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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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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 SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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

House of Lords

Tuesday 22 June 2021

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Lincoln.

Arrangement of Business
Announcement

12.06 pm

The Lord 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 and wear face coverings while in the Chamber, except when speaking. 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 Berkeley, to ask the first Oral Question.

Great British Railway Plans
Question

12.07 pm

Asked by ***Lord Berkeley***

To ask Her Majesty's Government what plans they have to integrate (1) HS2, and (2) the East West Rail project, into their Great British Railway plan.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, HS2 Ltd and East West Rail Ltd are currently separate from Network Rail and are delivering important additions to our rail network. The *Williams-Shapps Plan for Rail* is clear that they will retain their current roles and work closely with Great British Railways as it takes over responsibilities for integration.

Lord Berkeley (Lab) [V]: My Lords, I am grateful to the Minister for that clarification, but it seems that the statement in the Williams report that it will bring together the rail

"network under single national leadership"

is not correct. The report also states that there will be "a new focus" to deal with

"escalations in cost, gold-plating and over-specification",

which clearly applies mainly to HS2 as the worst offender. Can the Minister explain why there are plans to remove funding from Northern Powerhouse Rail and give it to the bottomless pit of HS2?

Baroness Vere of Norbiton (Con): My Lords, there are no such plans. In reference to the noble Lord's statements about HS2 and East West Rail being separate infrastructure managers, I say that there are 13 different infrastructure managers already on the rail network. GBR will obviously work closely with them, as indeed it will have to with Transport for Wales and ScotRail. GBR will be set up to collaborate; that is what we want to see it doing.

Lord Snape (Lab) [V]: My Lords, bearing in mind that the recently issued White Paper stressed the importance of a "guiding mind" so far as the railway industry is concerned in future, is it not completely illogical to leave out HS2 and East West Rail, its two major construction projects? Surely there will be considerable involvement in both projects. Does the Minister not remember John Junor's famous phrase in the *Sunday Express*: "Who is in charge of the clattering train?"

Baroness Vere of Norbiton (Con): Sadly, I do not remember that from the *Express.* One of the words that the noble Lord said was absolutely critical: "construction". HS2 and East West Rail are indeed both in construction at the moment and will be for some time. There is therefore ample time as both become operational railways for them to collaborate with GBR to ensure that all their services interlink.

Lord Mackay of Clashfern (Con): My Lords, what is the place of Scotland in this Great British Railways plan?

Baroness Vere of Norbiton (Con): There is a place for Scotland in Great Britain. The Scottish Government will continue to exercise their current powers and to be democratically accountable for them. Great British Railways will continue to own the infrastructure in Scotland, as Network Rail does now. The Government will of course explore options with Transport Scotland to enable the railway in Scotland to benefit from the reforms on the wider network of Great Britain.

Baroness Jones of Moulsecoomb (GP): If HS2 is to be managed separately, can the Government guarantee that any of its cost overruns, whether in construction or operation, will not see a bailout from wider rail network funds and that it will be responsible for its own overruns?

Baroness Vere of Norbiton (Con): I think the noble Baroness has just answered her own question: she stated that HS2 would be separate from Great British Railways. That is the case but in any event, as she pointed out, HS2 is under construction. It will be a while before it is an operating railway and then it will work closely with GBR.

Baroness Randerson (LD): My Lords, the Williams-Shapps report promises welcome expansion and better co-ordination of the railways. The Government also say that they are committed to levelling up the north, so can the Minister explain to us why the proposed

[Baroness Randerson]
new timetable for the east coast main line halves the number of trains from Newcastle to Manchester via Durham and Darlington? It also cuts one-third of the trains to London from Berwick and Darlington. In what sense is this expansion and levelling up?

Baroness Vere of Norbiton (Con): As it happens, I had a conversation yesterday with all the northern leaders when we met as the northern transport acceleration council. They raised this issue, which is of course one of capacity because there are more services, for example, between Newcastle and London. We have heard the pleas from various areas of the north on the timetabling. We are taking that away and doing what we can, but this is one of the reasons why we need Great British Railways. Timetabling is fiendishly complicated and we need to ensure that local areas are heard and get the services they deserve.

Lord Moylan (Con): My Lords, will my noble friend take this opportunity to rebut the current rumours that Northern Powerhouse Rail is going to be scrapped?

Baroness Vere of Norbiton (Con): My noble friend should not read too much into media reports on the front page of—I think it was—the *Yorkshire Post*. The Government continue to consider all options for Northern Powerhouse Rail as part of the integrated rail plan. Once that plan is published, we will work with Transport for the North to finalise a business case for Northern Powerhouse Rail. This will need to be consistent with the IRP's policy and the funding framework.

Lord Bradshaw (LD) [V]: My Lords, can the Minister confirm that the East West Rail link, certainly between Oxford and Bletchley, needs to be electrified from the outset because of the heavy freight traffic from Southampton to the west coast main line passing through Bletchley? It would be a crying shame if electrification were postponed until after the passenger service started.

Baroness Vere of Norbiton (Con): The case for electrification of East West Rail is being considered. A review is being undertaken by EWR Co, looking at all the options, including full electrification along the whole route as well as the various options for partial electrification, including battery-electric hybrid rolling stock.

Lord McColl of Dulwich (Con) [V]: My Lords, what proportion of the existing railway will be used in the building of this east-west extension? What is the latest estimate of the overall cost?

Baroness Vere of Norbiton (Con): I am grateful to my noble friend for advance notice of this question, because I too had to get my head around how the existing track and the new track all work together. There are three connection stages. The first one will rely on existing track, which will be upgraded, and the second two will be either small sections of existing track or mostly new track. The cost of connection stage 1 is currently £1.288 billion. We do not know the cost of future connection stages at this time, as of course the new track has not yet been fully scoped.

Lord Rosser (Lab) [V]: My Lords, assuming that the Northern Powerhouse Rail project, HS3, is not going to be scrapped—some parts of the media have suggested that it will be—will the Minister confirm that HS3 will be part of the integrated railway and Great British Railways, in the same way as other private companies are contracted to run the trains for the service and fares that Great British Railways sets?

Baroness Vere of Norbiton (Con): Goodness—I think we are a little early in the game to be discussing those sorts of arrangements, but I have answered the question about Northern Powerhouse Rail. The integrated rail plan will be published soon.

Lord Herbert of South Downs (Con): My Lords, is it not time to slay the urban myth that HS2 will not significantly cut travel times? The London to Birmingham travel time will be reduced by a third, or 30 minutes; the London to Manchester time will be halved to only around an hour. In Japan, growth is much more evenly distributed between the cities because of the Shinkansens; they are not content with existing speeds, but are building new lines. Is that not the global standard to which we need to aspire?

Baroness Vere of Norbiton (Con): My noble friend is quite right but HS2 is not just about speed, as I so often need to say in your Lordships' House. As he mentions, it is about bringing our regions closer together and delivering the capacity that our transport network absolutely needs. HS2 will give us a step change in capacity, while almost halving the time it takes to travel between our largest cities. If we were to do that by refreshing our existing railways, it would cause decades of inconvenience and disruption to passengers.

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

Child Trust Funds: People with a Learning Disability

Question

12.17 pm

Asked by ***Lord Young of Cookham***

To ask Her Majesty's Government whether they will facilitate access to Child Trust Funds by people with a learning disability.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, the Mental Capacity Act 2005 provides a process to obtain legal authority to access matured child trust funds. We are working with stakeholders to examine the case for legislation to enable third-party access to smaller balances without the need to obtain the form of legal authority currently required under the Act.

This is a complex issue; we intend to bring forward a proposal for consultation as soon as possible after the Recess.

Lord Young of Cookham (Con): My noble friend has described as "absolutely unfortunate" the current position, whereby access to child trust funds by those with a learning disability has to be through the Court of Protection. This time-consuming and intimidating process is denying much-needed funds to vulnerable people. While he proposes to change the law, as he has just said, he has told me that this might not happen before December. People should not have to wait that long, so may I urge him to make much faster progress?

Lord Wolfson of Tredegar (Con): My Lords, as I have said, we intend to launch the consultation as soon as possible after the Recess. This is a complex issue: as I have said before in this House, it is not limited to child trust funds. It goes beyond those funds and includes, for example, junior ISAs. We need to ensure that all factors, such as scope, simplicity and security of a small payments process are considered and accounted for. We are engaging with stakeholders across the financial services industry to make sure that the consultation is as smooth and effective as possible.

The Lord Bishop of St Albans [V]: My Lords, may I press the Minister a little further? What plans do the Government have to work with the providers of child trust funds to develop a proactive strategy to advertise the need for parents of children with learning disabilities to apply to the Court of Protection in advance of the young adult's child trust fund maturing? This is a really urgent matter, and we need the Government to be on the front foot.

Lord Wolfson of Tredegar (Con): My Lords, the right reverend Prelate is absolutely right: the focus should be on people applying before the young adult turns 18, at which point the legal position changes. We are engaging with industry providers to make sure that parents are aware of that change. We have put material on the GOV.UK pages, HMRC has also published material and my ministerial colleague Minister Chalk will host a round table on 15 July, bringing together relevant stakeholders to enable us to progress this work further.

Lord Flight (Con): This is the fourth time that my noble friend Lord Young has asked this question. It is a travesty that children with learning difficulties who are over 18 cannot readily access their child trust fund. The Government need to grasp and solve this problem. I do not see why parents should need a Court of Protection order to access funds on their adult children's behalf. There is now all the more reason for enacting legal changes to solve this problem, which faces 200,000 children with trust funds who cannot access their cash when they are 18 because of their disability. I do not see the DWP working group readily solving the legal problems here. The crucial need is to be able to access balances without requiring a Court of Protection order. This needs special legislation to achieve. Can the Minister update the House on what the group has achieved?

Lord Wolfson of Tredegar (Con): My Lords, people need a court order because, in the Mental Capacity Act, Parliament provided protection for young adults to make sure that their funds—and the funds are theirs, not their parents'—can be accessed only by people with a proper court order. The working group meets monthly, and the next meeting is later this week. It has engaged with people across the industry and, as I said a few moments ago, because of the work of the working group, we are now amending the GOV.UK pages to provide more information to parents in that regard as well.

Baroness Finlay of Llandaff (CB): Does the Minister agree that the noble and learned Lord, Lord Falconer of Thoroton, should be congratulated on the Mental Capacity Act, which is a precious piece of legislation that protects the most vulnerable? Does he agree that any erosion by creating exceptions to its established processes would fail to ensure long-term provision for the vulnerable person's welfare as an adult over 18, while increasing the risk of child trust funds being diverted without accountability?

Lord Wolfson of Tredegar (Con): My Lords, I respectfully agree that the noble and learned Lord, Lord Falconer, should be congratulated on his work on the Mental Capacity Act. He described it as

"a vitally important piece of legislation, and one that will make a real difference to the lives of people who may lack mental capacity."

I respectfully agree. I also congratulate the noble Baroness on hosting a very good briefing event on 17 June. I urge all Members of the House who are interested in this topic to look at the materials from that event, which are available on the Social Care Institute for Excellence website.

Lord Blunkett (Lab): My Lords, along with the noble Lord, Lord Young, I was at the briefing that was just referred to. What disturbs me most now is the juxtaposing of the rights under the Mental Capacity Act and the rights of young adults to access their own funds. Surely, the 15 July round table that the Minister mentioned should be the jumping-off point for the consultation, if, as he has often said, his officials are working "at pace"? "At pace" surely means that, within the next three weeks, that consultation material could be put together.

Lord Wolfson of Tredegar (Con): My Lords, we are putting the consultation material together as quickly as we can. The noble Lord is certainly right that we have to balance the ability of young adults to access their own funds against the importance of the protections given by the Mental Capacity Act to young adults who lack the mental capacity to manage those funds or give instructions to others to do so.

Lord Addington (LD): My Lords, we have been going at this for a while. Would the Minister agree that a parent who has filled one of these trust funds for someone who is now a young adult should be presumed to have their best interests at heart, unless there is another good reason? Saying that you now have a warning system for those coming up is of no assistance to those who have already matured.

Lord Wolfson of Tredegar (Con): The noble Lord puts his finger on a problem: the Law Commission in 1995 highlighted the need for a small payments procedure, but that was not picked up in Parliament in the Mental Capacity Act 2005. Here we are in 2021, trying to resolve a long-standing legal issue. We need to amend the legislation—otherwise, the Mental Capacity Act is a legal block to people's ability to obtain funds.

Baroness Bertin (Con) [V]: Could my noble friend the Minister help us to understand how many individuals with cognitive impairments could be supported to grant power of attorney to their parents or carers to manage these moneys in the interim? Can we also have reassurance that never again will policies such as this be introduced without any consideration whatever being given to how they might impact those with learning disabilities?

Lord Wolfson of Tredegar (Con): My Lords, I will pick up the noble Baroness's second point first. As the noble Lord, Lord Blunkett, explained on a previous occasion, regrettably, no thought was given when these funds were set up to people who could not access them because of mental incapacity. That is why we are having to deal with the point now. We do encourage people to make lasting powers of attorney, for example. The important fact is that we want to encourage young adults and their parents to be aware in advance of the legal position that the young adult will be in when they turn 18; it is a fundamentally different position from the one they were in the day before their 18th birthday.

Lord Falconer of Thoroton (Lab) [V]: It is clear that a lot of people will be prejudiced by the delay. From the Minister's answers, I take it that the Government have decided to legislate. Why can they not legislate before December?

Lord Wolfson of Tredegar (Con): My Lords, we have decided to consult, and that is a very important point. It should not be thought that there is nothing, so to speak, on the other side of the argument. I have received representations from third sector organisations that are very concerned that people with disabilities should retain the protections that the Mental Capacity Act, in which the noble and learned Lord played such an important part, gives them. The consultation will ask for views on how we balance these important, but sometimes opposing, principles.

Lord Hastings of Scarisbrick (CB): My Lords, this Question raises the wider challenge of inadequate financial literacy for underage and mature individuals with special learning needs. As a parent of young adults now seduced into lock-in accounts by commercial banks, I ask whether there not a public duty that could fall on the Post Office to provide community adult numeracy and financial literacy skills. Should the Government consider investing in designated accounts with higher incentive rates for those less able to grasp the complexities of mortgages, investments and standard banking and thus less able to use the market to make money grow?

Lord Wolfson of Tredegar (Con): My Lords, I fear that I might be straying from my own ministerial brief if I were to say too much about that. It is important that we recognise that part of education generally is teaching young adults and schoolchildren about how finance and money work. Perhaps fewer people would fall victim to scams if a greater emphasis was placed in the education system on the importance of understanding fairly basic financial concepts.

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

Human Rights at Sea

Question

12.28 pm

Asked by ***Lord Teverson***

To ask Her Majesty's Government what steps they are taking to protect human rights at sea.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the Maritime and Coastguard Agency enforces the Maritime Labour Convention 2006, and the Work in Fishing Convention 2007, to protect the living and working conditions of seafarers and fishermen on UK-registered ships and fishing vessels anywhere in the world, and on non-UK ships and fishing vessels in UK ports and waters.

Lord Teverson (LD) [V]: My Lords, I thank the Minister for that reply, as far as it concerns UK-flagged vessels—but she will understand that the crews of vessels of all nations on the high seas, whether they are fishing vessels, freight vessels or cruise liners, can be uniquely vulnerable to intimidation, abuse and a lack of immediate recourse to any judicial authority. To start to counter this, will the Government support the work to establish the Geneva declaration on human rights at sea?

Baroness Vere of Norbiton (Con): The noble Lord mentioned that my reply only concerned UK-flagged vessels, but I did also mention vessels at UK ports that are not UK-flagged. The Government are not able to provide formal UK support for the declaration that has been established by the charity of which I believe the noble Lord has been a patron for the last three months, and that has been discussed today. But what I can say is that we are hugely supportive of the existing international frameworks that already exist. The Maritime Labour Convention provides comprehensive rights and protections for the world's 1.2 million seafarers, and ILO 188, the Work in Fishing Convention, does similar for those who work in fisheries.

Lord West of Spithead (Lab): My Lords, I declare an interest as president of the Merchant Navy Association. For the benefit of the media outlets which pay particular attention to our House, that is unpaid, as are so many of the duties that so many of us fulfil.

One of the devastating effects of the pandemic has been the impact it has had on tens of thousands of merchant seamen who have been unable to return home after their voyages and have served many months over their maximum limits that were set for safety and welfare. What have the Government done to resolve this problem? Can the Minister explain why a group of British merchant seamen returning to the United Kingdom via Holland with British passports were locked up and berated about Brexit, while those with EU passports were waved through?

Baroness Vere of Norbiton (Con): I agree with the noble Lord that the impact of Covid on seafarers has been critical in some circumstances. We take the welfare of seafarers extremely seriously. The UK was one of the first countries—if not the first—to recognise and declare seafarers as key workers during the pandemic. Once we had done that, we brought together more than a dozen nations for a ministerial summit in July 2020. We managed to galvanise people into action. This ultimately led to the declaration in the UN General Assembly later in the year to call on all states to take action to protect the welfare of seafarers in the pandemic.

Baroness Bennett of Manor Castle (GP): My Lords, in her answer to the noble Lord, Lord Teverson, the Minister referred to the Geneva declaration on human rights at sea, with which she is obviously familiar. The current draft says:

"There is a profound need for the concept of 'Human Rights at Sea' to be accepted globally. It is primarily States that have responsibility for enforcing human rights standards at sea."

Does the Minister agree with those two statements?

Baroness Vere of Norbiton (Con): I can certainly agree that states predominantly have the responsibility for enforcing and making sure that human rights at sea are indeed followed. Of course, the Government share the concern about human rights abuses at sea. We work incredibly hard with our international partners through the UN organisations responsible for those human rights and with the IMO and the ILO—the International Labour Organization—which are able to set international law that applies to seafarers.

Lord Singh of Wimbledon (CB): My Lords, more than 20,000 refugees fleeing conflict in the Middle East have drowned in the last six years, many as a direct result of bombing and missile attacks by countries such as Britain, America and Russia pursuing so-called strategic interests. Does the Minister agree that we have a moral responsibility to look to the welfare and care of innocent civilians trying to escape by sea to a better life?

Baroness Vere of Norbiton (Con): As the noble Lord will be aware, the Government have good relationships with many countries in the Middle East and we work very closely with them in order to minimise the loss of life at sea.

Baroness Stuart of Edgbaston (Non-Afl): My Lords, I welcome the Government's move to declare seafarers as key workers. It was an important first step. Will Ministers go even further and consider making the United Kingdom an international hub for the vaccination of seafarers of all nationalities to ensure that global trade, which is important to us and the rest of the world, can continue to proceed?

Baroness Vere of Norbiton (Con): The noble Baroness makes a really good point. I am aware that visiting seafarers are able to get vaccinated. I will write to her with further details on our vaccination programme for seafarers.

Lord Collins of Highbury (Lab): My Lords, the Minister mentioned all the mechanisms in terms of laws and international conventions, but compliance with those requires port state control to stop a ship that is breaking those rules. What is she doing with her colleagues in the FCO and other departments to ensure that the mechanisms for compliance are strengthened globally so that the welfare of seafarers is better protected?

Baroness Vere of Norbiton (Con): In terms of what the UK is doing, in the first instance, we are showing leadership in the area. The Maritime and Coastguard Agency makes well over 1,000 stops every year in UK ports to check that vessels and the seafarers on them are in compliance with both international and domestic law. Where we find things that are not in compliance, we are able to share that information with other ports around the world. We continue to discuss enforcement with our international partners because it is important that these international laws, which have been agreed, are enforced effectively.

Lord Mackenzie of Framwellgate (Non-Afl) [V]: My Lords, I recall as a young student of law, many years ago, the late-19th century case of R v Dudley and Stephens. This involved a shipwreck that caused a number of sailors to take to a lifeboat. As a result of hunger and thirst, they alleged that it was necessary to kill and eat the young cabin boy in order to survive. The common law defence of necessity succeeded at their trial but was reversed on appeal. Does the Minister think that, if the facts were repeated today, the cabin boy's human rights to life would still trump those of the starving crew?

Baroness Vere of Norbiton (Con): Oh, my Lords, with modern standards for lifeboats and search and rescue, I would very much hope that such a situation would not arise today. The shipwrecked seafarers would be rescued long before any decisions would need to be taken on who to eat. Modern-day search and rescue services are equipped with an astonishing range of technologies that aid both in alerting the rescue services that there is an issue and in locating persons in distress or potential distress.

Lord Berkeley (Lab) [V]: Nautilus International has stated that some crews in ships registered under flags of convenience, including Panama, are having their internet access restricted to maybe 25 megabytes a month. Does the Minister agree on the importance of internet access to the welfare of effective and motivated

[Lord Berkeley]
crews, especially when they have been away for a very long time? What action will the Government take to ensure that all ships entering UK ports provide unlimited broadband on their ships all the way through their voyage?

Baroness Vere of Norbiton (Con): I thank the noble Lord for raising this issue. I will write to him with any further details of conversations that are ongoing where limits on broadband might be detrimental to a seafarer's mental health.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: Can the Minister indicate what joint action can be taken internationally, through the G7 and G20 groups of nations, to eliminate abuses against fishermen—a need that has been recognised by many fish producer organisations, as many of these fishers contribute significantly to our local coastal communities? Many of these people come from eastern Europe and the Philippines and make a major contribution to the catching and processing sectors within the fishing industry.

Baroness Vere of Norbiton (Con): The UK is fully committed to the welfare of all seafarers and, of course, fishermen. We will continue to work with our international partners to raise standards. We also recognise the difficulty of upholding human rights for those working away from home and beyond the normal authorities ashore. Sometimes, jurisdictional complexities can exist. This is why we welcome things such as the *Responsible Fishing Vessel Standard*, which is operated by Global Seafood Assurances. This provides commercial incentives to those operating fishing vessels to meet and maintain good standards of safety and employment.

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

Law Enforcement Agencies: Duty of Candour

Question

12.39 pm

Asked by ***Baroness Jones of Moulsecoomb***

To ask Her Majesty's Government what plans they have to implement the recommendation in *The Report of the Daniel Morgan Independent Panel* (HC 11), published on 15 June, that there should be "a statutory duty of candour, to be owed by all law enforcement agencies to those whom they serve, subject to protection of national security and relevant data protection legislation".

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Daniel Morgan Independent Panel recommends legislating for a duty of candour, which is a proposal put forward by the Hillsborough families. The Government are considering this as part of their response to Bishop James Jones's report on the Hillsborough families' experiences. The Government wish to engage with the families before publishing this response.

Baroness Jones of Moulsecoomb (GP): That is potentially very good news. However, the independent panel highlighted obstruction and a lack of co-operation by the Metropolitan Police that

"placed its concern for its own reputation above the public interest."

Who do the Government believe should be held accountable for that misconduct?

Baroness Williams of Trafford (Con): My Lords, first, I extend my deepest sympathies to the family of Daniel Morgan. Regarding who should be held accountable, the Home Secretary has asked the Metropolitan Police Service to account for the findings in the report. She has also asked HMICFRS to ask the chief inspector what steps the inspectorate can take to provide assurance on the issues raised in the report.

Baroness O'Loan (CB) [V]: My Lords, I declare an interest as chair of the Daniel Morgan panel. Is the Minister aware that the panel identified the abstraction of vast amounts of police material by the senior investigating officer of the last investigation, much of which he then disseminated to journalists and others for the purpose of broadcasting and writing a book about the murder? It included sensitive and secret material, the dissemination of which involves potentially significant risk to those identified and could undermine any future prosecution. Given this, does the Minister agree that the police must ensure that their policies and procedures to prevent such behaviour are effective and implemented, and that the creation of the duty of candour in matters such as this is vital for the integrity and effectiveness of policing?

Baroness Williams of Trafford (Con): I agree with the noble Baroness and I thank her for the work she has done to bring forward this report, which I am sure will be a source of learning for both the Government and the Metropolitan Police. Regarding the policies and procedures and what has changed since the murder of Daniel Morgan, as the noble Baroness probably knows, a code of ethics for the police was introduced in 2014, and in 2020 the standards of professional behaviour were changed to clarify that failure to co-operate with investigations and inquiries could constitute misconduct. Much has changed for the better since the murder of Daniel Morgan, but, as the noble Baroness says, this is by no means the end of this very long story.

Lord Harris of Haringey (Lab) [V]: My Lords, I refer to my policing interests in the register. I campaigned for a duty of candour in the NHS. My review, *Changing Prisons, Saving Lives*, recommended a similar duty for the offender management service. So, of course, it is right that a similar duty should be placed on police. However, the Minister said that everything must wait for the response from the commissioner, the review by Her Majesty's inspectorate and a full response to the Hillsborough inquiry. But this is a free-standing issue—a

duty of candour could be introduced now. What is the Home Office waiting for? Will the Minister make a clear commitment to legislating on this today?

Baroness Williams of Trafford (Con): It is important to answer the noble Lord's questions. The Home Secretary is keen to speak to the family before taking such measures forward. There were trials going on until recently. The families are very important in helping the Home Secretary on what steps to take forward.

Lord Paddick (LD) [V]: My Lords, in March 2011 the then acting Commissioner of the Metropolitan Police, Tim Godwin, said of the Daniel Morgan murder:

"The MPS has accepted that police corruption in the original investigation was a significant factor in this failure."

When the independent panel asked the Metropolitan Police to explain what the corruption mentioned in this and other admissions of corruption consisted of, it replied that

"any clarity required would have to be provided by those officers themselves."

Tim Godwin did not join the Metropolitan Police until 1999, so he must have been briefed by the Metropolitan Police on what to say. Even now, the Metropolitan Police refuses to be open and transparent. How can the Home Secretary allow this to continue?

Baroness Williams of Trafford (Con): My Lords, the Home Secretary fully expects the Metropolitan Police to respond positively to this report and to set out publicly the clear steps it intends to take to avoid making the same mistakes again. She has written to the Metropolitan Police Service Commissioner setting out her expectations and she will update the House on progress following a response from the Metropolitan Police and others.

Lord Coaker (Lab): This absolutely terrible and shocking incident adds to the legacy of the damaged trust of all aggrieved Hillsborough families and others in the police. It is devastating for the Morgan family, who fought so hard to get the truth; it is painful for the communities the police serve; and it is painful for the vast majority of officers, who serve with integrity. It is plain to see just how urgent the need is to get this statutory duty of candour in place. Notwithstanding what the Minister has already told the House, what work has begun to get that recommendation implemented? When will the duty be in place and how will it be enforced, thereby earning and maintaining public confidence in the police? This is urgent, and we want the Government to move as quickly as possible.

Baroness Williams of Trafford (Con): I say to the noble Lord that I agree with pretty much everything he says. This work is urgent. I know that work is progressing at pace and that the Home Secretary wants to speak to the family before making further progress on it.

Lord Lexden (Con): In light of the Morgan inquiry, what action has the Metropolitan Police taken in recent years to root out crime and corruption from its ranks? How many police officers have been prosecuted, suspended, forced to resign or retire early or sacked for corrupt behaviour since the current Commissioner of the Metropolitan Police took up her post?

Baroness Williams of Trafford (Con): I did not hear all of my noble friend's question, but I think he was talking about police officers being prosecuted, suspended, forced to resign or sacked. Between December 2017, when the police barred list was established, and 2020, a total of 117 officers and 18 special constables from the Metropolitan Police service were dismissed and added to the police barred list. The College of Policing breaks this down by category, but there is no single category for corruption. We do not intend to collect data on police suspensions, as that is obviously a matter for individual chief officers, but I can tell my noble friend that the Home Office is currently amending its data collection on police misconduct and we intend to publish data in greater detail from this autumn.

Lord Beith (LD): My Lords, although the duty of candour has to be organised in ways that do not compromise either national security or police intelligence gathering against serious crime, is it not very important to move in this direction? We have had police officers making a small industry out of selling information to the media, while other police officers were withholding information essential to discovering what had happened in this dreadful murder case.

Baroness Williams of Trafford (Con): What is also important to recognise, as I said to the noble Baroness, is how things have changed. It is 34 years ago; that is an awfully long time for the family to have had to wait, but there has been the introduction of a code of ethics for the police, and Section 35 of the Inquiries Act 2005 makes it an offence to commit acts that have the effect of distorting, altering or preventing evidence being given. I understand that this is obviously not a statutory inquiry, but clear standards of professional conduct for the police have been introduced in relatively recent years.

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

1.50 pm

Sitting suspended.

Daniel Morgan Independent Panel Report

Statement

The following Statement was made in the House of Commons on Tuesday 15 June.

"Daniel Morgan was murdered in London in 1987. It is incredibly painful for his family and friends that five criminal investigations into his brutal death have brought no successful prosecutions. In 2013, my right honourable friend the Member for Maidenhead, who was then Home Secretary, announced the creation of the Daniel Morgan Independent Panel to review police handling of the murder investigations. The panel was

[Lord McFall of Alcluith]
asked to explore: police involvement in Daniel Morgan's murder; whether anyone involved in the murder was protected by corrupt police officers; whether there was a subsequent failure to investigate corruption; and the incidence of connections between private investigators, police officers, the News of the World or other parts of the media. The independent panel has now completed its report. I am grateful to the panel and to Baroness Nuala O'Loan.

As Home Secretary, it was my responsibility to ensure that publishing the report was compatible with my statutory obligations in relation to human rights and national security. This was not about delay. I am pleased that no redactions were required. Daniel Morgan's family have waited eight years for this report. It is devastating that, 34 years after he was murdered, nobody has been brought to justice.

The report sets out findings from its review of the past three decades. It is more than 1,200 pages long and in three volumes. It is right that we carefully review its findings. The report is deeply alarming: it finds that examples of corrupt behaviour were not limited to the first investigation, that the Metropolitan Police made a litany of mistakes, and that that irreparably damaged the chances of a successful prosecution for Daniel Morgan's murder. The report accuses the Metropolitan Police of

'a form of institutional corruption.'

Police corruption is a betrayal of everything that policing stands for in this country. It erodes public confidence in our entire criminal justice system. It undermines democracy and civilised society. We look to the police to protect us, and so they are invested with great power. The overwhelming majority of officers use it honourably, but those who use their power for immoral ends do terrible harm, as do those who indulge, cover up or ignore police corruption. This is one of the most devastating episodes in the history of the Metropolitan Police.

In recent years, several steps have been taken to combat police corruption. A new offence of police corruption, applicable solely to police officers, was introduced by my right honourable friend the Member for Maidenhead in 2015, to sit alongside the existing offence of misconduct in public office. The offence carries a maximum prison sentence of 14 years. To prevent corrupt police officers evading accountability by resigning or retiring, the Policing and Crime Act 2017 enabled the extension of disciplinary procedures to former officers. It also ensures that if an officer under investigation for gross misconduct resigns or retires, misconduct proceedings can still take place and the officer can be barred from rejoining the police.

Last year, I overhauled the police complaints and discipline process. There is now a more efficient system for dealing with police misconduct. The investigation process is simpler and quicker, and an explanation is required if an investigation takes longer than 12 months. It is in the interests both of the police and of the public that corrupt police officers are exposed and innocent officers exonerated as swiftly as possible.

The Group of States against Corruption monitors countries' compliance with the Council of Europe's anti-corruption standards. This month, it published a report demonstrating good progress in the UK's law enforcement to prevent corruption. But we cannot ignore the findings of this report. Its recommendations are wide-ranging and far-reaching across aspects of policing, conduct, culture and transparency in public institutions. Today, I have written to Dame Cressida Dick to ask her to provide me with a detailed response to the panel's recommendations for the Metropolitan Police and the wider issues outlined in the report. This afternoon, I will also ask Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services to consider how best it can look into the issues raised.

The police are operationally independent, and the Metropolitan Police is held to account by the Mayor of London and the Mayor's Office for Policing and Crime, but the police are accountable to Parliament through me. I intend to return to the House to update on progress made on this and other recommendations in the report once I have received responses from the Metropolitan Police and others.

There can be no confidence in the integrity of policing without confidence in the police watchdog. The Independent Office for Police Conduct has made good progress since it was formed in 2018, but questions remain about its ability to hold the police to account. In particular, profound concerns exist about the handling of the IOPC's investigation into Operation Midland. The issues raised by the Daniel Morgan Independent Panel further reinforce the need for a strong police watchdog. I am therefore announcing today that I am bringing forward the next periodic review of the IOPC to start this summer. This will include an assessment of the IOPC's effectiveness and efficiency.

Daniel Morgan deserved far, far better than this, as did his family. To them, on what will be a very, very difficult day, I say that the whole House will have them and Daniel in our thoughts. I commend this Statement to the House."

1 pm

Lord Rosser (Lab) [V]: First, I wish to pay tribute to the family of Daniel Morgan. It is only as a result of their utter determination to see justice done that the independent panel was finally set up, 26 years after Daniel's horrific murder. Now, 34 years after his murder, we have its report, revealing appalling truths relating to the various police investigations that would never otherwise have been so comprehensively and forensically exposed; truths which make clear why still nobody has been brought to justice for Daniel's murder, and probably never will be. The delay of eight years in completing and publishing the panel's report only made matters even harder for the family, but it is to be hoped that its findings, justifying their determined stance, will provide some solace.

I wish to express our appreciation as well for the hard work done by the panel and for its report, and not least for the noble Baroness, Lady O'Loan. It does not seem that the work it did, with the barriers it faced, involved an exactly smooth and stress-free process. The report is devastating in what it reveals about the conduct, role, approach and competence of the Metropolitan Police Service, which was found by the panel to have concealed or denied failings for the sake

of its public image. It was found that this was dishonesty on the part of an organisation for reputational benefit and constituted a form of institutional corruption.

It is a conclusion that has already been abruptly rejected by the MPS as continuing to still apply, even though it has still to meet the Home Secretary's requirement for the commissioner to submit a report setting out the Metropolitan Police Service's response to the findings and recommendations of the independent panel. Would the Government say, first, when that MPS response has to be with the Home Secretary, and, secondly, if that written response from the MPS will be placed before Parliament, unamended and unredacted?

The overwhelming majority of MPS officers and staff will be gutted by the findings of the report. Certainly, my involvement with the MPS, as a participant in the parliamentary police scheme, left me with nothing but admiration for the way MPS officers and staff undertake their work on our behalf.

When the panel was set up by the then Home Secretary in 2013, it was expected to complete its work within 12 months of relevant documentation being made available. Instead, it took eight years, with the last relevant material not being forthcoming from the Metropolitan Police until March this year. The panel was not set up under the Inquiries Act, which would have given it statutory powers in relation to its investigation—not least over non co-operation—including powers over timely disclosure of documents and compelling people to appear before it to give evidence. The report is very blunt about the attitude of the Metropolitan Police Service towards the panel, saying that, at times, the force treated panel members as though they were litigants in a case against them. Can the Government say why the panel was left to carry out its work with one arm tied behind its back, as far as its powers were concerned? Would the Government also say if the Home Office was aware of the difficulties the panel was having in carrying out its work with the Metropolitan Police Service, and, if so, when did it become aware and what action did any Home Secretary then take, bearing in mind that the Home Secretary is accountable to Parliament for the police service?

That brings me on to a further statement in the panel report, on page 1138, which says:

> "The relationship with the different officials who have been Senior Sponsor … since 2013 has been positive, but the relationship with the Home Office as a department has been more challenging."

Would the Government say in their response whether the Home Office was aware of the specific issues of concern in relation to the Home Office, referred to on page 1138 of the report, and, if so, what action was taken to resolve them and then to ensure that no similar situation could arise again? One would have thought, bearing in mind that the panel was established in 2013 by the then Home Secretary, that the Home Office would have given its full backing and support to the panel. Clearly, that was not the case.

The Home Secretary told the Commons that she was asking the Inspectorate of Constabulary to look into the issues raised by the independent panel's report. What are the exact terms of reference that have been given on this to the inspectorate?

The Home Secretary also said that she would return to update Parliament on progress made on the recommendations in the report, which include a duty of candour, greater protection for whistleblowers, more effective vetting procedures and adequate provision of resources to deal with corruption, once she had

> "received responses from the Metropolitan Police and others."—[*Official Report*, Commons, 15/6/21; col.128]

Would the Government spell out exactly who "and others" covers, and whether that means the Home Secretary does not intend to return to the Commons with an update until she has received a response from all those, however many they may be, covered by "and others"?

Will oral updates to Parliament be given at regular intervals on progress being made in the light of the panel recommendations and other responses? One of the panel recommendations is a statutory duty of candour. Will the Government confirm that that recommendation, along with others about a requirement for co-operation from public bodies, will be implemented in time for the inquiry into the Covid pandemic?

Finally, would the Government say what further action they intend to take to provide justice for Daniel Morgan and his family? They are the ones who have been denied justice for 34 years. Public trust and confidence in our police are crucial, not least for policing by consent. The Government need to ensure that this kind of appalling episode can never happen again. Will the Government confirm that that is their objective in considering the findings and recommendations of the panel report, and that regular oral updates will be given to Parliament on how and to what timescale that objective is being delivered?

Lord Paddick (LD) [V]: My Lords, I commend the noble Baroness, Lady O'Loan, on her report and her patience. I apologise to the Morgan family for the way an organisation I was part of for over 30 years has conducted itself. The only points I wish to make are that this report chimes exactly with my professional and personal experience, that this report needs to be taken seriously, and that urgent action needs to be taken as a result. The Metropolitan Police puts its own reputation before openness, honesty and the pursuit of justice, and those who are telling the truth are ostracised and forced out.

Let me give noble Lords another example. In 2005, as a police officer holding the fourth highest rank in the Metropolitan Police, I gave evidence to the Independent Police Complaints Commission inquiry into whether the Metropolitan Police has misled the family of Jean Charles de Menezes after he was mistakenly shot and killed by the police following the London bombings. The then commissioner had told the media that both he and all those advising him believed for 24 hours after the shooting that Jean Charles de Menezes was a suicide bomber, when, in fact, five hours after the shooting, his closest advisers had told me that Jean Charles de Menezes was innocent. Noble Lords will recall the trial of the Metropolitan Police for health and safety breaches, where the Met digitally altered the image of the suspect it was pursuing to make it look more like de Menezes and claimed mistaken identity.

[Lord Paddick]

After an uneasy truce of about 18 months, I was sidelined from being in day-to-day charge of 20,000 officers to overseeing a project with 20 officers because the commissioner had lost confidence in me. He had done so because I told the truth. As a police inspector, I was told that I was too honest to be a senior police officer, and 20 years later I found out that that was true. That was the culture of the Metropolitan Police then, and this report tells us that it is the culture of the Metropolitan Police now. It highlights various types of corruption, including what it describes as "incontrovertibly corrupt behaviour", such as selling stories to press contacts and planting false evidence.

Research that I saw when I was a serving police officer showed that when there were surges in recruitment, as there was 30 years after the end of the Second World War and again 30 years later, there were significant increases in misconduct in those cohorts of recruits, increasing in seriousness as they secured important investigative positions within the organisation. The usual peak for misconduct was between 10 to 15 years' service. In the early 2000s the peak was between nought and two years' service. The report is right to highlight vetting systems, but this is nothing new. Why have the Government not taken action to address this recurring problem in the police service?

The report also highlights what it describes as a form of institutional corruption, failings in police investigations, unjustified reassurances rather than candour and a culture of obfuscation. The panel describes hurdles placed in its path, such as a refusal to recognise the necessity to have access to the HOLMES computer database, limiting access to the most sensitive information and even failing to provide a copy of the London homicide manual. It set out how murder investigations should have been conducted at the time of Daniel Morgan's murder, and its existence was not even revealed to the panel until December 2020.

The Metropolitan Police were able to claim repeatedly that the initial Daniel Morgan murder investigation was in accordance with the standards of investigation at the time by concealing the manual that proved that it was not investigated in accordance with the standards of investigation at that time. This is how the Metropolitan Police acts now, under its current leadership. This is not just about a few corrupt police officers who thwarted a murder investigation in 1987 or even the further corruption identified after a subsequent investigation; this is about a culture that enables corruption to thrive. The kind of institutional corruption identified in this report is not some kind of academic construct, an isolated incident of a few corrupt officers. It is the tip of an iceberg that threatens to undermine policing by consent in this country. That is a matter for the Government and the Home Secretary, and it must be urgently addressed.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): I again join the noble Lords, Lord Rosser and Lord Paddick, not only in paying tribute to the family of Daniel Morgan but in their appreciation of the work of the panel.

The noble Lord, Lord Rosser, asked when the Metropolitan Police Service will respond to the Home Secretary. The Home Secretary has undertaken to update the House by the end of the year, so the answer to his question is "swiftly". The noble Lord, Lord Rosser, talked about the obstruction in obtaining documentation. On the production of documentation and the funding required to carry out the work of the panel, the Home Secretary feels that the money and resources were sufficient to carry out the investigation. To date, some £16 million has been spent on this investigation.

On the relationship with the Home Office, I do not think that it has been smooth sailing. The previous Home Secretary, my right honourable friend Theresa May, set up the inquiry and it was never the intention that the relationship with the Home Office should be difficult. The Home Office has tried to assist the panel in whatever way it can.

I do not have to hand the terms of reference for the inspectorate, but I assume that that they would have been set up for the precise reason of ensuring that there is a full inspection. On the point of the term "and others", I presume that one of the "and others" is the IOPC. On the duty of candour to be taken forward, as I said earlier, the Home Secretary will want to speak to the family and to progress matters after that.

I was asked by the noble Lord, Lord Rosser, whether the Government will ensure that such a tragedy and miscarriage of justice never happen again and that the police cannot get away with impunity. I said earlier that Section 35 of the Inquiries Act 2005 makes it an offence to commit acts that are intended to have the effect of distorting, altering or preventing evidence being given to a statutory inquiry, although this was not a statutory inquiry, and I understand that. However, it is an offence intentionally to suppress, conceal or destroy a relevant document.

On recent measures, the noble Baroness, Lady O'Loan, talked about historic failings. The investigations may be historic, but police corruption is something that the Government have focused on. The introduction of the code of ethics in 2014 went some way towards correcting it, as did the establishment in 2015 of a specific criminal offence of police corruption. I recall, because I took the legislation through the House, that measures to ensure that officers cannot resign or retire to evade accountability were brought in in 2017, as well as a barred list to prevent dismissed officers rejoining policing.

There are also last year's reforms to ensure that misconduct investigations are more transparent and swift. Much work has been done by national policing to tackle corruption, particularly through the national action plan on abuse of a position for a sexual purpose. I know that HMICFRS is currently undertaking a follow-up inspection of all forces' counter-corruption and vetting capabilities and, as I may have said earlier, the Home Secretary has asked HMICFRS to ensure an urgent focus on the Metropolitan Police Service.

The Senior Deputy Speaker (Lord Gardiner of Kimble) (Non-Afl): We come now to the 20 minutes allocated to Back-Bench questions. I ask that questions and answers be brief so that I can call the maximum number of speakers.

1.27 pm

Lord Harris of Haringey (Lab) [V]: My Lords, I refer again to my policing interests as set out in the register. The finding of institutional corruption is uniquely

serious, but two issues are being conflated. The first is the corrupt relationships that undoubtedly existed between police officers, criminal groups and the news media that frustrated a proper investigation of the murder of Daniel Morgan. When I chaired the Metropolitan Police Authority, there was a system of integrity-testing police officers on an intelligence-led basis, but also randomly. My understanding is that the latter was phased out during Boris Johnson's mayoralty. Does the Minister agree that this was unwise?

The second issue is the culture of defensiveness. The Daniel Morgan report suggests that such a culture is just as significant now as it was when I first raised the need for a further investigation into the 1987 murder and was told by the then commissioner that there was no point as the case was 15 years old, the Met had changed and a fresh investigation would only undermine the reputation of the police. Openness and accountability are essential, so will the Government lead by example?

Baroness Williams of Trafford (Con): I apologise to the noble Lord because the sound was not very good, but I understood that he sees a culture that has not changed over many years, particularly one of defensiveness. The report makes it clear that there were significant failings in the Met and that the force put its reputation first, ahead of its duty to the public.

The vast majority of Metropolitan police officers, who work tirelessly to keep us safe and often put themselves in the way of danger, cannot be forgotten. They uphold the highest standards expected of them. Lessons need to be learned and the Home Secretary has decided that she wants a clear and transparent response from the commissioner, as the noble Lord says.

Baroness Ludford (LD): My Lords, the report calls for police officers to be required to register membership of the Freemasons with their chief constable. This is a modest requirement compared to the recommendation of the report of the Home Affairs Select Committee, 24 years ago, that a register should be publicly available. A voluntary declaration, not even seen by the public, is inadequate to remove any perception of conflict of loyalty and ensure trust in the police. When will the Government act at least to make it mandatory to declare membership of the Freemasons, if not for that to be publicly available?

Baroness Williams of Trafford (Con): The panel is clear that it did not find any evidence that freemasonry had any effect on the investigations. The *Code of Ethics*, published by the College of Policing, makes it clear that the police must remain impartial and that membership of groups or societies must not cause a conflict of interest or impact an officer's duty to discharge their duties effectively.

Lord Balfe (Con): My Lords, at Chapter 10, Paragraph 470, there is a quote that

"'the corruption of freemasonry influenced every attempt at seeking the truth in the initial Morgan criminal investigation and subsequent enquiries'."

Later, there are some figures on the voluntary database, where 96% of judges, 88% of magistrates, but

"only 37% of police … declared whether or not they were Freemasons".

The recommendation actually says:

"All police officers and police staff should be obliged to register in confidence".

They are not asked, but are obliged to do so. Later on, it says:

"The 'rotten apple approach' to dealing with corruption does not meet the needs of a police service seeking to minimise, and even prevent corruption".

Is it not time at least to accept the recommendation that police officers should be obliged to register whether they are Freemasons?

Baroness Williams of Trafford (Con): I thank my noble friend. As I said to the noble Baroness, Lady Ludford, on the definition of freemasonry, the *Code of Ethics* published by the College of Policing makes it clear that the police must remain impartial and that membership of groups or societies must not cause a conflict of interest or impact an officer's ability to discharge their duties effectively. As I said earlier, the panel is clear that it found no evidence that freemasonry had any effect on the investigations.

Lord Sikka (Lab) [V]: My Lords, a statutory duty of candour is a necessary first step in checking institutionalised corruption through the sunlight of transparency, candour and frankness. That point was made strongly by the 2013 Francis report, the 2015 Harris review, the 2015 *Report of the Morecambe Bay Investigation* and the 2017 Jones report on the Hillsborough tragedy, which specifically called for the establishment of a duty of candour for police officers. Can the Minister explain why the Government have ignored such calls? Secondly, if the Government are sincere about creating such a duty, they can easily and speedily adopt the Public Authority (Accountability) Bill, which was tabled in March 2017 by former MP Andy Burnham. There we are—we have ready-made legislation. What prevents the Government adopting it?

Baroness Williams of Trafford (Con): The noble Lord may not have been here for an earlier question, but I said that the Home Secretary is very keen to speak to the families before publishing our response on this duty.

Lord Beith (LD): My Lords, senior police officers, who abhor the corrupt relationships with criminals that are fully illustrated in this report, still find it difficult to accept that they may be guilty of institutional corruption. Is it not important to make it clear that the culture of cover-up, delay and denial is indeed a form of institutional corruption, which makes space for criminal corruption and leads the victims of corruption to believe that there is neither point nor prospect in trying to challenge the police about it?

Baroness Williams of Trafford (Con): As I said, the Home Secretary has written to the commissioner to set out her expectations and has explained that she is taking personal responsibility to make sure that progress is made on the issues outlined in this report. She has also brought forward a review of the IOPC and its governance structures, as well as asking HMICFRS to consider how it feels it can best focus on the issues raised.

Lord Davies of Gower (Con): My Lords, I too pay tribute to the family of Daniel Morgan and to the late Paul Flynn MP, who pursued this matter relentlessly on behalf of the family. The failure of the Metropolitan Police to identify and prosecute any person or persons responsible for Daniel Morgan's death is deeply regrettable, and I extend my heartfelt sympathy to his family. This was clearly a failure of investigative leadership and of others at the top of the organisation.

The Metropolitan Police has been accused in this report of being institutionally corrupt. By definition, an institution consists of those people within it. I was one of them for 32 years, so let me state clearly that I was not corrupt, neither were the tens of thousands of police officers and support staff who I had the privilege of working with over those years. I do not accept, and neither do my former colleagues—including the noble Lord, Lord Blair of Boughton, the former Metropolitan Police Commissioner—that there is any evidence whatever of systematic corruption in the Metropolitan Police, now or previously. The report has failed miserably to substantiate this general allegation, which frankly is a slur on the reputation of those police officers who have so diligently pursued terrorists and organised criminals and who daily face the dangers of policing this great capital. Sadly, I fear the report will be remembered solely for this unfortunate misrepresentation. I ask the Minister to join me in rejecting the baseless allegation of institutional corruption.

Baroness Williams of Trafford (Con): If I can, I will echo the words of my noble friend Lord Davies of Gower. As I said earlier, thousands of police officers patrol the streets of Greater London, putting themselves in danger and helping the lives of the members of the public whom they serve. The Home Secretary is looking into the institutional defensiveness that goes hand in glove with this report, but it is important to remember that we owe an absolute debt of gratitude to the thousands of police officers who keep us safe.

Lord Berkeley (Lab) [V]: My Lords, I pay tribute to the noble Baroness, Lady O'Loan, for achieving something incredibly difficult that has taken so long largely because she did not have the powers of the Inquiries Act 2005. Can the Minister explain the issue of the Freemasons? The report says:

> "The Panel has not seen evidence that Masonic channels were corruptly used in connection with either the commission of the murder or to subvert the police investigations."

Of course, the Freemasons are very good at hiding everything, particularly from women, so the noble Baroness, Lady O'Loan, probably had a more difficult job, as would the Minister. Who is monitoring and enforcing what the police are doing? The police code of ethics may be better, but who is checking on it? I am afraid, on the evidence that I have seen, that I have to conclude that there is significant corruption in the Metropolitan Police.

Baroness Williams of Trafford (Con): My Lords, I repeat, as the noble Lord said, that the panel is clear that it found no evidence that freemasonry had any effect on the investigations, and I refer noble Lords to the code of ethics. It might help the noble Lord to know that HMICFRS is currently undertaking a follow-up inspection of all forces' counter-corruption and vetting capabilities. The Home Secretary has asked HMICFRS to ensure an urgent focus on the Metropolitan Police.

Lord McNally (LD): My Lords, surely the people who should be most angry and outraged by this report are the vast majority of police officers, to whom the noble Lord, Lord Davies, referred, because they have been betrayed by these institutional failings. This is not a historic report; it is a current report. I understand that the College of Policing has drawn up a number of key action points for police forces to counter corruption. Will the Home Secretary inquire of chief constables and police and crime commissioners what action they have taken in response to those suggestions from the College of Policing? Does she share the report's sense of urgency that something must be done very quickly?

Baroness Williams of Trafford (Con): I agree with everything that the noble Lord said. The Home Secretary definitely shares that urgency, seeing as she will be coming back to report HMICFRS's findings towards the end of the year. It is worth pointing out now the work that national policing has done to tackle corruption, and that forces are periodically inspected on anti-corruption capabilities by HMICFRS—including this year. That does not take away from the report itself, which clearly shows that certain individuals are sadly lacking in that area.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I offer my sympathies to the family of the late Daniel Morgan and pay tribute to the noble Baroness, Lady O'Loan, for her report. Both the Minister and the Statement refer to the "periodic review" of the Independent Office for Police Conduct that will take place. Can she outline the timeframe for that review? How long will it take? In looking at governance structures, will it look at the issue that will deal with a form of institutional corruption, which the panel's report highlighted?

Baroness Williams of Trafford (Con): There was due to be a review of the IOPC at the end of this year, and the Home Secretary is bringing it forward to start as soon as practicable in the next few weeks.

Lord Lexden (Con): My Lords, the noble Baroness, Lady O'Loan, has said that the Commissioner of the Metropolitan Police placed "hurdles" in the way of the panel's work, prolonging it by years. The commissioner has said that she gave "maximum co-operation" to the panel. Who are we to believe? Will Sir Tom Winsor, in the course of his inquiries, tell us the truth about these two irreconcilable statements? It is not unsurprising that the Morgan family has been unable to accept the apology of the Metropolitan Police, whose sincerity must be open to doubt.

Baroness Williams of Trafford (Con): My Lords, I can understand the feelings of the Morgan family; it has been a devastating 34 years for them. Clearly, this review has covered more than one commissioner; it has been in train for the last eight years. I cannot say

whether the commissioner gave full support to the inquiry but, certainly, some of the following investigations will look into it, particularly that of the HMICFRS.

1.36 pm

Sitting suspended.

Arrangement of Business

Announcement

1.40 pm

The Senior Deputy Speaker (Lord Gardiner of Kimble) (Non-Afl): My Lords, the Hybrid Sitting of the House will now resume. I ask all Members to respect social distancing. For Committee on the Professional Qualifications Bill, I will call Members to speak in the order listed. During the debate on each group, I invite Members, including those in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request. The groups are binding. A participant wishing 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. We will now begin.

Professional Qualifications Bill [HL]

Committee (3rd Day)

1.42 pm

Relevant documents: 2nd and 3rd Reports from the Delegated Powers Committee

Clause 8: Duty of regulator to publish information on requirements to practise

Amendment 45

Moved by ***Baroness Noakes***

45: Clause 8, page 5, line 35, at end insert—

"(1A) Subsection (1) does not apply to a regulator of a regulated profession if—

(a) the regulator oversees the regulation of a regulated profession carried out by another person or persons,

(b) the regulator is satisfied that the information required by this section is available on the website of that other person or persons, and

(c) the regulator's website states where the information may be found."

Member's explanatory statement

This makes provision for a regulator which does not regulate a profession directly but oversees the regulation carried out by other professional bodies.

Baroness Noakes (Con): My Lords, in moving Amendment 45 I will speak also to Amendment 46 in my name. I shall also speak to Amendments 63 and 68 in this group, in the name of the noble Baroness, Lady Hayter of Kentish Town, to which I have added my name.

Amendments 45 and 46 both deal with the position of regulators that oversee the regulation of a regulated profession but do not carry out that regulation themselves. This typically arises where a regulator oversees a number of professional bodies, each of which provides qualifications for, and regulate those who practise, the profession. An example of this is the Financial Reporting Council, which oversees regulated auditors, but wholly or partly through the work done by several professional accountancy bodies. Those professional bodies qualify and regulate the accountants within their membership, not all of whom are regulated auditors. I will not attempt a technical description of the medical and dental professions, but the General Medical Council and the General Dental Council sit over the top of various other bodies and medical colleges to which individuals belong, and I suspect that similar issues arise.

Clause 8 requires the regulator to publish information on requirements to practise. My Amendment 45 is intended to ensure that, if the information is displayed on another website, the regulator need not gather and load up that information on its own website but can signpost where to find it. For example, the FRC could signpost information on the websites of the Institute of Chartered Accountants in England and Wales and the corresponding bodies in Ireland and Scotland, as well as the other bodies which have recognised audit qualifications. Anything else is just bureaucracy for the sake of it and is inefficient.

Clause 9 places a duty on a regulator to provide information to a regulator in another part of the UK. My Amendment 46 says that if someone else holds the information, they should seek to get the information provided by that other person. A regulator may have information about individuals in relation to the particular regulated profession but may not have information relating to the broader context of an individual's membership of a professional body—for example, a full disciplinary or complaint record. Gathering information only for the purpose of sharing it with another UK regulator would again be duplicative and inefficient.

Since the amendments in this group were tabled, the noble Baroness, Lady Hayter, and I have received an extraordinary letter from the Minister that is relevant to all the amendments in this group. This was one of my noble friend's Sunday missives, which we have all learned to love during the passage of this Bill. Noble Lords may recall that I initially asked for a list of the bodies covered by the Bill. I received a letter, dated 23 March, listing 160 regulated professions. The Minister said at the time that this was a list of the regulated professions that BEIS considered fell within the Bill's definition. Last Sunday's letter claimed that the earlier list was "indicative"—although he did not say that at the time—and a new list was attached. The new list has over 250 professions and nearly 60 regulators.

1.45 pm

The letter clarified the position of statutory auditors, which I have been banging on about, and recognised that, while the FRC remains a regulator within the terms of the Bill, the bodies that actually regulate audit as recognised supervisory bodies—the chartered accounting bodies—are also now within the terms of the Bill. This does not alter the need for my Amendments 45 and 46.

[Baroness Noakes]
Indeed, it strengthens the case, because asking the FRC to duplicate information held by the chartered bodies or handle information requests when the correct information is held by the chartered bodies would be unnecessary—and, as I said, I am sure that this issue is wider than just audit.

More broadly, this latest letter has shaken what little faith I had in BEIS in relation to the Bill. I have never really understood the rationale for the sweeping powers in this Bill and it has all the hallmarks of being a Bill conceived and executed by officials with little or no ministerial policy direction or oversight. My noble friend the Minister has been unable to justify the Bill other than in the most general terms, and last week we learned that one of the clauses was likely to apply to only four bodies. Now we learn that the Bill was drafted with a far-from-perfect understanding of the territory that it purports to cover. This is no way to legislate. The Government would be well advised to pause the Bill, once we complete Committee today, and to think long and hard about whether and to what extent it is appropriate to legislate in this Bill.

In the light of these latest developments it is absolutely clear that Amendments 63 and 68, tabled by the noble Baroness, Lady Hayter, are necessary in principle. The content is of course already out of date, and I note from the Minister's letter that there is no claim that the latest list is definitive—because apparently it is still being tested. We will need a final list on the face of this Bill before it leaves your Lordships' House, because it is simply unacceptable for legislation to be uncertain as to who or what is within its scope. I beg to move.

Baroness Hayter of Kentish Town (Lab): My Lords, it is nice to follow the noble Baroness, Lady Noakes. Clearly, she and I were doing the same thing on Sunday afternoon; when everyone else was out enjoying the rain, we were sitting at our computers waiting for letters from the Minister. When I have finished speaking to Amendments 63 and 68, I am sure that, if he were to indicate the Government's willingness in principle to accept them, the House would give him leave to give such an indication and save us from having to go through the whole group.

In respect of Amendments 45 and 46, respectively moved and tabled by the noble Baroness, Lady Noakes, it is clearly right that an arm's-length regulator, which now also includes the Legal Services Board, should not have the same legal requirements to provide regulators' information to the assistance centre, and nor should it be caught by the other requirements that apply to front-line regulators.

As we have heard, 160 professions were originally caught by this legislation; as late as the Minister's letter to me of 18 June, it was still 160 professions. The first time round, of course, it was the 57 varieties in the letter to the noble Baronesses, Lady Noakes and Lady Garden, on 24 May. As the noble Baroness, Lady Noakes, said, even the new list is "indicative", although we were not told that the first list was indicative. I received the Minister's letter at 2.16 pm on Sunday afternoon with some amusement because, as the noble Baroness said, we now have 60 regulators and about 200 professions. As I think she indicated, you really could not make it up.

Legislation has been drafted without the department even knowing which bodies are covered. It has then had to correct or revise it quickly afterwards to add, for example, recognised supervisory bodies, because it has just realised that the Companies Act and the Statutory Auditors and Third Country Auditors Regulations include them. As we heard, the Institute of Chartered Accountants in England and Wales has been added. We had specifically been told on 5 June, and again as late as 18 June, that the ICAEW was not included; we now find that it is. As the Minister's letter was not private, I shared a copy of it with the ICAEW. It emailed to say that

"it feels like government seem to be rushing through this legislation without having thought through the detail of the Bill and its consequences, and parliamentarians"—

I think that means us—

"are now having to try and fix this. For the list of regulators and professions affected by this Bill to have changed so substantially while the legislation is being scrutinised … does not help give certainty on such an important and wide-ranging legislative measure—a point hopefully the Minister would recognise."

I mentioned the Legal Services Board, which is now included in the list when it was not before, but the list still lists the Law Society of England and Wales as the regulator of solicitors. I would have thought that it would be more appropriate for the Solicitors Regulation Authority to be listed. The SRA has written to me, to say:

"We would support the SRA being named on the face of the bill".

It is rather surprised that the Law Society is mentioned. That was undoubtedly correct under the Legal Services Act 2007, but it should now be the SRA because it has recently been established as a legal entity. Clearly, even what we had on Sunday still needs correcting, and it needs correcting now, rather than at some point in the future.

As the noble Baroness, Lady Noakes, said, the Minister's letter says that the Government are still testing the list, and will make it public only after that. That really is not sufficient. The Government should not only know which bodies will be covered but have consulted them prior to drafting the Bill. It is no good finding out now that new regulators have not had the chance to put their pennyworth in, and that their specific remit, structure and the way they work clearly cannot have been considered because they have not been consulted.

I think that the noble Baroness and I both agree that it is also not adequate, even when the list is finalised, simply to have it available somewhere in the ether once the Bill is enacted. How are professions regulated by these bodies, or indeed foreign professionals who might want to be authorised here, to know whether the Bill covers them and whether it covers a list of regulators? Saying that there is a list on GOV.UK is insufficient, because who would know to look there to see whether there was a list of regulators covered by the Bill?

This is a powerful Bill. It will enable a Minister to mandate a supposedly independent regulator to put certain processes in place—our Delegated Powers Committee calls it a Henry VIII power. These professions are regulated in law but supposedly with an arm's-length approach, up till now, as to how they gain and retain

their professional standing. A new law would give powers to Ministers over these professional regulators. How can it be possible that those regulators are not listed in the Bill? Of course it must be possible to add or subtract regulators as they change their titles or merge—the sort of thing that happens over time—but it cannot be right to add in a new regulator at the whim of a Minister with no by your leave from Parliament and no mention in legislation.

Amendment 63 would therefore add in a reference to a schedule listing the regulators covered by the Bill, and Amendment 68 comprises that proposed new schedule. As the noble Baroness, Lady Noakes, suggested, given that it was a copy-and-paste, it is not now as accurate as I thought it was when I tabled the amendment. That is not my fault; the list was from the Minister's original letter. Unless the Minister will now accept the amendment in principle, the amendment I will table on Report will be the corrected version. Perhaps by then the Minister will have been able to confirm that all statutory bodies covered by the Bill have been identified and consulted, and to provide us with a list of which of those 60 regulators do not already have the power to recognise overseas qualifications and therefore might not even need the Minister's authorisation, as allowed for in the Bill. As I said, if the Minister will indicate now that he accepts this in principle, then I am sure that we can shortcut this.

Lord Purvis of Tweed (LD): My Lords, I have been a Member of a Parliament—either the Scottish Parliament or this Parliament—for nearly 18 years now. I cannot remember a government proposal for legislation that is so catch-all and which would have powers to amend primary legislation with whatever it wants, by whoever it wants, whenever it sees fit. For the Government not to know who the Bill will apply to while it goes through Parliament is unacceptable. Therefore, although I support all the amendments in the group, I also support the call for the Government to take their foot off the accelerator and pause, so that not just Parliament but the Government themselves can properly scrutinise who will be impacted by the Bill.

In many respects we have an indicative Bill, not an indicative list of bodies. We should not have indicative Bills presented to us. If the Government want to do this properly, there are well-established measures for presenting draft Bills. A draft Bill would probably have fleshed out all these aspects, and allowed those groups to indicate whether or not they will be part of the framework, whether they want to be part of it, or whether they desperately do not want to be. At least we would have known. When I say "we", I want to be all-inclusive, and I include the Minister—he would have known as well.

It is not just a question of whether the Government know which regulators and regulated professions will be in the framework. The impact assessment also includes a number of those that will not be in the framework, which is equally important. Do the Government also know this list? Otherwise, there might be some horrible kind of purgatory, where some of these bodies do not know whether they are on the way to legislation, and so are in a holding pattern, or whether they will not be part of it.

2 pm

The impact assessment says there are 90 regulators and over 140 professions not likely to be included. Does that mean that when the list in the letter to the noble Baroness, Lady Hayter, goes up, that list goes down? Or do the Government not actually know how many regulators or regulated professions there are in the first place? If that is the case, I wish them luck in defining demand in those professions that they do not know exist. The impact assessment is therefore no longer valid. The Government need to withdraw version 1 and give us another version. This is not just something to be amused about—were it not for the talk about a new royal yacht, this might be the funniest thing I have heard today. Rather, it is the fact that this could cost up to £42 million, which is a burden on the bodies that will come into this framework.

The noble Baroness, Lady Noakes, is absolutely right that bureaucracy costs. At a time when we are asking all our regulatory bodies and professions to work as efficiently and effectively as possible, this is an extra layer of bureaucracy and burden upon them. Many who may be listening to this debate could be part of that. Both noble Baronesses are absolutely right. It was breath-taking to read—I think they were to a degree trying to reassure us—that the Government are continuing to test, with interested parties and the devolved Administrations, which bodies should be included.

I think I have got to the bottom of why the Government are in a bit of a pickle. When I looked at the list, I was slightly surprised to find that pig farmers were exclusively singled out. Having represented a number of pig farmers in my former constituency, I was not sure why the Government felt that they, uniquely among all livestock farmers, should be part of the framework under this legislation on professional qualifications. This was raised previously by the noble Baroness, Lady McIntosh of Pickering, and the letter may confirm her doubts about how robust the Government's position is. I looked this up and—thinking, "Surely this cannot be the case" —phoned a friend who is a pig farmer. I think I have got to the bottom of it: this is a cut and paste job. The noble Baroness is right; it is a cut and paste job from the European Union, because this is the database that was used by the European Union for professional qualifications.

I wondered why pig farmers, uniquely across all of the United Kingdom, would be regulated by Defra, which, for this purpose, is the English department. So it was a surprise to find that my Scottish pig farmer friend had his non-existent professional qualifications regulated by the English department. I looked into the European database and, lo and behold, the contact for the UK, as a member state, was Defra. The regulations that are linked to it are, of course, Scottish, and there are separate ones for Northern Ireland. So I ask the Minister: will the third iteration be robust before we get to Report? I do not think so, because there are other professions where the UK Government as a ministry, or body, are put down as the regulator, but they are not—that is just the contact for the European Union; the regulations and standards are devolved.

My final point is that this list gives myself and my noble friends even greater concern about the interaction with the UK Internal Market Act. We have sought

[Lord Purvis of Tweed]
assurance that the carve-outs in that Act relating to the legal and teaching professions would be respected. It looks as though under this list they will not be. As we will be discussing later, when you add that to the Government's position on the Australian trade deal, which includes automatic recognition of, for example, all Australian lawyers to practise anywhere in the United Kingdom, this is a direct override of the UK Internal Market Act. So, while the Government have more work to do, this should not be on the hoof, or while the Bill is going through Parliament. So I agree with the noble Baroness that this now needs to be paused.

Lord Moynihan (Con): My Lords, I will speak to Amendment 45 in the name of my noble friend Lady Noakes, which makes provision for a regulator that does not regulate the profession directly but oversees the regulation carried out by other professional bodies. This refers precisely to the British Association of Snowsport Instructors, to which I referred at length at Second Reading. I too congratulate the noble Baroness, Lady Hayter of Kentish Town, on her excellent Amendment 63. I will speak in favour of it because it recognises:

"The appropriate national authority or the Secretary of State may by regulations amend"

the schedule,

"so as to insert additional regulators."

These will not necessarily be regulators of regulated professionals by statute but may be regulators such as the British Association of Snowsport Instructors.

I highlight this case because I have received a letter, distributed in May by the department of the economy in the Canton du Valais in Switzerland. That canton has more mountainous regions than any other in the Alps, including many famous ski resorts such as Crans-Montana, Zermatt and Morzine-Avoriaz, to name but a few. The letter, sent by the department to ski instructors in Switzerland, said:

"The enforcement of Brexit on 1 January 2021 will mean major changes in the hiring of British nationals. We would like to inform you of the following changes to your sector of activity. As of 1 January 2021, British nationals can no longer avail themselves of the agreement on the free movement of persons. They are therefore subject to the foreign nationals and integration Act (AIA), its ordinance (AOA) and its directives (AIA directives). This implies that the employment of British nationals is strictly reserved for highly qualified persons and must meet the strict conditions of the applicable law. Thus, according to the LEI guidelines, the hiring of snow sports teachers can only be done for qualified teachers, provided that there is an exchange agreement between a partner in the country of origin and a Swiss institution. In addition, the teachers must come from non-EU EFTA countries where there is a long tradition of the activity in question. Therefore, it will not be possible to hire British nationals as ski instructors. The recruitment of ski instructors will have to be done at Swiss level, or within the European Union countries. The Foreign Labour Section team is at your disposal for any further information. Please take note of the above. Our best regards".

That is a massive blow, announced in May, for all British ski instructors who have done so much over many generations to develop the sport of skiing, both in Switzerland and in Europe. It is also wrong. It says that the ski instructors should come

"from countries where there is a long tradition of the activity in question"—

but, of course, the country with the longest tradition of activity in Swiss-based skiing is the United Kingdom. It was Sir Arthur Conan Doyle who introduced skiing to Switzerland after returning from one of his skiing trips in Norway. He brought with him some skis, and he felt that Switzerland was the perfect terrain for such activity.

This is extremely serious for the future of not just British ski instructors but all those who support them. Seasonal businesses and the travel industry have argued the case very strongly that most people who go skiing in the Alps are supported. When they go on holiday, they tend to book through a British company, to be met at the resort by a British representative and, often, to be looked after by British staff—cooks, cleaners and ski instructors, as well as water sports instructors elsewhere in Europe and bar staff. This is all at risk. So the UK outbound tourism industry is facing a crisis in this sector post Covid. Thousands of young people—some 25,000 UK young people support outbound tourism—are also at risk.

It is exceptionally important to cover the second point, but I appreciate that it is the first point, on the British Association of Ski Instructors, that is most pertinent to this set of amendments. Not only does it effectively regulate all ski instructors in the United Kingdom but, through its hard work and diligence with international regulators—many of whom are supported in law in their respective countries—it is in a position whereby, as a result of the situation in which we currently find ourselves, it is not given the support by government that is absolutely necessary to remedy this.

Of course, when we were looking at the previous clause, Clause 7, on the assistance centre, there was an opportunity to put a great deal of effort, time and commitment behind securing the interests of those people as we go forward. I would argue that it is very urgent. If that sort of letter is circulating within the Alps, we need to act now.

I very much hope that one of two things might happen. The Minister is a Whitgift-educated man, and Whitgift is an outstanding centre of sporting excellence. I am sure that he wants to go back there with his head held high, having defended the interests of ski instructors in this country. Either he can use his extraordinary powers of negotiating skill to return pretty swiftly to Brussels to sort out this problem—and, in the case of Switzerland, negotiate with his counterparts there—or he can give a commitment that he will strengthen the assistance centre to make sure that this is a priority for the help given by the assistance centre. There was much debate and uncertainty about whether the resources behind the assistance centre would be adequate when the Committee looked into that in detail. Alternatively, he can accept the amendments in the names of the noble Baroness, Lady Hayter, and my noble friend Lady Noakes. Those are the three options.

I very much hope that the Minister will recognise the importance of this issue, which is now critical and urgent, and in so doing be able to give a very clear commitment to the Committee today that he intends to take this forward. I hope that he will underline the urgency in the same way that I have tried to do for the Committee this afternoon.

Lord Patel (CB) [V]: My Lords, I shall speak briefly to Amendments 45 and 46, but I support all of the amendments in this group. Before I do so, I thank the Minister for the correspondence that I received like everyone else—I made a lot of fuss about it in the previous Committee meeting, and I am grateful now that I am receiving this correspondence.

I shall speak mainly about the medical profession, because I know that best. Although the regulator, which is the General Medical Council, is responsible for all areas of training and certification, the GMC delegates quite a lot of its responsibilities to other bodies. Therefore, information about the different aspects and different levels of training is available from the bodies that deliver the education and training. For instance, it is mostly the universities that deliver undergraduate training. They all follow a core curriculum set by the General Medical Council, but in addition most universities also provide some medical training that will be different from other universities. For instance, my university, the University of Dundee, puts more emphasis on primary care, as well as meeting all the requirements of the core training set by the General Medical Council. The regulator has the information about core training and also publishes information on the universities, but it is the individual universities that will have the information about their particular training in medicine.

For specialist training, again the regulator is the General Medical Council, but all specialist training is delivered by colleges and faculties—I declare an interest as a fellow of several colleges. It is the colleges that write the curriculum and the training, which is approved by the General Medical Council, and they make sure that the training is conducted according to the agreement. At the completion of specialist training, which may take several years, it is the General Medical Council that issues a certificate of completion of training and puts the doctor on the specialist register.

Some doctors may take higher degrees, such as a doctorate in medicine or a PhD; these are totally controlled by the universities that issue those degrees. The regulator has no role there, although in 99% of cases the degrees will relate to some aspect of medicine, whether that be research or clinical science. Following the completion of all this training, it is the regulator, the GMC, that is responsible for the revalidation that every doctor has to undergo every five years. That, too, is delivered and checked by professional bodies such as the colleges, but it is the regulator, the GMC, that is responsible for making sure that it approves the revalidation certificate.

2.15 pm

What this shows is that lots of other organisations and bodies are involved. The information will be held by these bodies, although there is a common regulator in the General Medical Council. In that respect, therefore, I support in particular Amendment 45, which is on the responsibility for where this information should be held.

I will not comment further on the list issue, because a lot has already been said very competently by other speakers, particularly by the noble Baronesses, Lady Noakes and Lady Hayter, and the noble Lord, Lord Purvis. I will not add to that, but there is a problem, which we may discuss in a later amendment about the list.

Lord Hope of Craighead (CB) [V]: My Lords, it is a pleasure to follow my noble friend Lord Patel. I too wish to support all the amendments in this group, but I shall particularly mention Amendments 45 and 46, in the name of the noble Baroness, Lady Noakes. I like these amendments because they are directed precisely to an issue which affects two of the regulatory functions that I had when I was Lord President of the Court of Session in Scotland, as I mentioned at Second Reading.

The word "regulator" is defined in Clause 16 as meaning a

"a person having functions under legislation that relate to the regulation of the profession in the United Kingdom"—

a broad definition. The Lord President is such a person. But he does not exercise those functions on his own. His function, in essence, is to supervise or oversee the other regulator which in each case is the professional body itself. The definition does not draw that distinction, but it is relevant to what Clauses 8 and 9 require the regulators to do. The information to which Clause 8 refers is held by the professional bodies, not by the Lord President.

Amendment 45 addresses itself exactly to the function that the Lord President can perform, which is to ensure that the professional body does what Clause 8 requires. That makes very good sense. There is no need for him to duplicate what the professional bodies are asked to do—which, if the Bill remains as it is, would be its effect. All that is needed is to identify what the Lord President should do as overseer to ensure that the information is made available. The same is true as regards Clause 9. Here too duplication of what the professional body is being asked to do is unnecessary. What Amendment 46 requires of the Lord President is just the kind of thing that he does frequently throughout the year to ensure that the professional body is doing what it is required to do.

For these reasons, I am grateful—indeed very grateful—to the noble Baroness for bringing these amendments forward. I do not need to comment, for the reasons that the noble Lord, Lord Patel, gave, on Amendments 63 and 68. I hope that the Minister will recognise that the amendments to which I have been speaking make very good sense and will improve the Bill, which in its present form is, for reasons I have hinted at, highly unsatisfactory. I hope that he will feel able to accept them.

Lord Davies of Brixton (Lab) [V]: My Lords, I declare my interest as a member of a profession, as listed in the register of interests. I support Amendment 63, tabled by my noble friend Lady Hayter. It is entirely reasonable that it should be clear to which professions this legislation should apply—in addition to architects, who get their own bit in the Bill—so I commend my noble friend's diligent work.

However, I have a question about what counts as a regulated profession. I know this issue comes up under Clause 16, but it is clearly important in the context of the amendment. Clause 16 tells us that

"'regulated profession' means a profession that is regulated by law in the United Kingdom"

and draws our attention to Clause 16(3), which says:

[Lord Davies of Brixton]

"For the purposes of this Act, a profession is regulated by law in the United Kingdom … if by reason of legislation … individuals are entitled to practise the profession in the United Kingdom … or … individuals are entitled to practise the profession in the United Kingdom, or in that part of it, only if … they have certain qualifications or experience, or … they meet an alternative condition or requirement."

All that tells us, in effect, is that a regulated profession is a profession that is regulated by law. I find this difficult without a comprehensive index of all the legislation that might be caught by that definition, particularly given the open-ended Clause 16(3)(b)(ii) at the end about meeting

"an alternative condition or requirement".

So this question is relevant to the amendment. Could the Minister tell us a bit more about what is envisaged might be covered by that part of the definition?

Let us start from the other end. What professions might be covered by the Bill and is there a useful definition that covers them? My noble friend Lady Hayter has helpfully provided us all with a list. The list is interesting in itself, making clear the extraordinary hodge-podge nature of the Bill. Clearly, it is not a list based on a rational assessment of the needs for legal recognition; it is probably a combination of historical accidents. My question is: how do I, other noble Lords and, most relevant, the Government really know which professions are covered by the Bill, given the breadth of the requirement to meet an "alternative condition or requirement"?

How do we know there is not buried somewhere in past legislation a condition or requirement that applies before an individual can practise their profession? I mentioned this issue at Second Reading. Here is an example: there are requirements in the legislation covering both pensions and life insurance that an actuary can sign off on certain statutory reports only if they have been approved by the relevant government Minister—invariably, the Secretary of State. Does that count as regulation? If so, should various Secretaries of State be included in the list of regulators? Perhaps the Minister could address this issue. I do not ambitiously expect an immediate response, but a considered response would be helpful.

Baroness McIntosh of Pickering (Con): I support my noble friend Lady Noakes in her two amendments and the noble Baroness, Lady Hayter, in her Amendments 63 and 68. The first list that I saw was the one produced informally by my noble friend Lady Noakes, which I was delighted to see and took as gospel. Now we have had two or three iterations of it. While that may cause us some confusion and bemusement, one has to look to the professions and the regulators that are required to regulate them. I start from a simple premise: I am a non-practising member of the Faculty of Advocates. I understand what the faculty does, along with the corresponding regulator in England and the Law Society of Scotland—that is, the regulators for their respective professions.

I am delighted that the noble Lord, Lord Purvis, has leapt to the cause that I supported on the question of why pig farmers were chosen for special treatment under the Bill. If I may pause on the completeness of the list, I am not even sure that all the professions listed on pages 20 and 21 of the impact assessment—which I know the noble Lord, Lord Purvis, thinks is no longer entirely up to date—are covered in the new list. It is difficult to see whether

"Chief engineer class I fishing vessel"

and

"Deck officer class II fishing vessel"

have simply been renamed in the list that we received on Sunday afternoon or whether they are the same in the impact assessment and the latest letter. What causes me some concern and confusion, in the light of the comments by the noble Lord, Lord Purvis, is the footnote to table 4 on page 20 of the impact assessment:

"European Commissions' Regulated Professions Database. It should be noted that recognition decisions are captured at the generic profession level and not the specific profession level. Some generic professions listed may therefore include specific professions which do have alternate routes and/or which may be likely to be included in the new framework. This table is therefore likely to overstate the recognition decision numbers of the specific professions without alternate routes and which are not likely to be included in the new framework."

Now I am even more confused than before.

In the light of the forensic work that the noble Lord, Lord Purvis has done in this regard, I am still not entirely convinced as to why pig farmers are included, and producers of chickens for meat production only are included. Does that mean that overseeing egg-producing chickens is not deemed to be a profession and is therefore not regulated for the purposes of the Bill? I go back to what I said when this issue was first raised on the second day of Committee: could my noble friend please state the legal basis for including pig farmers? Has it been correctly identified by the noble Lord, Lord Purvis? I would like to understand, when I meet them at Thirsk auction mart, whether they are included or not. Are egg-producing chickens included or only those for meat production? Perhaps more importantly, on what basis are beef and lamb producers and producers of chickens for other purposes not included? Is that a permanent exclusion or could it be revisited, and might they be included at a later date?

The noble and learned Lord, Lord Hope of Craighead, was being very restrained when he said that this is an unsatisfactory situation. We have to accept that the Bill before us is perhaps not fit for purpose and that we need to do other work on it. I do not think that, hand on heart, we can allow it to go forward to Report and eventually leave the House in this form, because we would not be serving well the professions or indeed their regulators if we did. So I support Amendments 45, 46, 63 and 68 and particularly the call from my noble friend Lady Noakes to pause the legislation at this stage so that we can do the work that, undoubtedly, my noble friend and his department would be delighted to do.

Lord Fox (LD): My Lords, this has been an interesting debate. Before talking about the amendments specifically, I want to respond to the noble Lord, Lord Moynihan. I support his point, but the ski instructors of Great Britain are not alone in having their route to working in the EU cut off. We should look at the overall economic impact of this. Research by Make UK, which represents the UK's manufacturing industry, shows that 61% of manufacturers regularly send their employees to the EU to follow up their manufacturing

work with service work. Almost all of those have qualifications that until now have been recognised in the EU, but that is no longer the case. So this is a huge economic issue, not just for ski instructors and their families but for the entire manufacturing and indeed service sector of this country. The noble Lord has hit on a point, but it is actually a much bigger point overall.

2.30 pm

The Minister is in danger of establishing a tradition. We are sitting down to our Sunday lunch—whether it is a well-regulated piece of pork or an unregulated leg of lamb we do not know—when one of his letters arrives. This letter was timely, but only because the noble Baronesses, Lady Hayter and Lady Noakes, insisted that we have it. It is quite clear that the Government's intent was that we should go all the way through the Bill without knowing the contents of this list. It is also quite clear now that the department and the Government are going all the way through the Bill without knowing the content because, as was so elegantly pointed out by Members of the Committee on all Benches, this is what might best be described as a work in progress.

That brings up another point touched on by my noble friend Lord Purvis, which is, if the department is having problems simply drawing up a list of which professions are included, how is it going to manage a process of demand management? It does not even know who the people are. For example, we have notaries here, so perhaps the Minister can explain how demand management of notaries might be achieved. Is it how long you wait, or how many there are? Is there a quota per town of notaries? I do not know. Then we have banner-towing pilots. How do we know when we have a shortage? Are there too few banners?

Noble Lords: Ha!

Lord Fox (LD): This is not funny, because the Government are trying to micromanage the skills of this country, and it is truly absurd that we should be debating this and a shame that the Government have got themselves into this position. This letter is indicative of a failure of precision and a lack of detail. The Minister stood up and said that the Government need the Henry VIII powers because they are unable to foresee the future. They actually need these powers because they are unable to describe the present and need this to retrospectively fill in the gaps that the Bill will almost certainly leave because of that lack of precision and the failure to understand the detail.

I am sure the Minister's ambition when he first heard about the Bill was to take it through this House as quickly as possible and get on with what he considers to be the other more important parts of his job. It is clear that the Bill came before him very late in the drafting process, by his own admission. But it is now very hard to see how anything we can do to the Bill makes it fit to leave your Lordships' House. The comments from all Benches about having a hard, long look at this before it goes any further are very wise advice to the Minister.

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 noble Lords for the comments in this debate, which, as they may imagine, I have listened to with a certain lack of enjoyment. If I may, I will come back to the substance of that later.

I thank my noble friend Lady Noakes and the noble Baroness, Lady Hayter of Kentish Town, for their Amendments 45, 46, 63 and 68, which concern the regulators that the Bill applies to, as well as the duties on those regulators to publish information. I will start with Amendment 45, which concerns Clause 8 and the duty of a regulator to publish information on requirements to practise. We might remind ourselves of the purposes of this clause. Clause 8 is first and foremost about increasing transparency. It does this by requiring regulators of professions in all parts of the UK to publish information on the entry and practice requirements of professions. This is in direct response to our evidence-gathering. We found a complex regulatory landscape—I think the whole Committee would agree with that—which is difficult for professionals and aspiring professionals to navigate. Some regulators already publish the information listed in Clause 8, and those that do not should be able to prepare it within the six months of lead time set out in the commencement provisions relating to the clause.

The amendment's explanatory statement by my noble friend Lady Noakes helpfully clarifies that "persons" means "professional bodies", but I remind the Committee that many professional bodies regulate on a voluntary basis and not by law. The core principle of the Bill—I will come back to this again later—is that it applies to those regulators which are regulated by law in whole or part. The Bill does not apply to many of them because they regulate on a voluntary basis and so fall outside the duty to publish information under Clause 8. The amendment could create new burdens on bodies not covered by law in any other way.

Moreover, Clause 8 already makes provision, where there is more than one regulator involved in the regulation of a profession, for just one to publish the transparency information required. My noble friend Lady Noakes is seeking to provide for a similar effect with her amendment to a wider group of organisations in this space but, with all due respect, it is not necessary.

Amendment 46 concerns Clause 9 and the duty of a regulator to provide information when requested to a corresponding regulator in another part of the UK. This information helps regulators to check things like fitness to practise when a professional moves between jurisdictions within the UK. The amendment would apply these provisions to "another person or persons"—suggested in the explanatory statement to be professional bodies. Once again, this blurring of the nature of the bodies to which the Bill applies is unhelpful. Indeed, in this case it creates risks.

The clause places a specific duty on a defined regulator to make sure that important information is shared when requested. This might be critical to protect the public from harm. This amendment creates ambiguity around which body must fulfil the duty. It also introduces "must seek to ensure" into the provision. I do not believe this is enough. If there is more than one regulator or professional body involved in regulating a profession, then the law must be clear on who must provide the relevant information; it should be the regulator of the specific professional activity regulated in law. This is

[Lord Grimstone of Boscobel]
important to make sure necessary checks are done on professionals in a timely way. This clause is particularly important where a professional activity is regulated by different regulators in different parts of the UK. At our last count, the number of "corresponding" regulators this amendment would apply to was around 25. The provision in the clause is important, but any burden arising from it will be very limited.

I thank the noble Baroness, Lady Hayter of Kentish Town, for her Amendments 63 and 68, which seek to remove the definition of when a profession is regulated by law in Clause 16 and add a schedule listing the regulators to which the Bill applies. I think we have all learned things through the passage of this Bill. In particular, I have learned that a definition which was apparently clear-cut on when

"a profession is regulated by law"

has taken this amount of time to establish.

As the noble Baroness said, the list in the proposed schedule in her amendment is the same as the list of professions and regulators in the letter which I placed in the House of Lords Library on 24 May. Actually, I indicated at that time that this was not the final list:

"The following table is comprised of over 160 professions and more than 50 regulators that BEIS consider fall within this definition"—

the definition regulated by law—

"and is the product of engagement with other departments, regulators and external organisations. Please note that BEIS are still conducting assurance work to confirm the professions and regulators to which the Bill will apply … The list below should be considered indicative only."

I think that was the appropriate health warning to put on that letter. A very detailed exercise has been going on across Whitehall to confirm who is covered by law, which, as I said earlier, one would have thought it would be straightforward to find out. A very detailed exercise has been going on to update that letter, which was indicative, and to make the letter I have now sent as accurate as possible—although even that letter may still need some updating around the margin going forward.

In order to achieve this list, we have had to work with a large number of government departments and the regulators. This thorough mapping of the landscape of regulated professions has not been done properly, I have written down here, "for far too long". I wonder whether it has ever been done properly at all before now. Yet this list of regulators regulated by law was the list to which the European Union regulations applied. What has come to light, frankly, during this process, is that not all regulators have a copy of the list of the professions which they regulate. The list of professions attached to this list has come from the regulators and, quite rightly and properly, the GMC drew attention to the fact that some extra medical professions needed to be included in the list. Furthermore, not all departments had full visibility of which regulators that fell under their purview were covered by law.

I accept, without reservation, that it is not good enough that these lists have been incomplete and that noble Lords must have felt they were playing a game of blind man's buff in trying to see who the Bill applies to. Of course, as a Minister on the Front Bench, it has been uncomfortable to sit here and listen to the quite reasonable points made by my noble friend Lady Noakes, the noble Baroness, Lady Hayter of Kentish Town, the noble Lord, Lord Purvis of Tweed, and others.

This list must be put into good shape. By the mere act of our working through this Bill and unearthing these matters—in the way that our House is here to do—we are doing a good job. The landscape is complex, but by the time we have finished the Bill, I believe we will have learned all there is to learn about regulated activities, and this rather technical matter about which regulators and professions are covered by law.

Since the first letter, there have been, as I have mentioned, some changes to the indicative list, with some more regulators coming on to it. We have now identified close to 60 regulators—I think it is 55 or 56—and more than 190 professions as falling within the ambit of the Bill. I placed an updated list in the House of Lords Library yesterday. I thought noble Lords would congratulate me on working at the weekend on a Bill as important as this; I now have almost perfect knowledge of when noble Lords eat their lunch on a Sunday. I have asked my officials to keep the list under review as they continue their work with national authorities and regulators. Certainly, I would not want to be the Minister who took this Bill forward without knowing to whom it applied. I will, of course, inform noble Lords if further updates are made.

Actually, the vast majority of the professions and regulators contained in the indicative letter I shared on 20 June are the same as those I shared in the indicative letter of 23 May. As I said, we have done further work with departments to assess where existing legislation will mean that the Bill applies to certain professions and to determine the relevant regulators. This is detailed work that has drawn on expertise from many departments.

In answer to the point of my noble friend Lady McIntosh about animals—the virtual zoo to which she referred—whether or not an animal or a farmer falls under regulations that are governed by law is a matter for legislation that is owned by Defra, which at certain times in the past must have considered it appropriate to put an animal or an activity into its statutes. It is not something that I or my department have taken a value judgment on in relation to the list that should be included in the Bill.

2.45 pm

I reassure noble Lords that my officials have already been in discussion with the small number of regulators that came to light to make sure they understand the implications of the Bill. As I say, the vast majority of professional activities and regulators on the list have not changed. I asked officials to review whether the small number of changes have significantly affected the costs and benefits of the impact assessment. We believe that the transitional costs of revoking the current arrangements and the costs of the transparency requirements and information-sharing requirements may increase slightly, but by a very small percentage. Many of the costs will be unchanged.

Having given some explanation of where we are and how uncomfortable I have felt about this, I turn now to the detail of the amendments. I have concerns about the proposed approach. Inadequate though it

must seem to noble Lords, having listened to us get to this point, I have to say that I still prefer the definition-based approach—a regulator which is regulated in law—because it ensures that no provision is overlooked. This means that national authorities and regulators will have to consider carefully, as they should, whether each professional activity for which they are responsible meets the definition of regulated professions set out in the Bill. The question I would ask is not why the Bill has brought this to light, but why have not national authorities, professions and regulators had these facts at their fingertips before now.

We will absolutely continue the detailed mapping of the landscape and support national authorities and regulators to deepen their understanding of their responsibilities. I believe that this definition-based approach, regulated in law, is future-proof. If and when a new professional activity is regulated or even deregulated, or its name changes, the Bill will not need to be amended. There will be no need to pass regulations to amend a schedule for what might be quite trivial reasons. Having said that, I completely and utterly accept that it must be reasonable for there to be easily accessible and in the public domain an overview of which professional activities and regulators the Bill applies to. I will think further about whether it is best done through GOV.UK or through the assistance centre, which I know some noble Lords have mixed feelings about, but it must be done somewhere where it is completely visible, can be updated easily and can sit alongside other information and guidance about professional qualifications.

I believe that we should stick with the definition-based approach. I should publish an updated live list and do all that can be humanly done to make sure that it is complete, but I believe that it is unnecessary, and indeed would be unhelpful in terms of keeping that list up to date, for it to be put into law. What should be in law is the definition of a profession that is regulated by law, and the consequences of what is in law should be available publicly.

Before I close, I turn to the powerful points made by my noble friend Lord Moynihan in relation to ski instructors and some ancillary points made by the noble Lord, Lord Fox. I understand, of course, the concern that my noble friend feels. I have had a number of letters about this myself and will ensure that we look at it again properly. I will consult our posts in the countries concerned and look at whether there is anything else we can do. I will report back in writing and copy that to other Peers who have spoken on this topic.

Again, I apologise to the House that the initial list was indicative. I hope that noble Lords know that I have eaten a fair amount of humble pie in trying to explain why we have got to where we are.

I can answer the noble Lord, Lord Purvis of Tweed, quickly on his point about lawyers and the Australian free trade agreement. I am told that the agreement we have reached is so far only an agreement in principle. It will contain provisions on legal services, as we have heard, but it will not confer the automatic ability for Australian lawyers to practise law in the UK. We will have to wait for publication of the text to have the fine detail but, coming back to our favourite word, I hope I can assuage the noble Lord's mind on that.

I hope that my explanation in relation to Amendments 45, 46, 63 and 68 has been helpful. I ask that my noble friend Lady Noakes and the noble Baroness, Lady Hayter of Kentish Town, withdraw and do not press their amendments.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): My Lords, I have received two requests to speak after the Minister, from the noble Lord, Lord Purvis of Tweed, and the noble Baroness, Lady Hayter of Kentish Town. I will call them in that order.

Lord Purvis of Tweed (LD): My Lords, on the Australian point, I think the Statement on the Australian agreement will be repeated in this House, and I will pursue that aspect with the Minister there; so he has advance notice. What he just said at the Dispatch Box does not tally with what he sent me in letters, with accompanying documentation, about services and the recognition of professional qualifications. My questions to the Minister are on the back of this.

This place will scrutinise legislation but also the Government's proposals. We have no proposals from the Government to scrutinise because they have not brought forward proposals on what they want to do with some of these powers, so we are struggling. On the specific point of the list, it is not just the regulator bodies that should be on a list. The list is meaningful if we know what the bodies are with regards to the professional qualifications.

On the regulated professions database, the entry for pig farmers shows that they are regulated by legislation. No one has ever denied that is the case because anybody involved in livestock maintenance or husbandry in this country operates under the welfare of farmed animals regulations. On the database, there are the Welfare of Farmed Animals (England) Regulations, the Welfare of Farmed Animals (Scotland) Regulations—there is no reference to any for Scotland on the list—the Welfare of Farmed Animals (Wales) Regulations, and the Welfare of Farmed Animals Regulations (Northern Ireland). Further down it has a box:

"Qualification level: NA—Not applicable".

If the Bill is about recognising professional qualifications for someone wanting to become a pig farmer in any component part of the United Kingdom, and there are no applicable qualifications for it, why is it on this list? We know that a farmer is regulated by laws, and lots of them, but that is irrelevant for the purposes of the Bill. It is of concern because, if it is in the Bill, it will fall foul of all the different requirements under the Bill.

I want to ask a second question with regard to the list and say why it has to be meaningful. Incidentally, we have raised farriers previously; the noble Baroness, Lady Hayter, did so. Farriers remain on the list, so I looked up the Farriers Registration Council. It says that the route to be a farrier is through an apprenticeship; there is no qualification route as an automatic mechanism which can be recognised by someone else. All the professions under the list which have apprenticeship routes are not covered by Clause 1, so where would they be covered? That is the concern that this list generates. It is not just about what is or is not on it; what does it mean by being on it?

Lord Grimstone of Boscobel (Con): I thank the noble Lord for that. Surely this is why we are going to have the assistance centre and why we are going to require regulators to publish on their websites what it takes to become a member of their profession. I say to the noble Lord that an apprenticeship is a qualification, and if the requirement to become a farrier is that you have to be an apprentice, it is quite right that the farriers should put that on their website. It should say how one goes about being an apprentice; it should not be something known only to a favoured few. Boys or girls who wish to become a farrier should have a place to go and find out how to do it.

The Bill will open up, for the first time, for this list of professions—which nobody has pulled together and done the work on—whether you have to have qualifications or apprenticeships to do them. It will make that publicly accessible, and that will be a good thing in encouraging our people—young, middle-aged and old—to a route if they want to qualify and join these professions.

Baroness Hayter of Kentish Town (Lab): I think I am in even greater despair now than I was before the Minister responded. Is this a "better regulation" Bill or is it about recognising incoming professionals from other countries, who can then have the right to practise here?

I find some of the Minister's words extraordinary: he said that he felt uncomfortable, that he has apologised and that he has eaten humble pie. I thought he was leading up to saying, "And therefore we will, if you don't mind, put your amendments to one side and come up with our own words". I thought he was leading up to saying, "Actually, you've got it right". Because he also said that—I am not very good at writing quickly, so I may not have got it quite right—as a Minister, he needs to know to whom the Bill applies. But so do the professions: the farriers, the pig farmers and the chicken farmers, abroad or here, need to know, because this is all about bringing people here from another country. It is not about our sixth-formers wanting to know, if they want to become a professional, whether they should do an apprenticeship, go to university or go to a college of further education. It is not about that.

I think it was this Government who set up the Better Regulation Task Force, or maybe it was ours. Perhaps my noble friend Lord Hunt will help me.

Lord Hunt of Kings Heath (Lab): We definitely had one of those.

Baroness Hayter of Kentish Town (Lab): I am assured that we had one of those, so I cannot even blame this Government. But we do have a Better Regulation Task Force, so if there is no list of regulators at the moment, what on earth has that task force been doing in all the time that it existed under a Labour Government and for the 11 years that it has existed under a Conservative Government? That is exactly the sort of job it should be doing.

If we really need a list of regulators, so that young people can know whether to go to an apprenticeship or get their articles—that is what they used to be called, but I do not think they do those any more; the noble Lord, Lord Palmer would remember—I would understand that. But that is not what this Bill is about. It is about giving powers to a Minister to say to a regulator: "You will do something to accept people coming from another country to use the qualifications they have obtained"—whether by apprenticeship or by degree, or by sitting next to Harry or whatever—"to come here", either because we have a skills shortage or because we are signing a deal with Australia, or wherever. That is what the Bill is about. It is not about helping our sixth-formers know where to get a job.

3 pm

The problem is that if the Minister says that he needs to know to whom this Bill applies, so does everyone else. The regulators need to know and the professions need to know. If he cannot answer, and if his department, after all the weeks working on this, cannot answer, then relying on the idea that two gentlemen—there might be a lady, but I think there are two men in the assistance centre at the moment—are going to be able to define whether a profession or a regulator are covered shows that we are really in a very sorry position. The Minister's answer makes the idea of a schedule even more important—he can have a definition as well, if he wants—so that the matter is clear. I only ask him to agree to go away and think about what we said about that.

The specific question I want to ask the Minister is this. He said that his colleagues have now contacted, or been in touch with, all the new regulators whose names appeared in the new list. Perhaps he could feed back to us, either in a letter or in some other way, what the responses were from those regulators—who were contacted only late in the day—and whether they were content to be there. I really urge him to think very hard about putting a very powerful Bill on the statute book without even his advisers, let alone us, knowing who is covered.

Lord Grimstone of Boscobel (Con): I thank the noble Baroness for her comments. Of course, it goes without saying that I always listen to the noble Baroness's comments very carefully and take them away for consideration. The best advice I can give her about what this Bill is about and what is covered is to refer her to the Explanatory Memorandum on the Bill.

Baroness Noakes (Con): Well, my Lords, that rather took my breath away—and doubtless the breath of everyone else involved in this Committee. I am sure that my noble friend the Minister will want to reconsider his advice to the noble Baroness, Lady Hayter, on that point and perhaps write to her.

I certainly want to thank all noble Lords who have taken part in this debate, which has been an extremely important one. I pay tribute to my noble friend Lord Moynihan for his ingenuity in bringing forward the very real issues related to British ski instructors under BASI, but I do not think that they quite fit in this group of amendments. Nevertheless, it was good to have those issues raised again.

I will deal with my two amendments first. My noble friend said that the amendments were not necessary. I do not think he was listening to what I said about the accountancy, auditing and other related professions

such as insolvency practitioners, what the noble Lord, Lord Patel, said about the medical profession, or what the noble and learned Lord, Lord Hope of Craighead, said about the legal profession in Scotland. People who understand about professions think that this is important.

My noble friend said that this is not necessary. Of course, it is not necessary: the burden of my argument was not that this is necessary but that it is not desirable to require regulators who do not, by the nature of what they are doing, hold lots of information, to duplicate that information within their systems and on their websites. I hope that my noble friend will look carefully at what other noble Lords have said. I am happy if he ignores me, but if he would listen to what other noble Lords have said on these issues, he will see that there are some very real problems in there. The fact that a regulator might need to point to what is on a professional regulator's website or to information that a professional body has, rather than the regulator, does not seem to me to be an impediment, nor does it muddy up his precious concept that this Bill applies only to professions regulated by law. I therefore hope he will think about that again before we get to Report, because otherwise I think I shall probably bring these back at that stage.

We obviously had a lot of discussion on the list, and it is clear that it is still very much a work in progress, as my noble friend the Minister has said. I was really quite surprised to find the concept of some form of regulation being equal to professional qualifications. I never thought that this Bill was about an activity being regulated, but that now seems to have come within the purview of this Bill. It has changed for me the concept of what this Bill is supposed to be about.

I do not think the list is complete. For example, under "Professional business services and administrators of oaths" the only regulator that is cited is the Institute of Chartered Accountants in England and Wales. Actually, I did not know that chartered accountants were administrators of oaths, but I will bet you a penny to a pound that there are many other professional bodies that are regulated for the administration of oaths and it is not just the ICAEW. So we might say that even this latest list is perhaps not worth the paper that I have printed it out on.

It is not just about the completeness of the list; it actually goes to the heart of this Bill. BEIS did not consult on this Bill or any policy proposals. All it did was issue a rather strange call for evidence, some of the replies to which were really rather thin, and it then worked out its own policy and put out a statement of policy at the same time that it published the Bill. We have been aware for some time that a number of the professional bodies have been behind the pace on whether they are covered by the Bill and how it will affect them. Some are not even particularly well aware of it. My noble friend said that his officials were now reaching out to all these other bodies that they are now starting to bring within the net of the Bill, but that does not take the place of proper consultation on what is in this Bill, how it applies to a number of professional activities and whether we actually have a solution that is robust and deals with all the practical issues that arise with respect to professional bodies. As we have heard, each of the major professions has its own set of idiosyncrasies, and that is quite likely to continue.

My own view, and I think that of the noble Baroness, Lady Hayter, is that we will need a list on the face of the Bill for all the reasons that she said a few minutes ago. It is not enough to have a definition-based approach, and I was glad that my noble friend said that he would consider that further. We will return to all of these issues again at Report, but for now, I beg leave to withdraw the amendment.

Amendment 45 withdrawn.

Clause 8 agreed.

Clause 9: Duty of regulator to provide information to regulator in another part of UK

Amendments 46 to 49 not moved.

The Deputy Chairman of Committees (Baroness Fookes) (Con): We now come to the group consisting of the question whether Clause 9 should stand part of the Bill. Anyone wishing to press this to a Division must make that clear in the debate.

Debate on whether Clause 9 should stand part of the Bill.

Baroness McIntosh of Pickering (Con): My Lords, I am delighted to have the opportunity to pose some general questions on Clause 9. Taking up my noble friend the Minister's invitation to read the Explanatory Memorandum, I am looking at the relevant paragraphs as a starting point. Clause 9 is entitled "Duty of regulator to provide information to regulator in another part of UK". First, how wide is this duty, and how many regulators does my noble friend believe will fall within the remit of Clause 9? Being more familiar with the law and the legal profession than any other, I am obviously aware that the legal profession has devolved regulators in other parts of the four nations, but how many professions fall into that category? My other concern is that my understanding is that surely this would be happening anyway, so is why Clause 9 needed in that regard?

If it is some consolation to the noble Baroness, Lady Hayter, I am also struggling to understand the background and the need for this Bill. Perhaps I have a different starting point to the noble Baroness: my starting point was that I was full of admiration and thought it was the right thing for the Government to recognise professional qualifications from EU countries, EEA countries and Switzerland, but I was hoping—as I have mentioned before during the passage of this Bill—that we would have reciprocal rights negotiated. I repeat my disappointment that, having shown them an open door, that was not reciprocated by the other nations to which this Bill applies.

Harking back to the last debate on the amendments in the names of my noble friend Lady Noakes and the noble Baroness, Lady Hayter, I am disappointed that my noble friend the Minister was not able to point to the Defra legislation regulating the profession of pig farming and chicken producing for the production of

[Baroness McIntosh of Pickering]
meat only. Given that we have left the European Union—everyone keeps telling me we have, and that we are in this brave new world where we no longer rely on it—how on earth is it that we are relying on the European Commission database in this regard? That seems completely perverse.

My noble friend referred to this as a "technical matter", but I do not see it as just that. To me, it goes to the heart of this part of the Bill: which professions are to be regulated by law, particularly in the context of Clause 9, which causes a regulator to

"provide information to regulator in another part of UK"?

The Law Society of Scotland briefing states:

"The provisions in this clause seem reasonable for the most part. However, the terms of clause 9(3) and (4) raise some questions. Clause 9(3) provides that a disclosure of information does not breach '…(b) any other restriction on the disclosure of information (however imposed)'. This provision sits uneasily alongside clause 9(4).

Clause 9(4) provides that 'Nothing in the section requires the making of a disclosure which contravenes the data protection legislation (save that the duty imposed by this section is to be taken into account in determining whether any disclosure contravenes that legislation)'.

These provisions lack clarity. The duty under clause 9 can be taken into account when considering if a disclosure contravenes data protection law. Why should it not simply be that compliance with clause 9 is a defence to an accusation that data protection law has been contravened?"

I realise that we discussed that earlier in the debate.

I will also look at the impact assessment and raise the issue of costs. Paragraph 131 of the impact assessment states:

"In total, we are aware of 32 regulators operating in different parts of the UK, which regulate 20 professions, which may be affected by the information-sharing provision upon commencement. These professions are care managers (adult care home, domiciliary, residential child-care)"

and a whole host of others. It goes on to state:

"22 of the regulators are public sector, and we"—

the Government—

"are treating the other 10 as businesses."

It then states in table 19 that, at 2019 prices, the total annual cost to "collect & share data" is £2,380. For businesses, the

"Ongoing direct costs of collecting/sharing data to regulators treated as public sector",

at 2019 prices, are deemed to be £4,759. However, the

"Transitional direct costs to regulators treated as public sector for collecting/sharing data"

are deemed to be £38,076, and the

"Transitional direct costs to regulators treated as businesses for collecting/sharing data"

are deemed to be £19,000-plus, at 2019 prices. Could my noble friend confirm that those figures are still correct, or will they now be revised as the indicative list keeps growing, as we have heard this afternoon?

Given those few remarks, I believe that it would be immensely helpful to take some time between the completion of Committee, which will hopefully be today, and Report, so that my noble friend the Minister can call and chair a round table—I hope that noble Lords may also find this appealing and wish to participate—with the regulators covered by Clause 9 before we reach Report. I would find it immensely helpful to know which professions we are dealing with and which will fall within the remit, and to understand entirely how they feel Clause 9 and other provisions in the Bill will relate to them.

3.15 pm

Along with the other questions I have posed, I ask my noble friend to look favourably on the suggestion that we all have an opportunity to meet face to face under his chairmanship with the regulators in question, in order to have an idea of where we are heading with Clause 9 and how it relates to the rest of the Bill.

Baroness Noakes (Con): My Lords, while I sought to amend Clause 9 in the last group of amendments to avoid unnecessary burdens resulting from it, I could not work out why it was needed. When I searched the documents accompanying the Bill, I could not find an explanation of why it is needed. It has not been needed, to date, for people who practise within the United Kingdom and I cannot conceive of the circumstances in which it would be needed going forward.

I ask my noble friend the Minister to explain specifically why Clause 9 is needed, rather than making generalisations such as, "If a regulator needs to have information, this facilitates the sharing of it". What problem is Clause 9 trying to solve? That is what I am trying to get to the bottom of.

The impact statement relating to Clause 9 is pretty unsatisfactory. It seems to be based on one regulator alone answering a question, with some costs and benefits then being extrapolated from three or four regulators that answered a completely different question. This borders on the absurd, and I do not know how my noble friend the Minister managed to pluck up the courage to put his signature on the front page. If he can help me by explaining how he acquired the courage to sign off on the costs and benefits that accompany Clause 9, I am sure that that would be of value to the Committee.

The Deputy Chairman of Committees (Baroness Fookes) (Con): The noble Baroness, Lady Blake of Leeds, has been forced to withdraw, owing to a connection problem—I am sure that we can all sympathise with that—so I call the Minister to reply.

Lord Grimstone of Boscobel (Con): I thank noble Lords for their contributions on Clause 9. In answer to my noble friend Lady McIntosh of Pickering, we are not relying on EU data to work out the coverage. As we discussed at length earlier, the EU data is incomplete, which is why it has been necessary to go back to departments and source regulators to try to complete it. On her point about round tables, I would be more than happy to do that, and I will ask officials to work out with me what series of round tables would be useful and whom they would involve.

In answer to my noble friend Lady Noakes, I will have another look at the impact assessment to make sure that it still fully represents the situation, and I will write to her and other noble Lords if I feel that it does not.

Several noble Lords have previously commented positively on the commitment to ensuring the sharing of information between equivalent regulators in the UK. Of course, I am in complete agreement with that; that is why I believe that this clause is so important. My noble friend Lady McIntosh of Pickering has indicated that she intends to oppose this clause, but I hope to convince her to support its inclusion in the Bill.

Let us remind ourselves that the clause's purpose is to ensure that regulators in one part of the UK provide relevant information about individuals who have been recognised in that part of the UK to regulators of a corresponding regulated profession in another part of the UK, where required. This is important. Although existing voluntary arrangements work well in certain cases, in answer to the point made by my noble friend Lady Noakes, they do not always work well, I am told, and this Bill's provisions will ensure consistency. They will give greater confidence to regulators that they can access necessary information where required and pass it on to the corresponding regulator to ensure that a professional is qualified to practise in that part of the UK. I do not think that the fact that it may work smoothly now with some regulators takes away the need for it to be made to work smoothly with all regulators.

To put a little more context around the discussion, noble Lords have spoken a number of times during debates on the Bill about certain professions falling within devolved competence. Some of the professions have different regulators in different parts of the UK, of course. If a professional whose qualifications are recognised in one part of the UK wishes to practise in another, and his profession is one of those that falls within devolved competence, it follows that the regulator in the second part of the UK will need to consider whether that professional is rightly qualified to practise in their jurisdiction. To that end, the regulator will need to access information about the individual's qualifications, experience, fitness to practise and, if applicable, any evidence of malpractice. This is why, during the application process for recognition but also beyond—such as if a malpractice case comes to light following recognition—these regulators find themselves needing to share information.

As I have said, I understand and acknowledge that, in several cases, this kind of information sharing already takes place, such as in the teaching profession, where the General Teaching Council for Scotland, the General Teaching Council for Northern Ireland, the Education Workforce Council and the Teaching Regulation Agency all share information with each other. However, although there are existing sharing obligations in some sector-specific legislation, this differs between professions. It can even vary within professions. So, again in answer to my noble friend, this clause therefore brings consistency.

Let me be clear also that I do not believe that this is unnecessary red tape. It does not put an unreasonable duty on regulators. The information required to be shared in this clause is limited to information held by the regulator about the individual and would not require a regulator to procure information it does not already hold. The information sharing that this clause requires of regulators delivers many of the purposes of regulation that your Lordships' House has highlighted during these debates, such as protecting consumers and public health, by making known to regulators those individuals who have not upheld our high regulatory standards.

My noble friend Lady McIntosh of Pickering brought to the attention of the House that legal services and systems of course have distinct natures in the different parts of the UK. She suggested that

"there are sufficient differences between these legal systems to warrant an exclusion from the provisions that create greater regulatory integration of other professions between the UK's composite parts".—[*Official Report*, 9/6/21; col. 1481.]

I want to be clear that this clause already recognises that professions are regulated differently in different parts of the UK. Indeed, its very purpose is not to undermine this but to ensure that information flows effectively when there is a need to do this. To exclude legal professions would not only confuse the scope of the Bill but exclude from this clause the range of legal regulators that for the most part regulate separately across the UK and will therefore require information on professionals whom they do not regulate.

I hope that I can assure noble Lords completely that legal regulators will still operate completely autonomously to make decisions about who practises within their jurisdiction. My officials have engaged closely with legal regulators and the Ministry of Justice in developing these proposals. The Bar Standards Board, the Solicitors Regulation Authority and the Chartered Institute of Legal Executives were content to be included in this clause specifically.

As my noble friend acknowledged, the Law Society of Scotland described the provisions in it as

"reasonable for the most part."

Its specific concerns were around data protection—my noble friend Lady McIntosh reiterated that today—which we fully considered in an amendment that we debated on day 2, to the satisfaction of the House. The clause is explicit that the information required to be shared does not require any disclosures that would contravene data protection legislation. This should help the Law Society of Scotland in that regard.

The provision in the clause is required for the good reasons I have set out here, but the extent of concern around its potential impact is perhaps not. As I noted in my comments on Amendment 46—this is in direct response to my noble friend Lady McIntosh—we estimate that the number of corresponding regulators covered by this amendment is around 25.

Clause 9 will facilitate and support greater co-operation across the union and give confidence to regulators, professionals and consumers that professions are regulated appropriately and effectively across our United Kingdom. It gives a legal underpinning to co-operation that already works well in some cases but at the moment ultimately relies on good will. I hope that my noble friend will feel able to withdraw her opposition to this clause standing part of the Bill.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I have received requests to speak from the noble Lord, Lord Hunt of Kings Heath, the noble Lord, Lord Fox, and the noble Lord, Lord Purvis of Tweed. I first call the noble Lord, Lord Hunt.

Lord Hunt of Kings Heath (Lab): My Lords, I support the noble Baroness, Lady McIntosh, in her request for a round table with regulators between Committee and Report. That would be very helpful indeed.

I just want to ask the Minister about Clause 9. I remind the House of my membership of the GMC board. The Minister will know that, particularly in the health sector, there are regulators that currently regulate for the whole of the United Kingdom, but the devolved Administrations could decide to take over regulatory authority if they wished under the legislation that led to the devolved Administrations; that is particularly the case in relation to Scotland. That being so, will this clause apply to the interrelationship between the regulators in both countries? If the answer is yes, that makes the case for this clause because, clearly, one of the issues relates particularly to the National Health Service. Although it is run by four different government departments, none the less it has some UK-wide characteristics. The key one I believe is an ethos, but secondly there is the ability of staff in the NHS from the different countries to cross the border without any problem in relation to qualifications.

Lord Grimstone of Boscobel (Con): I thank the noble Lord for his question. Again, I repeat that I am very happy to hold round tables on this, as necessary.

On the noble Lord's particular point, if a new separate regulator was set up that fell within the definition of a corresponding regulator for the purposes of this Bill, Clause 9 would automatically apply to it and the information sharing would happen in that way.

Lord Fox (LD): My Lords, I am getting more confused; I am Confused of Wherever. When we set out on our journey on this Bill, the Minister was clear that this was about the mutual recognition of qualifications between different regulatory countries and repealing certain aspects as a result of Brexit. Since then, in the debate on a previous group, the Minister talked about recruiting people into skills, which was not in the initial remit, and now we seem to have strayed firmly into the territory of the internal market Act. Most of the people in this Chamber sat through the happy hours of the then internal market Bill, which was there to do the things that the Minister has just talked about. It seems to me that we are conflating lots of different objectives, the reason being that, once again, if you read the title of the Bill, it can be almost anything you want, and, because of the Henry VIII powers, you can do almost anything you want. Things keep changing. The furniture keeps getting moved. So can the Minister please reassert the focus of this Bill so that I can perhaps knuckle down under his iron will and we can get through it?

3.30 pm

Lord Grimstone of Boscobel (Con): I thank the noble Lord. When I earlier impolitely snapped at the noble Baroness, Lady Hayter, and said to read the Explanatory Memorandum, I was not saying that with any disrespect. This Bill, as we have just acknowledged, is about professional qualifications. It has a broad long title and one sees from the Explanatory Memorandum that it covers a number of matters that affect regulators and professional qualifications, additional to the mere mutual recognition of professional qualifications from overseas. You could easily say that Clauses 1, 2, 3 and 4, allowing recognition arrangements, are the heart of the Bill. But at the same time, as I said—and we have obviously not tried to hide this, as it is stated in the Bill—it covers various other matters in relation to regulators in the United Kingdom.

Lord Purvis of Tweed (LD): My Lords, the point from the noble Lord, Lord Fox, about the internal market Act remains valid. An entire part of that Act, Part 3, relates to professional qualifications. Under this Bill, a UK resident will be someone who, under a trade agreement, is entitled to practise. Under the internal market Act, that qualification is automatically recognised in another part of the UK, other than for those professions that are excluded. Can the Minister be very clear? Where does Clause 9 sit in relation to the internal market Act, given that that Act requires automatic recognition for a person's qualifications in another part of the United Kingdom? Is it not just more bureaucracy, as has been suggested?

Lord Grimstone of Boscobel (Con): I thank the noble Lord for that question. The way I see it is that the UKIM Act introduced a principle of automatic recognition of professional qualifications gained in one part of the UK, as well as provisions for the equal treatment of individuals who obtain their qualifications in a particular UK nation and those who obtain theirs in other parts of the UK. Clause 9 merely supports professionals as they seek recognition in another part of the UK by providing a legislative underpinning to information shared by regulators with their counterparts in another part of the UK. This is entirely about information sharing. It is not about the recognition of professional qualifications.

Baroness McIntosh of Pickering (Con): My Lords, I am grateful to noble Lords who have spoken at various stages of the debate. I want to clarify at the outset—and I am sorry if I was not clear—that I was in no way calling for an exclusion of the legal profession. I clearly stated that my experience is most familiar with the legal profession because I am a non-practising member of the Faculty of Advocates. I simply asked how many regulators will be covered by Clause 9, and my noble friend was kind enough to answer that he thinks 25 regulators will be covered by it. I asked for specific examples of where the Government think Clause 9 provides a solution to a particular problem.

I have to say that, from the questions raised by the noble Lords, Lord Fox and Lord Purvis, I am even more confused now than I was at the beginning of the debate as to the relationship of this clause to this Bill and the relationship of this clause to the internal market Act, which I sat through and contributed to on this specific theme. If anything, my noble friend has confirmed my understanding, and that of my noble friend Lady Noakes. I am most grateful again for her eloquence in stating her own view as to why Clause 9 is perhaps not necessary. My understanding is that the regulators are already communicating in the way that they should.

The noble Lord, Lord Hunt, made an argument as to why Clause 9 might be needed in one specific aspect, but I think that would have been covered in any event under the relevant provisions of the internal market Act.

I am grateful to have had the opportunity to debate this. I would just like to add a word of caution to my noble friend the Minister. The Explanatory Memorandum is not entirely clear in every particular. I refer to Clause 3—not that we are debating that at the moment—and particularly paragraph 32 on page 6, which I think raises more questions than could possibly be answered.

This is something that I will keep under review for the next stage. I am not entirely convinced as to why Clause 9 is in this Bill, but, for the moment, I will not press my objection.

Clause 9 agreed.

Clause 10: Duty of regulator to provide information to overseas regulator

Amendments 50 and 51 not moved.

Clause 10 agreed.

Amendments 52 to 55A not moved.

Clauses 11 and 12 agreed.

Clause 13: Regulations: general

Amendment 56 not moved.

The Deputy Chairman of Committees (Baroness Fookes) (Con): We now come to the group consisting of the question that Clause 13 stand part of the Bill. Anyone wishing to press this to a Division must make that clear in debate.

Debate on whether Clause 13 should stand part of the Bill.

Lord Hunt of Kings Heath (Lab): My Lords, in introducing this debate, I would like to apologise to my noble friend. I do not think that I was a member of the Better Regulation Task Force. I was the deregulation Minister in the Department of Health for a glorious period of four years, during which time we got rid of a few regulations—but I put through four major Bills to make up for that. Having done that, I was promoted, and I became a Better Regulation Minister in the DWP, the MoJ, Defra and finally DECC, where we were regularly hauled across to Downing Street to be given an absolute bollocking by the Prime Minister for why we were not doing enough to deregulate. Of course, for the other three months, we were called across and asked why we were not doing more to legislate to deal with a specific concern of Downing Street. Life does not change much. This Government talk a lot about deregulation but, my goodness me, they do not half like regulations when it comes to giving Ministers powers. That is really what I would like to explore in this stand part debate.

Clearly, we have had a very illuminating debate this afternoon. Despite the best intentions of the Minister, there is a sense of unease about the Bill, its rationale, the professions to be covered and its drafting. I say to the Minister that I would particularly note the comments from the noble and learned Lord, Lord Hope, when he talked about the unsatisfactory nature of the Bill. Coming from him, those were very telling comments indeed.

My own concern, as I have said, is about the extensive powers being given to Ministers throughout this Bill, and Clause 13 is an example. Clause 13(1)(a), taken together with the definition of legislation in Clause 16(1), means that the powers to which the Delegated Powers Committee has drawn the attention of the House in its report are Henry VIII powers. The powers conferred by Clause 5(2), Clause 6(1) and Clause 10(4) are also Henry VIII powers.

This is just one example of the increasing trend for Ministers to take powers unto themselves without adequate justification or explanation. I know that the Minister has sent a supplementary memorandum to the Delegated Powers Committee, and that we have had amendments to Clause 1, which have been very welcome. But it is noticeable that the Delegated Powers Committee, having considered that, says in its follow-up report that it none the less wishes to continue

"to press the Minister to provide … a much fuller explanation about the provision that could be made in regulations under clause 1; and"—

here it seems to me is the nub—

"full justification for all such provision—including that which amends primary legislation—being made by statutory instrument instead of by primary legislation with its attendant scrutiny."

I do not want to repeat what I said at Second Reading or in our earlier debates, but the report of the Secondary Legislation Scrutiny Committee must be seen in parallel with the reports of the Delegated Powers Committee. It complains about the number of pieces of legislation that have been introduced, partly in response to the pandemic but partly because of our withdrawal from the EU, which are extraordinary in the powers they give to Ministers. In this Bill so far, the Minister has very courteously defended the use of these Henry VIII powers on what I would call technocratic grounds—in other words, "We need the powers because they are demand-led, and demand will change over time."

As we have heard today, it is not possible at this moment for the Government to state explicitly where these powers will be used or what organisations or qualifications they will apply to. The Minister has explained the process he is still going through, but you could make the same arguments for any piece of legislation. The question I put to him is this: are we not seeing a general trend towards continuously bringing skeletal Bills in which extensive powers are given to Ministers and of which Parliament has very little opportunity to really go into the details?

The Minister has relied on the need for this Bill in relation to the specific needs of the different regulators, but he has not responded to the constitutional issues raised by it. I have instituted this debate to allow him to do so.

Lord Patel (CB) [V]: My Lords, to add to what my friend, the noble Lord, Lord Hunt of Kings Heath, has said, I will concentrate mainly on Henry VIII powers, which apply to other clauses in the Bill, not just Clause 13.

[Lord Patel]

Henry VIII clauses allow Ministers to amend or repeal provisions in an Act of Parliament using secondary legislation. I tried to look up what the laws might say about Henry VIII powers being adopted. For those not familiar with them, *Halsbury's Laws of England* provides the following description:

"As a general rule, primary legislation amends other primary legislation but leaves subordinate legislation to amend itself; subordinate legislation frequently amends other subordinate legislation, but mostly does not amend primary legislation.

Powers conferred by statute cannot be assigned without statutory authority, and whether they can be delegated depends on the construction of the statute. It will be assumed by the courts that Parliament does not delegate legislative or other power unless it does so by express provision or unavoidable implication; and provisions conferring power will be construed strictly against the person on whom the power is conferred.

An Act of Parliament may contain a power to make subordinate legislation which in turn can amend the enabling Act or another piece of primary legislation. The clause of the Bill containing such a provision allowing primary legislation to be amended by secondary legislation is commonly termed a 'Henry VIII clause' and the power itself is likewise called a 'Henry VIII power'"—

terms familiar to us all. It goes on:

"The normal principles of statutory construction apply to Henry VIII powers but the courts will apply a restrictive interpretation if there is any doubt as to the scope of the power."

The noble and learned Lord, Lord Thomas, who is speaking on this group, may wish to comment on that.

3.45 pm

The House of Lords Delegated Powers and Regulatory Reform Committee has said:

"Henry VIII powers should not be inserted in Bills as a matter of routine, and any that are included should be fully explained and justified."

For many of these clauses, including Clause 13, the scope and intent are not fully explained, although perhaps the Minister, as the noble Lord, Lord Hunt, has said, may wish to expand on that.

The House of Lords Constitution Committee report *The Legislative Process: The Delegation of Powers* had this to say:

"'Henry VIII clauses' are clauses in a bill that enable ministers to amend or repeal provisions in an Act of Parliament using secondary legislation. As secondary legislation is subject to a lesser degree of scrutiny than primary legislation, Henry VIII clauses are a significant form of delegated power."

It concluded:

"This is an increasingly common feature of legislation which, as we have repeatedly stated, causes considerable concern. The Government's desire to future-proof legislation, both in light of Brexit and the rapidly changing nature of digital technologies, must be balanced against the need for Parliament to scrutinise and, where necessary, constrain executive power.

Henry VIII clauses are 'a departure from constitutional principle. Departures from constitutional principle should be contemplated only where a full and clear explanation and justification is provided.' Such justification should set out the specific purpose that the Henry VIII power is designed to serve and how the power will be used. Widely drawn delegations of legislative authority cannot be justified solely by the need for speed and flexibility."

Clause 13 is a key example of taking wide powers to amend even primary legislation. Hence I believe that Clause 13 should not stand part of the Bill.

Lord Davies of Brixton (Lab) [V]: My Lords, I fully support my noble friend Lord Hunt and the remarks of the noble Lord, Lord Patel. I will look at the wording of the clause; I might be slightly more inclined to consider giving the Government these powers if I understood better what the clause is getting at. I admire and sympathise with the parliamentary draftsperson; I understand that there is a massive amount of custom and practice, but what does the wording of this clause actually provide? We know what the Government are trying to do—take all the power—but we should at least try to provide something vaguely comprehensible.

Let us look at the wording. Subsection (1)(a) says that you cannot modify the legislation; under subsection (1)(b) you can

"make different provision for different purposes";

and under subsection (1)(c) you can

"make supplementary, incidental, consequential, transitional, transitory or saving provision."

That is just a word salad. I assume that there are good definitions of all these words, which make them distinct, but I struggle to understand what they are.

Subsection (2) says that, under Section 8, there is no power to modify legislation. Does that mean that you can still make different provisions for different purposes under Section 8, or does the word "modify" encompass everything in one? Subsection (3) gives us even more words: "amend, repeal or revoke".

I really hope we can get an understanding of what the real powers that can be exercised under this clause mean and what the distinctions are between all these different ways of expressing what to me—a lay person—seem essentially to be the same objectives.

Lord Thomas of Cwmgiedd (CB) [V]: It is a pleasure to follow the noble Lord, Lord Davies of Brixton, and his analysis of Clause 13. I do not wish to add to it, because each of the words used in that clause is deliberately used by parliamentary draftsmen for purposes that, at the moment, I do not fully understand. My objection to the clause—this is why I support the noble Lords, Lord Hunt and Lord Patel—is that this is yet another piece of framework legislation with extensive Henry VIII powers, unclear as they are, as the noble Lord, Lord Davies, pointed out. There are occasions when one can see a justification for Henry VIII clauses or wide regulatory powers, but we have to ask about the context, and the context of this Bill is the professions, however broadly we define them. It is essential that professions be regulated under a structure approved in detail by Parliament, simply because we must be certain, first, of the quality of the professions, and secondly, of the scope of the restrictions. Thirdly, we must be certain that the professions are completely independent of government interference, given the reliance the Government place on them and the need for them to be steadfast in their independence and independent advice and statements to government.

The debate earlier this afternoon on Amendment 45 showed the fallacy of trying to do what the Government propose. It is only because this Bill—framework though it is and vague though it is—has been fully subjected to parliamentary scrutiny that some of the really difficult issues and the lack of preparation have come out. I dread to think what will happen when we move to looking at the way the Bill is to operate under regulations. It is clear, then, that the regulations will

not subject to detailed parliamentary scrutiny. What can be worse than passing what I regret to say, with due deference to parliamentary counsel, for whom I have the highest respect and have had the pleasure of working with on many occasions, is a wholly unsatisfactory and poorly prepared Bill? But a draftsman is not to be blamed for that. The blame lies with those who give the draftsman instructions.

This is the kind of Bill on which Parliament must now take a stand. We should not be legislating without good primary legislation that sets out the detail, so that we are sure how the regulatory powers are to be used. We should curtail the use of these powers in relation to matters of great importance to the prosperity and health of the nation, and that is the independence of the profession.

I therefore warmly support the noble Lords, Lord Hunt and Lord Patel, in this regard. I have not added to what the noble Lord, Lord Patel, said about Henry VIII powers because I do not think I could have improved upon his eloquent explanation.

Baroness McIntosh of Pickering (Con): My Lords, first, it was churlish of me not to thank my noble friend the Minister for his enthusiastic embracing of the idea of a round table in connection with Clause 9; for that I am extremely grateful to him. I am also grateful that he asked us again to refer to the Explanatory Memorandum in relation to Clause 13, in addition to the remarks made by the noble Lord, Lord Hunt, in moving this amendment. The EM states that the powers under Clause 13

"may be used to modify legislation, including, where relevant, Acts of Parliament."

Again, an Act of Parliament is being amended not by another Act, but simply by regulation.

Every Government like to govern by regulation and every Opposition would prefer things to be on the face of the Bill—that is just a fact of life to which I am becoming accustomed, having only served as a shadow Minister, not the real thing. But I would like to take this opportunity to ask my noble friend the Minister one specific question. Clause 13 as drafted is silent on any requirement to consult on these regulations. What consultation will there be, and at what stage might draft regulations be passed to the regulators as well as the relevant devolved Administrations? It is extremely important that they see them at the earliest possible stage.

Could my noble friend also put my mind at rest regarding an issue that the noble Lord, Lord Hunt, referred to in connection with Clause 9: the potential conflict between regulators of a devolved nation and regulators in another devolved nation or, indeed, the "mothership"—the English regulator? Might that situation arise under Clause 13? How would my noble friend aim to prevent that arising?

Lord Fox (LD): I am grateful for the speeches we have heard so far. I am a cosignatory to this amendment and I would like to associate myself completely with the comments of the noble Lords, Lord Hunt and Lord Patel. However, if they will excuse me, I would like to single out the comments of the noble and learned Lord, Lord Thomas of Cwmgiedd, which were a clear, clarion call as to what we need to do with this clause: take it out. If we do not, we will let a Bill leave your Lordships' House with so much power vested in the Minister and the department.

We are still struggling with what this Bill is for. If, as the Minister says, the first four clauses are its beating heart, then if things change, these issues can be picked up in primary legislation. Secretary of State Fox was very clear: trade deals will be brought to Parliament and debated as primary legislation. If and when the Government renege on that, perhaps it would be a problem of their own creating, but to leave this Henry VIII clause in the Bill is to pass too much untrammelled power going forward. I am sure that every department wants that ability not to have to worry about what Parliament says when it is making regulations and primary legislation, but your Lordships are here to stand up against things like that. We should remember the words of the noble and learned Lord, Lord Thomas, as we move forward to Report.

Baroness Hayter of Kentish Town (Lab): My Lords, my noble friend Lord Hunt referred to "unease" about the Bill. I would put it slightly stronger: the "worry" about the Bill is threefold. First, as we have been hearing, it is badly thought out, badly drafted and not subject to proper consultation. Secondly, it is powerful: it allows statutory bodies—ones we thought autonomous—to have their roles, structures and working practices altered, not at their request to a Minister but to comply with government policy. Thirdly, as we have just been hearing, these changes to statutory bodies will be imposed by secondary legislation.

Hence, it is entirely legitimate to ask questions about Clause 13. Again, it is about whether there are two parts to the Bill. I have been focused on the idea that the Bill is about recognising international qualifications, but we are hearing from the various trade talks that the Government will indeed want to add professional services into the mix. As we have said before, this will often be really welcome and will be prioritised, I hope, in some of the trade talks—but only where it is judged good for our professions and not where it is imposed in a deal for something else.

4 pm

Today is the launch, as we know, of the negotiations with 11 countries belonging to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. One day I will learn to say that, so it rolls off the tongue, but I have not quite got there yet, and "the CPTPP" does not roll of the tongue either. The launch of those negotiations today highlights the possibility of liberalisation through the recognition of qualifications, encouraging this, particularly in legal services and engineering. As I say, this is excellent when it is in our interest, but only so long as the UK can continue to set its own regulatory frameworks and standards, and only where any changes are brought properly through legislation and not just via Henry VIII powers.

As the noble and learned Lord, Lord Thomas of Cwmgiedd, says, without a change to the powers in the Bill, this will allow for no detailed parliamentary scrutiny of the implementation of the secondary legislation that will fall as a result of those new trade deals. They

[Baroness Hayter of Kentish Town]
could be in areas of really significant, independent professional standards, so there is real concern here about the powers that are granted to Ministers in Clause 13.

Lord Grimstone of Boscobel (Con): My Lords, I note that the noble Lords, Lord Hunt of Kings Heath, Lord Fox and Lord Patel, have stated their intention to oppose that Clause 13 stands part of the Bill. The purpose of Clause 13 is to clarify and set out the parameters of the delegated powers in the Bill. Without it, there would be uncertainty about the limits of the powers in the Bill. Appropriate national authorities could have more, not less, discretion over how they make regulations under this Bill. For example, without Clause 13, the limits placed on the power to make regulations in Clause 10, which can amend the duty to provide information to overseas regulators, would no longer apply. The regulation-making powers could potentially be interpreted more broadly. On this point, the DPRRC observed that the power in Clause 10, which is described in Clause 13 as presently drafted, was an appropriate use of delegated powers. I do not believe that introducing uncertainty in the use of the powers under the Bill is the outcome noble Lords are seeking to achieve.

The debate, rightly and properly, has often returned to the DPRRC's report on the Bill and its recommendations about the broad powers in the Bill. I respect and understand the points made by the DPRRC and by noble Lords during the Committee proceedings. I particularly noted the comments made by the noble Lord, Lord Hunt of Kings Heath, in this regard, supported by the noble and learned Lord, Lord Thomas of Cwmgiedd. The challenge we face, and I know I have said this previously, is that the existing legislative frameworks across numerous regulators include a mixture of primary and secondary legislation, so national authorities may require the ability to amend both primary and secondary legislation. I recognise the concern that noble Lords, including the noble Lords, Lord Patel and Lord Purvis of Tweed, and the noble Baroness, Lady Hayter of Kentish Town, have about the Henry VIII powers and the important comments made by the DPRRC. I will ensure that on Report I give as full an explanation as I can of why I believe those powers are necessary. I will not attempt to answer the legal points raised by the noble Lord, Lord Davies of Brixton, now. If I may, rather than doing it from the Dispatch Box, I will write to him, copied to other noble Lords present today.

I believe that if we are to move forward and put some greater coherence into the legislation surrounding professional regulators regulated by law in the UK this is the only route open to us. It allows us to provide for the implementation of international agreements of professional qualifications or to introduce routes to recognise qualifications from around the world in areas of unmet demand. The powers have also been designed to allow for flexibility to meet future needs. Of course I understand that noble Lords are worried about anybody at this Dispatch Box using the word "flexibility". This is why I will have to explain as fully as possible how these powers will be used.

These future needs may be the terms of future trade agreements or changes in demand for professions in the UK. Clause 13, as drafted, allows appropriate national authorities to act expediently and in a proportionate manner through statutory instruments. These statutory instruments will of course be held to the rigorous scrutiny of the appropriate legislative process and will be informed by intensive engagement and, I can absolutely ensure my noble friend Lady McIntosh of Pickering, consultation with interested parties. Regulations made under this Bill—and I know this was a concern of the noble Lords, Lord Purvis and Lord Fox—will not cut across reforms to specific professions where they are also being taken forward. For example, DHSC's consultation on proposals to modernise the legislation of healthcare professional regulators closed last week. If legislative changes are needed as a consequence of that reform programme, the intention is to use the existing powers under health legislation.

I hope that I have offered some reassurance about the intention behind the delegated powers in the Bill and I will, of course, continue to reflect on the points raised during the debate. I will see what I can do further to explain the rationale for these powers, but I do not believe that removing Clause 13 would address the concerns raised. I hope that the noble Lords feel able to withdraw their opposition to Clause 13 standing part of the Bill.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): I have received one request, so far, to speak after the Minister. I call the noble Lord, Lord Purvis of Tweed.

Lord Purvis of Tweed (LD): My Lords, I am grateful to the Minister for indicating that we will have more information on Report, but we have been asking some questions of concern since Second Reading, so I think the very least the Minister and the Government can do before we start Report, and indeed before the deadline for amendments on Report, is to provide information. Otherwise, it is pointless once we are on Report.

My question follows up a question from the noble Baroness, Lady Hayter, on trade deals to which the Minister referred. In an earlier group, in response to a question I had about legal services in the Australia deal, the Minister categorical ruled out that there would be mutual recognition of lawyers in the Australia deal to try to allay my fears that it would override the internal market Bill. The attachment in the Minister's letter to me, which is about the agreement in principle, has a specific paragraph:

> "Legal services provisions which will both guarantee that UK and Australian lawyers can advise clients and provide arbitration, mediation and conciliation services in the other country's territory using their original qualifications and title".

If that is not a new agreement on professional qualifications that will have to be implemented by this legislation, in which the Minister is intending to using a Henry VIII power rather than primary legislation under previous commitments, how on earth can we trust any other commitments about intent from the Dispatch Box?

Lord Grimstone of Boscobel (Con): I thank the noble Lord, Lord Purvis, for that. I really believe that we have to wait until we see the detailed text of the

Australia FTA, which will be subject to proper scrutiny. I think if there is one thing that the noble Lord and I agree on, it is the need for proper scrutiny of free trade agreements once the text is available. Trying to debate these free trade agreements purely on the basis of brief references to what they say is not something that I believe either he or I would feel is satisfactory.

Coming back to his earlier point, I will communicate with noble Lords as fully as can before Report on the matters to which he referred.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): I have received one further request to speak after the Minister, from the noble Lord, Lord Lansley.

Lord Lansley (Con): My Lords, I welcome what my noble friend had to say about returning to this issue on Report. When we do, given that, as the noble Lord, Lord Fox, said, it is our anticipation that future free trade agreements will be implemented in primary legislation, would my noble friend at that time also give us a guarantee that, where there is a choice between using primary legislation to make the necessary legislative changes to implement an international recognition agreement and using a power under this Bill, the Government will use the former to allow this House to scrutinise it in more detail?

Lord Grimstone of Boscobel (Con): I thank my noble friend for that comment. As we know, these questions are difficult to answer in the abstract. What I can say is that, where primary legislation is needed, it will be used. I do not think that it is reasonable to ask me to define which aspects will be covered by primary legislation at this stage for agreements that have not yet been finalised.

Lord Hunt of Kings Heath (Lab): My Lords, this has proven to be a very interesting debate, and it has moved us on a little. The noble Lord, Lord Patel, was very clear about why we are concerned about the use of Henry VIII clauses. He should take the noble and learned Lord, Lord Thomas, saying that he could not better his words as a pretty good compliment.

It seems to me that there are two things here. The first is the actual wording of Clause 13. My noble friend Lord Davies did a great service when he went through it. I reread it and, frankly, found it very hard to understand. When the noble and learned Lord, Lord Thomas, also says that he does not fully understand Clause 13, I suspect that that means that no one does, except perhaps one parliamentary counsel and possibly an official in the noble Lord's department who issued the instructions. The fact is that this is poor legislation if it is almost impossible to work through what this clause actually means.

At heart, this is not just an academic debate. The noble and learned Lord, Lord Thomas, put his finger on it when he said that at the heart of this is the independence of our professions. One of the great successes that we in the UK enjoy, both in terms of prestige and financially, is the way in which many of our senior professions are viewed globally. The independence of those professions is one reason why that is so. That is what makes the Bill so important and why we are all rather worried about the current situation with it.

My noble friend Lady Hayter said that, if we leave it as it is, we are leaving any changes in the future without sufficient parliamentary scrutiny. The noble Baroness, Lady McIntosh, asked for draft regulations; I do not think that she received an answer to that, but it was a very important point.

The Minister has promised a full explanation on Report, which we will now get earlier, but he needs to come forward with changes to the Bill because it will clearly not get through after its current process through your Lordships' House. There is a question for noble Lords generally about what to do with it.

The noble Lord, Lord Lansley, asked a pertinent question in relation to trade deals and the Government's preference for primary or secondary legislation. The Minister answered him very carefully by saying that there would be primary legislation when needed, which is not quite the answer that I think the noble Lord was seeking. Of course, he had an earlier amendment that seeks to deal with this in one way; I have a sunset clause, which is another way of dealing with the problems in the Bill. There may be other approaches, but, between now and Report, we have to do something to protect the independence of our professions and Parliament's role in scrutinising the provisions in the Bill.

Clause 13 agreed.

4.15 pm

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): We now come to the group consisting of Amendment 56A. Anyone wishing to press this amendment to a Division must make that clear during the debate.

Clause 14: Authority by whom regulations may be made

Amendment 56A

Moved by ***Baroness Finlay of Llandaff***

56A: Clause 14, page 11, line 2, leave out subsections (5) and (6)

Baroness Finlay of Llandaff (CB): My Lords, I start by apologising to the House, as I wrongly said previously that nursing associates are not regulated. Actually, the Nursing and Midwifery Council now holds the register of those who meet those criteria.

In moving Amendment 56A, I am grateful to my noble and learned friend Lord Thomas of Cwmgiedd for his support. We have already had a discussion about exactly which regulators are affected by this Bill. There are two regulating bodies based in Wales that this legislation would affect: the Education Workforce Council and Social Care Wales. There is no valid reason whatever that the Westminster Government should have a say over these bodies, as they operate in wholly devolved areas.

The letter previously referred to, which was sent by the noble Lord, Lord Grimstone, to the noble Baronesses, Lady Hayter of Kentish Town and Lady Noakes, concerning the professions and regulators within scope

[Baroness Finlay of Llandaff]
of the Bill, exemplifies a key concern that my amendment tries to address. The letter failed to clarify that the Education Workforce Council is a Wales-only regulator, but also failed even to mention Social Care Wales. This was clearly a mistake, as we have now heard, and I hope it has been corrected, but it also flags a wider issue: Wales and Welsh bodies are clearly an afterthought for this Government when considering this Bill.

In its current state, I fail to see how the Welsh Government would recommend that the Senedd consent to the Bill, unless a number of issues are satisfactorily resolved. Clauses 1, 3 to 6, 8 and 10 confer various regulation-making powers for different purposes on the "appropriate national authority". Of particular and cross-cutting concern to all these clauses is the way "appropriate national authority" has been defined by Clause 14. This means that the powers of the Welsh Ministers, along with those of the other devolved Governments, are exercisable concurrently by the Secretary of State or Lord Chancellor. Hence, the Secretary of State or Lord Chancellor could make provision, through regulations, on matters that fall within devolved competence.

In addition, as we have heard, Clause 13 contains provisions that mean that the powers to make regulations, conferred by Clauses 1 to 6, include powers to modify primary legislation, such as UK Acts of Parliament and Senedd Acts, as well as secondary legislation. The combination of concurrent functions and Henry VIII powers means that the Secretary of State could exercise these regulation-making powers to amend Senedd Acts and regulations made by Welsh Ministers. While Ministers may claim they do not intend to use these concurrent powers in areas of devolved competence, the wording of the Bill does not reflect this sentiment. The Secretary of State and Lord Chancellor would be able to exercise these powers in devolved areas without requiring any consultation with, or consent from, Welsh Ministers. That is clearly unacceptable.

Clause 14(5) requires Welsh Ministers, when exercising the regulation-making powers in the Bill, to obtain the consent of a Minister of the Crown when such regulations would, if made in an Act of the Senedd, require the Minister of the Crown to consent under Schedule 7B to the Government of Wales Act 2006. This effectively imports the restrictions imposed by paragraphs 8 to 11 of Schedule 7B to the 2006 Act into the regulation-making process. This restriction is unique to Welsh Ministers' powers; Scottish and Northern Ireland Ministers are not subject to a corresponding restriction. However, it is not without precedent—a similar restriction was imposed by the Fisheries Act 2020.

What does this mean in practice? It means that the Welsh Ministers would, when making regulations using the powers conferred by this Bill, need to obtain the consent of a Minister of the Crown in certain circumstances, including where, for example, the regulations modified or removed a function exercisable by a reserved authority. Further, the removal of this provision via a future Act of the Senedd would also engage the Minister of the Crown's consent requirements. Again, this is not a suitable state of affairs. Therefore, I must question whether some of these powers are even necessary.

For example, the power conferred by Clause 1 enables the "appropriate national authority" to make regulations that require specified regulators to consider and assess whether qualifications and experience gained outside the UK should be treated as if they were specified UK qualifications for the purposes of practising that profession in the UK. Both the Education Workforce Council and Social Care Wales already have powers enshrined by Welsh Ministers in Welsh legislation to recognise international qualifications and determine whether they are equivalent to UK qualifications, so I ask the Minister why the Bill now gives powers to override this. The solution, I suggest, is simply to accept my amendment.

Baroness Randerson (LD): My Lords, I am pleased to have the opportunity to support the amendment in the name of the noble Baroness, Lady Finlay. I shall take a moment to express my concern about the chaotic state of this Bill. I will not waste more of the time of this House by repeating what the noble Baroness said, but the omission of the social care regulator from the Minister's letter was such an obvious error. I cannot help thinking that a lot of work still needs to be done to make this Bill ready to pass into legislation.

As the noble Baroness has said, as the Bill is drafted, the regulator confers a suite of regulation-making powers on the appropriate national authority. Welsh Ministers are that authority for the devolved professions and have a right to be fully recognised as that, not to have to ask for permission from the UK Government nor to have their existing powers overridden by this legislation. According to the Bill, those powers are to be exercised concurrently with the Secretary of State and Lord Chancellor, who could legislate in devolved areas and, as the Bill stands, would not need the consent of Welsh Ministers on those regulations.

It is worth adding that the situation in Wales is always slightly more complex, because of the nature of Welsh devolution; it started from a bad place, has moved forward significantly in gaining clarity and logic, but is not 100% there yet. There are areas where Welsh Ministers have some Executive powers that are not reflected in the legislative powers of the Senedd, and that has to be recognised.

The reassurance that we received from the noble Lord the Minister—I realise that the noble Baroness, Lady Bloomfield of Hinton Waldrist, will respond to this group of amendments—that the power to override Welsh Ministers would not normally be taken is of no great reassurance to us, because the UK Government have said that in the past and then overridden the decision of the Senedd or the wishes of Welsh government Ministers.

This is a serious issue for the Government and this Bill. I warn them that, as the Bill stands, the Government will not get consent from the devolved Administrations or the Senedd in Wales. They have to take that into account as, to get this on to the statute book, they must start by overriding Welsh Ministers and Senedd powers.

Lord Thomas of Cwmgiedd (CB) [V]: My Lords, the issue on which I speak will be brief and parallels what I said earlier on Clause 13. It is important to keep this

Bill as defined as possible. This amendment tries to do that by forcing the Government to explain why the relatively simple issues on Wales cannot be dealt with in the Bill. If there is a real need for the consent of Ministers of the Crown for Welsh Ministers to exercise powers, can a reason be given?

As the Minister knows from her own experience, the Welsh devolution settlement is extremely complicated, and all this part of the Bill does is make it even more complicated again. I can see no reason why the consent of Ministers of the Crown is required for just two regulators in Wales. Therefore, if there is no real need for these powers, this clause should not be in the Bill. Otherwise, I entirely agree with what has been said by the noble Baroness, Lady Randerson, and my noble friend Lady Finlay of Llandaff. I hope the Government can explain why this clause is needed and, if there is no satisfactory explanation, remove it.

Baroness Garden of Frognal (LD): My Lords, in the face of such Welsh expertise, I rise apprehensively as an Englishwoman to add my support to the noble Baroness, Lady Finlay, the noble and learned Lord, Lord Thomas, and my noble friend Lady Randerson, and to support Wales and the Welsh Assembly. We all recognise that the Scottish Parliament, the Northern Ireland Assembly and the Welsh Assembly have different powers, remits and terms of reference. However, it seems strange that the Welsh Assembly is the only one to require the consent of a Minister of the Crown before being able to act, whereas the others do not. If devolution is truly to mean that the different nations have mastery over their countries, this surely cannot be necessary. The noble Baroness has already pointed out that Wales has prestigious bodies which could undertake these tasks.

4.30 pm

The other thing which puzzles me is that the Bill talks about the consent of "a" Minister of the Crown, so it is not necessarily the Welsh Minister or a Minister who knows anything at all about Wales. It seems it could be any passing Minister who has a few minutes to spare, regardless of his or her Welsh knowledge. I do not know whether that is how the Government intend the legislation to read, but that is how I read it. This really is unnecessary, for all the good reasons that have already been said. These sections should be withdrawn. We need to retain the friendly regard and respect which the nations of the UK should have, one towards another. As my noble friend Lady Randerson said, there should be no right to override the Welsh Assembly in these matters.

Baroness Hayter of Kentish Town (Lab): My Lords, I really do not want to add to what has been said because it is slightly strange that the UK Government will have to consent to regulations made by a Welsh Minister. I am sure the Minister will say, "But the Welsh Government saw this and did not object." Can she tell us exactly what discussions took place with the Welsh Government, and what assurances they were offered if they did nod it through, which I think is unlikely? What assurances were they given to allay their fears about it?

Baroness Bloomfield of Hinton Waldrist (Con): Hoffwn ddiolch i bawb a siaradodd yn y dadl byr ond bwysig hon. I thank all noble Lords who have spoken in this short but very important debate. I thank the noble Baroness, Lady Finlay of Llandaff, for her amendment, which relates to Clause 14 and the Welsh Minister's powers to make regulations under the Bill. I note that it is supported by the noble and learned Lord, Lord Thomas of Cwmgiedd. The amendment would remove the subsections within Clause 14 whereby a Minister of the Crown's consent would be required before any provision is made by Welsh Ministers in regulations that would, if contained in an Act of Senedd Cymru, require such consent.

First, I reiterate that the Government fully respect the devolution settlements. Devolved matters should normally be for the devolved Administrations to legislate on. It is hard to conceive of a scenario where this would not be adhered to. I remind noble Lords that the Government are seeking legislative consent to the Bill in line with the Sewel convention. The conditions in Clause 14 that the amendment would strip out are entirely in line with the devolution settlements. To deviate from the agreed position under the Welsh devolution settlement purely for the purposes of regulations made under the Bill would be inappropriate and unnecessary.

On the concurrent powers in the Bill, some professions are regulated on a UK-wide basis, and the regulation of some professions is entirely at devolved level. The Bill will apply to the entirety of the UK and, in line with the devolution settlements, allow the devolved Administrations to make regulations within devolved competence. The inclusion of concurrent powers ensures that professions which fall within devolved competence but are regulated on a UK-wide basis can be dealt with under the Bill by the relevant appropriate national authority. Of course, we shall always consult the relevant devolved Administration before these powers are used in devolved areas.

In answer to the noble Baronesses, Lady Randerson and Lady Finlay of Llandaff, officials met the Education Workforce Council at the end of April and are meeting the social care regulators next week to discuss the Bill. Social Care Wales was on the first indicative list and came off the second one following clarification from departments. As noble Lords know, the Education Workforce Council was on both lists. Because we are meeting the regulators so shortly, I will agree to write to noble Lords and update them on the progress of those discussions when they have actually happened. To that end, I hope that I can persuade the noble Baroness to withdraw her amendment.

Baroness Finlay of Llandaff (CB): My Lords, I think I should start by saying "Diolch yn fawr iawn" to the Minister for her reply.

I am most grateful to the noble Baroness, Lady Randerson, for supporting me and the noble and learned Lord, Thomas of Cwmgiedd, in this amendment. I am also grateful for the support of the noble Baroness, Lady Garden of Frognal, and for her interpretation when she described it as "any passing Minister" being able to make some power, which is how it did feel when I read this in the Bill.

[Baroness Finlay of Llandaff]

As has been said, the devolution settlement is indeed very complicated, and the problem is that the Bill appears to worsen those complications. The noble Baroness, Lady Hayter of Kentish Town, really put her finger on it in explaining what is, in some ways, the delicate nature of all this. I look forward to having a written reply from the Minister, because this is very complicated indeed. I do not think that we have clarified it adequately and, following that letter, I may well want to come back to it on Report. In the meantime, I beg leave to withdraw the amendment.

Amendment 56A withdrawn.

Amendment 57 not moved.

Clause 14 agreed.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): We now come to the group beginning with Amendment 58. Anyone wishing to press this or anything else in the group to a Division must make that clear in the debate.

Clause 15: Parliamentary procedure for making regulations

Amendment 58

Moved by ***Baroness Randerson***

58: Clause 15, page 11, leave out lines 10 to 13

Member's explanatory statement

This amendment would mean all regulations made under the Act are subject to the affirmative procedure.

Baroness Randerson (LD): My Lords, I will speak to Amendment 58 in my name and that of the noble Baroness, Lady Bennett. This is about as modest an amendment as one could possibly imagine. It simply requires that all regulations that flow from the Bill are made by the affirmative procedure. The Government have acknowledged that most of the substantive changes to the law envisaged by the Bill are to be made by delegated powers.

The Delegated Powers and Regulatory Reform Committee has drawn our attention to what it sees as significant problems with the Bill in respect of the constitutional principles involved. The noble Lord, Lord Patel, drew our attention to this issue earlier in our debates this afternoon. For instance, the DPRRC draws attention to the Henry VIII power in Clause 1, which gives the Government power to amend primary legislation to make provision about a wide range of issues, including details of the approach to assessing applications from overseas applicants, guidance to regulators on how to assess them, fees to be paid and appeals.

The Government's excuse is that these changes are to be demand-led, but the DPRRC does not regard that as a justification for Henry VIII powers. Paragraph 20 of its report points out that when those powers will be executed by affirmative procedure, that in itself will provide minimal scrutiny. Paragraph 23 points out that "Ministers will have no duty to consult before making regulations."

Clause 3 of the Bill gives Ministers powers to make regulations in connection with the implementation of international recognition agreements—another Henry VIII power and, this time, not subject to any conditions. We can already see the reality of this principle with the very broad agreement made between the UK and Australia in the recent trade deal, which specifies mutual recognition of professional qualifications in some detail.

The Constitution Committee makes the point that there is a long-standing constitutional convention that international agreements that change UK law require an Act of Parliament, so the DPRRC considers that Clause 3 should be removed from the Bill. Clause 4 also contains a Henry VIII power on authorising a regulator to recognise an overseas regulator. I go through this because I am pointing out that, in the face of this barrage of criticism from those in this House whose job is to safeguard the constitutional integrity of the UK, it is a very small request in this amendment that the blizzard of regulations that we can expect to flow from this Bill should be made by the affirmative procedure.

Lord Moynihan (Con): My Lords, I declare my interest, having in prior years been a long-standing member of the Delegated Powers and Regulatory Reform Committee. I echo the comments of the noble Baroness, Lady Randerson, that its report on the Bill and the use of secondary legislation makes telling and worrying reading. Before I cover that, I place on record my thanks to my noble friend Lord Grimstone for his response to my speech earlier and the constructive way in which he handled that. Also, it is important for the Committee to place on record that he has sought to catch the mood of the House rather than to counter it by speaking "note rote". That is a notable parliamentary and diplomatic skill, and he has done it more capably than many Ministers that I have heard in nearly 40 years in both Houses. However, as he knows, that does not negate the challenges that the Government face with this Bill on its passage through the House.

Most of the substantive changes to this Bill are envisaged to be undertaken by the Executive. As the noble Lord, Lord Hunt, has said, there is a creeping growth of secondary legislation. Some of it is understood in the context of the huge number of statutory instruments following Brexit, but both Houses need to review and reverse that process, otherwise we will be in a situation where the balance of power between the Executive and the legislature is out of kilter. Parliament must be consulted. My noble friend Lord Grimstone said that many of the Bill's aspects would be under rigorous scrutiny with interested parties; it is even more important that they are under rigorous scrutiny with Parliament.

The noble Lords, Lord Hunt of Kings Heath and Lord Patel, when talking about Henry VIII powers, and the noble and learned Lord, Lord Thomas of Cwmgiedd, on the lack of detailed parliamentary scrutiny, made eloquent contributions to what is relevant not only to the very light-touch but important amendment in the name of my noble friend Lady Sanderson but to the wider use of secondary legislation, because there is a significant difference between negative and affirmative resolution. With negative, there is no requirement to

approve the SIs for them to become law, and with the affirmative, there is a far higher degree of scrutiny sought, with the three forms of high and appropriate scrutiny that are well known to every Member of the House. That is why, wherever possible, Parliament should insist that as much as possible is on the face of the Bill, and why resorting to secondary legislation should be kept to an absolute minimum. It is with those comments in mind and made that I believe, not only in the context of Amendment 58 but throughout the Bill, that we need to return on Report to make sure that there is appropriate parliamentary scrutiny throughout.

Lord Purvis of Tweed (LD): My Lords, I support Amendment 60 in my noble friend's name, and I will speak to Amendments 65,66 and 67 in my name and that of my noble friend Lord Fox. This is a very short debate which in many respects reinforces points made in other groups, but it can be divided into two areas: first, the necessity of avoiding, where at all possible, using secondary legislation to amend primary legislation, as the previous group have indicated; and, secondly, to have an argument about pausing not just the Bill but the implementation of an Act before the Government have their policy ducks in a row.

4.45 pm

The second point relates to Amendments 65, 66, and 67. Part of the Government's intent with this legislation is to have an alternative framework to the one that we have left by virtue of membership of the European Union single market. It is inevitable that we will need some form of arrangement with the European countries that are our biggest service sector trading partners. It may not be depressing to everybody but it is depressing to me that the Government's assumption on this Bill is using the Home Office modelling that there will be a 70% reduction in the number of applications from EEA citizens seeking mutual recognition of their qualification to provide a service within the UK. On the second day of Committee I indicated the statistics that need not be repeated about how this is to the disbenefit of the United Kingdom—but the Government are on this journey. Part of the route for this will be to offset the shortages in labour and the increases in demand for services that the Government themselves are forecasting are inevitable.

However, we do not know yet how the Government will calculate demand, only that they have said that they will take a number of factors into consideration. We do not yet know, as we have demonstrated today in Committee, how many of the regulators will be asked to reduce fees, shorten timeframes, or change their application processes for those outwith Europe. The Government have indicated that they will not publish any draft regulations, and we have yet to see clarity on what those regulations might look like. Also, when it comes to non-European countries, the Government have not indicated how they intend to use this Bill vis-à-vis international trading agreements. As my noble friend Lady Randerson and the noble Lord, Lord Moynihan, indicated, there are now inevitabilities that we will be asked to implement new mutual recognition provisions within trading agreements. Australia has been referred to.

I hope that the noble Lord, Lord Grimstone, who is not responding to this debate, knows that I respect him greatly. I hope that he also knows that it is fairly futile to ask me not to ask questions of him about letters that he writes to me, and that it is not premature to ask questions about documents that are sent to me by his office. I will scrutinise them. Agreements in principle are very significant documents; they are inked international agreements and I will continue to scrutinise them.

As my noble friend Lady Randerson rightly indicated, there are professional qualifications chapters within the Australia trade agreement, and they are worth scrutiny—but proper scrutiny. Scrutiny and accountability do not come simply with a piece of secondary legislation. Yes, we may pray against and annul it—although that is exceptionally rare in this House, as we all know. In fact, I think it is the position of the Official Opposition that they will never seek to do that. Therefore, that is not necessarily a useful tool, and if they are not accompanied by full consultation and do not go through stages where they can be amended, this is a very much lower standard than what was promised by the Secretary of State, Dr Fox, when he told the House of Commons that the Government would

"bring forward a bespoke piece of primary legislation when required for each new future trade agreement that requires changes to legislation and where there are no existing powers."—[*Official Report*, Commons, 16/7/18; col. 42.]

That is different from saying, "If the Government need to". Dr Fox was categorical; now we have equivocation.

That leads on to my second point: what are our future trading policies going to be when it comes to professional qualifications and trade agreements? The Government's impact assessment gives the impression that it is to our advantage that we have to negotiate separately with the 27 countries for mutual recognition agreements. At the same time the Government have agreed a multicountry agreement with Norway and others, and now they want to have within CPTPP an 11-country-wide agreement. So what is the Government's approach? Do they support multilateral mutual qualification frameworks or do they want bilateral country-to-country agreements?

The Government have not published either a skills framework or a skills strategy that would be the basis on which we looked at demand. The amendments would give the Government an opportunity within a year, if the Bill goes through, to publish such statements, policy and strategy. At that point we would be able to implement the legislation with a much clearer idea of what the regulations would include, and of course who they would impact.

Baroness Blake of Leeds (Lab): This has been an interesting debate, especially for those of us who are only just beginning to get to grips with the whole process of affirmative and negative procedures. I thank the noble Baroness, Lady Randerson, for her explanation and the clarity with which she gave her understanding of why she has put forward the amendment. Clearly the Minister needs to explain why a distinction has been drawn and why the Government believe it is necessary.

[Baroness Blake of Leeds]

As we have heard, Clause 15 states:

"Regulations under this Act are subject to the affirmative resolution procedure where they contain provision amending, repealing or revoking primary legislation or retained direct principal EU legislation"—

otherwise, regulations are negative. Amendment 58, in the names of the noble Baronesses, Lady Randerson and Lady Bennett, seeks to ensure that all regulations made under the Act will be subject to the affirmative procedure. As the noble Lord, Lord Moynihan, stated, the Delegated Powers Committee has raised similar concerns, stating, for example, that the power in Clause 10(4), which is subject only to the negative procedure, was "inappropriate".

There seems to be a recurring theme throughout the discussions and debates that we are having as we go through these procedures: namely, that we must ensure that Parliament is not sidelined and that appropriate parliamentary scrutiny can take place. How many negative SIs does the Minister expect to come before Parliament in the first year after Royal Assent?

On Amendments 65, 66 and 67, I thank the noble Lords, Lord Purvis and Lord Fox, for putting forward the idea of one-year delay to revoking retained EU legislation, and I thank the noble Lord, Lord Purvis, for his detailed explanation of why that could be an attractive route to follow. I would like the Minister to explain whether this was ever considered. Indeed, would it give the regulators time to raise funds to cover any additional costs, or—to return to the theme of unease around so many areas of the Bill—is the Minister only worried about how a one-year delay could affect the UK's pursuit of trade agreements?

Baroness Bloomfield of Hinton Waldrist (Con): I thank the noble Baroness, Lady Randerson, and the noble Lord, Lord Purvis of Tweed, for their proposed amendments. As we have heard in this debate, the amendments concern parliamentary procedure for regulations made under the Bill and, separately, the timings for the revocation of relevant retained EU law. I note the concerns raised by almost all noble Lords who have participated in this debate about the use of delegated powers.

The Government have carefully considered the powers in the Bill and consider that they are necessary and justified. It would be unfeasible to specify in the Bill detailed amendments to a large number of pieces of primary and secondary legislation. In respect of certain policies, there is a need for flexibility to make changes over time. For example, the Bill takes a power to implement international agreements so far as they relate to the recognition of professional qualifications, the content and timing of which will depend on the outcome of trade negotiations.

On trade negotiations, I reiterate that the UK's offer to potential trade partners on the recognition of professional qualifications depends on many factors, including the size of the potential market for the export of professional services. On the concerns addressed by the noble Baroness, Lady Randerson, I reiterate my noble friend's comments about the status of the Australian trade deal. I understand the noble Baroness's concerns, but I feel that we should probably wait for the final text to be issued.

I will start with Amendment 58, which I note the noble Baroness, Lady Bennett of Manor Castle, supports. The amendment would have the effect that all regulations made under the Bill would be subject to the affirmative procedure. Clause 15 sets out the parliamentary procedure for how regulations under the Bill should be made. The clause already provides that any regulation amending, repealing or revoking primary legislation or retained direct principal EU legislation is subject to the affirmative procedure. It is right that Parliament has the appropriate scrutiny of such regulations.

The clause goes on to set out that the negative procedure should be used for other, more technical regulations. Further, as an additional safeguard, the Bill provides that regulations subject to the negative procedure may be made also subject to the affirmative procedure where required. For example, regulations made under Clause 10(4), in relation to the duty placed on UK regulators under that clause to provide requested information to their overseas counterparts, would be made under the negative procedure. Those regulations may make provision in connection with that duty—for example, in relation to the timeframe in which the duty is to be complied with. The negative procedure is clearly more fitting in these instances and will provide an appropriate scrutiny for such measures.

I turn to Amendments 65, 66 and 67, which propose a minimum of 12 months before revoking relevant retained EU law. I thank the noble Lord, Lord Purvis of Tweed, for tabling these amendments, and I note that the noble Lord, Lord Fox, supports them. We have already discussed at length the core professionals whose qualifications and experience have been gained overseas, reflecting our status outside the EU single market and our global outlook. Clauses 5 and 6 play a key role in doing that. The details of those clauses were addressed on day 2 of Committee, so I will not repeat them now, but I will repeat what my noble friend the Minister said about the timing of commencement regulations for these clauses and his assurance to noble Lords that the Government have no intention of rushing this.

The Government will consider carefully when to implement commencement regulations to revoke the EU-derived system under Clause 5(1). In order to support a coherent legislative framework while making sure that decisions are taken at the right time for the professions affected, there will need to be appropriate prior engagement with the devolved Administrations, regulators and other interested parties. Likewise, Clause 6 provides for the revocation of other retained EU law by the appropriate national authority, and I would expect there to be appropriate engagement from all such authorities with regulators. As a result, I am confident that the Bill will come into force in an orderly manner with no surprises for regulators, and that it will not bring with it such wholesale changes for which the regulators would need a year to prepare if regulations were to be made before that period had elapsed. I hope that has allayed some of the concerns of the noble Lord, Lord Purvis, that we were passing legislation before we had our policy ducks in a row.

I hope my explanations on these points have provided appropriate reassurance and I ask that the amendment be withdrawn. Lastly, I apologise to the noble Baroness, Lady Blake, but perhaps I could write to her with specific answers to her questions.

5 pm

Baroness Randerson (LD): I thank all noble Lords who spoke in this short debate. To sum up the situation on the affirmative versus the negative procedure, the reality is that negative instruments slip through this House almost unnoticed. The occasional one might catch the eye of an eagle-eyed Peer who might raise it and turn it into an affirmative procedure, but the vast majority slip through. The procedure is intended for routine things such as renewals year on year, not the kind of procedure envisaged in this legislation. At least we get the opportunity to debate affirmative instruments, although that is done on an "accept it or reject it" basis. We cannot amend them, and it is therefore a pretty blunt instrument. Noble Lords know that the number of affirmative instruments rejected by this House is extremely small.

I join the noble Lord, Lord Moynihan, in thanking the noble Lord, Lord Grimstone, for his acceptance that he has to provide greater clarity in response to our criticisms. The noble Baroness, Lady Bloomfield, also indicated that she will write in response to the specific questions from the noble Baroness, Lady Blake. My noble friend Lord Purvis pointed out a lack of clarity about how and why this legislation will operate.

I noted the Minister's comments about the Australian trade deal. The announcement sets out in detail the issues that will be covered, but not exactly how they will be covered. I read it with great interest. The two Prime Ministers stood there in person and announced it proudly. Is the Minister now saying that this is just a rough sketch of what might be and that we should not rely on this as the brave new future announced to us only a week or so ago?

I conclude by saying that the Bill has come to us far too soon. That view is probably shared by many noble Lords across the Committee. There has been a lack of consultation with the devolved Administrations and the regulators and a lack of research. It shows. The Bill was conceived with absolutely no understanding of the complexity of this process. Going back to Second Reading, my noble friend Lady Garden and I warned that the process of agreeing the mutual recognition of qualifications will take years. We have been arguing about how we set up a system to do that. It has nothing to do with the process of making the agreement on mutual recognition. We are in the calm before the storm on this.

We have a situation where there is uncertainty about who the regulators actually are and there is no recognition of how long it takes to agree the qualifications. This is a truly terrible Bill. I do not say that because I disagree with the principle behind the need for mutual recognition of qualifications. We need to have it, but we have a Bill that has not decided what it is about, how it will do it and why it will have to do it. The noble Baroness, Lady Noakes, said that it is bordering on the absurd, so I urge Ministers to go back to their department to have a long and honest conversation and then either withdraw the Bill and put it out of its misery or at the very least have a delay before Report to give them the opportunity to recharge their batteries and consider what they really want from the Bill. In the meantime, I beg leave to withdraw my amendment.

Amendment 58 withdrawn.

Clause 15 agreed.

Amendment 59

Moved by ***Lord Hunt of Kings Heath***

59: After Clause 15, insert the following new Clause—

"Expiry

(1) The appropriate national authority may not make regulations under this Act after a period of four years beginning with the day on which this Act is passed.

(2) Any regulations made under this Act expire on the day after that period."

Lord Hunt of Kings Heath (Lab): My Lords, I will carry on with the theme of the previous debate, which was very interesting in relation to statutory instruments and how far they afford us an opportunity to scrutinise provisions in the Bill.

I believe one solution to the challenges facing the Bill is to sunset the whole Bill. I am putting this forward as a proposition for discussion now between Committee and Report. It is not the only solution. The noble Lord, Lord Lansley, also had an interesting amendment earlier which seeks to deal with the issue in a slightly different way, but nonetheless is worthy of consideration.

The Government's defence, if you like, of parliamentary scrutiny is that the orders that come as a result of the use of the Act, when enacted, will come before Parliament in the form of statutory instruments, and most of them will be affirmative. The noble Baroness, Lady Randerson, asked what that means in practice. Since the Second World War, five statutory instruments have been defeated in your Lordships' House. We also had the debate on tax credits in 2015 where we agreed two amendments to the Motion to approve the tax credit regulations. They sought essentially to delay consideration of the regulations until certain conditions were met. The Government were very cross about that, but the fact is that they decided not to proceed and one can say that the Lords defeated that statutory instrument, so six since the Second World War.

The Minister says, "Ah, but Parliament can debate them and scrutinise them in relation to an affirmative instrument", and I accept that most will be affirmative, it means nothing. All we get is an hour's debate, at most. We can put a regret Motion down, but what does that mean? Ministers take no account of regret Motions. It makes us feel better because we have a vote and defeat the Government, but it is meaningless.

This is the whole problem with the parliamentary appraisal of secondary legislation. It was not really considered when the Parliament Act was first introduced. We have an absolute veto, but because it is an absolute veto we feel very reluctant to use it. In effect we have no leverage whatsoever. As the noble Baroness said, apart from the imaginative use of the 2015 regulations, we cannot amend statutory instruments either. My suggestion is that the only way to deal with this, if the whole of the Bill needs to go forward, is a sunset clause.

Sunset clauses, as the noble Lord, Lord Purvis, reminded us on the second day in Committee, are not unknown to the Minister, who has just taken through

[Lord Hunt of Kings Heath]
the Trade Act, which has sunset provisions. The power there, I gather, is for five years, with an option for another five years through regulation. It simply ensures that if changes are made in that period, Parliament has the opportunity to scrutinise them again through debating further primary legislation. The noble Lord, Lord Purvis, asked for some form of comparable treatment in this Bill, and the Minister said that there is a difference, in that the trade agreements in the Trade Act are rollover agreements, many of which will be replaced in due course by other agreements. He argued that what we are talking about in this Bill are mutual recognition agreements rather than rollover agreements, and that there is a distinct difference. Up to a point, Minister, up to a point. It strikes me that there are some parallels. We currently have a status quo in relation to the existing regulation of professional qualifications. In time, we can expect more mutual recognition agreements to come forward and, as with the Trade Act, surely it is not unreasonable for Parliament to be able to scrutinise them properly and in primary legislation after a period of years.

Sunset clauses provide an expiry date for legislation and are used in circumstances where it is felt that Parliament should be given time to decide on its merits —again, after a fixed period. This is certainly one avenue we need to explore if the Bill is to be taken any further. I beg to move.

Lord Patel (CB) [V]: My Lords, I support the amendment of the noble Lord, Lord Hunt of Kings Heath, which would insert a sunset clause into the Bill. Why do I say that? Because many of its clauses, as we have already discussed, take Henry VIII powers and the intent of those clauses is not quite clear. The sunset clause overview states that a such a clause provides an expiry date for legislation:

"Sunset clauses are included in legislation when it is felt that Parliament should have the chance to decide on its merits again after a fixed period."

Sunset clauses let Parliament reassess the legislation at a later date, once it is clear how it has been used in practice and how suitable it is to the policy challenge at hand.

The introduction of a sunset clause is also a useful method of reaching political compromise. It is clear from our discussions that we do not quite agree with a lot of the clauses. Reaching political compromise in the case of a controversial or sensitive provision allows the Government to make the provision they need for the time being, while building in a statutory guarantee of review of and parliamentary control over the Bill. In that respect, it is also good for the Government: they get their Bill through but it includes a sunset clause to allow Parliament greater scrutiny.

I was interested to see the guidance on the use of sunset clauses. The Government published guidance, through BEIS, on the better regulation framework in March 2020. This was written for government departments and explains how the better regulation system should operate. Section 1.5 of the guidance provides the following information on the use of review and sunset clauses:

"At an early stage in policy development, government departments

"will need to consider whether either a statutory review clause is required or a sunset clause is appropriate … Sunset clauses are not a requirement, but a tool for policy makers to use where they are deemed appropriate and impose an automatic expiry of the measure on a specified date … and ensure scrutiny of the decision on whether or not to renew the regulation."

On that basis, a sunset clause is the ideal way to deal with this Bill and the powers it takes through its different clauses, and I therefore support it.

5.15 pm

Lord Fox (LD): Once again, my Lords, I find myself following the wise words of the noble Lords, Lord Hunt and Lord Patel. In his speech, the noble Lord, Lord Hunt, referenced the Trade Act. Students of the Trade Act will have heard me make a speech about secondary legislation on at least two occasions and I am not going to repeat it, but—spoiler alert—it was very similar to the speech the noble Lord, Lord Hunt, gave. The key element both of us brought out was the complete lack of government jeopardy when it comes to secondary legislation. In other words: it is essentially a bet that cannot be lost. What they are betting with is the right governance of a very important thing.

After several trailers from the noble Lord, Lord Hunt, we come to this amendment. He has trailed this several times and the sunset clause is one way of putting some insurance into this Bill. What we would really like is for the Bill to leave this House not needing a sunset clause; that has to be the objective. This is very much a second-order or third-order solution to something sub-optimal. In that respect, I am not enthusiastic; I am somewhat reluctantly drawn to supporting this clause because we have to put in some element of insurance if we cannot get this right. I hope that, by hook or by crook, we can get the Bill right and perhaps not need a sunset clause, but in the meantime, we should keep that option open.

Baroness Blake of Leeds (Lab): I thank my noble friend Lord Hunt and the noble Lord, Lord Patel, for tabling Amendment 59. A four-year sunset clause is an interesting proposal, given the wider concerns that keep coming up throughout these debates: how quickly the Bill has been put together, the lack of thinking through of all the elements, and the concerns just raised by the noble Lord, Lord Fox.

Have the Government considered a mechanism for reviewing the Act's effectiveness and, if so, what sort of review is the Minister proposing? I hope he will acknowledge the lack of confidence that has been expressed from all sides of this Chamber. I finish by asking the Minister to explain why the Bill's provisions should last longer than four years, without a review mechanism.

Lord Grimstone of Boscobel (Con): My Lords, I thank the noble Lord, Lord Hunt of Kings Heath, for his amendment and the noble Lord, Lord Patel, for the views he expressed.

The amendment would impose a time limit of four years on appropriate national authorities making regulations under this Bill, once enacted, and regulations already made under the powers in the Bill would

expire the day after that four-year period is completed. Of course, this is familiar to many as a sunset clause. However, sunset clauses are typically insurance policies against powers that, at some point in the future, may be no longer suitable to deliver the policy aims which required the legislation to be made.

The Trade Act, which we have heard referred to by a number of noble Lords, with its rollover of international agreements to be replaced in due course, is an example of legislation in which a sunset clause that can be renewed by Parliament is appropriate. However, this Bill and the delegated powers within it are drafted deliberately to endure, futureproof the legislation and provide flexibility to make necessary changes over time. I even like to think of the Bill as having a sunrise —not sunset—effect because it is intended to help our professionals enter new markets and deliver a global Britain, having ended the one-sided, EU-derived temporary arrangements. I therefore feel that a sunset provision is at odds with the purpose of the Bill.

Returning to debate a new professional qualifications Bill in four years' time because this Bill no longer provides for that flexibility, would, I respectfully suggest, not be the best use of the expertise of this House. Of course, I have nothing against such clauses where they are appropriately used, but inclusion here would undermine the ability of the UK Government and devolved Administrations to respond swiftly to changing demands for services. It would potentially thwart the implementation of future regulator recognition agreements, which, as we know, may not in reality be implemented for some years after a free trade agreement is agreed.

There is also a risk that in providing for the expiry of regulations made under Clause 3 to implement international agreements, the UK may be left without provision upholding the commitments that we have made under those agreements, thereby placing us in breach of their terms. As I remarked to the noble Lord, Lord Purvis of Tweed, on day two in Committee, I believe that sunset clauses would not be appropriate in these circumstances. By sunsetting, we limit the opportunity for service trade and constrain regulators' abilities to exploit opportunities with their international counterparts, for example through Clause 4.

The powers in the Bill are designed to support a flexible response as the regulatory landscape evolves over time. Curtailing the ability to do that through a time limit would put us into regulatory limbo rather than preparing us for the future. We know that the Bill will allow the UK to replace the interim system of recognition currently in operation. Stripping away regulation that the Bill creates to replace the EU system would only create a new gap.

Finally, if the intent behind this amendment is indeed to mitigate any potential misuse of powers, I reiterate that the powers detailed in the Bill are carefully tailored to its requirements; they are focused on a specific purpose. I believe that the reason why some noble Lords are arguing for a sunset clause is that they think it is a rotten Bill: "If we are not able to kill it off now, why not do so in four years' time?" I prefer to share the ambition of the noble Lord, Lord Fox—I was pleased to hear him state it so clearly—that the Bill should leave our House in good shape, do what it is intended to do and be fit for purpose. On that basis, I hope that the noble Lord, Lord Hunt, will agree that a sunset clause is not appropriate and will consider withdrawing his amendment.

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to the Minister and to noble Lords who have taken part in this debate. The Minister is an eternal optimist and I liked his description of the Bill as a sunrise Bill. I say at once that I agree with the noble Lord, Lord Fox, that a sunset clause is not to be desired. The aim is to reach some consensus on the way forward. My reading is that the Minister is not going to get the Bill through at the moment, as it will be heavily amended on Report. This is a House of Lords starter Bill so the Parliament Act does not apply, and—

Baroness Hayter of Kentish Town (Lab): What?

Lord Hunt of Kings Heath (Lab): No, I do not think that it applies to Lords starters; it applies to Commons starters.

Rather than just repeating the reasons why the Government need the clauses as they are, I hope they will start to negotiate because that is the way to get through this. There are ways in which the Bill can be amended to modify the executive provisions, but the Government have to be prepared to move. I thought the noble Lord, Lord Patel, was very wise in repeating to the Minister the wise words of his own better regulation advice on where sunset clauses can be appropriate. My noble friend Lady Blake asked where there will be a review mechanism at all if there is no sunset point.

Ultimately, it seems that we have reached a crunch position where the House is unhappy and will vote to take chunks out of the Bill, one way or another, unless we can reach a satisfactory solution. Clearly, the Bill is a Lords starter for one reason: it is a Bill on which we should be able to come together because at heart we all want to see professional qualifications in this country maintaining independence, a very high standard and interchangeability with other countries, where that is appropriate. Although noble Lords may have some doubts about this Bill, I do not think there is any argument about the intent of where the Government seek to go. We now need to see movement from the Government. Having said that, I beg leave to withdraw my amendment.

Amendment 59 withdrawn.

Amendments 60 and 60A not moved.

Amendment 60B

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

60B: After Clause 15, insert the following new Clause—

"Saving: autonomy of regulators

Nothing in this Act affects the autonomy of regulators to act in the interests of their profession, including but not limited to the ability to—

(a) set and maintain professional standards.

(b) set requirements to practise a profession.

(c) determine who is fit to practise.

(d) set requirements for having insurance.

(e) set the training requirements (including requirements about gaining experience).

(f) determine appropriate levels of flexibility in assessment practices;

(g) determine to make a regulator recognition agreement."

Baroness Hayter of Kentish Town: I apologise for my response during my noble friend Lord Hunt's comments. Is it not wonderful that you learn something new every day? I had not realised that a Lords starter is not subject to the Parliament Act. I was just preparing something for a meeting I have tomorrow saying how the Bill was a Lords starter because that is normal for a noncontentious Bill. That is presumably why noncontentious Bills are put here.

However, with a final flourish, Amendment 60B is in my name and those of the noble Baroness, Lady Noakes, and the noble Lords, Lord Lansley and Lord Fox. It basically sums up the deep concerns we share about the Bill's potential to undermine the independent standard-setting and public interest duties of what we have seen as autonomous regulators. As the Minister will recognise, everything in this amendment is what he promised in Committee. I am not suggesting that the department made up its position as the Bill went along. In this amendment we have simply brought things together to make the Government's position, as the Minister has stated, much clearer and easy to read, so because of that, I think the Minister will have no issue at all with the amendment and will probably want to accept it.

As the amendment is all things that the Minister has been saying, I do not propose to rehearse all the arguments—he is familiar with all of them—save to say that a Bill to compel regulators either to enter negotiations with an overseas regulator or put in place a process for recognising the qualifications of applicants trained abroad to fulfil a promise made by the Government in a trade deal or to fill a skills shortage defined by a Minister is not compatible with a regulator's independence if it is carried out by diktat rather than at the regulator's request. I completely understand that if there is a deal and particular professions would like to have the mutual recognition of qualifications, they may find they do not have the powers and may come to the Minister saying "Look, our statute does not allow for it. Please can you do the necessary?" I quite understand that that power might need to exist but it should come from them, not from the imposition of the Minister.

5.30 pm

The noble Baroness, Lady Randerson, has gone but, basically, I am going to suggest to the Minister the same as she did. He should do one of two things: add this amendment right at the start of the Bill on Report to provide the assurances that we are all demanding; or amend the Bill so that its powers to allow a Minister to amend a regulator's freedom to consider that sort of mutual agreement occur only at the request of the regulator and not at the behest of a Minister. Or, of course, he could throw the Bill away and start again. I beg to move.

Lord Purvis of Tweed (LD): My Lords, we started Committee with an amendment in the name of my noble friend Lord Fox. It sought to establish at the very outset of the Bill the principle that nothing in it would have a negative impact on the autonomy of our regulators. I am glad that we are able to say—well, not quite "We told you so", but certainly the fact is that we have learned little in Committee that has meant that the case is not even stronger, so reassurance needs to be provided in the Bill.

The powers in Clause 1 could be extensive when it comes to individual applications. The powers in Clause 4 could be forced on a regulator. The powers in Clause 3 could implement elements of trade agreements on regulators in all four parts of the United Kingdom with little scrutiny or accountability. In reverse order, on the trade side, during the debate on the previous group, the Minister sought to give the impression that the regulatory powers were needed to implement trade agreements and the professional qualifications elements of those agreements because, without those powers, we would not able to implement international agreements and therefore may need to act urgently. Clearly, I have not been following in Committee because, by definition, these regulators are statutory. If the Government's statement that a treaty would be implemented by primary legislation is correct, that would be the vehicle—when that treaty is being implemented—to make changes to any of the legislation of those regulators. I simply cannot understand why a Henry VIII power is necessary for that.

On forcing the regulators to enter into mutual recognition agreements, if the Government are saying that this measure is purely enabling, there is a degree of merit in that. However, in Committee, we have heard that such enabling could go beyond and add extra pressure. In Clause 1, the powers on the application process are extensive. Whether we have a declarative statement at the outset or the protections that would be brought about by this amendment, there will have to be protections. If the Government genuinely want to avoid a situation where this Bill either must be paused or does not progress at all—my understanding is that the noble Lord, Lord Hunt, is absolutely correct that Bills starting in this place are not subject to the Parliament Act and that the Minister therefore has to be nicer to us—they must provide reassurance. That can happen now only through much greater detail about the organisations and regulators that will be impacted by this, as well as about certain areas of draft regulations along the lines of what the Government would really want to use these powers for. Without meaningful reassurances, this Bill has significant difficulties.

Baroness Noakes (Con): My Lords, I need to say very little, other than that I support what the noble Baroness, Lady Hayter, and the noble Lord, Lord Purvis of Tweed, have said. I know my noble friend has heard the strength of feeling in Committee, about the importance of regulator autonomy. I think there is agreement in Committee, though not necessarily yet with my noble friend the Minister, that something needs to be in the Bill to recognise that.

I hope that by the time we get to Report, if indeed there is a Report stage on this Bill, the Government will have taken ownership of the issue, because I am afraid that if they do not the House will.

Lord Fox (LD): My Lords, I have gone through the entire Committee session in complete agreement with the noble Baroness, Lady Noakes. Not a scintilla of difference has come between us all day. The fact that this amendment is signed by such a broad group of people indicates two things. One is that there is broad hope that we can get a Bill out of this process that we can live with. Also, this is the essential building block that has to start the process of creating a Bill that this House is much more comfortable with. As we have heard, the Minister has spoken time after time about the autonomy of the regulator. He cannot be faulted in the number of times he has said it. However, at no point is that autonomy echoed in the words of the Bill. That is what this amendment, very simply, seeks to do. As the noble Baroness, Lady Hayter, put it, it is to take the Minister's words and to put them into the Bill. Without that insurance, as my noble friend Lord Purvis explained, that are plenty of ways that autonomy can be eroded and, indeed, set to one side.

My noble friend Lady Randerson, speaking to a previous group, explained that mutual recognition of qualifications takes years. It does not take years if it rides in on the back of a free trade agreement and overrides the rights and autonomy of our regulators. That is the fear that runs through all the people trying to correct this Bill. This amendment, or something that the Government pick up and make their own, is one way of starting the process of having the dialogue that will help the Bill make further progress.

Lord Grimstone of Boscobel (Con): My Lords, I thank the noble Baroness, Lady Hayter of Kentish Town, for her amendment, which sets out the autonomy of regulators to act in the interests of their profession. I note that the amendment is supported by my noble friend Lady Noakes and others. Of course, I commend their commitment to upholding regulator autonomy, and it will come as no surprise that I support their intent here. I was told before I joined your Lordships' House that understanding the mood of the House was an important requisite if a Minister was to have a chance of even modest success in his role. I do not think that anybody who has listened to our debates on this matter could be in any doubt about the mood of the Committee on this topic.

I spoke at length on regulator autonomy on days one and two of Committee, saying, in particular, that regulatory autonomy is, and has always been, a priority in this Bill. Throughout the Bill's development and following its introduction, the Government have engaged closely with a wide range of regulators—even the newly discovered ones—to make sure that their autonomy is upheld throughout the Bill. We will of course continue to do so, not just during the Bill's passage but in its implementation. Subject to the usual channels, I believe that we may now have time available to us before the Bill moves to Report stage to make sure that process is fully and conclusively completed.

This is why of course we listened even before the Bill started its passage through the House, and tabled our amendments to Clause 1: to ensure, in that case, regulatory autonomy over decisions about who practises a profession and flexibility in assessment practices, in line with the rigorous standards set by regulators. I think noble Lords will recognise now that the overall effect of Clause 1, as amended, will be to ensure that regulators can use a full range of approaches to make their determinations about knowledge and skills, and it preserves their ability to set further conditions, such as those set out in the amendment. I am pleased that, through discussion, we were able to get both the General Medical Council and the Nursing and Midwifery Council to welcome this. The proposed new clause would also specify that regulators are able to determine whether to make a regulator recognition agreement. Perhaps I may humbly say that Clause 4 is already the means of achieving this.

Clause 3 ensures that, where the UK has international agreements on the recognition of professional qualifications, these can be implemented. The principle of autonomy will be a key priority in reaching these agreements. Of course, I understand the point made by the noble Lord, Lord Purvis of Tweed, that there will be a number of future free trade agreements that will require primary legislation to implement them. Equally, there may be some, for example the Swiss mobility agreement—not a full free trade agreement but one that acts within the spirit of the Bill—which may not need primary legislation. That is why it has been important to have this flexibility.

Agreements under Clause 4 are entirely regulator-led. The appropriate national authority may grant regulators the power only to enter into agreements, not to dictate what agreements to enter into. It is for the regulator to decide whether it wishes to enter into a recognition agreement with its counterparts overseas, and the terms of any agreement. I hope that I have conveyed through this, and my previous comments, that the Bill protects and values the autonomy of regulators. But of course, I go back to my earlier comments: the strength of feeling expressed by Members of this House has not gone unheard. I have listened carefully to the points made and I will continue to consider the importance of regulatory autonomy and to ensure that this is respected.

I would still highlight that the Bill, as drafted and amended by the Government, does give powers to regulators where they need them. If the Bill can be improved through scrutiny, who would not want it to be? However, the Bill is already consistent with the intended effects of the amendment, so I suggest that there is no need for an additional clause. I therefore ask that this amendment be withdrawn.

Baroness Hayter of Kentish Town (Lab): I thank the noble Lord and the noble Baroness, Lady Noakes, for their support for this. If I have understood the Minister correctly, he said, "Don't worry about it because it's all in the Bill, so it isn't necessary". But if it is all in the Bill, there is no harm in it. Given the concerns that we have had, I see nothing wrong with the reassurance, as I mentioned at an earlier stage. Sometimes, when things are tested, perhaps in courts afterwards, a very clear statement of intent and reassurance can work wonders—even more than a ministerial statement from the Dispatch Box. Therefore, it would not be right to say that it is not needed. If it is an extra bit, that seems to me a welcome addition.

However, I am very grateful to the Minister for saying that he has listened to everything we have said and will think about this. I will give away a small

[Baroness Hayter of Kentish Town]
secret, just within these four walls: there is no date, as yet, in July for Report, so it may well be that we have until September, which should give the Ministers and their drafters plenty of time. It would obviously be better if any amendments that we agree with could come in their names, because they tend to be drafted better than ours, and it is also much easier to have a discussion and agree.

5.45 pm

I will ask the Minister whether he is going to take the time to do it over the Summer Recess, which I think would be sensible. Please do not send us letters on a Sunday because we will all be on holiday—but any other update over the summer would be very welcome. I really do think that something like this is needed. Maybe because of the way it was put together, maybe because it was done in a hurry, and maybe because it had not been consulted on, there are worries that call out for some reassurance. I think that we will need to come back to this in some way. It may be right that it should be earlier in the Bill. It may be that it should be for Clause 3. Where it is best put is for discussion. The statement is an important one but, for the moment, I beg leave to withdraw the amendment.

Amendment 60B withdrawn.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): Before I go on to the next group, it is perhaps worth saying to those who wish to speak after the Minister that the earlier they can inform us, the more likely it is that the message can be passed directly on. I am afraid that I was not able to call the noble Lord, Lord Lansley, as I had to apply the same rules that I applied to the noble Lord, Lord Purvis of Tweed, for the same reason.

We now come to the group beginning with Amendment 61. Anyone wishing to press this or anything else in this group to a Division must make this clear in the debate. I call the noble Lord, Lord Palmer of Childs Hill.

Clause 16: Interpretation

Amendment 61

Moved by ***Lord Palmer of Childs Hill***

61: Clause 16, page 12, line 40, at end insert ", or a chartered accountancy profession (see subsection (3A)(a))."

Member's explanatory statement

See explanatory statement for the amendment in the name of Lord Palmer of Childs Hill to page 13, line 19.

Lord Palmer of Childs Hill (LD): My Lords, it is my great pleasure to speak here in the graveyard spot on this Bill to the amendments in my name. I thank the Minister for his letter of 20 June concerning the professions and regulators to which this Bill applies. It would have been a bit more helpful to have had it earlier.

It seems that BEIS has recognised the point I made in my amendments that the ICAEW and other accountancy professional bodies are in the scope of the Professional Qualifications Bill, owing to their role as recognised supervisory bodies for the purposes of statutory audit, insolvency, probate and administration of oaths. This has been referred to by many noble Lords from around the Chamber during the course of this Bill. As this addresses the point made in my amendments regarding the rationale for including the ICAEW, of which I am a member, in the scope of the legislation, I hope that the Minister will acknowledge when he replies that it helped to review the actual impact of the Bill, as his letter helped me in making this speech.

It feels like the Government are rushing through this legislation without having thought through the detail of the Bill and its consequences. Noble Lords are now having to try to fix this. For the list of regulators and professions affected by this Bill to have changed so substantially while the legislation is being scrutinised by your Lordships' House does not help give certainty on such an important and wide-ranging legislative measure.

Between this Bill's conclusion in the House of Lords and it eventually beginning to go through the lower Chamber—and eventually when it comes to Report—it is vital that BEIS takes stock of this legislation, reviews its intended and unintended consequences, and engages with those regulators and professional bodies in scope to iron out any remaining concerns. The noble Baroness, Lady Noakes, said earlier in this debate that there needs to be a pause to the Bill. There needs to be a certain something which does not just carry on as we are now.

A remaining concern—and my last words on this—is on the need for the regulation of accountants and tax advisers. At present, anyone can set themselves up to give this service—and maybe they should. I hope that the Government will consider whether any regulation in some form is required. After all, where pig farmers go, accountants should surely follow. I beg leave to move the amendment.

Baroness Noakes (Con): My Lords, the noble Lord, Lord Palmer of Childs Hill, has tabled these amendments, which I know were suggested by the Institute of Chartered Accountants in England and Wales, so I felt somewhat obligated to speak on the amendment. I know that the ICAEW is pretty keen to be included in the Bill's scope. As the noble Lord explained, its wish has been granted to some extent, but only for certain aspects where it regulates professions. The noble Lord's amendments would actually go considerably further by making chartered accountancy a regulated profession. Amendment 64 names the ICAEW as the "chartered accountancy regulator", thus relegating all the other chartered accountancy bodies to also-rans. If the noble Lord was even thinking about pressing his amendment, I would strongly oppose it. I hope that my noble friend the Minister will resist it.

The inclusion of chartered accountancy is not logical. The ICAEW already enters into mutual recognition agreements, so Clauses 3 and 4 would have no relevance whatever. I cannot believe that the Government would ever make a determination under Clause 2 that there is a problem with meeting a demand for accountants' services. There is no shortage of accountants.

The ICAEW's rather grandiose briefing to me said that it wanted to be in the Bill so that there could be

"a debate on the role of the profession in shaping global business practice, reporting and governance".

In other words, the ICAEW wants to be seen as important. Legislation should not be used to support the egos of anybody, let alone professional bodies.

Right at the end of his remarks, the noble Lord, Lord Palmer of Childs Hill, raised whether the provision of accountancy and tax advisory services should be regulated. That is pure protectionism and not something I would ever support, even for my own profession of accountancy. I know that the noble Lord will not press his amendments, but if he does I hope that my noble friend the Minister will strongly resist them.

Baroness Hayter of Kentish Town (Lab): My Lords, my sister is not a chartered accountant, but she is an accountant. I do not know whether that is an interest to declare, but I should note that.

Unsurprisingly, I have a lot of sympathy with what the noble Baroness, Lady Noakes, said. In fact, when the noble Lord first raised the possibility of this with me, I was really interested, but we were both quite surprised that somebody actually wanted to be regulated. As someone who has worked very much on the consumer side, I have tried to get people regulated and on the whole they have resisted. However, that falls apart, because we have now discovered in the letter that the ICAEW will be there.

Earlier, I read out the note that I had had from the ICAEW as a result of the Minister's letter on Sunday, saying that it seemed as if the Government were "rushing through the legislation". I did not quote this, but I will say it now:

> "Between this Bill's conclusion in the House of Lords and it beginning to go through the lower chamber, it is vital that BEIS take stock of this legislation, review its intended – and unintended – consequences, and engage with those regulators and professional bodies in scope to iron out any remaining concerns."

As I said on the previous group, I hope that we will use the time between now and Report, rather than between now and when the Bill arrives in the other House, but it sounds as though the ICAEW and the other accountancy bodies have not yet had a discussion with departmental officials. I hope that that can be put in hand. I hope the Minister will be able to confirm, although maybe not at this moment, that those meetings have taken place so that, as the ICAEW says, any intended or unintended consequences are fully understood and any problems can be ironed out. I look forward to hearing from the Minister that that will take place.

Lord Grimstone of Boscobel (Con): My Lords, I thank the noble Lord, Lord Palmer of Childs Hill, for his amendments. I am grateful for the opportunity to clarify the Government's thinking on whether the chartered accountancy profession is one to which the Bill applies, as well as the situation in respect of other chartered professions. I hope that noble Lords have noted, as I have responded to this, that we have been listening to their concerns and that we are looking to engage and make improvements where we can. I can confirm to the noble Baroness, Lady Hayter, that officials are already in discussion with the ICAEW.

As a short digression, I have to say that it is nice to hear regulators are now clamouring to join the bandwagon of this Bill. I hope that marks a turning point for us. I will be going home with a spring in my step this evening, having heard that.

I should begin by acknowledging that the UK's chartered accountancy bodies set the highest standards with their qualifications and require continuous professional development, rightly. As a result, the UK's accounting sector is highly respected and valued both domestically and across the world. We are rightly proud of it.

I would also like to highlight that, as we have heard from noble Lords, the ICAEW is a regulator to which the Bill applies, by virtue of its role as a regulator of auditors, insolvency practitioners and some other distinct specialisms. The professional activity of audit is regulated in statute by the ICAEW and the other recognised supervisory bodies for audit, all overseen by the Financial Reporting Council. We continue to deepen our understanding of these relationships as a result of the mapping work that I described much earlier today.

One of the objectives of this Bill is to revoke the current EU-derived system for recognising professional qualifications and experience gained overseas. We are taking away this prescriptive system and leaving it to our autonomous regulators to decide what recognition arrangements they require. If our regulators need help to create recognition routes to meet demand, or to agree reciprocal agreements with overseas counterparts, we can use the powers in this Bill to give them what they need.

Chartered titles are, in general, a form of self-regulation. Chartered accountancy is not a profession regulated in law, and there are no statutory impediments to the chartered bodies having whichever international recognition routes they deem appropriate. So there is simply no need for government intervention under this Bill to help chartered bodies set up recognition routes or international recognition arrangements for professional activities not regulated in law. Indeed, the ICAEW already has many overseas members and international agreements relating to accountancy. Therefore, the profession of chartered accountancy does not need to be included among those professions to which the Bill applies.

This is true of all voluntarily regulated professions. Professional bodies for those professions continue to reign with autonomy over their unilateral recognition routes and over the formation of the content of recognition agreements with overseas counterparts. So, I repeat: they do not need any help under the powers of this Bill. I hope that the noble Lord is reassured by this explanation, and I ask that he withdraw the amendment.

We are now reaching the end of the 27th grouping, which marks the end of the Committee stage for this Bill. I would like to express my sincere thanks to all noble Lords for their excellent and insightful contributions. I think it is fair to say that Ministers and officials have learned things from these insightful contributions. I will be reflecting on all the points made. If the noble Baroness would like to tell me where she will be for her summer holiday, I will make sure that the letters are delivered to her expeditiously.

I look forward to continuing to discuss this Bill with noble Lords. I will hold further round tables; I, and officials, will meet further with regulators; I will meet with the devolved Administrations; and I will do this before we return for Report.

6 pm

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): Before saying that there are no requests to speak after the Minister, I will just confirm this time that there are no such requests. No? Excellent—I therefore call the noble Lord, Lord Palmer of Childs Hill.

Lord Palmer of Childs Hill (LD): My Lords, I am glad that the Minister understands the mood of the House, which has been very clear over the course of our proceedings on the Bill. I thank the noble Baronesses, Lady Noakes and Lady Hayter, for contributing on these amendments, which noble Lords will appreciate were put down at a very early stage of the Bill, on the basis of the Institute of Chartered Accountants in England and Wales indicating to me—but not to everybody—that it wished to be named in the Bill. The noble Baroness, Lady Noakes, quite rightly said that it is not the only accountancy body. I raised this with the ICAEW, which said that it did not at this late stage want to be seen as speaking for all the other bodies but to test the water on behalf of the accountancy profession.

Noble Lords made the point that there is no shortage of accountants, but inclusion in the Bill does not necessarily mean shortage—I am not sure whether there is a shortage of pig farmers but nevertheless they are in the Bill; therefore, there is an argument for this. The noble Baroness, Lady Hayter, quite rightly said that some accountants feel that they need to be seen in, and part of, the Bill, but they have come very to it very late. I hope that this can be ironed out.

I thank the Minister for replying positively to many of the points that concerned me and beg leave to withdraw my amendment.

Amendment 61 withdrawn.

Amendments 62 to 64 not moved.

Clause 16 agreed.

Clause 17 agreed.

Clause 18: Commencement

Amendments 65 to 67 not moved.

Clause 18 agreed.

Clause 19 agreed.

Amendment 68 not moved.

Bill reported with amendments.

House resumed.

6.03 pm

Sitting suspended.

End-to-end Rape Review

Statement

The following Statement was made in the House of Commons on Monday 21 June.

"I would like to make a Statement on the Government's *End-to-end Rape Review Report on Findings and Actions*. Rape and sexual assault are some of the most horrific offences dealt with by our criminal justice system. They can leave devastating effects on victims for life. While the majority of victims of rape are women, this crime can have a devastating effect on male victims as well. Over the last five years, we have seen an alarming decline in the number of police referrals, charges, prosecutions and convictions for these sorts of crimes—a trend that the Government are determined to reverse with urgency. I want to pay tribute to the bravery of victims and to commend their courage in coming forward to report these crimes. It is crucial that the system gives all victims the reassurance that they will be believed and that they will receive the right support, right from the moment they report their crime through to the conclusion of their case and beyond.

In March 2019, the National Criminal Justice Board commissioned the first ever end-to-end review of how the criminal justice system handles rape cases. The rape review report and action plan outlines how we will act on its findings to deliver much-needed improvements, building confidence in the system and encouraging more victims to come forward. That will enable cases that are better prepared from the start, more prosecutions of rapes, greater encouragement of early guilty pleas, and fair and timely trials. This has been a collaborative effort between the Ministry of Justice, the Home Office, the Attorney General's Office—I am grateful to the Solicitor-General for being here today—the police, the Crown Prosecution Service, and Her Majesty's Courts and Tribunals Service, which is something that we believe will be crucial to its long-term success. Alongside the action plan, a government social research report outlining the underlying primary research in detail is also being published. I have laid that report before the House.

Our action plan sets out a robust and ambitious programme of work to improve the way in which the criminal justice system responds to rape at every stage in the process, so that victims are better supported to get the justice they deserve and so that all our constituents can have confidence that perpetrators of these sickening crimes will be rightly punished. As the House will know, this has been a priority area for government for some time, and I would like to take this opportunity to highlight some of the work already done, alongside the new actions that we are committed to delivering in the implementation of the review.

We appreciate that this is not the first piece of work in this area of criminal justice, and that both victims and stakeholder groups want change to happen as quickly as possible. The Government could not agree more, which is why the Minister for Crime and Policing will be personally pushing this work forward, and the Government will publish updates every six months detailing progress to ensure clear accountability. That will include scorecards monitoring progress against key metrics, including timeliness and victim engagement in each part of the system, and implementation of the action plan. Our ambition is for the volume of cases referred by the police for charging decisions and reaching court to return to 2016 levels by the end of this Parliament.

One of the key themes of the review is how we can create the conditions that will enable effective joint working between the police and CPS. It launched its

joint action plan in January this year. That will enable both the police and CPS to work hand in glove to support rape victims and to secure convictions. In the implementation phase of the review, we plan to introduce joint decision-making guidance for CPS and police investigation teams that will be implemented as part of a necessary culture change. We will also build on the shared learning and development in the form of training and guidance around trauma, to develop understanding of its effect on victims right across the system. In the next 24 months, we will have a framework for a new operating model that can be adopted by forces nationally.

A key plank of our work to transform the way in which cases are dealt with is the pathfinder programme known as Operation Soteria, which is being launched to drive systemic and sustainable transformation in how the police and CPS handle investigations into rape and sexual offences. I am pleased to say that we have already begun to transform the support provided to victims by publishing a revised victims' code, which sets out 12 clearly defined rights. We have invested record amounts in support over the last 18 months, including spending more than £70 million on rape and domestic abuse services in 2020-21 and £27 million on the expansion of the independent sexual violence adviser service—the ISVA service.

I accept that more needs to be done to reform support services to meet current and rising demand, and ISVAs play a crucial role. Research suggests that their involvement in the criminal justice system can make a victim 49% more likely to stay engaged and see their complaint through to its conclusions. With that in mind, we will shortly consult on a statutory underpinning for the ISVA role as part of the forthcoming victims Bill consultation. The police and CPS will work together to introduce minimum standards on how to communicate with ISVAs after a complaint is made, throughout the investigation process, through charging decisions and through court proceedings themselves. This will be done through a national framework to ensure that standards improve right across the country.

We are also committed to ensuring that no victim is left without a means of communicating through an extremely traumatic period in their life, which is why we are working to increase the capacity of the front-line technology used to examine digital devices. We will work with the mobile phone technology industry to support police efforts to provide swap-out phones for victims to use when their own devices are unavailable. Our ambition is that no victim will be left without a phone for more than 24 hours.

We recognise that the court experience can be particularly distressing. Last year, we rolled out Section 28 of the Youth Justice and Criminal Evidence Act 1999 to help support children and vulnerable adult victims and witnesses to give their evidence and be cross-examined sensitively. We are already piloting the same arrangements for intimidated witnesses and victims in three locations, and plan to increase that pilot to three additional courts. Subject to that evaluation, we aim to commence full rollout to all Crown courts for this group, and will consider whether any further legislative change is needed. We also plan to test the use of Section 28 in the youth court.

We will continue to explore how we can increase the use of special measures in rape trials, and will develop a best practice framework for rape and sexual violence cases during court proceedings. Additionally, we have asked the Law Commission to explore the use of rape myths and evidence about victim credibility at court to see whether there are changes we can make there to improve the experience for victims and give them the opportunity to present their best evidence. In addition, the CPS has updated its legal guidance to address rape myths and stereotypes.

We will go further than the work outlined in the review; later this year, we will publish a new strategy to tackle violence against women and girls, and we will consult on the new victims Bill. I am sure that the whole House will join me in acknowledging the many people and organisations who are working tirelessly to improve the way in which these cases are handled. I thank the organisations in this field. Their expertise, research and challenge is invaluable. I am incredibly grateful to Emily Hunt in particular, who has been working as an expert adviser on the rape review, and ensured that the voice of victims was heard loud and clear as the Government considered their approach.

I reassure the House that if the proposed actions do not yield sufficient change in the timescales that we have set out, the Government are prepared to look at more fundamental changes to the criminal justice system, including measures to strengthen accountability and governance more widely. The review represents just the beginning of this work. We must continue to challenge the entire system to deliver urgent and sustained change. We owe that to every victim of these terrible crimes. Every part of the system can and must do better; now is the time for it to deliver. I commend this Statement to the House."

6.08 pm

Lord Falconer of Thoroton (Lab) [V]: The issue about the extent to which rape is properly prosecuted in this country is now a real one. The Lord Chancellor rightly apologised for the lack of prosecutions, yet did nothing to deal with the problem properly. He announced a sum of money, in the region of £150 million, most of which went to refuges. Refuges are very worth while but will not deal with the problem of the lamentably low rate of convictions for rape. The average amount of extra expenditure on rape cases, if one applies it to the number of rape cases the Government estimated last year, is £15 a case.

Why have the Government not made more resources available, if their apology is serious? Why have they not rolled out Section 28, which allows for victims of rape to give evidence as soon as possible after the crime has been committed and for their evidence to be recorded?

Lord Thomas of Gresford (LD) [V]: I congratulate the authors, researchers and statisticians who have contributed so much to this comprehensive and excellent review. I trust that the Government will fully resource its recommendations, but agree with the noble and learned Lord, Lord Falconer, that there is no sign of it so far.

[Lord Thomas of Gresford]

I focus on one of the review's findings—namely that, in 57% of all adult rape cases, the victim feels unable to pursue their complaint. Given that in 90% of cases the victim knows the perpetrator—as a member or friend of the family, fellow student or worker, friend or acquaintance—that may not be too surprising. I strongly suspect that very few of those withdrawals concern the small minority of cases where the perpetrator is unknown. I am interested to know whether the Minister has a figure for the percentage of withdrawals in cases of stranger rape.

So, what are the reasons for disengagement by the victim? First, there is delay. Giving evidence is always a stressful experience, as I know well. Standing exposed in a witness box with one's honesty, accuracy of recollection and motives challenged is not pleasant. Giving evidence about intimate sexual encounters must be agonising and overwhelmingly stressful. Only those with a high degree of courage and persistence can be expected to stay the course without considerable support. I very much welcome the pilot schemes for the recording of evidence and cross-examination early, well before trial. How soon can those pilots be evaluated and rolled out? Months, if not years, of waiting for a trial must disincentivise victims pursuing their case.

Secondly, there is the intrusion into privacy. In January 2018, the noble and learned Lord, Lord Morris of Aberavon, introduced a debate on this topic. I suggested an algorithm which would require the defence to co-operate by setting out their case in a defence statement and, at that point, indicating keywords for the search of mobile phones. The revised *Attorney General's Guidelines on Disclosure*, published in 2020, set out such a system and it is now operational. The review recognises the importance of privacy by its requirement that mobile phones be returned within 24 hours. If that is done, I hope this disincentive to reporting rape will be removed.

Thirdly, we come to sentencing. I am not convinced that longer and longer sentences have any benefit. The review points out that the minimum sentence guideline is now six years and that the average term served for rape is nine years. This increase in sentencing coincides with a decrease in convictions. So many cases depend upon consent, without these days, in England and Wales, any need for corroboration. The lack of consent by the victim must be proved beyond reasonable doubt, and that is the highest degree of proof.

A victim, already oppressed by delay in bringing a case to court, must generally also contemplate the destruction of the life of an offender whom she knows and may even love. That may also be a potent reason for her to disengage from the case. That there should be a substantial and significant sentence of imprisonment for rape is not in doubt, but excessive increases year on year may have unexpected consequences to the detriment of justice.

Ultimately, the jurors are the judges. Acquittals reflect societal attitudes. At the moment, judges seek hard to dispel the myths and prejudices of the past, with lengthy exhortations and directions to the jury—but attitudes begin in the classroom, and we must train teachers to inculcate respect for others and, above all, the meaning and parameters of consent.

In the last few years, we have developed teams of specialised investigators and prosecutors, special measures for court hearings and victim support services. All these are steps in the right direction but have manifestly had no impact on the rate of convictions. We must try harder. We will support the Government further in implementing the policies that are set out in this review.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, I turn first to the points raised by the noble and learned Lord, Lord Falconer of Thoroton. First, I should repeat the apology that the Lord Chancellor gave in the other place yesterday, setting out by reference the reasons why he gave it, given the time.

As the noble and learned Lord, Lord Falconer of Thoroton, said, it is not right to criticise the Government's response to the rape review for lacking in ambition. On the contrary, we have set out clear ambitions for rape cases with the police and the CPS, and we have set out actions against which they, and we, can be held to account. We want to return the volume of trials for rape to pre-2016 levels, with corresponding expectations for police referrals and cases charged. We want to ensure that no victim is left without a phone—noble Lords will appreciate how important the data found on phones these days can be in these prosecutions—for more than 24 hours. We should not underestimate how difficult it can be for a victim to hand over her—it is invariably her—phone and to know that it will be looked at. We will also publish updates every six months, detailing our progress against our expectations, with scorecards monitoring progress against key metrics, including timeliness and victim engagement in each part of the system. That will enable us to provide information on a regional and local level, to see where things are working well and where there is room for improvement.

I turn to the other substantive point that the noble and learned Lord made, about Section 28 of the Youth Justice and Criminal Evidence Act, which enables people to have their cross-examination recorded in advance. The pilots of this provision have focused on complainants for sexual and modern slavery offences. We are extending them from three to six Crown Courts. I want to increase the availability of Section 28, but we need to do this properly. This is a radical departure from the normal court process, where evidence is given at the same time, in front of the jury. The pilots enable us to understand the impacts of this way of giving evidence—not only the impact on the evidence itself but the operational impacts on the courts, because they have to set out, and set up, a bespoke hearing for such evidence to be given.

Although we have some experience of this working for vulnerable victims, primarily children, victims who can be intimidated or are subject to distress, such as victims of rape and sexual violence, are in a different category. That is why we need to look at the pilots and see how it works in practice before we roll it out nationally, if that is what we do.

I turn to the points made by the noble Lord, Lord Thomas of Gresford. The reasons for complainants' withdrawals are complex, regardless of whether the victim knows the perpetrator. I do not have specific

data for withdrawal in stranger-rape cases, but what we do know is that in all cases, good-quality support is a key factor in maintaining victim engagement with the process. That is why we are funding more ISVAs, and we will consider putting that on a statutory basis. As for delay and prerecording cross-examination, I think I have dealt with that point already.

As I said earlier, we recognise that a lack of privacy can be a deterrent and that having your phone gone through can be a very distressing process. We want to ensure that the focus is on the alleged perpetrator and investigating them, rather than on investigating the alleged victim. That is why we do not want to see victims without their phones for long periods of time, and only information that is necessary for an investigation will be asked for. In addition to new guidance for police and information for the public, the Police, Crime, Sentencing and Courts Bill will clarify the power used to extract information from victims' devices and will include privacy safeguards.

As to sentencing, I must disagree with the point made by the noble Lord. Rape is a very serious offence and merits a significant sentence. I take issue with his proposition that there have been excessive increases. On the contrary, I suggest that the sentences for rape, which ultimately are a matter for the judiciary, are entirely appropriate for the very serious nature of that crime.

However, I agree with the noble Lord's point about the importance of education. A tackling violence against women and girls strategy is forthcoming. It will focus on prevention, recognising the importance of education for preventing violence against women and girls. If I may say so, from my own knowledge of what is being taught to my children in secondary school today, the education given to children today in areas such as consent and sexual relationships is far improved and much better than it was years ago. That is a very important part of the process, and I agree with the noble Lord that education is a key component in this debate.

On that note, I echo another point that the Lord Chancellor made yesterday in the other place: we will work across party lines when it comes to this issue. I therefore welcome the noble Lord's concluding remarks, in which he indicated that he too would be prepared to work on that basis.

The Lord Speaker (Lord McFall of Alcluith): We come to the 20 minutes for Back-Bench questions. I ask that questions and answers are brief, in order that I can call the maximum number of speakers.

6.23 pm

Baroness Bertin (Con) [V]: My Lords, there is much to support in this review. I am pleased that the Government have been so candid in their assessment of what is a totally unacceptable situation, but I do not doubt their commitment to trying to rectify it.

It is particularly encouraging to see that the report is committed to implementing an offender-centred police process. Putting victims and their character at the centre of the investigation, rather than the suspect and his behaviour, is one of the biggest reasons why so many cases fall down and have "NFA" stamped on them. We have to try to change the culture of questioning the victim's behaviour and focus instead on perpetrators and why they are doing this. In my view, this approach should always have been the norm. Will the Minister commit the Government to a further funding stream and ensure that this approach is rolled out across forces as quickly as possible?

Lord Wolfson of Tredegar (Con): My Lords, on funding, we have invested record amounts in support for victims in the last 18 months. We spent more than £70 million on rape and domestic abuse services in the financial year 2020-21, and £27 million on the expansion of the independent sexual violence adviser service—ISVA—which I mentioned earlier. The data is extraordinary, showing that a victim is 49% more likely to stay engaged with the process and see their complaint through to its conclusion if they have that support. That is why we will be consulting on a statutory underpinning for the ISVA role.

My noble friend used the phrase—if I have taken a correct note—"totally unacceptable" to describe the current position. I do not dissent from that. I also agree with her, as I said earlier, that we need to have more focus on investigating the perpetrator and less on investigating the victim.

Baroness Gale (Lab): My Peers, while I welcome the publication of this rape review and the Government's apology for the failings on rape—and an apology from the Government is to be welcomed—there is very little consolation for the women who have been failed, including the many victims whose cases have not been progressed by the Crown Prosecution Service.

A few days ago, I heard on Woman's Hour about the case of a woman who had been raped and went to the police, who dealt with her case very well—but the CPS refused to prosecute, as it said that the recording from the CCTV had shown her holding hands with her rapist. Can anyone imagine what this woman felt after all she had been through? Would the Minister agree with me that this should never have happened and that cases like this do nothing to encourage rape victims to come forward?

The review mentioned £70 million spent over the past 18 months on domestic abuse and rape services. Can the Minister say how much of that £70 million is to support victims of rape and how much is allocated to victims of domestic abuse—which is vital but has nothing to do with improving victims' experience of the criminal justice system or improving rape convictions? Can the Minister explain how much of this funding is to support rape victims in getting justice?

The charity Refuge has called for a total overhaul of the rape criminal justice system—both the police and the CPS—and has said that it cannot accept such monumental failings any more.

Baroness Scott of Bybrook (Con): Perhaps the noble Baroness could conclude.

Baroness Gale (Lab): Thank you. So could the Government urgently provide adequate sustainable funding for specialist rape services, which have been very seriously eroded in the last few years?

[Baroness Gale]

I do hope this review will produce positive results for victims and ensure that rapists are answerable for their crime.

Lord Wolfson of Tredegar (Con): My Lords, we can certainly agree on the last point. The focus of the criminal justice system is indeed to make sure that rapists are answerable for their crimes—and they are heinous crimes.

I obviously cannot comment on the particular instance that the noble Baroness mentioned. Of course, the CPS is quite properly an independent agency; decisions to prosecute or not to prosecute cannot and must not be taken by Ministers. But what I can tell the noble Baroness and the House is that the CPS is committed to reversing the negative trend in prosecution volumes seen over recent years. The CPS and the police are putting together a joint plan. The CPS is itself committed to a range of actions to drive forward improvement. This includes consulting and publishing revised rape legal guidance, including new content on challenging rape myths and stereotypes. From what I heard of the example given by the noble Baroness, that is a good instance of "rape myth", and it behoves everybody engaged in this debate to make sure that the public know the facts and are not distracted by myths.

The noble Baroness asked me a couple of precise questions on funding—in particular, the division of the £70 million figure as between rape victims and domestic abuse. May I please write to her on that point, together with the other point on funding which she put to me?

Baroness Brinton (LD) [V]: The Statement says that Operation Soteria will transform how the police and CPS handle investigations into rape and sexual offences, and the Operation Bluestone pilot in Avon and Somerset has shown that there is an effective way of working. Can the Minister say if it is true that Operation Soteria will involve only four police forces and has funding for only one year? This is hardly a universal rollout of a new culture of transforming rape services. Can he say when it will be rolled out and properly funded across the country? Victims and victims' organisations have rightly made it clear that not one day should be lost.

Lord Wolfson of Tredegar (Con): My Lords, it is not only Operation Soteria that we need to focus on. As part of Operation Soteria, we are working with pathfinder police forces to test the latest technology, including advanced analytics such as machine learning, to, for example, get data off phones as quickly as possible. We will certainly make sure that all police forces have access to the best technology available, so that all victims around the country can see the improvement that the Lord Chancellor and I—indeed, the whole Government—want to see in rape prosecutions. That will involve work not only with the police but with the CPS.

Baroness Newlove (Con) [V]: My Lords, there is much in this report that I could talk about and there are many questions but because of time and other speakers, I shall be brief. While I have the greatest respect for the Secretary of State for Justice, the right honourable Robert Buckland, I think this is a shameful report containing nothing that we did not know many years ago. As the former Victims Commissioner for more than seven years, I have met hundreds of victims of rape who have no confidence and would not expect other victims to go through the system. However, saying that, I am very happy to read about the role of ISVA as advocates to help victims of sexual abuse and rape. Their role is very important, so will the Minister say how they are going to be funded? Is it going to be through the Home Office, or does a costly fee have to be paid to become an ISVA? Can we have them as registered intermediaries so that they collect CPD credits and are professional right the way through? That will entail an advocate for the victims law later in the year.

Lord Wolfson of Tredegar (Con): My Lords, my noble friend is quite right to mention the victims Bill, which is an important element in this debate. Of course, with her background, she is a strong advocate for victims in this area. She is absolutely right to focus on confidence. We want to make sure that victims have the confidence to go to the police, to stay engaged with the process and to give evidence. That is why all these issues, whether data from phones or Section 28, are all part of making sure that victims stay engaged with the process. On funding, as I mentioned there will be a consultation about statutory footing for ISVAs and I will refer her to that in due course.

Lord Campbell-Savours (Lab) [V]: My Lords, I make a plea. There are a number of 70-plus year-old men who, following controversial sex offence trials, languish in prison, ill and with disabilities. They are no risk to society and, during the pandemic, their CCRC case reviews are, legally, access and procedurally problematic. Why not let them home under monitored conditions and free space for people who are a real danger to society? John McGuinn of Darwen in Lancashire is one of them. He is a celebrated case and I appeal on his behalf and that of others.

Lord Wolfson of Tredegar (Con): My Lords, I am not sure it is right or proper for me to comment on individual cases from the Dispatch Box. There is a proper procedure for people who seek probation or to have sentences served outside a formal prison, and I think it would be unwise and probably improper of me to say any more on the subject than that.

Baroness Uddin (Non-Afl) [V]: My Lords, the heinous crime of rape, including marital rape, violates trust and dignity as well as physical and mental well-being. There cannot be consent to rape, which violates the most fundamental, basic right to say no. Victims must be believed. I worry how many other victims are not reporting.

This report reinforces what we and women's rights organisations know. As my noble friend Lady Newlove said so eloquently, women's organisations have repeatedly called on the Government time and again for action, funding, services and training, including for police officers. Indeed, we have failed hundreds of thousands of women victims and survivors, with the Government

fully aware of all the facts contained in this report. Given what the Minister said on the need for education, are the Government further considering the resource implications of the report alongside a public information and education campaign? Knowing also that sexual violence and the abuse of children is prevalent in schools, are they considering working with all communities to state that sexual violence is against the law, that we take this as being of the utmost seriousness and that we are as committed to eradicating this pandemic of sexual violence as we are to erasing Covid, both nationally and globally?

Lord Wolfson of Tredegar (Con): My Lords, I am very happy to accept the two adjectives used by the noble Baroness: "serious" and "committed". That is exactly what we are. She is right to say that there are resource implications. There are resource implications in what I said about mobile phone data and Section 28, but we want to make sure that the criminal justice system delivers for victims of rape. Obviously, as the Lord Chancellor said yesterday, resources are a necessary part of that.

Baroness Helic (Con) [V]: My Lords, I welcome the review and the Government's commitment on this issue. One of the current problems that rape victims face is severe court backlogs, which cause victims to withdraw before their case is completed. Section 28 would be a valuable tool in combating this problem. Allowing victims to pre-record evidence would help them to stay in the justice process as they could be cross-examined on evidence much earlier. Greater use of this is being piloted, but we have already had pilots for several years. Can my noble friend the Minister tell us when the Government hope to see Section 28 in use across all Crown Courts?

Lord Wolfson of Tredegar (Con): My Lords, I am reluctant to give a date for that because we really have to see how it works out in the courts in which it is being piloted. I have already explained that its use in cases of rape and sexual violence raises different issues from its use in the case of vulnerable witnesses in, for example, domestic abuse and children's cases. With respect to the delays, we now have more jury courtrooms available than we did before the pandemic. We have Nightingale courts to provide more space as well. As the Lord Chancellor has said, we are running the criminal justice system hot this year; there is no limit to the number of sitting days in the criminal justice system this year.

Baroness Verma (Con): My Lords, following on from my noble friend Lady Helic, would my noble friend the Minister consider putting it out to the police and crime commissioners to create strategies that work across their police forces to measure the progress being made by their local police authorities on responding to victims' needs? I also refer to the critical issue of children who have been groomed and been victims of multiple rapes during the grooming process. If justice has been served, can we make sure that those young people get the support, both physically and mentally, that they will need long after they have had their time in court?

Lord Wolfson of Tredegar (Con): My Lords, my noble friend is right to focus on the importance of PCCs in this area. Although, as I have said, the scorecards which we intend to bring in will look at local and regional data, the role of the PCCs in this regard is also very important because they are the people on the ground and they have the relationship with the local police force. Her second point is also extremely important. Victim support does not stop when there is a conviction or a sentencing. Support for victims has to carry on because we know that, for the reasons that my noble friend has said, victims are in need of support often for a considerable time after the perpetrator has been convicted of and sentenced for the crime.

House adjourned at 6.40 pm.

Grand Committee

Tuesday 22 June 2021

The Grand Committee met in a hybrid proceeding.

2.30 pm

Arrangement of Business

Announcement

2.30 pm

The Deputy Chairman of Committees (Lord Rogan) (UUP): My Lords, the hybrid Grand Committee will now begin. Some Members are here in person while 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 debate on the following statutory instrument is one hour.

Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) (No. 2) Order 2021

Considered in Grand Committee

2.30 pm

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

That the Grand Committee do consider the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) (No. 2) Order 2021.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with a bit of déjà vu and humble apologies, I beg to move that this Committee do consider the draft order. It was laid before Parliament in May and is made in exercise of the powers conferred by Section 141 of the Nationality, Immigration and Asylum Act 2002. The draft order is a technical one that corrects drafting errors in an earlier instrument; namely, the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2021, which I shall refer to as the earlier order.

The earlier order was debated and approved by both Houses. It aligns the juxtaposed controls regime at the seaports of northern France with the regime in operation at Coquelles for the Channel Tunnel shuttle service and at the Eurostar rail terminals in France, Belgium and the Netherlands. The earlier order replicated the legislative approach taken at the other juxtaposed control locations and enabled all UK immigration legislation to be applied in the UK control zones at the ports of Calais and Dunkirk.

The UK operates border controls at specified ports in France. This allows Border Force officers to conduct checks on passengers and freight destined for the UK. It is a reciprocal arrangement, with French officers completing entry checks at certain ports in the UK on passengers and freight destined for continental Europe. Currently, Border Force conducts juxtaposed immigration controls at the ports of Calais and Dunkirk, with French Police Aux Frontières undertaking Schengen entry checks at the UK port of Dover prior to travel.

The juxtaposed controls in Calais and Dunkirk are provided for at an international level by the 2003 Le Touquet treaty. This was put into effect in the UK by the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003, which I shall hereafter refer to as the 2003 order. The earlier order amended the 2003 order to grant UK Border Force officers working at the juxtaposed ports of Calais and Dunkirk the full range of immigration powers currently available to them under the immigration Acts, and made the necessary modifications to other enactments to ensure that UK immigration controls could function properly in Calais and Dunkirk.

This instrument corrects drafting errors contained in the earlier order relating to modification to Section 2 of the UK Borders Act 2007, which makes provision for the detention at ports power. I shall refer to this as the 2007 Act hereafter. For clarity, the detention at ports power allows suitably trained and designated Border Force officers to detain an individual of any nationality that the officer believes may be liable to arrest pending the arrival of the relevant law enforcement authority.

This instrument makes the necessary amendments to the earlier order and the 2003 order to do two things: first, to make it explicitly clear that the 2007 Act has been extended to the juxtaposed seaports and, as necessary, modified for the purposes of those controls. This instrument reverses a formatting error that set out the modification to the 2007 Act as a stand-alone article rather than a provision to be inserted into the 2003 order. Secondly, to account for recent legislative changes resulting from the end of the transition period reflecting the UK's departure from the EU, this instrument corrects two further, purely technical minor errors in the modification to the 2007 Act.

To be absolutely clear to the Committee, this instrument does not change the policy content of the earlier order, nor does it make any new changes to the juxtaposed seaports regime. It simply corrects minor drafting errors contained in the earlier order to ensure that the effect of that order is explicitly clear. Again, I must apologise unreservedly to the Committee for the original errors having been made and for the imposition that the correction of these errors is making on it, but it is important they are corrected so that the law is absolutely clear.

2.35 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, I thank my noble friend for setting out the simple purpose of this order and for her gracious apologies. It is a straightforward matter to correct a formatting error and to clarify the earlier order, and it is clearly necessary; of course, I support that totally. I further appreciate that this order does not alter any policy content and, like the previous order, is not Brexit-related.

I would like to take this opportunity to ask my noble friend about the state of immigration controls in the area of the Channel Tunnel, particularly in the time since the earlier order came into effect, which I

[Lord Bourne of Aberystwyth]
believe was at the end of March this year. The earlier order was considered by your Lordships' House on 2 March 2021.

That order was approved against a background of considerable pressure on the United Kingdom's borders. Can my noble friend update the Committee on the current situation? Is the pressure any less than it was earlier in the year? Does she have any statistics on the number of incidents at the seaports of northern France involving UK Border Force officials? Further, what do the statistics show about the new powers that were conferred by the earlier order in relation to immigration controls at those seaports of northern France—namely, Calais and Dunkirk? This debate on the amending order provides us with the opportunity of reassurance, hopefully backed up by evidence, that the new powers that were conferred have been useful and indeed necessary in our control of immigration at those ports.

Can I ask my noble friend about the position elsewhere along the east coast of the United Kingdom? I appreciate that this is not within scope of the order, or indeed the earlier order, but to what extent is there similar pressure at Harwich, Felixstowe, Hull and so on, and Aberdeen for that matter, on our immigration controls?

Finally, and again very tangentially to this order—but I have given advance notice of this to my noble friend, which I hope she has received—perhaps I may ask about the future of the Eurostar service. To what extent is that secure? It would be good to hear from my noble friend on this important issue. If she does not have the details to hand, I would be glad to receive a written response to that question.

2.38 pm

Lord Bhatia (Non-Afl) [V]: My Lords, this SI has been prepared by the Home Office. It clarifies a provision in the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2021 relating to the detention at ports power.

Section 141 of the Nationality, Immigration and Asylum Act 2002 permits an order to be made to provide for a law of England and Wales to have effect, with or without modification, at a juxtaposed control at an EEA port. Pursuant to this, the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 was made. At present, the juxtaposed controls locations governed by the 2003 order are those at the ports of Calais and Dunkirk in France and, for the French authorities, at the port of Dover in the UK. These juxtaposed controls are provided for under the Le Touquet treaty of 2003.

The order in 2003 did not follow this model and, instead, stipulated a list of specific immigration enactments to be extended to the control zones in French seaports. To align the operation of controls across all juxtaposed locations in line with the operation of controls across the UK, the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2021 amended the 2003 order to extend all current immigration enactments, without specificity, to the seaports—

Lord Parkinson of Whitley Bay (Con): My Lords, I am sorry to interrupt the noble Lord, but he is simply reading the Explanatory Memorandum, which all noble Lords have. If he has some points to make or questions to ask of the Minister, if he might move on to those, that would be appreciated, I think.

Lord Bhatia (Non-Afl) [V]: My question is, who has made these errors and what has been the cost of correcting them?

2.42 pm

Lord Paddick (LD) [V]: My Lords, I thank the Minister for explaining the order. When we debated the substantive order that this order amends on 2 March this year, I complained about the original order's length and complexity. In her letter dated 20 May to Peers who contributed to that debate, the Minister apologised for the mistakes in the original order. I do not wish to add to her embarrassment, but it reads:

"I am acutely aware of the pressures on Parliament over the past year as a result of the pandemic and EU Exit, and apologise unreservedly for these errors. I can assure you that the department has reviewed its internal processes and has taken proactive steps to prevent such errors from occurring in the future."

I am acutely aware of the pressures on the Minister over the past year, but we have arrived at a situation where secondary legislation is being neither properly drafted nor properly scrutinised by Parliament.

At the end of her closing statement in the debate on 2 March, the Minister said:

"I hope that I have answered noble Lords' questions as far as I can today. I will write to noble Lords if I have missed anything out."

The Minister neither answered my questions at the time—I have read the *Hansard* of that debate—nor has she written to me as promised, as far as I can ascertain from searching my inbox, as such letters are now delivered only electronically. Specifically, I asked:

"According to the Explanatory Notes, one part of these regulations is to reconcile the regime at the juxtaposed-control seaports in northern France with that for international rail services via the Channel Tunnel. The other part, Article 2, extends all immigration enactments to control zones in France and makes the necessary modifications to other enactments to ensure that UK immigration controls are able to function properly in those control zones."

But I asked about Belgium:

"Why not Belgium? Are there no international agreements between us and Holland? What steps are being taken to extend arrangements to Belgium and Holland?"

I further asked

"if the arrangements are entirely reciprocal, there appears to be"—

the possibility of—

"double jeopardy where a person could be committing an offence under both British and French law. For example, someone who assaults a French official in a control zone in the UK could be prosecuted both in the UK and in France, were the French to have equivalent legislation to these regulations. If that were the case, who would have precedence in terms of prosecution? Would it depend on whether it was a French national or a British national"

who was the perpetrator?

My concern is enhanced by the addition of Article 12(7) to the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003, which states:

"Any jurisdiction conferred by virtue of this article on any court is without prejudice to any jurisdiction exercisable apart from this article by any French court."

There was no response. I then asked:

"The regulations appear to significantly expand the enactments having effect in a control zone in France from a specific and limited number of enactments in the 2002 order to all immigration control enactments; the Minister explained that the remit of Border Force officers has expanded since 2002. Even if that is necessary and proportionate, for the sake of clarity should the regulations list those immigration control enhancements so that people know exactly what they are subject to?"

There was no reply.

I also asked:

"The regulations appear to remove the protections provided by the Data Protection Act in relation to data processed in a control zone in France in connection with immigration control. Why is that necessary and proportionate?"—[*Official Report*, 2/3/21; cols. 1103-09.]

There was no answer.

This is what Parliament has been reduced to. The Government are making mistakes in the drafting of legislation, regulations are so long and complex that it is difficult for parliamentarians to properly scrutinise them, and even when we get the opportunity to hold the Government to account, our questions are ignored, as they were today on the Statement regarding the Daniel Morgan case. I will regret these regulations when they are tabled for approval on the Floor of the House, and I will tell the House why.

2.46 pm

Lord Rosser (Lab) [V]: This order corrects errors in the earlier 2021 order of the same name, which we discussed in the House on 2 March. That earlier order extended the current immigration enactments, relating principally to detention at ports powers, including the power to use reasonable force, applicable already to the Channel Tunnel route, to the juxtaposed controls at the ports of Calais and Dunkirk. However, the earlier order set out the required modifications to the UK Borders Act 2007 as a stand-alone article rather than a provision to be inserted in a previous order from 2003, which is needed to modify relevant immigration enactments to ensure that the juxtaposed controls in Calais and Dunkirk operate correctly.

This order we are now debating rectifies the situation and incorporates two additional minor changes. I thank the Minister for her letter of 20 May 2021 explaining the background to, and necessity for, this further order. Can the Minister spell out the actual consequences to date of the earlier order being defective in its drafting? Have powers been used for which it now turns out there has been no proper statutory authority, or has it meant simply that the introduction of the powers in the original order has been delayed? If the new powers on reasonable force have been available at Calais and Dunkirk, on how many occasions have they been used since they came in?

In her letter, the Minister said that

"the department has reviewed its internal processes and has taken proactive steps to prevent such errors from occurring in future".

Does that mean that the error that did occur was as a result of a deficient process or failure to adhere to a process, rather than being a straightforward mistake or oversight?

In our debate on the earlier order on 2 March, the noble Baroness, Lady Gardner of Parkes, said that she found herself

"perplexed that the legislation governing borders and border control is spread across such a great many statutory instruments … It is just the sort of legislation that frustrates parliamentarians—and others, presumably—because it relies on so many statutory instruments, orders and regulations, rather than the primary piece of legislation, to introduce the rules."—[*Official Report*, 2/3/21; col. 1101.]

I doubt that the noble Baroness would have imagined that her point would be substantiated so powerfully and so quickly by the very fact of our being back just three and a half months later to debate yet another order rectifying an error in the original order of March.

The Explanatory Memorandum to the original order, which this order amends, said:

"Impacts will be monitored through regular collection and analysis of … force data as well as the existing internal review system."

What exactly are the impacts that will be monitored, and how will the Government assess the impact of this change, in respect of the use of reasonable force, on national security? How many people have been refused entry to the UK coming through French northern Channel ports in the first three months of this year compared with the first three months of last year? Is it expected that this further order, amending the original order, will have any impact on the number of people entering the UK without authority through the northern French ports and any impact on the quantity of goods entering this country that should not be doing so?

What does a power to use "reasonable force" mean in practice? Where Border Force officers on Channel crossing routes already have the powers, on how many occasions per week or per month on average do they have to use these powers? Are Border Force officers who can use reasonable force also armed officers or are they ever armed officers?

Will enabling Border Force officers to use "reasonable force" at the northern French ports mean that fewer officers will need to be deployed or will the change provided for in this order have no impact on staffing levels? Have concerns been raised by the French authorities that our Border Force officers at the northern French ports not having sufficient powers in relation to "reasonable force" increases the workload and the responsibilities of the French authorities?

There are a number of issues affecting our borders and Border Force personnel that the Government have yet to get a grip on, a couple of which I want to raise briefly. Kent County Council has been warning the Home Secretary for some time of its inability to cope with the number of unaccompanied children arriving into its care. Where are the safe routes to replace both Dubs and Dublin III? The removal of safe routes, without replacement, will simply encourage more vulnerable people to seek to enter the UK by irregular routes. While the Government are correcting mistakes today, could they also give us an update on safe routes for unaccompanied children in Europe?

The Government have gone back on an election commitment by cutting their international aid provision. That will do nothing to solve the refugee crisis which leads to people being forced to leave their own homes and seek refuge elsewhere, including by arriving at our own borders. While the Government are looking again at the powers needed at our own borders, will they also take heed of the warnings, including from many Members on their own Benches, of the impact that our aid policy has around the world?

[Lord Rosser]

I trust the Government will address the points and questions that I and other noble Lords have raised in their response. One would like to think that this order and the original order will improve national security in a meaningful, necessary and measurable way, and that the orders are not just about either ensuring uniformity across juxtaposed control locations for the sake of it or the Government pursuing other policies which are likely to make the need to used "reasonable force" more likely than ever.

2.53 pm

Baroness Williams of Trafford (Con): My Lords, I thank noble Lords who have spoken in this debate. My noble friend Lord Bourne asked about illegal migration at Calais and Dunkirk. He will know that the UK and France maintain a long-standing relationship in tackling illegal migration at the shared border. As he also knows, the UK and France work to a whole-of-route approach to tackling illegal migration, ensuring intervention at different stages in a migrant's journey.

Both sides agree on the importance of a continued close dialogue to reduce migratory pressures at the shared border, and we continue to keep requirements under review as part of our ongoing partnership with France. As noble Lords will know, it is a shared problem, and the UK has committed several funding packages to support the work. The Sandhurst treaty, agreed in January 2018, represented an ongoing commitment by both the UK and France to the whole-of-route approach, and last year the Home Secretary and her counterpart agreed measures to make that route unviable. At that time, the UK committed to invest in a €31.4 million package with France as part of a joint action to address illegal migration. This package includes doubling the number of officers patrolling French beaches, bolstering security along the 150-kilometre stretch of coastline, which is regularly targeted by people-smuggling networks, and the provision of an enhanced package of cutting-edge surveillance technology, including drones, radar equipment, optronic binoculars and fixed cameras.

So far this year over 5,000 crossings have been prevented —more than two and a half times the number prevented in 2020 for the same period. The proportion of crossings intercepted in 2021 currently stands at around 52%, up from 46% recorded throughout 2020, and on average, the French have arrested more than 100 facilitators each month since the beginning of the year.

My noble friend asked about migrant numbers. It is difficult to be totally accurate but the migrant population at Grande-Synthe, currently assessed at 400 people, remains steady, although the Calais population is seeing a gradual increase from around 500 to 600 a few weeks ago to 875 more recently, despite the regular clearance operations by local law enforcement. That said, the overall numbers are massively down compared with those seen in advance of the Calais camp clearance, when the local population in Calais alone was in excess of 10,000 migrants, with 3,000 to 4,000 of them at Dunkirk.

The noble Lord, Lord Rosser, asked about the numbers refused entry. I do not have those numbers. The noble Lord, Lord Paddick, said that I had not addressed his specific points, either on the previous statutory instrument, the Question that we had earlier, or indeed the debate we had earlier. I know that I wrote to everyone who spoke in the last debate, but I will check for the noble Lord on his specific points.

On double jeopardy, matters relating to the responsible state as regards offences have been considered and are the subject of a specific set of provisions underpinning the Le Touquet agreement, and we have international arrangements underpinning the rail regime with France, Belgium and the Netherlands, which are incorporated into our domestic law by 1993, 1994 and 2020 orders.

On the point about the drafting complexity, again, I apologise to noble Lords. On the question from the noble Lord, Lord Bhatia, about whose fault it is, parliamentary draftsmen draw up our laws, and I can only apologise again. They work very hard and it is amazing the amount of stuff that gets through both Houses in impeccable condition.

As to the actual complexity, the noble Lord, Lord Paddick, was right last time that the order and instrument are technical and complex in nature; both are drafted in line with accepted government practice. The errors did not stem from the complexity of the order but were, as I have explained, the result of human error. As soon as the department was aware of the errors, swift steps were taken to correct them to ensure that the law was made clear. Since they were identified, the department has been proactive in taking steps to improve quality assurance procedures to prevent errors occurring. All I can say, again, is that I apologise for the fact that not only do noble Lords have to listen to me but I have to bring these pieces of secondary legislation for their consideration not once but twice.

On impacts, to answer the question from the noble Lord, Lord Rosser, there is no impact on the reasonable force power; it is just about the detention at ports power. As I said in my opening remarks, the order will make it explicitly clear that Section 2 of the UK Borders Act 2007 has been extended to and modified for the juxtaposed seaports. As part of the earlier order, the Explanatory Memorandum set out that an impact assessment was not conducted. That is correct—the department foresees no significant impacts resulting from the earlier order, given that the intent related to other Border Force control locations. However, it is right that we continue to monitor and analyse the use of force data to draw out and mitigate against any potential unintended impacts.

The noble Lord, Lord Bhatia, asked about unaccompanied asylum-seeking children. Sorry, no, it was the noble Lord, Lord Rosser, who asked me about that—and, yes, we want to help those who are most in need of our help and not force them to rely on unscrupulous criminals. We do not want journeys to be criminality-facilitated; we want them to be on safe, legal routes. I look forward to debating that legislation with the noble Lord in due course.

On asylum returns, I would say to the noble Lord that the joint political declaration between the UK and EU agreed on 24 December last year noted the intention to engage in bilateral discussions with the most concerned member states to discuss suitable practical arrangements on asylum, family reunion, unaccompanied minors and illegal migration. In accordance with the UK's and the EU's respective laws and regulations, we

have begun bilateral negotiations, and there are a series of existing routes by which people can come. I look forward to discussing these issues further with noble Lords.

I shall leave it there and will write to noble Lords on any areas of clarification.

Motion agreed.

3.03 pm

Sitting suspended.

Customs Safety and Security Procedures (EU Exit) Regulations 2021

Considered in Grand Committee

3.20 pm

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

That the Grand Committee do consider the Customs Safety and Security Procedures (EU Exit) Regulations 2021.

Relevant document: 4th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Cabinet Office and the Treasury (Lord Agnew of Oulton) (Con): My Lords, this statutory instrument is part of the Government's package to extend the staging in of customs controls in Great Britain. The instrument concerns safety and security declarations and will come into force on 1 July 2021. Noble Lords will be aware that the Secondary Legislation Scrutiny Committee reported the regulations as an instrument of interest in its fourth report, published on 10 June 2021.

In June 2020 the Government announced that full customs controls would be introduced in stages in Great Britain after the end of the transition period to allow businesses affected by Covid-19 additional time to meet new customs requirements. In March, after discussion with industry stakeholders, the Government decided to extend the staging in of customs controls to allow businesses additional time to prepare to meet new customs requirements.

The measures in this instrument concern the safety and security declarations aspect of that extension and should be understood in the context of our existing safety and security regime. Safety and security declarations are a standard customs process and are used, along with intelligence from other sources, in the UK's safety and security regime.

The UK approach to safety and security is guided by the World Customs Organization's SAFE framework of standards, which is designed to manage the risks associated with the movement of goods between customs territories. Risks in the international supply chain are mitigated by following minimum standards for customs administrations set out in SAFE. This includes the collection and risk assessment of pre-arrival and pre-departure data.

The EU implemented safety and security requirements through the UCC, which has been retained in UK law since the transition period ended on 31 December 2020. While the UK was part of the EU's safety and security zone, safety and security declarations were required only for goods entering or leaving the EU. Since the transition period ended on 31 December 2020, there has been a requirement for safety and security declarations for goods moved between Great Britain and the EU, as well as the rest of the world.

To give businesses additional time to prepare for new customs requirements, in November 2020 the Government introduced a six-month waiver on the requirement to submit safety and security declarations on goods imported from the EU and other territories from which such declarations were not required before the end of the transition period. This waiver is in place until 30 June 2021.

The Government also introduced a statutory instrument granting time-limited powers to issue a public notice waiving or altering the requirements for safety and security declarations on goods exported from Great Britain. These powers were put in place as a contingency option to mitigate any border disruption as a result of the introduction of the new requirements.

Since the beginning of 2021 there have been public notices in force waiving the requirement for safety and security export declarations for two categories of movements. The first category is empty pallets, containers and modes of transport, where they are being moved under a transport contract to places where such movements did not attract a safety and security requirement before the end of the transition period. The second category is all roll-on roll-off movements of goods where an exit summary declaration would otherwise have been required.

As part of the extension to the staging in of customs controls, the instrument we are discussing today will extend the current waiver on the requirement for safety and security declarations for goods imported from the EU and other territories where such declarations would not have been required before the end of the transition period. This means that safety and security entry summary declarations will not be required for these movements until 1 January 2022.

Having listened to businesses' concerns about the impact of Covid-19 on their ability to meet new customs requirements, this extension to the waiver is being introduced to give them additional time to meet these new requirements. As was the case before the end of the transition period and has been the case during the period of the first waiver, Border Force will undertake intelligence-led risk assessments of goods movements into Great Britain. There is no change to the requirements for entry summary declarations for goods imported from the rest of the world as a result of this instrument. This waiver does not create a significant increase in the security risk to the UK.

In most cases, the data that is risk-assessed in relation to goods leaving Great Britain is contained in a customs export declaration. Where such a declaration is not submitted, a stand-alone safety and security exit summary declaration is required. In response to industry feedback, since the beginning of the year safety and security declaration requirements have been waived

[Lord Agnew of Oulton]
for the two categories of movements that I discussed earlier. This has been done by the issuing of public notices, using time-limited powers introduced in December 2020. These allow the commissioners of HMRC to waive or alter the requirement for pre-departure safety and security declarations. The public notice powers that were used to introduce this waiver can be used only with regard to requirements between 1 January 2021 and 30 June 2021. As such, the Government are introducing this instrument to extend this waiver until 30 September 2021. As with imports and exports during the current waiver, Border Force will undertake intelligence-led risk assessments of goods movements out of Great Britain. As such, there is no significant short-term security risk due to the introduction of this waiver.

The Northern Ireland protocol means that there are no safety and security requirements for goods moved between Northern Ireland and the EU, and that Northern Ireland remains aligned with EU customs rules. As such, this instrument does not affect safety and security requirements in Northern Ireland. Goods moved between Northern Ireland and the rest of the world will be subject to existing safety and security requirements. Northern Ireland businesses moving goods into Great Britain benefit from unfettered access and are not required to submit pre-arrival or pre-departure safety and security declarations. Businesses moving goods from Great Britain to Northern Ireland are not required to submit pre-departure safety and security declarations.

In conclusion, these temporary waivers from safety and security declaration requirements for goods moved between Great Britain and the EU strike an appropriate balance between supporting businesses affect by Covid-19 and maintaining safety and security. Therefore, I beg to move.

3.28 pm

Lord Bradshaw (LD) [V]: My Lords, first, I thank the Minister for his thorough explanation of what is happening. There is a problem in considering these changes because two things are muddying the water—Brexit and the Covid-19 crisis.

I am anxious to find out from the Minister how many extra customs officers or officials are being employed now who were not needed before we left the European Union. If additions have been necessary because of Covid, that can be explained as such and we would expect the numbers employed to return to a more normal level afterwards. However, we were led to expect when we were led along the Brexit path that we were going to get economies as a result, and I am most anxious to know how much more money is having to be spent by government in checking things and by the private sector in preparing documentation for examination. Those are pertinent questions that any legislature would ask of its Ministers because we must be clear that public money is being wisely spent.

3.30 pm

Lord Tunnicliffe (Lab): My Lords, I am grateful to the Minister for introducing this statutory instrument, which follows on from several previous regulations relating to new customs procedures. As the Minister has outlined, this instrument extends waivers granted under the previous regulations for up to an extra six months. These waivers cover both imports from the EU, Norway and Switzerland and certain types of movements back to those territories.

It is fair to say that the first six months of our new relationship with the European Union have not operated as smoothly as the Government promised. The reality of new red tape, coupled with challenges resulting from the Covid-19 pandemic, had a noticeable impact on trade flows from 1 January.

Although there are signs of improvement in some areas, the data in others remains concerning. Last week, for example, analysis suggested that British food and drink exports fell by £2 billion in the first three months of the year. Sales of dairy products plummeted by a staggering 90%. The Government will be keen to label these as teething problems but those in the industry are less sure. The Food and Drink Federation, for example, argues that these figures are

"a very clear indication of the scale of losses that UK manufacturers face in the longer-term due to new trade barriers with the EU."

It is worth reflecting on previous debates on this topic. When we debated one instrument in December, we were told that the powers in relation to exports were being granted purely as a contingency. The impression given was that the Government did not expect to use them. Indeed, the Minister said that the waiver would be applied

"only where absolutely necessary to avoid border disruption".

At the time, I asked whether the Minister envisaged the extension we are debating today. In his response, he said:

"The Government have no plans to extend this contingency beyond the first six months of next year, as we do not anticipate that there will be any risk of disruption, as a result of the safety and security requirements on exports after that period."—[*Official Report*, 10/12/20; col. GC 382.]

As the Secondary Legislation Scrutiny Committee notes in its fourth report of the Session:

"HM Revenue and Customs explains that these extensions are being introduced in response to feedback from industry that the pressures arising from the pandemic have affected their readiness for the introduction of full customs controls from 1 July 2021".

While we have no doubt that the pandemic has had an impact on the ability of businesses to adapt, I am not convinced that HMRC's explanation is complete. We are still hearing complaints about the Government's new customs phone lines, for example. Ministers are also still being coy about the number of customs agents that have been recruited and whether their self-imposed target of 50,000 personnel has been met. Can the Minister provide an update on these projects? Does he believe that the required capacity will be in place by the end of the year? Is there a possibility that HMRC will decide to grant further extensions into 2022?

Finally, in that December debate we also raised concerns about safety, in light of HMRC's admission that bringing certain contingency plans into force could have implications for border security. Can the Minister confirm that these matters have been kept under review during the operation of the customs waivers, and whether such risks have become a reality?

Have any incidents occurred that the department would consider significant and, if so, will the Minister commit to sharing the details with us?

3.34 pm

Lord Agnew of Oulton (Con): My Lords, I thank the Committee for this debate. I will seek to address the questions and observations raised, starting with those of the noble Lord, Lord Tunnicliffe.

I acknowledge that there have been some very dramatic movements in trade flows over the last few months, but I suggest that there have been exceptional circumstances, with some stockpiling, and it is hard to get a run rate at the moment. However, overall, we are encouraged by the process so far.

On the noble Lord's query about the extension of waivers and assurances that we gave last year, we always wanted to have the flexibility to extend. I think the biggest event that has occurred since then which we were not aware of in December is the emergence of the much more virulent strain of Covid. This caused us to extend lockdown and restrict businesses' ability to operate for longer than we would have hoped at the time.

In terms of the noble Lord's concerns about the customs phone line, I am pleased to say that the customs and international trade helpline has been working well since the beginning of the year. The helpline has answered 97% of its calls since January, with an average speed of answer of 23 seconds. HMRC is offering this service over the weekend and on weekdays until 10 pm.

On customs agent capacity, the Government do not have a specific target or number of customs agents, because the sector is varied and made up of a number of different business models. For example, in the lead-up to the end of the transition period, we saw large investment in technology by a number of the larger intermediaries, which meant that their ability to handle declarations was well beyond that of simply adding more people. When thinking about readiness, it is helpful to think of the capacity to make declarations instead of the number of staff involved. We know that the intermediary sector has significantly increased this capacity to meet demand following the end of the transition period. The Government helped it to do this by making over £80 million in support available, including flexible grants that can be used for IT and training and recruitment. We are running an intermediary register on GOV.UK at the moment—for example, in the last two weeks, there have been 1,400 views of that page. There are 1,300 intermediaries listed on the register, of whom 93% say they have capacity, 92% say they are able to help small traders, 54% can support SPS checks and 309 can help with roll-on roll-off. We are improving the register all the time following feedback from traders and intermediaries.

The noble Lord asked whether we are likely to grant further extensions. The Government originally intended to introduce the full customs controls by 1 July but, given the impact of the pandemic, they are extending these facilitations to September and December. The Government do not plan to extend these waivers any further. Traders will need to comply with full safety and security declarations on exports from 1 October 2021 and on imports from 1 January 2022.

The noble Lord asked whether the customs issues have been kept under review during the current waiver period. With regard to any risks created by the waivers, Border Force has continued to undertake intelligence-led risk assessments and interventions on imports and exports since the beginning of the year, as it did before the end of the transition period. The noble Lord asked whether any of the risks have become a reality. During the period covered by the waivers, Border Force will continue to do as it has done up until now to protect the security of the UK, but I am happy to write to the noble Lord with figures expanding on the interceptions and work that it has been doing.

The noble Lord, Lord Bradshaw, asked about the cost of the safety and security process. Our EU exit is an opportunity for us to increase the amount of data we collect and thus the range and effectiveness of our interventions and the security of our borders. The collection of safety and security data on movements from the EU will allow Border Force to undertake additional targeting and checks on potentially dangerous goods movements from the UK. While we expect importers to face some increase in costs as a result of safety and security declaration requirements, these can vary depending on the businesses, how much they trade, and whether they use an intermediary. We do not know yet how importers will choose to manage declarations, which is often just one part of a wider customs process, and costs will also depend on factors such as the mode of transport and who the carrier is. Due to this uncertainty, an estimate of the administration burden costs for S&S declarations is not currently available.

Having listened to the feedback from businesses affected by Covid, we are providing them extra time to meet the requirements. This supports efficient customs arrangements and ensures that goods originating in the EU or UK are not subject to tariffs. Therefore, I commend these regulations to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Lord Rogan) (UUP): The Grand Committee stands adjourned until 4.10 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

3.40 pm

Sitting suspended.

Local Elections (Northern Ireland) (Amendment) Order 2021

Considered in Grand Committee

4.10 pm

Moved by ***Viscount Younger of Leckie***

That the Grand Committee do consider the Local Elections (Northern Ireland) (Amendment) Order 2021.

Viscount Younger of Leckie (Con): My Lords, this statutory instrument is about providing increased transparency in relation to the imprints on printed election campaign material. To be clear, an imprint is the information on election material which is added to

[Viscount Younger of Leckie]
show who is responsible for its production. It helps to ensure transparency about who is campaigning. Imprints underpin public trust in the democratic process and ensure that voters are informed about who is behind an electoral campaign.

I will begin by putting this order in context. It is part of a wider package of measures which will ensure that there is a comprehensive paper imprint regime for candidates and parties in all elections in Northern Ireland. The current imprint regime in Northern Ireland is slightly different and not as comprehensive as that in place in Great Britain or for referendums across the whole of the UK. We do not believe that people in Northern Ireland deserve any less transparency for elections than those in the rest of the UK.

On its own, this order will not deliver the comprehensive cover we are seeking. It is one of two SIs needed to create a coherent regime: this order and a separate commencement order, which will be timed to come into force together. Together they will ensure that the paper imprint regime in Northern Ireland covers parties and candidates in all elections.

This order will make provision in relation to material printed for a specific candidate at local elections. The commencement order will bring into force other measures already on the statute book but not yet commenced for Northern Ireland, which will cover candidates at parliamentary and Assembly elections, and material in relation to parties at all Northern Ireland elections.

I will explain why we are taking these steps now. While the existing imprint regime in Northern Ireland has never been problematic, in recent years the Electoral Commission has highlighted the discrepancy between the regimes in Northern Ireland and Great Britain. We undertook to bring forward the change when the legislative timetable allowed. The weight of legislation required for our exit from the EU has delayed these changes but I am delighted to bring them forward now.

It is important to understand that the principle underpinning this measure is ensuring greater transparency for voters. We accept that the Northern Ireland regime should be no less comprehensive than that in Great Britain. All voters, whether in Great Britain or Northern Ireland, should know the origin of election campaign material, who is printing it and on behalf of whom.

On transparency, some of your Lordships may remember that last year the Government brought forward a measure to remove private addresses from ballot papers. On the face of it, this may seem to run counter to those measures which protected the personal data of candidates. However, I reassure your Lordships that the Electoral Commission has produced advice on this matter and there is no requirement for candidates to have personal addresses printed on election material as a result of bringing Northern Ireland into line with Great Britain. A name and PO box address is sufficient for transparency purposes, while protecting personal addresses.

I will now explain what we are changing. The existing regime for Northern Ireland provides that only the name and address of the printer must be included on Northern Ireland election material for candidates. This differs from the regime for Great Britain, which covers material for both candidates and parties, and specifies that in addition to the name and address of the printer it must also include: the name and address of the promoter of the material and the name and address of any person on behalf of whom the material is being published and who is not the promoter.

The promoter of the material is whoever has caused the material to be published. This may be the candidate themselves, their agent or, in the case of a party, the party treasurer, another officer of the party or the party itself, as outlined in the Electoral Commission's guidance on imprints. The format that imprints should take is, across the UK, subject to Electoral Commission guidelines. While the commission does not take a view on the font of the imprint, this essential information should be clear and legible so that it can be seen by potential voters.

Although the Electoral Commission provides guidance on these matters, it does not enforce the rules. Any concerns about non-compliance with the imprint regime should, as is the case currently, be reported to the police. I should mention that the penalties for non-compliance will not change and the offender is liable on summary conviction to a fine of up to £5,000.

I am happy to tell the Committee that the proposal to close the gap between the Northern Ireland and Great Britain paper imprints regime is fully supported and welcomed by the Electoral Commission. I should also say that as the measures relate in some respects to the publication of personal data, we have, as noble Lords would expect, consulted the Office of the Information Commissioner, which has approved the draft order.

Finally, it is of course the case that much of the election material now seen by voters does not take the slightly old-fashioned form of printed material. Your Lordships will rightly ask how this order address the transparency of the sources of political campaigning online and through digital media. The short answer is that it does not, nor is it intended to. The Government have consulted on the issue of digital imprints and have made clear our intention to bring forward UK-wide legislation to address the issue. This SI is a measure to bring the paper imprints regime into line with that in Great Britain. Digital imprints are a separate issue and will be the subject of separate legislation.

I therefore hope that your Lordships will agree that bringing the paper imprint regime in Northern Ireland in line with the more comprehensive one in Great Britain is a sensible and important step towards modernising elections in Northern Ireland. I hope that your Lordships will support this order. I commend it to the Committee and beg to move.

4.17 pm

Lord Alderdice (LD): My Lords, I thank the Minister for presenting this statutory instrument so clearly and comprehensively. It is not a contentious matter, as he rightly says, although, for Liberals, anything to do with elections, constitutions and electoral processes is always a matter of enormous interest. The Alliance Party, on whose behalf I am speaking today, has been doing that kind of thing for over 50 years—and before that, the Ulster Liberal Party did so. It would be, in Liberal terms and in the Northern Ireland parlance, what one might describe as a traditional route for Liberals.

As I say, the noble Viscount is right in saying that the order is not contentious and the question that it addresses has not been particularly problematic in Northern Ireland. Of course, when we look at elections, there are two issues that we would like to try to address. One is when there has been a problem and the other is when we are able to improve things, even where there has not yet been a problem. For example, in the early days, the Alliance Party and previously the Ulster Liberals campaigned for the single transferable vote system in the polarised context of Northern Ireland. That was an improvement in the situation and has continued to be so.

It is not that printed media have no problems at all. For example, on this side of the water there was recently concern about some newspaper advertising. Who had paid for it? How had it come about? It is always important to ensure that those who pay for any kind of advertising are doing it with appropriate and, indeed, legal funds. That has sometimes been a bit of a concern in Ireland, north and south.

However, as the Minister rightly says, it does seem a little strange at this point to be addressing the question of the printed medium. I do not know about the Minister, but I find that although I get more and more material coming to me, less and less comes through my letterbox—almost all of it is now digital. I have to search out printed material if I want to look at that—or, of course, print it out. The Minister has indicated that it is in the Government's mind—and I know that there has been the Cabinet Office document, *Transparency in Digital Campaigning*; the consultation was to be finished by the end of last year, if I recall—so if he is able to say anything about that, that would be helpful.

This whole question of digital campaigning is becoming an increasingly serious issue, not just in Northern Ireland but, truth to tell, globally—not so much because it is putting out a message but because the tactic that is being used, the stratagem that has been devised, is to use social media to deepen polarisation. One can see this being done with armies of bots, directed by artificial intelligence, being employed to pick up messages, amplify them and, through that, create deeper polarisation. We have seen it in this country with referendums as well as elections, and in other countries too. Are the Government addressing this question, not just in principle—knowing who produces something and checking that it comes from appropriate funding sources—but whether the tactics are undermining the process of liberal democracy itself? This is becoming a really quite serious question. It is not an easy one. I would be encouraged if the Minister were to reassure me that the Government are actively addressing this question. It is a matter of very real concern.

I thank the Minister for what he has said. I agree that it is not contentious so far as it goes. The real matters of contention are those things that are not addressed, and I hope that in summing up he may be able to address some of them.

4.22 pm

Lord Browne of Belmont (DUP) [V]: My Lords, we hold today's debate against the backdrop of a global pandemic which seemingly has new variants monthly and has affected so many lives across the United Kingdom. Our councils and local government can and will play a key role in normalising things and getting this country back to work; in particular, in revitalising and renewing our town centres and shopping areas.

As we discuss local government election changes, I believe we ought first to take a moment to acknowledge those who work on the front lines for local government every day across our nation. I offer my thanks to and praise for front-line and public-facing council workers in Northern Ireland and across these isles. As a former Belfast city councillor for 25 years and former lord mayor of the city, I am all too aware of the hard-working council staff in our towns and cities.

Those council workers and others involved in delivering front-line public services, including volunteers, have done a tremendous, heroic job in supporting communities through the unprecedented and unsettling circumstances of the past year. Public-facing council workers have worked throughout the pandemic, and it is right and proper that we acknowledge their efforts.

In relation to the specifics before us, I welcome the amendments to Schedule 9 and thank the Minister for bringing these regulations before your Lordships' Committee for consideration. I note that for many of us in Northern Ireland, this is not entirely new information. In many respects, we have been ahead of the game, as it were, specifically in terms of highlighting the relevant details; namely, the published inclusion of names and addresses of election agents and printers on leaflets, flyers, posters and various electoral communications. Even on social media in Northern Ireland local elections, you will often find the election agent's information emblazoned on infographics and social media posts.

Many candidates and parties in Northern Ireland have carried out these practices for a number of full election cycles. Indeed, during my time on Belfast City Council, I often served as an election agent for local council elections. We always made sure to publish the relevant information on electoral communication and posters. I recall one particular election when I, alongside colleagues, had to remove a batch of recently erected, fresh council election posters and individually affix to each poster the published name and address of the printer alongside the election agent, before they were allowed to be erected once more. I believe that we have been ahead of the game; this has been long-standing practice in Northern Ireland elections. None the less, I welcome these up-to-date clarifications.

I wish to turn to one particular issue which remains a concern to many in Northern Ireland in relation to donations from abroad, using certain electoral and other loopholes. These loopholes enable some parties to bring funds in through another jurisdiction, such as the Irish Republic, without requiring the kinds of registration and thorough checking that apply to funds donated from within the United Kingdom. One example of this can be found in a very recent *Times* newspaper article, which revealed that a number of Sinn Féin staff in the Republic of Ireland donated part of their salaries to the party in Northern Ireland for approximately three years. The *Times* report highlighted the long-standing practice that exists whereby Sinn Féin party staff in the Irish Republic switched payments to a bank account belonging to the party in Northern Ireland. This policy

[Lord Browne of Belmont]
was adopted after rules on political donations were changed in the Irish Republic, with lower thresholds imposed in 2013.

Decision-makers in that state banned foreign donations to political parties within their jurisdiction. Here in mainland Britain too, foreign donations to political parties have been banned—but in Northern Ireland there remains a significant loophole as it relates to party donations from other jurisdictions, which have been used by some to fund local elections and their party operations. For an all-island party, this has been a useful alternative route whereby donations may be made from individuals, companies and organisations in the Irish Republic to a party in Northern Ireland.

In recent years we have also seen examples of large donations to the same political organisations in Northern Ireland from Australia, Canada and the United States. The question over the need for regulation in respect of overseas donations to political parties has existed for many years. When we discuss local government electoral changes or mention election cycle donations, one cannot help but question why this particular issue has lingered for so long without a real and focused effort to address it head on. Does the Minister share my view that this is a particular issue of concern, when money from other jurisdictions can be continually used to fund the pursuits of a political entity in one part of this nation—indeed, via the only part of this nation where this loophole remains open?

In previous debates, we have heard about foreign money and, indeed, foreign election interference. I can recall a debate in your Lordships' House some years ago in respect of American election interference. Is it not time that we addressed this issue of foreign sums of money being used within the realms of our own United Kingdom democracy? I am pleased to support the order before us today.

4.28 pm

Baroness Hoey (Non-Afl) [V]: My Lords, I add my thanks to the Minister for the very clear articulation of what this SI says. Reading what we got from the Library and the Northern Ireland Office, I found one or two points where it did not seem quite so clear, and I think that he made a very clear run at telling us what it says. It is also quite nice to speak when the Minister is moving something on Northern Ireland with which I am totally in agreement.

I very much support this order. We should have consistency across the United Kingdom in our elections as far as possible. Sometimes that is not just one-way; of course, Northern Ireland has very sensibly and successfully had photographic ID for elections for a long time, and now the rest of Great Britain is going to follow on that. I think that is very sensible. You do not need a passport or driving licence; the local authority will give you something that shows your identity, which I think is very important. It is not just a case of Northern Ireland always catching up. As I think the noble Lord, Lord Browne, said, sometimes we are actually ahead in Northern Ireland.

The imprint issue is important, and this has clarified what will happen in the future. I was also going to raise the question of social media, Twitter and Facebook, all of which are being used much more in elections, so I am very pleased that the Minister has mentioned this. I am interested that there is going to be legislation. Could the Minister give us some timings on that? I think this will be more and more of a problem. Having said that, Twitter and Facebook have brought a lot of people into listening to and being interested in politics who maybe did not or were not before, so we have to be careful in judging social media. There are positive aspects of both Facebook and Twitter, but for elections it is important that there is the same amount of scrutiny of who is posting and promoting things. I would support that, and I would like to find out whether there is a date for legislation coming through.

Finally, could the Minister tell us what is now left? What is the not the same in Northern Ireland as in the rest of Great Britain? It would be useful to know whether we will be exactly identical in our election format, procedures and rules after both aspects he mentioned go through.

4.32 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I thank the Minister for the explanation of these regulations, which require on the document the name and address of the printer; the name and address of the promoter of the material; and the name and address of any person on behalf of whom the material is being published and who is not the promoter. I presume that this means the name of the candidate; could the Minister confirm that this is the case? We already provide the name and address of the election agent and the printer at all elections throughout the election cycle, and the candidate's name is already there, so what is required in addition?

I am all for transparency; I want to see election fraud eliminated. As the noble Baroness, Lady Hoey, said, we were ahead of the game on this issue, but there was a very good reason for that, because there were high levels of election fraud. That is why the legislation was brought in and why we have photographic ID—which works very well now—and complete registers. In that regard, there is a concern, not necessarily that certain political parties have direct access to the electoral register but that they have additional information on voters. Therefore, the issue of the GDPR comes into play. This has been an issue in Northern Ireland which many of us, as members of political parties, have been subjected to. We have been contacted by people realising that certain parties have information about them. This has also been the case in the Republic of Ireland, and very serious issues have been raised about this matter. Are the Government contemplating any future legislation in that regard?

I do not have an issue with this secondary legislation for an imprint, because it leads to greater levels of transparency. However, like other noble Lords, I would like to know the detail of the future legislation in relation to digital imprints—the information that will be required if you are going to publish on Facebook and Twitter—because Facebook is one of the mediums used greatly by political parties, candidates and elected representatives today to communicate their messages to voters.

One of the more worrying features for me is the major threat to political stability in Northern Ireland due to the ongoing internal difficulties in the DUP. I am glad to see that Jeffrey Donaldson will be the new leader, and I wish him well in his new role. There are also the ongoing challenges presented by the exit from the European Union and, as a consequence, the protocol and those difficult relationships between Britain and Ireland. After all, the UK and Irish Governments are the co-guarantors of the Good Friday/Belfast agreement. It is important that they are seen to be working together and do work together in the interests of reconciliation, together with the Northern Ireland Executive and the political parties in Northern Ireland.

I can think of one previous Secretary of State, who is with us in this debate—the noble Lord, Lord Murphy of Torfaen—who, along with his colleague, the then Secretary of State Mo Mowlam, clearly engineered situations to ensure dialogue between the parties and at an intergovernmental level. I would like to find out from the Minister whether the meeting of the British-Irish Intergovernmental Conference promised for June is taking place this month. It is vital that high-level direction is given by both Governments, by the Northern Ireland Executive—I hope the difficulties can be ironed out—and by leaders of political parties in Northern Ireland, and that the north-south arrangements and the east-west arrangements operate on an equal basis.

I have concerns that there are, I am told, illegal parades taking place without notification to the Parades Commission, which could be in breach of Covid regulations. It is a time for responsible leadership, and we need to ensure that. Above all, we all need to ensure that the power-sharing arrangements are underpinned, so can the Minister indicate when that high-level British-Irish Intergovernmental Conference will take place? We need to see the commitments in *New Decade, New Approach*—which all parties and both Governments agreed to, and which heralded the restoration of our political institutions in January last year—implemented in full. Can the Minister indicate what work is being done with the Irish Government to ensure that this will take place?

In summary, I have no problem with this order and look forward to further measures to create greater levels of transparency in the digital area and that of recording information about electors, so that potential electors are protected from any nefarious activity that may or may not be going on.

4.38 pm

Baroness Suttie (LD) [V]: My Lords, it is a pleasure to take part in a debate in which there is so much agreement and consensus; that is not always the case in our Northern Ireland debates in this House. I add my thanks to the Minister for such a comprehensive explanation of the context of this order, which I found enormously helpful and enlightening.

These Benches very much welcome the introduction of this order. As the Minister said, it will ensure that the imprint regime for local elections in Northern Ireland finally mirrors the regime in place for parliamentary elections in Great Britain. This will go some way to improving transparency and open democracy for elections in Northern Ireland, and this is greatly to be welcomed. As my noble friend Lord Alderdice said, Liberals are always in favour of systems that introduce greater transparency and open democracy.

Improving transparency for voters so that it is clear from the election literature who is campaigning and who is supporting candidates at local government elections is something we have long called for from these Benches over many years. It will also introduce greater accountability for political parties, as well as facilitating legal actions and remedies should these become necessary.

However, it is clear from the Explanatory Memorandum that consultations took place back in 2018—three years ago. The Minister explained that Brexit was the cause of the delay, but perhaps he could say a little more about why this has taken three years to come before us today.

These measures were also a key conclusion in the report of the Independent Commission on Referendums, published in July 2018. Can the Minister say what has happened to the associated recommendations from that report? In particular, the distinguished cross-party group that formed that commission on referendums recommended that

"a searchable repository of online political advertising should be developed, including information on when each advertisement was posted, at whom it was targeted, and how much was spent on it."

Can the Minister say whether any progress is being made on following those recommendations?

The Minister will know that last month the head of the Electoral Commission Northern Ireland again called on the UK Government to change the law to allow it to publish information relating to political donations and loans which occurred before 1 July 2017. The commission's most recent research in this area, published in February this year, confirms that the majority of the public agree that this information should be publicly available. I appreciate that this is a little beyond the scope of this order, but in the spirit of openness and transparency which this order promotes, it would be extremely helpful to have an update on this matter from the Government. If the Minister is unable to provide a response today, I would be grateful if he might be able to write to me at a later stage.

4.42 pm

Lord Murphy of Torfaen (Lab) [V]: My Lords, I am grateful for the opportunity to take part in this very interesting short debate and to make it clear that the Opposition support this statutory instrument. We do so because it makes elections more transparent and because, obviously, it aligns Northern Ireland with Great Britain.

It is 48 years since I first had the effrontery to ask people to vote for me in an election, and in all those years, imprints have been a very important part of any candidate's or agent's job. However, it is worth remembering that it has not been quite that easy in Northern Ireland, and that fraud and intimidation have been features of the electoral system there over the last half a century. Of course, it is changing dramatically, and the law changes with it too. However, I can recall that when I first became a Minister in

[Lord Murphy of Torfaen]
Northern Ireland in 1997, the then Chief Electoral Officer for Northern Ireland came to see me in my office in London and brought with him a suitcase in which were hundreds of ballot papers, every one of which was fraudulent. He was showing me how they were made fraudulently and how real the problem was in Northern Ireland.

An awful lot has changed since that time, but I emphasise that it has been different. There has been a similar situation with intimidation and political donations —certainly those that came from within Northern Ireland. On both sides of the political divide there, people were frightened to reveal that they had given gifts to various political parties for fear of intimidation and threats. It has not been easy, and it is good that we are catching up with the rest of the United Kingdom with regard to how we deal with elections, but it was different.

I have a couple of questions for the Minister. First, I saw from the notes that the department put out that there was a consultation in Northern Ireland on this change in electoral law and that the majority of people supported it, which I do. However, it would be interesting to know whether the minority who did not do so was substantial and what they said that they did not like about this change. Secondly, a number of noble Lords mentioned the important issue of a digital imprint regime and how the world has changed. For most of us, when we started our political lives, digital electioneering did not exist. Now it is becoming increasingly important. Can the Minister confirm that any change in the law on that, which is necessary, will also cover Northern Ireland?

A number of your Lordships have raised issues of stability. Of course, elections have to operate within political stability and I share the view of the noble Baroness, Lady Ritchie, about the need for a meeting of the BIIGC—the sooner the better—and that there should be more meetings with all the political parties in Northern Ireland, including with the new leader of the DUP.

However, I also want to point out that with regard to voter ID in the whole of the United Kingdom, which will come before us in separate legislation, it is not as simple as that. My experience over the years has been that we will have problems in getting older people in particular used to that system. There is something to be said for it and I am not suggesting that there is not, but one has to weigh it against the enormous issue of people deciding not to vote at all if a substantial obstacle is placed in front of them. We must acknowledge that, as well as the fact that Northern Ireland is still different. But that is for another day. I give notice to the Minister that we will be discussing that matter in much greater detail in the months ahead.

However, we support the order and I hope that the regime will start as soon as possible.

4.47 pm

Viscount Younger of Leckie (Con): I start by thanking your Lordships for their broad support for these measures. As the noble Baroness, Lady Suttie, said, it is true that it is difficult to achieve a general consensus on Northern Ireland matters and, in general, we have managed to achieve that this afternoon. However, that is not to say that a number of questions were not raised and I will do my best to answer them all.

However, before I go into that, I want to say a word or two about something raised by the noble Baroness, Lady Hoey, and some more expansive comments by the noble Lord, Lord Murphy. The noble Baroness is right: she mentioned voter ID and it is true that Northern Ireland is a leader here and at the forefront of that measure, leading the way. The noble Lord related the issue to the rest of the United Kingdom and is right to say that there are some challenges. One that he mentioned was about including older people and getting them used to the system. It is good to discuss it and, no doubt, discussions will continue.

Before I go into the substantive issues raised, I want to say one thing about security or intimidation, to address any concerns that the addition of an address to election material may lead to the intimidation of a candidate, printer or promoter—something that I did not really address in my opening remarks. It is vital for our democracy that individuals are able to engage in campaigning in elections without fear of intimidation. I want to be clear that a candidate, for example, is under no obligation to print their home address on any election material. The Electoral Commission provides guidance that the address provided does not need to be a home address; it may be a business address or, as I did say in my opening remarks, even a PO box. These changes will not, therefore, risk intimidation for any candidate and the existing law provides that the printers must already include details on any election material that they produce. However, it is only right that the people of Northern Ireland have the same levels of transparency and clarity in elections as people in Great Britain. Voters have the right to understand who is publishing and promoting election material. This order, combined with the commencement order, will do just that.

This leads nicely into some points raised by the noble Lord, Lord Alderdice, who spoke about digital campaigning. I have noted his comments, which were becoming more expansive, I think, and were supported by the noble Baroness, Lady Suttie. He asked whether the tactics were undermining the liberal process. That is a very good point, and I am sure that is a subject for future debate.

On digital imprints, just to reassure the noble Lord, we have consulted, and I promise him and others who have raised this point that comprehensive measures will be included in forthcoming legislation. The noble Baroness, Lady Hoey, asked about the timings on this. I am unable to give any timings on this particular legislation at the moment, but I shall check back with officials. If there is anything more that I can add to that I shall, of course, write.

The noble Lord, Lord Alderdice, also alluded to the point that imprint offences are, mercifully, very rare. I inform him that, between 2015 and 2020, only three offences were found to have taken place within the UK, and those were for failing to include an imprint on election campaign material. This perhaps demonstrates how well the current imprint regime in the rest of

Great Britain is working. We expect the updated regime in Northern Ireland to work similarly. I hope that that gives some reassurance. It plays well into the point that the noble Lord, Lord Alderdice, made, which is that we do not believe that this is particularly contentious, and I appreciate that.

The noble Baroness, Lady Ritchie, and the noble Lord, Lord Murphy, spoke about political stability. It is very relevant that this point has been raised. I know that the noble Baroness has spoken about this before, and how important it is to have political stability—to state the obvious perhaps—in Northern Ireland. She spoke, quite rightly, about the importance of continuing dialogue and creating agreement between all parties. On current events, I was pleased that the DUP and Sinn Féin nominated First and Deputy First Ministers last Thursday following the Secretary of State's intensive negotiations with the parties' leaders. I hope that the UK Government's commitment to legislate for the balanced culture and language package agreed on in the *New Decade, New Approach* deal, should the Executive not do so by the end of September, now means that we can move on to much more pressing issues such as healthcare, education and jobs in Northern Ireland. This Government look forward to working with the whole of the Northern Ireland Executive to address those challenges and embrace the opportunities that lie ahead for Northern Ireland.

This brings me to a point raised by the noble Baroness, Lady Ritchie, about the BIIGC. There is a date in the diary of 24 June for that group to meet in Dublin.

The noble Baroness, Lady Suttie, asked why this order had not been implemented before—why these changes had not been forthcoming. I cannot really add to what I said in my opening remarks, but I reassure her that, because of the weight of legislation required for our exit from the EU, it really is the case that these changes were delayed. As I said earlier, I am pleased that we are at this point now. It is not that Northern Ireland was entirely without imprint rules. However, the Electoral Commission has felt and has highlighted that the law on imprints in Northern Ireland was less comprehensive than in the rest of the United Kingdom and that it was important that we addressed that properly.

The noble Lord, Lord Browne, said—and he is right—that we should give thanks to those who are in the front line of organising elections. I pay my tribute, too, to those who give so much in terms of public service in this respect. The noble Lord raised a point about foreign donations—Irish donations. Perhaps I can reassure him that all donations to registered Northern Ireland parties from all donors are subject to the rules, and Irish donations are allowed; that respects the Belfast agreement principles. I shall read *Hansard* but, if he has particular concerns, I shall undertake to write to him on the matter.

The noble Baroness, Lady Ritchie, asked about additional requirements in terms of what we are doing today. I reassure her that, as I think I said in my opening remarks, this includes the name of the printer and the promoter on whose behalf the leaflet is published. This is no more and no less, and I understand that this information is usually made available in Northern Ireland. It sets down the requirement in law.

The noble Baroness, Lady Suttie, spoke about transparency, which plays rather well into comments made by the noble Lord, Lord Alderdice. The question of retrospectively opening up historic records from 2014 remains genuinely difficult at a time when threats to elected representatives are all too common and various measures have been put in place to protect those elected representatives. We must be very careful that nothing we do might lead to intimidation against members of the public who donated to parties. We have always been clear that any movement on this issue must have the support of all the parties in Northern Ireland, but I am not aware that any of them have raised the issue of historic transparency with us since we changed the law to bring reporting requirements into line with the rest of the UK from July 2017.

The noble Lord, Lord Murphy, asked about fraud measures in place. I reassure him that they are more stringent in Northern Ireland than elsewhere in the UK.

I believe that we are nearing the end of the time, but I hope that I have answered all the questions. However, I am aware that the noble Lord, Lord Murphy, asked about the consultation. I think I shall write to him on that. He asked about the minority of those who responded to the consultation. I do not have information for him, but I shall endeavour to write.

Again, I appreciate the general support for these regulations, and I beg to move.

Motion agreed.

4.57 pm

Sitting suspended.

Scotland Act 2016 (Social Security) (Consequential Provision) (Miscellaneous Amendment) Regulations 2021

Considered in Grand Committee

5.02 pm

Moved by ***Baroness Stedman-Scott***

That the Grand Committee do consider the Scotland Act 2016 (Social Security) (Consequential Provision) (Miscellaneous Amendment) Regulations 2021.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, I am pleased to introduce this instrument, which was laid before the House on 17 May 2021. Subject to approval, the regulations will make some necessary legislative changes to prevent overlapping entitlements to the soon-to-be-introduced Scottish child disability payment and UK disability benefits. It will also permit the Department for Work and Pensions to accept the Scottish government appointee arrangements for UK government benefit purposes, thereby reducing the administrative burden for claimants and appointees in dealing with both Governments. I am satisfied that the regulations are compatible with the European Convention on Human Rights.

[Baroness Stedman-Scott]

The UK Government are committed to making devolution work and to ensuring the safe and secure transition of powers to the Scottish Government under the Scotland Act 2016. As a result of the devolution of social security powers to the Scottish Parliament under this Act, the Department for Work and Pensions will need to update its legislation from time to time to reflect the introduction of the Scottish Government's replacement benefits. Section 71 of this Act allows for the necessary legislative amendments, in this case as a result of benefits introduced under the Social Security (Scotland) Act 2018.

I am grateful for the opportunity to debate these regulations today. They will effect some purely technical changes and prevent overlapping entitlement to and payment of the Scottish child disability payment and UK disability benefits such as disability living allowance for children, personal independence payment and Armed Forces independence payment. It also includes some time-limited overlapping provisions for Northern Ireland. It will enable the Department for Work and Pensions to accept appointees over the age of 18 if they have already been granted appointee status by the Scottish Government. This is a positive change for claimants and staff.

Noble Lords will be aware that the Social Security (Scotland) Act 2018 established the legislative framework for the Scottish Government to introduce new forms of assistance using the social security powers devolved under Section 22 of the Scotland Act 2016. Specifically, Section 31 of the 2018 Act allows the Scottish Government to introduce legislation to provide financial support through their disability assistance for people in Scotland with long-term additional health needs. The Scottish Government have legislated for disability assistance for children and young people, which will be introduced from July 2021. They are calling this child disability payment; I will refer to it as CDP from now on.

I understand that CDP will have residency conditions attached and primarily will be paid only to claimants who live in Scotland. However, as part of their offer the Scottish Government will continue to pay CDP for a period of 13 weeks after a claimant has left Scotland and moved to another part of the UK. This will allow claimants time to sort out new benefit arrangements, should they wish to.

Our intention is to offer a similar facility for those moving to Scotland, though this will not be needed for a few years. What is needed now is a modest legislative amendment to deal with this policy, in order to both support the devolution agenda and strengthen a union that works together in the best interests of our shared citizens.

If these regulations are passed today, they will ensure that there are clear boundaries between entitlement to CDP and entitlement to a similar UK government benefit, and that there is no overlapping provision of entitlement. They will do that by making it clear that entitlement to a relevant UK government benefit will not start until the day after payment of CDP has ended and will reflect the Scottish CDP legislation, which acts in a similar way. This will not only protect the public purse by avoiding double payment but help prevent the need for complicated overpayment calculations and recovery. Furthermore, it is also in the best interests of the claimant, who will have a clear expectation of which Government is responsible for paying their benefits at which point in their claim or award.

The instrument includes provisions on behalf of the Ministry of Defence to ensure that Armed Forces independence payment will similarly not overlap with CDP. Provisions have also been introduced to prevent overlapping entitlement when a claimant moves to Northern Ireland and is in receipt of the 13-week run-on payment from the Scottish Government.

Finally, we recognise that many DWP claimants will also be claimants of the Scottish Government's devolved provisions. This instrument will make changes to UK government legislation to allow the Department for Work and Pensions to accept that a person over the age of 18 has appointee status if they have already been granted it by the Scottish Government. This removes unnecessary burdens on the claimant, the appointee and the department through effective and proportional collaboration on information shared and used by respective Governments. I commend this instrument to the Committee and beg to move.

5.09 pm

Lord Naseby (Con) [V]: My Lords, I recognise the antecedents of the Smith commission, itself deriving from the 2014 Scottish independence referendum, and the following Scottish Acts in 2016 and 2018. I am no expert on the details of this particular SI or social security benefits in general, and I do not know if I am right on this, so maybe my noble friend can clarify it when she speaks at the end, but it seems to me that it does not affect social legislation in Great Britain—or, that is, it affects England and Wales but not Northern Ireland.

My key concern is about the background of the importance of the union—we all know what is happening on the ground at the moment—and a recognition of what the current SNP leadership is all about. This in itself is in contrast to the powers of the Scottish Parliament. For example, it has the power to borrow over and beyond the benefits of the Barnett formula, as I understand it, so there is a double incremental benefit to Scotland as a whole.

What will be the impact on the other three nations that make up the United Kingdom? Is this just a simple implementation agreed by all four parties, with Scotland in the lead? They are doing trials in various cities. Or is it what I would call a ratchet effect, in that they take an initiative which the rest of the union then has to follow? I do not know, and I hope my noble friend can make that absolutely clear for the record when she winds up.

I will now focus particularly on Northern Ireland, and colleagues may wonder why. This is primarily because I was PPS in Northern Ireland from 1979 to 1981 and got to know that part of the UK quite well. I have deep concerns about what is happening on the ground there; they are struggling with the protocol and the aftereffects of Brexit on top of everything else. I would have thought that to have an important part of their social security affected as well—seemingly in the autumn—is just another problem and challenge for them.

I have two implementation points to make. I note that this is to be trialled in Dundee City, Perth and Kinross, and maybe somewhere else, from 26 July. It is thought that there will then be a full national rollout in the autumn. But 26 July is, in effect, the beginning of the summer, and nothing very much will happen in August, so we will really begin to have some test of this in September or October. Normally, to do a proper test, you would do it for at least three months. You would then review it for a month, because there are bound to be some elements of it that are not quite right, particularly if you have to consult the other three nations. Maybe they are not going to consult, but they should. I suggest to my noble friend that she should have a quiet word with her colleague across the border and ask if they are absolutely sure that it should be rolled out in the autumn and why it should not be rolled out from January, when people have had time to look at it, make necessary technical amendments and then implement it accordingly.

The other technical matter I would raise is that it is all very well saying that there is a 13-week change in some of the moves from Scotland to England, Wales or wherever. It never ceases to amaze one, having been a Member of Parliament, but there are families who do move around regularly when they change jobs or if something else happens—

Baroness Scott of Bybrook (Con): Lord Naseby, can you hear me?

Lord Naseby (Con): Right, okay, thank you.

5.15 pm

Lord Bruce of Bennachie (LD) [V]: This SI is a small step in the long, drawn-out and complicated process of transferring responsibility for some aspects of social security from the UK Government to the Scottish Government. The Scottish Government are always vociferous in their demand for more power, despite struggling to use many of the powers they have effectively or, sometimes, at all. That is not to say there cannot be value in administering benefits to meet the needs of beneficiaries in Scotland, but only time will tell whether it delivers a net positive and an affordable outcome.

This statutory instrument is necessary to facilitate the establishment of the Scottish Government's child disability payment as a replacement for disability living allowance. The aim is to transfer approximately 50,000 recipients of DLA to CDP over 12 months, all being well. The amount of benefit will not change, but the assessment will. There will be no upsides—no political upsides, certainly—if current recipients fall through the net or if any change disadvantages an applicant for CDP compared with the previous DLA arrangement. Concern has already been raised about the altered definition of night-time care under CDP compared with DLA and whether that might disadvantage Scottish claimants. Having said that, my understanding is that this is being jointly administered between the DWP and the Scottish Government, so that should help eliminate such complications.

One positive change that has emerged on the back of consultation is that recipients of CDP will not have to apply for PIP at 16, as is the case with DLA, but can continue on CDP until 18, and then apply for PIP. It would be interesting if the Minister could comment on whether her department considers that beneficial and something that might be applied elsewhere in the UK.

The SI does three things. It ensures that there is no overlap, as the Minister said, between CDP, DLA, PIP and the Armed Forces independence payment; it provides for the continuation of CDP for up to 13 weeks after a recipient moves to another part of the UK, to allow time to apply for the appropriate replacement for CDP; and it allows the Scottish Government's criteria for appointing someone on behalf of a recipient to be recognised across the UK.

These are practical and sensible measures, and that explains why the Scottish Parliament's Social Security Committee dealt with it in less than a minute. Nevertheless, if the transfer of some social security benefits from the UK to Scotland is to have purpose, there must be practical and real benefits, rather than just name changes and different administration. The PIP point looks like it might be something for the DWP to consider, so I repeat: can the Minister say whether this might lead to a rethink in her department?

Where will all this lead? Can the Minister indicate how many other Scottish social security SIs she expects in the coming months? The question is: will this lead to the Scottish Government tackling the serious problems of poverty, multiple deprivation and drug abuse that blight Scotland, or will it amount to just relatively small administrative changes that could add to the complexity for those in need without providing transformational benefit?

No doubt the SNP will claim that only independence will unlock the resources needed to turn poverty around, despite the very real risk that Scotland will lack the resources to maintain current benefit levels, let alone improve them. Indeed, if Scotland decided that it was going to pay more generous benefits than the rest of the UK, which it would be entitled to do, we could see some kind of reverse benefit tourism, which would be at the Scottish taxpayers' expense.

The challenge is to use these social security powers to demonstrate a positive difference in shaping the system to Scotland's needs, to take account of the different social circumstances and different geography of Scotland. If it is done in that way, it will be beneficial to both Scottish and UK citizens by delivering benefits in a fairer and more efficient way, but whether or not it does, we shall have to wait and watch with interest.

5.19 pm

Baroness Wilcox of Newport (Lab): My Lords, we are here today because this statutory instrument will make consequential amendments to social security legislation in respect of Great Britain and Northern Ireland to prevent payments of DLA, PIP and AFIP overlapping with the Scottish Government's child disability payment. The Scottish Government are introducing the CDP, which will replace the disability living allowance for children, currently delivered by the DWP. This new child disability payment will be open in pilot areas for applications from 26 July this year in Dundee City, Perth and Kinross and the Western Isles council.

[Baroness Wilcox of Newport]

This is the first application-based disability benefit to be introduced by the Scottish Government, and the pilot will be followed by a full national rollout in the autumn. Families currently getting DLA for children will be transferred automatically to the new Scottish system. People who currently get disability benefits from the DWP will have their awards transferred to the new Scottish system in stages after the new benefits are introduced. We believe that the work will be completed by 2025.

We entered the pandemic with too many people living in poverty, and this poverty is endemic in many parts of the UK, in all the nations and regions. The Scottish Labour shadow Cabinet Secretary for Social Justice and Social Security has raised several matters about this issue with the Cabinet Secretary Shona Robison MSP and has asked her to consider making progress on tackling child poverty in Scotland by doubling the Scottish child payment immediately as well as to mitigate the two-child limit in Scotland. Projections show that this would cost just 0.2% of the Scottish Government's total budget. Further ideas expressed to reduce poverty include removing the full-time study rule in carer's allowance and moving from the safe and secure transition of disability benefits to transforming eligibility and rate, together with using procurement to enforce the living wage and end zero-hours contracts, bringing housing costs down by capping rent rises, and requiring businesses that get public money to pay the living wage and end zero-hours contracts.

Can the Minister confirm that no one will lose money by stopping any overlap between the DLA, PIP, AFIP and the new child disability payment? Also, is the Minister confident that the 13-week CDP run-on payment will take place? What happens if it does not? Finally, when does the Minister expect the national rollout of CDP to take place? Most importantly, is the DWP ready for it?

5.23 pm

Baroness Stedman-Scott (Con): I thank all noble Lords for their contributions today. I shall deal with some of the points that noble Lords have raised.

In answer to the noble Lord, Lord Naseby, and to some degree the noble Lord, Lord Bruce, I would say that all five parties in the Scottish Parliament accepted the Smith commission recommendations on the devolution of social security. The two Governments are now working together to implement them, and this SI is part of that process. In Wales, social security is reserved by virtue of the Wales Act 2017, although the Welsh Government have the power to make payments to people in extreme financial hardship using the discretionary assistance fund. In Northern Ireland, social security is transferred to the Northern Ireland Executive. However, in line with the Northern Ireland Act 1998, the DWP and the Department for Communities in Northern Ireland work closely together with a view to maintaining parity between the two systems.

The Barnett formula is used by the Treasury to calculate the annual block grants for the Scottish and Welsh Governments and the Northern Ireland Executive. It calculates funding for devolved public services based on what the UK Government spend on those functions in England. If the devolved Administrations want to spend more on devolved services, they must find the funding from elsewhere in their budgets.

On the evaluation of implementation, which noble Lords have raised, that is a matter for the Scottish Government. The UK Government will, of course, be interested in the iterations of the reserved benefits, given the larger number of people in Scotland receiving benefits from both Governments.

In answer to the noble Lord, Lord Bruce, the DWP currently administers benefits on behalf of the Scottish Government where they are the same as other benefits. However, replacement benefits, such as CDP, will be entirely delivered by Social Security Scotland, which is part of the Scottish Government. We will, of course, follow with interest how the Scottish Government deliver their new benefit and we can, of course, learn from their experience where we both face similar challenges.

On cross-border moves from Scotland to England, the noble Baroness, Lady Wilcox, asks what will happen if someone moving from Scotland to England and Wales does not apply to the DWP in time for their claim to be processed before their CDP runs out, and whether they will incur a break in payment. If the claimant is late in making the claim following the move, there is a greater risk that there will be a break in payment. However, arrears will be paid back to either the date of the claim or to the date the run-on ceases, depending on the circumstances. If a claimant delays making an application and their CDP stops before their claim has been made, any new claim can be paid only from the date of that claim.

The DWP and the Scottish Government both have devolution programmes to ensure that all partners are ready in delivery and ready for the implementation. We hope that that working together will continue.

The noble Lord, Lord Bruce, asked about how many more SIs on Scotland are coming. It seems that there are three more statutory instruments on devolution of Scottish Social Security to the Scottish Parliament before the Summer Recess. Further instruments will follow as the Scottish Government make further progress on the replacement of benefits.

The UK Government are working collaboratively with the Scottish Government to ensure that the two systems of social security will operate effectively alongside each other and the required legislation that underpins them is delivered successfully for the people of Scotland and, where relevant, claimants in England, Wales and Northern Ireland. This order highlights the importance that the UK Government place on the effective functioning of devolution. I commend this order to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Baroness Henig) (Lab): 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 5.28 pm.