriate conduit or forum for these discussions. In these circumstances, I urge him to withdraw his amendment.

Lord Dannatt (CB): My Lords, I thank all noble Lords who have spoken this evening. I was going to say that it was a short debate but it was a proper-size debate, getting at a number of these issues. I thank the Minister for her thoughtful and comprehensive reply to the points raised and for addressing Amendment 14. She is right that in some ways there is no more than a cigarette paper between us. In my opening remarks, I said that I was pretty clear that we shared a common objective. The current area of disagreement is over how we march towards achieving success on this common objective.

Amendment 14 is about establishing a duty of care standard. I am grateful to the noble Baroness, Lady Chakrabarti, for referring to this as a vital amendment. The noble Baroness, Lady Smith, and the noble Lord, Lord Tunnicliffe, also indicated the support of the Liberal Democrats and the Labour Party. If we believe that we have a common objective in doing the right thing by our serving and veteran personnel, then I fail to see why clearly setting out a duty of care is causing so much difficulty for the Ministry of Defence.

In Committee, there was some discussion about whether this was the right Bill to address these issues. Many of us argued that, if we were to lose this Bill, it could be quite some time before there was another Bill that could address them. I argue strongly that we should maintain this Bill on its passage through Parliament.

7.45 pm

My noble and gallant friend Lord Houghton referred to the recent integrated review and the questions quite rightly thrown up about future warfare and the conduct of servicepeople within it. Undoubtedly, he is right to make reference to that. But I feel his comments and those of the noble Baroness, Lady Smith, could be taken a step further to argue that we should kill this Bill and hope for another one that could better achieve the objective, which would be a reasonable argument. But as far as I am concerned, it is capped by the argument that we have a Bill and that we should make the best of it and try and achieve what we can in terms of a better duty of care to our people.

The noble Lord, Lord Faulks—one of the few speakers who did not speak in a content manner about any of the amendments that have been lodged and discussed this afternoon, for which I congratulate his courage—did make a reference that he thought this was a probing amendment. Yes, to an extent, it is a probing amendment, and when you probe, and find weakness, you are minded to attack, which is why I recognise the comments of the noble Lord, Lord Tunnicliffe, when he referred to the 120 years of service of the noble and gallant Lords, Lord Stirrup and Lord Boyce, and myself, each former heads of the Army, Navy and Air Force. But if you are going to mount an attack, it best comes when there is some leadership to force the issue. That is what we are going to do this evening.

The noble Baroness, Lady Goldie, made reasonable reference to the fact that the Armed Forces Bill going through Parliament might be a better mechanism for taking these issues forward. She may well be right, but we are currently debating amendments to the overseas operations Bill, and subsequently we will be discussing the Armed Forces Bill.

Because I believe passionately that we should be standing up for our servicepeople and veterans, I believe we should be setting out a clear duty of care. Many of the things I would expect to see in that duty of care are not novel; many of them are swept up in the issues being discussed in this Bill, not least Amendment 6, which we debated successfully this afternoon. In a sense, that duty of care will be an amalgamation—a compendium, if you like—of things a caring employer should gather together in the best interests of its employees.

Finally, there has been some reference to Northern Ireland. In an ideal world, this duty of care would not just extend to operations overseas but address some of the issues relating to Northern Ireland, which for many people are still extraordinarily sore.

For all these reasons, I wish to test the opinion of the House. I believe passionately that we should set out a duty of care and, should we not succeed in establishing such a duty of care through the passage of this Bill, I am confident that my colleagues and I will return to these issues in the context of the Armed Forces Bill when it comes to your Lordships' House. I wish to test the opinion of the House on Amendment 14.

7.49 pm

Division conducted remotely on Amendment 14

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Amendment 14 agreed.

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Kerr of Kinlochard, L.
King of Bridgwater, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lansley, L.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lothian, M.
Lucas, L.
Lupton, L.
Mackay of Clashfern, L.
Manzoor, B.
Marland, L.
Marlesford, L.
Maude of Horsham, L.
McColl of Dulwich, L.
McDonald of Salford, L.
McGregor-Smith, B.
McInnes of Kilwinning, L.
McLoughlin, L.
Mendoza, L.
Mone, B.
Morgan of Cotes, B.
Morris of Bolton, B.
Morrissey, B.
Moylan, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
O'Shaughnessy, L.
Parkinson of Whitley Bay, L.
Patten of Barnes, L.
Patten, L.
Penn, B.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Powell of Bayswater, L.
Price, L.
Rana, L.
Randall of Uxbridge, L.
Ranger, L.
Rawlings, B.
Reay, L.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ridley, V.
Risby, L.
Robathan, L.
Rock, B.
Rose of Monewden, L.
Rotherwick, L.
Sanderson of Welton, B.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shrewsbury, E.
Smith of Hindhead, L.
Spencer of Alresford, L.
Stedman-Scott, B.
Stewart of Dirleton, L.
Strathclyde, L.
Stroud, B.
Sugg, B.
Suri, L.
Swinfen, L.
Taylor of Holbeach, L.
Tebbit, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Tugendhat, L.
Udny-Lister, L.
Ullswater, V.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Verma, B.
Vinson, L.
Wakeham, L.
Waldegrave of North Hill, L.
Wasserman, L.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Wilson of Dinton, L.
Wolfson of Tredegar, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

8.01 pm

Clause 13: Power to make consequential provision

Amendment 15 not moved.

Clause 14: Extent

Amendments 16 and 17 not moved.

Clause 15: Commencement and application

Amendments 18 and 19 not moved.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, we now come to the group beginning with Amendment 20. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Schedule 1: Excluded offences for the purposes of section 6

Amendment 20

Moved by ***Baroness Goldie***

20: Schedule 1, page 12, line 7, leave out "this Part of this Schedule" and insert "paragraphs 2 to 13"

Member's explanatory statement

This amendment clarifies the scope of paragraph 14.

Baroness Goldie (Con): My Lords, we come to what some might argue is the least thrilling and interesting part of Report stage, but I hope I can conclude our proceedings on Report with something slightly positive and welcome.

These amendments are minor and technical. They are being brought forward to improve the drafting of the Bill. Amendment 20 corrects the scope of paragraph 14 of Schedule 1 so that it refers only to the offences listed in paragraphs 2 to 13 of Schedule 1 and not to Section 42 of the Armed Forces Act 2006. This is not required because Section 42 does not create any new offences in addition to those listed.

Amendments 23 and 25 correct errors in the Bill and omit paragraphs 23 and 30 of Schedule 1 because neither is necessary. Paragraph 23 is unnecessary because Section 65 of the International Criminal Court Act 2001—referred to in paragraph 23—does not establish an offence separate from those already mentioned in paragraphs 17 to 22 of Schedule 1 to the Bill. Similarly, paragraph 30 is unnecessary because Section 5 of the International Criminal Court (Scotland) Act 2001—referred to in paragraph 30—does not establish an offence separate from those already mentioned in paragraphs 27 to 29 of Schedule 1 to the Bill. I beg to move.

Baroness Smith of Newnham (LD): My Lords, this might be the shortest intervention of the evening. I am grateful to the noble Baroness for saying that there are errors in the Bill and removing the relevant paragraphs. I do not think anybody will be too sad to lose certain paragraphs from this Bill. There may be clauses that we would have preferred to lose, but I do not think that there will be any objections from these Benches.

Lord Tunnicliffe (Lab) [V]: I am willing to accept the assurance from the Minister that these are technical amendments, and I have no further comments.

Baroness Goldie (Con): It would seem trite to say that I thank your Lordships for this long and interesting debate but, none the less, with great sincerity, I thank the noble Baroness, Lady Smith, and the noble Lord, Lord Tunnicliffe, for their contributions.

Amendment 20 agreed.

Amendments 21 and 22 not moved.

Amendment 23

Moved by ***Baroness Goldie***

23: Schedule 1, page 13, line 28, leave out paragraph 23

Member's explanatory statement

This amendment corrects an error in the Bill. The provision omitted by this amendment is unnecessary because section 65 of the International Criminal Court Act 2001 does not establish an offence separate from those already mentioned in paragraphs 17 to 22 of Schedule 1 to the Bill.

Amendment 23 agreed.

Amendment 24 not moved.

Amendment 25

Moved by ***Baroness Goldie***

25: Schedule 1, page 14, line 24, leave out paragraph 30

Member's explanatory statement

This amendment corrects an error in the Bill. The provision omitted by this amendment is unnecessary because section 5 of the International Criminal Court (Scotland) Act 2001 does not establish an offence separate from those already mentioned in paragraphs 27 to 29 of Schedule 1.

Amendment 25 agreed.

Amendments 26 to 29 not moved.

Schedule 4: Limitation periods: Northern Ireland

Amendment 30 not moved.

House adjourned at 8.06 pm.

Grand Committee

Tuesday 13 April 2021

Arrangement of Business

Announcement

2.31 pm

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): My Lords, the hybrid Grand Committee will now begin. Some Members are here in person, others are participating remotely, but all Members will be treated equally. I ask Members in the room to respect social distancing. 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.

Greenhouse Gas Emissions (Kyoto Protocol Registry) Regulations 2021

Considered in Grand Committee

2.32 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Greenhouse Gas Emissions (Kyoto Protocol Registry) Regulations 2021.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, I beg to move that the regulations, which were laid before the House on 25 February 2021, be approved.

The statutory instrument is laid under the power of Section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018, to address deficiencies of retained EU law that arose from the withdrawal of the United Kingdom from the European Union. The purpose of this SI is to amend retained EU law related to the UK's Kyoto Protocol registry to ensure that it will be operable in the UK. The statutory instrument is not introducing any new policy; it is simply ensuring continuity of the UK Kyoto Protocol registry, independent of the EU's registry system.

As a party to the Kyoto Protocol, an international climate change treaty with which I am sure Members are familiar, the UK has a legal obligation to maintain a Kyoto Protocol registry. This registry enables the UK and UK-based account holders to hold and trade Kyoto units. Kyoto units are each equal to one tonne of carbon dioxide and can be traded on the international carbon market. Kyoto units held by the UK Government are used to demonstrate compliance with our emissions reduction targets under the Kyoto Protocol. Emission reduction commitments under the Kyoto Protocol covered the period from 2008 to December 2020. However, due to the time lag in collecting emissions inventory data, final accounting cannot be completed until several years after December 2020, hence the continued need for a registry. Future registry requirements under the Paris agreement, as the successor to the Kyoto Protocol, are due to be decided at COP 26 in November.

While the UK was a member state, the UK's Kyoto Protocol registry was housed in the EU's Consolidated System of European Registries. The UK has now established its own domestic platform to house the UK's Kyoto Protocol registry, independent of the EU system. This platform is due to be operational in May 2021. The UK Kyoto Protocol registry enables the holding and trading of Kyoto units, just as a bank account does with money.

As an industrialised country with emission reduction targets under the Kyoto Protocol, the UK is allocated a number of units, known as "assigned amount units". These units are held in the UK Kyoto Protocol registry. When finalising accounting for the Kyoto Protocol commitment period, countries have the option to trade or cancel any surplus units if they have met their emissions reduction targets through domestic action. The registry enables this activity.

Private entities can also open accounts in the registry to hold and trade Kyoto units generated through the clean development mechanism under the Kyoto protocol. The clean development mechanism allows a country with an emissions reduction commitment under the Kyoto protocol to implement an emissions reduction project in developing countries. Such projects can then earn certified emission reduction credits, each equivalent to one tonne of carbon dioxide, which can be counted towards meeting Kyoto targets. This mechanism can enable more cost-effective emissions reductions, and the emissions credits generated can be traded, thereby creating a carbon market.

This statutory instrument is about continuity and compliance rather than any substantive changes to policy. By amending the retained EU legislation relating to the Kyoto protocol, this statutory instrument provides a clear legal basis to operate and administer the UK registry domestically. This SI does not have any significant impact on businesses, charities, voluntary bodies or the public sector. The Environment Agency will continue its role as administrator of the UK Kyoto Protocol registry, as it did before our departure from the EU.

There are currently 112 businesses with accounts in the UK Kyoto protocol registry. The units and transaction history relating to these accounts are being transferred from the EU system to the new UK system hosting the UK Kyoto Protocol registry. As I mentioned, the new UK system is due to be operational in May 2021, which is when account holders will be able to register on the UK system to access their newly migrated accounts. Trading Kyoto units via the UK Kyoto Protocol registry should be possible from June this year.

Businesses with accounts in the UK Kyoto Protocol registry were given advance notice about changes to the registry while the transfer from the EU to the UK system takes place. The Environment Agency, in its capacity as administrator of the registry, continues to provide updates to account holders, and we are not aware of any concerns being expressed by those account holders. All four Governments of the UK nations have agreed with the purpose and content of this statutory instrument.

[Lord Callanan]

I therefore conclude by emphasising that I see the measures contained in these regulations as important, since they will ensure the UK's ability to uphold its international commitments under the Kyoto Protocol, following our departure from the EU. I hope on this basis that noble Lords will feel able to support these measures and I commend these regulations to the House.

2.38 pm

Lord Whitty (Lab) [V]: My Lords, I thank the Minister for these regulations, given that Brexit means that we are no longer party to the EU recording of emissions for Kyoto registry purposes.

I have three questions, two operational and one rather fundamental. First, can the Minister assure the House that this methodology for calculating greenhouse gas emissions will not be changed unilaterally by the UK and that, in terms of trends, we will be compatible with both past reported trends for the UK and the EU system of reporting, as well as simply meeting the requirements of the Kyoto registry?

Secondly, while the figures in this log will not determine what allowances can be traded in the new post-Brexit UK emissions trading scheme, can I assume that they will be compatible with it?

Thirdly, and more strategically, do the Government recognise that the methodology of determining individual nations' contributions to greenhouse gas emissions, taken on its own, is fundamentally misleading? It reflects reduction within the national emissions' geographical boundaries, not the national demand generated by that nation's society and economy, which would produce a very different impact on global emissions. For example, the UK final demand will include demand for imports, in the production of which greenhouse gases will have been emitted in China, say, or on the high seas or in the air, in transporting them to the final user or consumer. The global total will be the same, but the relative contribution of each nation to that total will be radically different, and the implied policy priority for each nation will therefore also be radically different. To put it crudely, if countries such as the UK and the United States, or companies in those countries, in effect offshore or export their dependency on greenhouse gas emissions by shifting production to the Far East, it is our economy, our final user and our supply chains whose behaviour needs to be addressed, rather than, or as well as, those of the Far Eastern nations.

This, then, is an issue that the Kyoto mechanisms and registry need to address. I do not say we do not need this production-based data—we absolutely do—but it needs to be augmented by a parallel index analysing, as best we can, the carbon-equivalent content of each nation's final demand. Production-based data is important and we need to keep it, but we also need demand-based data. Do the Government recognise this as a priority and, if so, is it an issue that will be discussed at the forthcoming COP 26 later this year, when the Government will be in a highly influential position to get the nations of the world to agree to work on a parallel system of demand-based greenhouse gas figures, as well as the figures covered in the regulations today?

2.41 pm

Lord Redesdale (LD): My Lords, as this is an SI, there is obviously little we could do to change it, even if we wanted to, but it makes sense that this SI goes through post Brexit. Its importance is its link to the trading regime. I have always been a sceptic of the trading regime, unlike my noble friend Lord Teverson—we have both been in the House long enough that we were debating this between 2006 and 2009. However, trading has taken place, with differing levels of success. A friend of mine was a carbon trader and I asked him how he made up his mind whether to buy or sell. He said, "It's very simple. When it's sunny, I sell, because people want to buy on a sunny day, and when it's raining, I buy, because people want to sell." It was as simple as that, and he made quite a lot of money using just that simple methodology, which shows that it had less to do with the actual price of carbon and more with how traders felt about carbon on that particular day.

As we are moving to a registry, I will ask the Minister one thing. We now perhaps have the opportunity to become a little innovative in the way we move forward. Could we not look at a registry not just of carbon dioxide and greenhouse gases but based around methane? Methane constitutes 23% of our emissions and we could do a great deal to focus on it. There is a great deal that we could do internally on the methane marketplace that would have a major effect on climate change, because methane production is not always linked to fossil fuels.

2.43 pm

Baroness Altmann (Con): My Lords, I thank my noble friend for his clear exposition of this SI. I am delighted that the Government have been showing strong commitment to addressing climate change, and of course I support the aims of the regulations and the amendment of EU law as it now applies to UK—which is, sadly, required following our departure from the EU. I also support our work to comply with our assignment amount units and targets under the Kyoto Protocol in order to reduce emissions.

In my brief time today, I shall ask my noble friend a few questions. What are the advantages from the extra costs incurred in setting up our own domestic registry, independent of the EU-wide CSEUR software platform, and how much is it expected to cost? Was there any opportunity to remain part of the EU system? Will my noble friend also provide an update on the progress so far and the Government's confidence level in meeting the May deadline for transferring accounts over to the new UK system and for verifying the information from those accounts when they are transferred from the CSEUR?

This SI also removes obligations from the Environment Agency to comply with EU law. Now it only has to comply with our international climate law obligations. Will this departure from EU rules have any impact on the trade in certain sectors or products? I wonder whether my noble friend could comment on any assessment that may have been made of the implications of departing from the presumably higher EU standards.

Finally, following on from the remarks of the noble Lord, Lord Redesdale, could my noble friend comment on the possibility of bringing together the various

different schemes? We have already established our own emissions trading scheme for greenhouse gases, and we are now setting up our own registry for the Kyoto Protocol. Are there plans under consideration to bring together all our climate change obligations so we can monitor them in a comprehensive fashion?

2.45 pm

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): The next speaker on the list, the noble Lord, Lord Berkeley, has withdrawn from the debate, so I call the noble Lord, Lord Bourne of Aberystwyth.

Lord Bourne of Aberystwyth (Con) [V]: My Lords, it is a great pleasure my good friend the noble Baroness, Lady Altmann, and I thank my noble friend the Minister for setting out so clearly the effect of these regulations.

I support these regulations, which amend retained EU law. We clearly need to do that in order to ensure the continued application of the UK's Kyoto Protocol obligations, which, as my noble friend said, persisted from 2008 to 2020 but will clearly go on for several years after that. That is the importance of these regulations.

Along with other noble Lords, I am keen to hear from my noble friend that we will carry on in the same way. I think he gave that reassurance, but I hope that that will be carried across in our ambition to COP 26. As he said, there will be a fresh assessment made at COP 26, and I will say something about that in a minute, if I may.

I am also concerned by the hiatus, which my noble friend touched on, between the end of the transition period and the new regulations taking effect in, I think he indicated, June 2021. Clearly there is a gap there. I think I understood him to say that that gap has been catered for and that the 112—I think he said 112—businesses that are potentially affected by this are aware of this, and I hope that they have been given guidance on how that will affect them in the period before our own registry takes proper effect in June 2021. I would welcome that reassurance.

We as the United Kingdom have a historic opportunity with COP 26, and it is incredibly important that we seize it and go forward with at least the ambition that we had in the EU—and I hope beyond it—to show that global Britain really does mean business. I know my noble friend will say that this is a matter for the usual channels, but I hope that he will be able to convey to the usual channels and to other parties the importance of having a meaningful debate in your Lordships' House well ahead of COP 26 so that we can express our collective ambition so that can be carried forward, because this is of crucial significance not just for our country but for the entire globe.

With that, I am more than willing to support these regulations, which make sense, but I would welcome my noble friend's reassurance with regard to the hiatus and, I hope, to a meaningful debate on this issue.

2.49 pm

Lord Howell of Guildford (Con) [V]: My Lords, I echo the final question asked by the noble Lord, Lord Whitty, about the true nature of our carbon footprint in the world. I will also point out that global emissions are again set to rise, and that, while the goals of greening our economy and aiming for net zero are admirable, they and the Kyoto regulations, in whatever form we now take them on board in the registry, fall far short of what is needed to tackle climate change.

I am sorry to strike a slightly negative note. However, as Jeremy Warner remarked in last week's *Sunday's Telegraph,*

"unless China and the rest of the developing world are on board, all efforts to reach a net zero world are doomed. It matters not a jot what America and Europe do to reduce their emissions if the rest of the world isn't doing the same."

The Kyoto Protocol is 24 years old, but here we are still struggling to curb rising greenhouse gases, both CO_2 and, even more of course, methane, which is 28 times as lethal. We really do need accurate and frank guidance on how to avert world climate catastrophe, which we are just not getting from the Committee on Climate Change and other authorities. This could be the opportunity to get the change needed.

As I said, global emissions are set to rise, after a pause during the pandemic, whereas to reach Paris accord targets they should be falling by at least 7.6% per year. Rising emissions in the big emitting countries, particularly from coal burning and particularly in Asia and Africa, are about to outweigh by far any reductions we can possibly make, so carbon concentrations in the atmosphere are set to continue growing almost unabated.

Coal of course produces about 46% of carbon emissions and, unless the technology for capturing and using carbon from these world sources is vastly improved and cheapened, and applied to all coal burning throughout Africa and Asia, there is not the slightest chance of meeting climate goals, which presumably is what we are about. This is where there should be an all-out concentration of resources and brainpower.

Present policies, although they involve enormous expenditure of national resources and are desirable in our narrow national interest, are not addressing the key issues. There is no safe haven here at home from climate change. What we need is not Kyoto or Paris but a multinational endeavour, a Manhattan-scale project, at least on the scale of China's belt and road initiative.

Without this kind of new strategy emphasis, the rise in global emissions will continue. Kyoto, Paris, net zero and all the rest will do almost nothing to check the real drivers of global warming. That is the honest and frank message that I would like to see come from these discussions to shape policy priorities, and it is the real message and policy direction which the next generation deserves and which should shape the whole approach that we take at COP 26.

2.53 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, in following the noble Lord, Lord Howell of Guildford, I respectfully disagree with his suggestion that any blame for lack of progress lies with the Committee on Climate Change. It is providing the advice that is needed. The failure is with government action, and I agree with the noble Lord on the extraordinarily urgent need for action.

[Baroness Bennett of Manor Castle]

I thank the Minister for his introduction to this statutory instrument. As he outlined, it establishes the new UK registry that is currently in development. As our own Secondary Legislation Scrutiny Committee noted with dry restraint:

"Until then, UK businesses that wish to trade KP units will have to open KP accounts in other countries' registries."

Once again, the Government are scrambling, still belatedly filling in basic gaps nearly six years after the Brexit referendum. This is continuity and compliance, as the noble Lord said, with an international agreement signed more than 20 years ago.

However, I will look primarily not backwards but forwards, as the noble Lord, Lord Whitty, did with his important focus on consumption emissions rather than just measuring territorial emissions. This debate comes on a day when both the *Guardian* and the *ENDS Report* carry articles from respected international figures expressing concern about the damage done to the UK's moral authority, as chair of COP 26, by domestic decisions. Christiana Figueres, a key Paris climate talks figure, said:

"There have been recent decisions in the UK that are not aligning with the ambition of the net zero target. It is worrisome. There are raised eyebrows among world leaders watching the UK."

What we have here is a problem not just with the decisions being made on roadbuilding, coal mines and airport expansion, but with the failure to deliver policies—the kind of slow, snail-like progress that we are seeing here today. Just look at a list of what the Government are supposed to deliver before COP 26: a heat and buildings strategy, a transport decarbonisation plan, a Treasury net-zero review, an England tree strategy, a hydrogen strategy, an industrial decarbonisation strategy, a nature strategy, and a net-zero strategy. Of course, we are still waiting for the crucially important Environment Bill, in the country ranked 189th in the world for its state of nature.

I do not expect the Minister to have complete answers to all these concerns today, but I ask him for an acknowledgement that the Government have heard these concerns from highly respected, knowledgeable, non-partisan international figures and are at least reflecting on them, and ask him whether he might acknowledge, at least privately, that attaching the label "world-leading" to every government claim is counter-productive and serves only to highlight, as today's SI does, that the UK is currently profoundly unprepared for the climate emergency and nature crisis.

A "legally binding target" for net zero for 2050 is, in terms of its impact on members of the Government today, precisely meaningless. What matters is action—practical, workable, effective action today—to slash emissions by 2030. That is something the Government have to show progress on, once they are done with the catching up that this statutory instrument demonstrates.

2.56 pm

Baroness McIntosh of Pickering (Con): My Lords, I am delighted to follow the noble Baroness. I welcome my noble friend Lord Callanan to his place and I look forward to his views. I also welcome the noble Lord, Lord Teverson, to his position and thank him for his excellent chairmanship of the outgoing EU Sub-Committee on the Environment.

I thank my noble friend Lord Callanan for his clear exposition of the statutory instrument, which I support as it gives a clear legal basis on which the UK register will function. Does he share my concern that there will be a number of months before any trading can take place? Is my understanding correct that these account holders have now left the international register and cannot start trading until June this year? If that is the case, I understand from paragraph 7.3 of the Explanatory Memorandum that his department is encouraging account holders to register with other countries. If that is the case, can he explain what the cost and administrative burden on these account holders will be? Does he accept my concern that this is a burden with which they could well do without? Is it the department's intention that they continue to register on two registers—the UK's and another country's register—or is this meant to be a short-term fix for the five months until our register becomes operational?

Further, is my understanding from A5 in appendix 1 of the Secondary Legislation Scrutiny Committee's report correct that the account holders have to register for two UK registers, effectively holding a register for the UK emissions trading scheme as well as for this one before us on the ETS allowances? Again, can my noble friend comment on what the cost and administrative burden to these companies will be?

Can my noble friend also assure me and other noble Lords who have asked him about this that we will not lower expectations on reducing greenhouse gas emissions now that we have left the European Union? What will be the mechanism? Will there be a role for the OEP under the Environment Bill in this regard?

My final point is that there has been no public consultation, but there has apparently been an ongoing communication with account holders. That is slightly alarming. Could my noble friend explain to us precisely what those forms of communication have been? If they have not been sufficient, is it therefore any surprise that no account holder has registered any dissent?

2.59 pm

Lord Teverson (LD): My Lords, I must admit that when I first looked at this instrument, I was severely disappointed with it. I can normally find in any secondary legislation at least 25 points of criticism to talk about for six minutes. Looking through these regulations, I could see nothing contentious at all.

That was until I started reading the explanation for them, which raised a number of concerns. One of them, which has been talked about a number of times, is the gap in trading. Given that we knew there was going to be a notice in this area, how come we have a gap in trading, even though only 112 organisations deal with it? I suppose that having to send our registrations on carbon abroad is one interpretation of global Britain, but that concerns me. I noted that the Minister said that the system was due in May, I think. He did not say that it would actually happen in May. I would be very interested if he would confirm that the system will be operational next month, so that we can all, let alone the users, have confidence in it.

I was also rather concerned by the last bullet point in paragraph 7.6 in the Explanatory Memorandum, which says:

"Amendments include … ensuring that provisions regarding the operation of KP registries are compatible with the software for the UK KP registry."

That seems the wrong way round to me. Surely we design the software to meet the needs, rather than the needs to fit the software. I am interested to understand why it is that way around. Can the Minister assure me that we are not just buying an app from the Apple shop, or whatever? It seems very strange that we are not designing something that is right for this, but, rather, are having to change our systems to meet the software. I tried to look up the value of one of these traded units but could not find it, so perhaps the Minister could tell us, without conferring, the current-day price of these units. That would be very interesting to know.

I move on to an area of potential confusion for us all here between the Kyoto trading system and the new UK ETS. I realise that that is not the direct subject today, given the very important role of this new UK ETS, but it would be useful if the Minister could help us to understand this. Its first trading day is due in May, so it would be very useful to have clear understanding and to be certain that it will happen at that point. I know there is a wish, which I applaud—it may be a hope—that there might be a connection between the EU ETS and the UK ETS in future, giving greater liquidity for the UK market. I would be interested to understand from the Minister whether those conversations have started and already take place, or even whether that is still the Government's wish or objective.

Lastly, in that area, consumption figures were mentioned, as was offshoring, which is one of the problems of having high prices on national emissions. Are the Government considering or investigating further a carbon border tax, which has been mentioned more broadly in the western world?

I agree absolutely with my noble friend Lord Redesdale about methane. One of the areas of climate change concern is that methane emissions have increased quite substantially, and what is perhaps even more worrying is that most authorities do not understand why that is the case. Any insight the Minister can give us on that would be very useful. The consumption figures are extremely important. I congratulate Defra, which looks after consumption, rather than BEIS, which looks after production, for that time series, and I encourage government to give it more publicity and more time.

I will not go into the broader issues of climate change and COP 26, which has been covered very adequately indeed by the noble Lords, Lord Whitty and Lord Howell, and by the noble Baroness, Lady Bennett, in particular, but even on these smaller issues, not least the UK ETS, it would be very good to have confirmation from the Minister about those important areas.

3.05 pm

Lord Grantchester (Lab): I add my thanks to the Minister for his introduction to the SI before the Committee today. As he said, the Kyoto Protocol and its mechanisms have been crucial in setting up co-ordinated international regimes to combat climate change. The treaty agreement has focused on green development through sustainable technology and investment. It has helped countries to meet emission reductions targets, removing carbon from the atmosphere cost-effectively, and has certified trading through registries to encourage industries and companies towards sustainability.

This statutory instrument continues the necessary arrangements to set up a complementary UK protocol registry following the UK leaving the EU emissions trading scheme, and I approve of it. However, as others have commented, the Government have not yet got the UK registry operational in time for the end of the transition period. The UK Kyoto Protocol registry will not become available until May this year, albeit that that is now only a few weeks away. Can the Minister confirm that everything is on track and that the trading of KP units will begin in June this year? Granted that priority has been given to the UK emissions trading scheme to be operational at the end of the transitional period in January, can the Minister confirm that this scheme has been embedded successfully and that the preparatory work undertaken so that the necessary international connectivities can proceed under this protocol will now proceed smoothly?

The Secondary Legislation Scrutiny Committee highlighted in its 48th report the possible impacts on businesses. Interestingly, neither the department nor the Environment Agency has received complaints from businesses about interruptions or costs as a consequence of this failure to maintain continuity with the EU registry. As the noble Lord, Lord Bourne, has asked, will any issues become more pressing by June, when businesses bear the costs? While being reassured that any damage may prove to be minimal, does the Minister expect any consequences at all? Perhaps he could comment further on the point that the UK KP registry serves as a distinct and separate policy from the UK ETS registry. Along with the noble Lord, Lord Teverson, I think that an understanding of these technicalities would be most helpful.

At this point in the process of establishing the UK regime, the future objectives and priorities of the scheme closely resemble those of the EU. Does the Minister's department have any variations in mind that might enhance the UK's path towards net zero? Any changes to the scheme, including calculations on emissions, must have only that intention and direction in mind in order to avoid the offshoring of emissions.

We are also somewhat in the dark regarding the Government's intentions. The weakness of this statutory instrument is that it is silent on all this. How similar to and how compatible will it be with the EU scheme? Indeed, what links may there be at all? As my noble friend Lord Whitty asked, will the UK scheme address carbon demands within the UK economy or merely reflect production? Will it add to the focus on the need for more attention to methane emissions, as the noble Lord, Lord Redesdale, asked? There are also issues about possible competitive distortions in state aid to certain industries. The greater challenge is halting the relentless increase in global warming, as emphasised by the noble Lord, Lord Howell. It may well be a challenge to the Minister, but if he could reveal anything at all, that would be most helpful.

3.09 pm

Lord Callanan (Con): I thank all noble Lords for their contributions to the debate. The noble Lord, Lord Teverson, summed it up well. This is fairly uncontroversial territory and I am pleased that most Members are supportive certainly of the principle of this legislation. As I expected, most of the questions did not focus on the content of this fairly dry statutory instrument but covered a range of other areas connected to our emissions reduction and greenhouse gas policies. However, in an effort to be as helpful as possible to the Committee, I will endeavour to answer as many of those questions as I can.

The noble Lord, Lord Whitty, asked whether the methodology for measuring greenhouse gas emissions will not be changed by the UK. I can assure him that the UK will continue to report greenhouse gas emissions under the Kyoto Protocol using exactly the same methodology as it did when we were an EU member state. The noble Lord also asked whether the Kyoto Protocol allowances would be compatible with the UK ETS. I can tell him that, under the UK ETS, the Kyoto Protocol units will not be able to be converted to allowances, and international credits are not permitted in the UK ETS at this time. However, the Government and the devolved Administrations are open to reviewing the usage of offsets in future, especially in deciding how best to implement the carbon offsetting and reduction scheme for international aviation, or CORSIA as it is known, alongside the UK ETS.

The noble Lord, Lord Whitty, also suggested that the UK should include imported emissions in its climate target. That issue was also raised by the noble Baroness, Lady Bennett. In our view, targets should strive to follow the best available science and methodologies to account for emissions and it is currently standard international practice to set such targets based on territorial emissions. Including imported emissions would, of course, risk double-counting emissions that had already been captured in other countries' national efforts.

The noble Lords, Lord Redesdale and Lord Grantchester, asked about the important subject of methane, as well as carbon. I can tell them that methane is covered under the KP and calculated as a CO_2 equivalent, following internationally agreed methodology provided by the IPCC.

My noble friend Lady Altmann asked about the costs of the new domestic registry system and plans to bring together all our climate commitments. The UK KP register has been developed as part of the same IT project as the UK emissions trading system registry. The two systems share a lot of the same IT functionality and we are able to maximise economies of scale and increase value for money by housing the two separate registries on the same system. I know that she will approve of that.

My noble friend Lord Bourne of Aberystwyth asked whether we have provided guidance to businesses affected by the change in the registry. The answer is yes, we have provided regular updates to account holders about the changes. Account holders were given advance notice that the UK KP registry would be inaccessible for a period while the transfer from the EU to the UK system took place. They were advised that, should they wish to trade Kyoto units before the UK registry had been successfully transferred on to the new domestic platform, they could open a KP account in another country's registry. As yet, we have no evidence to suggest that any businesses with accounts in the UK KP register have felt the need to take that step.

My noble friend Lord Howell rightly expressed concern about the urgent need internationally to reduce emissions and he made some good points, particularly about the number of current coal-fired power stations built by China and elsewhere. That indicates the challenge that faces us for the COP meeting, but I reassure my noble friend that we are making progress on international efforts to address these matters. That is certainly a priority for the Government through our presidency of COP and we will continue to make those points strongly to other member states, jointly with Italy and in partnership with many other countries.

The noble Baroness, Lady Bennett, in her predictable manner, made many of the same points that she always makes in these debates, not many of which had anything to do with the subject facing us in the statutory instrument, but let me reassure her that over the past three decades the UK has achieved record clean growth and has met its climate change commitments. Those commitments are indeed world-leading. I understand that they will never be enough for the noble Baroness, but nevertheless we think that we have made considerable efforts. Between 1990 and 2019, our economy grew by 78% while our emissions decreased by 44%, which is faster than any other G7 nation. The Prime Minister is building on that progress and has set out his 10-point plan for the UK to lead the world into a new green industrial revolution. This innovative programme sets out ambitious policies and significant new public investment to support green jobs, to accelerate our path to reaching net zero by 2050 and to lay the foundations for building back greener.

The noble Baroness, Lady McIntosh, asked about the impact of the changes to the KP registry on account holders. The instrument impacts a limited number of organisations that hold the Kyoto Protocol registry accounts. Our analysis has shown that the costs to businesses are expected to be minimal, as the instrument allows for the continued functioning of businesses through the operation of a UK KP registry, rather than making any substantive changes to existing policy. As I mentioned, account holders were advised that, should they wish to trade Kyoto units before the UK KP registry had been successfully transferred on to a new domestic platform, they could access another county's register, but so far, as far as we are aware, none has done so.

I can also tell the noble Baroness that the UK will not be lowering its climate standards or commitments as a result of leaving the EU. Our UK ETS is more ambitious than the EU system that it replaces—I know that this will be hard for some noble Lords to appreciate, but it is true. From day one, the cap has been reduced by 5%, which just goes to show that, as usual, we can do things better than the EU does.

The noble Lord, Lord Teverson, asked about the gap in trading for account holders following the end of the transition period. As I said, we have provided

regular updates to them. I earlier covered the point about what they could do in the meantime. The value of CERs, the most commonly traded unit on the Kyoto Protocol registry, is approximately 20p.

The noble Lord, Lord Grantchester, asked whether the registry will be ready for June and why there are two separate systems. I can reassure him that the scheme will be ready for trading in June. That may be a commitment that I will regret, but I give him it. We are working closely with the Environment Agency and the IT software developer and keeping in regular contact with account holders to ensure that the transition goes smoothly. The registry must be connected to the UNFCCC international transaction log. Before being reconnected, it must pass a series of tests that meet the international standards. The registry is currently undergoing those tests and is on track to pass them. Once those tests are passed, the register will be able to go live.

In response to the question of the noble Lord, Lord Teverson, about linking the UK ETS with the EU ETS, of course we recognise the importance of international co-operation on carbon pricing and the important role that international carbon markets can play. We are indeed open to linking the UK ETS internationally in principle. We are considering a range of options, but no formal decisions have been made at this point on any linking partners.

I hope that I have been able to reassure noble Lords, following the breadth of their questions, that the statutory instrument is worthy of their approval. I think that the only remaining question was from the noble Lord, Lord Bourne, about scheduling a debate. In asking the question, he predicted the answer: this is a matter for the usual channels. I am sure that the Whip has taken careful note of his concerns and will relay them to the Chief Whip, who will consider them accordingly. With that, I commend the regulations to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): The Grand Committee stands adjourned until 3.35 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

3.19 pm

Sitting suspended.

Arrangement of Business

Announcement

3.35 pm

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): My Lords, the hybrid Grand Committee will now begin. Some Members are here in person, others are participating remotely, but all Members will be treated equally. I ask Members in the Room to respect social distancing. 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.

Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) (Amendment) Regulations 2021

Considered in Grand Committee

3.36 pm

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

That the Grand Committee do consider the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) (Amendment) Regulations 2021.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I beg to move that the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) (Amendment) Regulations 2021, which were laid before the House on 25 February 2021, be approved.

This is an uncontroversial statutory instrument, which is required to implement a protocol, signed by the Governments of the United Kingdom and Japan on 16 December 2020, to amend the 1998 nuclear co-operation agreement between the UK and Japan. The statutory instrument amends regulations to ensure that the United Kingdom can comply with the provisions of that protocol.

To understand the importance of this statutory instrument, one first needs to understand the background to, and purpose of, the nuclear co-operation agreement and the protocol. Nuclear co-operation agreements are commonly used international agreements that give legal underpinning to civil nuclear co-operation. They provide key non-proliferation assurances, including in respect of nuclear safeguards, and a framework for nuclear trade. In 1998, the United Kingdom signed a nuclear co-operation agreement with Japan, reflecting Japan's position as an important partner in nuclear co-operation and non-proliferation for the United Kingdom. Both countries collaborate in the areas of nuclear regulation, research and development, decommissioning and advanced nuclear technology development.

On 16 December 2020, the United Kingdom and Japan signed a protocol to the nuclear co-operation agreement. The primary aim of the protocol is to maintain this mutually beneficial relationship between the United Kingdom and Japan on civil nuclear trade and co-operation. It achieves this by ensuring that the United Kingdom-Japan nuclear co-operation agreement, which it amends, is fully operable now that the United Kingdom operates its own domestic safeguards regime and is no longer part of Euratom.

However, it also goes further by including provisions that strengthen the mutually beneficial relationship between the United Kingdom and Japan. These additional provisions cover issues such as co-operation in research and development, intellectual property, safety and the expansion of the scope of the nuclear co-operation agreement to include information. The protocol therefore maintains and builds on both countries' commitments on non-proliferation and ensures the continued peaceful uses of nuclear materials and information.

[Baroness Bloomfield of Hinton Waldrist]

Until this protocol comes into effect, the current nuclear co-operation agreement remains operable through an exchange of notes, which was agreed as an interim measure between the UK and Japan in February 2019. This exchange of notes came into effect at the end of the transition period.

I shall now explain the purpose of this instrument and what changes it effects. The statutory instrument amends regulations to ensure that the United Kingdom can comply with the provisions of the protocol and ensure that its objectives can be achieved. First, it amends the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2019, so that the protocol is included under the definition of "relevant international agreement" for the purposes of the Energy Act 2013.

This concerns primarily the role and responsibility of the UK's nuclear regulator, the Office for Nuclear Regulation. One of the Office for Nuclear Regulation's statutory purposes is to ensure that the UK complies with relevant international agreements. These regulations ensure the protocol is captured as such an agreement. Failure to pass this statutory instrument would therefore mean that the Office for Nuclear Regulation's role would not include any reference to what has been agreed in the protocol, leaving the UK at risk of breaching this agreement. That, clearly, is not acceptable.

The second change effected by this statutory instrument is the inclusion of the protocol under the definition of "specified international agreement" for the purposes of the Nuclear Safeguards (EU Exit) Regulations 2019. This is achieved by extending the requirement in the Nuclear Safeguards (EU Exit) Regulations 2019 for operators to provide information to the Secretary of State relating to qualifying nuclear material or other relevant items in respect of the protocol.

For the purposes of the Energy Act 2013 and the Nuclear Safeguards (EU Exit) Regulations 2019, the Office for Nuclear Regulation and operators are currently required to fulfil certain reporting obligations relating to the UK-Japan nuclear co-operation agreement. Operators are therefore already required to provide information on nuclear material to the Office for Nuclear Regulation, and information on non-nuclear material and equipment to the Department for Business, Energy and Industrial Strategy. As a result, there are existing reporting mechanisms that will allow them to meet the additional obligations detailed in these regulations, specifically on information. We therefore expect the administration costs associated with implementing new requirements under the protocol to be very low.

There is a statutory requirement to consult the Office for Nuclear Regulation and others that the Government consider appropriate on these regulations. The Government have therefore worked closely with the Office for Nuclear Regulation and the civil nuclear industry to implement the new domestic safeguards regime and to ensure that the appropriate mechanisms are in place to implement obligations contained in international nuclear agreements such as this protocol. It has been of utmost importance to ensure that their interests and concerns were reflected throughout the policy process.

Moving forwards, we will continue to work closely with the Office for Nuclear Regulation and to engage regularly with the civil nuclear industry, highlighting the guidance available and addressing any questions and concerns. The Government have also engaged with the Business, Energy and Industrial Strategy Committee, the Lords EU Environment Sub-Committee, and the Lords EU International Agreements Sub-Committee, informing them of the protocol and the changes it makes.

The territorial extent and application of the statutory instrument is England and Wales, Scotland and Northern Ireland. The Government have shared it with our colleagues in the devolved Administrations so that they are aware of the obligations it creates.

I conclude by emphasising that I see the measures contained in these regulations as important but uncontroversial, since they will ensure that the United Kingdom can comply with the provisions of the protocol to the UK-Japan nuclear co-operation agreement. I hope that noble Lords will support these measures.

3.42 pm

Lord Redesdale (LD): My Lords, this is one of those SIs that you cannot find any reason to object to, so I will be extremely brief. While it talks about co-operation, it is unfortunate that Toshiba cancelled the Moorside project in 2018. Since then, two further projects have been cancelled at nuclear power plants.

Of course, this SI is relevant to the EU exit regulations. One of the issues raised was that, by moving away from Euratom and joint co-operation with our EU partners, we are in effect increasing costs to those organisations that would want to undertake development of nuclear power plants in this country. It seems that EDF is the only viable alternative for nuclear power plants at the moment, but could the Minister give an indication of how much the new regulations are costing industry, or maybe write to me?

3.44 pm

Viscount Trenchard (Con): My Lords, I thank my noble friend the Minister for introducing these regulations. I declare my interest as a consultant to the Japan Bank for International Cooperation and as a member of the advisory board of Penultimate Power.

The introduction of our own nuclear safeguards regime, supervised by the ONR, should enable us to comply with IAEA standards in a less cumbersome and less expensive manner than when we were able to while a member of Euratom. We no longer need to rely on complicated verification processes that do nothing to ensure full compliance with IAEA standards. Our NCAs of course ensure that our independent safeguards regime will permit no diminution whatever in the maintenance of the highest possible standards.

However, can my noble friend the Minister confirm that under our independent regime we no longer have issues such as those faced by Urenco in the past? These included the requirement for Euratom's approval

of any new contract and firm declarations on end use for the material. All that required much expensive bureaucracy, which added nothing to the agreements with, and undertakings to, the IAEA, which were not needed by non-European competitors.

Of course, UK companies remain fully covered by the Government's undertakings to the IAEA, and any shipments from the UK have to meet the requirements of UK export controls. However, it is not clear yet whether, after the inevitable teething problems, the Government have got to grips with the need to ensure that costs and bureaucracy are reduced to the maximum extent compatible with the necessary maintenance of the highest international standards.

I welcome the introduction of these regulations, whose effect is to add technology to the scope of the UK-Japan NCA through its amending protocol. This will enable the ONR to ensure the UK's compliance with the amending protocol. Will the Minister confirm that the Government agree that co-operation with Japan in civil nuclear power is even more important than it has been until now? The energy White Paper recognises the need for at least one more major large new nuclear power station project, besides confirming the Government's intention to continue to support the development of SMR and AMR technologies.

As the Minister is aware, Wylfa is perhaps the best available site for a nuclear power station in the country, if not in Europe. Is she also aware that Hitachi waited some 18 months after its decision to suspend the project before cancelling it, and that if the Government had come forward with additional financial support and a committed operator within that time, the project might have been rescued as a tripartite UK-Japan-US project? Would that not also have sent a very positive message about our trade and investment relationship with Japan, coming hard on the heels of the signing of the CEPA, and provided strong support for our tilt towards the Indo-Pacific, so important for the success of global Britain?

Does the Minister also agree that it is important that, where possible, major investors in our nuclear energy projects should be from countries whose security and defence interests are aligned with our own? What steps are the Government taking to revive the Horizon project? Does she agree that it is in our interests for them also to support other UK-Japan nuclear projects such as that on which Penultimate Power is collaborating with the JAEA to commercialise its high-temperature gas-cooled reactor technology in this country?

3.48 pm

Baroness McIntosh of Pickering (Con): I am delighted to follow my noble friend Lord Trenchard. I welcome my noble friend the Minister to her position and thank her for her clear and lucid explanation of the SI before us, which I very much welcome.

I note in the Explanatory Memorandum that the UK already has a number of bilateral nuclear co-operation agreements with countries such as Australia, Canada and the USA, which is very welcome in addition to the measure before us. Are any other agreements in the pipeline of which we should be aware? That would be welcome news indeed.

I particularly welcome the extension that my noble friend outlined in her introduction. She said that the mutual co-operation will continue to exist, but that it will be extended to R&D, international property and the other items that she mentioned. That is very positive.

I really have only one question, which I appreciate is not directly relevant to the SI before us. It deals with civil nuclear co-operation but, in view of the Government's recent announcement that we are to increase—I presume unilaterally—the number of nuclear warheads in this country, has her department had any negative feedback in relation to civil co-operation? It is interesting that my noble friend dwelt quite positively and strongly on this being a key nuclear non-proliferation safeguard. Obviously, it could be a potential setback, so I would be very interested in that regard, particularly in view of the sometimes tense relations that we have with my home country of Scotland, the place of my birth.

With those few remarks, I thank my noble friend for giving us the opportunity to consider the SI before us. I would very much welcome hearing more broadly of other co-operation agreements. I hope that we will continue to co-operate with Japan and the other countries along the terms that she outlined to us this afternoon.

3.51 pm

Lord Grantchester (Lab): I thank the Minister for her introduction to the instrument this afternoon on the relevant international agreements on nuclear safeguards. The UK regime was one of the crucial elements necessary for having effective and coherent UK controls in place during the Brexit process. The Nuclear Safeguards Act 2018 gave powers to the Office for Nuclear Regulation to monitor and regulate the nuclear co-operation agreements, one of which was with Japan.

I am very happy to approve these regulations today, which amend and update the original 1998 UK-Japan agreement with the December 2020 amending protocol. They provide a framework for further trade in nuclear materials and technology, and facilitate research, development and exchanges of information. Without the details of the updates with Japan, can the Minister advise the Committee whether this amendment to the 2019 agreement is made further to the position under Euratom? As I understand it, the 2019 amendment merely confirmed the NCA with Japan in the original Euratom protocols under the IAEA. If my hunch is correct in any way, do the Government intend to update other NCAs, most notably with the US, Canada and Australia, in a similar fashion? Have the Government received any comments from the IAEA?

When the Nuclear Safeguards Bill, now an Act, was before the House in 2018 one of the concerns was the recruitment and training of nuclear inspectors for the ONR to undertake what was then its new task to the high IAEA standards. For interest, it would be helpful if the Minister could give any update on the operations of the ONR. Maybe she can confirm whether any ONR review or report is intended to focus on the nuclear safeguards part of its responsibilities.

3.53 pm

Baroness Bloomfield of Hinton Waldrist (Con): I thank noble Lords for their valuable contributions to this short debate. The points that we have been discussing

[Baroness Bloomfield of Hinton Waldrist]
today highlight that these regulations will ensure that the United Kingdom can comply with the provisions of the protocol agreed between the Governments of the United Kingdom and Japan. The amendment ensures that the protocol is captured under the Office for Nuclear Regulation's statutory purpose: to ensure compliance by the UK with relevant international agreements, and that operators provide information on qualifying nuclear material or other relevant items to the Secretary of State.

In response to the questions from the noble Lord, Lord Redesdale, and my noble friend Lord Trenchard regarding the Government's commitment to minimising cost and bureaucracy, I must emphasise that a number of requirements already existed through the agreements between the UK and Japan which this protocol amends. Under the new regime, operators are required to provide information on nuclear material to the Office for Nuclear Regulation and information on non-nuclear material and equipment to the Department for Business, Energy and Industrial Strategy. There is no requirement to provide information to Euratom. We therefore expect the administration costs associated with implementing new requirements under the protocol to be very low.

My noble friend Lord Trenchard also asked whether co-operation with Japan in civil nuclear is more important than ever, and whether it is important to have major investors in our nuclear energy projects from countries whose security and defence interests are aligned with our own. Japan is a significant strategic partner for the UK and we regularly discuss a range of issues, including nuclear energy. Both countries collaborate in areas of nuclear regulation, research and development, decommissioning and advanced nuclear technology development—although it would not be appropriate to comment on the detail of these discussions. As Japan requires a nuclear co-operation agreement with countries before it will conduct nuclear trade with them, the protocol in this secondary instrument is an important enabler of co-operation between the UK and Japan on any future nuclear projects.

Both noble Lords mentioned the Wylfa project. We recognise that Hitachi's decision to pull out of the proposed project at Wylfa and wind up Horizon Nuclear Power was disappointing for local communities, and personally for me as the spokesperson for Wales. Ultimately, though, these were commercial decisions, and the future of the site is a matter for Hitachi. However, as my noble friend Lord Trenchard rightly pointed out, the energy White Paper is clear that nuclear remains an important part of the UK's energy mix. We have committed to at least one more 1 gigawatt power plant and we will continue to discuss new projects with other viable companies and investors wishing to develop sites, including the one in north Wales. The civil nuclear sector continues to be of key strategic importance to the UK and we welcome foreign investment in our infrastructure, subject to thorough scrutiny and the need to satisfy our robust legal, regulatory and national security requirements. I point my noble friend to the National Security and Investment Bill that is going through the House this week.

In relation to the question on high-temperature gas-cooled reactors, in 2019 the UK and Japan signed a memorandum of co-operation on energy innovation. This is the beginning of discussions on what the UK-Japan collaboration on advanced nuclear might look like. The joint NNL and JAEA report was published in October 2020 to provide a technical basis to establish and agree the next phase of collaboration, which will be welcome.

In response to my noble friend Lady McIntosh of Pickering, I will say that the UK Government are considering NCAs with other countries. We cannot comment on any ongoing negotiations, but we are of course keen to put in place NCAs with any country where such an agreement would be mutually beneficial. All the NCAs that the UK has in place are operable and we review them regularly.

With reference to the change in the UK's overall weapons stockpile, the UK Government have consistently stated that we will both keep our nuclear posture under constant review, in light of the international security environment and the actions of potential adversaries, and maintain the minimum destructive power needed to guarantee that the UK's nuclear deterrent remains credible and effective against the range of state nuclear threats from any direction. We regret that the security environment has necessitated this change, but we must recognise that the security situation has worsened since the previous Government's declaration of their intended nuclear warhead stockpile ceiling in 2010, since when we have seen an increase in nuclear challenges. Against this backdrop, the UK must ensure that its nuclear deterrent remains credible and effective against the full range of state nuclear threats from any direction.

I thank the noble Lord, Lord Grantchester, for his question about the interests of the IAEA in relation to this SI. The IAEA seeks to promote the safe, secure and peaceful use of nuclear technologies. The nuclear co-operation agreement between the UK and Japan seeks to do the same. As a former chair of the Nuclear Suppliers Group, I am sure that IAEA director-general Grossi will be pleased to see that we have brought our agreement up to date and in line with NSG guidelines.

To close, I will underline that the protocol, and by extension these regulations, reaffirm the importance that the Government place on ongoing co-operation with the UK's international partners in the civil nuclear sector. It highlights the continued value we place on mutually beneficial co-operation on the peaceful uses of nuclear energy. I commend these regulations to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): The Grand Committee stands adjourned until 4.40 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

4 pm

Sitting suspended.

Arrangement of Business

Announcement

4.40 pm

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): My Lords, the hybrid Grand Committee will now begin. Some Members are here in person, others are participating remotely, but all Members will be treated equally. I ask Members in the Room to respect social distancing. If the capacity of the Committee Room is exceeded, or other safety requirements are breached, I will immediately adjourn the Committee.

As we expect a further Division in the House, we have agreed that the Committee will adjourn now until five minutes after the vote has been called on Amendment 6, if that vote is called. I remind the Committee that, should there be a further Division, we will also adjourn for five minutes. So the Committee now stands adjourned until we know whether there has been a decision on Amendment 6 to call a vote—and, if there is, five minutes after that decision has been taken.

4.41 pm

Sitting suspended for a Division in the House.

Audiovisual Media Services (Amendment) Regulations 2021

Considered in Grand Committee

4.51 pm

Moved by ***Baroness Barran***

That the Grand Committee do consider the Audiovisual Media Services (Amendment) Regulations 2021.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, I am pleased to introduce this instrument, which was laid in both Houses on 25 February and is being made under the European Union (Withdrawal) Act 2018. This instrument will remedy certain failures of retained EU law arising from the withdrawal of the United Kingdom from the EU. It addresses minor and technical issues in domestic law after transposition of the audio-visual media services directive by the Audiovisual Media Services Regulations 2020, and is necessary to ensure that the law remains fit for purpose beyond the end of the transition period.

These regulations amend references to EU legislation, substituting domestic law references and making references to EU legislation ambulatory where appropriate. They also remove the requirement for Ofcom to notify the European Commission of services in scope falling within the UK's jurisdiction, and address Ofcom's co-operation with EU member state regulators.

I will now look at the regulations in more detail. The audio-visual media services directive, also known as the AVMS directive, is long-standing EU legislation that co-ordinates the regulation of audio-visual media services. The AVMS directive was revised in 2018 to take into account changes to the media landscape since the last revision of the directive in 2010.

The UK's Audiovisual Media Services Regulations 2020, which transposed the revised AVMS directive, were made and laid in Parliament on 30 September 2020. Those regulations came into force on 1 November 2020. They introduced rules for video-sharing platform services for the first time, with Ofcom as the national regulatory authority for video-sharing platforms falling under the UK's jurisdiction. The new rules for video-sharing platforms stipulate that platforms which have the required connection with the UK must have appropriate systems and processes to protect the public, including minors, from illegal and harmful material. The "required connection with the UK" means that if the platform provider is established in the UK, or if a group undertaking of the provider is established in the UK and the service is not regulated by another EEA country, Ofcom will in those circumstances have jurisdiction to regulate the video-sharing platform service.

Three key requirements have been placed on video-sharing platforms: first, to take appropriate measures to protect minors aged under 18 from harmful content; secondly, to take appropriate measures to protect the general public from material inciting hatred or violence, and certain illegal content; and thirdly, to introduce standards around advertising.

Ofcom is currently actively engaging with platforms that may be affected and has published guidance on scope and jurisdiction. In March, Ofcom published draft guidance for consultation on the list of measures that video-sharing platforms can take to protect users from harmful material. More vigorous regulation will commence once all guidance on video-sharing platform regulation has been published later this year.

I now draw the attention of the Committee to the report from the Secondary Legislation Scrutiny Committee considering this instrument, and thank it for its work. The committee's helpful report flagged two key areas: first, Ofcom's power to co-operate with EU regulators and, secondly, the delay in the introduction of the online safety Bill.

I will first address the committee's concern that replacing Ofcom's duty to co-operate with a power to co-operate with EU regulators could result in uncertainty regarding enforcement for platforms whose services are used in the UK but where the platform is based and regulated outside of the UK.

Co-operation and sharing information between national regulatory authorities is helpful for the purpose of enabling authorities to fulfil their functions in the most efficient and joined-up way, and to collaborate on matters of common interest. In this post-transition period, co-operation continues to be important and this instrument provides Ofcom with the power to co-operate with its EU member-state counterparts. Engagement with other national regulatory authorities will be helpful to resolve any jurisdictional issues and help ensure that UK users are protected from illegal material appearing on a video-sharing platform where the provider of the platform does not have the required connection with the UK.

[Baroness Barran]

Ofcom will be able to use this power in a number of circumstances: addressing jurisdictional matters, such as determining where a provider is established; co-ordinating enforcement action; engaging to ensure cross-border compliance; and exchanging regulatory best practice. Without that power, Ofcom would be able to engage only in non-case specific informal co-operation with other EU regulators—for example, exchanging regulatory best practice rather than co-ordinating enforcement action. This could result in a lack of transparency between regulators and could lead to less effective protection of UK users, including minors.

Although this instrument does not guarantee that EU counterparts will reciprocate and co-operate with Ofcom, these regulations show a willingness on the part of the UK Government that Ofcom should engage and promote collaboration in this important area of online safety. Leaving a duty to co-operate in place would be inappropriate because of the lack of reciprocity from EU member states, and would provide no incentive for EU national regulatory authorities to co-operate with Ofcom.

I will now address the committee's concerns about the timing and introduction of the online safety Bill. While we recognise the importance of being online and the benefits that this can bring, we acknowledge that online safety is a major concern. There are serious risks that users, especially children, currently face when they are online, and the prevalence of the most serious illegal content and activity online is unacceptable. We are working at pace to prepare online safety legislation, which will be ready this year. In the meantime, we are working closely with Ofcom and will continue to engage with parliamentarians as we prepare the legislation.

The current regulation of video-sharing platforms shares broadly the same objectives as the upcoming online safety legislation. In particular, it places requirements on UK-established video-sharing platforms to have systems in place to protect their users. The online safety regime will be broader and is expected to apply to a much wider range of online platforms. It is therefore the Government's intention that the UK video-sharing platform regime in Part 4B of the Communications Act 2003 will be repealed and superseded by the online safety legislation once the latter has been implemented. Ahead of the repeal, Ofcom, through regulating video-sharing platforms, is gaining invaluable knowledge about systems regulation and how best to keep UK users safe online. This knowledge and experience will help the Government to meet our objective to make the UK the safest place in the world to be online.

5 pm

Lord Blunkett (Lab): My Lords, I appreciate the explanation given by the Minister. I have to mind the old joke about déjà vu all over again, because we have been here and will undoubtedly be here again to discuss the necessary measures that, I hope, will emerge from the online harms legislation, which we are all anticipating and looking forward to scrutinising following the Queen's Speech in May. We are looking forward to it, because the situation that we face at the moment, as outlined by the Minister, is totally unsatisfactory.

I appreciate that this is just a technical measure, and that is why I can be brief. However, the technicality of providing a power to Ofcom to collaborate and share illustrates the paucity of any real measures that we have to hand to be able to deal with the situation whereby a platform is outside the UK but is beaming into and is used extensively in the UK. That is the problem, as we all know, with this technical regulation. Very few, if any, of the major platforms that we are talking about fall into the category of being overseen by Ofcom, and we need collaboration across Europe and the world to deal satisfactorily with online harms.

That has been thrown into contrast by one of the continuing emotional spasms during the recess—namely, the issue of whether boys are a dangerous species in our schools. I do not underplay it; I have written about it, and do not want to be misinterpreted. There is a real problem. But the problem, in part at least, springs from pornographic material that, sadly, is available for young people to access, and the distorted view of relationships, including sexual and emotional relationships, which are affected by it.

I wanted to put on record this afternoon that it will be absolutely crucial that we get the new legislation right and ensure that the powers will be available, whether the major platforms and big tech like it or not, in order to be able to protect our citizens, and particularly our young people, from the harms that they currently face.

5.03 pm

Lord Foster of Bath (LD): My Lords, last November, when we debated the earlier SI, I welcomed it but raised a number of concerns. Frankly, today's extra-technical fixes do not allay those concerns. A critical concern was about who would regulate to our satisfaction services that are available in the UK but are based elsewhere. The Minister said in November:

"Under the revised AVMS directive, each EU member state and the UK is responsible for regulating only the video-sharing platforms that fall within its jurisdiction. There will be only one country that has jurisdiction for each platform at any one time."—[*Official Report*, 27/11/20; col. 440.]

So we have no say in the regulation of on-demand platforms, such as Netflix, which will be regulated in the Netherlands, and video-sharing platforms, such as YouTube, which will be regulated in Ireland.

Today's SI does not help. It merely replaces the duty on Ofcom to co-operate with EU regulators with a power for Ofcom to do so. As the Minister explained last November,

"Ofcom will rely on informal co-operation with the relevant EU regulatory authorities for information regarding determination of jurisdiction and discussions on co-operation and consistency of approaches towards video-sharing platform regulations".—[*Official Report*, 27/11/20; col. 451.]

So it is down to informal co-operation rather than, as previously, having membership of the European Regulators Group for Audiovisual Media Services, which sets the rules for how all other EU regulators will operate.

I have frequently asked whether Ofcom will seek at least observer status of ERGA so that we may have something a little more than "informal co-operation". Can the Minister tell us whether the Government are urging Ofcom to do so? Of course, if it were significantly

updated to cover ODPs and VSPs, the Council of Europe's Convention on Transfrontier Television could provide a way for us to have a greater say, as, along with most EU countries, we remain in membership of the council. Are the Government considering this? Can she outline the intended regulatory regime once we have our much-awaited online harms legislation?

Last November, I asked the Minister:

"Do the Government intend their online harms legislation to bring all VSPs that impact on UK consumers under the scope of UK regulation?" —[*Official Report*, 27/11/20; col. 444.]

I did not get an answer then. Can she tell us now? If the answer is no, surely the much-vaunted taking back control will be a sham.

Finally, I ask the Minister to reflect on something else she said back in November, when she commented that

"if a platform has no physical presence in any country covered by the AVMS directive, then no country will have jurisdiction over it, even if the platform provides services in those countries." —[*Official Report*, 27/11/20; col. 440.]

Are we really to believe that if a service provided to UK customers is based outside the EU or UK—say, in China—we will have no power to regulate it? I hope she can explain.

5.07 pm

Lord Kirkhope of Harrogate (Con) [V]: My Lords, the regulations are obviously necessary. However, the powers cover only those platforms that fall within UK jurisdiction, as has already been said, and where it is necessary to protect the public, including, especially, children, from illegal or harmful material. We are immediately in difficult territory. In order to become subject to control, the definition is limited to those VSPs that either display a physical presence in the UK or are based or established here. Those companies with a presence elsewhere cannot be controlled, and only one country can have control at any time. Many of the VSPs are international concerns, as we know, such as Facebook or YouTube, where video material is widely propagated. Examples of child sexual abuse being displayed are, sadly, becoming more common, and the Internet Watch Foundation, with which I am connected, has drawn attention to the growth of undesirable content.

Also, the regulations on the powers of Ofcom do little to control online advertising, which is another source of concern in the need to protect children, in contrast to TV advertising, which is controlled. Few of the most widely patronised VSPs meet our requirements for Ofcom or government attention or control. Many of the most popular, including Facebook and YouTube, but also Instagram and Twitter, are outside our jurisdiction. Some are based in EU countries, including Ireland. That leaves us unable to intervene effectively and our citizens in danger. Can my noble friend advise how else we can gain more control in view of the rules that we now accept? The new online harms Bill, which we are promised, is still awaited with interest, and perhaps we can hear today from my noble friend how it might deal with the obvious limitations we currently have.

I have been arguing in the field of technological legislation that we should try to ensure that it is smart legislation—that is, updatable, like the software we use in computers and cars. If it is not, technologically will inevitably always be ahead of the regulators and any desirable controls the Government might need to protect us. In view of the fact that the EU and other countries have their own criteria to apply to online content, which might be very different to our own, what steps are being taken to try to maintain that common approach, with common limits on acceptability of content?

Ofcom is on record as saying that it will prioritise only the most serious potential breaches arising following our leaving the EU until it has fresh and comprehensive guidance. Does my noble friend not believe that clearer guidance should now be given? This is an area of our lives which will not wait and where we need always to be up there with those who provide these services. Online services can be a force for good, just like TV and radio communications, but there is evidence that they can be accessed by those whose aims are less beneficent and, in some cases, criminal. We cannot preside over such uses.

5.10 pm

Baroness Wheatcroft (CB) [V]: My Lords, I thank the Minister for the straightforward way in which she introduced this statutory instrument. It is, as she said, a technical instrument and I even welcome it in part. It is a positive that the UK will continue its commitment to the European works regime. As a generator of content, our creative industry will be a beneficiary of this regime and it makes sense to continue that involvement.

However, I can only echo the concerns expressed by others this afternoon about the limitations left unanswered by this legislation. With so much content being generated by platforms based outside the UK, our users of social media in particular and platforms generally are being left highly vulnerable to what is produced that is not regulated from the UK. This is a matter not just of the pornography that is being piped out and, as the noble Lord, Lord Blunkett, said, inflicting damage on our youngsters. An immense amount of really dangerous stuff about suicide gets circulated online. On anorexia, thinness websites are pushing our young ladies into starving themselves. It is really appalling. It will not be stopped by the regulators in other countries and I am afraid that our regulators will not be able to do it.

We have heard many times already this afternoon about the long-awaited online harms Bill, but when will it actually hit the statute book? How extensive will it be? Anyhow, I query whether Ofcom will be ready to deal with it when it arrives. From looking at its website, it is desperately trying to recruit people to deal with this. It still needs a principal to deal with online harms —somebody who can build and lead a multidisciplinary force across Ofcom to deliver high-quality policy and advice on complex issues. It is still hunting for a policy manager to support the development of its approach to regulating online harms. Can the Minister reassure us that Ofcom will be able to fulfil the duties being imposed on it to protect our country from online harms?

5.13 pm

Baroness McIntosh of Pickering (Con): My Lords, I welcome my noble friend the Minister to her place and thank for the very clear exposition of and background

[Baroness McIntosh of Pickering]
to the regulations before us. I declare my interest as on the register as chairman of the Proof of Age Standards Scheme board.

I will make two points and ask my noble friend a question on each. Is she in a position to give us the timetable for the online harms Bill, in particular as regards identifying and proving the age of minors to ensure that they are not subject to harmful images and content online? What discussions has she had with her opposite number in the Home Office, in particular my noble friend Lady Williams, with whom we have been working closely at PASS in this regard, to establish a digital ID and to verify how proof of age for the purposes of such a digital ID for young people can be set up? It is extremely important that these departments co-operate and work very closely together in this regard. I would welcome an early meeting with my noble friend if that is potentially helpful.

Secondly, on the issue raised by the noble Lords, Lord Blunkett and Lord Foster, and others who have spoken so far, all making the same point, how do the Government intend to resolve the question of jurisdiction and the potential for video service providers to escape the control of Ofcom, although offering services in the UK? What provision do the Government intend to make in that regard?

Finally, paragraph 7.2 on page 4 of the Explanatory Memorandum says:

> "The references in the transposing Regulations which are being fixed include amending and substituting references to EU legislation with references to domestic law".

The duty on Ofcom to co-operate with the European Commission, and presumably other member state bodies, is therefore being replaced with powers for it to co-operate with EU regulators. How does my noble friend expect that these changes will be made? Personally, I regret that there is a downgrade from a duty to powers for it to co-operate. I will follow this very closely.

5.16 pm

Lord McNally (LD): My Lords, as the noble Lord, Lord Blunkett, indicated, this debate is but one small piece of a larger jigsaw which Parliament will have to put together in the new Session in May. I pay tribute to the Secretary of State and his colleagues, including the noble Baroness, Lady Barran, for the painstaking way in which they have gone about consultation and involvement in preparing for the online harms legislation. I hope that they will go one step further by including pre-legislative scrutiny in the process by which the proposals will be brought forward.

Nineteen years ago I sat on the Puttnam committee, the Joint Committee of both Houses which gave pre-legislative scrutiny to what became the Communications Act 2003. That pre-legislative scrutiny made for a better Bill. The SI before us makes a number of tweaks to that Act, which was, of course, the legislation which created Ofcom. I remember that pundits at the time were predicting that the media vested interests would overwhelm Ofcom—or, as it was indelicately put then, "Murdoch's lawyers will have them for breakfast". This proved not to be the case, but there is no doubt that the same vested interests will be at work trying to draw the teeth of legislation designed to limit their powers to make money. As my noble friend Lord Foster and the noble Lord, Lord Kirkhope, indicated, who regulates what could turn out to be a lawyer-fest.

The Communications Act 2003, which we are amending today, contains the crucial Puttnam amendment, imposing on Ofcom the statutory duty to further the interests of citizens. That has been crucial in ensuring that regulatory decisions are not dictated by market criteria but governed by proper considerations of the broader public interest. It is essential that the Puttnam protections appear in the new Act. That statutory duty becomes even more important as Ofcom takes on the role of online regulator. As the noble Baroness, Lady Wheatcroft, outlined, it will be essential in reinforcing its ability to protect citizens, including children and the vulnerable, from a range of social harms as well as the threats to our democracy via fake news and disinformation.

Ofcom's willingness to shoulder those responsibilities and the way it works with our other regulators—the ICO, the CMA and the Financial Conduct Authority—in the newly created digital regulation co-operation forum will depend on the effectiveness of the protection we now seek against internet harm. The protection of the citizen and of the wider public interest must remain part of the architecture of the regulatory system that we seek to put in place.

5.19 pm

Lord Holmes of Richmond (Con) [V]: My Lords, it is a pleasure to participate in this short debate. I congratulate my noble friend the Minister on the way that she introduced the regulations. In doing so, I declare my relevant interest as a board member at Channel Four Television Corporation.

These are technical regulations, so forgive me if my questions are of a somewhat technical nature. What mechanisms and technologies are currently in place to ensure that the power to co-operate can be exercised effectively and in real time? To echo my noble friend Lady Wheatcroft's point, does the Minister believe that Ofcom currently has the resources and expertise required in this area in terms of individuals, and the hard and soft resources to back this up?

In her opening, the Minister set out the learnings that would come through Ofcom's engagement with VSPs. How will those learnings feed into the online harms legislation process and can a mechanism be established to ensure that they can be fed into any pre-legislative scrutiny in real time, because they could be invaluable to that process? I agree with my noble friend Lady McIntosh that, as with so much that we are considering now, a lot of this tracks back to the need for a distributed digital ID. Can the Minister outline some of the work going on in her department? What can be done to accelerate that and what proofs of concept may be undertaken that could be particular to the issues we are discussing?

Does the Minister agree that we have world-class broadcasters and content producers in the UK, and that it is essential that we have world-class online harms legislation? Will she conclude the debate by giving us a date for when the legislation will be introduced?

5.21 pm

Lord Clement-Jones (LD): My Lords, it is ironic that we keep coming back to this set of audio-visual media services regulations, yet this regime is only ephemeral and rather limited in scope. Schedule 15A was inserted only in November, as the Minister said, and is destined to be repealed, we hope, within a short space of time. This is really a dry run, as the Minister accepted, for what we are expecting to be the much wider scope of the online harms legislation, due, we hope, shortly after the Queen's Speech, at least in draft. That is why we need to kick the tyres pretty hard at this stage on the way in which Ofcom plans to regulate and on the provisions of this SI.

As my noble friend Lord Foster asked, how many on-demand and VSP services are now covered, or have been since 6 April? He also asked what the Government intend as regards VSPs not based in the UK when the new online harms legislation is introduced. The Minister used the phrase "wider ambit". Is that a commitment? We can, of course, talk about the provisions of the regulations themselves, the duty of co-operation and so on. She referred to the findings of the Secondary Legislation Scrutiny Committee and its view that the SI created some uncertainty.

The Minister was not wholly convincing in pushing back on the fact that the powers are essentially informal. There are not duties that require formal mechanisms of co-operation, least of all those belonging to the association of regulators mentioned by my noble friend Lord Foster. Perhaps the Minister can also talk about the consequences of the "ambulatory" definition of "European works". There seems to be some confusion about the way in which that will operate. It is important to have transparency between the regulators and a commitment by the Government to make sure that our legislation is on all fours, at least during the interim period and probably for some time thereafter. I agree with the noble Baroness, Lady Wheatcroft, about the concerns over the timing of the introduction of the online harms legislation.

We should all be interested today in the substance of the Ofcom consultation on the video-sharing platform guidance. Of course, we are all concerned about the question of freedom of expression, but Ofcom in its consultation said

"The VSP Regime does not set standards for content which providers should meet".

Is that going to be the online harms approach? I very much hope that we will go further and adopt the risk assessment and management approach discussed later in the VSP consultation by Ofcom. That would fulfil what my noble friend Lord McNally referred to as the Puttnam criteria.

The noble Baroness, Lady McIntosh, mentioned age verification. Ofcom said:

"For VSPs which specialise in, or have a high prevalence of pornography, we think robust and privacy preserving forms of age verification are key to providing necessary protections for under-18s".

I entirely agree with that, and with what the noble Lord, Lord Blunkett, had to say. But will this be mandatory or a matter of judgment? What sanctions will there be if age verification is not introduced?

It is evident from the answer to the recent Written Question from my noble friend Lady Grender that user-generated content will be more heavily regulated than commercial pornography sites which do not carry user-generated content. Is that the Government's settled approach? If so, they will have a fight on their hands, especially in the light of BBFC research which showed that parents agreed with a statement that there should be robust age-verification controls.

I could go through age ratings and the DRCF workplan mentioned by my noble friend Lord McNally. I strongly support the proposal for a centre of excellence. The dispute resolution mechanisms discussion is also of great interest, and I declare an interest as chair of the board of Ombudsman Services Ltd. The Government have said that they do

"not intend to establish an independent resolution mechanism".

Ofcom clearly considers it important to have independence, and I hope that the Government will have changed their mind by the time we come to the online harms legislation. Furthermore, Ofcom's statements are very cogent about media literacy, but where is the Government's strategy?

Finally, are Ofcom's enforcement guidelines fit for purpose in regulating VSPs? What kind of assessment has been made of them and what assurance can the Government give? I have great confidence in the way in which Ofcom is steering its activities towards preparing for online harms regulation. I am not so sure about the Government, however, given the regulatory framework and the policies that they are adopting.

5.27 pm

Lord Bassam of Brighton (Lab) [V]: My Lords, the noble Lord, Lord Clement-Jones, is right to say that this afternoon's discussion is something of a dry run. If that is the case, there will be anxious people around the world concerned to know exactly what we are going to get in the online harms Bill, when it is forthcoming.

In a previous debate, I raised the question of how we would regulate the big players such as YouTube when they are established elsewhere if they are regulated entirely by the EU and outside our jurisdiction. That question has cropped up again today. I welcome the fact that colleagues across the House have begun asking the Government more about that issue, because it is a very important one. I look forward to the Minister's response on that.

Noble Lords have said this afternoon in no uncertain terms that they find the current situation highly unsatisfactory. Reference was made to resources by the noble Baroness, Lady Wheatcroft, while the noble Baroness, Lady McIntosh, asked about jurisdiction. The noble Lord, Lord Kirkhope, was clearly concerned to ensure that we have the online harms Bill brought forward sooner rather than later. While the noble Lord, Lord McNally, was happy to see detailed consultation carried out, I think that he also would like to see some of that during the pre-legislative process, so we can all understand how the legislation will work.

[Lord Bassam of Brighton]

I, like the noble Lord, Lord Holmes, want—[*Inaudible*]—online regulation, and that is the view of my party. So while the changes made by this statutory instrument were not felt to be day-one critical, it was always inevitable that they would have to be made to ensure that Ofcom's powers and duties reflect the new informal relationship between the UK and the EU and EEA regulators, and the fact that the UK no longer needs to notify the European Commission of certain changes.

As noted by the Secondary Legislation Scrutiny Committee, however, there was a recommendation for this instrument to be upgraded from the negative procedure to the affirmative. We welcome the fact that the Government accepted this recommendation, but the fact remains that there is too little information on the proposed timetable for the online safety Bill for us to be entirely reassured. I hope that the Minister will address those concerns and perhaps give us a timetable for pre-legislative scrutiny and the final introduction of the Bill. Can she do that this afternoon? We need to have some certainty. Does the Minister also accept that the current regulatory vacuum, where significant video-sharing platforms operate but are entirely outside our jurisdiction, rather undermines the Government's commitment to protect users?

We welcome the Government's plan to introduce a duty of care on online service providers, but while legislation exists only in draft form this does nothing to keep users, particularly younger ones, safe at present, despite various voluntary initiatives. We continue to see worrying cases of users encountering harmful and inaccurate content online.

Paragraph 2.13 of the Explanatory Memorandum notes:

"Guidance issued by the European Commission will continue to have relevance in the UK should it be updated."

This makes sense, but it could be argued that this approach is inconsistent with the handling of similar guidance in some other policy areas. What was the rationale for this specific decision? DCMS says that the new ambulatory reference will fall away if the EU opts to adopt an entirely new definition or guidance. Can the Minister put on record her understanding of the current regime and the level of regard UK bodies should have for it in the light of this statutory instrument? What future changes to the EU guidance would DCMS consider inappropriate in the UK context?

Paragraph 2.15 of the Explanatory Memorandum says that the Government are giving Ofcom statutory powers to co-operate with EU and EEA regulators in part because

"it is hoped it will incentivise other regulators to co-operate with Ofcom."

What has this co-operation been like during the first three months of the new relationship? Does the Minister accept that we have become dependent on the good will of others, something that we are increasingly needing to rely on in our new relationship with the EU? I look forward to hearing the Minister's responses to this and the other important points raised from across the Committee today.

5.33 pm

Baroness Barran (Con): My Lords, I start by thanking all noble Lords for their valuable and insightful contributions to this debate. I will do my best to answer the points raised in the time allowed, but if I run out of time I will of course write to your Lordships.

A number of noble Lords, including the noble Lord, Lord Blunkett, and my noble friends Lord Holmes and Lord Kirkhope asked how this approach would work in practice in terms of co-ordination with EU regulators. I believe that I covered some of this in my opening remarks. I would just add that the UK and the EU have similar objectives regarding online harms and continue to share similar values. Both the digital services Act and the online safety legislation will set out new expectations on companies to ensure that they have proportionate systems and processes in place to mitigate risk and to keep their users safe online. We are committed to working with our European and international partners, as well as businesses themselves, to understand how we can implement these existing frameworks better. However, I would like to be clear, in response to many noble Lords' requests for clarification on jurisdiction, that our forthcoming online safety regime will regulate platforms irrespective of jurisdiction.

The noble Lord, Lord Clement-Jones, asked which platforms would be regulated by this new instrument. From 6 April this year, VSP providers in UK jurisdictions have been legally obliged to notify their services to Ofcom. Existing providers have one month—until 6 May—to notify their services, and the list of providers will be published shortly thereafter. We expect, and this is very important in light of the very valid concerns that your Lordships raised, that this will include some smaller platforms that have never previously been in scope of regulation.

A number of questions were asked about ambulatory references. These ensure that UK law reflects updates to the definition of European works and/or the relevant guidance attached to that, so that when the EU makes changes to legislation, a full legislative process has to be gone through and the UK will therefore get a reasonably lengthy period of notice in which to consider whether or not to disapply the ambulatory reference. As a matter of policy, however, the UK wants to keep close to the EU on the definition of European works, which is why the definition is ambulatory. It is also a technical definition and has links to the European Convention on Transfrontier Television, to which the UK is a party.

A number of questions, including from the noble Lord, Lord Clement-Jones, were asked about the use of age-assurance and age-verification measures within the video-sharing platform regime. Age assurance is one possible appropriate measure in the VSP framework. In order to comply with the VSP regime, age-assurance measures may be adopted by VSPs, along with other measures such as age ratings and parental controls. When considering which measures are needed to protect users adequately, platform providers must consider what is practicable and proportionate, which includes taking into account the rights of users.

Ofcom is committed to promoting best practice in this area within the VSP regime, and its guidance is consistent with the guidance on establishing age within

the Information Commissioner's age-appropriate design code. Throughout the duration of the regime, Ofcom will work with the ICO to provide clarity on roles and coherence in approach. I can tell the noble Lord, Lord McNally, that this will be done with a risk-based approach, both in this regime and in the forthcoming online safety regime.

The noble Baroness, Lady Wheatcroft, asked whether Ofcom had sufficient resources to fulfil its role. Ahead of the online safety Bill we are working closely with the regulator to understand the challenges that it faces, and we are working to ensure that it has the resources, processes and expertise to start building its capability as an effective regulator of VSPs and of course, importantly, as the future online safety regulator.

My noble friend Lady McIntosh of Pickering and the noble Lord, Lord Bassam of Brighton, asked again about jurisdiction and the regulation of platforms not established in the UK. VSPs that are not established in the UK will be regulated not by Ofcom but rather by the EEA state in which they are established. Ofcom will regulate VSPs that are not established in the UK but have a group undertaking in the UK, if the VSP does not fall under the jurisdiction of an EEA state. We hope that the regulation provided by other EU member states will be effective enough to provide protection to UK users in the interim. But, as I said earlier, our online safety regulation is intended to be the long-term regulatory framework.

Lastly in relation to this instrument, my noble friend Lord Kirkhope asked about the regulation of advertising. Under the VSP regime, the requirements placed on providers with regard to restricted material and relevant harmful material in videos apply to adverts as well.

In the time remaining, I will turn to the online harms legislation. Most noble Lords asked me to clarify the timing of the online safety Bill. We are working at pace to prepare the legislation, which will be ready this year. As for pre-legislative scrutiny, I thank the noble Lord, Lord McNally, for his kind remarks about our engagement with parliamentarians, which we have found extremely useful. We will make a final decision on pre-legislative scrutiny nearer the time of introduction, but your Lordships will have heard the Secretary of State say that he is minded to undertake it.

A number of noble Lords asked for clarification on what would be included in the new regulatory framework. In brief, the framework will prioritise action to tackle illegal content and the protection of children. All companies in scope will need to tackle illegal content on their services and protect children. The noble Baroness, Lady Wheatcroft, cited some of the most troubling examples of legal but harmful content. In that case, companies will be required to set out clearly what content and behaviour are acceptable on their services.

I fear that I am running out of time and have not answered all noble Lords' questions. I will follow up in writing. As I have set out clearly today, these regulations are required to fix the remaining issues of the transposition of the AVMS directive to ensure that the law remains clear and operable beyond the transition period. This instrument will allow Ofcom to continue regulating video-sharing platforms effectively and will give it the power to co-operate with EU regulators when it is appropriate to do so. This will help to ensure that online users, particularly those under the age of 18, will benefit from the protection from illegal and harmful content provided by Ofcom's regulation of video-sharing platforms ahead of the upcoming online safety legislation. With that, I commend the regulations to the Committee.

Motion agreed.

Committee adjourned at 5.44 pm.