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PARLIAMENTARY DEBATES
(HANSARD)

# HOUSE OF LORDS
## OFFICIAL REPORT

*ORDER OF BUSINESS*

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

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

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

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

# House of Lords

*Thursday 15 April 2021*

*The House met in a hybrid proceeding.*

*Noon*

*Prayers—read by the Lord Bishop of Gloucester.*

## Introduction: Baroness Merron

*12.08 pm*

*Gillian Joanna Merron, having been created Baroness Merron, of Lincoln in the County of Lincolnshire, was introduced and took the oath, supported by Lord Knight of Weymouth and Baroness Smith of Basildon, and signed an undertaking to abide by the Code of Conduct.*

## Introduction: Lord Morse

*12.13 pm*

*Sir Amyas Charles Edward Morse, KCB, having been created Baron Morse, of Aldeburgh in the County of Suffolk, was introduced and took the oath, supported by Lord Bichard and Lord Macpherson of Earl's Court, and signed an undertaking to abide by the Code of Conduct.*

## Arrangement of Business

*Announcement*

*12.17 pm*

**The Senior Deputy Speaker (Lord McFall of Alcluith):** My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, others are participating remotely, but all Members will be treated equally. I ask all Members to respect social distancing. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

Oral Questions will now commence. Please can those asking supplementary questions keep them no longer than 30 seconds and confined to two points. I ask that Ministers' answers are also brief. I call the noble Lord, Lord Black of Brentwood, to ask the first Oral Question.

## Domestic Animals

*Question*

*12.17 pm*

*Asked by* ***Lord Black of Brentwood***

To ask Her Majesty's Government what steps they are taking to improve the welfare of domestic animals in the United Kingdom.

**The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) [V]:** My Lords, the Government are committed to improving the welfare of domestic animals. We have updated legislation to facilitate the control of horses and improve licensing of activities involving animals, prohibited the third-party sale of puppies and kittens in England and targeted unscrupulous selling through our Petfished campaign. We are also supporting the Animal Welfare (Sentencing) Bill, which increases animal cruelty sentences to five years, and acting on cat microchipping, puppy smuggling, pet theft and more besides.

**Lord Black of Brentwood (Con) [V]:** I congratulate my noble friend on everything that he is doing to protect domestic animals. Is he aware that one result of lockdown has been a surge in demand for companion animals and a resultant hike in prices, with Cats Protection reporting a 40% price rise for kittens last year? Sadly, some demand is met by unscrupulous online sellers, often peddling sick and underage kittens. It may also be responsible for the rising trend in cat thefts as well as the growing market for animals bred more for their looks than their welfare, such as the Scottish Fold cat, born with cartilage deficiency and destined for lifelong pain. What action will my noble friend take to ensure that cat breeding is properly regulated and that there is compliance with regulations governing commercial pet sales?

**Lord Goldsmith of Richmond Park (Con) [V]:** Following the introduction of Lucy's law last year, anyone looking to get a kitten or cat now has to source directly from the breeder or consider adopting from a rescue centre. This is a major step forward in disrupting the unscrupulous online trade my noble friend has highlighted.

Defra's national Petfished campaign, which launched in March last year, continues to educate prospective buyers on how to source pets responsibly and how to avoid deceitful sellers. Local authorities are responsible for enforcing the regulation of commercial pet sales, and I urge anyone with any concerns to report the matter to the relevant local authority.

**Baroness Hayman of Ullock (Lab) [V]:** The animal welfare sector has been under huge strain with the increase in abandoned pets during lockdown. The Minister mentioned horses. The RSPCA has raised serious concerns about the huge increase in abandoned horses and ponies. However, without rigorous enforcement and tough financial penalties, current legislation will do little to stop irresponsible horse owners continuing to dump their animals. Does the Minister agree that animal welfare charities need extra support following this very challenging year, and will he look at toughening up enforcement and increasing penalties for those who abandon horses?

**Lord Goldsmith of Richmond Park (Con) [V]:** The noble Baroness raises an important point. Animal rescue organisations do extraordinarily valuable work, usually on a voluntary basis, and the pandemic has had a massive impact on individuals, businesses and charities caring for animals. Throughout this challenging period, we have pressed to ensure that rescue and rehoming organisations are able to stay open, that

[Lord Goldsmith of Richmond Park]
staff and volunteers can continue to work and tend to the animals in their care and that rehoming, fostering and adoption services can continue. Throughout the pandemic we have kept in very close contact with the entire sector.

**Lord Bhatia (Non-Afl) [V]:** Can the Minister say whether there should be fines for people who neglect or abandon their pets?

**Lord Goldsmith of Richmond Park (Con) [V]:** I am afraid to say that I did not hear the noble Lord's full question. However, in relation to increased punishments for cruelty to animals, I can say that the Government are supporting a Bill that appears before this House tomorrow; my noble friend Lord Randall will be introducing the Sentencing Bill, and the Government support it. It will increase the maximum custodial sentence for animal cruelty from the current six months to five years, and that will enable courts to take a much firmer approach to cases such as dog fighting, the abuse of puppies and kittens and so on, and the gross neglect of farm animals. I hope that answers the noble Lord's question.

**Baroness Fookes (Con):** My Lords, while I accept that my noble friend cannot anticipate the contents of the Queen's Speech, perhaps I may none the less urge him to expedite the introduction of a Bill to ban the export of live animals for slaughter or further fattening, which has long been desired by many of us. Our patience is not merely thin, it is getting threadbare.

**Lord Goldsmith of Richmond Park (Con) [V]:** I am hopeful that the Queen's Speech, when it happens, will include a number of measures to improve animal welfare, not just those that appeared in our most recent manifesto. As my noble friend will know, we recently consulted on ending live exports for slaughter and fattening. We are analysing the responses that we received and will be publishing the government response very soon. We hope to have legislation in place to end live animal exports for slaughter and fattening by the end of the year, and hopefully sooner than that.

**Baroness Parminter (LD) [V]:** There has been an explosion in the last two years of dogs imported into the UK—mainly puppies with poor disease status from Romania. What are the Government doing to increase the minimum age for imported dogs from 15 weeks to 24 weeks, which would solve this problem?

**Lord Goldsmith of Richmond Park (Con) [V]:** Now that the transition period has ended, we have the opportunity to manage our own pet travel and commercial importation rules. We are actively liaising with and listening to the concerns of stakeholders, not least Cats Protection, and there has been recent parliamentary work from the Environment, Food and Rural Affairs Select Committee. We are considering a whole range of recommendations in the area raised by the noble Baroness.

**The Earl of Caithness (Con) [V]:** My Lords, does the Minister agree that it is actually up to the owners of animals to behave better towards them, which would be the best way to go forward, and that those who do not look after animals should be prohibited from owning them? Has my noble friend seen the SongBird Survival research into how cat owners can improve the mental and physical well-being of their cats, as well as reducing the number of wild birds that cats take each year, which is many millions?

**Lord Goldsmith of Richmond Park (Con) [V]:** I am not aware of the research cited by my noble friend, but I will certainly look out for it. The difficulty for the Government is that our job in a sense is to ensure that the minimum standard is acceptable and that owners are not able easily to sink beneath acceptable standards. It is therefore really a baseline that we set. But my noble friend is absolutely right that this is a country of animal lovers and most owners are inspired to look after their pets with great care, and we should of course be doing everything we can to raise standards across the board and encourage everyone to apply the same level of attention, care and love to the pets that they own.

**Lord Trees (CB) [V]:** My Lords, disease and ill health are a major cause of poor welfare in both companion animals and livestock. I congratulate Her Majesty's Government on recognising this with respect to livestock in the Agriculture Act by providing the possibility of financial incentives to improve health and welfare. How do the Government intend to assess and measure livestock welfare to achieve that objective?

**Lord Goldsmith of Richmond Park (Con) [V]:** The Government's planned animal health and welfare pathway will support livestock farmers financially by using public funds to deliver public goods and pay for health and welfare enhancements that are valued by the public but not currently delivered by the market or through existing regulatory standards. We are working closely with animal welfare scientists and stakeholders to determine which animal welfare enhancements to pursue and the most effective welfare metrics to use as a basis for those future payments.

**Lord Blunkett (Lab):** My Lords, as has already been touched on, there has already been a massive upsurge in the purchase of domestic animals during lockdown. It is clear that, as people return to normal forms of working, there will be an acceleration of the abandonment of many pets, particularly dogs. Is the Minister's department prepared to engage in an advertising campaign about both the treatment and the rehousing of animals rather than their abandonment on the street?

**Lord Goldsmith of Richmond Park (Con) [V]:** The noble Lord makes a really important point. The department has run a successful campaign called Petfished, which we launched in March last year, to raise issues associated with low welfare and the illegal supply of pets and to help prospective buyers source pets responsibly. It is one of the most successful comms campaigns that

the department has run and it has generated masses of interest; we are told through YouGov polling that it has contributed to doubling awareness of low-welfare pet sellers. I cannot commit here and now that we will replicate those efforts in relation to the issues raised by the noble Lord, but I will certainly take his message back to the department and discuss it with colleagues and officials.

**Lord Goddard of Stockport (LD):** My Lords, there is well-reported and documented evidence of people stealing pets for profit. It is usually dogs, but cats are also being stolen to order, usually Persians and Bengal cats. According to Cats Protection, only 26% of cats are microchipped. Will the Minister consider introducing the mandatory microchipping of cats to give their owners a small chance of getting their pets back?

**Lord Goldsmith of Richmond Park (Con) [V]:** The Government have a manifesto commitment to introduce the compulsory microchipping of cats—so, yes, we will do that. We have consulted and will issue our response later this year.

**Baroness Boycott (CB):** My Lords, I want to ask the Minister about the situation with pigs. I know we have high welfare standards here, but we still allow the import of meat from pigs and piglets that have been reared in less humane conditions such as farrowing crates and places where tails are docked. Will he level up the playing field and ensure that our trade rules ensure that animal compassion is in all our supply chains?

**Lord Goldsmith of Richmond Park (Con) [V]:** My Lords, the new pig welfare code of practice, which came into force in March last year, states that the aim is to phase out the use of farrowing crates in the UK and for any new system to protect the welfare of the sow as well as her piglets. We are continuing to work with the industry on this issue. In relation to imports of substandard produce, as set out in our manifesto and repeated many times since, both by the Prime Minister and by other Ministers, we will not compromise on our high animal welfare standards in the pursuit of free trade agreements. That is a commitment that we are absolutely committed to and will stick to.

**The Senior Deputy Speaker (Lord McFall of Alcluith):** My Lords, the time allowed for this Question has elapsed.

## Crohn's Disease and Ulcerative Colitis

*Question*

*12.29 pm*

*Asked by* ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what assessment they have made of the variation in the standard of care received by patients with (1) Crohn's disease, and (2) ulcerative colitis; and what plans they have to work with NHS England to implement a framework to improve care and outcomes for such patients.

**The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con):** My Lords, on the basis of the IBD audit, NHSEI is working closely with front-line clinical experts, patient representative groups and leading charities, including Crohn's & Colitis UK, to develop evidence-based improvement tools to address possible variations in service. This work includes an important new inflammatory bowel disease right-care scenario, setting out what high-quality, joined-up care looks like at every stage of the patient journey.

**Lord Hunt of Kings Heath (Lab) [V]:** My Lords, I am grateful to the Minister. He will know that over 500,000 people are living with inflammatory bowel disease, often with debilitating long-term symptoms and complications. Given the current huge variation in standards of care to which the noble Lord referred, will the Government appoint a national clinical director for IBD, solely to concentrate on spearheading a drive to implement the national IBD standards, which are backed by 17 healthcare professional and patient organisations?

**Lord Bethell (Con):** We are doing a huge amount in this area, as the noble Lord rightly points out. In particular, we are working with Crohn's & Colitis UK on the scenario work I mentioned. That is on top of working on diagnostic waiting times, formal personalised care, access to specialist treatment and formal, structured education. I will look into the possibility of having a formal leader to oversee all these strands, but my impression is that, at present, the work is best done by the individual workstreams I mentioned.

**Lord Balfe (Con):** My Lords, what assessment have HMG made of how many treatments and admissions for inflammatory bowel disease have been impacted by Covid-19?

**Lord Bethell (Con):** My Lords, Covid-19 has hit all services in the NHS. I pay tribute to those involved in the IBD area who have moved extremely fast to anticipate these problems. Rapid guidelines for gastrointestinal and liver conditions treated with drugs have been made available over telephone, email and text messaging services. NICE issued new guidance in August 2020 to advise healthcare professionals on gastrointestinal and liver conditions.

**Baroness Greengross (CB) [V]:** My Lords, what plans do Her Majesty's Government have to introduce sanitary bins in public toilets for men? There is a terrible shortage of these, and many men need somewhere to put items such as pads when they have a disease.

**Lord Bethell (Con):** I am afraid that the management of public toilets is outside the reach of the department, but I will take that idea back to the department and write to the person responsible.

**Lord Turnberg (Lab) [V]:** My Lords, when I was a gastroenterologist, I knew that patients with inflammatory bowel disease did best when managed by a team made up of a gastroenterologist, surgeon and specialist nurse.

[Lord Turnberg]
Too often now, patients are denied access to such teams. In view of what the Minister has said, will this team approach be part of how we might correct this deficiency?

**Lord Bethell (Con):** I would like to reassure the noble Lord that the scenario I described typically includes two gastroenterology consultants, a clinical intermediate fellow, a GP partner and a patient representative. It is exactly this kind of team approach that delivers the best patient outcomes, as the noble Lord rightly outlined.

**Baroness Brinton (LD) [V]:** In 2012, NICE published a treatment pathway for Crohn's and colitis. It was a groundbreaking change to ensure consistent and comprehensive services, including the team approach referred to by the noble Lord, Lord Turnberg, and outcomes for all patients of this autoimmune disease across England. NICE further updated this in 2019, so there has been a pathway for nine years. Why is it not being adhered to by NHS England? What will the Minister do to ensure that all Crohn's and colitis patients get the treatment they are promised by NICE?

**Lord Bethell (Con):** I am not sure it is correct that it is not being adhered to widely, but there is some variation in all parts of the NHS. That is why we are developing a right-care scenario for IBD with key stakeholders. This will create a very clear template for all patients and all those involved in their care. It will, I hope, help create more consistent standards across the healthcare system.

**Baroness Young of Old Scone (Lab) [V]:** My Lords, I suffer from ulcerative colitis and understand how disabling this condition can be. Support from IBD specialist nurses is a lifeline in managing periodic flare-ups of the condition, yet the postcode lottery means that one-third of IBD patients do not have access to a specialist nurse. This is just one of the many examples of uneven standards of care. I do not know why the Minister cannot simply commit to endorsing IBD UK's 2019 IBD standards and ensure that services are commissioned to these standards across the country. We have waited an age—at least three years—for the scenario he is talking about. Half a million patients are fed up of waiting.

**Lord Bethell (Con):** I am extremely grateful for the testimony of the noble Baroness. She speaks very movingly about the challenge faced by those with IBD—a challenge that we all sympathise with. We are working extremely hard with both Crohn's & Colitis UK and IBD patient groups on this scenario. There has been disruption in the last year, but I reassure the noble Baroness that we are working extremely hard to get the scenario out as soon as possible.

**Lord McColl of Dulwich (Con):** My Lords, does the Minister agree that, even for very experienced clinicians, diagnosis and treatment of these conditions can be very difficult indeed—as my experience over the years has taught me? Patients may present in bizarre ways—for instance, with a disease of the skin, eyes or joints. Furthermore, a patient with ulcerative colitis can almost imperceptibly become dangerously ill, requiring drastic emergency surgery. Clinicians are always trying to do better, and they need encouragement and thanks, particularly over this very difficult pandemic.

**Lord Bethell (Con):** My noble friend is entirely right that diagnosis is key to the accurate and prompt treatment of IBD and associated conditions. That is why we have put diagnosis at the heart of our research programme. Between 2015 and 2020, we funded 20 research projects, many of them on diagnosis, with over £17 million committed. That includes a study into the overlap of IBD and magnetic resonance enterology to image Crohn's disease patients. This approach is extremely promising.

**Baroness Masham of Ilton (CB) [V]:** Does the Minister agree that some people are hesitant to go to their GP about problems with their bowels as they are embarrassed? Can there be a campaign across the country saying, "Early diagnosis can be vital"?

**Lord Bethell (Con):** My Lords, I agree with the noble Baroness. A lot of late diagnoses are caused by the kind of delicacy the noble Baroness refers to. My noble friend talked about the challenge of diagnosis, which is made more complex by patients finding a lot of these subjects extremely delicate. The approach taken in primary care to handling such delicate issues has improved dramatically over the years. We are working with GPs and clinicians to make their bedside manner more delicate, so that they are able to broach such delicate issues more sensitively. That, I believe, is at the heart of the problem.

**Baroness Wheeler (Lab):** My Lords, Covid-19 has widened the huge cracks in the quality of IBD care, with patients facing even longer waits for elective care, surgery, investigations and a personalised care and support plan to support their daily lives. Surveys have shown nearly one in five IBD patients have suffered a flare-up crisis during the pandemic because they were unable to obtain specialist advice. We know that many have had to continue shielding because Crohn's disease compromises the immune system and they have to wait for their two vaccines. What recognition and support of their particular care needs is being given at primary care and community level?

**Lord Bethell (Con):** I completely sympathise with all those with IBD and associated conditions. The situation the noble Baroness described is exactly right and it is extremely challenging. I have particular concern for those shielding for a very long period, although I hope many of them will not be waiting long for their second vaccine. Those with all conditions have endured some waits because of Covid, but the NHS is working incredibly hard on the catch-up. Huge progress has already been made and there is a massive focus on diagnosis in particular, to ensure that we catch up with all those presenting with problems who need diagnoses.

**The Senior Deputy Speaker (Lord McFall of Alcluith):** My Lords, the time allowed for this Question has elapsed.

## Crown Courts: Outstanding Cases

*Question*

*12.39 pm*

*Tabled by* ***Lord Beith***

To ask Her Majesty's Government what steps they are taking to reduce the backlog of outstanding cases in the Crown Courts.

**Lord Thomas of Gresford (LD) [V]:** My Lords, I beg leave to ask the Question standing in the name of my noble friend Lord Beith, who is regrettably attending a family funeral. Given that physical accommodation has at last been made available for Nightingale courts—

**Lord Ashton of Hyde (Con):** My Lords, we ought to allow the Minister to reply.

**The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con):** My Lords, in relation to the Question posed by the noble Lord on behalf of the noble Lord, Lord Beith, we spent more than a quarter of £1 billion on recovery in the last financial year, making court buildings safe, rolling out new technology for remote hearings and opening 60 Nightingale courtrooms. Although there is further to go, this has made a difference. In the Crown Courts, we are completing around 2,000 cases each week, which is the same as before the pandemic.

**Lord Thomas of Gresford (LD) [V]:** My Lords, my apologies. Given that physical accommodation has at last been made available for Nightingale courts in football grounds, hotels, theatres and even the ballroom in Chester Town Hall, how are these being manned by trained court staff? Given the fact that very few have custody facilities, to what extent are serious cases being held back and periods of remand in custody thereby lengthened?

**Lord Stewart of Dirleton (Con):** My Lords, at the Nightingale venues, we use experienced court staff who are trained to deal with the type of work heard on site. While Nightingales deal with non-custodial cases, by taking this work away from the main court estate, custody cases can be heard in our specialist facilities faster than would otherwise be possible. To expand further our capacity to hear complex cases, we have also modified around 70 courtrooms to increase the capability to hear multi-handed trials of up to 10 defendants. In addition, work has begun on a super-courtroom in Manchester, which will further increase capacity for multi-handed cases. For those on remand in custody, our systems show that the majority of such cases had their first hearing in February 2021, and those who have pleaded not guilty have been listed for trial prior to September 2021. I acknowledge the courtesy shown by the noble Lord, Lord Thomas of Gresford, by intimating to my department the terms of his supplementary question in order that a specific answer could be given to this important point.

**Baroness Jones of Moulsecoomb (GP):** My Lords, the Minister must be well aware that this problem has been going on for much longer than just the pandemic. The big problem is the Government's savage cuts to court processes. The solution is not Nightingale courts but better funding. Will the Government do that?

**Lord Stewart of Dirleton (Con):** My Lords, prior to Covid, the outstanding case load in the Crown Court was 39,000, which is well within the range of 33,000 to 55,000 over the last decade. At its lowest point, it was even as low as 33,000, in 2018-19. Immediately before the pandemic, the Government were increasing sitting days in the criminal courts to address rising demand.

**Baroness Rawlings (Con) [V]:** My Lords, on 25 January, I tabled a Written Question to my noble friend Lord Wolfson regarding the closing, selling and standing empty of courts. My noble friend's swift, detailed reply was that around 110 had been closed since 2015 but 21 new Nightingale courts, which have just been mentioned, had been made. Have these courts had what the Minister feels is the desired effect of reducing the backlog in the Crown Court as well?

**Lord Stewart of Dirleton (Con):** My Lords, I am obliged to my noble friend for her question. The recovery steps taken have made a difference, allowing us to complete around 2,000 cases each week—the same figure as before the pandemic. I assure my noble friend that the decisions taken to close courts were not, and are not, taken lightly; they are taken alongside public consultation.

**Lord Singh of Wimbledon (CB) [V]:** My Lords, the Covid pandemic has led to a surge of cases awaiting trial in the Crown Court. While the setting up of special Nightingale courts to help clear the backlog is welcome, delays to effective hearings are leading to additional stress and anxiety, particularly for vulnerable victims. Does the Minister agree that, in looking to greater efficiency, we need to look harder at cutting the considerable time spent on cases that do not move to trial?

**Lord Stewart of Dirleton (Con):** My Lords, we are keenly aware of the need to improve timeliness for both defendants and victims, and to mitigate the impact of delays on complainers and witnesses in such cases. To that extent, I agree with what the noble Lord asked in his question.

**Lord Browne of Ladyton (Lab) [V]:** My Lords, in a Written Question on 17 December, my honourable friend Alex Norris asked the Secretary of State for Justice

"what assessment he has made of trends in the level of defendants offending while awaiting delayed court dates."

On 15 January, the dismissive one-sentence reply was:

"We do not hold any data on offences committed by offenders."

Is data about the number of offences committed on bail no longer held on the police national computer? Why have this Government apparently lost interest in trends of the criminal behaviour of offenders awaiting trial?

**Lord Stewart of Dirleton (Con):** My Lords, I repeat the answer given previously: the department does not collect specific data on the level of offending by defendants

[Lord Stewart of Dirleton]
on court bail. However, as the noble Lord is aware—and as Members present may not be aware—the commission of a crime on bail is itself an aggravation, which will be reflected in the sentence.

**Baroness Ludford (LD) [V]:** My Lords, the recent Constitution Committee report pointed out that, because of delays to the courts reform programme, improvements to IT systems had not been sufficiently implemented by the time of the pandemic, meaning that remote hearings relied on antiquated systems and participants in the criminal and family courts in particular struggled with virtual hearings. How do the Government intend to supply adequate investment in training in IT while also guaranteeing fairness for all through physical participation for those for whom remote hearings are not a solution?

**Lord Stewart of Dirleton (Con):** My Lords, we acknowledge that, in many cases, participation by way of remote hearings is valuable for people in such positions. None the less, we also appreciate that it is not appropriate for all such people, whether they be witnesses or complainers in cases.

**Baroness Altmann (Con):** My Lords, I am delighted that the Nightingale courts are being expanded. Can my noble friend comment on any plans that the Government might have to extend the serving period for, or bring back, retired judges so that we can deal with the backlog more rapidly—perhaps by extending court hours—and deal with ongoing ageism in the workplace, which seems to write off older people when they are too young?

**Lord Stewart of Dirleton (Con):** My Lords, prior to retirement, judges below the High Court are already able to have their appointments extended on an annual basis up to the age of 75 where there is a business need. After retirement, salaried judges are already able to be authorised to sit beyond the current retirement age of 70, on an ad hoc basis, up to the age of 75. We are using our fee-paid judges, as well as salaried judges who wish to sit following retirement, to ensure that we maximise judicial capacity.

In answer to the second part of my noble friend's question, we are looking at more flexible working. Temporary Covid operating hours have been piloted at seven Crown Court sites to test whether even more could be done, and we are looking at the extension of the working day as a short-term—I emphasise "short-term"—tool and aid to managing recovery. Magistrates' courts also sat on at least 100 additional Saturday courts per month between September and December.

**Lord Morris of Aberavon (Lab) [V]:** My Lords, justice delayed is justice denied. Is not the root cause of the delays the reduced finance that the Justice Department too speedily agreed to long before the pandemic? Have the Government given up on the alternatives that I have canvassed to speed up trials—for example, a reduction in the size of juries or trials of less serious offences decided by judges alone, with the consent of the defendant?

**Lord Stewart of Dirleton (Con):** My Lords, I repeat the figure that I gave earlier: over a quarter of £1 billion has been spent on a range of measures to increase Crown Court capacity. With respect to the additional measures that the noble and learned Lord outlined, I regret that I do not have to hand details of consultation and discussions, but I undertake to write to him on behalf of my noble friend Lord Wolfson in the Ministry of Justice.

**Lord Hain (Lab):** My Lords, does the Minister accept that this mountainous backlog impacts most upon victims, witnesses to crime and members of the public waiting for years to see justice done? Does he also accept that this backlog began well before Covid and is directly because of this Government's savage funding cuts in courts and tribunals and even more punitive cuts in legal aid? Is it not high time that the Conservatives started investing in increased court capacity, qualified staff and victim support instead of cuts, cuts and still more cuts, benefiting only criminals?

**Lord Stewart of Dirleton (Con):** My Lords, I do not accept the adjectival premises on which the noble Lord's questions were based. I refer to my earlier answers about the spending that has been identified in relation to these matters.

**The Senior Deputy Speaker (Lord McFall of Alcluith):** My Lords, all supplementary questions have been asked, and we now move to the fourth Oral Question.

## Higher Education: New and Returning Students

*Question*

*12.51 pm*

*Asked by* ***Lord Moylan***

To ask Her Majesty's Government when they intend to update their guidance on *Students returning to, and starting, Higher Education*, last published on 8 March, following the resumption of university courses after Easter.

**Lord Parkinson of Whitley Bay (Con):** My Lords, on Tuesday my honourable friend the Universities Minister and I laid Written Statements confirming that, following the review of when all higher education students could return to in-person teaching, remaining students on non-practical courses should return to in-person teaching alongside step 3 of the road map out of lockdown no earlier than 17 May. Alongside this, the guidance document for students returning to or starting higher education was updated and published.

**Lord Moylan (Con):** My Lords, I am grateful to the Government for updating the guidance shortly after this Question was tabled. I am, of course, conscious of the need for sensible restraint in emerging from lockdown. However, by 17 May, many summer terms will be so far advanced that it will be almost not worth while, in many cases, restarting physical teaching. For many

students, I suspect that it will be the autumn before they get back to where they ought to be. It seems to me that university students have been handed yet again the shortest of short straws and are bearing a disproportionate part of the national burden. Will my noble friend think again?

**Lord Parkinson of Whitley Bay (Con):** My Lords, of course we recognise the difficulties and disruption that a return in line with step 3 might cause the students. It does allow them, however, to receive some extra in-person teaching and assessment, to engage with extra-curricular activities, to take part in face-to-face careers support, to visit specialist libraries and so on, as well as to see their peers and boost their mental health. Students are keen to get back to campus and universities are keen to have them back. We want to enable this as soon as the public health situation allows.

**Baroness Royall of Blaisdon (Lab) [V]:** My Lords, I entirely agree with the noble Lord, Lord Moylan. Students have been short-changed: they are anxious; they are angry; they feel let down; and they cannot understand why they cannot return to university when schools, shops, gyms and hairdressers are open. I do not understand that either. It is having a detrimental effect on their mental health, their well-being and their studies. The appalling delay in the guidance has made the situation worse. How did the Government reach the decision to delay the return of students until 17 May? Have they assessed the current and long-term impact on the mental health and well-being of students? Have they considered the impact on universities, which play such a vital role in the economy of our country and which have made the most enormous efforts to put in place all of the requisite Covid-safe measures in respect of in-person teaching, libraries, accommodation and other facilities? I remind noble Lords of my interest as principal of Somerville College, Oxford.

**Lord Parkinson of Whitley Bay (Con):** My Lords, of course we understand the frustration that students might feel, particularly as things are opening up under step 2, but many of the things that are opening are taking place outside and do not involve the formation of new households, which a return of students to university would do. Inside, the risks of transmission increase, and the decision we have taken is in line with our cautious approach to the road map out of lockdown. At the heart of our decision is public health but also student well-being, as the noble Baroness mentioned. The last thing that any of us want is for students to have to self-isolate repeatedly, as some had to previously. That would not only be damaging to their mental health and well-being but put at risk the ability of some students studying creative and practical subjects to graduate.

**Baroness Smith of Newnham (LD) [V]:** My Lords, there is cross-party support for the noble Lord, Lord Moylan, and the noble Baroness, Lady Royall. From the Liberal Democrat Benches, I reinforce everything that he said. I declare my interest as an academic at Cambridge University. I note that this is guidance. Why on earth should students or universities listen to guidance if it is not law, particularly if it goes against the interests of students?

**Lord Parkinson of Whitley Bay (Con):** As I said, the Government recognise how difficult the situation is for students, but the road map is designed to maintain a cautious approach to the easing of restrictions so that we can maintain progress and not have to go back on it. The guidance that we have made available is in the best interests of students and the wider community, and we urge everybody to adhere to it.

**Baroness Warsi (Con) [V]:** My Lords, I draw the House's attention to my entry in the register of interests. I congratulate the Government on the student hardship fund, including the addition £15 million that has recently been made available. This has provided a necessary lifeline for many students. However, in relation to students returning to university, I am with noble Lords who have already spoken. What assurance can the Minister give that, in the event of a potential future lockdown, which has already been spoken about, the education of university students, many of whom have already lost at least a year's worth of face-to-face teaching, will be prioritised in ways that they have not been over the last year?

**Lord Parkinson of Whitley Bay (Con):** I thank my noble friend for her welcome for the further £15 million of student hardship funding that we have announced this week. That is on top of the £70 million that we had already provided and the £256 million which providers are able to use during this academic year. Our cautious approach is designed to ensure that this step out of lockdown will be irreversible and to avoid the situation that my noble friend outlined.

**Baroness Bull (CB):** My Lords, I remind the House of my interests as set out in the register. The ONS student insights survey revealed that almost two-thirds of students have experienced a decline in mental health over this academic year, brought about in part by the uncertainty, anxiety and isolation which is, of course, exacerbated by this further decision. Will the Government commit to providing additional funding for university mental health services, given the increasingly high demand that they will face both now and over the coming year?

**Lord Parkinson of Whitley Bay (Con):** Yes, we have worked with the Office for Students to provide Student Space, which is being funded by up to £3 million by the OfS to support students with their mental health and well-being. Furthermore, we have asked the OfS to allocate £15 million towards student mental health this year through the proposed reforms to strategic priorities grant funding.

**Lord Bassam of Brighton (Lab) [V]:** My Lords, university students feel forgotten in the Government's plans for leaving lockdown. What discussions have the Government had with university leaders and student representatives regarding the date for return to in-person teaching? Given that, by mid-May, many universities will have finished their teaching year, does the Minister accept that the reality is that this decision means that many universities and courses will effectively stay online until the autumn? What impact will this have on

[Lord Bassam of Brighton]
students, who have, frankly, been paying through the nose to study at campuses that they have not been able to access since Christmas?

**Lord Parkinson of Whitley Bay (Con):** The students are most certainly not forgotten. My honourable friend the Universities Minister engages directly with students and representatives of students through various groups that she has set up, including ones focusing on mental health. The Office for Students is also conducting some polling of students so that their views can be fed into decision-making. That, alongside the scientific advice, is what has led us to the decision that we have taken this week.

**Lord Addington (LD):** My Lords, does the Minister agree that what is coming out in this Question Time and in the news is that students do not seem to know what the situation is? They do not know if they will get a reduction on fees. They do not know if they are going to get some money back on accommodation taken for university. Will the Government at least publish something that is a guideline to what sort of behaviour they think is proper? If not the Government themselves, the Office for Students would be a very good body to take this on.

**Lord Parkinson of Whitley Bay (Con):** My Lords, as I say, we have updated the guidance to students with advice on returning to universities this week. As was announced in February, students and HE providers will be given a week's notice of any further easing of restrictions as it affects them. This is a changing situation with the pandemic. We understand the frustrations people face, but we are grateful to them for their forbearance.

**Lord Wood of Anfield (Lab):** My Lords, surveys suggest that over a fifth of university students say they would need extra teaching over the summer—which I believe many of them are being offered—to catch up on lessons, tutorials and classes they may have fallen behind on over the course of the year. Will the Government provide additional financial support for students who may need to study beyond the normal academic year?

**Lord Parkinson of Whitley Bay (Con):** My Lords, such decisions are for universities, as autonomous institutions, to make in line with the guidance we have set out this week.

**Baroness Prashar (CB) [V]:** My Lords, would the Minister agree that the uncertainties of lockdown and this incomprehensible delay are having a negative impact on international students and the reputation of the UK as a place to come and study? What impact does he think this will have on the intake for 2021 and 2022?

**Lord Parkinson of Whitley Bay (Con):** Students around the world will have seen how UK universities have reacted admirably to the challenges posed by the pandemic, designing and delivering high-quality online learning and offering exceptional well-being and mental health support. The UK was one of the first countries to introduce immigration flexibility for students, and our new post-study work route, the graduate route, will launch on 1 July, further encouraging international students to choose to come and study in the UK.

**The Senior Deputy Speaker (Lord McFall of Alcluith):** My Lords, the time allowed for this Question has elapsed.

## NATO: Russia and Ukraine

*Private Notice Question*

*1.02 pm*

*Asked by* ***Lord Campbell of Pittenweem***

To ask Her Majesty's Government what discussions they have held with NATO allies regarding the recent amassing of Russian forces on the Ukrainian border.

**The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con):** My Lords, we have significant concerns about Russian military activity on Ukraine's border and in illegally annexed Crimea. We support Ukraine's sovereignty and territorial integrity. We have discussed extensively with NATO allies; the Foreign Secretary has engaged with French, German and US counterparts and Ukraine and we attended the NATO-Ukraine Commission on 13 April. We and our allies urge Russia to uphold the OSCE principles and commitments it signed up to, which it violates through ongoing aggression against Ukraine.

**Lord Campbell of Pittenweem (LD):** Does the Minister agree that even if Mr Putin's intentions are confined to the intimidation of Ukraine and those who support its legitimate wish to join the NATO defence alliance, the present, massive deployment of armed forces on the border is dangerously destabilising because of the risk of conflict arising by either misjudgment, mistake or provocation, real or manufactured? Is all this not particularly dangerous when we consider that the Russian military appears to have resurrected the Cold War doctrine of nuclear war fighting and the deployment of low-yield nuclear weapons on the battlefield? If there ever was a time for transatlantic solidarity, is this not that time?

**Lord Ahmad of Wimbledon (Con):** My Lords, I agree with the noble Lord, and that is why my right honourable friend the Foreign Secretary has been engaging extensively with NATO allies. He was in Brussels only yesterday. I also agree with the noble Lord regarding Russia's aggressive behaviour towards Ukraine. Let us be clear: it is not limited to Donbass and Crimea; we know that Russia seeks covertly and overtly to undermine Ukraine at every turn.

**Lord Anderson of Swansea (Lab):** My Lords, Russia applies pressure militarily, economically and politically until it meets counterpressure that is credible and

strong and it has to pay a price, which we have seen here. Therefore, will the UK apply the latest group of US sanctions against Russia and encourage our NATO and EU allies to do the same? Do the Government support the completion of Nord Stream 2, which will severely damage the economy of Ukraine?

**Lord Ahmad of Wimbledon (Con):** My Lords, on the noble Lord's second point, we have repeatedly stated our position on the issue of Nord Stream 2; while we ourselves do not welcome it, it is an issue and a challenge for Germany. I agree with the noble Lord's earlier point, and we are working closely with our allies. The noble Lord alluded to reports that are currently circulating on further actions the United States will be taking. The formal announcement of that is imminent, and we will respond accordingly.

**Baroness Smith of Newnham (LD) [V]:** My Lords, I agree with my noble friend Lord Campbell of Pittenweem about the importance of a strong transatlantic response, but does the Minister agree that if we are concerned about Russia building up its forces on the border, the UK also needs to be careful not to be seen to be fuelling any sort of arms race by threatening to increase its nuclear weapons?

**Lord Ahmad of Wimbledon (Con):** My Lords, the United Kingdom's nuclear deterrent, as well as working with our key allies, is reflective of the importance the United Kingdom attaches to the defence of Europe and the wider world. History has shown us that our independent deterrent has ensured that those who sabre-rattle know that there would be an extensive response from allies of the United Kingdom if they were to go down that route. That said, the deterrent has done exactly what it is intended to do. It has deterred further action and aggression, which no one wishes to see.

**Lord Robathan (Con):** My Lords, President Putin is an authoritarian and dictatorial bully, and like all bullies, he senses weakness. He senses weakness in Nord Stream in Germany; he senses it, rightly or wrongly—I think probably wrongly—in the new President Biden in the United States; and he senses weakness when the United Kingdom reduces its Armed Forces, its aircraft, its ships and, above all, the size of its Army at this time. So, will my noble friend go back to our right honourable friend the Foreign Secretary and get him to argue in Cabinet that to reduce the Armed Forces at the moment is a signal to bullies that we are not to be taken seriously?

**Lord Ahmad of Wimbledon (Con):** My Lords, I know my noble friend speaks from great insight and expertise about our Armed Forces, but I assure him that Her Majesty's Government are fully committed to our Armed Forces, which is underlined by the additional funding that has been provided to the Ministry of Defence. On the broader issue of security, we stand firmly with our allies and in support of the NATO alliance. I suggest that with the new Administration in the United States we have seen a realignment and strengthening of that alliance.

**Lord Kerr of Kinlochard (CB) [V]:** The Minister will recall that Sir John Major and Lord Hurd of Westwell were the west European signatories of the 1994 Budapest memorandum. Do the Government agree that this gives us a continuing responsibility for the security and territorial integrity of Ukraine? If so, how do the Government intend to discharge it? The United States has a similar responsibility as a signatory, and the Minister will have noted that President Biden believes that now is the time for dialogue with both President Zelensky and President Putin.

**Lord Ahmad of Wimbledon (Con):** My Lords, we stand by our commitment to the convention that was signed and are fully supportive of the efforts in the defence of Ukraine and its sovereignty and integrity.

**The Lord Bishop of Leeds [V]:** My Lords, given the relative ineffectiveness of the western response to the invasion of eastern Ukraine in 2014, what assurance might Ukraine assume, should conflict or further invasion ensue? Also, could the Minister comment on any prognosis for the future of the Minsk accords and the prospects for Normandy?

**Lord Ahmad of Wimbledon (Con):** My Lords, the Minsk accords are very much alive, and we remain supportive of them. On Ukraine's recognition of support from the United Kingdom, that is firmly acknowledged by President Zelensky and his team. Indeed, when he visited the United Kingdom last year, I also met his Foreign Minister; they all recognise the strong support the United Kingdom continues to provide Ukraine in protecting its sovereignty and by continuing to implore Russia to withdraw from Crimea. Crimea is occupied territory; Russia should withdraw.

**Lord Collins of Highbury (Lab):** My Lords, the threats and risks are clear, and the case for transatlantic co-operation cannot be overstated. Strong backing for President Biden's bid for a summit is vital. When he spoke with President Putin earlier this week, he raised cyber intrusions and election interference. The Russia report called for a common international approach on Russia's malicious cyberactivity, so what action is the Minister taking to support a common international approach on this, including through strengthening actions with the United States? Will we match the sanctions of the United States or sit back and wait?

**Lord Ahmad of Wimbledon (Con):** My Lords, we fully engage with the United States. The noble Lord is correct that President Biden spoke with President Putin on 13 April. Equally, we have been engaged in a large degree of diplomacy, both through NATO and directly with our allies, including the United States. We are fully aligned with the objectives behind the approach of the United States and work very closely with it. On the specific issue, as I said earlier, a formal announcement is due shortly from the United States, but we are working in a very co-ordinated fashion with it.

**Baroness Northover (LD):** My Lords, the integrated review claims that we

"will remain the leading European Ally in NATO, working with Allies to deter … threats … particularly from Russia".

Are we playing a convening or a pivotal role in this instance?

**Lord Ahmad of Wimbledon (Con):** My Lords, we continue to play a pivotal role in the NATO alliance, to which we are strong contributors in both strategy and financing. That will continue to be the case. We are centrally involved in the discussions around the current situation we are seeing in eastern Ukraine.

**Lord Dobbs (Con) [V]:** My Lords, as Washington's closest ally, can my noble friend confirm that the Biden Administration are consulting us and other NATO allies rather than simply informing us as to whether they intend to send warships into the Black Sea? In strategic terms, is it not vital that we ensure the Black Sea remains an international waterway rather than watch it turn into a Russian lake?

**Lord Ahmad of Wimbledon (Con):** My Lords, I agree with my noble friend's second point in the sense that we continue to work with our NATO partners to ensure exactly that free operation in the Black Sea. On his earlier point, consultation is very much at the centre of the approach of the United States with its NATO allies, including the United Kingdom. As I alluded to earlier, my right honourable friend the Foreign Secretary was in Brussels yesterday, together with the United States and Secretary of State Blinken, to discuss Ukraine among other key priorities for NATO.

**Baroness Wheatcroft (CB) [V]:** My Lords, the *Integrated Review of Security, Defence, Development and Foreign Policy*, published last month, makes much of the UK's new freedom to pursue different economic and political approaches to those of the EU, but does the Minister agree that, when the threat is such as that posed by Russia to Ukraine, so close to Europe, we should not stand alone—where we will be weak—but work jointly with our EU neighbours?

**Lord Ahmad of Wimbledon (Con):** My Lords, I agree with my noble friend. We are doing exactly that through the NATO alliance. As I said in my original Answer, the Foreign Secretary has engaged directly with key European partners, including France and Germany, and Italy joined various discussions in that respect.

**Lord Lancaster of Kimbolton (Con):** My Lords, I was fortunate to visit Ukraine on several occasions to witness the training support that the UK Government have been giving the Ukrainian military. To date, that training has been defensive and non-lethal in nature—for example, first aid training or counter-IED training. Can my noble friend reassure me that in future the UK will not necessarily feel obliged to follow those constraints and will consider any reasonable request from the Ukrainian Government for support?

**Lord Ahmad of Wimbledon (Con):** I recognise the role my noble friend played in this respect in his previous role as Minister for the Armed Forces. UK military support for Ukraine, as he will be aware, covers training delivered through Operation ORBITAL. This has been extended, resulting in training as well as maritime training initiatives. I note what my noble friend says. We are working very closely with not just Ukraine but our NATO allies to ensure that an appropriate response is given at the appropriate time.

**Lord McConnell of Glenscorrodale (Lab):** My Lords, in addition to combating Russian aggression, support for improved governance and strong institutions in Ukraine—helping it build a proper democracy—is vital. Is the UK currently financially supporting any projects run by the UN, the OSCE or others in Ukraine? If so, will they be affected by the cut to overseas development assistance that the Government have announced?

**Lord Ahmad of Wimbledon (Con):** My Lords, we are working very closely with Ukraine, and not just in providing training support for its defence requirements. The noble Lord is right that we have been working; indeed, I remember that in my first role as Communities Minister—going back a bit to 2013—one of my international engagements was with Ukraine, about building local government structures. That continues to be the case; we work very closely with President Zelensky and his team.

**Lord Benyon (Con) [V]:** My Lords, egregious human rights violations and breaches of international law by murderous and kleptocratic regimes such as that in Russia can be responded to by using our relatively new Magnitsky legislation. Will my noble friend commit to using this legislation for such malign actions if they occur in the ongoing conflict in Ukraine?

**Lord Ahmad of Wimbledon (Con):** My Lords, I agree with my noble friend; we are working on a range of issues around supporting human rights in support of Ukraine's efforts, including in Crimea. We provide specific projects to groups supporting the rights of the citizens of Crimea. The United Kingdom has also contributed £700,000 to the UN Human Rights Monitoring Mission. On sanctions, I agree with my noble friend inasmuch as the whole basis of the governance structure of the sanctions is to call out egregious abuses of human rights. Where necessary, we have exercised them. We keep all matters under review, but I cannot speculate at this juncture about any future action we may take.

**The Deputy Speaker (Baroness Fookes) (Con):** My Lords, all supplementary questions have been asked.

## Business of the House

*Motion on Standing Orders*

*1.18 pm*

*Moved by* ***Lord Ashton of Hyde***

That Standing Order 44 *(No two stages of a Bill to be taken on one day)* be dispensed with on Monday 19 April to allow the Financial Services

Bill to be taken through its remaining stages that day and that therefore, in accordance with Standing Order 47 *(Amendments on Third Reading)*, amendments shall not be moved on Third Reading.

**Lord Ashton of Hyde (Con):** My Lords, on behalf of my noble friend the Lord Privy Seal, I beg to move the Motion standing in her name on the Order Paper.

*Motion agreed.*

## Greenhouse Gas Emissions (Kyoto Protocol Registry) Regulations 2021

*Motion to Approve*

*1.19 pm*

*Moved by* ***Lord Callanan***

That the draft Regulations laid before the House on 25 February be approved.

*Relevant document: 48th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 13 April*

*Motion agreed.*

## British Library Board (Power to Borrow) Bill

*Order of Commitment*

*1.19 pm*

*Moved by* ***Lord Vaizey of Didcot***

That the order of commitment be discharged.

**Lord Vaizey of Didcot (Con):** My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to speak in Committee. Manuscript amendments are not possible at present. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

*Motion agreed.*

## Education and Training (Welfare of Children) Bill

*Order of Commitment*

*1.20 pm*

*Moved by* ***Baroness Blower***

That the order of commitment be discharged.

**Baroness Blower (Lab):** My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to speak in Committee. Manuscript amendments are not possible at present. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

*Motion agreed.*

## Forensic Science Regulator Bill

*Order of Commitment*

*1.20 pm*

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

That the order of commitment be discharged.

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to speak in Committee. Manuscript amendments are not possible at present. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

*Motion agreed.*

*1.21 pm*

*Sitting suspended.*

## Arrangement of Business

*Announcement*

*1.30 pm*

**The Deputy Speaker (Baroness Fookes) (Con):** My Lords, the Hybrid Sitting of the House will now resume. I ask all Members to respect social distancing. We now come to Report on the National Security and Investment 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.

## National Security and Investment Bill

*Report*

*1.31 pm*

***Clause 3: Statement about exercise of call-in power***

*Amendment 1*

*Moved by* ***Lord Lansley***

**1:** Clause 3, page 3, line 9, at end insert—

"( ) details of the circumstances in which the application to an asset of any export control, transfer control, technical assistance control or trade control imposed under the Export Control Act 2002 and related provisions may affect the Secretary of State's exercise of the power to give a call-in notice, and"

**Lord Lansley (Con):** My Lords, it is a privilege to open proceedings on Report. I want to say generally that Members across the House, on all sides, are supportive of the principles of the Bill. It has been clear that all the amendments tabled have the intention of trying to make it as clear, effective and workable as possible, and—as we will discuss later—to make sure that there is proper accountability and transparency in the proceedings. Several of my noble friends have tabled amendments in that spirit. I know that Ministers in charge of the Bill have responded in kind with a willingness, even in the past few days, to supply additional

[Lord Lansley]

material on how the workings of the national security and investment regime will be made more transparent and clear to those it affects, who are substantial in number.

I come to one of the issues in the two amendments in this group, both in my name, which relate to the interaction between the national security and investment regime and the export control licensing regime. Amendment 1 relates to the exercise of the call-in power by Ministers. Amendment 37 relates to the making of interim and final orders by Ministers. I start with the first amendment.

I quoted the 2018 White Paper at more length in Committee but it stated, on behalf of the Government, that

"where national security concerns relate solely or primarily to the export of goods, the Government expects that the export control regime would remain the primary means of protecting national security".

In Committee, I asked the Minister responding to reiterate that expectation. He failed to do so, nor did he offer any specific assurance about how the two regimes would interact. I am grateful to Ministers because, since then, they have committed to the publication of guidance, which will include the interaction of the national security and investment regime with the Competition and Markets Authority, the Takeover Panel and the export control regime. We have not, of course, yet seen the text of that guidance. Nor is a reference to the export control regime being included in the draft statement, which has to be made under Clause 3, that will explain where and in what circumstances the Secretary of State will exercise his call-in power.

The importance of that is illustrated not least by the references from time to time in the consultation on the sectors in scope of the mandatory regime, in which a number of respondents made it clear that they thought there was a widespread interaction and overlap. For example, paragraph 3.76 said that one respondent suggested that the pre-existing export control licensing regime was appropriate, for which a number of businesses had robust and sophisticated compliance programmes, noting a significant overlap between the lists and a number of the other proposed mandatory sectors.

The noble Lord, Lord Grantchester, on the Front Bench opposite, in Committee instanced other references to that in the consultation response. Indeed, he may have looked at the strategic export control list, which is 309 pages long, and the sectors in scope of the mandatory regime for the national security and investment regime. The overlap is very large indeed. It is important to those affected that these two regimes interact positively and sensibly.

Amendment 1 seeks to require that there be such a reference in the Clause 3 statement and a commitment to explaining to people how the two regimes will interact. Why does that matter? First, given the nature of the assets in the strategic export control list, a change of control of the entities that own them will often be a notifiable acquisition and therefore be subject to a mandatory notification. But will the acquisition be called in? That question will be in the minds of those affected and will depend upon the level of risk. If the acquisition is by a hostile actor, it is a fair argument that the national security and investment regime adds an extra safeguard beyond the export licensing process. However, it will be important for those who own sensitive assets to know when that issue—the nature of the acquirer—is the prompt for a call-in, not simply the sensitivity and nature of the assets themselves, since they can be safeguarded for national security purposes through the export control licensing regime. Therefore, those asset owners need to be able to reasonably predict when a call-in will be made.

Secondly, the Clause 3 statement should offer clarity about the distinction between the use of an asset and its control. The national security and investment regime is about ownership and, hence, control of assets. Export controls are directed to their use, specifically outside the United Kingdom by way of export. However, we should consider what will happen if we follow the American lead. Following the enacting three years ago of the latest US legislation, there are circumstances in which the American export control regime, because it anticipates that a given ownership could lead to a transfer of technology within an entity, deems such assets to be exports. We already see an increasing overlap between the question of control and the question of use. The statement needs to be clear about that distinction, too.

What I am really looking for from my noble friend on the Front Bench is, first, an assurance that these issues will be fully dealt with in the guidance to be published, and that there will be a specific reference in the statement to matters dealt with under Clause 3, even if that is supplemented in detail by the technical guidance.

Amendment 37 raises an important further interaction. When Ministers make interim or final orders, given the extent of overlap between assets in the scope of this regime and those in the strategic export control list, it is likely that the entities that control such assets may, if they pass into new ownership, be subject to such orders. Those orders are about not just the situation today but what should happen in future. There will be a temptation on the part of Ministers to make orders that, like contracts in law, provide for every set of circumstances in future.

My point is simple: when making orders, Ministers should always rely on the export control licensing regime to do its job effectively. They should not try to substitute for the export control regime in future by restricting, through orders, what entities are or are not able to do. Even though they have the power to do that, they should not do it. They should live up to the expectation of the 2018 White Paper that the export control regime is the means by which Ministers exercise control of the export of sensitive assets.

There are two units involved. The Export Control Joint Unit is made up of officials from the Ministry of Defence, the Department for International Trade and the Foreign, Commonwealth and Development Office, and there is the unit for the national security and investment regime. The interaction between the two units needs to be excellent. In the shape of my noble friend the Minister on the Front Bench, we have the embodiment of the relationship between the Department

for International Trade and the Department for Business, Energy and Industrial Strategy. I hope that he makes sure that these two work together well.

We should not see orders under the NSI regime supplanting what should be licensing procedures under the export control licensing regime, not least because—I pre-empt an issue that we will come on to later—export control licensing is the subject of greater and specific parliamentary scrutiny by the Committees on Arms Export Controls in the other place. There is no such direct scrutiny of the orders being made under this NSI regime. I hope that I do not need to say that Ministers should not fall prey to the temptation to incorporate measures into orders under this regime because it entails less parliamentary scrutiny than would be the case for export licensing under the other regime.

When we get to Amendment 37, I hope that I will be able to rely on Ministers' further assurances that they will not simply take account of the export control regime and will rely less on administrative law issues. It was slightly ironic that our debate in Committee was followed the following week by a debate on administrative law that suggested that statute should be as clear as possible about the requirements that people have to live up to and not rely on a general public law duty—but that is exactly what Ministers profess to rely on here. I would prefer Amendment 37 to be adopted by the Government and it to be very clear that Ministers will take full account of the export control licensing regime. Even if they are not happy to amend the legislation, I hope that what my noble friend says in response to this debate will make it clear that that will be the case. I beg to move Amendment 1.

**Lord Grantchester (Lab):** I thank the noble Lord, Lord Lansley, for returning to the issue of the interaction of the NSI and export control regimes. He is correct to probe further with the explicit inclusion of Amendment 1, so that the new NSI regime is not buried within BEIS but works effectively across government, specifically across both regimes.

Amendment 37 underlines the need to recognise proper co-ordination in this regime. The Government had recognised only that the two regimes are distinct and would sit alongside each other, as the expression goes, yet they were concerned by activities that could circumvent the export control criteria. With the extent of the overlap to which the noble Lord, Lord Lansley, refers, this would be surprising.

Since Committee, further consideration has been given to the issue. We agree with the noble Lord in calling for greater clarity about the interaction needed with export controls, especially when a call-in notice has to be considered and when interim and final orders are being made. We are supportive of the intention behind these amendments regarding concerns about how this regime will interact with functions under the export control regime. Why does the Bill remain silent on the export control regime in its drafting?

*1.45 pm*

In Committee, the Minister stated that,

"where export controls in relation to an asset are already in place, it may not be necessary or proportionate to make an order under this Bill prohibiting the transfer of the asset overseas, but this will depend on the facts of each case."—[*Official Report*, 16/3/21; col. 199.]

This is not particularly helpful and could result, as the noble Lord, Lord Lansley, says, in an asset or situation being drawn into both regimes, without more explicit explanations on the interplay. What are the functions of any facts that would result in being subject to this regime, as well as having been referred to the Export Control Joint Unit? Where would it be proportionate for this to happen?

I am grateful that the Government have now recognised the validity of these concerns and committed to publishing guidance after enactment of the Bill. I am also grateful to the Minister and his departmental team for outlining an indicative list of nine points of regime guidance. Guidance 8, on how the regime will work alongside other regimes, including export control, takeovers and the CMA, will address this. However, there are still some important outstanding questions for the Minister to answer to add clarity on how duplication across both regimes will be avoided while meaningful co-ordination operates effectively. It would be most helpful if he could provide that clarity at this important stage in the passage of the Bill.

**The Minister of State, Department for Business, Energy and Industrial Strategy and Department for International Trade (Lord Grimstone of Boscobel) (Con):** My Lords, I thank my noble friend Lord Lansley for his Amendments 1 and 37, which explore the interaction between the export control regime and the regime created through this Bill. As we start this session, I thank your Lordships for the constructive way in which they have approached this Bill and the constructive debates that we have had.

Amendment 1 would provide that the statement about the exercise of the call-in power may set out how the Secretary of State will factor in controls placed under the export control regime when deciding whether to call in asset acquisitions. Amendment 37 would ensure that the Secretary of State takes into account controls placed under the export control regime when imposing interim or final orders on asset acquisitions. These amendments follow discussions in Grand Committee on the links between export controls and NSI; I thank noble Lords for the insights that they have shared.

I am happy to confirm to my noble friend that the Secretary of State will need to take into account the impact of any controls placed under the export control regime, as well as other relevant regimes so far as they relate to national security considerations. This is required by both the legal tests in the Bill and public law duties. This is the case when he decides whether to call in an acquisition of control; whether to impose interim orders or final orders in relation to such acquisitions; and what form those orders should take.

In particular, if existing controls under the export control regime already address any national security concerns arising from the acquisition of an asset, I am happy to confirm for my noble friend that it is unlikely that the Secretary of State would be able to call in that acquisition. As has been referenced by noble Lords, I commit that we will provide guidance on the interaction of the NSI regime with other relevant regimes, including export control, which will ensure that affected parties are clear on this point.

[Lord Grimstone of Boscobel]

My noble friend also asked specifically about the Statement. I am happy to confirm that the Government will consider specific reference to export controls in it if we judge this to be appropriate following the consultation on the Statement. I thank my noble friend Lord Lansley for this suggestion.

I appreciate the intent behind these amendments, and I hope that I have finally given my noble friend sufficient reassurance on these matters not to press them.

**The Deputy Speaker (Baroness Fookes) (Con):** I have received one request to speak after the Minister. I call the noble Lord, Lord Fox.

**Lord Fox (LD):** My Lords, I think I heard the Minister say that the export control regime and the regime established by this Bill will be equal, rather than one being precedent to the other. The noble Lord, Lord Lansley, quoted a White Paper which very clearly set the export control regime as having precedent over this regime. That is not what I heard the Minister say —so, in order of precedence, how does the Minister expect these two regimes, which I hope will be complementary and not conflicting, to work together?

**Lord Grimstone of Boscobel (Con):** I thank the noble Lord for that point. It is hard to give a black-and-white answer, because it would depend of course on the circumstances. Let us remind ourselves what the difference is. The export control regime, which is the licensing regime for certain controlled goods, is one important part of the safeguarding of our national security, and, of course, it sits well alongside the national security and investment regime. The two regimes are distinct and do not perform the same role. To give an example to clarify that, the export control regime does not provide the Government with the ability to scrutinise acquisitions of UK companies or the ability to direct the use of sensitive assets used in the UK, whereas the NSI regime would. In a nutshell, the precedence between these two regimes must and will depend on the circumstances that are being covered.

**Lord Lansley (Con):** I thank your Lordships for this very short but useful debate—useful not least in assisting those who will be affected by the regime. I am grateful to the noble Lords, Lord Grantchester and Lord Fox, for their contributions.

The point about the White Paper and the commitment to use the export control regime primarily to deal with national security risks relating to the export of these assets, and specifically the qualifying assets, is that the export control regime sets specific limitations on the export of specific items to specific persons and places. It is very targeted in that sense. As the Minister says, it does not bear upon the question of control of entities or the overall ownership of assets, so there is a compelling need now for this new regime; it just does not need to reproduce or trespass upon those things that are being achieved through the export control regime. That is what I understood the White Paper to say, and I understood the noble Lord, Lord Fox, to be asking for that to continue to be the expectation.

I hope that Ministers will make it very clear to those affected that, where they have a compliance regime in place for export control, that will continue to be sufficient for the purposes of the management of qualifying assets, because Ministers have made it clear that rarely would they expect to invoke the national security investment regime in relation to specific assets. It is really targeted on the ownership and control of entities and, by that route, the ownership and control of large-scale assets. I am sorry to have had to explain that again, but I do hope that Ministers will take it on board.

I am most grateful to my noble friend for going further than we were able to go in Committee, and, in particular, returning to Amendment 1, what he was able to say about the Statement under Clause 3 and the additional guidance has moved us on quite a long way from where we began. I am most grateful for that, and I beg leave to withdraw Amendment 1.

*Amendment 1 withdrawn.*

**The Deputy Speaker (Baroness Fookes) (Con):** 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 6: Notifiable acquisitions*

*Amendment 2*

*Moved by* ***Lord Lansley***

**2:** Clause 6, page 4, line 15, leave out "or (6)" and insert insert ", (6) or (8)"

**Lord Lansley (Con):** My Lords, I apologise for speaking to two groups in a row. It is how chance would have it with the structure of the Bill.

Clause 6 of the Bill is where there is a definition of "notifiable acquisitions". This is linked to Clause 8, which sets out the circumstances in which entities come under the control of a person, and the link between these two, as I understood it, was that if somebody takes control of an entity by any of the routes described in Clause 8, that acquisition would be notifiable under Clause 6 if it relates to a sector in scope of the mandatory regime. Therefore, I was slightly surprised that the cases presented in Clause 8 relate, in the first three instances, to shareholdings in total, or voting rights. My noble friend Lord Leigh has secured a notable concession from the Government, which he will no doubt refer to in a moment—actually, he may not, looking at the list—that secured a change. However, on his behalf I thank Ministers and I congratulate my noble friend on securing that change in the Bill in relation to shareholdings over 15%. It is a sensible shift.

However, I was looking not at shareholdings or voting rights but material influence, as defined under the Enterprise Act 2002. On the face of it, it seems that if one acquires control by virtue of material influence over an entity, why would that not also come under the Clause 6 requirement that it be a "notifiable acquisition"? In a very helpful exchange of correspondence,

Ministers have explained to me that their intention is that the mandatory regime should apply only where those affected can be very clear that there is a mandatory notification requirement. Material influence, by its nature, is a less clear test. It is a subjective test and of course it can vary dramatically over time. It is much better, in the view of Ministers, that it should be governed by the voluntary notification regime or the Ministers' power to call in if they are concerned, rather than by requiring everybody who acquires material influence over a sensitive entity to notify any change of material influence. They have explained that to me and I am very happy—so, in that sense, I am not pushing Amendment 2 any further.

I suppose the point of this short debate is to enable Ministers to explain that point, because otherwise, of course, people could fall into exactly the same confusion that I did: namely, is it control or not? The answer is that, where material influence is concerned, it may be control of a kind—you may be able to influence the policy of an entity—but there should then be a subjective question in the mind of somebody who acquires that kind of influence over the policy of a relevant entity in scope of the regime, and they should think that they should make a voluntary notification rather than being required to make a mandatory one. It does not take them out of the regime, but it changes their interaction with it. I am content that the Bill achieves that, but it is useful to explain that to those who might be affected. Otherwise, I very much welcome the government amendments in this group, and for the moment, I beg to move.

*2 pm*

**Lord Hodgson of Astley Abbotts (Con):** My Lords, since this is the first time I have spoken at this stage of the Bill, I add my thanks to those of my noble friend Lord Lansley to the members of the ministerial team and the Bill team for the time they have given and the meetings we have had to clarify and sort out the delicate balance we are all trying to achieve and the changes being made, which are part of the amendments in this group.

I will focus my remarks on Amendment 8, which returns to whether minority investor veto rights automatically bring the investment in question into the provisions of the Bill. It was an issue I addressed in Amendment 29 in its previous incarnation, along with Amendment 72. I found the Government's arguments about Amendment 72 entirely convincing, so I have not retabled it, but I am not able to say the same about the response I received to Amendment 29, so I have retabled it and have discussed it with the Law Society, which seems similarly confused.

This is important because if we do not get clarity on this issue, there are at least two possible consequences: a potentially large increase in the number of voluntary notifications required, so further straining the system which the department is setting up, and/or a deterrent effect on people's readiness to invest in the defined sectors of our economy.

I explained in Committee that a private equity investment essentially has two parts. There is the purchase of the shares, which will take place under the standard provisions of the Companies Act, and that is where the control of the entity lies. In parallel, it will be supplemented by a specially drafted, custom-made investment agreement. This is an agreement which both parties—the investee company and the investor—hope will be put into a drawer and never looked at again but, life being what it is, disagreements take place and the agreement is therefore essentially a protective device for the investor against malfeasance or bad performance by the managers of the company. The Minister needs to understand that it is essentially an agreement about corporate governance, not corporate law, which is how the company is controlled. That investment agreement is likely to require the investor's consent to a number of major issues, such as approval of the budget, major capital expenditure proposals and so on.

When I describe it like this, it can be seen that these are protective provisions, not proactive initiating ones, but although they are protective, they are extensive, and this is where the use of the words "substantially all" in Clause 8(7) becomes significant. If that is the case, the Bill appears to bring within its ambit a range of private equity investments where the new investor has taken a minority position. It might be assumed that the new investor will be taking a minority position for malfeasance reasons, but there are a large number of reasons why private equity houses do not wish to buy 100% of a company. It may be that the existing management will not sell more than 50%. It may be that the new investor wishes the continuing management to have a real incentive to do well, and therefore likes it to have a larger stake. Last but not least, it may be that the investor has a maximum size of investment he can make and that determines the percentage that the investor can hold. So if you have an investor who can put up only £40 million and the company is worth £100 million, it can take only 40% because that is how the maths work out.

The new investors who are in a minority position need additional protections, and if they can obtain those protections only after making a notification then there are these consequences of more voluntary notifications and some diminution in the attractiveness of the sectors covered by the Bill. That does not seem a desirable outcome.

I have said that significant changes to a company's status come about not from the investment agreement, but as a result of passages of ordinary or extraordinary resolutions under the Companies Act. Amendment 28 is therefore designed to remove some of the wording of Clause 8(6), which is untried, untested and, at least in the view of a number of law firms, open to interpretation, and replace it with company law provisions with which everyone is familiar.

When winding up the debate on this amendment on 9 March, the Minister said, "I believe that his"—that is my—

> "intent is very much to seek to exclude acquisitions of minority veto rights from constituting trigger events."

So far, so good. He then went on to say:

> "However, the Government consider that the Bill already achieves this goal to some extent"—[*Official Report*, 9/3/21; col. GC 637-38.]

[Lord Hodgson of Astley Abbotts]
because of the provisions of subsection (7). That is the heart of the matter. The concern of the Law Society and others is that the Bill creates uncertainty where no uncertainty need exist. That uncertainty can easily be dispelled if we use familiar company law concepts.

To summarise, I argue that if no change is made to guard against these uncertainties, legal advisers to private equity investors can be expected to take a belt-and-braces approach and suggest that on all occasions a voluntary notification should be made. When he comes to reply, I invite the Minister either to say that the Government believe that minority investor rights are not covered by the Bill so that we are all clear about that or, if he cannot say that, to please agree to take a further look at it to try to create certainty and dispel uncertainty, and therefore further ensure that we get the right balance between personal property rights and the nation's security.

**Lord Clement-Jones (LD):** My Lords, I shall speak to the Government's amendment and to Amendment 8 in the name of the noble Lord, Lord Hodgson, but, as regards Amendment 2, the questions raised by the noble Lord, Lord Lansley, are valid and it is rather inexplicable that that subsection of Clause 8 is not included in Clause 6.

When we debated the thresholds for the trigger for mandatory notification, the noble Lord, Lord Leigh—I am sure he will get many tributes today for having pushed the envelope and succeeded in having the Government agree with him—raised issues about 15% versus 25%. The principal arguments were that keeping it at 15% would result in a huge number of notifications, the vast majority of which would not give rise to national security concerns, which would place a significant administrative burden on the new investment screening unit, and that that the current filing threshold of 15%, as set out in the Bill, is significantly below the threshold used in a number of other major foreign direct investment regimes such as France, which requires 25%, Australia which requires 20% and Canada which requires 33.3%. I am delighted that the mandatory notification threshold has been increased to 25%, which was the threshold set out originally in the White Paper. I think the Government's reversion to their original intent is very much to be welcomed.

As regards Amendment 8, tabled by the noble Lord, Lord Hodgson, not having practised company law for many years now, I can only admire his forensic ability in setting out exactly why we need greater clarity under that provision. He has illustrated that the current language does not provide that level of clarity. In his words, it does not dispel uncertainty, but the language in his Amendment 8 certainly would. I believe it is only in the Government's and the ISU's interest to acknowledge that, and I very much hope the Government will accede to his request to provide clarity, either by accepting his amendment or by giving assurance that they will look at it further and take that forward at Third Reading.

**Baroness Neville-Rolfe (Con):** My Lords, I rise to speak for the first time on this Bill. I declare my interests in the register as a director and former director of a number of companies, although none is obviously affected. I have not spoken until today because I support this Bill, and it has been making good progress without any help from me and with the forensic assistance of my noble friends Lord Lansley, Lord Hodgson of Astley Abbotts, Lady Noakes, Lord Leigh and others right across the House.

There has been a succession of regrettable takeovers of UK jewels in recent years without proper scrutiny by the authorities. The SoftBank raid was the most egregious, yet it was welcomed by the then Chancellor. ARM—my favourite firm when I was Intellectual Property Minister, if I may now say so—was the world's leading chip maker, headquartered relatively modestly in Cambridge and run by the talented Warren East, who must look back with pleasure to that time. Allowing its subsequent takeover was a serious mistake for UK interests.

This Bill is concerned primarily with security, so I suspect it would not have caught another controversial deal, that of Kraft/Cadbury, though it would have been useful had that too been caught. That example highlighted the fact that it is not only jobs but both R&D spend and cultural support that tend to go with the head office of a company or group.

Decades of such highly leveraged deals have contributed to damage in this respect. Think of aerospace pioneer Cobham and satellite service provider Inmarsat. As an aside, how lucky those of us who have benefited from its vaccine are that AstraZeneca held out against Pfizer a few years ago. We ought to have powers to prevent such a proposal if it arose again and was not in the UK interest. The powers in this overdue Bill should, among other things, slow the sale to overseas interests of companies engaged in tech and biotech, as well as emerging forms of AI and intellectual property.

My concern today is not with the Bill but with government Amendment 3 and its associated provisions, which, as we have heard, raise the threshold, from 15% to 25%, at which investors are required to notify the Government of their deals. I know this is done for apparently good reasons, summarised by the noble Lord, Lord Clement-Jones—notably to avoid needless blockages and queues of deals awaiting approval in the new unit at the Department for Business, Energy and Industrial Strategy, my old department—but I believe it is the wrong call. No doubt the ARM deal would have been caught by the new rules anyway, but less radical deals might not. I believe that it would be better to invest more in administration at the business department, to keep the threshold as it is and to improve the incentives to discipline and speed in processing of applications.

This is such an important matter for our future that we should not skimp on the new unit, which should be staffed by top people with the ability to work at speed. My noble friend Lady Noakes and others have rightly expressed concerns on this score, which I will support later. It would be a tragedy if this new Act were undermined by administrative inadequacy.

If we are to flourish in this more competitive and dangerous world, we need to prevent British science, technology and intellectual property leaving these shores without anyone noticing or reviewing it. We need thorough scrutiny of the deals identified in this Bill,

so, for me, Amendment 3 goes too far and I would find it difficult to support the Government if the House chose to divide.

*2.15 pm*

**Baroness McIntosh of Pickering (Con):** My Lords, I am delighted to speak on Report. I congratulate my noble friend Lord Leigh on raising this persistently and so eloquently at earlier stages of the Bill. I congratulate my noble friend the Minister on listening to and acting on the concerns expressed across the House at that stage by bringing forward the amendments that he has today.

I particularly associate myself with Amendment 8, to Clause 8, in the name of my noble friend Lord Hodgson of Astley Abbotts. I would like to press the case a little further with my noble friend the Minister and ask that we pause for a moment at this stage and ensure that we are not going to scare off potential large investors with an increase in referrals that perhaps could not be managed or see a deterrence to potential investment, therefore possibly damaging the economy.

The way in which I would like to press my noble friend the Minister follows on from what my noble friend Lady Neville-Rolfe said in her opening remarks just now as to what extraneous factors may be taken into account that could damage potential investment in this country. Those further factors that I ask my noble friend to rule out have been put forward at earlier stages by the Law Society of England, which I supported in Committee and repeat in connection with Amendment 8 here.

Can my noble friend clarify and give greater certainty as to what constitutes national security? Will he specifically rule out extraneous factors such as employment effects, reciprocal investment and trading opportunities in other jurisdictions and a desire to protect UK business from international competition as factors that would be taken into account when assessing whether a trigger event would give rise to a national security risk? In terms of Amendment 8 and our earlier discussions, it would give clear guidance to those practitioners at this stage if we could rule out that those extraneous factors would ever constitute a potential national security risk.

**Lord Fox (LD):** My Lords, we have had a short and interesting debate. Speaking to Amendment 2, the noble Lord, Lord Lansley, has as ever uncovered an incongruity in the way the Bill is drafted. I suggest the Government are wise to listen to his advice. Similarly with Amendment 8, there is a need for clarity for people. Where do they stand on this issue? That is all people deserve when trying to manage their affairs.

We then come to the extraordinary intervention of the noble Baroness, Lady Neville-Rolfe. It is a shame that she was not around to give a Second Reading speech, which perhaps might have guided us through some of our decision-making, and arrived only at this late hour to offer her help. I suspect that, had she involved herself a little earlier, she might have been less concerned with the issues than she is now. For fear of doing the Minister's work for him, I ask him to confirm that the regime retains the right to call in deals that are less than 25% at any time. The notion that there are deals that the regime may not see is one of the points inferred by the noble Baroness, Lady Neville-Rolfe.

This is the point: the unit has to be sufficiently resourced and efficient in its work to be able to pick these issues up. We shall talk later about where it gets its information and how the security guidance is fed in, because that comes under another group of amendments. However, with all the issues coming through, the point is how well the regime is actually operated; the noble Baroness, Lady Noakes, has mentioned this on many occasions. That will be the rub, in terms of how business will be affected by the Bill. The more the Minister can reassure us that the resources will be there to deliver this, the happier most of us will be.

**Lord Grantchester (Lab):** My Lords, we remain committed to the principles of the Bill, and join others in thanking the Minister and his team for the way they have conducted discussions with us to resolve any issues on the Bill. One of the issues that remains involves the extensive adventure of the unit into the business environment. In Committee, my colleague and noble friend Lady Hayter introduced an amendment to delete Clause 6(2)(b), and asked why the Government wished to make subject to mandatory notification all acquisitions that resulted in only a minimum 15% stake in an entity. We consider that disproportionate. The noble Lord, Lord Leigh, also spoke passionately on the point, as did several other noble Lords. My noble friend apologises because, understandably, she cannot take part in these proceedings today.

However, it is to be welcomed that the Government have heeded the concerns about the unnecessary impact on businesses and the largely intrusive workload for the new ISU section in the department. Government Amendment 3, together with the consequential amendments in this group, would remove the 15% threshold for notifiable acquisitions from the regime. Throughout the proceedings on the Bill, we have been concerned about the impact on businesses, especially in the SME sector, and the huge workload that the Bill would create. That government concession goes a long way towards meeting those concerns.

The Government will still be able proactively to call in transactions involving acquisitions under the 25% threshold of shares or votes if such an acquisition could be deemed to result in "material influence". However, the ISU would be notified only of transactions most likely to raise national security risks in the most sensitive sectors of the economy. This is plainly sensible. The removal of the 15% threshold will also remove unnecessary impediments to investments in smaller start-ups and enterprises, which might have concerns about hitting the 15% threshold.

Initially the Government reckoned that the new screening regime would result in about 1,800 notifications per year. We expressed scepticism at that estimate, as did several others, including the CBI. Whatever would have been the result, have the Government now recalculated how many notifications the department is likely to receive, having deleted the 15% threshold? I would be grateful if the Minister could give the House the new figure, with any further explanations as to its determination. It would be useful to reflect on it, in the light of the experiences of the unit that are to come.

[Lord Grantchester]

I am grateful, too, to the noble Lord, Lord Hodgson, for his Amendment 8, which redrafts Clause 8(6). I understand very well the point he is making, and I await the Minister's reply.

**The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con):** I am grateful to noble Lords for an interesting debate, and I am particularly grateful to my noble friends Lord Lansley and Lord Hodgson for their respective amendments in this group concerning the scope of the regime. I will turn to those in a moment, but let me start with a few remarks on the amendments in my name.

Debates on the Bill, both in this House and in the other place, have reflected that there is a strong degree of cross-party consensus on its underlying principles. I am grateful to the Opposition for making that clear. All sides agree that reforms are necessary to keep the country safe and to bring our investment screening powers in line with our friends and allies. There has also been a shared recognition that the requirements of the mandatory regime must be no more than are necessary and proportionate for the protection of our national security, so that business and investment are not unduly burdened or stifled.

The noble Lord, Lord Fox, put it well in Committee when he reminded us that the clue is in the name. This is the National Security and Investment Bill, and it is vital that we secure both these interests. To that end, the Government have reflected carefully on the scope of the mandatory regime and, in particular, on the comments made by a number of noble Lords in Committee on the 15% starting threshold. I pay particular tribute to the noble Baroness, Lady Hayter, who raised this—and who is, I am pleased to see, in her place, taking a break from her "get out the vote" campaign. Perhaps she would be better advised to be getting out the vote, but I am grateful that she has joined us. I am also grateful to my noble friends Lord Leigh and Lady Noakes, the noble Baroness, Lady Bowles, and the noble Lord, Lord Fox, who all spoke powerfully in support of her amendment.

The Government have concluded that the right approach is indeed to remove acquisitions between 15% and 25% from constituting "notifiable acquisitions"; Amendment 3 gives effect to this decision. We recognise that acquisitions between 15% and 25% will not result in material influence being acquired as a matter of course. Indeed, in many cases, we anticipate that material influence will not be acquired. We have always sought to ensure that the mandatory regime is reasonable and proportionate, and this is an important change, which I believe businesses and investors alike will welcome. I hope that it will reduce the business burden and allow the investment security unit to focus on notifications and cases that will necessarily result in control being acquired.

Let me make two further points on this amendment. First, there may be some noble Lords—my noble friend Lady Neville-Rolfe was one, I believe—who will say that this is a weakening of the regime. Let me explain why I do not believe that that is the case. As the noble Lord, Lord Fox, pointed out, the Secretary of State will continue to be able to call in acquisitions across the economy at or below 25%—and, indeed, if necessary, below 15%—where they reasonably suspect that material influence has been or will be acquired. That call-in power will be available up to five years after an acquisition takes place, so the incentive for parties to notify cases of material influence that may have national security implications remains, in order to achieve deal certainty. The five-year period also provides the Government with a significant window to identify acquisitions of concern and for the Secretary of State to call them in for scrutiny.

Secondly, the Clause 6 powers enable the Secretary of State to amend the scope of the mandatory regime through regulations. Notwithstanding this amendment, that would include the ability to introduce, if necessary, a 15% threshold or, indeed—assuming the will of Parliament, of course—any other threshold that would be relevant to determining whether a trigger event would take place, for mandatory notification in future if that is considered appropriate. The Government do not currently envisage doing so, but I am sure that noble Lords will agree that it is important that the Bill provides the power to do so, subject to the will of Parliament, if the evidence of the regime in practice suggests that this matter should be revisited. I hope that that reassures my noble friend Lady Neville-Rolfe.

Amendments 4, 5, 10 and 21 are all consequential amendments that reflect the removal of the 15% threshold, so I do not intend to dwell on them further.

I now turn to the other amendments in this group. Amendment 2 in the name of my noble friend Lord Lansley would make the acquisition of material influence a notifiable acquisition. I have to say that, in his speech, my noble friend did such a good job of advocating for the Government's position on his own amendment that perhaps we should welcome him back to the Front Bench at some stage; actually, he would probably make a better job of it than me.

The Government do not consider that broadening the scope of the mandatory regime to material influence would be appropriate. The mandatory regime, given that it is underpinned by voiding and criminal and civil sanctions, must be defined with sufficient certainty for acquirers to determine their obligations objectively.

*2.30 pm*

Material influence is, by its very nature, subjective and will depend on the facts of an individual case. The level of shareholding, the number of board seats, the other rights to be acquired, and the status and expertise of the acquirer are all examples of the factors which will be relevant to whether material influence will be acquired. The regime must, of course, enable the Secretary of State to be able to call in such cases where they may pose a national security risk, but that is clearly a different proposition from mandatory notification.

Amendment 8 in the name of my noble friend Lord Hodgson seeks to narrow the third case of control in Clause 8 to protect minority rights. The third case currently captures the acquisition of voting rights in the entity that enable the person to secure or prevent the passage of any class of resolution governing the affairs of the entity. His amendment would mean that

acquisitions of such voting rights would be captured only if they enabled the passing or prevention of a resolution in respect of any matter governing the affairs of the entity that is equivalent to a matter that can be passed by ordinary or special resolutions under the Companies Act 2006. I listened carefully to my noble friend's comments on this matter during Grand Committee, but the Government continue to consider that the Bill already broadly achieves his aim.

I take the example of where a person acquires preferred shares which provide the ability to prevent a resolution of that class of shares in order to protect their investment or minority rights and does not provide the ability to vote on all or substantially all matters at a general meeting. This would not constitute an acquisition of control within the meaning of Clause 8(6), as subsection (7) sets out that a reference to voting rights is to the rights conferred on shareholders in respect of their shares to vote at a general meeting of the entity on all or substantially all matters. I emphasise to my noble friend that limited veto rights are unlikely—in our view—to meet that threshold so their acquisition would not be notifiable or, indeed, a trigger event at all. I hope that reassures my noble friend and that this amendment can therefore be withdrawn.

**The Deputy Speaker (Baroness Watkins of Tavistock) (CB):** I have received a request to ask a short question for elucidation from the noble Lord, Lord Leigh of Hurley.

**Lord Leigh of Hurley (Con):** I suppose I should say that modesty had forbidden me from putting my name down for this group. I wanted to have a point clarified and to thank the Government for listening to the Back-Benchers. I think it was fairly random that I took the 15% point: I cannot remember how it was allocated. I thank the Minister for listening to the many people who made representations.

In respect of the point from the noble Lord, Lord Lansley, about the fourth case—Clause 8(8)—we debated this and I think I raised the question at the time as to what influencing the policy of the entity means. To return the compliment to the Government, I agree with them in this instance because if we had Clause 8(8), I can see a lot of discussion and debate as to the meaning of enabling a person to materially influence "the policy". We discussed the meaning of this at length. I return the compliment and agree with my noble friend the Minister.

**Lord Callanan (Con):** I will just say that, as always, I agree with my noble friend.

**Lord Lansley (Con):** My Lords, it has been a helpful debate, not least from the point of view of helping those—I imagine that over time, there will be more of them than we imagine—who will look back and ask what the intentions were behind the Bill as it was brought forward. If I perhaps can say by way of comfort to my noble friend Lady Neville-Rolfe, the point that we have discovered going through the Bill is that there are two tracks here—I confess that my Amendment 2 was tabled originally not quite getting that point. First, there is mandatory notification, which is required in respect of a notifiable acquisition, so the definition of notifiable acquisition needs to be specified very clearly. Then there is voluntary notification but also the power of Ministers to call in any transaction. That is precisely the point that the noble Lord, Lord Fox, made very clearly and which my noble friend on the Front Bench reiterated.

The common theme here is that taking out the 15% threshold and, indeed, not including the material influence test in notifiable acquisitions, means that it is not subject to a mandatory notification requirement. As my noble friend said, we should not ignore the fact that under Clause 13(1):

"A notifiable acquisition that is completed without the approval of the Secretary of State is void."

The risk associated with an unclear boundary between what is notifiable and what is not is that potentially large numbers of acquisitions that should be notified are not and therefore those transactions are void. We do not want to arrive at that position. We want people who run the risk of their transaction being a notifiable acquisition either being captured by the mandatory requirement or voluntarily notifying. Frankly, for many people voluntary notification will probably be the better and simpler resort.

Taking out the 15% threshold does not mean, in any sense, that those transactions are taken out of the scope of the regime but simply means that they are dealt with within the regime in a more flexible manner than would be the case through the mandatory notification requirement. Some of the press reports I have seen about this slightly miss the point. This is not a hard-and-fast threshold. It is a threshold for mandatory notification, not voluntary notification. The regime still applies.

My noble friend very helpfully responded to my Amendment 2 in precisely the way that I anticipated and quite correctly and, on that basis, I beg leave to withdraw Amendment 2.

*Amendment 2 withdrawn.*

*Amendments 3 to 5*

*Moved by* ***Lord Callanan***

**3:** Clause 6, page 4, line 17, leave out paragraph (b)

Member's explanatory statement

This amendment has the effect of omitting a category of notifiable acquisitions from the scope of the mandatory notification regime, namely where a person acquires a right or interest in a qualifying entity such that their shareholding or voting rights in the entity increases from less than 15% to 15% or more.

**4:** Clause 6, page 4, line 22, leave out from "14(1)" to "would" in line 23

Member's explanatory statement

This amendment and the amendments at page 4, line 42, page 8, line 30 and page 21, line 7 are consequential on the removal of Clause 6(2)(b).

**5:** Clause 6, page 4, line 42, leave out subsection (8)

Member's explanatory statement

See the explanatory statement to the amendment at page 4, line 22.

*Amendments 3 to 5 agreed.*

**The Deputy Speaker (Baroness Watkins of Tavistock) (CB):** We now come to the group beginning with Amendment 6. Anyone wishing to press this, or anything else in this group, to a Division, must make that clear in debate.

*Amendment 6*

*Moved by* ***Lord Fox***

**6:** Clause 6, page 5, line 3, at end insert—

"( ) In making regulations for the purposes of this section the Secretary of State must have regard to the risk to national security posed by climate change and to the role of qualifying entities and assets in mitigating that risk."

Member's explanatory statement

This amendment would require the Secretary of State to have regard to the risk to national security posed by climate change when making regulations relating to notifiable acquisitions.

**Lord Fox (LD):** My Lords, at the very end of the third day of Committee your Lordships had a short debate around the impact of climate change on national security. On these Benches, our view is that this is still not considered appropriately by the Bill as it is currently drafted. Climate is also possibly missed in some of the 17 technologies; I guess we will have a chance to debate that when the detailed list arrives formally. Infrastructure issues are also somewhat neglected, as we have heard on some occasions, not least from the noble Baroness, Lady Noakes, opposite.

During that debate, I suggested that the best route might not be a lengthy definition of national security, which included a part for climate change. Rather, I suggested, something that focused on Clause 6 might be a better approach. This amendment is the response to that suggestion. Amendment 6 in my name would require the Secretary of State to

"have regard to the risk to national security posed by climate change"

when making regulations relating to notifiable acquisitions. I am grateful to the noble Lord, Lord Grantchester, and to the noble Baroness, Lady Bennett of Manor Castle, for their signatures and, of course, to my noble friend Lord Clement-Jones.

It is quite clear that climate change is already causing national security issues. We have only to look at climate-inspired migration crises, which are hitting many countries, and the related security issues that arise from that mass migration, to appreciate the nexus between these two issues. It is also clear that, when it comes to meeting these challenges, access to both technologies and the raw material to deliver those technologies are crucial to our national response to the climate change threat. Further, the ownership of key infrastructure which will, I hope, help to deliver a zero-carbon footprint will be a matter of concern going forward.

All of this could implicitly fall within the remit of the Bill, and I accept that. This amendment calls for a more explicit recognition of the potential for climate change—which, in my view, includes biodiversity—to affect national security, and that is what I am looking for from the Minister today.

The Minister has previously indicated his allergy to "have regard" amendments, notwithstanding the fact that there are such clauses in Bills that the Government have asked your Lordships to approve from other departments, so perhaps this allergy is simply reserved for the BEIS area. But, recognising this, I ask the Minister, and expect him to explain, why this amendment would contaminate this Bill, because the Government have voiced their concerns around climate change, and it is easy to make that connection in some cases.

At the very least, I think it is possible for the Minister to acknowledge that climate change and its influence will be one of the factors that should be taken into consideration when making regulations related to notifiable acquisitions. I think that he could find his way to confirming that the technology and raw material issues that I set out earlier would also be on the investment unit's checklist, because they are important elements of national security. I remain hopeful that the Minister will be able to do that while, of course, retaining the option of putting my amendment to a vote. I beg to move Amendment 6.

*Amendment 7 ( to Amendment 6 )*

*Moved by* ***Baroness Bennett of Manor Castle***

**7:** After "climate change" insert "and biodiversity loss"

**Baroness Bennett of Manor Castle (GP) [V]:** My Lords, as this is my first contribution to Report stage of this Bill, I make reference to the Law Society briefing. In summary, it expresses concerns about the Bill's lack of a clear definition of national security, the definition of qualifying entities and assets, and the procedure for voluntary and mandatory notifications—the whole Bill then. There are grave concerns about the degree to which this has been thought through, through no fault of anyone here in this debate—a small number of people have put in a huge amount of often detailed work. On this point, it is right to note how appropriate it is that the noble Lord, Lord Lansley, opened the debate on Report. I ask noble Lords to forgive me if anything in my speech today is unclear, since I am still in recovery from a minor bit of dental work this morning.

I speak now to Amendment 6 in the names of the noble Lords, Lord Fox, Lord Clement-Jones and Lord Grantchester, to which I have attached my name, making it truly cross-party. It requires the Secretary of State to have regard to the risk to national security posed by climate change when making regulations relating to notifiable acquisitions. I also beg to move Amendment 7 and speak to Amendment 38 in my name. Amendment 7 adds "biodiversity loss" to the matters posing a risk to national security that the Secretary of State must have regard to when making regulations relating to notifiable acquisitions. Amendment 38 in some ways ties this all together, along with other matters, stating that:

"Within 6 months of the passing of this Act the Secretary of State must publish a statement which outlines how provisions in this Act will align with the United Kingdom's long term security priorities and concerns which have been identified in the Integrated Review of Security, Defence, Development and Foreign Policy."

That amendment is a repeat of an amendment in Committee—tabled by the noble Baroness, Lady Hayter of Kentish Town, and signed by the noble Baroness,

Lady Northover, and myself—which has been only minorly updated to take account of the publication of the integrated review.

In introducing this group, the noble Lord, Lord Fox, has already spoken clearly and eloquently on the way in which the climate emergency is a national security issue. I note his focus on the list of technologies, which he has kindly offered to work with me on. I have not yet managed to get to that, but I will, and I very much appreciate his offer. I can also go to the Prime Minister's foreword to the integrated review, which states:

"Her Majesty's Government will make tackling climate change and biodiversity loss its number one international priority."

I know that there are now few Members of your Lordships' House who would at least actively deny the issue of the climate emergency. That does not include, I hope, any members of the new Environment and Climate Change Committee. Therefore, I will focus my remarks primarily on Amendment 7, which adds the concern about biodiversity to that of climate change. I might for completeness have made this amendment refer to planetary limits as a sustainable development goal-informed way of addressing the multiple national security threats from environmental degradation, social inequality and poverty, but this is at least a step along the way towards genuine systems thinking in our legislation.

*2.45 pm*

I am aided by the publication this morning of a report in the journal *Frontiers in Forests and Global Change*, which finds that just 3% of the world's land remains ecologically intact, with healthy populations of its original animals and undisturbed habitats. Previous estimates had been as high as 20%—now 3% of land is in decent, original condition. The more we come to understand about this planet, of which we still have so little knowledge, the more that the damage that we have done becomes evident. Those fragments of wilderness undamaged by human activities are mainly in the Amazon and Congo tropical forests, eastern Siberia, northern Canadian forests and tundra, and the Sahara. None of those is in the UK. Indeed, the UK ranks as one of the most naturally degraded nations on the planet, at 189 out of 218 nations in the independent *State of Nature* report. Restoration of land—for example, our upland peatlands—is something that our security very clearly depends on, whether in terms of climate, flooding or biodiversity. But, of course, there are British companies that are likely to have influence on the remaining untouched 3% of our landmass.

None the less, I can almost feel from a distance some Members of your Lordships' House bristling, "What does this all have to do with national security?" I would argue that there is nothing more crucial to human security—national security—than the state of nature, including the state of our climate. If noble Lords do not want to listen to me, they might want to listen to the Nobel Peace Prize committee, which gave its award to the environmentalist Wangari Maathai back in 2004. Of course, she was most famous for tree planting. To make the obvious point, the very air you breathe today, the existence of life on this planet, is due to the process of photosynthesis in plants—due to nature. All the food that we eat also depends on that very same process, and it is the source of the genetics of all our current crops.

I briefly cite another recent academic study, in *Global Change Biology*, which demonstrates how existing crops have been greatly damaged by decades of industrial agriculture and breeding for yield, not resilience, and highlights the need to retain and support wild relatives of crops as a source for future cross-breeding to restore them. Or, to focus on something that your Lordships' House must have at the forefront of its mind, there is also the massive ongoing threat of the SARS-CoV-2 virus. That emerged out of disturbed nature—the zoonosis threat that all the experts tell us is accelerating because of our destruction of nature.

Finally, I return to Amendment 38, which calls for a report in six months' time on how this Bill relates to the integrated review. Again, we are talking about systems thinking, joining up different parts of government, seeing how they fit together and subjecting that to democratic scrutiny and oversight. We will debate that review next week, so I will not venture here in depth, but lots of the commentary on it has said that it identifies the problems clearly but fails to make choices between difficult alternatives—something that this amendment could help with in creating an opportunity for the House to consider those and to force the Government to confront them.

It is not my intention to test the opinion of your Lordships' House on these two amendments. There will be ongoing debate and discussion, but I am confident that we will see climate change, biodiversity, sustainable development goals and systematic joined-up thinking at the absolute heart of our national and international security in future. I very much hope that in the future, we will look back and see that we made the right choices today, because there is no doubt at all that, in the climate emergency and the biodiversity crisis, we are right at the crunch point where action is needed.

**Lord Grantchester (Lab):** My Lords, in Committee we debated the climate emergency as the most pressing issue that affects every aspect of everyday life. The climate crisis is not only a threat in the long term to our survival and that of the planet but a threat to security in the short to medium term. According to the Government's own statistics, nature loss will result in a cumulative economic cost of up to £10 billion between 2011 and 2050. While the Minister may say that climate change is not directly connected to the national security and investment regime proposed in the Bill, actions by hostile actors that stifle our modern green infrastructure can only make us more vulnerable. As the former civil servant Paddy McGuinness has recently said, green networks

"provide an attractive opportunity for an adversary to unbalance, intimidate, paralyse or even defeat us."

I am grateful to the noble Lords, Lord Fox and Lord Clement-Jones, and the noble Baroness, Lady Bennett, who have returned with simple "must have regard to" wording in Amendments 6 and 7 regarding climate change and biodiversity loss. Of course, all Governments will have regard to all legislation on the statute book that impacts on our activities and lives. Nevertheless, it is imperative that the risks of climate change be recognised in the new regime being initiated through the Bill, and the Secretary of State must consider how to mitigate these deepening risks.

[Lord Grantchester]

I am grateful to the noble Baroness, Lady Bennett, for retabling our Amendment 38 from Committee, which asks for a statement to be made on emerging threats in the light of priorities identified in the *Integrated Review of Security, Defence, Development and Foreign Policy*. It allows me to follow up with some further questions on the integrated review and its associated documents.

Can the minister provide an outline of how the ISU will work effectively with the MoD directorate for economic security? It is all very well to say that the ISU will be drawing on the expertise in the MoD and the Defence Secretary will be able to make representations to the Business Secretary, but what mechanisms will be set up to co-ordinate across departments? Will there be a mechanism whereby the MoD directorate can give advice directly to businesses in a defence and supply chain through policies initiated from the ISU in the business department, especially in connection with technologies and future associated threats? It would be helpful if the Minister could respond or follow up with a letter in due course.

**Lord Callanan (Con):** I am grateful once again to the noble Lords, Lord Fox and Lord Clement-Jones, and the noble Baroness, Lady Bennett—I am particularly grateful that she has joined us after her dental work and of course we wish her a speedy recovery—for their respective amendments in this grouping.

With the permission of the House, I will take Amendments 6 and 7 together. Amendment 6 seeks to require the Secretary of State to

"have regard to the risk to national security posed by climate change"

when preparing secondary legislation under Clause 6 in relation to the scope of the mandatory notification regime. Amendment 7 then seeks to amend Amendment 6 to require the Secretary of State to also have regard to the risk to national security posed by biodiversity loss.

I commend the sentiment of the amendments regarding tackling climate change. As I set out in Grand Committee, this Government are of course committed to tackling the climate crisis. I can also confirm, in response to the amendment of the noble Baroness, Lady Bennett, that, just as the Prime Minister has said in his foreword to the integrated review, biodiversity loss very much sits alongside that as the UK's top international priority. The Government continue to promote co-operation on climate action through the UK's G7 presidency, and we look forward to the COP 26 conference in November, which will allow us to highlight our leadership in tackling the climate crisis, including biodiversity loss.

However, the Bill is focused on the risks to our national security posed by the acquisition of control over qualifying entities and assets. As the noble Lord, Lord Fox, correctly predicted, we are therefore unable to accept amendments seeking to set out what is or is not a factor to be considered when looking at national security, including factors relating to climate change and biodiversity loss, without edging closer to defining it—which, as he knows, we are reluctant to do. I hope that having my comments on the record in response to these issues provides due assistance to noble Lords. I can further reassure them that, as drafted, the Bill provides the flexibility for the Secretary of State to consider all types of risk to national security that are relevant in the context of this regime, including those that are environmental in nature.

I thank the noble Baroness, Lady Bennett, for her Amendment 38, which seeks to ensure that the national security and investment regime is consistent with the recently published integrated review. I note that a similar amendment was tabled in Grand Committee by the noble Baronesses, Lady Hayter and Lady Northover. However, whereas that amendment asked for a report

"as soon as reasonably practicable",

the noble Baroness, Lady Bennett, has opted for "within six months". As noble Lords will be aware, the integrated review provides a comprehensive articulation of the UK's national security and international policy. It outlines three fundamental national interests: sovereignty, security and prosperity.

I understood the benefits of an amendment in Grand Committee when the Government had not published the integrated review but, now that we have, the alignment is clear for all to see. For example, the NSI will be tremendously valuable in countering state threats, in maintaining the UK's resilience and in helping us to work with and learn from our allies, to name but a few areas of alignment. Indeed, as noble Lords would expect, this Bill is explicitly referenced within the review.

As noble Lords will know, the National Security and Investment Bill will prove a key tool in enabling the UK to tackle its long-term security concerns and pursue its priorities. The Bill will create carefully calibrated powers for the Secretary of State to counteract concerns around acquisitions and the flexibility to respond to changing risks and a changing security landscape. As part of this, the regulation-making powers in the Bill allow the Secretary of State to keep pace with emerging threats as they arise, such as by enabling them to update the sectors covered by mandatory notification.

Therefore, for the reasons that I have set out, I do not see a strong case for the amendments and I very much hope that their proposers will feel able to withdraw them.

**Baroness Bennett of Manor Castle (GP) [V]:** I beg leave to withdraw the amendment.

*Amendment 7 (to Amendment 6) withdrawn.*

**Lord Fox (LD):** I thank noble Lords for that debate and I thank the Minister for his response. It was entirely predictable, as I think the noble Lord, Lord Lansley, who has just slipped out, said when we discussed the previous group.

What I heard the Minister say—

"types of risk … including those that are environmental in nature"—

was slightly more explicit than what is in the Bill. My sense when the Minister talks about long-term security is that the technology needed to maintain or further our fight against climate change will increasingly become

a long-term concern. I suspect that this unit will find itself embroiled in calling in transactions that indeed concern the environment because they deal with technologies that are environmental in nature.

I will think again on this issue, and obviously I will read *Hansard* to make sure that I have got the words correct, but in the meantime I beg leave to withdraw the amendment.

*Amendment 6 withdrawn.*

***Clause 8: Control of entities***

*Amendment 8 not moved.*

*3 pm*

**The Deputy Speaker (Lord Faulkner of Worcester) (Lab):** We now come to the group consisting of Amendment 9. Anyone wishing to press this amendment to a Division should make that clear in debate.

*Amendment 9*

*Moved by* ***Lord Bruce of Bennachie***

**9:** Clause 8, page 6, line 38, at end insert—

"( ) For the purposes of this Act, a person does not gain control of a qualifying entity if the person acquires a right or interest in or in relation to the entity—

(a) solely by way of obtaining security; and

(b) in a situation where they obtain no effective control."

**Lord Bruce of Bennachie (LD) [V]:** I thank noble Lords. Amendment 9 is self-explanatory:

"Clause 8, page 6, line 38, at end insert—

"( ) For the purposes of this Act, a person does not gain control of a qualifying entity if the person acquires a right or interest in or in relation to the entity—

(a) solely by way of obtaining security; and

(b) in a situation where they obtain no effective control."

The purpose of this is to ensure that transactions constitute a trigger event only where the person gains actual control of a qualifying entity and, very specifically, to exempt Scottish share pledges or other situations where no effective control is obtained. I moved a previous amendment in Committee, and I thank the Law Society of Scotland, which has drawn this matter to my attention. I thank both Ministers, the noble Lords, Lord Callanan and Lord Grimstone, for engaging with me, the noble Baroness, Lady McIntosh, and representatives of the Law Society of Scotland to discuss this issue, which the Law Society still feels has not been satisfactorily addressed by the Government. Obviously, this amendment would be an attempt to ensure that it was.

There is a particular point about Scots law. The amendment is intended to exclude a situation whereby the sole fact of pledging shares in security, under Scots law, would be classed as a trigger event. A Scottish shares pledge does not allow a security holder to exercise effective control over the relevant shares in a Scottish company. The primary concern is that the current proposal suggests that a trigger event would take place in a situation where no control has in fact passed. The Ministers will be aware that not only did we exchange very useful views in discussion in meetings—I repeat, we are grateful to the Ministers for engaging with us—but the Law Society president then wrote to the noble Lord, Lord Grimstone, copying in the noble Lord, Lord Callanan, to express the concern that there was still an outstanding issue that needed to be addressed. As set out in the letter, the Bill as currently drafted fails to align with clear statutory precedents for treating shares that are the subject of Scottish share pledges as still being controlled by the pledger. For example, there is the definition of "subsidiary" in Section 11(59) of the Companies Act 2006, as supplemented by paragraph 7 of Schedule 6 to that Act. That reference obviously comes from the Law Society and not from me. This would create a disparity between Scotland and England—that is the real concern—and could make it harder for Scottish companies to obtain loan finance, as well as disincentivising potential investors from establishing vehicles under Scots law.

The amendment would ensure that a trigger event was recognised at the point at which the transfer of control actually occurs. In doing so, it would enhance the ability of the Secretary of State to carry out a national security assessment and impose any safeguards, but at the most appropriate point.

The Law Society, very helpfully, has set out a hypothetical example reflecting what it would say is a common, real-life scenario. For the purposes of this, it is control over company C which gives, or may give, rise to national security concerns. The situation is this: company A is seeking to raise finance, by way of a loan, and approaches bank B. Bank B agrees to lend the money against security over the shares held by company A in its wholly owned subsidiary, company C. Under current Scots law, the only way to obtain fixed security over shares is by way of a share pledge, with the shares being transferred to bank B or its nominee. As such, it can be said that bank B holds the shares, as per Clause 8(2)—that is, the bank holds 100% of the shares in company C. However, holding the shares in this scenario is not ownership in the true sense, and does not give the security holder effective control. Bank B will be unable to sell the shares, has no right to be paid dividends, has an obligation to immediately retransfer the shares on the money secured being repaid and, most importantly, will be unable to exercise voting rights, other than in conformity with company A's wishes. In practical terms, company A therefore remains in full control of company C, and bank B is not, in fact, in a position of control.

In the previous debate, Schedule 1 was acknowledged and it appears to address the issue, recognising a scenario where a person grants security over shares but continues to exercise de facto control. However, the clarification refers to rights attached to shares, rather than the holding of the shares. Therefore, it does not fully account for the different situation, where a lender becomes the registered holder of shares in security. That has been the case with a share pledge in Scotland and has been standard Scottish legal and business practice since the 19th century. This is different from English law because, by way of comparison, under an English charge over shares this situation just simply does not arise, because no formal transfer of the charge shares is required to perfect the charge. In the parallel English scenario, the same relationships of

[Lord Bruce of Bennachie]
control or lack of control exist but—this is crucial—no trigger event is recognised. The disparity between the situations in Scotland and England is one of real concern, which has been highlighted. It is not only prejudicial to existing Scottish businesses, by increasing obstacles to obtaining finance, but risks making Scotland less attractive as a jurisdiction in which to establish a business vehicle. I do not need to remind your Lordships how important the financial services sector is to Scotland. Indeed, Scotland's contribution to the UK economy is disproportionately large in this sector. So, in project financing, investors could prefer an English vehicle, if this makes it easier to obtain funding. The practical effect is that long-established Scottish legal and business practice is being treated adversely compared to its English counterparts. I am sure that is not the intention of the Government or Ministers, but that remains a continuing concern of the Law Society of Scotland.

Acquisitions will, of course, be notifiable only in relation to the listed sectors. However, it is not the notification requirement per se that poses the risk to the ability of Scottish business to access finance. As identified in the context of the PSC, lenders are reluctant to enter into arrangements that suggest that they have control over an entity when this is not the case. The breadth of the call-in power, the potentially broad scope of national security concerns, means that many transactions may be called in for up to five years after the event has taken place. This creates uncertainty, and uncertainty, of course, opposes a commercial risk. The potential for transactions to be called in after the event in other sectors, may ultimately have a greater impact by disincentivising lenders. I hope the House is clear that this is a point of real and substantive concern.

In real life, it is very unlikely that bank B would seek to appropriate the shares in company C, in the scenario I outlined earlier. The most common scenario, following an event of default, would be for bank B to notify company A that it was going to enforce the security, and then sell the share in company C to repay the debt. The sale of the shares in company C to another purchaser—purchaser P—would constitute a trigger event under Clause 5. There is also the potential that bank B would decide instead to retain the shares. Having given notice to company A, bank B would therefore, at that point, enter into control of company C, acquiring all voting rights, dividend rights and the ability to sell the shares. That is the point at which the trigger event should occur. Entering into control of the shares following a default could indeed be specifically recognised as a trigger event, but that scenario is already suitably covered by Clause 8(2).

In a situation where company C falls within one of the 17 listed sectors, bank B's acquisition of control would be recognised only if the appropriate notification had been given. In a situation where the Chancellor was not compulsorily notifiable, the five-year call-in period would begin to run at the point bank B assumed control. This could give the Secretary of State a longer timeframe in which to assess any risks posed by ownership of the shares vested in bank B. Notice of bank B's interest would appear as a matter of public record, subject to the default occurring after the annual return showing that the share pledge had been taken. That would all happen long before bank B was able to take control. For these reasons, there is no real risk of hostile actors targeting lending arrangements as a means to gain control of national security-sensitive entities. The Secretary of State would retain discretion over available remedies, which could be applied at the appropriate time.

Nothing in the remarks that I have just made will come as a surprise to Ministers, because it has been set out in detail in a letter from the president of the Law Society of Edinburgh, addressed to the noble Lord, Lord Grimstone, and copied to the noble Lord, Lord Callanan. I hope that the Minister will acknowledge that there is an outstanding point of concern. As I say, we are all grateful to the Minister for engaging with us and showing understanding that this is a real issue.

None of us is of the view that there is any intention to put Scotland and Scottish businesses at a disadvantage, but, without this amendment or some comparable amendment that the Government might agree to or introduce, there remains a real possibility of discrimination against Scottish financial services and investment businesses, which would be politically awkward and embarrassing as well as practically damaging to the interests of both Scotland and the United Kingdom sector. I hope that the Minister can acknowledge that this issue needs to be addressed head on and that assurances can be given that the concerns outlined will not actually take effect. I beg to move.

**Baroness McIntosh of Pickering (Con):** My Lords, I am delighted to speak in support of, and to have co-signed, Amendment 9. I am grateful to the noble Lord, Lord Bruce of Bennachie, for moving and speaking to the terms of the amendment so thoroughly. I also echo his thanks to the Law Society of Scotland for highlighting this issue at Committee stage and bringing forward this amendment for Report. I also thank my noble friends Lord Grimstone and Lord Callanan for the time that they spent with the noble Lord, Lord Bruce of Bennachie, me and members of the Law Society of Scotland going through the issue with us. I remind the House that I am a non-practising member of the Faculty of Advocates.

This is quite a sensitive time to be raising this matter, mindful of the fact that elections are going on in Scotland—they will be held on 6 May—so I am sure that it is not the intention of a British Government whom I overwhelmingly support to seek to disadvantage Scotland at this time. We are here to assist the Government and bring to their attention the ramifications of the preventions of the Bill currently before us. Amendment 9, so eloquently moved by the noble Lord, Lord Bruce of Bennachie, would simply ensure that transactions constitute a trigger event only where a person gains actual control of a qualifying entity—and to exempt Scottish share pledges in relation to other situations where "no effective control" is obtained.

Of all the comments made by the noble Lord, Lord Bruce, I echo the comparison that he made with English law, which could cause some confusion and has perhaps led to this regrettable situation. Of all the things that I recall from the conversation that we had on the call with my noble friends the Ministers, I want

to impress on the Government that this is not just an issue but potentially one of some magnitude—my noble friend Lord Callanan seemed not to grasp that during the call, so I pause to emphasise it to him.

By way of comparison, under an English charge over shares, this situation does not arise, because no formal transfer of the charged shares is required to perfect the charge. In the parallel English scenario, the same relationships of control or lack thereof exist, but no trigger event is recognised. I am sure that this is just an unfortunate situation that has arisen, which is why it is timely to bring it to the Government's attention today. The disparity between the situations in Scotland and England is one of the concerns that we seek to highlight as not only being prejudicial to existing Scottish businesses and increasing obstacles to obtaining finance but risking making Scotland less attractive as a jurisdiction in which to establish a business vehicle. I support all the comments that the noble Lord, Lord Bruce of Bennachie, made.

In the spirit of openness, as this is an extremely technical issue—I can quite understand if my noble friends perhaps do not fully grasp the situation in which we find ourselves—I have taken the opportunity to bring it to the attention of the Advocate-General, my noble and learned friend Lord Stewart of Dirleton, who will fully consider the ramifications. As such, I have every confidence that, before the Bill leaves this place, full and due consideration will be given to Amendment 9 and what we are seeking by moving it today.

*3.15 pm*

**Lord Grantchester (Lab):** I thank the noble Lord, Lord Bruce, and the noble Baroness, Lady McIntosh, for looking critically at the legislation in relation to Scotland and its legal approach. Clause 8 defines the circumstances in which a person gains control of a qualifying entity, thus constituting a trigger event that may be subject to assessment under this regime. Throughout this process, we have stressed the importance of clarity on who qualifies for assessment under the regime.

Amendment 9, tabled by the noble Lord, Lord Bruce, aims to ensure that transactions constitute a trigger event only when the person gains actual control of a qualifying entity and to exempt securities or other situations where no effective control is obtained. The amendment's purpose is to avoid the potential unintended consequences of the Bill for financial transactions under Scottish law, as identified by the Law Society of Scotland. Under the amendment, rights and interests in, or in relation to, entities and assets held by way of security would be exempt from the regime, on the basis that lending and debt arrangements do not give rise to control.

We have been clear that the Bill must be fit for purpose across every part of the United Kingdom, and I ask merely whether the Minister can provide reassurances to the House that it has been properly considered in relation to its impacts on the Scottish legal system in particular. Can he reassure the House that consultation has taken place between the Scotland Office and the Scottish Administration and that there are no outstanding issues to be resolved in this respect?

**Lord Callanan (Con):** I am of course grateful to the noble Lord, Lord Bruce, and my noble friend Lady McIntosh for Amendment 9 in their names. As they outlined, it seeks to exempt from the call-in power acquisitions made by way of obtaining security over a qualifying entity where no effective control is obtained. I start by placing on record my thanks to the noble Lord, my noble friend and the Law Society of Scotland for meeting my noble friend Lord Grimstone and me following Grand Committee to discuss this issue in detail. Indeed, we have considered all the points that were made.

As I emphasised in that meeting and in our subsequent correspondence, the Government do not consider that the provision of loans and finance is automatically a national security issue. Indeed, lenders need confidence that they can see a return on ordinary debt arrangements in order to provide that service. However, we must also recognise that in a small number of cases national security risks can arise through debt arrangements. Noble Lords have particular concerns about the Bill with regard to Scotland. I understand—and the noble Lord, Lord Bruce, stated—that this is because it is usual practice in Scotland for a lender to become the registered holder of shares in security through a shares pledge.

Having heard the concerns, the Government have reflected carefully on the issue, but we continue to believe that an exclusion would not be appropriate in this case. In such circumstances, the legal title to shares will, as a matter of fact, have been acquired by the lender, and it is important that we do not inadvertently create a loophole that those who wish us harm might otherwise seek to exploit.

While I note that the proposed amendment has been updated since the version debated in Grand Committee, reflecting my noble friend's intention to limit the exemption to situations where "no effective control" is obtained, I fear that this would be difficult to reconcile with the mandatory regime.

It would introduce a new, inherently subjective concept that would sit uncomfortably with the need for acquirers to be able to objectively determine their legal obligations. I hope that noble Lords who have stayed the course on this Bill—a small, gallant band—will know by now that it is focused on the central premise of acquiring control, with these circumstances defined in detail in respect of entities in Clause 8. This amendment would lead to a circular argument in the Bill, in which a trigger event is the acquisition of control—except for when control is not acquired. I am sure that a number of lawyers in this country would be licking their lips with that provision in the Bill.

I mentioned particular concerns about how this would affect the mandatory regime, but the Government also consider that this would cause difficulties for voluntary notification and for the Secretary of State's call-in power. None the less, both my noble friend Lord Grimstone and I have committed to monitoring the operation of the regime in practice with regard to this issue. Clause 6 provides the Secretary of State with the power to make "notifiable acquisition regulations" to amend the scope of the mandatory regime. That could be used in future, if considered appropriate, to exclude circumstances related to acquisitions by way of security from the mandatory notification regime.

[Lord Callanan]

I will address head-on the point made by the noble Lord, Lord Bruce, that this will be particularly disadvantageous to Scotland. It is important to emphasise that such lending arrangements are also possible in England and Wales—albeit we know that they are less common. This Government are staunch supporters of Scotland and it is vital that the Scottish legal and finance sectors continue to flourish.

Let me briefly make three other points on this amendment, which I hope will provide further reassurances to the noble Lord and my noble friend. First, the Bill broadly mirrors the existing approach of the persons with significant control register, which does not exclude legal owners of shares acquired by way of security. I take great confidence from the fact that this has been in place since 2016 and has had no discernible effect on the willingness of lenders to provide finance in Scotland.

Secondly, the mandatory notification and clearance element of the regime is proposed to apply only to entities of a specified description within 17 sectors of the economy. The number of circumstances requiring notification where a lender acquires the legal title to shares at or above the thresholds in this Bill is therefore likely to be low and, as with all acquisitions, the Government expect that the overwhelming majority will be quickly cleared to proceed.

Thirdly, as has been previously debated, I am sure my noble friends will welcome the removal of the 15% threshold I spoke about in a previous group. This will further reduce the number of cases covered by the mandatory regime in relation to securities.

So, for all the reasons I have outlined, I hope that both noble Lords will accept the arguments I have put forward and will feel able to withdraw the amendment.

**Lord Bruce of Bennachie (LD) [V]:** I thank the Minister for his response and for addressing the details. I am not convinced that the Law Society will be entirely satisfied that the difference between Scottish and English law has been fully appreciated. The Minister talked about legal title but, as I said in my opening remarks, legal title is meaningless if the shares pledge explicitly excludes any mechanism for dealing with the shares—either receiving voting rights, dividends, or the right to sell and an obligation to have them back when the loan is repaid. It simply is not control.

I take note that the Minister is concerned that the Scottish situation is not unique and therefore could cause complications in England and Wales, but the practice is clearly well established in Scotland. As I said in my opening remarks, it has been since the 19th century and is relatively unusual elsewhere in the UK.

I understand that the Minister believes that there will be relatively few instances, but part of the problem with the Bill is that an awful lot is undefined, in terms of the 17 sectors, the details of how those will be determined, the circumstances in which triggers will happen and the definition of national security. All of those things are explicitly not set out in detail.

I welcome Ministers saying they will monitor the situation closely. The assurance I would be looking for if we withdraw this amendment—obviously we will ask the Law Society what it feels about the unamended Bill—is that, if it becomes apparent there is a significant negative impact on Scottish business and the Scottish sector, the Government will be prepared to act to remove such discrimination.

It is a long-established fact that one reason the Scottish financial services sector is so strong is that it has a long history of prudent asset management and insurance, which has given Scotland a disproportionate share of both national and international business because of its reputation for, if I may put it in these terms, "canniness" in managing investments and other people's money. That being the case, we do not want a situation where the law as introduced somehow compromises that. That would not be good for Scotland or the UK either.

I hope these remarks will be noted by Ministers and they will undertake to consult and respond to any representations that emerge showing that the concerns we have outlined are real and significant. If the Minister is correct in his assurance that, though they may be real they will not be very significant, perhaps the matter can rest. But I am sure that I, the noble Baroness, Lady McIntosh, and others will make it clear to him that, if it becomes apparent that there is a significant problem for Scotland and that uncertainty is disadvantaging Scotland, he will hear about it. In the meantime, I withdraw the amendment.

*Amendment 9 withdrawn.*

### *Clause 14: Mandatory notification procedure*

*Amendment 10*

*Moved by* ***Lord Callanan***

**10:** Clause 14, page 8, line 30, leave out paragraph (b)

Member's explanatory statement

See the explanatory statement to the amendment at page 4, line 22.

*Amendment 10 agreed.*

**The Deputy Speaker (Lord Faulkner of Worcester) (Lab):** We now come to the group beginning with Amendment 11. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

*Amendment 11*

*Moved by* ***Baroness Noakes***

**11:** Clause 14, page 9, line 10, leave out "as soon as practicable" and insert "within 5 working days"

Member's explanatory statement

This amendment imposes a specific time limit on the notification required to be made after the Secretary of State has decided whether to accept or reject a mandatory notification.

**Baroness Noakes (Con):** My Lords, I rise to move Amendment 11 and I will speak also to Amendment 12 in my name and Amendment 13 in the name of my noble friend Lord Lansley, to which I have added my name.

With this group of amendments, we are returning to the issue of timing that we discussed quite extensively in Committee. There is a high level of concern in the

business community that the timescales set out in this Bill are excessive and breed uncertainty. If a transaction is called in, the Secretary of State has 60 working days—with the possibility of a 45-day extension—to make up his mind what to do. That adds up to five months elapsed time, which could kill many deals and, if the target company is in financial distress, could spell the end of its existence.

I accept that, if national security issues are genuinely involved, we have to allow the Government sufficient time to examine transactions in order to make the right decisions in the interests of our nation. I am, however, concerned about the timing at the front end of the process, once a transaction has been notified to the Secretary of State for both mandatory and voluntary notifications.

I hope that most mandatory notifications will not result in a call-in notice, and it is important that the parties to a proposed transaction get clarity about whether they have to enter the tunnel of uncertainty due to a call-in notice or can proceed with their deal. Under the terms of Clause 14 the Secretary of State gets 30 working days—six weeks in real money—to decide whether to call in a transaction, but that is extended by two indeterminate periods.

In the first of these, the Secretary of State has an unlimited period of

"as soon as reasonably practicable"

in which to decide whether to accept or reject a notice. We challenged this in Committee, but the Minister told us that the Government could not define this period because it would be affected by the nature and quality of the supporting information that came with the notification. I have given the Government the benefit of the doubt on that.

*3.30 pm*

Once the Secretary of State has decided whether to accept or reject the mandatory notification, he then has either to reject the notice and give his reasons or to notify the parties that he has accepted it. In either case, he has to do this "as soon as practicable" and the 30-day review period does not start until that has happened. I am not sure why these second grace periods are not qualified by "reasonably"—I hope that the Minister can explain this—but, whatever the subtleties of drafting are, it does not seem to be reasonable for the Secretary of State to make his decision but then sit on it without notifying it, thus extending the period of uncertainty. My Amendments 11 and 12 would take out the "as soon as practicable" formula in Clause 14(7) and (8) and replace it with "within 5 working days". These amendments are very modest in the whole scheme of mandatory notifications; I hope that my noble friend the Minister can accept them.

I will leave my noble friend Lord Lansley to explain the different approach that we have taken to voluntary notifications under his Amendment 13, but I will say a word on the background. Most people with experience of transactions believe that the severe penalties in this Bill, plus the ability of the Secretary of State to look back for up to five years, mean that many transactions will be notified under the voluntary procedure; that is what parties will be advised to do. There are concerns about the sheer volume of transactions and whether BEIS will be adequately resourced to process them. I know that we will discuss this later today.

There are parallel concerns about unnecessary delays to transactions once a notification disappears into the black hole of the Investment Security Unit. These concerns are particularly acute if a business is in administration or liquidation, or is teetering on the edge. Putting some certainty around how long a transaction can be held within BEIS waiting for a decision on whether a call-in notice will be issued will be hugely important for those transactions that simply need the comfort of clearance that they will going not be called in.

Amendments moved in Committee that sought to set up a fast-track procedure did not find favour with my noble friend the Minister, but I hope that he will be able to set out today how in practical terms transactions that need to be dealt with swiftly—whether mandatory or voluntary notifications—can get an appropriate degree of attention in the ISU. What kind of system of prioritisation will be set up? Will transactions that are notified be triaged or simply put on a conveyor belt? Who will be accountable for the performance of the ISU, and will that be visible?

I remind my noble friend the Minister that it is not just individual deals that are at stake. The reputation of the UK as a good place to invest will be on trial once this Bill becomes law. I know that he is well aware of this, and I hope that he can provide reassurance today that the concerns I have expressed will be central in how the ISU really operates.

I have also tabled some amendments that seek to get some quite granular annual reporting on the time taken at each of the stages of the process for both voluntary and mandatory notifications. I am a realist on substantive amendments; government departments have a "not invented here" aversion to changing the Bills that they create. With that in mind, I have drafted some amendments to create transparency instead so that, even if our worst fears on timing came to pass, it would at least be in the open; that would make sure that the Government would have to pay some attention to it.

However, since I tabled my amendments, the Government have tabled their own, less granular, versions of annual reporting. We are due to debate these in a later group, so I will say no more about them at the moment. While transparency is better than no transparency, even better would be some changes to the Bill to give more certainty to the business community. That is why we have tabled these amendments, and I look forward to the Minister's response. I beg to move.

**Lord Lansley (Con):** My Lords, I am very glad to support my noble friend Lady Noakes in her Amendments 11 and 12. I am grateful to her and the noble Lord, Lord Fox, for adding their names to Amendment 13.

My noble friend explained Amendments 11 and 12 extremely well. Let me say why separately there is an additional amendment in relation to the voluntary notification separate from mandatory notification. It is precisely because our expectation must be that there will be a significant number of voluntary notifications,

[Lord Lansley]
particularly in the early days as people involved in various sectors begin to understand how this regime is to act and under what circumstances they should make a notification. Our expectation would also be that, partly for precisely that reason and in the early days, there will be a significant number of voluntary notifications that do not lead to further action on the part of the Government because there is not a national security risk involved and they do not need to review it any further— that is, they do not need to take it through the call-in notice for an assessment.

For many of these transactions, because of the level of uncertainty associated with this—of course, these might be transactions where the seller brings them forward to the Secretary of State to understand under what circumstances they contemplate an acquisition, and whether they should proceed and how rapidly—there are a lot of reasons why this should happen quickly. In looking at Clause 18, about the voluntary notification procedure, our problem was that the review period had "30 working days" applied to it, but that period, as is the case with the mandatory one, follows two indeterminate periods. First, there is the period of time between a notification being made to the Secretary of State and the Secretary of State deciding whether to accept or reject it and, subsequently, the Secretary of State, after a period of time—this might be very short; I hope it would be very short—notifying each relevant person. The 30 working days, therefore, could be added to by two other periods.

The purpose of Amendment 13, therefore, is straightforward. It is to say, "Let's try to make sure that this is no longer than it needs to be, and that the pressure inside the Investment Security Unit is for what are essentially the bureaucratic processes"—in effect, saying, "We have received a notice. Is it compliant or not?", then, "Okay, we have accepted the notice. Have we notified all the relevant persons?" Those things happen very quickly because the important thing is that the 30 working days are devoted as far as possible to the review period to get the decision right as to whether this potential trigger event should be called in or not. That is the crucial thing. All the time should be devoted to that review. Amendment 13 says that the 30 days start at the point at which a seller or an acquirer gives a notice to the Secretary of State. I hope that that is helpful.

I noted—no doubt we have a similar view—that the bureaucratic processes should be as short as possible, but the Government, as my noble friend Lady Noakes noted, have put forward their own amendments in a later group. The one that is relevant here is Amendment 27, which would tell us how long the period is between the receipt of a notice and the decision to accept or reject it, and tell us to report that in the annual report. Frankly, that is useful, but we would rather that the pressure was built into the statutory arrangements rather than simply through the question of what is in the annual report by way of performance against that.

**Lord Clement-Jones (LD):** My Lords, in speaking to these three amendments, I am extremely fortunate to follow the noble Baroness, Lady Noakes, and the noble Lord, Lord Lansley. I do not think anyone could have explained more succinctly how these different timescales work for both the mandatory and the voluntary notification, so I will not go through it again. I really appreciate the persistence of both noble Lords, and the noble Lord, Lord Hodgson, in teasing out the real consequences of these very indeterminate timescales, which may differ between the voluntary and the mandatory notification procedures but create uncertainty in both cases. As the noble Lord, Lord Lansley, said in Committee,

"we want to ensure that the greatest possible certainty and the least possible delay intrudes into these processes for investors."—[*Official Report*, 16/3/21; col. 229.]

That has been our common theme throughout this Bill.

We have heard some graphic phrases throughout, such as the noble Lord, Lord Hodgson, decrying both the "no man's land" that we must not and do not want to fall into and the powers to "stop the clock". We also heard the noble Lord, Lord Grimstone, try to reassure the Committee that the Secretary of State has

"no desire to push his peas around the plate",—[*Official Report*, 16/3/21; col. 222.]

another phrase introduced by the noble Lord, Lord Hodgson; he will probably write a book at some stage with all these phrases included. However, that is not the same as the assurance and certainty contained in statute.

The noble Lord, Lord Callanan, said in Committee that

"the process of initially determining whether a valid and complete notice has been submitted is separate from fuller screening".

We understand that, but there should be clear time limits in that case. He tried to give us a reassurance:

"I mention 'maximum' again because that is exactly what these deadlines represent. In many cases, we expect the Secretary of State to be able to review and clear notifications much more quickly."—[*Official Report*, 16/3/21; col. 235.]

Businesses need certainty on whether to proceed with a transaction. A delay in the Secretary of State making a decision outside the time limits—because they can—would cause uncertainty over the validity of the transaction. This lack of a clear timescale could create uncertainty for investors, universities and businesses, making domestic and foreign investment less attractive and disincentivising industry in the process.

I heard what the noble Baroness, Lady Noakes, and the noble Lord, Lord Lansley, said about the later amendments on what should be contained in the annual report; I entirely agree that more transparency is very desirable, but that is not the same as specifying exactly what the timescales will be.

There is also the question of what I think the noble Lord, Lord Lansley, called the "bureaucratic processes". There is not yet a great deal of reassurance on that basis. We do not know how the regime will operate. Throughout this, especially on these timescales, the impression is that all the cards are in the Government's hands, not the hands of the potential investor. That could be a real deterrent. I hope the Government will respond to the very consistent view throughout the passage of this Bill that there needs to be a considerable tightening up in this direction.

**Baroness Bennett of Manor Castle (GP) [V]:** My Lords, I will be brief, but I wanted to speak in this debate having spoken on similar amendments in Committee. I oppose Amendments 11 and 12—I will reserve judgment on Amendment 13 until I have heard the full debate—and find myself in the unusual position of supporting the Government's proposed legislation and opposing changes to it.

The noble Lord, Lord Lansley, in introducing Amendment 13, talked about the pressure from bureaucratic processes; these amendments are trying to impose a pressure for speed. We hear talk of not wanting these rules to slow things down or to have too many limits or controls. This very much reflects the kind of language we have heard about "cutting red tape". I always go back to the words of the hazards at work campaign: better red tape than red bandages. What are referred to as red tape are very often the rules that keep us safe, protect us and ensure our security, in the terms of this Bill.

I wanted to make sure that the Government hear voices from the other side in this debate, saying that we have to privilege the public good and national security. Processes must take as long as they need to take to be done properly and have full and proper scrutiny.

*3.45 pm*

**The Deputy Speaker (Lord Faulkner of Worcester) (Lab):** The noble Baroness, Lady McIntosh of Pickering, has withdrawn from the debate, so I call the noble Lord, Lord Hodgson of Astley Abbotts.

**Lord Hodgson of Astley Abbotts (Con):** My Lords, I have put my name to Amendments 11 and 12, tabled by my noble friend Lady Noakes, which concern mandatory notifications, as she made clear. However, I am equally enthusiastic about Amendment 13, tabled by my noble friend Lord Lansley—even though I have not put my name to it—which addresses voluntary issues as well.

I will add a couple of points in support of these two approaches. As my noble friend made clear on Amendments 11 and 12, the use of the phrase "practicable" or "reasonably practicable"—it is not clear why we have one in one place and one in another—has come in for some pretty widespread criticism. As we have discussed before and heard from various legal advisers, the word "possible" would be a big improvement on "practicable".

Mandatory notifications will be at the sharp end of the Bill and can be expected in many cases to be controversial. There will be a temptation for a Secretary of State, faced with a controversial decision, to try to delay it. It is common ground that, while we need to take appropriate steps to protect our national security interests, it is also in our national economic interest to encourage as much investment as possible in the chosen 17 sectors which will collectively have a significant impact on our economic future.

With great respect, I understand what the noble Baroness, Lady Bennett of Manor Castle, is trying to say, but the reality is that this is a balance; if we are in a competitive market around the world for investment and are unable to balance it properly, people will go elsewhere. It is as simple as that. Her idea of having an open-ended arrangement for the Secretary of State to make up his or her mind is a recipe for an outflow of investment which might otherwise come here to support this country, with its worldwide reputation in tech and other sectors.

On my noble friend Lord Lansley's amendment on voluntary notifications, we have been around this course many times before; there will be a substantial flow and the new unit at BEIS may find it difficult to cope. In Committee, we discussed a number of amendments to try to help the Government with this and focus the new regime on the really significant cases. Amendments by various Members of your Lordships' House, including me, proposed inter alia to exclude intra-group investments, to require only one trigger event for each group of companies and to limit notifications to assets used in connection with activities carried on in the UK—in other words, to limit the extraterritoriality of this Bill's provisions.

The Government declined to accept any of these, arguing that they needed the widest possible strategic view to prevent evasive tactics by unwelcome purchasers. I must accept the force of that argument, but it means the Government must live with the consequences of those decisions. To provide an appropriate level of certainty for investors, we simply cannot risk a situation where, if a flood of voluntary notifications occurs, the Government could decline to start the 30-day clock.

In his concluding remarks, my noble friend may refer to Amendment 27, which the Government have tabled, about the contents of the annual report. If it is accepted by the House, as I expect it will be, it will include details of the number of days taken to give a decision, or the time taken to reach a voluntary notification. I do not want to add to the points the noble Lord, Lord Clement-Jones, made, but I have to say to my noble friend that it is really shutting the stable door after the horse has bolted to be told, a year later, that we have not been able to hit the targets or that they are being missed widely. There is nothing wrong with that, but we are trying to create a balanced regime that hits the ground running, and to learn, a year later, that "the system is overwhelmed", which a number of us in this Chamber feel is likely to happen, is simply not an adequate answer.

**Lord Fox (LD):** My Lords, the noble Lord, Lord Hodgson, set out his view of a balance, and I will set out another dichotomy—between thoroughness and timeliness. I do not think any of us in the Chamber are asking for this process to be less thorough. I think we are all saying we want a thorough process. But that thoroughness cannot be at the expense of timeliness, which is what these amendments are seeking to establish.

I do not think it is the Government's intention to sow the market with uncertainty; I am absolutely sure that is not the intention of the Bill or this element of it. However, we all know that once things get written into law, they move into a departmental process and there is a unit dealing with this, unless there are specific guidelines on achieving timeliness, things will drag and take time. Departmental clocks can run at a different speed to business clocks. We should be clear that that will cost jobs and opportunities, because the longer a transaction takes, the longer it is in play, the

[Lord Fox]
fewer opportunities those companies have and the more threat there is for them. This is particularly clear in sales out of distress and in businesses that are already in play. Once they are in play, they become victims of exploitation, and the longer this department maintains a business in play through this process, the more danger those businesses are in.

The Government's "intent" has come up many times in speeches, and that is an important element here. The way this Bill is currently drafted does not reveal an intent for rapid resolution. It does not reveal an understanding of the importance of timeliness, and that is what these amendments seek to establish.

**Lord Grantchester (Lab):** I thank the noble Baroness, Lady Noakes, and the noble Lords, Lord Hodgson and Lord Clement-Jones, for returning to the issue of the impact of this legislation on businesses and the uncertainty it would create within a business environment as businesses must interface with its bureaucracy. It has been interesting to hear the reflections from debates in Committee.

In Committee, we were sympathetic to Amendment 11 and others in the group as we have also pushed the Government to ensure greater clarity and transparency regarding how long businesses and organisations will have to wait for answers from the Government concerning notifications. It is important not only that statutory time limits are laid down to each stage of assessment but that the overall accumulated length of time of the whole process is defined. We remain supportive of the intentions behind the amendments in this group, and I am grateful to the many business interests that have expressed concerns to us. I merely ask again: what does "reasonably practicable" mean as a length of time?

In Committee, the Minister did not address whether and to what extent five working days could become practicable. The noble Baroness, Lady Noakes, asked many pertinent questions concerning the operation of the unit and its systems in addressing the tasks it will have to be administrating. Could the Minister provide more clarity? Can he give assurances today that officials in the department will engage effectively with business and provide updates and explanations regarding issues under consideration to businesses, should an answer not be forthcoming within the defined five-day limit proposed in this amendment, rather than expect businesses to delay and wait for an unspecified length of time to be proved practicable? Communication of the position would prove extremely reassuring to businesses.

**Lord Grimstone of Boscobel (Con):** My Lords, I thank my noble friends Lady Noakes and Lord Hodgson for their contributions and all the other noble Lords who have contributed so far. Perhaps it is not out of order to especially thank the noble Baroness, Lady Bennett of Manor Castle, for her rare support of the Government in this instance. I will begin with Amendments 11 and 12 together.

As currently drafted, the Bill provides that the Secretary of State must decide whether to reject or accept a mandatory or voluntary notice as soon as reasonably practicable after receiving it. They must then inform relative parties of the decision as soon as practicable. I will later draw the distinction again between "as soon as practicable" and

"As soon as reasonably practicable".

Amendment 11 would require the Secretary of State to provide written reasons to the notice "within 5 working days" if a mandatory notice is rejected, instead of "as soon as practicable." Amendment 12 has a similar effect but would require the Secretary of State to notify each relevant party that a mandatory notice has been accepted within five working days of acceptance, rather than as soon as is practicable, as currently drafted.

My noble friends Lady Noakes and Lord Hodgson asked about the distinction in places in the Bill between the timescales, "as soon as practicable" and

"As soon as reasonably practicable."

These different tests reflect that some requirements are more onerous. For example, determining whether a valid notification has been given will be dependent on the facts of the case, so it is appropriate, in that instance, to use

"As soon as reasonably practicable."

However, communicating the decision to parties should be possible without delay, so in that instance, the Secretary of State must do so as soon as practicable. I hope that clarifies that for noble Lords.

The Secretary of State already expects to be able to quickly decide to accept or reject notifications in many cases—then inform parties of those decisions—much faster than the five-day working limit proposed. However, I must stress that it is important that there is scope for flexibility in the relatively rare circumstances where more time may be needed. When notifying relevant parties that a notification has been accepted, there may, for example, be multiple, potentially international, parties needing to be contacted whose details are not immediately available.

In some cases, purely as a matter of practicalities, the Secretary of State may need more than five working days to notify a party that their notification has been rejected. Take a notification sent in by letter, from either a UK or a foreign company, without proper contact details and which does not meet the requirement for notification. The Secretary of State would, therefore, be likely to reject it. This may seem trivial, but it may take more than five working days to find the contact details for the notifier to notify them of the rejection. If the letter contained commercially sensitive or personal information, it is particularly important to get that right to make sure that any correspondence from the Secretary of State is not sent to the wrong person. This is just one practical example where it could take longer than five days to notify of an acceptance or a rejection.

Just imagine: the amendments could enable sophisticated hostile actors to game the system. There will be people out there who will want to game this system, if they can, but I am sure that that is in no way the intention of my noble friends.

*4 pm*

Amendment 13 would start the voluntary notification review period on the day a notification is received by the Secretary of State, irrespective of whether it has

been accepted by the Secretary of State that day. This differs from the current drafting, which starts the review period on the day the party submitting the notification is notified of acceptance.

I am happy to assure noble Lords that we expect to confirm acceptance of the vast majority of notifications quickly in order to begin the clock on the review period quickly but, in rare situations, it may take much longer to determine whether a notification is valid, perhaps due to large amounts of information being submitted in an unclear way. It may be deliberately unclear. In that case, if the notification were ultimately accepted, the Secretary of State would have substantially less than the 30 working days that they may need to decide whether to issue a call-in notice, potentially being timed out and forced to clear the acquisition without proper scrutiny. For cases like this, it becomes possible for hostile actors to flood notifications with information to reduce the likelihood of a call-in.

In conclusion, I assure noble Lords that the ISU will be a thinking organisation and not a conveyor belt, as some noble Lords fear. Ministers will be accountable for its operations. There is a real national interest in making sure that the ISU does its job well, and we will do all we can to ensure this. I commend my noble friends and other noble Lords on their efforts to make the new regime more agile but I hope that they understand why we cannot accept the amendments I have addressed in this group, and kindly ask that they withdraw them.

**Baroness Noakes (Con):** My Lords, I thank all noble Lords for taking part in this debate—even the noble Baroness, Lady Bennett of Manor Castle, with whom I never agree. This is a Government trying to take the maximum possible scope for manoeuvre in the Bill because of bad actors out there. We understand that, but we have essentially been pressing practical issues. I was disappointed by what the Minister said, because he gave us lots of extreme outlying examples of where people might be trying to game the system, which I do not quite understand, but little about what the Government will do in practice to address the uncertainty that is feared by the business community, because of a lack of concentration on timeliness will in practice be part of that.

For example, I asked my noble friend the Minister whether there would be a prioritisation or triaging system, so that those transactions that have a great need for speedy resolution can, if possible, be dealt with quickly. I heard nothing on that. I am beginning to wonder whether Ministers have a handle on what the practical arrangements will be within the ISU. My noble friend said that Ministers would be accountable. That is good because if this starts to go wrong, transactions will be caught up, which will end up doing more damage to the UK economy by creating an environment in which no investment comes to us. That would be very damaging. I had hoped that the Minister would go further and say what sorts of practical steps would be taken to increase a focus on timeliness and what the implications would be.

I will not press my amendment to a Division today but, I must say, I do not have the impression that Ministers have a grip on this yet. We accept that the Bill needs to ensure that nothing bad can happen in the area of national security. On the other hand, the Government need to accept that the business community needs much more reassurance than Ministers currently appear willing to give. I beg leave to withdraw.

*Amendment 11 withdrawn.*

*Amendment 12 not moved.*

***Clause 18: Voluntary notification procedure***

*Amendment 13 not moved.*

**The Deputy Speaker (Lord McNicol of West Kilbride) (Lab):** We now come to the group beginning with Amendment 14. Anyone wishing to press this or any other amendment in the group to a Division must make that clear in the debate.

***Clause 30: Financial assistance***

*Amendment 14*

*Moved by* ***Baroness Bennett of Manor Castle***

**14:** Clause 30, page 20, line 3, leave out ", with the consent of the Treasury," and insert "by regulations"

Member's explanatory statement

The amendments to Clause 30 in the name of Baroness Bennett of Manor Castle seek to ensure that Parliament is able to scrutinise financial assistance before the Government is committed to its provision.

**Baroness Bennett of Manor Castle (GP) [V]:** My Lords, I speak to move the linked Amendments 14, 19 and 20, which appear in my name. I must begin by offering my profound thanks to the Public Bill Office for providing the expert legal assistance to deliver a legal framework for the purpose set out in the explanatory statement, which is

"to ensure that Parliament is able to scrutinise financial assistance before the Government is committed to its provision."

Noble Lords will recall that, in Committee, the noble Lord, Lord Hodgson of Astley Abbotts, drew our attention particularly to Clause 30, which provides the Secretary of State with the power to compensate for the consequences of him or her making a final order under Clause 26. I quote the noble Lord from that debate:

"Its wording can best be described as wide, and the Explanatory Notes are not much more helpful."

The noble Baroness, Lady Bowles, said in that debate that,

"if the Government's requirements have caused disaster to befall a company through delay, there should be a mechanism for compensation. However, how that is to operate needs to be made clear."

The noble Baroness, Lady McIntosh of Pickering, asked a good question about

"from which budget the grants, loans and indemnities would come."

I will now disagree with the noble Baroness, Lady Noakes, by proving that it is possible for us to agree, at least occasionally, for I entirely agree with her comment in Committee that

"a Bill about stopping certain transactions could have morphed into one whereby the Government will stuff public money into the pockets of one or more of the parties involved, with almost no explanation."

[Baroness Bennett of Manor Castle]

I conclude my little roundup with the words of the noble Lord, Lord Clement-Jones, who started this debate. He said that

"there is no control over what the Secretary of State does."—[*Official Report*, 16/3/21; cols. 215-20.]

I apologise to your Lordships' House that these amendments appeared late. Given all the discussion in Committee, I was rather hoping that someone with more experience of legislating than me would pick the issue up but, when I saw that that had not happened, I thought that I should at least give the House a chance to find the solution to a problem so clearly identified in Committee. What I am doing is taking the financial compensation—the potentially swingeing payout—from the hands of the Minister and handing it to the best possible democratic control and greatest transparency: that of Parliament.

To run through some of the regular reactions that we hear from Ministers, if the Government say, "This could be better drafted", I would be happy for them to do so. If they say that there should be a lower limit to the sums concerned, that is certainly something to talk about. If they suggest that this would slow the process, I would point to recent times when Parliament has proved able to act very quickly—the events of 30 December 2020 come to mind—if the money is needed and justified.

However, I think that there is clearly greatly increased public concern about the Government handing over money to the private sector; that concern has increased even more since our debate in Committee. In the interests of not being seen as political, I will resist the urge to expound at length on the reasons why there is growing public concern, because I am making a serious attempt here to see if some improvement, clarity or democratic oversight can be provided to the exercise of Clause 30.

Last night, during the Financial Services Bill, we were talking about regulatory capture and, indeed, political capture—a situation in which the Government are often seen to be acting as a wing of, or advocates for, business, rather than as an advocate for the common good. I am not saying at this moment that I will not push this matter to a vote but am not saying that I will. I want to hear the, albeit rather disappointingly short, debate and anyone who might want to question the Minister's response before making a decision on that. I should like there to be some movement, clarity and reassurance on the use of Clause 30. I beg to move.

**Lord Grantchester (Lab):** I thank the noble Baroness, Lady Bennett, for the amendments in this group. We recognise the importance of financial assistance in relation to the regime where it would have financial impacts on businesses, following a final order being made. We understand the public significance of financial assistance and are supportive of there being parliamentary oversight and agreement to that assistance. The issue of how practical it is to undertake that before any final order is made, presumably after close contact with an affected business, is an interesting point that the Minister will address.

The noble Baroness will understand that consideration of regulations is not generally contentious. Nevertheless, her points are well made. Any greater clarity that the Minister can give in the parliamentary process regarding awards made in consequence of government decisions would be helpful. Will all individual cases of those receiving financial assistance be made public? It would be interesting to understand the Government's intentions and the role of Parliament in scrutinising financial assistance.

**Lord Grimstone of Boscobel (Con):** My Lords, perhaps I may extend my thanks to the noble Baroness, Lady Bennett, for the amendments she has tabled. I also welcome to the Chamber one of my supporters, the noble Baroness, Lady McDonagh.

These amendments would remove the requirement for financial assistance to be given with consent from Her Majesty's Treasury. They would require, instead, regulations to be approved by Parliament before financial assistance is given. Amendment 20 would consequently remove the reporting requirement when financial assistance exceeded £100 million in any financial year.

I think it is a sensible check in the context of this regime to set out in the Bill a requirement for the consent of HM Treasury. Parliament has a choice today in the final stages of this Bill on whether to approve the principle that financial assistance should be made available in consequence of the making of final orders. Requiring that an affirmative statutory instrument be laid each time money is proposed to be spent for these purposes would be excessive and possibly cause that principle to be debated each time. Indeed, parliamentary approval for each occasion of spending is likely to be impractical in many circumstances because of the time required. The delay could lead to the UK losing important capabilities that we may have otherwise been able to support while an appropriate acquirer was found.

On accountability, I remind the House that Parliament will already have voted on the spending estimates, and BEIS will need to account against those. The BEIS accounting officer is ultimately responsible for ensuring that budgets are spent in the correct ways. I am therefore unable to accept these amendments.

Finally, and more generally, I know that several of your Lordships are concerned about the seeming opacity of providing financial assistance. Perhaps I may say a few words to explain the provision further. The reporting provisions are intended to ensure that Parliament will be able to see what assistance the Secretary of State is providing, at least on an annual basis, and more frequently if spending rises over £100 million in any relevant period. Your Lordships may also, at any time, ask Questions to the Minister about spending on financial assistance, which will have to be answered in the House. Additionally, HM Treasury will not be forthcoming in its consent to spending unless a strong case is made, and use of the power will be subject to all obligations on using public money.

*4.15 pm*

There are therefore strong checks on this provision that allow for scrutiny and ensure appropriate use of public money. The Government will not be issuing separate guidance on the use of the power to give financial assistance. I hope that I have provided the clarity that your Lordships requested on financial

assistance and, for the reasons I have given, I am, regretfully, unable to accept these amendments. I hope that the noble Baroness will feel able to withdraw or not move them.

**The Deputy Speaker (Lord McNicol of West Kilbride) (Lab):** I have received no requests to speak after the Minister, so I call the noble Baroness, Lady Bennett of Manor Castle.

**Baroness Bennett of Manor Castle (GP) [V]:** My Lords, I thank the noble Lord, Lord Grantchester, for his contribution and the Minister for his response. I particularly note that the noble Lord, Lord Grantchester, shared my concern about the need for greater clarity on the use of Clause 30, his focus on the need for payments to be made public and the need to understand the rationale behind them.

The Minister suggested that there was a problem with the principle being debated each time a payment was proposed. I am not sure that it is necessarily bad that principles should be debated regularly. It was interesting that he said that this proposal would be impractical in many circumstances. I must admit that I find a matter of concern his suggestion that that might be something that happens often. He also said that accountability was through the BEIS accounting officer. However, what we are talking about there is after the fact, and in the depths of a great deal of varied and complex spending.

In his general comments, the Minister said that it was always possible for your Lordships to table Questions in the House but people have to know what is going to happen if they are to have any hope of intercepting it, or at least throwing light on it, before it happens. I am concerned that there will be no separate guidance about the use of the power, which is, as in the nature of the whole Bill, a novel use of government spending.

None the less, although we have not reached where we need to get to, it is clear that I have not found the route to get there, so I beg leave to withdraw the amendment.

*Amendment 14 withdrawn.*

**The Deputy Speaker (Lord McNicol of West Kilbride) (Lab):** We now come to the group beginning with Amendment 15. Anyone wishing to press this or anything else in the group to a Division must make that clear in the debate.

*Amendment 15*

*Moved by* ***Baroness Noakes***

**15:** Clause 30, page 20, line 3, after "may," insert "if he or she considers that there is a risk to national security and"

Member's explanatory statement

This amendment probes whether there could be any circumstances beyond a risk to national security which would result in financial assistance being given under Clause 30.

**Baroness Noakes (Con):** My Lords, I shall move the amendment and speak to Amendments 16 and 17 in my name. I thank my noble friend Lord Hodgson of Astley Abbotts and the noble Lord, Lord Fox, for adding their names. I have also added my name to Amendment 18 in the group, in the name of my noble friend Lord Hodgson of Astley Abbots.

My amendments are probing amendments, following the interesting stand part debate that we held in Committee on Clause 30, which gives the Government extraordinarily wide powers to give financial assistance. The Minister's response in Committee raised as many questions as he answered and we have therefore tabled amendments to gain further enlightenment.

There is no constraint on the ability to provide financial assistance in the Bill, other than that it can be only

"in consequence of the making of a final order".

My noble friend the Minister sought to reassure us that this was

"not a general compensation scheme"

and would be used only in exceptional cases. The Minister said the power

"will only be used in instances where the public interest, particularly national security interests, require it".

Later, he said that

"the nature of national security makes it very hard to predict where some of these issues might arise. However, where they do and where national security is an issue, it is important that the power is there".—[*Official Report*, 16/3/21; cols. 223-26.]

I was puzzled by this. Is national security a necessary condition for the use of the power or not? Our horrible hybrid working practices mean it is not easy to pursue questions in Committee when the Minister gives answers, so I tabled Amendment 15 to explore this further.

Amendment 15 adds to Clause 30(1) the words "if he or she"—that is, the Secretary of State—

"considers that there is a risk to national security",

so that the financial assistance power could be used only if it were necessary on national security grounds. There could easily be other grounds for giving financial assistance—for example, if we had an industrial strategy, which I am definitely not advocating. I do not believe it would be appropriate to allow considerations broader than national security to underpin financial assistance under this Bill. If my noble friend the Minister thinks anything beyond national security could be involved, I suggest he needs to explain to the House what those circumstances could possibly be.

Amendment 16 takes out some words from Clause 30(2) so that financial assistance can be provided only by way of loans, guarantees or indemnities. The current wording allows practically anything under the sun and certainly allows grants and soft money. My noble friend the Minister will know that I am deeply sceptical about giving a Government powers to throw taxpayers' money around. Powers such as these, drafted with good intent, can end up being used as cover for politically expedient expenditure. The best way to stop that happening is not to have the power in statute, as it is too much of a temptation and, even if I trust the current Government to act responsibly, which of course I do, I would not trust Governments of a different party—if we were unlucky enough to experience that again.

Lastly, Amendment 17 says that financial assistance has to be provided on arm's-length terms. I should probably have drafted this in terms only of loans,

[Baroness Noakes]
guarantees or indemnities, as I do not think that subsidies or grants—which I am sure my noble friend the Minister will tell me he needs the power to provide—can ever be on arm's-length terms. I was prompted to table this by what my noble friend the Minister said in Committee:

"For example, if the Government provided a loan, it would normally have to be at market rates."—[*Official Report*, 16/3/21; col. 224.]

I hate weasel words such as "normally" almost as much as I hate throwing taxpayers' money around in non-commercial transactions. I therefore ask my noble friend the Minister to say a little more about the boundary between commercial and non-commercial terms for assistance given under Clause 30. What will drive the use of market rates and, I hope, market terms and conditions? What criteria would be used for abandoning arm's-length terms?

I would have preferred not to have this broad and undefined power sitting on the statute book, because it implies an intent to provide financial assistance. The Government could have relied on the Appropriation Act for genuinely exceptional circumstances. However, if the Government are set upon having the power, Parliament is entitled to some better explanations than we got in Committee of its potential use. I beg to move.

**Lord Hodgson of Astley Abbotts (Con):** My Lords, once again I have the pleasure of flying in the slipstream of my noble friend Lady Noakes. Before I turn to my own Amendment 18, I will say that I entirely support the remarks she made about Amendments 15, 16 and 17, to which I have added my name.

Amendment 18, like my noble friend's, is a probing amendment and seeks to discern the possible financial impact of this Bill on the small battalions. I hope the House will forgive me if I become a little granular and practical about how this clause might work. It can far too easily be assumed that this Bill will impact only on big companies. That is not the case. It has not been the case in the past and certainly will not be the case in future, with the big increase in the number of sectors of the economy falling within the provisions of the statute.

I would like to take the House back to our first day in Committee, when I raised the case of Impcross Ltd. Impcross had been the subject of a reference under the old regime. It was statutory instrument 2019/1490. I am not—repeat, not—going to ask my noble friend to comment on the details of the Impcross case. It would be utterly improper for me to ask, and probably even more improper for him to answer. But I want to use the Impcross case as an example of how drastic an impact the provisions of this Bill could have on smaller companies and their owners.

Impcross is based in Stroud and machines parts for the aerospace industry. Its annual turnover is just shy of £12 million, so it is not a large company but a small one, and one that in the year to 30 June 2019—according to the records at Companies House—made a small operating loss. Significantly, it has a person with significant control. In this case, the accounts reveal that a particular individual owns between 50% and 75% of the company. If you look back through the records, you can see that the individual appears to have been at the company for many years, so it is not fanciful to believe that the company is the result of a lifetime's work and effort and, further, that perhaps the particular individual is now considering his future options, which might involve selling up the company and enjoying the fruits of his labours.

One exceptionally important and helpful aspect of the Bill the Government have brought forward is the establishment of timeframes, which we have already talked about today. We are a bit nervous about how good the timeframes are—we think they may be a bit too flexible for our wishes—but nevertheless there are some there. The Impcross case was referred in early December 2019. It was not until 10 September 2020, nine months later, that Gardner Aerospace, the Chinese-owned potential buyer, withdrew. That cannot have been an easy nine months for all involved, but it serves to underline—if I may say so to my noble friend on the Front Bench—the real importance of sticking to the fixed timetables. Otherwise, the company in the gun sights has a very uncomfortable time indeed.

This does not deal with any potential economic consequences. Let us take the example a little further. If companies are in interesting sectors, they are often sold on a multiple of turnover. Let us say it is two and a half times turnover, which would mean Impcross was worth £30 million. Let us suppose that was the figure that Gardner Aerospace offered, but that when it was refused permission to complete the transaction the next best offer was £27 million, a reduction of 10%; it could well be more. My noble friend the Minister, who has enormous and extensive experience of the City, knows that once an offer has failed to complete, there is always a concern among other buyers that there is something they have not spotted and that there is something wrong that they will need to look at more carefully.

*4.30 pm*

The hard fact is that if this example were to work through in the way I have described, the owners would have lost £3 million as the direct result of the state interfering with their property rights. The probing question posed by my Amendment 18 is whether it is intended that Clause 30 will provide a means to ride to the rescue of individuals who have suffered economic harm or loss as the result of actions taken under this Bill. If Clause 30 is not so designed, what assessment have the Government made of the detrimental impact on investment, particularly early-stage investment, in these 17 critical sectors?

**Lord Clement-Jones (LD):** My Lords, I am again very fortunate in following the noble Baroness, Lady Noakes, and the noble Lord, Lord Hodgson. I have signed Amendment 18 and my noble friend Lord Fox has signed Amendments 15 and 16. I entirely endorse what the noble Baroness and the noble Lord said about the lack of clarity and the important implications of this clause.

In our clause stand part debate in Committee, the Minister, the noble Lord, Lord Grimstone, described the clause as "tightly drawn". Today, he has talked about strong checks on the power, but I would have

thought that it is now abundantly clear from the debates we have had, not only on the previous group of amendments but particularly on this group, that there is insufficient clarity about the operation of the clause. The noble Baroness, Lady Noakes, described the clause as extraordinarily wide, in particular in terms of transparency, the reporting requirement, an inadequate and arbitrary cut-off point, the nature of affected parties who could be compensated, the lack of alternatives to compensation, as mentioned by my noble friend Lord Fox, such as taking an equity stake, and the lack of a specific reference to public interest and national security in the clause. It seems we have to rely on the threat of judicial review rather than the wording of the Bill to ensure that the Secretary of State reasonably considers that the compensation is "necessary and proportionate".

The Minister assured us that the power would be used only "responsibly and respectively"—I am not quite sure what "respectively" means in that context—but that the circumstances were hard to predict. Nothing that has been said so far today has dispelled the opacity, which I know the noble Lord intended to do. It is still extremely cloudy, and that was illustrated by both who have spoken. All this argues for a much tighter framework, such as suggested and probed by these amendments. I hope that the Minister will either take that on board or give pretty clear, detailed assurances about the workings of the clause or, probably even better, separate guidance. I understand from the Minister that that will not be provided, which seems highly regrettable. I hope that the Minister can give much greater detail about the operation of this clause, as required by these amendments.

**Lord Fox (LD):** My Lords, I am grateful that the noble Lord, Lord Grantchester, is arriving back in his place, as I am not intending to speak for very long, so he had better get there swiftly.

This seems to be the other half of the amendments that went with the previous debate, and the group, with the exception of the noble Lord, is mutually exclusive, but it is still around subsidy payment money and what it is. The central question about Clause 30 is: what was in the Government's mind when it was drafted? What is it for? The longer the Minister refuses to be specific in answering that question, the more I am drawn to the supposition that the Government do not know what it is for and that it has been put there as an insurance measure, just in case. Frankly, that is typical of the way this Bill has been written. It has been written as widely as possible to give the department as much leeway as possible in the event of stuff happening, stuff which is as yet undefined or is perhaps undefinable. That is not a good example of what Governments should be bringing to your Lordships' House for approval.

The questions that have been asked very clearly by the previous speakers are important. If the Minister wants to prove that there is some guiding force behind Clause 30, and not just "We'll put it in just in case we need it", which is what it looks like to me, I look forward to hearing his comments.

In speaking to the previous group, the Minister implied that the fact that the Treasury would have a hand on the tiller should give us comfort. If the only comfort we have is that the Treasury will be looking over your shoulder, it does not sound very comfortable. The department should know what this money is for, why it is there and what it is going to be used for. We should not have to rely on the good offices of Her Majesty's Treasury.

**Lord Grantchester (Lab):** I am very grateful to the noble Lord, Lord Fox, for looking after my welfare.

I am grateful to the noble Baroness, Lady Noakes, and the noble Lords, Lord Hodgson and Lord Fox, for pressing further through this group on the scope of Clause 30 concerning financial assistance, how far and in what circumstances financial assistance will be provided to businesses resultant on government decisions, and what the Government have in mind when under Clause 30(2)

"any other kind of financial assistance (actual or contingent)"

could be helpfully provided.

Amendment 18 is important in raising the issue of compensation, which I am sure the Government will continue to resist. Greater clarity will be always be helpful. Does the Minister envisage assistance being given beyond a certain figure? The sum of £100 million is specifically mentioned in the Bill. It seems to us, however, that the scope of the provision in Clause 30 is adequately drawn up.

**Lord Grimstone of Boscobel (Con):** My Lords, I am grateful for the attention that your Lordships have paid to Clause 30 today and in Grand Committee. As we know, the clause enables financial assistance to be given to, or in respect of, entities in consequence of the making of final orders. The key challenge from your Lordships towards this clause has been about transparency and how the system will work. I will do all I can today to cast some further light on this.

First, I shall address Amendment 15, tabled by my noble friends Lady Noakes and Lord Hodgson and the noble Lord, Lord Fox, which would limit financial assistance to situations in which the Secretary of State considered that there was a risk to national security. I am pleased to be able to reassure the House that this Bill already requires that financial assistance may be given only where there is a risk to national security, since it states that financial assistance may be given only when a final order has been imposed. As final orders may be imposed only once a risk to national security has been determined to exist, I am happy to confirm and to reassure noble Lords that a risk to national security is a necessary part of granting financial assistance.

All financial assistance will be further subject to the usual scrutiny and agreement of HM Treasury, as I said in Committee. I may not be completely reassuring to all noble Lords, but I have no doubt that it would be scrutinised thoroughly by HMT. Essentially, the Secretary of State will not be able to hand out money in any way they choose, or, in my noble friend Lady Noakes's phrase, to

"stuff public money into the pockets"—[*Official Report*, 16/3/21; col. 218.]

of companies.

[Lord Grimstone of Boscobel]

Turning to Amendments 16 and 17, tabled by my noble friends Lady Noakes and Lord Hodgson, and the noble Lord, Lord Fox, Amendment 16 would limit the forms of permissible financial assistance to loans, guarantees and indemnities. Amendment 17 would specify that financial assistance would need to be given on "arm's length terms", which might be subject to a degree of interpretation in this context, but I appreciate that both amendments are probing the nature of any financial assistance.

It is important that the Secretary of State has some flexibility in the types of financial assistance that might be given, because there may be circumstances—perhaps unforeseen at the moment—where a form of assistance other than loans, guarantees or indemnities, will be appropriate. It would be most unfortunate if we had tied the Secretary of State's hands so that they could not give such assistance just when it was needed. I assure noble Lords that the Government will be guided entirely by prudence when deciding what form of assistance is appropriate. However, we should not limit financial assistance in the way proposed by the amendments in lieu of a clear case for why this must be done. I am afraid I have not heard that clear case today, although I am very grateful to my noble friends for their points of explanation.

Picking up a point made in Committee, I reassure my noble friend Lady Noakes that financial assistance may be recoverable, depending on the terms set by the Secretary of State. Just as the decision to grant financial assistance will be taken on a case-by-case basis, so the terms of that assistance will be fixed on a case-by-case basis, including whether it should be recoverable. Indeed, I expect that in many circumstances the assistance would be recoverable. All such spending would be made clear in the annual report and in a separate report to the House of Commons if spending exceeded £100 million in any relevant period.

It may be the case that following a final order, only non-recoverable financial assistance would ensure that the UK does not lose capabilities considered important enough for the Secretary of State to intervene to protect them in the first place. If they are important enough to prevent losing them to actors who may do us harm, it should be open to the Secretary of State to decide whether they merit unrecoverable support. If financial assistance is given to a firm, that does not mean, in these circumstances of national security matters, as my noble friend Lord Hodgson said in Committee, that the firm is somehow a wounded bird or has become inherently unattractive. In most circumstances it may just mean that the Government are tiding it over until a more suitable acquirer, which does not pose a risk to national security, is found. To be absolutely clear, the Government do not intend for financial assistance under the NSI regime to be used as a form of back-door subsidy control. Under the Bill, financial assistance may be given only in consequence of a final order—to mitigate the effects of a final order, for example.

Amendment 18 would provide that financial assistance may include compensation given to anyone who suffers economic harm because of actions taken under the Bill. I remind your Lordships that subsection (1) already limits financial assistance to assistance given "to or in respect of an entity in consequence of the making of a final order."

Therefore, even with this amendment, Clause 30 is not a general compensation scheme. It relates only to final orders. Additionally, I have doubts as to whether the amendment would be straightforward to apply. For one thing, it is not entirely clear what would constitute "suffering economic harm" as a result of actions under the Bill. Furthermore, it is not clear how such harm would be assessed, what evidence would be needed or what sort of assistance would be appropriate.

*4.45 pm*

I assure the House that the Government do not intend financial assistance to be a routine part of the final order process. It is intended to be provided only where such assistance is appropriate in the circumstances. Therefore, there will be no formal process to request financial assistance, and the circumstances will depend on the facts of an individual case, so it is vital that there is flexibility in how the decision process on financial support is initiated. For example, an entity may make the Secretary of State aware that they require financial assistance, which the Secretary of State may then consider, or, equally, on receiving advice from other sources, the Secretary of State may proactively offer assistance to an entity.

We believe that the Secretary of State should have flexibility in the types of financial assistance that he or she can provide, and that the Bill is right to specify who can receive financial assistance and for what purpose. I am afraid that, for the reasons I have given, I cannot accept these amendments. I hope noble Lords feel able to withdraw them.

**Baroness Noakes (Con):** My Lords, I thank all noble Lords who have taken part in this debate. I was not expecting many answers from my noble friend the Minister, and I was not disappointed. We can conclude that we have heard nothing that explains this clause any more clearly; it is still opaque. This probably indicates that Ministers do not know how they will be using this power, but they would like it in their back pocket just in case. I am not at all surprised by this being the case.

This will mean that ex post scrutiny and accountability of Ministers' use of this power will become very much more important. Obviously, if there is a large amount—over £100 million—in one year, an ad hoc report will go to the other place. Otherwise, there is the content of the annual report, which will become quite important. There is the BEIS Committee in the other place, which I am sure will have an interest in this, and your Lordships will be aware that this House has recently set up the Industry and Regulators Committee, to which I am pleased to have been appointed. This power, if used, would be the kind of thing that your Lordships' Committee would want to look at, to see how it had been used in practice and whether it had been used prudently, as the Minister has assured us it will be.

I do not think we can take this any further forward today. I beg leave to withdraw my amendment.

*Amendment 15 withdrawn.*

*Amendments 16 to 20 not moved.*

***Clause 32: Offence of completing notifiable acquisition without approval***

*Amendment 21*

*Moved by* ***Lord Grimstone of Boscobel***

**21:** Clause 32, page 21, line 7, leave out paragraph (b)

Member's explanatory statement

See the explanatory statement to the amendment at page 4, line 22.

*Amendment 21 agreed.*

**The Deputy Speaker (Lord McNicol of West Kilbride) (Lab):** We now come to the group beginning with Amendment 22. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

***Clause 53: Procedure for service, etc***

*Amendment 22*

*Moved by* ***Lord Callanan***

**22:** Clause 53, page 33, line 15, after "if" insert "a sender or"

Member's explanatory statement

This amendment clarifies that regulations under Clause 53 may make provision in respect of non-individuals required to give notices and any other documents under the Bill, as well as those in receipt of such documents.

**Lord Callanan (Con):** My Lords, I rise to move Amendment 22 in my name, but with the permission of the House I will also speak to Amendments 23, 25, 27 and 32. I shall begin with Amendments 25, 27 and 32.

A strong theme of debate in Grand Committee, and in the other place, has been whether there is sufficient accountability in the regime—in particular, through the reporting requirements in the annual report. In general, as the House will be aware, the Government's position has been that, as the Secretary of State may add anything judged appropriate to the annual report, there is no need to amend the Bill to include additional reporting requirements. The Government have, however, listened to proposals, including those made through amendments tabled in Grand Committee, and seek to add additional reporting requirements where it is judged that they would provide significant additional value for parliamentarians and the general public.

Amendment 32, in my name, will therefore increase the level of detail provided on final orders in the annual report, so that in addition to their total number being published, the number of orders varied and revoked will also be published. We recognise that final orders will be significant and reflective of government intervention following the call-in of an acquisition. There will already be a duty on the Secretary of State, in Clause 29, to publish notice of the fact that a final order has been made, varied or revoked. It is therefore appropriate that we provide information on the total number of orders varied and the total number of orders revoked. I thank, in particular, my noble friend Lord Lansley for this proposal, and for our discussions on how to improve this Bill prior to, during, and following Grand Committee. His counsel has been much appreciated.

Amendments 25 and 27 address the concern that the requirements on the Secretary of State to decide whether to accept or reject a mandatory notice or voluntary notice are insufficiently specific. As it stands, the Secretary of State must decide

"As soon as reasonably practicable"

after receiving a notification, and thereafter notify parties of his decision as soon as practicable. I set out during Grand Committee that the Secretary of State would strive to ensure that decisions to accept or reject notifications were made quickly. In many cases "as soon as reasonably practicable" is expected to be a very short period indeed, but we do not consider it appropriate to limit the period to a specific number of days, so as to provide scope for flexibility where required. In place of that, the Government propose reporting on the average number of days taken to respond to voluntary notices and mandatory notices. This additional detail will, we believe, ensure that parliamentarians and the wider public will be able to judge whether the Government's expectation that this will be a matter of hours or days is proving correct year on year. Of course, these changes do not preclude the Secretary of State from going further by providing more information than required, where the information provides value to Parliament, and where, in particular, it provides reassurance where there is no time limit expressed in terms of a number of days.

Amendments 22 and 23 are minor amendments. Noble Lords will be aware that Clause 53 provides for regulations to be made setting out the procedure for service of documents under the Bill. These changes are intended to put the scope of the power beyond doubt. A change is proposed in subsection (2)(g), so that it is clear that the regulations may specify what must, or may, be done in relation to service of documents by senders outside the United Kingdom. A corresponding change is then made to paragraph (e), to avoid any doubt that the regulations will be able to set out what must, or may, be done where a sender is not an individual.

I hope that I have made clear the principles on which the Government are approaching the amendments in this group. I beg to move.

**Baroness Noakes (Con):** My Lords, I have a number of amendments in this group, all of which would amend the annual reporting requirements. Some of them overlap with amendments that my noble friend has just spoken to. In particular, my Amendments 26 and 28 are similar to his Amendments 25 and 27. The difference is that my noble friend's amendments ask for the average time to be given, whereas I ask for both the average and the maximum, because averages can be very misleading. However, we shall have some data, and I am sure that those can be used as a springboard for further examination of BEIS Ministers and officials, if either House wished to do that, so I shall not pursue those amendments.

Of my other amendments, Amendment 29 asks for differentiation between call-in notices issued for mandatory and for voluntary notifications. That is not given, and it is quite an important bit of information, which would be useful to enable us to see how important that

[Baroness Noakes]
mandatory notification route turns out to be. The other thing I have asked for is a focus on timing—the time between issuing the call-in notice and getting to the end of the process and giving the final notifications and the final orders. I continue to believe that those areas would be important for keeping an eye on how well the process is operating, especially as there are very long times available once the call-in notice is issued. Again, I am sure that questions can be tabled and Ministers can be interrogated in the usual way, so I am not worried about that. I am glad that my noble friend has moved towards more transparency, although he has perhaps not gone quite as far as I would have preferred.

Although I have not added my name to the amendment in the name of the noble Lord, Lord Grantchester, I think it is important for annual reporting to keep a focus on the resources dedicated to this, because the timing performance will be in part a reflection of whether adequate resources have been dedicated. Of course, giving numbers never gives an idea of the quality of resources, so that can only ever be an imperfect picture, but it is important for Parliament to have an opportunity to review and keep in focus the resources dedicated to the ISU processes. That is where the biggest impact is likely to be felt by businesses as they come up against the system. Well done for bringing in some transparency; a bit more would have been better.

**Baroness Neville-Rolfe (Con):** My Lords, as I noted earlier, the administrative arrangements for consideration of deals referred to BEIS are incredibly important. This is a good Bill, but it must not be undermined by poor implementation, or UK plc will be cast in a bad light. As others have said in Committee, delays create cost and uncertainty, which can jeopardise beneficial takeovers or combinations. Deals in the 17 categories must be reviewed, but this must be done professionally and quickly.

I therefore welcome the Government's amendments, and thank my noble friend the Minister, but I do not think they go far enough. At the least, I feel that he should also accept some or all of Amendments 28 to 31, tabled by my noble friend Lady Noakes—either in the Bill at Third Reading or through a commitment to add to guidance.

I have years of experience of being regulated, by the CMA and other anti-trust and investment authorities round the world, mainly in my former retail role. Good people, and good regulators, are both thorough—I know that has been a cause for concern right across the House—and timely. I can tell noble Lords that authorities use the set timeframes as a defence, and almost never, in my experience, report or publish ahead of the deadlines. So the timelines need to be clear, and, as argued by my noble friends Lady Noakes and Lord Lansley, and the noble Lord, Lord Fox, in the debate on Amendment 11, they need to be tight. They could perhaps also be shorter for smaller or struggling companies, which have more to lose. It would be helpful if my noble friend could have a look at that, if it is not already envisaged that we will take special care with those categories.

It is a worry that we are running out of time for the Bill in this legislative Session. As I have said, I supported the Bill at the start, and I am keen to get it on to the statute book, as I know the Government are as well.

In the light of discussion, I have four questions that probably go slightly wider than the annual report. Perhaps I could ask the Minister to respond either today or before Third Reading. My first question is whether in principle the Minister has the ability to consult on sensible arrangements on timeliness and timelines and put them into statutory guidance or whether a new power is needed, which is rather suggested by my noble friend Lord Leigh's Amendment 36, which we will come on to.

*5 pm*

I would also like to be crystal clear on the maximum timescales normally envisaged for clearance, both for the mandatory notifications, which is my second question, and for the voluntary notifications, which is my third question, which my noble friend Lady Noakes has said we need to put into the report as well. Operators will seek clarity even if they are not required to submit proposals for clearance ex ante.

I would very much appreciate an assurance that material on timelines could in fact be added as a guidance product—that is an unfortunate designation; in my day we used to call it guidance. In his very helpful letter yesterday, the Minister set out his plans for a number of guidance products that would be added. It struck me that this is possibly a way forward, and that it would be possible to give a little more of the assurance that business is seeking in the guidance that is now envisaged by the department. So my fourth question is: is that right?

**Lord Lansley (Con):** I can be brief. I acknowledge with thanks that the Minister has brought forward government amendments that respond both to my Amendment 81 in Committee, about the number of orders varied or revoked and, in part, to what the noble Lord, Lord Grantchester, had to say on Amendment 80 in Committee, including on the time taken to decide whether to accept or reject mandatory and voluntary notifications. I will not rehearse what my noble friend Lady Noakes had to say. Knowing more about the time taken, in addition to what is already intended to be in the annual report, will certainly give us reassurance about these administrative processes, which I think will be very important—especially at the outset, bearing in mind that we start with already potentially five months' worth of relevant transactions that are within the scope of the regime but the legislation has not yet entered into force. Operating rapidly in relation to all those potential notifiable transactions will be really important, even in the first annual report.

**Lord Clement-Jones (LD):** My Lords, I shall speak to the amendments tabled by the Minister, and I thank him for doing so. I shall also speak to those tabled by the noble Baroness, Lady Noakes, and Amendment 34, tabled by the noble Lord, Lord Grantchester, which I have signed and strongly support. The noble Lord, Lord Lansley, has highlighted the extra importance

of transparency in the annual report in these circumstances where we already no doubt have a backlog of potential action.

I thank the Minister for responding to concerns in Committee and in the meantime and for taking us towards greater transparency. While the noble Baroness did not use the expression "half a loaf", since it is perhaps three-quarters of a loaf, it goes some way towards giving us a greater understanding of how effective the regime is, particularly given the Government's desire to keep these rather uncertain timescales that we were talking about in Committee.

In Committee, I hoped to persuade the Government to undertake a regular review of whether the Act was achieving its aims. It seems good practice to make sure that we have the right balance between the investment climate and national security concerns. The Government were unpersuaded by that, but I hope they will take on board the contents of the amendment by the noble Lord, Lord Grantchester, particularly new paragraph (p),

"the impact on levels of foreign investment in the United Kingdom brought about under this Act",

which would be inserted as a requirement in the annual report. Currently, the annual report does not go far enough. Surely, seen in the round, one of the most important factors is the impact of the Bill on foreign investment. Is this not a key indicator that should be included in any annual report? How can we judge how the balance of the Bill's requirements are working? Is foreign direct investment not sufficiently important to be included in the annual report? I hope that the Minister can perhaps explain, if there is no explicit reference to it, why not, and if not, whether there will be a description of how the regime is operating.

Other aspects of the amendment from the noble Lord, Lord Grantchester, are extremely important. The noble Baroness, Lady Noakes, mentioned the average staff resource allocated to the operation of reviews and so on. That resource aspect is going to be very important so that we can see transparently what resource is being devoted. Then there is the whole aspect of SMEs, which potentially could be impacted very heavily. The noble Baroness, Lady Neville-Rolfe, talked about this. I think that is a very important aspect too.

The way that the regime in the Bill impacts is extremely important. The Minister has given us some transparency, but I very much hope that he will accede to further requirements that could be included in the annual report really without very much difficulty.

**Lord Grantchester (Lab):** I welcome the lead amendment in this group from the Government, providing greater clarity to the Clause 53 procedure for service. However, the bulk of the amendments in this group concern Clause 61, on the annual report. I thank all noble Lords who have contributed to this debate.

In commerce, I have always championed annual reports as a strategic publicity document for an organisation, displaying how it is performing, how effective it has been, what results and achievements it has attained and what wider societal responsibilities it has performed. It can be far more than a dry, lumpy statutory document that has to be produced and is a chore to be complied with. I am sure it should be the same for government departments and public agencies.

I am grateful, therefore, for the dialogue since Committee with the Minister and his team regarding this issue. I am very glad that the Government have looked again at Clause 61 and at the material that could be provided in the annual report of this new unit and its operation. I am grateful to the noble Baroness, Lady Noakes, for looking at this and extending the information to be provided to cover both mandatory notifications as well as voluntary notices.

The noble Baroness has also added many more aspects that would provide greater visibility for the activities of the ISU. It is important that the Government are transparent about these areas so businesses can see the impact on their activities and compare experiences. Parliament and the public can monitor the work of the unit and determine the value to national security activities and how far legitimate businesses are being affected. These amendments were all supported by the UK BioIndustry Association. I thank it for the briefings it has sent throughout the Bill.

However, we still believe that there is more that the Government could do to assist the understanding of this new regime. I thank the noble Lord, Lord Clement-Jones, for adding his name to my Amendment 34. Greater transparency could still be given on the resources allocated to the new unit, the extent to which small and medium-sized enterprises are called in under the regime and the Bill's impact on foreign investment. This is about requiring greater accountability from the department on the unit's service standards.

The business community still remains somewhat nervous concerning the impacts on it as a result of the Bill. Throughout its passage, we have sought to champion clarity and support for SMEs and innovative start-ups, which are the engine of growth in the economy, create many new jobs and enhance prosperity. We are keen to foster a business environment in which SMEs can thrive.

It would be beneficial for the Government to report on the unit's work with SMEs in the annual report. This can only be helpful in providing detail and reassurances to SMEs on the operation of the unit and its impacts on them. I would be very grateful if the Minister could provide reassurances that his department will embrace the annual report in a positive manner and provide as wide a range of information as possible.

**Lord Callanan (Con):** My Lords, first, I thank all noble Lords who spoke in this debate, particularly my noble friend Lady Noakes—for her Amendments 26, 28, 29, 30 and 31—and the noble Lords, Lord Grantchester and Lord Clement-Jones, for Amendment 34.

I also thank my noble friend Lady Neville-Rolfe, to whom I will reply first. The Government have written on plans for a range of guidance, as my noble friend said. This is intended to aid parties in understanding and complying with the Bill. Timings and matters of requirements are set out in the legislation; they were consulted on, and of course they cannot be added to in guidance. As in the past, the Constitution Committee advised us quite strongly against legislating through guidance. Of course, we remain open to further proposals for guidance that assists in understanding and complying with the basic provisions in the Bill.

[Lord Callanan]

I move on to Amendments 26 and 28, which seek to require the Secretary of State to report on the "maximum and average time" taken to process mandatory and voluntary notices. These amendments would also require the Secretary of State to report on the "maximum and average time" taken between a notice being accepted and a call-in notice or notification of no further action being given or issued. Clauses 14 and 18 already set out that, if a notification is accepted, the Secretary of State has up to 30 working days to either give a call-in notice or notify each relevant person that no further action will be taken under the Bill.

I outlined in Grand Committee that these timings are a maximum, not a target. I have also set out the principles by which the Government consider it appropriate to specifically amend the Bill to require additional reporting, rather than to judge over time whether it would be beneficial to publish the information. It is already clear in the Bill that the maximum time that can be taken to make a call-in decision is 30 working days.

On the point of including average times, as I hope noble Lords will appreciate, each case will turn on its own facts. Therefore, reporting an average time without explaining the complexities of every individual case would be meaningless, in my view. For example, there may be a low average for some response times where particularly straightforward cases were prevalent—this may be held up as an efficient case review. There may be another period where particularly complex cases are dealt with exceptionally efficiently but none the less slightly more slowly. What would a comparison of the averages without further details on the cases provide? To my mind, it would provide nothing but a misunderstanding.

Amendment 29 seeks to require the Secretary of State to separately report on the number of call-in notices given in response to mandatory and voluntary notifications. I reassure the noble Baroness that the Bill already allows for the Secretary of State to do this in the future if deemed useful. Clause 61 sets out minimum reporting requirements that the Secretary of State must meet in the annual report.

Amendments 30 and 31 seek to require the Secretary of State to report on the "maximum and average time" taken between a call-in notice being issued and the making of a final order as well as the "maximum and average time" taken between a call-in notice being issued and a final notification that no further action will be taken under the Bill. In my view, the same argument applies in response to these amendments.

*5.15 pm*

Finally, Amendment 34 seeks to require the Secretary of State to report the resource allocated to the investment security unit and the extent to which small and medium-sized enterprises are being called in under the new regime, and to review the impact of the NSI regime on foreign investment. It goes without saying that the Government remain the strongest supporter of SMEs and have sought to provide an easily navigable regime for businesses of all sizes to interact with. In fact, one of the tests of our guidance—I set out the details of it in my letter to noble Lords—continues to be whether unadvised owners of small businesses can understand the regime and navigate the requirements just using our guidance. I reassure noble Lords that it is hard-wired into how we think about the future delivery of this regime.

On the matter of resourcing, I am afraid that our answer and argument remain the same: resourcing is an internal matter for the BEIS Permanent Secretary, including average staff numbers. The Government are of course committed to ensuring that this regime is well resourced.

Furthermore, I am aware from the Grand Committee that the noble Lord, Lord Clement-Jones, in particular is concerned about the NSI regime "unduly deterring foreign investment". Our regime is indeed in line with many of our allies' investment screening regimes, therefore we believe that investors will be well used to navigating this kind of regulation.

I am therefore unable to accept the amendments in this group other than those in my name. I hope that noble Lords will feel able not to move theirs and to support those that the Government have brought forward.

*Amendment 22 agreed.*

*Amendment 23 agreed.*

**The Deputy Speaker (Baroness Henig) (Lab):** We now come to the group beginning with Amendment 24. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

### *Clause 61: Annual report*

*Amendment 24*

*Moved by* ***Lord West of Spithead***

**24:** Clause 61, page 36, line 15, at end insert ", except for any confidential annex prepared under subsection (2A)"

**Lord West of Spithead (Lab):** My Lords, I will also speak to my Amendment 33, which is consequential to Amendment 24 and part of it. Both are supported by the noble Lords, Lord Butler of Brockwell, Lord Campbell of Pittenweem and Lord King of Bridgwater—a pretty impressive front row, I think noble Lords will agree. The amendments have general support across the House—I know this from my ex-CDI hat, having gone around and checked. I should make it clear that if the Government are not able to resolve this issue, I intend to test the opinion of the House on these amendments.

In Committee, the question of oversight of the investment security unit was raised—specifically, that the Bill does not allow for any oversight of the sensitive intelligence of its work, and that that oversight should be provided by the Intelligence and Security Committee of Parliament. There are many in this House who have served on the ISC, and who were therefore very concerned—as I was—by some of the misunderstandings about the operation of the ISC put forward by the Minister in Committee and what appeared effectively to be a reneging by the Government on the very clear commitments made to Parliament during the passage of the Justice and Security Act.

I assume that the Government accept that there should be a process for evaluating the national security implications of investment in British companies. That concern was first raised by the ISC. Indeed, the Government have stated that the Bill puts national security concerns at the very heart of the process—so why are those national security concerns which will be at the very heart of the process not to be properly overseen? It would mean the Government avoiding scrutiny of their decisions, and that is precisely what Parliament is here to ensure does not happen.

The Government have said that they expect the intelligence scrutiny to be undertaken by the BEIS Select Committee. With the greatest respect to the BEIS Select Committee, which is eminently qualified to scrutinise the work of BEIS, it cannot provide scrutiny of intelligence, because it cannot have access to all the national security material concerned.

The Minister has argued that the BEIS Select Committee does have access to sensitive material, and I grant that, in theory, that may be the case. The Osmotherly Rules allow the Minister discretion to give Select Committees top secret information. In practice, however, that is not the case. We know that the BEIS Select Committee has not been given any top secret information—sensitive information perhaps, but not top secret information. The reality is that it cannot be given top secret information. The BEIS Select Committee, with its excellent chairman, members and staff, cannot be given top secret material because it does not have the requisite security apparatus in place to do so. The committee's staff do not have the security clearance required to see such material, and the committee does not have the facilities to store or discuss top secret information or have a statutory process to safeguard against the publication of top secret material. Therefore, unless the Government are intending to break their own rules on the handling of top secret material—something that would prompt an ISC inquiry in itself—the BEIS Select Committee cannot provide the scrutiny required. It cannot consider the national security material at the heart of the decision, and therefore the decision itself.

Now that we have established that the BEIS Select Committee cannot in practice be given the top secret material in question, and therefore cannot provide oversight, the question is, who can? Fortunately, the Government and Parliament had the foresight to create a body which can be given top secret material on a regular basis because it does have the requisite security apparatus in place. In 1994, the Intelligence and Security Committee was established expressly to scrutinise the intelligence and security activities of Her Majesty's Government.

The ISC's remit was extended through the Justice and Security Act 2013. Noble Lords will have heard it said during earlier stages in this House that the JSA provides the ISC with oversight of the three intelligence agencies. That is, perhaps, a little misleading. The ISC does not only oversee the agencies: it was established to oversee all intelligence and security matters across Government—or at least that was what Parliament was told.

The long title of the Justice and Security Act is,

"An Act to provide for oversight of the Security Service, the Secret Intelligence Service, the Government Communications Headquarters and other activities relating to intelligence or security matters".

The memorandum of understanding which sits underneath the JSA, and which was expressly agreed by the Prime Minister, says that this means,

"those parts of Departments whose work is directly concerned with intelligence and security matters".

Both Parliament in the JSA, and the Government in the MoU, have already expressly agreed that the ISC has oversight of all intelligence and security matters across Government.

In case there can be any lingering doubt, I draw your attention to the commitment given by the then Security Minister during the passage of the Bill when he said that it was,

"the intention of the Government that the ISC should have oversight of substantively all of central Government's intelligence and security activities to be realised now and in the future".

I trust the Minister has noted the wording there: "now and in the future".

At the time the MOU was written there were seven such organisations, and these are therefore listed in the MOU. The then Security Minister also made it very clear during the passage of the Bill that the MOU was intended to be updated. He told Parliament:

"Things change over time. Departments reorganise. The functions undertaken by a Department one year may be undertaken by another the following year. The intelligence world is no different from any other part of Government ... An MOU is flexible: it can be changed much more easily than primary legislation".—[*Official Report*, Commons, Justice and Security Bill (Lords) Committee 31/1/2013; col. 98.]

Clearly, the Minister's argument that the ISU is not listed in the MoU is irrelevant. That is what the Minister said. His Government have already committed to changing the MOU when necessary in order to ensure the ISC has oversight of all intelligence and security matters. It really could not be any clearer. It is therefore of very grave concern that, despite Parliament's clear intent and the Government's clear commitments, oversight is being expressly denied.

The Minister also said that the ISC does not need to be given oversight expressly because the ISC can scrutinise the public report and can ask for other information about the ISU. Again, I am afraid this misses the point entirely. Of course the ISC can ask for information: we can ask for information from any part of the Government, but that does not mean to say that they will give it to us. By contrast, the organisations listed in the MoU—and therefore within the Committee's remit—are required to provide information to the ISC. This is quite a different proposition, and demonstrates why the ISC should expressly be given oversight.

One last argument that has been put forward is around demarcation. There is concern that the work of BEIS should be overseen by the BEIS Select Committee, and therefore concern that to give the ISC oversight of the work of the ISU would have the ISC parking its tanks on the BEIS Committee's lawn. This is simply not the case. The ISC chairman has already discussed this with the chairman of the BEIS Committee and

[Lord West of Spithead]
they recognise that this issue cannot be overseen by the BEIS Committee and that some accommodation is required.

The ISC already oversees parts of departments that, for the most part, fall to a departmental Select Committee. The OSCT—I think it is now called Homeland Security—in the Home Office is just one such example, and the ISC and HASC have worked harmoniously for some years. I draw the Minister's attention yet again to the commitments already given in this respect. The MoU clearly states that:

"Only the ISC is in a position to scrutinise effectively the work of the Agencies and of those parts of Departments whose work is directly concerned with intelligence and security".

This will not affect the wider scrutiny of departments such as the Home Office, FCO and MoD—ditto BEIS—by other parliamentary committees. It really could not be any clearer and the Government have already recognised that demarcation is not a problem. So, I hope the Minister does not seek to put it forward today as an argument against ISC oversight.

I trust that I have demonstrated thus far why proper oversight is needed, why that can only fall to the ISC, why there is no reason for it not to fall to the ISC, and how the Government have already given commitments previously to Parliament that the ISC will oversee these matters. Now perhaps I might explain the amendment I have laid, with the support of the noble Lords I have mentioned. It seeks to provide this missing oversight and thereby enable the Government to honour their commitment.

Clause 61 mandates the Secretary of State to provide an annual report to Parliament. The information in that report is limited, and obviously will not include any sensitive security information. My amendment to Clause 61 would add two further categories of information to that annual report and provides a mechanism for the Secretary of State to redact any of this information from the public report, should it be deemed damaging to national security. That information must be moved into a classified annexe, understandably, which must then be provided to the ISC, thereby ensuring that if Parliament as a whole cannot scrutinise it—which clearly it cannot because of its classification—the ISC can.

Noble Lords will have noticed that this amendment simplifies the amendment I laid in Committee. The ISC has consistently tried to engage with the Government on this issue, to understand their concerns about our approach, and to try to chart a course through. Despite this, the committee and I remain wholly ignorant of the real reason for the Government's intransigence. The arguments put forth by the Minister in this House in Committee were flawed, I am afraid, as I think I have shown. They cannot therefore be the real reason why the Government appear to be seeking to renege on the commitments given to Parliament during the passage of the Justice and Security Act.

The noble Lord, Lord Butler, has questioned whether there is some deep-seated dislike of the ISC at the heart of Government. Certainly, oversight is not comfortable, but it is not meant to be comfortable. I cannot believe that the Government would prioritise a petty squabble regarding the committee's Russia report or the chairmanship of the committee over the clear commitments that they have given to Parliament. I am sure that cannot be the case, knowing the Minister as I do. We will therefore see the Government, I hope, honour their commitments today.

To show that I am an unusually flexible naval officer, I wish to reiterate the offer I made to the Government in Committee. If our amendment is unacceptable, for some reason that they have not yet told us, then the alternative is to put the Investment Security Unit into the MoU and provide for oversight by the ISC in that way. The MoU was intended to be a living document; it is very simply amended by way of an exchange of letters between the Prime Minister and the committee chairman. Perhaps the Minister was unaware of the simplicity of the mechanism, when he said that putting the Investment Security Unit into the MoU was a "substantial amendment".

The Minister may be unaware that in the work of the Investment Security Unit, the unit which currently takes these decisions is the Investment Security Group in the Cabinet Office, and that is currently overseen by the ISC. Therefore, adding the Investment Security Unit to the MoU is not some radical step but simply preserves the status quo, rather than actively removing it from ISC oversight.

*5.30 pm*

The means by which oversight is provided is less important than the end result. What matters is that Parliament must maintain its sight, and its sovereignty, over a crucial part of national security. Despite the various attempts we have heard to argue that the BEIS Select Committee will provide it, the simple fact is that it is only the ISC which can oversee the national security rationale for decisions made. I repeat the wording that the Government agreed:

"only the ISC is in a position to scrutinise effectively ... those parts of Departments whose work is directly concerned with intelligence and security matters ... This will not affect the wider scrutiny of departments … by other parliamentary committees."

The BEIS Committee will oversee the business element, as is entirely right and proper, and the ISC will oversee the security element and the decision which weighs that security element. Working together, we will therefore ensure that the wide-ranging powers granted under this Bill are exercised as intended.

Security threats are increasing in both number and complexity; we see that all the time. This legislation is part of the Government's response to that, and I am very glad about the overall thrust of the legislation, but the Government must recognise that if they wish to maintain public confidence in their abilities to protect the UK at this challenging time, they cannot dismantle democratic oversight. They cannot renege on the commitment they gave to Parliament about that oversight. I apologise for the length of this, but I feel very strongly about it. I beg to move.

**Lord Campbell of Pittenweem (LD):** My Lords, I was flattered to be included in the front row that my noble friend set out. I have one qualification about it though, and that is that these days, such is the pressure of rugby that the front row is often completely substituted

at half-time. But this is a front row that has not been substituted at half-time. I and the noble Lords, Lord Butler and Lord King, have lasted the pace.

It is not necessary for me to expand in any way upon what were, if I may say so, the most compelling arguments put forward by the noble Lord just a moment or two ago. I acknowledge my interest in these matters, having been a member of the Intelligence and Security Committee for seven years, but I am afraid that I take issue with some of the flavour of the correspondence that has passed between some of us on this matter. The dismissal of the amendments, and the arguments that lie behind them, has been, in my respectful view, cavalier and verging on the insulting. This is a fundamental issue and it demanded a more reasoned set of arguments for simply refusing to accept the amendments that have just been so eloquently proposed.

I will say a word or two repeating to some extent what I said in Committee. When Huawei was first raised it was not raised with the Intelligence and Security Committee, as it ought to have been, but officials sent it to the Secretary of State for Trade and Industry. Had the importance and understanding of the Intelligence and Security Committee been properly recognised perhaps some of the difficulties that ultimately presented themselves with Huawei would have been avoided.

The other point I want to make is slightly self-aggrandising, I suppose, but those who have chosen to be members of the Intelligence and Security Committee are carefully vetted. On some occasions, when the leaders of political parties have made nominations, these have been turned down. It is supposed to reflect those with experience and judgment, who can be relied on to accept the onerous responsibility that membership brings. That involves signing the Official Secrets Act and going through the necessary processes attached to it. I do not understand that the BEIS Committee will be subject to that. Although the Secretary of State may offer classified information, the BEIS Committee will not have the statutory rights, as pointed out so eloquently by the noble Lord who last spoke. I fear this is yet another illustration of how the Government believe that, with a docile majority in the House of Commons, they can, if not ignore what happens in this place, at least enter their opposition in the hope, belief and perhaps the knowledge that if it goes back to the other place the Government's position can be restored.

The last point I want to make is this: what can be more important than issues of national security? What can be more important than ensuring that those charged with oversight are given every opportunity, based on experience and judgment, to consider these issues and reach conclusions? There seems to be no recognition of that in this issue. It is deeply disappointing.

As the noble Lord who introduced the amendment pointed out, there are not only undertakings on the part of the Government but statutory principles to be observed. My submission is that the Government should think again, but they have already said that, irrespective of argument, they will not accept this amendment. They can hardly be surprised, therefore, if those who support it believe that the attitude of the House must now be taken.

**Lord King of Bridgwater (Con) [V]:** My Lords, in supporting the amendment I will first say how disappointed I am to be here at all. As we have gone through the Bill's stages the argument has been very clearly made. I think a mistake was made in the original construction of the Bill and there now seems to be a determination not to repair the one problem that exists.

I say this as somebody who strongly supports the Bill. We need to have powers for the Secretary of State to prevent serious loss and threats to our national security. I note my noble friend Lady Neville-Rolfe's comments, citing some of the pretty valuable businesses that should not have been allowed to go. If wiser counsel had prevailed that could have been prevented. This Bill would have helped that.

The other important thing that the Government have got absolutely right is ensuring that, if we are going to have this Bill and give the Secretary of State these new powers, there has to be proper parliamentary oversight of it. But they either were negligent or perhaps unaware of the important background: there are limitations affecting the operation the BEIS Committee. It is not qualified and will not be able to see any "top secret" information. If anybody on the government side seriously suggests that there could not possibly be any "top secret" information arising in connection with some possible takeover or acquisition, that position is not one they can seriously seek to sustain in a rapidly changing, increasingly technical and pretty dangerous world, as the noble Lord, Lord West, said. This is a pity, because I would like to pay my compliments to the Minister for the way he has handled the Bill. In every other respect it has been a model of parliamentary oversight and the proper review of it.

Referring again to what we now call the front row of the scrum, it seems, if I may say so, that we in your Lordships' House each come from a different background. I, having been Secretary of State for a number of departments and then, for seven years, chairman of the ISC, was able to see this from both sides and saw the importance of there being, in the end, proper oversight of the intelligence agencies and of the intelligence and information that may be coming to them which government Ministers might be relying on.

Somebody has kindly sent me a copy of the letter sent by Jacob Rees-Mogg to Julian Lewis, and I echo something the noble Lords, Lord Campbell and Lord West, said: it is pretty dismissive and merely says that the committee's role should not be on an ad-hoc, Bill-by-Bill basis, and that it would be a significant precedent, providing parliamentary oversight of the UK's intelligence community. Although my noble friend Lord Grimstone paid what may have been a perfectly well-deserved tribute in Committee to the qualities of the BEIS Select Committee, the simple fact is, as my two colleagues have said, it will not be allowed to see any top secret information. It is not cleared for top secret intelligence that comes in, which might, on some occasions, be the key consideration that affects a decision the Secretary of State takes, for which there would then be no parliamentary accountability or oversight.

[Lord King of Bridgwater]

I have some sympathy with the Minister, because there are others who seem to have dug their heels in on this one, but even at this late stage, the argument does not stack up. A sensible decision by the Government would be to include this limited amendment to an otherwise excellent Bill and get on with it. Otherwise, it is a serious gap, and we could well pay the price for it in the future.

**Lord Butler of Brockwell (CB):** My Lords, in my rugby-playing days I played in the back row, and I think I am right in saying that the noble Lord, Lord Campbell, played on the wing. However, I am very happy, in this case, to be in the front row with the noble Lords, Lord West, Lord Campbell and Lord King, even though the rules might say that that is one too many.

This is a very important amendment, and the House and the Government have to take it seriously. The noble Lord, Lord West, has made an irrefutable case for the involvement of the ISC, on the basis of what the Government promised Parliament during the passing of the Justice and Security Act and subsequently, and there really can be no answer to that.

I will come to the role of the ISC in a moment, but first I will draw attention to an oddity of Clause 61 in its present form if the amendment moved by the noble Lord, Lord West, is not accepted. We have been discussing the content of that clause, which stipulates that the Secretary of State must make an annual report to each House of Parliament about the exercise of the powers in the Bill. The clause requires that the annual report should cover details in no less than 12 areas, and the Government are now proposing to add to that. So much detail—but all the details are administrative. The clause in its present form omits the essential matter in which Parliament and the public will be interested: namely, the actual decisions of the Secretary of State and the justification for them—the grounds on which they were made. That is an extraordinary omission, and the first part of the amendment moved by the noble Lord, Lord West, puts it right.

*5.45 pm*

The noble Lord's Amendment 33 requires that, in addition to the matters listed under Clause 61, currently and as it has been expanded today, the annual report must give a summary of the Secretary of State's actual decisions on final orders and notifications, and the reasons for them, in terms of the underlying national security risk assessment. Of course, it is the decisions themselves and the justification for them that Parliament and the public will want to know about, and it is extraordinary that the list of the matters covered in the annual report, in the Bill as it stands, does not include them. I cannot see how the Government can possibly refuse to put that omission right.

The second part of the amendment is the provision for a confidential report to the ISC, when necessary, containing any details considered too sensitive to be included in the published report. In the debate in Committee, the Minister answering made much of the role of the BEIS Select Committee in another place. He pointed out that it could receive classified information, if necessary. I accept that the Select Committee in the other place must be Parliament's principal instrument in scrutinising the Government's use of the powers in the Bill that relate to inward investment. The amendment of the noble Lord, Lord West, provides for a summary of the national risk assessments provided by the Security Service to be published in the annual report, which the BEIS Select Committee will use.

It may be that further unpublished intelligence material can be given to the BEIS Select Committee on a confidential basis, as the Minister suggested in Committee, but, as the noble Lord, Lord West, said today, this misses the point. There is very likely to be relevant intelligence material that is so sensitive that the appropriate body to question the intelligence services about it is the body established by Parliament within the ring of secrecy for that very purpose. Why should the Government rule out a mechanism to provide for that contingency? As the noble Lord, Lord West, said, this is not just a question of security. With the best will in the world, it is not within the competence of the BEIS Committee to establish the validity of intelligence; that is the realm of the ISC.

I remind the House that the amendment of the noble Lord, Lord West, does not require such an annexe in every case, but only in those cases where it is necessary because the underlying information is of such sensitivity that it cannot be published. In that case, the amendment provides that it should be made available to the specialist committee established by Parliament for that purpose, which can then advise Parliament and the BEIS Committee, as appropriate. What can the objection to such a provision possibly be? There can be no valid objection and I urge the Government to accept these necessary and very reasonable amendments. If they do not, the noble Lord, Lord West, has said that he will test the opinion of the House, and I hope that the House will passes the amendments.

**Lord Lansley (Con):** My Lords, I express my support for the amendments presented by the noble Lord, Lord West of Spithead, and his colleagues. Curiously, we seem to have four on the front row, but I am perfectly happy where I am, because I am quite a big chap and used to play left lock, so that will be fine.

Colleagues will recall that I had an amendment in Committee to extend the remit of the Intelligence and Security Committee under the 2013 Act. I think the place we have reached on Report is right; my amendment was unnecessary and might have led to precisely the criticism which my successor bar five as Leader of the House of Commons has put to the chair of that committee—that it is expanding the role of the committee beyond its original statutory function. Jacob Rees-Mogg has expressed this criticism about where we are now, but I am afraid he is plain wrong. That is precisely not what this amendment seeks to do; it seeks to ensure that the Intelligence and Security Committee can fulfil the role it was given in precisely the terms that the noble Lord, Lord West of Spithead, set out in introducing his two amendments. I very much support him.

I fear the noble Lord, Lord Butler of Brockwell, may have hit on why the Government are resisting this; not for the reasons they have expressed, but because it will enable the quality of some of those

decisions to be examined in detail, including with reference to the security risks that must be incorporated into this decision-making. Perhaps they do not wish that to happen, but that is why we have parliamentary oversight and why, in particular, the Intelligence and Security Committee was originally instituted. I was not a Member of the other House at the time it was instituted, but I was director of the Conservative Research Department and my deputy director is now chair of that committee—as my mother would say, as these things go around, they come around. I am very happy to support their role.

I will mention one other thing. He is not with us this afternoon, but in Committee the noble Lord, Lord Janvrin, made an essential point about the Government's argument that the ISC can go after the information it is looking for and make inquiries of whoever. He said:

"I think we would all argue that effective scrutiny leads to better decision-making. The Minister in another place said that there is nothing to stop the ISC calling for evidence on a specific decision. That may be true, but is it practical? It calls to mind Donald Rumsfeld's 'unknown unknowns': how does the ISC know which decisions to examine in detail? I question whether such a hit-or-miss approach to scrutiny would lead to better decision-making."—[*Official Report*, 16/3/21; col. 250.]

We do not want a hit-or-miss approach. Even less, frankly, do we want the ISC to have to go out on fishing expeditions to try to find out on what the intelligence material on which decisions were made was based. I would far rather it was done in a well-constructed manner. I support these amendments for that reason and hope my noble friend, at the very least, will be able to say that the Government will bring back their own amendments at Third Reading to serve this purpose or amend the memorandum of understanding in the right way. If not, I will have to support these amendments this afternoon.

**Lord Fox (LD):** My Lords, the fact that such esteemed Members on all sides of the House have coalesced on this amendment speaks volumes for your Lordships' concern about this issue.

It has been a heavyweight debate, with all due respect to the four amigos who have been speaking. I will now bring it down to earth with a bit of politics. It has been an authoritative debate and, all other things being equal, we would expect and hope that it causes the Minister not just to listen but to act. However, I fear his hands—metaphorically if not actually—are tied behind his back by other things. A couple of previous speakers mentioned the letter from the Lord President of the Council, Leader of the House of Commons, to wit, the right honourable Mr Jacob Rees-Mogg. This seems to indicate the bindings the Minister is currently under.

In this short tome, as we have heard, Mr Rees-Mogg tells the right honourable Dr Julian Lewis MP, who is, as we know, chairman of the ISC, that decisions regarding committees' roles and remits should not be made on an ad hoc, Bill-by-Bill basis, and that there needs to be careful consideration.

I suggest this is a patronising view of the proceedings of your Lordships' House. When have your Lordships' considerations not been careful? The most reckless behaviour I have seen during the course of this Bill has been the Minister's wholesale consumption of sugar-based products, so where is the carelessness that the right honourable Member for North East Somerset speaks of? We should be a little outraged by that suggestion.

This Bill is written by BEIS, and it is understandable that BEIS would want to favour its own Select Committee. I am sure that is how we set out along this route. I think it was the noble Lord, Lord Butler, who said that we have set out in the wrong direction. I feel sure that is what happened. Good governance would be to understand that, take advice and make changes.

It would not be so bad if the BEIS Committee had not been so obviously exposed by the comments we have heard today to be the wrong committee to do the security part of the scrutiny of this very important Bill. It is absolutely clear that it is the wrong committee. If the Minister cannot make or promise changes, I believe he can undertake to accurately reflect both the strength of feeling of your Lordships' House and the facts, rather than the assumption of the facts that appears to be driving the letter that Jacob Rees-Mogg has written.

I ask just one question of the Minister. If the Bill in considered by the Government to be an ad hoc process, what is careful consideration? What does careful consideration look like if it is not the careful scrutiny of legislation?

**Lord Rooker (Lab):** My Lords, they did not do rugby at my secondary technical school, and I am only guesting for my noble friend on the front row for this debate. I will be brief, as I do not want to repeat what was said in this debate or in Committee, when I spoke briefly.

As has already been commented, my noble friend Lord West has made an irrefutable case for the amendment. It is quite clear that there is a serious problem here. No one is arguing with the committee in the other place or wants to devalue or undermine the role of elected Members of Parliament and the departmental Select Committees. They have been an enormous success since they were introduced in, I think, the 1980s and early 1990s. But they have a specific role, which does not cover security matters. Parliament and government decided together to form a different structure for that purpose, which is effectively what we are debating today.

With all due respect, I feel sorry for the Minister, because others are making the decisions on this and he is but their messenger and will give us their message. The fact is that no acceptable, reasonable reason has been given by anybody in government for opposing the procedure envisaged in this amendment: that the Intelligence and Security Committee should have oversight of these decisions. We have no reason for it at all.

The noble Lord, Lord Campbell, referred to the Government's docile majority. We have to be careful about that; we are hoping that docile majority will support your Lordships' House, so in my view they are obviously all very intelligent, alert parliamentarians, putting the interests of the country and their constituents first. It is very important that we take that on board.

The noble Lord, Lord King of Bridgwater, mentioned the cruciality of parliamentary oversight in respect of the committee he once chaired—indeed, he was the

[Lord Rooker]
first chair—and made it clear that the Select Committee in the other place that oversees the department's day-to-day activities cannot possibly have the relevant information put before it in all the cases. One is not arguing that every single case of a takeover or merger will be referred.

The noble Lord, Lord Butler, made the point that of course the principal role of scrutiny of BEIS lies in the Commons with the departmental Select Committee. However, the Government seem to be ruling out the ability for questions to be asked of the security services by opposing the amendment. That cannot be good. He wants to know what the objection is.

*6 pm*

The noble Lord, Lord Lansley, referred to the noble Lord, Lord Janvrin. I was going to refer to him, too, because the brief intervention that I made at the end of Committee on 16 March was to follow up on a point that the noble Lord had made. Perhaps I can get the answer now because I did not get one then and the matter has been sitting there for a month. I simply said to the Minister:

"I have a question for him, based essentially on the speech of the noble Lord, Lord Janvrin, which I do not think he referred to. How could rumours about government action in respect of a private company which may be market-sensitive be dealt with to public satisfaction unless the ISC has oversight? It would not matter if the ISC reports were redacted; Parliament would accept that; the media would accept it."—[*Official Report*, 16/3/21; col. 259.]

However, businesses out there that are involved in this market-sensitive information would also know that it had been examined at the highest possible level in Parliament by the committee that scrutinises the security services and accept the decision. If the matter is left in the other place to the BEIS Select Committee, when it is known that the committee cannot have the top-secret information, all kinds of rumours may fester in the markets, affecting the companies concerned. How do the Government propose in due course to overcome those issues?

We are out to send a message to the House of Commons, which has the last word on everything. I always say to people outside this House that we are simply a massive sub-committee that has the ability to ask the Commons to think again and again—and again, if the matter is a red-line issue. This is a serious warning that I have to give to my parliamentary colleagues in the Commons from serious people of substance. They include a former First Sea Lord and Chief of Naval Staff, and security adviser to the Prime Minister; a former Defence Secretary and Northern Ireland Secretary who has been chair of the ISC; someone who was a successful lawyer and athlete before becoming a party leader, as well as being an ex-member of the ISC; in Committee, a former principal Private Secretary to Her Majesty the Queen and former member of the ISC; and a former head of the Home Civil Service and Cabinet Office who served five Prime Ministers and is an ex-member of the Intelligence and Security Committee. These are the people who have contributed and drafted these amendments. I am not excluding the noble Lord, Lord Lansley, who served with distinction as a member of the Cabinet, but the point is that the jobs that the others did and their roles were absolutely relevant and spot-on.

The key players in the other place, as I see it, are Johnson, Gove and Rees-Mogg. From a political point of view, those are not people of substance. Shallow, mediocre and trivial is the way in which I would sum them up. That is the issue. We have messages here from people who have been at the front line, and we are simply saying to the Commons, "We want you to think again about this, and the reasons we want you to do so have been deployed in this debate." They, the Commons, ought to be asking the Government—and no one has had the answer yet, unless we get it from the Minister—what is the Government's central objection? That is what this is all about and, unless we get an answer from the Minister, I will certainly recommend that my noble friends support my noble friend Lord West in a Division.

**Lord Callanan (Con):** My Lords, perhaps I may start by welcoming back to the Front Bench the noble Lord, Lord Rooker, who is an extremely adequate substitute, if I might say. It is a delight to see him back and fully recovered from injury.

There have been a lot of analogies about rugby and positions in this debate. I did not really play much rugby in my career, which is probably a good thing, but the occasional time that we played at school, I seemed always to be the hooker, which seemed, in the poor quality of rugby that we played, to be the one in the middle of the scrum being kicked by everybody else—somewhat appropriate in this debate.

I thank the noble Lords, Lord West and Lord Butler, for their Amendments 24 and 33, which would require the Secretary of State to provide additional information on regime decisions, either in the annual report, or, where details are too sensitive to publish, in a confidential annexe to the Intelligence and Security Committee. This information would include summaries of decisions to make final orders or to give final notifications, and summaries of the national security assessments provided by the security services in relation to those decisions.

A number of noble Lords have spoken with such passion and knowledge on this important issue, both in this debate and when we previously discussed amendments in this area during Grand Committee. I am particularly grateful—I say this genuinely—to the noble Lords, Lords West and Lord Butler, for their careful consideration of the words used by my colleague my noble friend Lord Grimstone during Grand Committee, and for their continued pursuit of an amendment that attempts to satisfy all parties.

The noble Lords' amendment would effectively require the Secretary of State to include material provided by the security services in a confidential annexe. Of course, the ISC is already able to request such information from the security services as part of its long-established scrutiny of those organisations, as is set out in the Justice and Security Act 2013 and its accompanying memorandum of understanding.

I will directly address the issue raised by the noble Lord, Lord West, and others, about the BEIS Select Committee and its access to sensitive or classified information. The Government maintain their view that there is no barrier to the committee handling

top-secret or other sensitive material, subject to agreement between the department and the chair of the committee on appropriate handling. As part of its role, the BEIS Select Committee can request information, which may include sensitive material, from the Secretary of State for BEIS, including on the investment security unit's use of information provided by the intelligence and security agencies. The Select Committee already provides scrutiny of a number of sensitive areas and there are mechanisms in place for them to scrutinise top-secret information of this kind on a case-by-case basis.

The amendment would also require sensitive details to be provided to the ISC of the Secretary of State's decisions in respect of final notifications given and final orders made, varied, or revoked. As we discussed earlier, the Bill already provides that the Secretary of State must publish details of each final order made, varied, or revoked. The Government have also recognised that providing this information at an aggregate level will be helpful, and Amendment 32 in my name would require the Secretary of State to include the number of final orders varied and revoked in the annual report. Even without Amendment 32, Clause 61 already requires the report to include the number of final orders made. The Secretary of State must also include in his annual report a number of other details pertinent to this amendment. I am confident that this will provide a rich and informed picture of the Government's work to protect our national security from risks arising from qualifying investments and other acquisitions of control.

As I have said before, for further scrutiny, we welcome the fact that we can follow existing appropriate government procedures for reporting back to Parliament, including through responding to the BEIS Select Committee, which does such an excellent job of scrutinising the work of the department. As the Secretary of State for BEIS said on 13 April, during a session of that committee, the NSI Bill "sits within BEIS" and the powers of the Bill sit with the Secretary of State for BEIS.

The chair of the BEIS Select Committee—who, I remind noble Lords, is an Opposition Member of Parliament—supported the view that his committee should scrutinise the investment security unit as part of its oversight of the department. Therefore, it makes sense that, from a governance perspective, the BEIS committee should be the appropriate scrutinising committee.

As this was discussed at length in Grand Committee, I do not wish to try the patience of the House by repeating the assurance that my noble friend Lord Grimstone, the Minister, provided to the House on the ability of the BEIS Select Committee to request and see materials regarding the work of the investment security unit. Therefore, I hope—it is probably more in hope than expectation—that noble Lords will accept my explanation and feel able to withdraw their amendments.

**Lord West of Spithead (Lab):** My Lords, I thank all those who had an input in this debate, particularly those supporters. We almost got a full scrum, with the noble Lord, Lord Lansley, added as well—we had a bit of weight there. We are more second than front row, to be quite honest, but I have now found that the Government Minister is actually a hooker, so we have a bit of front row around. As he rightly says, the hooker gets punched by everyone—I am afraid that that is the way that it is going tonight.

I have considerable sympathy for the Minister: I was in that position when I had to argue for 90 days pre-trial detention. Because I am not really a politician, I had actually already said on the "Today" programme that I thought that this was a very dodgy thing to do—and then I had to stand at the Dispatch Box and argue for it. Lo and behold, I am in *Guinness World Records* for the biggest defeat of the Government since the House ceased being entirely hereditary—so I feel for the Minister.

However, I am afraid I question a couple of the things that he said—for example, the chairman of the BEIS Committee has no objection to my amendment at all, so he was given some wrong information there. I also fear that the Minister has failed to provide an explanation for the Government's intransigence and indeed seems willing to stop Parliament having a mechanism whereby it can scrutinise highly classified intelligence, based on which key decisions are made. To cut it short—I have spoken for far too long—I therefore have no choice but to test the opinion of the House on this key amendment.

*6.12 pm*

*Division on Amendment 24*

*Contents 296; Not-Contents 232.*

*Amendment 24 agreed.*

**Division No. 1**

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Dobbs, L.
Duncan of Springbank, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Eccles of Moulton, B.
Eccles, V.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.

Fall, B.
Farmer, L.
Fellowes of West Stafford, L.
Finkelstein, L.
Fleet, B.
Flight, L.
Fookes, B.
Foster of Oxton, B.
Fox of Buckley, B.
Framlingham, L.
Fraser of Craigmaddie, B.
Freud, L.
Frost, L.
Fullbrook, B.
Gadhia, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garnier, L.
Geddes, L.
Glenarthur, L.
Godson, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Grade of Yarmouth, L.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hailsham, V.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Harris of Peckham, L.
Haselhurst, L.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kalms, L.
Kamall, L.
Keen of Elie, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lang of Monkton, L.
Leigh of Hurley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lucas, L.
Lupton, L.
Mackay of Clashfern, L.
Mancroft, L.
Manzoor, B.
Marland, L.
Maude of Horsham, L.
McColl of Dulwich, L.
McGregor-Smith, B.
McInnes of Kilwinning, L.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Mone, B.
Montrose, D.
Morgan of Cotes, B.
Morris of Bolton, B.
Morrissey, B.
Moylan, L.
Moynihan, L.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Northbrook, L.
Norton of Louth, L.
O'Shaughnessy, L.
Parkinson of Whitley Bay, L.
Patten, L.
Pearson of Rannoch, 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.
Ribeiro, L.
Ridley, V.
Risby, L.
Robathan, L.
Rock, B.
Rose of Monewden, L.
Rotherwick, L.
Saatchi, 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.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Spencer of Alresford, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Strathclyde, L.
Stroud, 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.
Waldegrave of North Hill, L.
Warsi, B.
Wasserman, L.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

*6.24 pm*

*Amendment 25*

*Moved by* ***Lord Grimstone of Boscobel***

**25:** Clause 61, page 36, line 22, at end insert—

"(da) the average number of working days—

(i) from receipt of a mandatory notice to notification of a decision to accept that notice, and

(ii) from receipt of a mandatory notice to giving written reasons for a decision to reject that notice,"

Member's explanatory statement

This amendment adds a reporting requirement to ensure that the average length of time taken to give notification of a decision to accept or reject a mandatory notice is included in the annual report that must be made by the Secretary of State under Clause 61.

*Amendment 25 agreed.*

*Amendment 26 not moved.*

*Amendment 27*

*Moved by* ***Lord Grimstone of Boscobel***

**27:** Clause 61, page 36, line 26, at end insert—

"(ga) the average number of working days—

(i) from receipt of a voluntary notice to notification of a decision to accept that notice, and

(ii) from receipt of a voluntary notice to giving written reasons for a decision to reject that notice,"

Member's explanatory statement

This amendment adds a reporting requirement to ensure that the average length of time taken to give notification of a decision to accept or reject a voluntary notice is included in the annual report that must be made by the Secretary of State under Clause 61.

*Amendment 27 agreed.*

*Amendments 28 to 31 not moved.*

*Amendment 32*

*Moved by* ***Lord Grimstone of Boscobel***

**32:** Clause 61, page 36, line 33, at end insert—

"(m) the number of final orders varied,

(n) the number of final orders revoked."

Member's explanatory statement

This amendment adds a reporting requirement to ensure that the number of final orders varied or revoked is included in the annual report that must be made by the Secretary of State under Clause 61.

*Amendment 32 agreed.*

*Amendment 33*

*Moved by* ***Lord West of Spithead***

**33:** Clause 61, page 36, line 33, at end insert—

"(m) in respect of final notifications given, and final orders made, varied or revoked—

(i) a summary of the decision of the Secretary of State under section 26(1), and

(ii) a summary provided by the Security Services of any national security risk assessment provided under section 26(3)(a)(ii) relating to each decision under section 26(1).

(2A) Where the Secretary of State considers that publication of any information listed in paragraph (2)(m) would be contrary to the interests of national security, those details may be excluded from publication and instead must be included in a confidential annex to the report provided to the Intelligence and Security Committee of Parliament on the same day that the rest of the report is laid before each House of Parliament."

*Amendment 33 agreed.*

*Amendment 34 not moved.*

**The Deputy Speaker (Lord Lexden) (Con):** We now come to Amendments 35 and 36. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

*Amendment 35*

*Moved by* ***Lord Rooker***

**35:** After Clause 61, insert the following new Clause—

"Higher education guidance

(1) Within three months of the day on which this Act is passed, the Secretary of State must publish guidance for the higher education and research sector in relation to provisions in this Act, which includes, but is not limited to—

(a) a clear explanation of asset transactions in respect of which higher education institutions must give notice to the Secretary of State;

(b) how the provisions of the Act affect contract research, consultancy work, and collaborative research and development;

(c) the application of the provisions of the Act to strategic security partnerships and domestic partners.

(2) The Government must consult the higher education and research sector on draft guidance and include feedback in the final publication."

**Lord Rooker (Lab):** My Lords, I beg to move Amendment 35, which was tabled in the name of my noble friend Lord Grantchester.

As my noble friend Lady Hayter said in Committee, there is considerable concern in the higher education and research sectors about the potential impact of the Bill on research partnerships. Organisations have been crying out for clarity. Amendment 35, which I move on behalf of my noble friend—I thank the noble Lords, Lord Lansley and Lord Clement-Jones, for signing it—would require the Government to

"publish guidance for the higher education and research sector",

including

"a clear explanation of asset transactions"

indicating how

"research, consultancy work, and collaborative research and development"

will be affected and how the provisions apply to

"strategic security partnerships and domestic partners."

The amendment would also require the Government to

"consult the higher education and research sector"

in a meaningful way in advance of the guidance. The amendment is therefore about developing guidance and promoting good practice, in that it should be done in co-operation with the sector. I certainly hope that the Government will agree to that.

The Russell group has said that, without clear guidance, a significant proportion of universities' routine engagement with British business could inadvertently be captured by the Bill. I am grateful to the Minister for his engagement on this issue; I understand that there has been an indication that the Government have listened. Without getting ahead of the Minister, when he comes to wind up, will he confirm when the guidance will be published by the Government and how higher education and research institutions will be involved in drafting it? Will a draft of the guidance be published beforehand, for example? How will higher education institutions be highlighted in the critical sectors? Will the guidance include hypothetical scenarios so that people can plan?

Universities want to help to make the Bill work, as we all do; the Bill has enormous support across Parliament. We can all be united in recognising the benefits of businesses working with research institutions, which we want not only to continue to support and allow to flourish but to continue increasing. I beg to move.

**Lord Leigh of Hurley (Con):** My Lords, I thank the Minister, my noble friend Lord Callanan—he is not in his place—for his letter to us regarding guidance products. I was a bit confused by the word "products" but let us let that pass for the moment. The letter tells us about the expert panel, which is welcome; I gather that it has already sat, so that is a good start. I was slightly disappointed not to see any representatives from the insolvency profession on that panel because I think that, when they wake up to it, they will find that this Bill affects them much more than they realise. R3 had already told me that it would like to be on the panel, and no doubt the IPA, after its annual lecture the other week, will be keen to have representations on it. I also hope that the expert panel might include members of the public and practitioners who feel that they can contribute usefully.

*6.30 pm*

To be honest, I welcomed point 9 on market guidance until I read it. It says:

"This will draw on an analysis of patterns or trends in notifications received by the ISU, focusing on where notifications were unnecessary."

I am grateful to my noble friend Lord Lansley for coining the expression that this is "about markets", not "to markets". What one is hoping to see is guidance to the market on the modus operandi of the Bill and the ISU. In its last sentence, Point 9 helpfully says:

"It may also highlight where other guidance has been recently updated."

What we are looking for here—I accept that this is slightly beyond the scope of the amendment, but it is relevant to it—is that guidance will be issued to the market on practical day-to-day matters so that particular sellers of businesses can understand how the system might work.

My noble friend the Minister has already raised, quite rightly, his concerns that he does not want to see buyers gaming the system. One way to avoid that is for

guidance to be issued on what is actually happening and how to avoid that. Questions have arisen, such as if a purchaser is contemplating a bid—as we discussed in earlier sittings—and goes for a clearance to the ISU, will the ISU tell the seller that it has received such a notification from a purchaser, or is that kept confidential from the seller? That is not clear at all. Under the voluntary notification regime, for example, can the seller seek guidance on whether the Secretary of State will not call in the transaction if the selling auction is restricted to, say, UK purchasers? All sorts of helpful guidance might be issued to sellers of businesses, as the noble Lord, Lord Hodgson, said. It is a very fraught and important time, and reducing the number of purchasers in a transaction can have a dramatic effect on the value of the transaction.

As the noble Baroness, Lady Neville-Rolfe, said, we are all anxious that the ISU is properly staffed. I read the impact statement last night to refresh my memory. It talked about 1,830 transactions—based on 2,500 completed last year—which runs to about four a day. Of course, that is just transactions completed. As an M&A advisor, I have to tell noble Lords that, sadly, many more transactions fail than complete. However, many of them will go to the ISU for voluntary notification, thus ramping up the numbers.

The one thing we seek is certainty. To get it, we need consistency. Therefore, if the market guidance explains to the market what has happened in transactions clearly and precisely, consistency can be achieved in the market; that will help transactions to complete smoothly and inward investment not to be deterred.

I very much hope that my noble friend the Minister will consider the amendment that I have put forward in that light, or perhaps write to us afterwards with some further thoughts on it.

**Lord Lansley (Con):** I am very glad to support Amendment 35 in the name of the noble Lord, Lord Grantchester, so ably moved by the noble Lord, Lord Rooker. It follows a debate in Committee led by the noble Baroness, Lady Hayter, which I thought drew out some of the issues for the higher education and research sector very well.

I am really pleased that our noble friends on the Front Bench have responded that they will provide guidance. I was originally looking for what amounted virtually to a safe harbour for higher education and research institutions, which I accept may be a stretch too far, but there is a substantial range of transactions that the higher education sector is concerned may be within scope.

When one looks at the consultation on the scope of the regime and the range of assets that are in scope, one sees that its concern about it is entirely justifiable. What it really comes down to is understanding through guidance and the sort of scenarios that the noble Lord, Lord Rooker, was referring to, how this is actually going to work. One of the central issues is that this is a regime about ownership and control, not about use. I am sorry; I have not given my noble friend notice of this question so if he wants to write to me about it subsequently I will completely understand, but I will take one example, which is non-exclusive licensing.

There are instances, and I think they are reasonably frequent, where the licensing process will allow people the use of an asset but will not allow them control of it, which remains within the higher education institution. It would be really helpful if the Minister were able to say, "Yes, the guidance will cover that and our expectation is that non-exclusive licencing would not be within the likely call-in", not least because if the assets were to be used outside the United Kingdom and by particular persons outside it then, coming back to my earlier point, the export licensing regime would catch that use. The two regimes, working alongside each other, would work in harmony in that sense but would focus on the control and ownership of the technology in question rather than trying to capture all its potential uses.

With that said and with that question asked, I am glad that the Minister was able to give us some guidance —I should not say "guidance about the guidance"—or some expectation of the use of the guidance in the way that we wanted that to happen. I am very glad to support Amendment 35 but hope that, in reiterating that expectation, the Minister will allow this to be withdrawn.

**Lord Clement-Jones (LD):** My Lords, it is a pleasure to speak on this group of amendments because of the progress that has been made. It is also a pleasure to follow the noble Lord, Lord Rooker, in his new Front-Bench incarnation. Long may it last.

On Amendment 35, I declare an interest as chair of the governing body of Queen Mary University. As I said in Committee, although the Bill does not directly reference universities, given the width of the sectors included in the scope of the Bill, it is clear that there is an intention to capture partnership entered into by universities. Elements of the Bill, while introducing measures to protect national security, could have unintended consequences for future investment in UK R&D and could cause BEIS to be overloaded with references from the university sector. That would add to lead-in times and create red tape for both universities and businesses, and that would not be to the benefit of R&D in our universities. I am delighted that the Government have now accepted the case that there is a need for specific guidance for higher education when the trawler of the noble Lords, Lord Grimstone and Lord Callanan, goes by. It is really about the specificity that the noble Lord, Lord Lansley, mentioned; the nature of the guidance needs to be specific.

In Committee the noble Baroness, Lady Bloomfield, assured us that

> "we do not generally expect the acquisition of qualifying assets for exclusive use by UK-based research or higher education institutions to give rise to national security concerns. Indeed, to go further, the use of assets where there is no acquisition of a right or interest resulting in control over a qualifying asset would not even constitute a trigger event".

I hope that kind of thing is going to be spelled out. Similarly, the noble Baroness pointed to the three levels of risk set out in the draft statement on the Secretary of State's call-in power. She said:

> "I am confident that higher education and research institutions will be able to assess their activities and decide in which of these three areas of risk they fall."

[Lord Clement-Jones]
Again, I very much hope that that is spelled out in the guidance. The summary certainly looks quite promising in terms of talking about the scenarios that are going to be outlined. She concluded:

"The Government very much appreciate the Russell group's ideas on inclusion for guidance",—[*Official Report*, 9/3/21; cols. 657-58GC.]

and I very much hope that they will continue to listen. I see that the Russell group is represented on the expert group, and I think that is extremely helpful.

I think we can be much more confident that the Government will turn that appreciation into tangible guidance, but I hope that the Minister will—in the way that the noble Lord, Lord Rooker, mentioned—give further comfort on the nature of the consultation, the timing and with whom it will take place, in respect of that particular set of guidance.

Turning to Amendment 36, I am delighted to follow the noble Lord, Lord Leigh. I declare an interest as a member of the advisory board of the corporate finance faculty of the ICAEW. Of course, it follows that the noble Lord, Lord Leigh, and I have been very carefully following the correspondence between the noble Lord, Lord Callanan, and David Petrie of the ICAEW. Again, I am delighted that the Minister has accepted that the statement about the exercise of the call-in power will not be sufficient for the investment community and that the annual report—and, indeed, the fact sheets mentioned in Committee—is not the best vehicle and that the Government have now committed to issuing market guidance.

But the market guidance notes really must do what they say on the tin. The noble Lord, Lord Leigh, had a slightly veiled criticism of how detailed these were going to be in terms of their use to those who are transacting. This has rather different wording from that applied to higher education. It seems to me that the wording is much more helpful when it talks about scenarios in higher education; this talks about drawing on analysis of patterns or trends in notifications received by the investment security unit. It is all about the notifications; it is not an end-to-end analysis of the trends as regards the Secretary of State's decisions, call-in and so on. There is a great deal more that could be covered. I welcome the flexibility shown by the noble Lord, Lord Callanan, in his letters to the ICAEW, offering to make progress on developing guidance notes. I very much hope that will happen now that the ICAEW is part of that expert group.

I think it might be helpful to put on record significant detailed additions that could be put into the guidance notes. In addition to some of the points made by the noble Lord, Lord Leigh, I suggest that it would be useful to have contained in the market guidance notes details about at what stage in a transaction advisers or companies should contact the ISU, and how sellers seeking to retain control of the process might manage that element of the transaction—although, of course, we know that most of the emphasis is on the acquirer notifying the unit. It might also be useful to have advice for investors on the provisions that could be exercised and the circumstances in which the Secretary of State has declared deals as null and void, and commentary that recognises the need for maintaining competitive tension in an investment or sales process in order to obtain optimum terms from investors or acquirers, in terms of enabling a limited number of final bidders in a trade auction process. These are the sorts of the things that could be envisaged. It could also include advice about mechanisms to prevent bidders submitting vexatious or deliberately incomplete notifications, and advice designed to avoid frequent requests to investors and/or acquirers for additional information.

A market guidance note might be useful when it becomes clear that the Secretary of State is unwilling to permit investment and control in particular subsectors that have been identified. Additionally, I think that the ICAEW has mentioned that a market guidance note specifically for private equity investors would be useful. Of course, publishing these market guidance notes in a timely and regular fashion as circumstances change is really important. Again, on the question of the consultation, I very much hope that the Minister will say who will be consulted and when such market guidance notes might be available—that would be good.

*6.45 pm*

Finally, I welcome the suite of products. I do not like the word "product" either. I think "sets of guidance" is more apposite. I very much hope that those who are affected by the Bill and its provisions when it becomes an Act are not required to read a huge pile of documents. In the case of market guidance notes, for instance, I hope that the notification process is included and that we do not just expect everybody to read 10 documents before they can grasp the requirements under the Act. The same applies to higher education. The approach of rolling in the risk profile of the transactions into the policy statement would be a great deal more helpful than simply expecting people to read individual documents as they go through the process.

**Lord Grimstone of Boscobel (Con):** My Lords, I thank noble Lords for their amendments, which seek to require the provision of guidance. As a former practitioner, I am very pleased with the progress we have made in this area with your Lordships' help. It is an important topic.

Amendment 35 requires that the Secretary of State provides guidance for the higher education and research sector within three months of the Bill passing. This amendment also requires the Government to consult the higher education and research sector on the draft guidance. I thank the noble Lords, across three parties no less, for their amendment. As has been said, this amendment and others encouraged my noble friend Lord Callanan to write to all Peers on Tuesday setting out our intention to publish guidance. I am pleased to be able to commit on the Floor of the House that the Government will provide guidance to the higher education sector within three months of Royal Assent.

I am happy to assure the noble Lord, Lord Rooker, that we are already working with the Russell group and others as part of our expert panel across all guidance. This panel is providing feedback and input to ensure that parties have the utmost clarity and assistance in understanding and complying with the

regime. In this guidance, we will pay care, as the amendment seeks, to the treatment of assets under the regime. I can confirm that the Government will also engage with representatives from the broader research sector as part of this work.

I will just make a few further, brief points. First, I wish to make it clear that asset acquisitions will not be in scope of the mandatory notification regime, so there will be no obligation to notify any asset acquisition. Secondly, as my noble friend Lady Bloomfield set out during Grand Committee, the statement provided for in Clause 3 sets out core areas and core activities to which the Secretary of State is likely to pay closer attention, and the majority of research, consultancy work and collaborative research will fall outside these areas. The guidance we are publishing will provide higher education and research establishments with hypothetical scenarios—effectively case studies—of where acquisitions in the research sector could fall in scope of the regime. It is our aim that the guidance will aid the higher education sector's understanding of where acquisitions in its sector may be in scope and will prevent unnecessary voluntary notifications, which is clearly in everyone's interest.

Thirdly, the amendment makes reference to the application of the provisions of the Bill to security partnerships and domestic partners. I am pleased to clarify that this Bill covers only acquisitions of control over qualifying entities and assets, so does not apply specifically to the formation of partnerships. An acquisition of control by a partnership will be in scope of the regime in the same way as any other acquisition of a qualifying entity or asset by a party but, if there is no acquisition of control, this regime would not apply.

Amendment 36, from my noble friend Lord Leigh of Hurley, would require the Secretary State to provide market guidance notes within six months of the Bill passing and every six months thereafter. Such market guidance notes would provide information to assist with compliance with the regime.

I am pleased to confirm to my noble friend and other noble Lords on the Floor of this House that it is indeed the Government's intention to provide market guidance notes, sometimes known as practice statements or practice notes, and we will draw on the expert panel. The composition of the panel was set out in the letter that noble Lords recently received, and no doubt the composition of the panel can be adjusted over time to make sure the appropriate experts are on it.

These practice statements will be issued periodically and based on an analysis of the notifications received and, of course, feedback on what it would be helpful for them to contain. I believe this guidance will be helpful to advisers in particular. It will refer to and emphasise aspects of the statement where it is clear such emphasis would benefit parties in coming to a judgment about whether to notify. The statement will be published by the Secretary of State on how he expects to exercise his call-in power as provided for by Clause 3. We remain open to considering over time what further information will be helpful to guide parties as part of such market guidance. I have already carefully noted the suggestions noble Lords made today in that respect.

I thank noble Lords for these amendments, and for their discussions with me. The Government have listened and acted as a result of their helpful suggestions, and I have no doubt that the regime will be better understood as a result. I hope I have reassured noble Lords with the commitments I have made in the House today and I therefore ask that they do not press their amendments.

**The Deputy Speaker (Lord Lexden) (Con):** My Lords, I have received a request to speak after the Minister from the noble Baroness, Lady Neville-Rolfe.

**Baroness Neville-Rolfe (Con):** I thank the Minister for what he has said, particularly on education. I am also grateful for the letter sent by the noble Lord, Lord Callanan, which I expressed my appreciation for when speaking on Amendment 22.

My question relates to something said at that time: the suggestion that market guidance to buyers and sellers could not cover timelines, timeliness and the modus operandi. There was a reference to the Constitution Committee apparently making that problematic. Clearly, guidance on such issues is very helpful to operators, so I wondered whether it would be possible to have a little more detail—not now, but later—as to why there is a problem in covering that in guidance. If there is a problem, perhaps the Minister would consider whether we need to take a power, which I think the amendment tabled by my noble friend Lord Leigh provides for. This would ensure that we can give operators the sort of guidance they need to make operations work well, as we all hope.

**Lord Grimstone of Boscobel (Con):** I thank my noble friend for those comments. It certainly seems a bit weird that the Constitution Committee will have a role in this. If I may, I will look into the matter, write to the noble Baroness and put a copy in the Library.

**Lord Lansley (Con):** I wanted to inquire whether my noble friend might write to me about the question of non-exclusive licensing of technology in the higher education sector, as I mentioned earlier.

**Lord Grimstone of Boscobel (Con):** Yes, I am very happy to give my noble friend the assurance that I will write to him on that topic.

**Lord Rooker (Lab):** In the main, the Minister's reply was a model of its kind. I beg leave to withdraw the amendment.

*Amendment 35 withdrawn.*

*Amendments 36 to 38 not moved.*

**The Deputy Speaker (Lord Lexden) (Con):** My Lords, we now come to Amendment 39. Anyone wishing to press this amendment to a Division must make this clear in debate.

***Clause 63: Regulations under this Act***

*Amendment 39*

*Moved by* ***Lord Fox***

**39:** Clause 63, page 37, line 39, at end insert—

"(6) Before making regulations under section 6(1) the Secretary of State must lay before Parliament—

(a) the proposed draft of the regulations, and

(b) a document which explains the proposed draft regulations.

(7) Where a proposed draft of the regulations is laid before Parliament under subsection (6), no draft statutory instrument containing the regulations is to be laid before Parliament until after the expiry of the 30-day period.

(8) The Secretary of State must request a committee of either House whose remit includes industrial strategy, economic affairs, science or technology to report on the proposed draft regulations within the 30-day period.

(9) In preparing a draft statutory instrument containing the regulations, the Secretary of State must take account of—

(a) any representations,

(b) any resolution of either House of Parliament, and

(c) any recommendations of a committee under subsection (8),

made within the 30-day period with regard to the proposed draft regulations.

(10) If, after the 30-day period, the Secretary of State wishes to make regulations in the terms of the proposed draft or revised draft regulations, they must lay before Parliament a statement—

(a) stating whether any representations, resolutions or recommendations were made under subsection (9),

(b) giving details of any representations, resolutions or recommendations so made, and

(c) explaining any changes made in any revised draft of the regulations.

(11) The Secretary of State may make a statutory instrument containing the regulations (whether or not revised) if, after laying a statement under subsection (10), a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament as outlined in subsection (5).

(12) In this section, reference to "the 30-day period" in relation to any draft regulations is to the period of 30 days beginning with the day on which the initial proposed draft regulations were laid before Parliament.

(13) For the purposes of subsection (12) no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days."

Member's explanatory statement

This amendment would introduce the super-affirmative procedure for regulations made under section 6(1).

**Lord Fox (LD):** My Lords, your Lordships will be pleased to know that I will not repeat the entire, long speech that I gave in Committee. The wording of this amendment has not changed between Committee and Report, but there are a few points I want to remind your Lordships of. I am sure the speech is still fresh in noble Lords' minds. To be clear, I will be putting this amendment to a vote at the end of this process.

Under Clause 6, the Secretary of State has great power to make the regulations concerning how the Bill will work. The Secretary of State can specify the description of the qualifying identity for the purpose of identifying a notifiable acquisition. He or she can amend the circumstances in which a notifiable acquisition takes place or does not take place, exempt acquirers with specified characteristics from the mandatory notification regime and make consequential amendments to other provisions in the Bill.

The Minister has represented, as he did in Committee, the proposed use of the affirmative procedure in the Bill as meaningful parliamentary scrutiny. However, the truth is that, from the perspective of these Benches, this means that Clause 6 can be amended by this and any subsequent Government as they please. Parliament cannot amend statutory instruments and, perhaps more importantly, this House has voted down affirmatory statutory instruments just four times in the past 70 years. I refer, as I did last time, because it is important, to the Constitution Committee's 2018 report, *The Legislative Process: The Delegation of Powers*, which states:

"Without a genuine risk of defeat, and no amendment possible, Parliament is doing little more than rubber-stamping the Government's secondary legislation. This is constitutionally unacceptable."

For this reason, affirmative statutory instruments do not constitute meaningful parliamentary scrutiny. This Government—or, I remind the Minister, any subsequent Government—are effectively free to amend the Bill as and when they please. The Minister sort of said this when speaking to the second group of today's amendments.

Regrettably, I do not think Her Majesty's loyal Opposition will roll behind me when this moves to a vote. That is the indication I have been given. I know that the noble Lord, Lord Grantchester, is as up for scrutiny as any man or woman. He likes a bit of scrutiny, and he is possibly not averse to knocking back legislation from time to time. However, his colleagues, particularly those at the other end—who are, even now, trying to measure up ministerial curtains in advance of their march towards power—would not welcome the democratic speed bumps proposed in this amendment, so their reaction, while regrettable in the great scheme of things, can be explained in that way.

Those sitting on the Benches opposite will live to regret not putting in place such measures. Members of their own party are not above adapting powers of Bills to create micromanagement, but we certainly heard enough at Second Reading, from some Members of Her Majesty's Official Opposition, to feel that there are those who will seek to use this as a proxy for interventionist market strategy. I support having a collaborative strategy for national prosperity, but this Bill should not be used to enforce such aspirations.

The super-affirmative procedure in the amendment would provide both Houses with opportunities to comment on proposals for secondary legislation, and to recommend amendments, before orders for affirmative approval are brought in their final form. However, the power to amend the proposed instrument remains with the Minister. The two Houses and their committees can only recommend changes, not make them. So I ask the Minister what there is to fear from that. I beg to move Amendment 39, and I give formal notice that, unless a miracle occurs, I expect to divide the House on this issue.

*7 pm*

**Lord Clement-Jones (LD):** Noble Lords will be relieved to hear that I have very little to add to what my noble friend has just said. The basic fact is that everything we have discussed in the course of our consideration of the Bill could be changed by regulation. If noble Lords do not believe me, they can look at *Policy Statements Regarding Statutory Instruments Required for the Commencement of the NSI Regime*, as updated on 2 March 2021. There are eight extensive areas—my noble friend mentioned a few of them—for

changing the sectors covered. If that is not a massive change, I do not know what is. Changing the trigger thresholds, which we have been debating today, would effectively change the entire mandatory regime. These changes could all radically change the nature of the Bill. Whether or not noble Lords accept the scenarios put forward by my noble friend, that should be a real wake-up call. No primary legislation should be subject to the possibility of change as broad as that. So I support my noble friend's amendment, and I very much hope the Minister will rethink the attitude taken by the Government in Committee to this self-same amendment. The super-affirmative process is a good one; it gives proper deliberation to changes and it is far more democratically accountable.

**Lord Grantchester (Lab):** I am grateful to the noble Lords, Lord Fox and Lord Clement-Jones, for the amendment, which proposes a super-affirmative process for regulations under subsection (1) of Clause 6, "Notifiable acquisitions". This was debated at length in Committee, and we certainly agree that parliamentary scrutiny of regulations is not always as meaningful as it might be. We can feel sympathy with the view that notifiable acquisition regulations are highly significant and require proper oversight, not merely by both Houses of Parliament but also by many experts who might become involved.

The opinions of those experts could be sought and made available to Parliament and deliberated on. The importance of consultations with stakeholders who are knowledgeable and familiar with the situation at the leading edge is also recognised. However, the Delegated Powers and Regulatory Reform Committee did not call for the super-affirmative procedure to be adopted for these regulations under the Bill. Indeed, in its report of 22 February it said that

"there is nothing in the Bill to which we would wish to draw the attention of the House."

It would be unusual to take a view contrary to the considered opinion of that well-respected committee of your Lordships' House.

We remain somewhat sceptical about how the super-affirmative procedure would work in practice, over and above the normal affirmative procedure, in this case, even if custom and practice deemed the process less than ideal in all circumstances. We feel that experience needs to be gained first before undertaking this extra affirmative process. I hope this confirmation of what the noble Lord, Lord Fox, may have heard about our view on his amendment may not greatly startle him.

**Lord Callanan (Con):** My Lords, I of course welcome the amendment from the noble Lords, Lord Fox and Lord Clement-Jones, which seeks further parliamentary scrutiny of Clause 6 regulations, and the opportunity to put forward the Government's case once more. I can spare the noble Lord, Lord Fox, the agony and tell him that, great though my ministerial powers are, I am not a miracle worker and, therefore, probably will not satisfy him.

The Bill as drafted provides for regulations made under Clause 6 to be subject to the affirmative resolution procedure. This amendment would require the Secretary of State to lay a proposed draft of any regulations made under Clause 6 before Parliament for 30 days before the draft regulations themselves are laid and subject to the approval of both Houses. It would also require the Secretary of State to identify a committee to report on the proposed draft regulations and then report on their consideration of the committee's recommendations.

We have, as the noble Lord, Lord Fox, said, previously discussed the importance of regulation under Clause 6, and I thank the noble Lords for their commitment to ensuring meaningful parliamentary scrutiny of the making of such regulations. However, the Government's position remains that the affirmative procedure—or regulations made under Clause 6—ensures such scrutiny by requiring Parliament to approve regulations. In Grand Committee, the noble Lord also highlighted the importance of the Secretary of State maintaining "serious technology foresight" and making any regulations under Clause 6 to protect our national security effectively. I can assure noble Lords that the Government are committed to keeping regulations under constant review to ensure that this regime is effective in protecting our national security and reflects technological changes.

The affirmative procedure will, in addition, provide the Secretary of State with the flexibility to update the mandatory regime quickly should new risks to national security arise. For all these reasons, I ask that the noble Lord withdraw his amendment though, in the absence of the requested miracle, I suspect that he is not going to do so.

**Lord Fox (LD):** I thank the Minister for his response and the noble Lord, Lord Grantchester, for his speech. The Minister is correct: there was no miracle, and there was no surprise. Of course, I was aware that the Secondary Legislation Scrutiny Committee had not recommended opposing this in any way. Sitting through three days in Committee and a day on Report would activate many people who worry about the way in which Governments run their affairs. Therefore, with all due respect to everyone, having been through that process, it would be remiss if someone did not bring an amendment of this kind before your Lordships' House. To that end, I would like to test the mood of the House.

*7.07 pm*

*Division conducted remotely on Amendment 39*

*Contents 118; Not-Contents 255.*

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*7.19 pm*

## Domestic Abuse Bill

*Returned from the Commons*

*The Bill was returned from the Commons with amendments and reasons. The Commons amendments and reasons were ordered to be printed. (HL Bill 191)*

*House adjourned at 7.19 pm.*

# Grand Committee

*Thursday 15 April 2021*

*The Grand Committee met in a hybrid proceeding.*

## Arrangement of Business

*Announcement*

*2.30 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 and 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.

## Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021

*Considered in Grand Committee*

*2.31 pm*

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

That the Grand Committee do consider the Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021.

**The Minister of State, Cabinet Office and the Treasury (Lord Agnew of Oulton) (Con):** My Lords, I beg to move that the regulations, which were laid before the House on 8 March in draft, be approved. This statutory instrument, laid under the European Union (Withdrawal) Act 2018, makes consequential amendments to financial services law and related matters to provide for the safe and effective operation of the market in UK emission allowances as part of the establishment of a UK Emissions Trading Scheme.

At the end of the transition period, the UK ceased to be part of the EU ETS. As of the start of this year the UK has established its own ETS, which has been designed to ensure a consistent price for carbon. This SI was preceded by legislation laid last year under the Climate Change Act 2008 which legally established the UK ETS. In implementing the UK ETS, the Government have drawn on the best of the EU system, which the UK was instrumental in developing. At the same time, however, we are making improvements where needed to ensure greater flexibility, so that this scheme is properly designed for the UK. The new scheme allows for a smooth transition for businesses while reducing our contribution to carbon emissions from day one. Reducing emissions while supporting UK industry is central to the Government's mission to deliver our world-leading net-zero target. The UK ETS is key to achieving that target.

Emissions trading schemes work on the cap and trade principle. This is where a cap is set on the total amount of certain greenhouse gases that can be emitted by installations and aircraft covered by the scheme. Within the cap, participants receive or buy emission allowances which they can trade with one another as needed. This cap is reduced over time, so that overall carbon emissions fall. Participants are required to monitor their emissions during a calendar year and surrender one emissions allowance for every tonne of carbon dioxide equivalent—$CO_2e$—that they have emitted at the end of each reporting year. Thus the ETS is underpinned by the creation of a market for emission allowances. The auctioning and trading of allowances leads to the discovery of a market price for greenhouse gas emissions and will in turn drive cost-effective emissions reductions across our intensive industries, power generation and aviation sectors.

This statutory instrument amends existing financial services legislation so that it works in the context of the creation of a UK ETS. In doing so, it ensures that the Financial Conduct Authority can oversee the auctioning and trading of emission allowances and ensure the soundness and integrity of the market. This instrument is being introduced now so that it is in force in time for the first auctioning of UK emission allowances in May. In particular, this SI establishes the activity of bidding in an emission allowance auction as a "regulated activity" and establishes UK emission allowances as "financial instruments". This means that the FCA has oversight of bidding in allowance auctions and ensures that the allowances themselves are subject to the appropriate regulatory treatment with regard to issues such as market abuse. The instrument also amends financial promotion legislation so that the promotion of investments in UK emission allowances can be undertaken only by persons with the correct permissions.

To properly empower the FCA to oversee the regime, the SI updates rules around the disclosure of confidential information so that the FCA can correctly discharge its functions with regard to the disclosure of information relating to the UK ETS and emissions allowance holdings. It ensures that the FCA has the investigation and enforcement powers to fulfil its duties with regard to preventing financial misconduct in the context of the auctioning and trading of emission allowances.

Finally, this SI amends the UK market abuse regulation so that it covers the primary and secondary market trading of UK emission allowances, and the secondary market trading of EU emission allowances where these activities are within the territorial scope of UK MAR.

This instrument will ensure the integrity of the UK carbon emission allowance market to facilitate ETS carbon pricing policy in the UK. This is integral to the Government's ambitions to encourage cost-effective emissions reductions and, ultimately, achieve our goal of net zero.

*2.36 pm*

**Lord Bourne of Aberystwyth (Con) [V]:** My Lords, I thank my noble friend for that very clear introduction. I recognise his expertise—probably more particularly on the financial side rather than the climate change

[Lord Bourne of Aberystwyth]
side—and I have several questions which I hope he will be able to answer but, if he is unable to bring to bear the relevant expertise, I am quite happy for him to write to me.

I support these regulations; their intention seems quite unexceptional. The Government have established a domestic emissions trading scheme based on our previous expertise and experience in Europe to replace the EU Emissions Trading Scheme—that is the background to this. On Monday, we were discussing accounting obligations placed on the United Kingdom in relation to the existing scheme—or I should perhaps say, in our case, the previously existing scheme—which will of course go on for some time. Although there are remaining accounting obligations, we have clearly left the EU trading system and are now entering into a new system, although some of the furniture of the scheme is clearly familiar from the previous EU scheme.

The approach of the Government, as exemplified by these regulations, is to pursue a domestic ETS rather than a carbon tax, and I applaud that. I welcome the clear emphasis on decarbonisation and towards renewables at the centre of the Government's policy, and that they are favourable towards nuclear too. As I say, these regulations are part of our domestic emissions trading scheme and are clearly designed to provide a smooth transition for effective carbon pricing in the United Kingdom.

My noble friend said, quite correctly, that the scope of the UK ETS includes presently energy-intensive industries and the power generation and aviation sectors, as it did previously and as the EU scheme does. There is clearly an attraction in that linkage but some respondents in the consultation that we undertook favoured extending the ETS to other sectors, and the Government have indicated that they are not unfavourable to looking at that some time in the future. For example, the Climate Change Committee has suggested agriculture and land use. Could my noble friend indicate the Government's willingness to look at an expansion of the scheme, and when that will be? What will inform the discussion and the choice some time in the future? Could he also say whether we will want to talk to—I assume we will—our previous EU partners, our partners in Europe and in other countries, and how we will arrive at that decision? That would be most helpful.

The United Kingdom is committed by law to reducing emissions to net zero by 2050 and the UK ETS is clearly vital in that endeavour. Could my noble friend indicate the level of ambition that the United Kingdom will have in setting the cap for allowances for the UK scheme, as opposed to what our ambition would be if constrained by the European scheme? How will we approach that? Will we be more ambitious and, if so, how much more ambitious than within the EU scheme?

I welcome the structure of the first phase of the UK ETS from 2021 to 2030, which matches the EU ETS phase 4 length. Most consultees similarly welcomed that development. Will my noble friend confirm that it is intended that the United Kingdom's operational approach—I stress "operational approach"—to the ETS will broadly mirror that of the EU scheme, while not precisely, of course? That seems sensible and is the conclusion that I draw from reading around the scheme, but it would be good to have his say-so and expertise on that.

Lastly, I would welcome confirmation from my noble friend, if he is able to give it, that the United Kingdom intends to be a trail-blazer on this area in general. I do not just mean the ETS. I know that the Prime Minister has great ambition in this area, and we are hosting COP 26, obviously. There is a massive opportunity for the United Kingdom here—not just on COP 26, of course, but looking to the future more widely. I mean not just our doing the right thing internationally, although the United Kingdom rightly prides itself on doing so, but in ensuring that we establish a strong green economy with sustainable jobs and prosperity domestically.

*2.41 pm*

**Lord Tunnicliffe (Lab) [V]:** My Lords, I am grateful to the Minister for introducing this statutory instrument, and to the noble Lord, Lord Bourne of Aberystwyth, for his contribution to this short debate. While the instrument is not formally labelled as an EU exit document, it nevertheless deals with one of the many issues arising from our withdrawal from the European Union and its various structures and policies. As the Minister outlined, the instrument makes changes to the UK legal provisions to reflect the fact that we are no longer part of the EU Emissions Trading Scheme. It then puts in place other provisions linked to the auction platform of the new UK Emissions Trading Scheme ahead of its first use later this year.

For some time, industry has sought certainty over the direction of travel on carbon pricing. It had not been clear whether the UK Government would operate a stand-alone ETS, some form of linked scheme, or an alternative approach such as a carbon tax. The decision to launch a UK ETS may have come later in the day than we would have liked, but it is one that we support. Maintaining the cap and trade principle will be important as we seek to reduce emissions in a manner consistent with meeting the 2050 net-zero target. It was not clear that alternative options such as a carbon tax would offer the same benefits as an ETS. In addition, while I will shortly turn to questions of how the UK's scheme will work in practice, I can see that it makes sense to retain an approach that relevant companies are familiar with. However, it is regrettable that the regulations are being brought forward only now. The first auctions may not take place until later this year. It surely would have made more sense for the Government to spell out the detail and establish mechanisms further ahead of time. That would have provided greater clarity and certainty to all involved.

Establishing new markets and trading systems is always difficult, especially if you are to achieve early buy-in from companies, which generally require long lead-in times. I am sure that the Minister will be able to cite examples of engagement with business, but I cannot help observing that last-minute policy-making seems to have become one of the hallmarks of this Administration.

The relative size of the UK ETS when compared with the EU scheme raises a variety of questions. Going it alone also introduces an element of risk.

Indeed, I am sure that the Minister is familiar with the concerns of the Committee on Climate Change, which pointed out potentially significant challenges in achieving market stability and liquidity.

Why has the UK set the auction reserve price at the level it has, when the EU scheme has seen prices rising sharply in recent months? We acknowledge that the auction reserve price is higher than the level initially proposed and are mindful of the need for it to be set at a level that creates a robust market and ultimately drives down emissions. With that in mind, how will the Government keep the price level under review? What importance, if any, will they place on price fluctuations within other emissions trading schemes around the world? Can the Minister provide an update on whether the UK is looking to link its scheme with others, as suggested in the White Paper published in December? Another consideration is the sectoral coverage of the UK ETS. Do the Government see a case for expanding the number of sectors covered by the scheme and, if so, when can we expect to hear more about it? If a decision were to be made this summer to include agriculture, for example, what kind of timescale would we be looking at for implementation?

I realise that many of these questions are better directed at the Department for Business, Energy and Industrial Strategy, so I am happy to wait for an answer in writing. However, in the hope of bringing the focus back to the Treasury, could the Minister comment briefly on the role foreseen for the Financial Conduct Authority? What additional knowledge or resource, if any, does the FCA require to fulfil its new responsibilities? Are the Government confident that this will be in place come the first auction?

*2.47 pm*

**Lord Agnew of Oulton (Con):** I thank both noble Lords for their valuable contributions and questions in this short debate, and for their broad support of carbon pricing and this statutory instrument.

The noble Lord, Lord Tunnicliffe, asked several questions, and I hope to be able to give useful answers. On the timing of the decision to create a UK ETS, it is right that at the moment of leaving the EU and in the transition period we took the time properly to prepare and consider a UK ETS and a carbon tax, given that the chosen mechanism will be crucial to meeting our climate ambitions over the coming decades. There was a full consultation on the structure of the UK ETS; the FCA has already completed a consultation on the rules that it will make, following the legislation being debated today.

On the £22 level of the auction reserve price, I agree with the noble Lord's desire for a strong carbon price signal. The auction reserve price is not the trading price but a floor price. We need to allow sufficient room in this market for price discovery. The EU system does not have a floor, as we saw when prices were extremely low in the years after the financial crisis. We have cut the UK ETS cap by 5% to start with, and I shall consult on a tighter net-zero consistent cap trajectory this year. We would then expect a steadily reducing cap, visible to all participating businesses, to drive higher prices and so reduce emissions over time.

I note that other emissions trading schemes have experienced price volatility. In years one and two of a UK ETS, the cost containment mechanism will have lower price and time triggers, providing a mechanism by which the UK Government can decide whether to intervene sooner, should very high prices occur. We stand ready to use that mechanism if necessary. The risk of price volatility must be balanced with the risk of policy volatility, whereby excessive market intervention would erode policy certainty for businesses. We remain open to linking internationally, but have not made a decision on preferred linking partners. Clearly, ahead of agreeing any link, we will need to consider whether it is in our interests.

The Government said in the energy White Paper that we would explore expanding the UK ETS into the two-thirds of emissions currently uncovered by the scheme. We will set out any plans resulting from this, including on implementation, in advance of COP 26 —which, as the noble Lord will know, is quite soon.

Finally, the noble Lord asked about the role of the FCA. I can assure him that the FCA does not require any additional knowledge or resource to fulfil its new responsibilities. The FCA will continue to oversee the UK ETS in much the same way it oversaw the market for EU emission allowances in the UK when the UK was part of the EU scheme.

My noble friend Lord Bourne asked about the scope of the ETS. As set out in the energy White Paper, we will consider expanding it, as I mentioned. We have initially cut the cap by 5% compared to the equivalent for the UK within the EU ETS. We have committed to introducing a net-zero-consistent cap trajectory and will consult on this later in the year. On the operation of a UK ETS, I can say that the environmental regulators of the four nations of the UK work in close collaboration with the UK Government and devolved Administrations as part of one UK ETS authority. I am happy to write to set out an answer in more detail on that specific question.

My noble friend is right that we want to blaze a trail on decarbonisation. To drive forward progress towards net zero, last year the Prime Minister announced his 10-point plan, which is also part of our mission to level up across the country and will mobilise £12 billion of government investment to create support for up to 250,000 highly skilled green jobs in the UK and spur more than three times as much private sector investment by 2030. At the centre of his blueprint are the UK's industrial heartlands, including the north-east, Yorkshire and the Humber, the West Midlands, Scotland and Wales, which will drive forward the green industrial revolution and build green jobs and industries for the future. This will build on our already impressive progress to date, which has seen the UK decarbonise its economy faster than anyone else in the G20 since 2000, including France and Germany.

This statutory instrument, laid under the European Union (Withdrawal) Act 2018, will make amendments to financial services law to provide for the safe and effective operation of the market in UK emission allowances as part of the UK ETS. The ETS will drive cost-effective emissions reductions across our intensive industries and power generation and aviation sectors.

[Lord Agnew of Oulton]
As such, this legislation will ensure that the UK has a domestic carbon pricing policy that is fit for the net-zero future that we have led the world in committing to. Launching the UK ETS has allowed us the autonomy to pursue our climate goals in the way that works best for the UK. In some areas, we have already taken the opportunity to make the system work better, such as the immediate reduction in the overall size of the pool.

This instrument will ensure the integrity of the market that will underpin our carbon pricing goals and is vital in ensuring that the ETS can function as planned. I commend these draft regulations to the Committee.

*Motion agreed.*

**The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab):** The Grand Committee stands adjourned until 3 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

*2.53 pm*

*Sitting suspended.*

## Arrangement of Business

*Announcement*

*3 pm*

**The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab):** My Lords, the hybrid Grand Committee will now resume. 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. The time limit for this debate is one hour.

## Common Organisation of the Markets in Agricultural Products (Wine) (Amendment, etc.) Regulations 2021

*Considered in Grand Committee*

*3 pm*

*Moved by* ***Lord Gardiner of Kimble***

That the Grand Committee do consider the Common Organisation of the Markets in Agricultural Products (Wine) (Amendment, etc.) Regulations 2021.

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con):** My Lords, this instrument concerns protection of geographical indications in Great Britain. GIs are a form of intellectual property protection for the names of food, drink and agricultural products with qualities attributable to the place they are produced or the traditional methods by which they are made. Wider examples include Scotch whisky, Welsh lamb and Melton Mowbray pork pies. This instrument concerns only wines such as an English regional wine, iconic products such as champagne and Rioja, and corresponding traditional terms: for example, grand cru or sparkling. It contains a necessary amendment to the retained EU regulation which provides the legal basis for the wine geographical indication scheme.

The amendment made by this short and technical instrument corrects an error in the original legislation, identified since the end of the transition period. I express my considerable apology and regret for this. Clearly, one seeks to have all legislation in the perfect form. I can report that this error was identified within the department. We immediately sought to remedy it, hence this instrument has used the "made affirmative" procedure. It ensures that the proper registration and protection of GIs and traditional terms in Great Britain continues and that the UK maintains compliance with its international agreements.

This SI does not make any wider policy changes. It corrects article 107 of retained EU regulation 1308/2013, concerning protected wine names and traditional terms. Three separate exit instruments provided for amendments in relation to this article, but in the process an inadvertent revocation was made of the text that was intended to be in place. This instrument puts the intended provision in place, ensuring that all established wine GIs and traditional terms are fully protected and legitimately appear on a public register of wines and traditional terms. "Established" means those names that were protected under the relevant EU schemes on the last day of the transition period. This in turn ensures that the UK Government fully comply with their GI commitments under the EU withdrawal agreement, and the WTO's TRIPS obligations—the Trade-Related Aspects of Intellectual Property Rights Agreement.

As well as making a direct amendment to a retained EU regulation, the instrument includes a corresponding revocation of domestic secondary legislation. The provision revoked is Regulation 6(3) of SI 2020/1452, one of the previous exit instruments I mentioned. As the provision has been rendered ineffective, it is being removed for clarity.

Since this instrument entered into force on 10 March 2021, the relevant entries in our public GI registers have been updated to show the date of registration as 10 March, rather than 31 December 2020. This change has been made to just over 2,000 records; seven of these are UK names, the rest are predominantly from EU countries. We have engaged with the Food Standards Agency and the network of trading standards authorities, who have confirmed that they are not aware of any wine GI infringements during this period.

We have also engaged with the European Commission and have provided reassurance that we are not aware of any breaches with respect to the affected product names given our checks with the responsible bodies. Furthermore, we have confirmed with the Intellectual Property Office that there have not been any conflicts with trademark applications during the period in question. We have also engaged with the two main UK wine trade bodies, the Wine and Spirit Trade Association and WineGB, and with the Scottish and Welsh Governments. All were appreciative of the quick efforts

we had taken to rectify the error and our engagement with them; they reported no knowledge of any breaches to affected product names. I reassure your Lordships that all product names under the three other GI schemes have not been affected, including spirit drinks and agri-foods, nor are wine GIs and traditional terms which are protected domestically through other international agreements.

As I have outlined, the regulations in this instrument are essential to ensure that the UK and EU wine GIs and traditional terms are appropriately protected in Great Britain, and that we comply with our important international obligations. For those reasons, I beg to move.

*3.06 pm*

**Lord Hannan of Kingsclere (Con):** My Lords, viticulture is one of our great prospects in this country. In the two years leading up to lockdown there was a 35% increase in the number of people employed by the sector. More of our acreage is given over now to the commercial growing of wine than at any time certainly since the dissolution of the monasteries and possibly ever. Wine producers are making a calculated gamble on a warming of temperature in this region. Not only is a lot of Kent, Surrey, Sussex and Hampshire growing as a wine-producing area, but traditional champagne houses are buying up land because they too are able to see the way in which temperature is moving.

As my noble friend the Minister says, this SI deals in effect with an oversight that in itself is a minor issue. What is not a minor issue is the question of geographical indications and how to get them right. One of my neighbours in Hampshire produces an outstanding English sparkling wine—I say outstanding because it wins every blind tasting and is the only foreign sparkling wine served at the George V in Paris; not the only English wine, the only foreign wine—yet he has to get a name for it, a recognised brand, that will allow him to charge what it is intrinsically worth abroad.

We need to be aware of treading the line between consumer protection and accurate information for customers and, if you like, barriers to entry. These classification schemes are often set up deliberately to be a racket. They sometimes have rather amusing anomalies; for example, Stilton cheese can be produced in half a dozen places in the East Midlands, none of which is actually Stilton. It is not in the area allowed to produce that cheese and has to call it something else. Sometimes they are very obviously a racket. The most outstanding example within the wine trade is of course the 1855 Bordeaux classifications, from which you cannot move down. We need a response that is flexible, guards against producer capture and rewards innovation and start-ups.

My noble friend the Minister mentioned the trade bodies. WineGB's chief executive, Simon Robinson, has a nice phrase, saying that our producers will be

"the New World in the Old World",

by which he means that we will replicate the innovative, experimental approach of new world producers, who of course are much less tied to the concept of the appellation contrôlée than the European Union and continental wine producers are.

I hope that the Government will take on board what the industry is calling for, which is that, as we repatriate control, we should not simply replicate EU rules on geographical designations. We should have a UK regime, but it should be very light-touch. What is it that the prayer book says of marriage? We should approach it "reverently, discreetly, advisedly, soberly"—if "soberly" is the right word to use when talking about the wine industry.

I finish on a light note. Did noble Lords know that it can only be called "repartee" if it is said in the Repartée region of France, otherwise it is just sparkling wit?

*3.10 pm*

**Lord Moynihan (Con):** My Lords, it has taken me a while to come to terms with the reality that my noble friend the Minister has taken responsibility for an error in his department—a very rare occasion indeed—but his outstanding speech and excellent explanation of the GIs completely carried the Committee. We fully appreciate the way he has come back to us to give us the background.

I had the privilege of serving on the European Union Committee's sub-committee in 2007 that undertook a detailed analysis of European wine, entitled *A Better Deal for All.* I had the great privilege of working with Lord Plumb at the time. I stand by all the committee's recommendations, many of which are still relevant in the context of a post-Brexit UK, but possibly more relevant to the bureaucrats in Brussels. I am also a long-standing unpaid member of the Haberdashers' Company's wine committee.

These are simple and straightforward regulations and, as my noble friend the Minister said, they clarify a technical error, which is welcome. However, my noble friend's presence at the Dispatch Box on this subject provides the Grand Committee with an opportunity to hear about a key issue during the current round of trade negotiations with wine-producing countries, being ably led by the Secretary of State, Liz Truss, who is doing excellent working securing future arrangements between the UK and a number of countries producing new world wine.

The issue in this context that should concern your Lordships is the future regime for wine import certificates, first in the context of the EU and separately in the context of all wine-producing countries with which we trade. Now that we have left the EU, I can see no national interest in nor justification for the retention of wine import certificates. Freed from unnecessary bureaucracy, the retention of these forms is a cost on the Exchequer and on the industry. In fact, they are no use, so much so that my noble friend the Minister would find it difficult—I would go as far as to say impossible—to name any other bottle of potable alcohol from vodka to rum that requires them. All are well served by standard customs paperwork.

Yet the retention of wine import certificates, which is exclusively a decision for government and Parliament, is to place an onerous and costly process on those merchants and buyers—the restaurants, pubs and bars—that buy a wide selection of wines as their unique selling point and which now have to face the bureaucratic process of obtaining a physical stamp for wine imported,

[Lord Moynihan]
which has no safety benefits and above all no consumer protection advantages. After all, if there were any consumer protection gains, we would have them for imports of every other bottle of alcohol.

With safety and authenticity being guaranteed by the importer, I am a loss to understand why the Government are looking to retain these import certificates. After all, one significant advantage of Brexit consistently argued by the Government with which I was in complete agreement was to ensure a substantial reduction in unnecessary red tape, freeing Parliament to promote freer trade and erasing unnecessary bureaucracy.

I ask my noble friend the Minister just one simple question: why does he of all people—bright, questioning and perceptive as he always is—want to keep VI-1s? What is their benefit? Can it possibly be greater than the bureaucratic costs and processes that they cause? These forms require a physical customs stamp on entry into the UK, duplicating everything that is necessary in normal commercial documentation. They do not address the historical challenge of counterfeited wine since, should there be another Australian scandal, that would not be discoverable on the face of the certificate. Counterfeited wine would be stamped at the customs point, so I cannot see how possible issues of fraud are in any way covered by these certificates.

Possibly this bureaucracy is to be retained to protect English producers, but surely my noble friend the Minister and the Committee would not conceive of resorting to red tape to protect our outstanding English producers, who can succeed on merit and quality even if they currently produce less than half a percent of total wine consumption in the UK. So what do the Government see as the benefit of VI-1s?

A simplified version of the form is good for the European Union, but the answer to that challenge is to welcome the deferred date for the EU introduction, which is now the end of the year, and use that time to introduce digital forms, moving with pace from the CHIEF to the CDS system. That is the least bad outcome with Brussels and is surely acceptable to everybody in the industry. However, importing to the EU is, of course, different from the rest of the world, where surely there is no need for these forms at all. After all, most of the wine imported from Australia is in bulk. While there may be 10,000 or more suppliers in the EU supplying major retailers in the UK, only a handful export from Australia, and the majority do so in bulk.

What can it possibly be that would make the exceptionally popular and able Liz Truss so unpopular in bars and restaurants the length and breadth of the UK, not to mention the dent in popularity of my noble friend the Minister when the Bishops' Bar reopens? The only answer I can come up with is that this is a pawn in an otherwise much larger series of trade negotiations. If so, the Minister will understandably have little to say, particularly in answer to my only question of what is the value of a VI-1 certificate. If that is the case, I totally understand and would not wish to weaken the Government's negotiating position in the trade negotiations under way this year. If I am wrong, then I hope this House will return to the subject in due course and be united in seeking to end this unnecessary and costly bureaucracy—costly to the Government, to the wine industry in the UK and, above all, to the consumers, who will pay the price for the bureaucracy we hoped we had left behind on 31 January 2020.

*3.16 pm*

**Lord Holmes of Richmond (Con) [V]:** My Lords, it is a pleasure to take part in this debate, and to follow my noble friend Lord Moynihan, who, with eloquence and guile, has taken many of my points: I feel none the worse for being a shadow and an echo of much of what he said. Before that though, I welcome these regulations, straightforward but important and correcting, as my noble friend the Minister said, an error as we transpose legislation as a result of the end of the transition period. I shall focus, very much as my noble friend Lord Moynihan did, on the VI-1 forms.

In no sense do I wish to pre-empt the Minister, but I believe that my noble friend Lord Moynihan very effectively answered his own question: there is no purpose or point to VI-1 forms. Has the Minister had an opportunity to look at the *Reducing Friction in International Trade* paper that I alerted him to in the autumn of last year? That concerns a digital solution to this problem, a proof of concept for Australia-to-UK wine imports, not just about customs documentation but about all documentation, linking the digital, the legal, the physical, the health and safety and the viniculture all together through various new technologies, not least distributed ledger technologies, IoT and several other elements. What the proof of concept demonstrated was that we can today, if we so choose, have a real-time, effective digital solution to this issue; yes, with EU-UK trade; yes, with all trade.

It may be worth noting that we are not just an importer of fine wine from continental Europe; we have a stunning importer/exporter wine industry at all levels and at all sections of the wine industry. It is a less well-known but fabulous part of the British economy. Indeed, as my noble friend Lord Hannan correctly identified, we have a growing range of fabulous wine producers, not least across the south coast of England, which is set in only one direction, and that is positive and set for growth. Does the Minister agree that we can work together and bring in a digital solution which would be far more effective than just taking into digital means the unnecessary details currently stored on VI-1 bits of paper? Until then, does he agree that not just until 31 December this year, but well beyond, to eternity, we should not have VI-1 forms in our trade with the EU or the world? They have no purpose; they merely leave UK drinkers with an acrid aftertaste in their mouth. If the forms come back, they will leave drinkers having to swallow increased prices and reduced choice. I know that my noble friend the Minister cannot want that. I very much look forward to his response.

**The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab):** As the noble Baroness, Lady McIntosh of Pickering, has withdrawn, I call the noble Baroness, Lady Parminter.

*3.20 pm*

**Baroness Parminter (LD) [V]:** I thank the Minister for his opening remarks and for agreeing to meet me and the noble Baroness, Lady Hayman, yesterday to discuss this SI, which as he says is a simple one that corrects a technical omission. I thank him for his gracious mea culpa at the beginning; we all make mistakes, but it is important to acknowledge them. As Peers are always busy dealing with SIs, the fewer we have of them in future, the better.

I do not think that the omission does anything to suggest that the Government are not serious in how they treat the issue of GI schemes. I believe that they understand their value, to both consumers and the trade, in delivering benefits to both. I would like the Minister to commend the staff for spotting this error. I think there was a nine-week period during which these regulations could have been exploited so, as I say, they should be commended. During that time, there was no protection for the investment made by companies that have invested in these high-quality products. As other noble Lords have said, those are mainly from Europe, with brands such as champagne and rioja but, as the noble Lord, Lord Hannan, says there is a growing number of English sparkling wines, which we should be and are proud of—not just in Hampshire, I would like to say, but in the neighbouring county of Surrey, where I live.

I have no wish to prolong the debate, but I ask the Minister one question. When we last debated this matter, a number of noble Lords outlined the concerns that they had around the problems that people were having in importing wine from European countries. Can the Minister update us on the situation vis-à-vis imports of European wine into the UK, given that half of all the wine that we import into this country comes from the European Union? Therefore, a problem with the amounts of importing from Europe would be a significant blow to those who enjoy drinking those products.

*3.23 pm*

**Baroness Hayman of Ullock (Lab) [V]:** I also start by thanking the Minister for his very helpful meeting with me and the noble Baroness, Lady Parminter, and for his openness about what has happened and the situation that has arisen. Clearly, as the Minister said, this is a very short instrument because its sole purpose is to reinstate a previously implemented operability amendment to geographical indicators that was inadvertently revoked by another Defra SI. This error has meant that the version of the EU regulation on the statute book following the transition period was technically incorrect, but we thank the Minister and his staff for their explanations yesterday that the impact has been minimal.

As we have already considered this instrument in Committee, and other noble Lords have discussed the wider implications, I also intend to keep my remarks brief. I was pleased to hear in the Minister's opening remarks that he and his department have discussed the situation with both—[*Inaudible*]—and the devolved Administrations. I draw attention to the fact that, during consideration of previous Defra EU exit SIs, we have raised concerns around the possibility of drafting errors and potential for mistakes if Defra continues to favour multiple and sometimes overlapping instruments over one or two larger consolidating texts.

If we turn to Paragraph 7.1 of the Explanatory Memorandum,

"What is being done and why?"

we can see that our concerns have come to fruition in this case. I understand that it is often more complicated when we have so many different pieces of legislation that need to be updated, changed or brought into UK law following our departure from the EU, but it is concerning that mistakes such as this have been able to be made due to the complexity of the many different small pieces of legislation that are being passed.

I join the noble Baroness, Lady Parminter, in giving thanks to the member of staff who spotted this error, as it was extremely fortunate that it was picked up at this early stage. But I hope that the Minister will be able to explain how such an error came to be made. Is the department aware of any similar issues that have arisen in other areas? If so, how many have happened, and are relevant corrections being made? Has the department reviewed how it checks the drafting of often very complex and detailed legislation? We all need to have confidence in government legislation and confusion and avoidable errors are simply not acceptable. I thank the Minister again for his sincere apologies that such a mistake has happened and ask for his reassurance that there will not be any such confusion and reoccurrence in the future.

*3.26 pm*

**Lord Gardiner of Kimble (Con):** My Lords, I thank all noble Lords who have contributed to what has been a very constructive debate. It is clearly essential that we have the right legislation in place for the effective operation of the UK's wine GI scheme, with appropriate product name protections visibly in place.

I enjoyed my noble friend Lord Hannan of Kingsclere's absolute endorsement of viticulture in this country, and if I could trade some counties with my him and the noble Baroness, Lady Parminter, in Suffolk we have some excellent wine production as well. Clearly, the champagne houses are not only buying land in Kent because of climate change but also because the soil structure is very similar to that obviously famous part of France—and that is why there is this commitment. The export of English and Welsh wines, in particular, around the world is an area of expansion and growth, and I am pleased that my noble friend mentioned innovation start-ups, which are really important.

I reiterate to both noble Baronesses my regret that the error has happened, but I would also like to remark upon their thoughtfulness in raising the matter of the official, whom I am not allowed to name, who detected this error. I am very grateful for their generosity. I am aware—as we all are, because we are all engaged in this—of the significant pressures on both policy and legal teams with regard to the SI programme. This was particularly the case in the run-up to the end of the transition. That is why, to pick up the important point raised by the noble Baroness, Lady Hayman, we will continue to review and improve our processes in respect of legal and policy checks and clearances of

[Lord Gardiner of Kimble]
legislation. This will include a consideration as to whether there is enough resource in place. I regret every error; the perfect form is something we strive for, but sometimes these things happen. I will always be up front when they do, but we obviously need to do everything we can to stop these issues manifesting themselves.

My noble friends raised the issue of VI-1s, which already exist for wine imports from other origins, such as Australia, the United States and Chile. These wines remain extremely competitive in our, and, indeed, the EU's, marketplace. We believe the new self-certification requirement to be appropriate and affordable.

I also say to my noble friends, particularly my noble friends Lord Moynihan and Lord Holmes of Richmond, that leaving the EU of course gives us the opportunity to consider and review changes in policy to suit the needs of British people and our businesses. We will continue to monitor all areas of retained EU law, including those concerning wine certification, to ensure that they are fit for purpose. I remember my noble friend Lord Holmes of Richmond raising the electronic transmission of wine certification strongly in debate on the Agriculture Bill. It is possible to transmit by those means and we will consider all aspects of VI-1 processes and their transmission. Our immediate attention has been focused on whether VI-1s serve a practical and useful purpose in today's global wine trade. However, I remember the document and officials are considering this area.

A number of points were also made about the whole scenario of the wine world, including by the noble Baroness, Lady Parminter. The first thing to say is that the United Kingdom is one of the most important global wine-trading nations. The UK is second only to the United States of America in the value of imports. She also raised the point that there were issues, which we have all identified, post the end of the transition with imports and arrival. My understanding is that these matters are improving all the time, as paperwork becomes better understood. A lot of attention has been paid to this and it is improving. It was interesting that imports from France and Italy were down by 10% in 2020, compared to 2019, but imports from Spain were up by 10%. Those are the three countries which have a significant supply issue.

I certainly want to take up the opportunities that my noble friends have raised for exports of our excellent English and Welsh wines. I should also say that we have recently extended the easement where any wines arriving from the EU will not need to have associated wine certification to 1 January 2022. This will provide time for the sector to adjust to the new trading arrangements, including those set out under the UK-EU Trade and Cooperation Agreement.

I agree that there have been these initial problems with exports to certain EU member states. We have a considerable interest in wine exports to the EU, of course, which total about £400 million per annum. This is largely made up of re-exports of imported wine from countries such as Australia, Chile and the United States, and fine wines from all around the world. Those problems are very important not only for our own domestic wine but obviously for this significant re-exporting, which is a key feature and part of the employment aspects of this sector.

We have been working hard with the companies concerned in this area and with their agents, our diplomatic network and member states to resolve the immediate issues, and what can be done to ensure these problems do not reoccur for future shipments. I cannot promise that we are in the perfect form on these matters as yet. What I know is that, across the piece, as exports have been building up since 1 January, these issues have been resolved and trade is starting to re-energise itself—not only because of coronavirus but because of the work we are doing in this sector.

With those comments and, if I may say so, a general endorsement of the opportunities for domestic wine consumption and exports, I recommend that the Committee agrees to these regulations so that we can rectify an error which, thank goodness, was identified by an excellent official. There was no issue with any goods and, from the work we have done, we are clear that there was no issue of any difficulty during those nine weeks. We would of course not have wanted that to arise. I will look at *Hansard* in case there are some points that I may not have covered, but with those remarks I commend the instrument to the Committee.

*Motion agreed.*

**The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab):** The Grand Committee stands adjourned until 4.05 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

*3.35 pm*

*Sitting suspended.*

## Arrangement of Business

*Announcement*

*4.05 pm*

**The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB):** My Lords, the hybrid Grand Committee will now resume. 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 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.

## Plant Health etc. (Fees) (England) (Amendment) Regulations 2021

*Considered in Grand Committee*

*4.05 pm*

*Moved by* ***Lord Gardiner of Kimble***

That the Grand Committee do consider the Plant Health etc. (Fees) (England) (Amendment) Regulations 2021.

*Relevant document: 50th Report from the Secondary Legislation Scrutiny Committee*

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con):** My Lords, this instrument extends the current regime of charging for plant health import checks to apply to checks carried out on consignments from EU member states, Switzerland and Liechtenstein. This is in line with the standard approach that the full cost of service delivery be recovered from businesses using plant health services.

It is our responsibility to protect biosecurity across plant and animal health, and the wider ecosystem. To that end, plant health checks—documentary, identity and physical—are carried out on regulated consignments imported into England from non-EU countries which may carry pests or diseases that could pose a risk to our biosecurity. Currently, the highest-risk commodities are subject to 100% documentary, identity and physical checks. The level of identity and physical checks on other commodities is based on risk.

During our membership of the EU, plants and plant products were able to enter the UK from EU member states without the need for any import checks. However, inspections carried out as part of Defra surveillance programmes have identified instances where EU consignments have contained plant pests or diseases that could pose a threat to UK biosecurity.

To address that threat, and in line with retained law, from 1 January 2021 the existing regime of plant health checks is being extended to consignments of regulated plants, plant products and other objects imported from EU member states, Switzerland and Liechtenstein. Under the agreed phased approach, which allows businesses time to adjust to the new arrangements, higher-risk goods, such as plants for planting, have been subject to documentary, identity and physical checks from January. This has already resulted in a number of interceptions of consignments with pests and diseases, allowing appropriate statutory action to be taken. Documentary checks on other, lower-risk regulated plants, plant products and other objects will commence on 1 January 2022, with identity and physical checks applied from March 2022.

It is UK government policy to charge for many publicly provided goods and services. The standard approach is to set fees to recover the full costs of service delivery. This relieves the general taxpayer of costs, so that they are properly borne by users who benefit from a service. This allows for a more equitable distribution of public resources and enables lower public expenditure and borrowing. Charging for plant health services is consistent with the principle that businesses using these services should bear the costs of any measures to prevent harm that they might otherwise cause by their actions or inactions, since most serious plant pests and diseases that arrive and spread in this country do so via commercial trade in plants and plant produce.

Fees are applied for checks under the Plant Health etc. (Fees) (England) Regulations 2018. For lower-risk consignments eligible for reduced levels of physical checks, a proportionally reduced fee is applied to every imported consignment. This SI amends the 2018 regulations. It extends charging for plant health checks to also apply to checks carried out on consignments from EU member states, Switzerland and Liechtenstein. In addition to ensuring equity with those importing from non-EU countries, it also reflects that exports into the EU are subject to chargeable import checks, so there is a degree of reciprocity.

We have worked closely with individual operators and industry bodies, including the Horticultural Trades Association, Fresh Produce Consortium and the National Farmers' Union on developing our approach to dealing with imports from the EU. To give businesses time to adjust to the new arrangements, the fees for documentary, identity and physical checks on the higher-risk goods, and for documentary checks on other goods, will not be applied until June 2021, despite checks being undertaken since 1 January. Fees for identity and physical checks on the remaining regulated goods from EU member states, Switzerland and Liechtenstein will be applied from March 2022.

Under the 2018 regulations, there is a single combined fee for a documentary and identity check, reflecting the fact that both those checks were previously carried out at 100% on all consignments. From 1 January the frequency of the identity check is linked to that of the physical check as both checks are carried out at the same time. So any reduction in the level of physical inspection will also apply to the identity check. This instrument therefore provides for a separate fee for documentary and identity checks for all consignments. This SI does not make any other changes to existing fees for checks on consignments imported from non-EU countries, other than Switzerland and Liechtenstein.

This SI applies to England only. The vast majority of consignments entering GB from the EU do so via England. The Scottish and Welsh Governments are following the same phased approach in terms of the timetable for inspecting EU consignments and applying fees to recover the cost of those inspections.

This instrument is necessary because it provides for fees to be charged for plant health checks on commodities imported from EU member states, Switzerland and Liechtenstein, thereby providing consistency with imports from the rest of the world, where fees already apply. I beg to move.

*4.12 pm*

**Baroness Redfern (Con) [V]:** My Lords, I speak in support of the draft plant health regulations, which, as my noble friend alluded to, come into force on 1 June 2021 in England, together with similar provisions to be introduced in Scotland and Wales. However, it is important to note that charges are to be phased in for businesses with plant health checks from 1 January 2021. Higher-risk goods will be subject to documentary, identity and physical checks from January 2021, but for other regulated plants and plant products they will be phased through 2021-22, supporting the importance of uninterrupted business trade flow.

As well as applying legislation equally across businesses, whether large or small, the risk is relevant to whatever size of business to clearly demonstrate the importance of biosecurity, which must not be put in jeopardy at any cost. We must note accordingly that assurances are being kept, with the same arrangements post Brexit, again stressing the absolute necessity of seeking at all

[Baroness Redfern]
times to maintain the same high levels of plant health biosecurity, which is vital to ensuring that public health and the environment are fully protected 24/7.

Where consignments are authorised for identity and physical checks there are assurances for all inspectors, who are allocated strong systems for safe working, handling and inspection, with adequate light sources, the ability to fumigate gas testing and, of course, access to toilets and handwashing facilities. This all aligns with safe working practices.

This instrument provides for reasonable action coupled with cost recovery, so it is fair in outcome and maintained in line with existing fees, characterised into the following three principles: maintaining current high levels of plant health, preserving the flow of trade, and minimising any future impacts on businesses, whether large or small. I support the regulations.

*4.14 pm*

**Baroness Ritchie of Downpatrick (Non-Afl) [V]:** My Lords, it is a pleasure to follow the noble Baroness, Lady Redfern. I thank the Minister for his explanation of the regulations. I have some questions for him regarding the operational nature of the regulations and the cost implications.

I fully concur with the Minister and the noble Baroness, Lady Redfern, that plant health and biosecurity are vital, irrespective of our constitutional position and Brexit. I note that the regulations will be phased in alongside other requirements, such as the requirement for importers to have a phytosanitary certificate. What is the timeframe for that phasing-in? Have assessments taken place regarding the operational nature of the regulations during this phasing-in period and, if so, what has been the result of such assessments?

I understand that only high priority plants and products from EU member states, Switzerland and Liechtenstein will be subject to these new requirements initially. I was going to ask the Minister what high priority plants are, but he has already told us that they are plants for planting. Are these all types or plants, or specific plants? How are they defined and will only these categories be subject to the new requirements?

With these regulations, the Government will be enabled to charge fees for plant health checks on imports from the aforementioned countries into England. Has charging already taken place in the intervening period, or will it happen only from 1 June 2021 in relation to the new factor of the post-transition period? What will be the actual cost to businesses and importers, and will there be any financial assistance from central government to mitigate the costs?

I, like other noble Lords, have been contacted by the Agricultural Industries Confederation, which stresses that the new non-tariff barriers and fees will have consequences. It asserts that the ongoing effects of both of these will continue to impact the seed industry, and could reduce choice for growers and increase the cost to consumers. As the implementation of the trade and co-operation agreement continues, the AIC urges the UK and EU to work together to balance the priorities of removing non-tariff barriers where possible, while minimising biosecurity and plant health risks. What reassurances can the Minister give in this regard? What will be the impact on importers? Has there been any assessment of how they will bear those costs, particularly during the pandemic period?

These regulations do not apply to Northern Ireland, because Northern Ireland will be covered by the protocol. But, as an aside to this particular issue, can the Minister provide any update that allows for easier ways to implement phytosanitary veterinary checks with respect to Northern Ireland? I note that the noble Lord, Lord Frost, is meeting his EU counterpart today.

An issue that was raised by the House of Lords Secondary Legislation Scrutiny Committee was the lack of an impact assessment. Perhaps the Minister could comment on the reasons for that. The committee was concerned about the potential impact of new additional costs on businesses and importers, and why this had not been considered worthy of assessment. The committee again raised the issue of costs.

These are some of the issues that I wanted to raise, but I believe and strongly contend that plant health and biosecurity are vital to the local agricultural and horticultural industry.

*4.20 pm*

**Baroness McIntosh of Pickering (Con):** I am delighted to follow the noble Baroness, Lady Ritchie, who was such an effective and distinguished member of the Environment, Food and Rural Affairs Committee in the other place. I thank my noble friend the Minister for introducing the regulations before us today and being so clear about how they will apply. I assume that this is a direct consequence of our leaving the European Union, as we are now being treated as a third country.

I am also grateful to the Agricultural Industries Confederation for its briefing and I have a number of questions—harmless, friendly questions, I hope—for my noble friend in this regard. How does the department expect to work with EU counterparts, both through the European Union and directly with member states, to balance the priorities of removing non-tariff barriers going forward, wherever possible, while minimising biosecurity and plant health risks? I entirely endorse the basis that he set out as to why the regulations are required.

As this is a new regulation, and following the concerns raised in the 50th report of the Secondary Legislation Scrutiny Committee, why did the department decide not to conduct an impact assessment in this case? I am led to believe by the Agricultural Industries Confederation, a trade association representing a UK agrisupply industry that has a farm-gate value of more than £8 billion, that most of the seeds, presumably for agricultural purposes, actually come from the European Union. So the fees to which my noble friend referred, some applying from June this year and some from March next year, will apply for the first time, as they have not been importing in any great measure from the rest of the world. As the noble Baroness, Lady Ritchie, asked, does my noble friend have a ballpark figure as to what the size of the fees, the scale and percentage of the fees on their costs, will be?

I notice that the Explanatory Memorandum clearly states that there was a consultation with the relevant trade bodies, including the National Farmers' Union,

the Horticultural Trades Association and the Fresh Produce Consortium. Was the Agricultural Industries Confederation consulted as part of the preparation for the regulations before us today?

I thank my noble friend and the department for delaying the introduction of the fees, in particular those on imports from the EU, because that indicates that my noble friend and the Government are aware that there will be an impact on the agricultural businesses concerned. I ask those few questions about how wide the consultation was and about the reasons for not undertaking an impact assessment. There is, in fact, quite a major change in that most of the seeds, as I indicated, are imported from the EU and so will not previously have incurred a fee, as not many seeds were imported from the rest of the world. How will my noble friend and his department seek to remove and minimise other potential non-tariff barriers wherever possible?

I also ask, from a personal interest, whether FERA, which was in my constituency for the last five years I was in the other place, has done any work on the consignments that have been identified as having a potential issue. I am full of admiration for the work it does. I realise that its status has changed and that it does some private sector work as well, but it would be good to know that it is still assisting the Government in this regard. With those few remarks, I bid the regulations well.

*4.24 pm*

**Lord Bhatia (Non-Afl) [V]:** My Lords, this SI has been prepared by Defra to amend existing regulations relating to fees for inspections of plant and plant produce imported into the UK from non-EU countries to reflect changes in inspection levels and corresponding fees according to risk profiles. EU law would continue to apply during any implementation period. Therefore, we are amending certain import inspection fees to give effect to changes at EU level.

*4.25 pm*

**Baroness Gardner of Parkes (Con) [V]:** My Lords, I would like a reassurance from the Minister that the challenges that plant growers in the EU and the UK have faced in importing and exporting with the new inspection regime are being addressed by this Government. The matter of the condition of plants is not new to me, as it must be some 40 or perhaps even nearer to 50 years ago that I imported camellias from Australia, my homeland. We had to have a phytosanitary certificate, all soil had to be washed from them and I had to go to the airport and pick them up instantly. As far as I know, they are still going, because I have taken a cutting from each one every time I have moved house. A man with a beautiful collection at a stately home here also took cuttings from those plants.

I understand that the RHS has reported that there are continuing problems with the movement of plants between Europe and the UK, with some even suspending trade with the UK due to the imposition of the new inspection regime. *Amateur Gardening* has even stopped attaching free seed packets on its magazines heading over the Irish Sea, as it would cost £1 million in the necessary health checks and certification. In addition, there is growing concern in the industry about the restriction in the choice of more specialist plants, due to the additional complexity and cost of the new certification and inspection regime. An unintended consequence of this is that some of these plants die before the order reaches these shores, despite the hefty inspection fee proposed by the regulations.

Can the Minister look at what can be done to make the process easier and quicker while also trying to keep down costs, which are ultimately passed on to the consumer in higher costs and may lead to much less choice now and in future?

*4.28 pm*

**Baroness Bakewell of Hardington Mandeville (LD):** My Lords, I thank the Minister and his officials for their time in providing a briefing yesterday morning, and for his introduction this afternoon. This is a fairly straightforward SI, which attempts to level up the playing field around importation of plant and plant products into the UK from across a wide spectrum of countries. It uses the same fee-charging basis to countries inside the EU, Switzerland and Liechtenstein, as currently applies to the rest of the world. As I understand it the fees may change slightly, but the methodology of calculating the fees will remain the same across GB and be based on the full recovery cost.

The fees in the schedules are extensive, ranging from £205 down to £6.40 for some seeds, per consignment. Yesterday morning, after the briefing with the Minister, I attended the launch of the Woodland Trust's report, *State of the UK's Woods and Trees 2021*. This provided some very stark detail about the state of our ancient woodlands and the wildlife that currently lives in them. Only 7% of our woodlands are in good condition, a devastating statistic given the role of woodlands in carbon stores and carbon sequestration. Many of our native trees have been lost through the importation of pests and diseases carried on imported plants and plant products.

Although woodland cover has increased, woodland biodiversity has decreased. Bird numbers are down by 29% since 1970, butterflies by 41% since 1990, and plants by 18% since 2015. Since 1990, 19 pests and diseases have been introduced into the country, threatening our biodiversity, compared with only four prior to 1990. The certification of trees, plants and plant products that come into the country is essential. Ash dieback arrived with us from the Netherlands. Xylella is also an extremely dangerous disease, which we must ensure we keep under control and prevent further importation, especially of oak saplings.

The gradual introduction of fees for health checks is to be welcomed to enable businesses to plan ahead and prosper. However, the various dates are confusing. The checks for high-risk products began on 1 January. This includes 1,200 entries on the plant risk register, including tree species. Lower-risk plant checking will begin in June 2021. However, fees will not be implemented until March 2022. I am slightly less concerned about low-risk plants, but I am very concerned about high-risk plants and trees.

At paragraph 3.3 of the Explanatory Memorandum there is mention of the devolved Administrations, and paragraph 7.7 indicates:

> "Similar changes are to be introduced by the Scottish and Welsh governments."

[Baroness Bakewell of Hardington Mandeville] Can the Minister tell us whether the devolved Administrations have similarly been checking high-risk plant products since January or whether they are lagging behind? If no checks are currently taking place, a product could enter the country via Scotland or Wales without checking and then be transported into England, especially if the fees being charged are cheaper in the devolved Administrations than those being administered in England. I understand that some imports come through the island of Ireland and then into Wales. There is a possibility of some checking being avoided. Can the Minister provide reassurance?

I am concerned about the impact of costs to horticulture and other businesses of these additional fees. The noble Baroness, Lady McIntosh of Pickering, raised this as well. Although no fees will be applied until March 2022, the fees will be refreshed in October 2022, with an assessment being made of the full-cost recovery figures. At this stage there could be an uplift, which the importers, especially of seeds, might not be expecting. This could be excessive for them. Can the Minister comment on this?

This is a vital piece of legislation that should ensure the protection of our native-grown plants and trees. It should be rigorously enforced, and I fully support it.

*4.33 pm*

**Baroness Hayman of Ullock (Lab) [V]:** I thank the Minister for the very useful meeting that I and the noble Baroness, Lady Bakewell, had with him yesterday, and for his introduction today. [*Connection lost*.]

**The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB):** We seem to have lost the noble Baroness.

**Baroness Hayman of Ullock (Lab) [V]:** Sorry, my computer took on a life of its own and decided to mute.

Biosecurity has become an increasingly important issue. According to the Royal Horticultural Society, UK imports of live plants have increased by 71% since 1999. But with increasing trade comes increasing risk of pests and diseases being imported inadvertently. It is extremely important that regulatory standards are not compromised following the UK's departure from the EU, so we are pleased to support this SI. We know that there was previously some surveillance of plants coming in from the EU that sometimes found problems, so improved legislation with additional checks on plant imports from the EU provides an opportunity to detect plant pests and diseases at the border, therefore further reducing future pest and disease problems.

I turn to the detail of the instrument before us today. The Minister has explained that it enables fees to be charged for plant health checks on imports into England from the EU, Switzerland and Liechtenstein, bringing those countries into line with the rest of the world, and that under a phased approach, higher-risk consignments of regulated plants, plant products and other commodities imported from the EU, Switzerland and Liechtenstein have been subject to checks since 1 January this year, with such checks on the remaining regulated goods being phased in later this year and in 2022. As there are a number of different checks and dates of implementation, I would be grateful if the Minister could clearly outline the timetable and provide clarification as to how businesses and industry have been informed about these changes, and what information has been provided to ensure that they are fully ready.

Changing plant health regulations also provides an opportunity to increase public awareness of plant health and biosecurity risks, encourage wider responsibility and drive cultural change. Has the Minister's department been working with stakeholders such as the RHS to ensure that the UK's plant health regulatory requirements are presented in a way that is accessible and user-friendly in order to encourage this outcome?

We understand that Scotland and Wales are introducing similar provisions. Can the Minister provide information about what dialogue has been held with the devolved Administrations to ensure a timely and co-ordinated introduction across the whole of Great Britain? Will the fee structures be the same across the devolved Administrations, and is it likely that the fee rates charged could be different? Industry will have to consider how it reacts to the new charges, so if there are different fee rates, has the Minister considered how businesses are likely to react and also how importers will decide to pass on the increased costs?

The Secondary Legislation Scrutiny Committee asked the department about the expected additional cost to business arising from these fees and the noble Baronesses, Lady Ritchie and Lady McIntosh, have gone into detail around this. But it is important that the SLSC regarded Defra's approach in this area as "poor legislative practice" by not having

"analysis of the expected financial impact".

The fact that

"the Department found it necessary to phase in the fees to give businesses time to adjust"

shows that an impact on business has been recognised. As the SLSC points out, there is no real information on the anticipated impact of these changes for those in the trade.

Defra has engaged with stakeholders extensively regarding the planned changes; however, we know from previous experience that the total potential impacts of the UK leaving the single market and customs union have not always been completely clear or understood by those it affects. In earlier SIs we have raised our concerns about the capacity of ports to carry out inspections; I therefore ask the Minister: where will the inspections take place? What assessment has been made of capacity and what additional resources have been provided to ensure effective delivery of the new checks?

As a final point, in its submission to an inquiry by the House of Lords EU Energy and Environment Sub-Committee into biosecurity, the Prospect union recommended better training for plant health officers, with the re-establishment of a viable training programme for new and established inspectors, plus joint training ventures with the Horticultural Trades Association and Royal Horticultural Society. Can the Minister inform us as to whether this has taken place and, if not, whether further training of officers is planned?

*4.39 pm*

**Lord Gardiner of Kimble (Con):** My Lords, I am very grateful to all noble Lords for what has been a constructive and interesting debate. If there are any points that time does not permit me to cover today, I will of course write to your Lordships.

I was struck by all the comments about biosecurity and why we are doing this. It is to protect plant biosecurity, as was made clear by my noble friend Lady Redfern and the noble Baroness, Lady Bakewell of Hardington Mandeville. It is absolutely key that we embark on this in a very serious and important way. I was also struck by my noble friend Lady Redfern, absolutely rightly, referring to the importance of the safety of those working to deal with pests, disease and invasive non-native species, all of which impinge upon our biosecurity.

Given the points made by the noble Baroness, Lady Hayman, and others, I thought it would be helpful to summarise the timetable for the introduction of checks and associated fees. On 1 January 2021, documentary, identity and physical checks were introduced on high-risk EU goods and carried out at places of destination. No fees are currently applied for these checks. On 1 June 2021, fees will be introduced for documentary, identity and physical checks on high-risk goods and for documentary checks on other goods. On 1 January 2022, physical inspections of high-risk goods will move to border control posts. On 1 March 2022, identity and physical checks on other goods will commence at border controls posts, with fees then applied for those checks.

The noble Baronesses on the Front Benches opposite raised the devolved Administrations. The Scottish and Welsh Governments are following the same phased approach as in England in terms of the timetable for inspecting EU consignments and applying fees to recover the costs of those inspections. In all parts of GB, fees will set to recover fully the cost of services provided, in line with the general Treasury principle on cost recovery. As services in Wales are provided by APHA on behalf of the Welsh Government, fees in Wales will mirror those in England. A different cost-base applies in Scotland, so there may be some differences to actual fees, but the same methodology and principles apply.

I give the noble Baroness, Lady Bakewell, my absolute assurance that the devolved Administrations are currently checking high-priority plants. We are working very closely and extensively with our devolved counterparts on operational readiness to ensure that our policies and plans are operable. For example, a UK plant health post-transition period operational readiness board—I am sorry, that is such a long phrase—has been established to discuss planning with devolved Administrations. This includes weekly meetings to consider policy issues, including fees. We have been working closely with officials from all the devolved Administrations to design future common frameworks where they are necessary, in line with principles on common frameworks.

I understand the point about working closely with industry. My noble friend Lady McIntosh and the noble Baronesses, Lady Bakewell and Lady Hayman, raised this. We have maintained regular engagement with the industry—indeed, I have been at a number of the meetings, particularly with the Horticultural Trades Association—on post-transition planning with individual operators and through key stakeholder groups. This included an explanation of the planned charging regime for EU imports, which was followed up with details of the actual changes. Discussions were held through fora such as the plant health advisory forum, the tree health policy group and the Ornamental Horticulture Roundtable Group. In addition, there was frequent bilateral engagement on EU imports with key stakeholders, such as the Horticultural Trades Association, the Fresh Produce Consortium, the National Farmers' Union, the Ornamental Aquatic Trade Association and—I declare my membership—the Royal Horticultural Society, which we have also been working with.

The noble Baronesses, Lady Ritchie and Lady Hayman, my noble friend Lady McIntosh and others more generally raised the important point of how best we can support business with the changes that I think we have all agreed are desirable, given the interceptions that we have identified already, and before this new regime. We have been listening carefully to the concerns of industry to make sure that the new requirements are practical, proportionate and—importantly—risk-based. The import controls on EU-regulated goods are being phased in over 14 months. Regulated goods are not currently being held at the border for import checks in order to help trade flow. All EU high-priority goods may be checked at places of destination until January 2022, minimising that disruption at the border.

On a point raised by the noble Baroness, Lady Hayman, the Government have invested £705 million to ensure that our border systems are functional from 1 January and will be fully operational in line with the phasing plan. Operating hours for plant health services have also been adjusted to service business needs, while ensuring that biosecurity standards continue to be maintained and strengthened in ways that support trade and the smooth flow of goods. I think it was my noble friend Lady Gardner of Parkes who made the point about the importance of biosecurity but also trade flows and supply.

So far as the financial costs raised in this debate, we have been clear that, in line with Treasury rules, the Animal & Plant Health Agency recovers the cost of delivering these services from businesses that use them. Low-risk goods will receive a lower frequency of checks; fees therefore need to be adapted to ensure that there is no over-recovery of costs.

My noble friend Lady McIntosh raised engagement with the EU. There is ongoing and active engagement with the EU on all these matters. She also raised the AIC report. We have regular contact and engagement with the AIC. She also mentioned FERA, which conducts seed testing to support imports and exports. The cost of seed inspections is £128.13 per consignment for a 100% inspection and £6.40 for a 5% inspection rate. Specific seeds are listed in the SI.

The noble Baroness, Lady Bakewell of Hardington Mandeville, asked about risks from Northern Ireland goods. The island of Ireland is of course a single epidemiological unit. It is really important that we respect both their biosecurity and ours. We have a

[Lord Gardiner of Kimble]
risk-targeted surveillance programme, which monitors movement of plants from all origins. Again, it is important that we look at this constantly. She also raised the risks to woodlands. We review risks on a continuous basis through the UK plant health risk register and take action in response to new threats, including emergency regulations, such as those for Xylella.

The noble Baroness, Lady Ritchie, raised the definition of high-priority plants. High-priority plants are those that pose the greatest potential risk to GB biosecurity. This includes shrubs and plants for planting not intended for final users, host plants of Xylella—for instance, lavender and rosemary—and other plant material for propagation, such as seeds and cuttings. Fees are based on the actual cost and time that it takes to inspect different categories of material.

The noble Baroness, Lady Bakewell, also raised costs. The methodology used to calculate these fees was fully consulted on in 2017 and has not changed. Fee income is carefully monitored to ensure that there is no over-recovery or under-recovery. Any discrepancy would normally be rectified in the following year. However, for this year, to ensure that there is no significant over-recovery of costs, APHA and Defra will monitor fee income on a monthly basis, which is important.

The noble Baroness, Lady Ritchie, also raised Northern Ireland. In line with the principles of unfettered market access, there is no requirement for export phytosanitary certificates to accompany qualifying Northern Ireland goods moving from Northern Ireland to GB, so there are no associated fees. There will also be no import checks on those qualifying goods entering GB and no additional costs to trade as a result of plant health service delivery by APHA.

I am sorry if that was a very brisk description of some of the questions asked by the Committee. However, I commend this statutory instrument to your Lordships.

*Motion agreed.*

**The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB):** That completes the business before the Grand Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the Room.

*Committee adjourned at 4.50 pm.*