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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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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

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House of Lords

Wednesday 14 July 2021

Noon

Prayers—read by the Lord Bishop of Chichester.

Arrangement of Business

Announcement

12.07 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, 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.

National Lottery

Question

12.08 pm

Asked by ***Lord Brooke of Alverthorpe***

To ask Her Majesty's Government what plans they have to review the objectives of the National Lottery.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, since its launch in 1994, the National Lottery has been an unprecedented success, raising over £43 billion for community, arts, heritage and sports projects across the UK. The primary objective of the National Lottery is to raise money for good causes and we have no plans to change that.

Lord Brooke of Alverthorpe (Lab) [V]: My Lords, I am grateful to the Minister for that reply, but I hope that she may be prepared to reflect. The National Lottery has not been quite so successful in recent years; life has changed and we should have new objectives. The big change has been the problem with the nation's health. We have the worst number in Europe of deaths from Covid. I believe that the Government should review the objectives of the National Lottery and see whether a greater focus on health for the nation should be considered. One of the lottery's great benefits is that it reaches the hard-to-reach groups in society. As many play the National Lottery with scratch cards and so on, the Government should consider how that link might be used to incentivise and reward players for moves to better and healthier eating and drinking and exercise rather than simply focusing on money rewards, as it does at the moment. Let us put the real health of the nation at the heart of this objective rather than simply money.

Baroness Barran (Con): The noble Lord is of course right that the pandemic has highlighted the importance of the nation's health. He will be aware that health is one of the objectives of the National Lottery Community Fund, but, more broadly, this Government have an ambitious target for reducing, in particular, obesity. The lottery must provide additionality in its funding, not replace core government funding.

The Lord Bishop of Chichester: My Lords, will the Minister undertake to review the abolition of the HLF grant for places of worship, which has resulted in congregations without financial resources finding it much harder to compete for maintenance and development funding? The effect of abolition has been profoundly demoralising for small rural communities and areas of deprivation in coastal towns, such as Hastings, where the church building can be a source of local pride and community cohesion but is in danger of falling into disrepair and representing a sense of abandonment by local and national government.

Baroness Barran (Con): My Lords, I am happy to take the right reverend Prelate's point back to colleagues in the department, but I hope that he will recognise the value of the work that the National Lottery Heritage Fund does.

Lord Smith of Hindhead (Con): My Lords, with reference to my interests as set out in the register, if a person plays the six draw-based National Lottery games each week, excluding scratch cards and online games, they spend £21. With the current fuss being made about affordability in gambling, is it right that the state-franchised lottery is encouraging people to "dream big" and gamble over £1,000 a year?

Baroness Barran (Con): I am not sure that I would agree with my noble friend and call affordability a fuss—I think that for once I may have a number of your Lordships on my side. Affordability is important but, as my noble friend knows, we see the lowest level of problem gambling in the lottery games. As I said in response to the earlier question, the primary purpose of the lottery is to provide money for good causes and 30% of the revenue raised has done that since its inception.

The Earl of Clancarty (CB): My Lords, in the last major debate that we had on the National Lottery, which was three years ago, I made the suggestion that more could be done to inform the public of the immense contribution of the National Lottery to good causes at local and regional levels, for instance at physical points of sale. That suggestion was not taken up, but if one of the effects of the past year has been an increased awareness of local community and community pride, perhaps this is something that might now be looked at.

Baroness Barran (Con): The noble Earl makes a very interesting point. I know that all the lottery distributors pride themselves on their ability to reach deeply into communities and to make those local connections.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, the National Lottery is a significant success and enjoys huge public support. Research shows that there is also public support for other national lotteries, such as the Postcode Lottery. Will their needs for greater parity of prize money and reach be reconsidered so that more funds can be made available for good causes?

Baroness Barran (Con): The noble Lord will be aware that we are planning to carry out a review of society lotteries, to which he refers. It will be an early

[Baroness Barran]
check based on evidence to see whether the increased limits have had the intended impact and that the limits are enabling the sector to increase the proportion that goes to good causes.

Lord Foster of Bath (LD) [V]: My Lords, research shows that replacing lottery duty with gross profit tax could, over a 10-year period, lead to more than £6 billion extra for good causes and the Treasury. The Minister just reminded us that returns to society are a key objective, so can she explain why the Government have rejected the recommendation from your Lordships' Gambling Industry Committee? Will she publish the Government's own analysis of this proposal?

Baroness Barran (Con): The Government reviewed all the evidence available and, based on that, concluded that to protect income for good causes and tax revenue for the Exchequer—which, obviously, is also spent in the public interest—the current model of taxation should remain in place.

Lord Flight (Con): My Lords, while I accept the good intentions of the noble Lord, Lord Brooke, I cannot agree with his proposal. I support the National Lottery's existing remit to raise funds for community, arts, heritage and sports projects. Recently, 40% of lottery funding was for health, education, environmental and charitable causes. I estimate that more than £1 billion was awarded over two years to respond to Covid-19—the largest contribution made to pandemic relief beyond that made by government. This seems to illustrate the scope for substantial National Lottery expenditure on health. What is the average annual expenditure on health by the lottery in normal times and what percentage of total lottery spending is accountable for health?

Baroness Barran (Con): I echo my noble friend's reflection that the lottery distributors played an important part in responding to the pandemic and getting funding to organisations all around the country. There is no specific figure on health, but he is right that the National Lottery Community Fund has that as one of its four key objectives. More broadly, the work of all the lottery distributors could certainly be argued to be making a difference to the nation's mental health and, particularly in the case of Sport England, to our physical health as well.

Baroness Merron (Lab): My Lords, while the National Lottery has funded many celebrated projects of national and international significance, including London 2012, the V&A in Dundee and the Millennium Stadium in Cardiff, it is also welcome that many National Lottery grants are for £10,000 or less and directed towards small grass-roots projects. What plans are there to increase the numbers of these small grants? Can the Minister give some indication of the support given to community projects where there is a lack of know-how and infrastructure to make a successful application?

Baroness Barran (Con): It is obviously up to the National Lottery to decide those splits between larger and smaller grants, but I know from my recent conversations, particularly with the community fund, that the emphasis on "People in the Lead", to use its language, is absolutely central to its top three priority approaches. My understanding is that it has a great focus on supporting groups that might otherwise find it difficult to apply for funding.

Lord Addington (LD): My Lords, I thank the Minister for saying that there will not be that radical a change to the lottery, but can we look at making sure that sport is seen as something that actively supports the health budget? Can the Department of Health let the sporting world know what type of activity would give it the best return?

Baroness Barran (Con): This Government have been committed to supporting both elite and—in the case of the noble Lord's remarks—grass-roots and community sport. I would be amazed if my colleagues in the Department of Health and Social Care were not aware of that too.

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

Global Education Summit

Question

12.18 pm

Asked by ***Lord McConnell of Glenscorrodale***

To ask Her Majesty's Government what outcomes they expect from the Global Education Summit being co-hosted by the United Kingdom and Kenya on 28 and 29 July.

Lord McConnell of Glenscorrodale (Lab): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I draw attention to my entry in the Lords register: my additional honorary ambassadorial role with the Global Partnership for Education.

Lord Parkinson of Whitley Bay (Con): My Lords, at the Global Education Summit we will set the Global Partnership for Education on a path to secure its five-year funding target of $5 billion, providing the single biggest-ever boost to children's education opportunities around the world. We will also diversify GPE's donor base, work with our co-host to ensure that eligible developing countries sign a political declaration on education and secure further support for the girls' education objectives endorsed by the G7.

Lord McConnell of Glenscorrodale (Lab): My Lords, the Global Partnership for Education works in 76 different countries around the world to build the efficiency, equity and volume of education systems in those countries. It is in those low-income countries—where, for example, two-thirds of girls do not complete primary school—that education is most required, and we know how important it is. Given that the Government have become probably the first country in history to host a global summit to refinance education at the same time as cutting the budget, what will the Government's strategy be to ensure that that gap is filled by others but also that we achieve that $5 billion target that will see so much more education available throughout the world?

Lord Parkinson of Whitley Bay (Con): The noble Lord is right to draw attention to the importance of the $5 billion target. With that money, the GPE could support 175 million girls and boys to learn, reach 140 million more students with professionally trained teachers, enrol 88 million more children in school, and help Governments save $16 billion through more efficient spending. The UK is leading the way in the run-up to the summit. We have pledged £430 million, an uplift of 15% on our largest ever pledge to the global partnership. With our co-host, President Kenyatta, we are urging other nations to step up, as well as the private sector and charitable and philanthropic foundations such as the LEGO Foundation, which recently pledged $23 million, which is very welcome indeed.

Lord Collins of Highbury (Lab): My Lords, it is estimated that there has been a $210 billion reduction in domestic financing for education caused by falling GDP and tax revenues triggered by Covid. To pick up my noble friend's point, it is really important that the voices of low-income countries are heard. What is the Government's assessment of President Kenyatta's call for broader and bolder action on debt relief, and for addressing long-term global liquidity needs through a meaningful new allocation of special drawing rights by the IMF and the redistribution of these to lower-income countries?

Lord Parkinson of Whitley Bay (Con): My Lords, of course, the pandemic has threatened education finance at a time when it is needed most. We are very glad that President Kenyatta has written to partner countries calling for them all to protect pre-pandemic levels of education spending. We are looking forward to working with him at the summit to address exactly these points.

The Earl of Sandwich (CB) [V]: My Lords, does the Minister agree with the Global Education Coalition that children who are victims of the pandemic should be prioritised through remote learning? There are also other deserving groups. What about teaching children who are injured or who cannot attend the school because they live close to minefields? Surely this is hardly the time to cut UK aid to organisations such as the Mines Advisory Group by almost 50%.

Lord Parkinson of Whitley Bay (Con): My Lords, investing in education is the key to solving many of the world's problems. It can improve global health and save lives and is vital to levelling up society, boosting incomes and ending poverty. As the noble Earl points out, this is about more than simply teaching. That is why education is a major priority for the Government and why we are spending more and pledging our largest ever sum to the global partnership.

Baroness Fall (Con) [V]: I congratulate the Minister on co-hosting this very important meeting. I am sure he will agree that we should set an example by addressing our own educational challenges in the first instance. A recent report by Onward drew attention to 200,000 primary school students who have no alternative but to attend a school rated by Ofsted as inadequate or requiring improvement. Most of those correspond to areas in need of investment. Does the Minister agree that levelling up must start with education and that more should be done to improve these schools by incentivising the best managers and teachers in the country to take them on?

Lord Parkinson of Whitley Bay (Con): My noble friend is right. Levelling up in education is important, domestically as well as globally. Thanks to the education reforms that began when she was in government, more children are attending good or outstanding schools. We want to see that commitment to high-quality education continue throughout people's lives, which is why the lifelong learning entitlement will make it easier for adults and young people to study more flexibly throughout their lives.

Lord Hastings of Scarisbrick (CB) [V]: My Lords, grateful as we are for the Government's commitment of £430 million to the replenishment fund, is it not likely that other Governments will also use the impact of Covid to cut aid and investment in girls' education? What practical promises of commitment in hard-cash terms have been made to date by the G7 countries and G20 countries? Assuming a shortfall, how will Her Majesty's Government make up the gap and close the deal, ensuring that the Global Partnership for Education has the promised resources to educate girls? We said we must, so will we?

Lord Parkinson of Whitley Bay (Con): At the recent G7 summit, the Prime Minister secured a landmark commitment from all the G7 partners to pledge at least $2.75 billion to the Global Partnership for Education ahead of the summit. We look forward to receiving more from this group, and call on others to make similarly ambitious pledges.

Lord Walney (Non-Afl): As the noble Lord, Lord Collins, referenced, the impact of the pandemic on learning creates a greater need for countries to increase their investment in education just at the moment when their economies have shrunk. Will the UK ask the summit to set a goal for nations to increase the proportion of GDP that they spend on education year on year?

Lord Parkinson of Whitley Bay (Con): As I say, one of the cruellest aspects of the pandemic is that it threatens education finance at a time when it is needed most. That is why President Kenyatta has written to partner countries calling for them to protect pre-pandemic levels of spending and to work towards increasing it towards the global benchmark of 20% of total public expenditure. The Government support that call to action and hope that the summit will be an opportunity for our partners to make commitments not only to mobilise financing for education but to improve the effectiveness and efficiency of that spending.

Baroness Northover (LD): My Lords, does the Minister agree that the link between good family planning and girls being in education is exceptionally strong? Good access to family planning means smaller families, with more of those children in schools, and families and communities becoming more prosperous. Can he assure us that the cuts to family planning will be reversed in time for the Kenya meeting?

Lord Parkinson of Whitley Bay (Con): My Lords, the noble Baroness is right to point out the many factors that have an impact on people's access to education. In May the Prime Minister set out the girls' education action plan, which sets out the steps that we will take to deliver our global objectives on girls' education.

Baroness Helic (Con) [V]: My Lords, the UK has secured—within the G7 communiqué, at least—$2.75 billion for the GPE. Will the UK Government consider expanding their pledge to encourage other countries to do the same to ensure that we genuinely reach the $5 billion GPE target?

Lord Parkinson of Whitley Bay (Con): As my noble friend may know, we are the GPE's largest donor, having contributed more $1.6 billion since it was set up in 2002, and our new pledge will take our contributions to over $2 billion. Our contributions are currently around 13% of the GPE's income and we encourage other nations, the private sector and philanthropic organisations to step up and do the same.

Baroness Prashar (CB) [V]: Apart from encouraging ambitious pledges to reach the $5 billion target to replenish the GPE, what other steps will the Government take to ensure that other resources are leveraged to improve literacy, given that, even before the pandemic, nine in 10 schoolchildren in lower-income countries were unable to read proficiently by the age of 10?

Lord Parkinson of Whitley Bay (Con): My Lords, the UK's contribution to the GPE is only one of our tools in achieving our ambitions. Between 2015 and 2020 the UK supported over 15 million children in gaining a decent education, of whom 8 million were girls.

Lord German (LD): I draw attention to my interests in the register. The Covid pandemic has highlighted the significance of good health and hygiene practices in schools. Hygiene-related diseases are closely linked to increased student absenteeism, and poor hygiene facilities often lead to the exclusion of girls from school. At this important summit, will the UK Government be supporting resources going into water, sanitation and health projects in schools, or will they be too embarrassed by the cuts in support for those programmes that they are making?

Lord Parkinson of Whitley Bay (Con): My Lords, the noble Lord is right to point to health being an important factor. Through the GPE's Covid-19 response grants, we have been able to support the Government of Tanzania in building 1,000 new classrooms to help with overcrowding and social distancing when schools return there. Similarly, in Rwanda, GPE funds are supporting handwashing facilities for 2,500 schools. So through this work we are tackling health outcomes as well.

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

Domestic Abuse: Older People

Question

12.29 pm

Asked by ***Baroness Gale***

To ask Her Majesty's Government what plans they have to investigate the nature of domestic abuse of older people; and what support they offer to victims of such abuse.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con) [V]: My Lords, building on the landmark Domestic Abuse Act, the Government will shortly publish a dedicated domestic abuse strategy, ensuring that a fitting level of attention is given to the prevalence and types of domestic abuse, including efforts to improve understanding of who is affected. We are committing to ensuring that all victims are supported and we closely monitor and assess needs and how best to meet these, together with providing continued dedicated government funding for specialist services, including for the elderly.

Baroness Gale (Lab) [V]: Reports show that there is an increased risk of older people experiencing domestic abuse, especially in relation to financial and care dependencies and barriers to reporting abuse during the pandemic. Does the Minister accept that there are no reliable figures on the abuse of older people and that therefore they are a hidden group? Much more publicity should be given by the Government about where older people can go to get advice and help. Is the Minister aware that the Older People's Commissioner for Wales has produced an information booklet to advise older victims, and will she agree to commission a similar action in England?

Baroness Williams of Trafford (Con) [V]: My Lords, I was pleased to be able to speak to the commissioner in Wales. I think it is always advantageous to learn from good practice elsewhere. We know that the number of older people experiencing domestic abuse has increased in the last year. The Crime Survey for England and Wales shows that 5.5% of adults aged 16 to 74 experienced domestic abuse in the year ending March 2020. But I look forward to seeing more refined figures in the future, which I think is what the noble Baroness is alluding to.

Lord Mackay of Clashfern (Con): My Lords, do the Government have a plan for the effective monitoring of this type of abuse?

Baroness Williams of Trafford (Con) [V]: I thank my noble and learned friend for his question. There are various ways in which we can monitor this sort of crime. I have mentioned the Crime Survey for England and Wales. We have the National Domestic Abuse Helpline and of course we have police figures as well. So there are numerous different ways of measuring this.

Baroness Greengross (CB) [V]: My Lords, what assessment, if any, have Her Majesty's Government made of the number of people over 65 who have been

victims of non-fatal strangulation, suffocation or sexual violence? What support is provided to older victims of these types of abuse?

Baroness Williams of Trafford (Con) [V]: My Lords, that is a very valid question in light of the legislation we have just passed. I do not know the overall figures for non-fatal strangulation but certainly we saw it as sufficiently worrying that we passed legislation to ensure that it was outlawed. In terms of people over 65, the House will know that over-75s are now being included in ONS statistics. I think that is a very good move.

Lord Rosser (Lab) [V]: During the passage of the Domestic Abuse Bill, the noble Baroness, Lady Greengross, tabled amendments on ensuring that local authorities recognised and reported abuse of older people and ensuring entry powers for social workers in situations where abuse is suspected. The Government argued that neither amendment was necessary as the necessary training and powers already exist. However, training to recognise older victims of abuse can be piecemeal across different public bodies and agencies. What is being done, and by whom, to ensure that people in public-facing roles are properly trained to recognise and report such abuse?

Baroness Williams of Trafford (Con) [V]: The noble Lord raises a really valid point: underlying all of this is the need for sufficient training to enable agencies and local authorities to refer onwards. Indeed, because tier 1 local authorities now have a duty placed upon them, that need is emphasised even further.

Lord Paddick (LD) [V]: My Lords, I know from personal experience that the perpetrators of coercive control can be so cunningly malevolent that the victim may be oblivious to it. What steps are the Government taking to raise awareness among older people of this kind of domestic abuse?

Baroness Williams of Trafford (Con) [V]: I recognise that the noble Lord speaks from experience, which he has shared with the House on many occasions; I thank him for that. He is absolutely right to point out the very clever and cunning ways in which this abuse can take place. Older people in particular may not even realise that they are being coercively controlled. Of course, in the work that we do across agencies, as the noble Lord, Lord Rosser, said, it is up to the various people who work both within government and in the various agencies which support this work to be trained to be able to identify and then refer on these people for the help that they might need.

Baroness Verma (Con): My Lords, I refer to my interests in the register as an adult social care provider. In that context, many elderly people will have quietly suffered during the pandemic, but it is also incumbent on us to have a look at those carers—not the paid carers but voluntary carers—within home settings who have had zero respite during this time. I ask my noble friend to take this back to see why social workers are now, a year or so later, not going out and doing the regular visits and reviews that they were doing before the pandemic.

Baroness Williams of Trafford (Con) [V]: My Lords, I do not have exact information for my noble friend. I totally agree with her that there may have been a lot of things going on behind closed doors that we do not yet realise. Clearly, we are opening up a bit more next Monday and, horribly, some of these things will come to light. But I will get her information on just how much one-to-one engagement has been done during the pandemic, because of course there is social distancing to be cognisant of as well.

Baroness Butler-Sloss (CB) [V]: I declare an interest as chair of the National Commission on Forced Marriage. I ask the Minister to look at ensuring that the strategy for older people includes the special needs of older victims of forced marriage.

Baroness Williams of Trafford (Con) [V]: The noble and learned Baroness is right that the effects of domestic abuse and forced marriage are not confined to any one age group. She will also know that 297 forced marriage protection orders were made last year, and that between 2008 and this year nearly 3,000 orders have been made. This must go some way to try to prevent it but the point that she makes about the ongoing trauma post forced marriage is absolutely right.

Baroness Burt of Solihull (LD) [V]: The Domestic Abuse Act removed the upper age limit from the definition of domestic abuse and included relatives in the definition of "personally connected" but the elder abuse charity Hourglass found that only 0.7% of crimes against older people result in prosecution. With more tools in their toolkit, how can the police improve on this appalling prosecution rate and make abusers understand that there will be consequences of their cruelty?

Baroness Williams of Trafford (Con) [V]: I agree with the noble Baroness: it is very concerning that that statistic evidences such low rates of conviction. It is probably multifactorial: people are unwilling to come forward, as I said earlier, perhaps not even knowing that they are victims of domestic abuse. As I said earlier, training for agencies and front-line staff will be crucial in identifying domestic abuse, bringing perpetrators to justice and supporting those victims in the future.

The Lord Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed. We now come to the fourth Oral Question.

Northern Ireland: Jewish Community

Question

12.39 pm

Asked by ***Lord Dodds of Duncairn***

To ask Her Majesty's Government what steps they are taking to address the concerns expressed by the Jewish community in Northern Ireland about its future as a result of the operation of the Protocol on Ireland/Northern Ireland.

Viscount Younger of Leckie (Con): My Lords, we recognise the concerns raised on this matter. It is a positive step that it was possible to agree with the EU a sensible extension on chilled meats moving from Great Britain to Northern Ireland until 30 September this year. This extension means that Northern Ireland consumers will continue to be able to buy chilled meat products, including kosher products, from Great Britain, and allows for further discussions to continue on a permanent basis.

Lord Dodds of Duncairn (DUP): My Lords, the Jewish community in Belfast and Northern Ireland has made, and continues to make, a very rich and compelling contribution to the life of our country. Indeed, the sixth President of the State of Israel, Chaim Herzog, was born in my former constituency in north Belfast, and his son Isaac is the current President of the State of Israel. Very worryingly, the Chief Rabbi and Jewish leaders in Belfast have expressed great concerns about the operation of the protocol and the continued viability of the Jewish community. The Prime Minister has also expressed concerns. The Minister referred to a grace period, but that runs out in September. Will he give a guarantee that, in all circumstances, he and the Government will take whatever measures are necessary to guarantee the supply of kosher food into Northern Ireland for the Jewish community?

Viscount Younger of Leckie (Con): The noble Lord makes some very good points: it is vital that we find a way to ensure that goods flow as freely as possible between Great Britain and Northern Ireland, where they are destined for Northern Ireland consumers, while ensuring that goods moving onward into the EU are subject to the appropriate requirements to ensure that EU rules are observed and the single market protected. On the noble Lord's point about the Jewish community, it is a key focus for government to support that community. I take note of the points he raises and, although I cannot give a guarantee, every effort is being made to move forward and find solutions to these problems.

Baroness Chapman of Darlington (Lab): My Lords, it is vital that Jewish people in Northern Ireland can practise all aspects of their religion, including access to kosher food. It is deeply regrettable that the Government have so far failed to deliver a practical, long-term solution in the form of a veterinary agreement. The Governments of Switzerland and New Zealand have managed to secure such an agreement with the EU. What does the Minister intend to do to ensure that freedom of religion for Jewish communities in Northern Ireland is protected through a veterinary agreement?

Viscount Younger of Leckie (Con): The Jewish community has played an integral role in shaping the journey and identity of this nation, particularly in Northern Ireland. Our society is richer for its diversity and the Jewish community is proud and shining testament to that. In answer to the noble Baroness's question, as I said earlier, every effort is being made. UK and EU officials are engaging multiple times each week to discuss the issues around the implementation of the protocol. We also meet the EU regularly under the formal protocol joint and special committee structure, with the most recent meeting of the joint committee having taken place last month.

Baroness Suttie (LD) [V]: My Lords, does the Minister acknowledge that if the Government had carried out a full impact assessment on the Northern Ireland protocol before agreeing to it, many of these culturally sensitive issues would have been highlighted? To push further on the EU-UK veterinary agreement, does he not agree that this is yet another issue that could be resolved by signing up to such an agreement?

Viscount Younger of Leckie (Con): I do not agree with some of the points that the noble Baroness makes, because the protocol was really a compromise. It was always clear that it was a delicate balance designed, crucially, to support the Good Friday agreement and to maintain Northern Ireland's place in the UK while protecting the EU single market. The question, of course, is how it is applied. I point out to her that under the detail of the protocol, it is not simply about putting a goods and customs border in place between Great Britain and Northern Ireland. For example, Article 6(2) says that the UK and EU

"shall use their best endeavours to facilitate the trade between Northern Ireland and other parts of the United Kingdom … with a view to avoiding controls at the ports and airports of Northern Ireland to the extent possible",

so we need to look at that.

Lord Caine (Con): My Lords, as my noble friend Lord Dodds made clear, the Jewish community has made a huge contribution to the city of Belfast, including providing a unionist Lord Mayor as far back as 1899. Does my noble friend the Minister agree that it would be both tragic and outrageous if this latest crazy manifestation of the EU's implementation of the protocol now forces that community to leave Northern Ireland altogether? How do supplies of kosher food to a small Jewish population in any way threaten the integrity of the EU single market?

Viscount Younger of Leckie (Con): I do not disagree with my noble friend's last point. Again, the Jewish community has made an important contribution to society in Northern Ireland. It is essential that that community receives the kosher products that it requires, for eating and for religious purposes. A key focus is to support the community in this respect. As I said to the noble Lord, Lord Dodds, it is vital that we find a way forward to ensure that these goods flow smoothly.

Baroness Ludford (LD) [V]: My Lords, why was this important issue not addressed by the Government and their supporters before now? Can the Minister tell us what meetings were held with the Jewish community in Northern Ireland when the protocol was being negotiated by this Government, and what did the Government tell that community about how they would avoid the impeded access to kosher food, which has a serious impact on the legally protected human right of religious practice? If the Government will not solve this through a veterinary agreement, as I and many others are calling for, how will they solve it through negotiating a specific exemption? The Government must pursue one route or the other.

Viscount Younger of Leckie (Con): I do not have any information to hand as to what meetings took place at the point when the protocol was being negotiated. However, I can tell the noble Baroness that the Secretary of State met the Jewish community last week and impressed upon it that the Government were urgently seeking solutions to the flow of important goods for that group.

Baroness McIntosh of Pickering (Con): Although I welcome the extension for chilled meats between GB and Northern Ireland, we are just kicking the can down the road. Will my noble friend give a commitment that we will negotiate an SPS agreement, such as has been agreed between New Zealand and the EU? Will he further give the House a commitment today that there is no threat to the availability of kosher or other such foods from the protocol or any other legislation currently before the House, such as the Animal Welfare (Sentience) Bill?

Viscount Younger of Leckie (Con): My noble friend's question takes us slightly beyond the immediate subject. However, on supplies to supermarkets, which I think is the gist of her question, a lot of work has gone on to ensure that supplies continue to fill their shelves in Northern Ireland. We announced in March that arrangements for supermarkets and their suppliers who are trusted traders supplying food will continue until October, meaning that they do not need to complete health certificate paperwork. But as they have made clear to us, notwithstanding the considerable government investment to support these efforts, there are still some real challenges to sort out.

Lord Rogan (UUP): My Lords, the diverse country that Northern Ireland has become over recent decades is a source of great local pride but, as the noble Lords, Lord Dodds and Lord Caine, have said, there is nothing new about the special place that the Jewish community holds in Ulster, which dates back to the mid-18th century. Speaking at a Policy Exchange event last week, the Northern Ireland Secretary, Brandon Lewis, said:

"None of us can tolerate or be willing to accept"

a threat to the Province's Jewish community because of the protocol. If that is the case, why did the Prime Minister choose to sign up to it?

Viscount Younger of Leckie (Con): As I said earlier, the protocol was a compromise. We agreed something exceptional, it is fair to say, to control goods moving within our own country in the interest of peace—to apply EU law in our own country without any democratic say beyond a vote, as the House will know, in four years' time. Again, that was in the interest of peace. No other country has agreed to such a thing and if it is to be sustainable, it must operate in a pragmatic and proportionate way—not just like any other external border of the single market.

Lord Polak (Con): My Lords, there is a joke that the structure of Jewish holidays can be simply put as: "They tried to kill us; we won; let's eat", so availability of kosher food is important, especially to a small community as in Northern Ireland. The Secretary of State for Northern Ireland, the right honourable Brandon Lewis, is a true friend of the community, and I am grateful, as has been said, that he found time to meet the Chief Rabbi and the Board of Deputies last week. However, can my noble friend the Minister assure me that the department will do whatever it can to resolve this issue and allow the Jewish community to celebrate, and eat?

Viscount Younger of Leckie (Con): Perhaps a discussion on the importance of eating is for a separate debate but I take the first point that my noble friend made with the due seriousness it deserves. We are mindful that many communities in Northern Ireland have specialised foods which are deeply important to their culture and spiritual beliefs, and we will always act to ensure that these are adequately supplied. However, I assure my noble friend that, in the supermarkets we have been in touch with, we are pleased to note that there is no disruption at this time, although there were specific issues during Passover which he will know about, and which DAERA and Defra, working together, helped the sector to navigate.

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

Overseas Development Assistance

Private Notice Question

12.51 pm

Asked by ***Lord Fowler***

To ask Her Majesty's Government, further to the Written Statement by the Chancellor of the Exchequer on 12 July (HCWS172) setting out the fiscal circumstances under which they will return to spending 0.7 per cent of Gross National Income on Overseas Development Assistance, as stipulated in the Official Development Assistance Target Act 2015, whether they intend to bring forward primary legislation in this area; and if not, why not.

The Minister of State, Cabinet Office and the Treasury (Lord Agnew of Oulton) (Con): My Lords, the Government remain committed to the International Development (Official Development Assistance Target) Act 2015 and to spending 0.7% of gross national income on official development assistance. The decisions taken are in line with the spirit and framework of the Act, which envisages situations in which departure from the 0.7% may be necessary. Yesterday's vote provided the House of Commons with a further opportunity to consider the return to 0.7%. In the light of that and our continued commitment to the 2015 Act, there is no need to bring forward additional legislation.

Lord Fowler (CB): I am afraid that that reply does not convince me. Surely the vote yesterday means that an Act of Parliament passed by both Houses has been overturned by a last-minute Motion passed by just one House, in spite of clear government commitments in November that they would bring forward proper legislation. I will make one short point: I hope the Minister recognises that the vote yesterday does not represent the view of this Parliament.

Lord Agnew of Oulton (Con): My Lords, I can reassure my noble friend that the 2015 Act had provision for suspension of the 0.7% depending on major events such as the one we have just experienced with Covid. I politely remind him that we have seen the largest drop in our economy with regard to our GDP in 300 years, and the Act made provision for adjustments to the rate in light of such events.

Lord McConnell of Glenscorrodale (Lab): My Lords, I drew attention to my entries in the Lords' register. When the Government confirmed the withdrawal of military support in Afghanistan they stressed, rightly, the critical importance of advocacy of the rule of law, democracy and our support for development in that country as an alternative way forward. Yet, as just one example of these cuts, a project for rural women in Afghanistan has been cut in the third year of its four-year programme, resulting in thousands of women who will no longer receive literacy training or vocational educational training, or be able to complete their courses. Do not the Government think the Taliban will be cheering this decision, delighted that we took it yesterday in the House of Commons? Do they really think that we promote the rule of law and democracy by breaking our own laws in the way that has just been announced by the Chancellor and Prime Minister?

Lord Agnew of Oulton (Con): My Lords, I respectfully disagree with the noble Lord. We have not broken our own laws. As I pointed out in my supplementary answer to my noble friend, this is a suspension of the current percentage which is allowed under the original Act. We have committed through the debate yesterday that we will revert to the original Act's commitment when the economy allows us to do so.

Lord Purvis of Tweed (LD): My Lords, as the sponsor of the legislation through this House, I calmly say to the Minister that, when he refers to the spirit of the legislation, that spirit was based on a two decades-long consensus that we should not only meet our obligation to the world's poorest but sustain it. We have enshrined it in a law that the Government are now moving away from, using executive authority. If the Government wish to bring forward changes, they should bring forward legislative changes and not simply Motions. My question to the Minister is very simple and he will have the answer because it is in his briefing pack, I am sure. If the new fiscal tests are linked to the pandemic, it follows that they would have been met when we did not have a pandemic. Under which calendar year in the past have those physical tests been met?

Lord Agnew of Oulton (Con): Just to restate the point, Section 2 of the 2015 Act envisages circumstances in which the 0.7% target is not met due to

"economic circumstances and, in particular, any substantial change in gross national income"

and

"fiscal circumstances and, in particular, the likely impact of meeting the target on taxation, public spending and public borrowing".

We last met those requirements in 2018-19.

Lord Judge (CB): Please can the answer to this question not be that the law has not been broken? We had that last week and it was not an answer to my question. Is it consistent with the sovereignty of Parliament that an obligation or duty imposed on the Government by primary legislation can be expunged or suspended by Ministerial Statement?

Lord Agnew of Oulton (Con): My Lords, at the risk of being tedious, we have not in any way expunged the Act. We have suspended it in line with the section that I cited in the previous answer.

Lord Bates (Con): My Lords, for many years Her Majesty's Government have taken great pride in regularly publishing reports on the impact of overseas aid in terms of the millions of lives saved, children educated and jobs created. Will my noble friend say whether any similar impact assessment of the likely effect of this reduction in our aid budget has been carried out by the Treasury or the FCDO using the same established methodology? If so, can it be shared to inform future debates and votes, and if not, why not?

Lord Agnew of Oulton (Con): My Lords, as my noble friend will know, we are undergoing a rationalisation by moving DfID into the FCDO. The Foreign Secretary has agreed that he will focus all of government's investment and expertise on issues where the UK can make the most difference and achieve the maximum strategic coherence. The FCDO is working through what this means for individual programmes, in line with the priorities identified. We will of course report in detail when those arrangements are concluded.

The Lord Bishop of Worcester [V]: My Lords, the Chancellor's Statement published on Monday finally outlined the meaning of the much-repeated but undefined government line that 0.7% aid spending would be restored when the fiscal situation allows. Will the Minister accept that to many working in the field of international development, these criteria point to a permanent rather than a temporary cut in overseas development, which in any case was due to change and has changed because it is a percentage of gross national income? Does the Minister recognise that this decision represents a terrible sentence, probably of death, for thousands of children and risks doing untold reputational damage to Britain's leadership in international development?

Lord Agnew of Oulton (Con): I respectfully disagree with the right reverend Prelate on that assertion. We will absolutely be prioritising the budget for the programmes of the most urgency and impact, so I do not accept that. I also point out to him that we have made considerable investments during the Covid crisis by helping other countries through our large investment in COVAX and, indeed, the Prime Minister's commitment at the G7 to make a large number of vaccines available outside this ceiling of 0.5%.

Lord Collins of Highbury (Lab): My Lords, this decision goes against a long-standing consensus across Parliament. It is against the Conservative Party's manifesto and against the law and, most importantly, it is against the national interest. As a direct result of these cuts, more people will be forced to flee their homes and more people will turn to extremism in a less secure and

stable world. To pick up the point the noble Lord, Lord Bates, made, we have been told in this House that officials carried out an equalities impact assessment which looked at our bilateral country spending. Can the Minister give us a guarantee this afternoon that this will be made public, and quickly?

Lord Agnew of Oulton (Con): My Lords, it is important to remind the House that we have done this in the largest crisis to affect our country since the war and the largest recession in 300 years, with borrowing of £300 billion—14% of GDP—to deal with the crisis. It means that there has had to be some give in the system. We are committed to re-establishing it as soon as the economy allows it, and I am sure that the information the noble Lord asked for will be available soon.

Baroness Northover (LD): As the Minister who took the Bill through the House, I can tell the noble Lord that this is totally contrary to the spirit, let alone the letter, of the law. Has the Treasury made an impact assessment of its new policy on the validity of the integrated review and the UK's ability to deliver a successful COP 26?

Lord Agnew of Oulton (Con): My Lords, I respectfully disagree with the noble Baroness that it is in breach of the Act. The Act provides for accountability to Parliament in the form of a Statement in the event that the Government do not meet the 0.7% target, to include the fiscal reasons on which the Government rely at that time. This week we have set out clearly and transparently how the Government will approach that task.

Baroness Sugg (Con): My Lords, I struggle to understand how this new policy can be described as temporary. In response to the question asked by the noble Lord, Lord Purvis, my noble friend the Minister referred to one part of a financial year in the past 20 years, and that was only one. The Written Ministerial Statement refers to "a sustainable basis". Given the implication of this new policy, it is important to be exact, so can my noble friend define exactly what is meant by "sustainable"?

Lord Agnew of Oulton (Con): My Lords, that will be for when we have re-established a fiscal position that allows us to meet our commitments without having to borrow money on a day-to-day basis. That is the position we are in now, and I respectfully remind noble Lords that it will be the next generation who will pick up the tab for this huge amount of borrowing, and something has to give. That is what has happened in this situation.

Lord Berkeley of Knighton (CB) [V]: My Lords, given what the Minister has just said, I wonder how he would respond to the devastating observation by John Major yesterday that we seem prepared to build an expensive national yacht—which I would describe as a floating embassy—that we neither need nor want, while cutting back support for thousands of malnourished and starving people around the world who we could and should be further helping to feed.

Lord Agnew of Oulton (Con): I disagree with the noble Lord. The vessel to which he refers will be to promote Britain and trade and lead to wealth creation. The cost—some £200 million, I understand, has been mooted—should be amortised over the life of that vessel. The running costs will be covered by the companies using it. It will bring wealth to this country, and wealth creation is a high priority for us at the moment.

Lord Parekh (Lab) [V]: My Lords, 0.7% of gross national income is a moral obligation, it is an international institutional obligation because of our membership of the United Nations, and it is also a statutory obligation, so supersession of this obligation requires enormously compelling circumstances. I cannot see why it has to give way to others, especially when the amount involved is no more than £4 billion out of a total of more than £600 billion that we are going to have to raise. The Government say that this constraint in expedient and temporary. What measures are we taking to make sure that what is temporary does not become permanent? The Government say that they will return to 0.7% when the fiscal situation is established on a sustainable basis. That is a very vague term. How do we decide what is a sustainable basis? It takes a long time to work it out and, more importantly, it is a term which can be understood in several different ways. How can we be sure that the Government will return to 0.7% and what reassurance can be given to people who are deeply worried about the step that the Government are about to take?

Lord Agnew of Oulton (Con): I disagree with the noble Lord that this is a small sum of money when it would be 1p on income tax and is something like four times the amount committed to hiring 50,000 more nurses and four times the amount committed to hiring 20,000 more police officers. We have set out, as agreed in the Commons yesterday, the criteria for re-establishing it and committed to re-establishing it when they are met.

Baroness Nicholson of Winterbourne (Con): Does the Minister agree that, given that the amount of funding is a little smaller than earlier, despite the fact that it is extremely generous in global terms, this is the moment to look more carefully at the way in which these funds are spent? Might it be possible, for example, to introduce open tendering rather than automatic disbursements of funds before there is any open competition, as is happening at the moment and has been happening for a long time? Might he also be willing to consider some successful monitoring? There are many ways of monitoring, but at the moment the funding does not seem to be subject to such things and certainly it is not published. Will the Minister consider those two items crucial when he delivers the outcomes of this slightly lower sum of money being spent?

Lord Agnew of Oulton (Con): I strongly agree with my noble friend. We need to be much more stringent in our assessment of how the money is spent. We saw from the St Helena Airport incident, for instance, that money can be wasted. I am sure that with less money available there will be much more scrutiny. That tends to be a natural reaction in organisations. I will take back my noble friend's useful suggestions to the Treasury.

The Deputy Speaker (Lord Duncan of Springbank) (Con): I apologise to the noble and right reverend Lord, Lord Harries of Pentregarth, that the time allowed for this Question has now elapsed. We will take a moment or two for people to escape the Chamber before we move on to the next business.

House of Lords (Peerage Nominations) Bill [HL]

First Reading

1.07 pm

A Bill to make provision for the appointment of a Commission to advise the Prime Minister on recommendations to the Crown for the creation of life peerages; to establish principles to be followed in making recommendations; and for connected purposes.

The Bill was introduced by Lord Norton of Louth, read a first time and ordered to be printed.

Market Surveillance (Northern Ireland) Regulations 2021

Motion to Approve

1.08 pm

Moved by ***Lord Callanan***

That the draft Regulations laid before the House on 10 June be approved.

Relevant document: 6th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 8 July.

Motion agreed.

Bank of England Act 1998 (Macro-prudential Measures) (Amendment) Order 2021

Motion to Approve

1.08 pm

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

That the draft Order laid before the House on 14 June be approved.

Considered in Grand Committee on 8 July.

Motion agreed.

Road Vehicle Carbon Dioxide Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations 2021

Railway (Licensing of Railway Undertakings) (Amendment) Regulations 2021

Motor Fuel (Composition and Content) and the Biofuel (Labelling) (Amendment) (No. 2) Regulations 2021

Motions to Approve

1.09 pm

Moved by ***Baroness Vere of Norbiton***

That the draft Regulations laid before the House on 8 and 21 June be approved.

Relevant document: 8th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 8 and 12 July.

Motions agreed.

Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021

Motion to Approve

1.09 pm

Moved by ***Lord Greenhalgh***

That the draft Regulations laid before the House on 8 June be approved.

Relevant document: 6th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 8 July.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): I beg to move.

Amendment to the Motion

Moved by ***Lord Faulkner of Worcester***

At end insert "but that this House regrets that the Regulations were not revised to take account of the evidence of the benefits of 100 per cent smoke-free pavement licences, which have been implemented over the last year in a diverse range of local authorities and which have received strong public support".

Lord Faulkner of Worcester (Lab): My Lords, when the Business and Planning Bill came before the House in 2020, a cross-party amendment was tabled saying that a condition of licence would be that outdoor seating areas were required to be smoke free. It was signed by the noble Baroness, Lady Northover—who I am delighted to see in her place—the noble Baroness, Lady Finlay of Llandaff, who cannot be here today but has said she strongly supports this amendment to the Motion, the noble Lord, Lord Young of Cookham, and me.

Commenting on our amendment, the Local Government Association said

"it sets a level playing field for hospitality venues across the country and has a public health benefit of protecting people from unwanted second-hand smoke … If smoking is not prohibited, pavement areas will not become family-friendly spaces."

Noble Lords in all parts of the House supported our amendment, but it was not accepted by the Government, who instead inserted a requirement in the legislation that

"the licence-holder must make reasonable provision for seating where smoking is not permitted."

Two-thirds of the public polled earlier this year did not think that the legislation went far enough and said they wanted smoking banned in the outdoor seating areas of all restaurants, pubs and cafés. Fewer than one in five opposed a ban. This was a large sample of more than 10,000 people carried out by YouGov for Action on Smoking and Health.

A growing number of councils under Conservative, Labour and Liberal Democrat control have recognised that smoke free is what the public want and have taken action to make it happen. These include cities such as Newcastle and Manchester, counties such as Durham and Northumberland, unitary authorities such as Middlesbrough and North Lincolnshire, and metropolitan boroughs such as North Tyneside, Gateshead and the London Borough of Brent.

These regulations were debated in Grand Committee last Thursday. One of the most telling contributions was by the noble Lord, Lord Young of Cookham. He is unable to be in the Chamber today but is aware that I plan to mention his speech. Noble Lords who read it in *Hansard* will see that he took apart the various government assertions about smoke-free pavement licences, including the scare that if smoking were banned outside pubs and cafés

"it could lead to significant closures across the country".

The noble Lord, Lord Young, said about that:

"In spite of repeated challenges, not one shred of evidence was ever produced by the department to substantiate that assertion, frequently made by the smoking pressure group FOREST. Such evidence as we have from the introduction of the smoking ban in 2007 showed that more people said that they went to the pub more often than said that they went less often."—[*Official Report*, 8/7/21; col. GC 387.]

In a letter to Manchester City Council last August, the Secretary of State urged it not to burden businesses with more red tape. The reality is that far less red tape is involved in implementing Manchester's 100% smoke-free seating, which requires only putting up one no smoking sign. As every venue in the city is the same, the policy is clear to the public and businesses.

Sir Richard Leese, the leader of Manchester City Council, says:

"Since the pandemic, more and more businesses in the city are expanding outside where the public increasingly expect and enjoy smokefree spaces. By introducing smokefree pavements across Manchester, we are welcoming everyone back to our vibrant cafes, bars and restaurants, while driving forward our vision for a smokefree future."

Manchester's experience is repeated across the country. Norma Redfearn, the elected Mayor of North Tyneside, which also has 100% smoke-free pavement licences, says:

"We have found that implementing entirely Smokefree seating has been easy and simple for businesses to follow. We have worked closely with our business community to support them with its implementation, they have not raised any serious concerns about it and there have not been any compliance issues."

There is good evidence from Canada, where smoke-free patio areas have been required by a number of provinces, that they are popular and easy to enforce and improve the health of hospitality workers, with no evidence of an adverse impact on business. If smoking is allowed, passers-by, customers and, above all, staff, who have no choice, will be exposed to significant amounts of tobacco smoke. Where patio smoking bans—similar to pavement licences here—were implemented in Canada, second-hand smoke exposure went down by up to a quarter. Where there was no ban, it went up. Hospitality workers in places where smoking was allowed on patios in Canada were found to be exposed to significant levels of toxic chemicals.

1.15 pm

One hundred per cent smoke-free seating is easy to understand, simple to implement and popular with the public. Unfortunately, the Government's compromise did not meet any of those tests. Revising the regulations to require 100% smoke-free pavement licences would have been a positive step towards delivering the Government's vision of a smoke-free 2030 for England. Sadly, that opportunity has been missed this year, which is why I have tabled this amendment. Let us hope that we have another chance soon to get this right. I hope your Lordships will agree with me and vote for this amendment if I seek to test the opinion of the House. I beg to move.

The Deputy Speaker (Lord Duncan of Springbank) (Con): I have received requests to speak from the noble Baronesses, Lady Northover and Lady Blake. I will call them in that order.

Baroness Northover (LD): My Lords, I strongly support the amendment of the noble Lord, Lord Faulkner, which he very effectively introduced. The Government claim that they want the UK to be smoke free by 2030, but they have a funny way of going about this.

Years back, despite the efforts of the tobacco industry, working cross party we introduced into the United Kingdom the provision that public places such as pubs and restaurants should be smoke free. Was that not a transformation? It made sense during the pandemic that pavement licences should be granted, as people needed to be more distant from each other. Most people welcomed these new arrangements. Pavements were often widened to accommodate them. Does the Minister agree that the key thing to remember here is that these areas are simply extensions of the areas inside and need to be smoke free as well—for people's health, for them to be family-friendly and to move closer to the smoke-free aim that the Government apparently have?

We ran into all the usual tobacco industry-briefed objections last year and—surprise, surprise—it turned out that the noble Lord's department had not properly consulted the Department of Health on the matter and had to scurry to do so. Has it fully done so this time?

The objections from the tobacco industry are so familiar to the Department of Health. The noble Lord, Lord Young, took these objections apart last week. I wish we had a stronger weapon than an

[Baroness Northover]
amendment to an SI that was going to be just slipped through, having been debated in Grand Committee, where noble Lords cannot vote and would knock out the whole SI if we did. This SI will barely have been registered by most in your Lordships' House. Thank goodness the noble Lord, Lord Young, noticed and flagged it to the rest of us.

If this amendment is lost, the Minister should not take that as the will of this House. I am fully confident that if and when we debate this in legislation, there will be overwhelming cross-party support in this House for helping to tackle the terrible scourge of smoking. The department should be very wary of the briefings and influential lobbies that push it in another direction. I hope I do not hear very familiar objections voiced by the Minister in a minute. On these Benches we strongly support this amendment and are very grateful to the noble Lord, Lord Faulkner, for tabling it. I hope he calls a vote.

Baroness Blake of Leeds (Lab): My Lords, I pay tribute to my noble friend Lord Faulkner for bringing this really important issue into the Chamber. His very well-informed and passionate speech does not need too much adding to.

I want to bring in a slightly different dimension. My noble friend and the noble Baroness, Lady Northover, both referenced the speeches in Grand Committee, which were really well put together; I recommend that everyone have a look at them in *Hansard*. We should also look at what we have learned over the last 18 months of the devastating impact of the coronavirus. We have been on an incredibly steep learning curve in understanding how the virus has impacted on the people who live in our communities. We have a duty, surely, to look at all the evidence before us.

Covid-19 is often described as a cruel virus and it has exposed health inequalities in the most vicious way. Surely we must learn from the knowledge that those suffering from underlying health conditions have been disproportionately affected by the virus. Smoking is a major contributory factor to those health conditions. Do we not have a responsibility to do everything in our power to reduce exposure to the impact of smoke inhalation? I am referring to both the customers and the staff in the premises we are talking about.

I would also like to emphasise the points that the noble Lord, Lord Young, made in Grand Committee about the lack of evidence and the lack of consultation with local authorities, which would have demonstrated that there has just not been the evidence that we should be concerned about the impact on the businesses we are talking about.

We have an opportunity to make an improvement to the provisions in the Building and Planning Act 2020. Of course, the irony is that the Act was brought in specifically to deal with the impact of coronavirus. I hope we will recognise the public health improvement outlined in my noble friend Lord Faulkner's amendment and that we will all come together to show our support accordingly.

Lord Greenhalgh (Con): I thank the noble Lord, Lord Faulkner, for tabling this amendment and I thank noble Lords for an interesting debate on this matter. I will take this opportunity to respond to the noble Lord's amendment. In Grand Committee I was not able to answer fully all the questions noble Lords raised on smoking issues relating to the temporary—I emphasise that—pavement licence extension regulations. I welcome the opportunity to address these issues in greater detail.

In Grand Committee, the noble Lords, Lord Faulkner, Lord Bradshaw and Lord Shipley, and the noble Baroness Lady Wheatcroft, all challenged me on the passing of these regulations and the potential passive smoking impacts. The impacts of passive smoking are very much a key concern and a top priority for this Government, which is why we should look to tackle this issue strategically. We will be a publishing a new tobacco control plan later this year, setting out our ambitious plans for England to be smoke free by 2030. The tobacco control plan will consider areas of regulation to strengthen in support of this aim.

In the very short term, it is right that we act to support hard-hit hospitality businesses to boost their capacity and continue their recovery. For this 12-month extension of the pavement licence provisions, the Government consider local and business-led discretion over implementing smoke-free policies to be the most appropriate approach. Businesses are able to introduce their own smoke-free policies if they wish to go further than the regulations require.

As the noble Lord, Lord Faulkner, mentioned, local authorities are also able to set their own local smoking conditions where appropriate and where local decision-makers believe it is reasonable to do so. A number of local authorities have already implemented such local smoking ban conditions within outdoor seating; these include the city of Manchester, as mentioned by a number of noble Lords, Newcastle, North Tyneside, Durham and Northumberland. This makes it clear that local conditions can be implemented where it is appropriate and desired locally.

I also remind noble Lords that the pavement licence guidance sets out ways in which the requirement for provision for seated and non-seated smokers could be met, such as displaying clear no smoking signs, the removal of ashtrays from smoke-free areas, and a minimum two-metre distance between smoking and non-smoking areas wherever possible.

The noble Lord, Lord Faulkner, referenced international comparisons. I emphasise that the UK is a world leader in tobacco control, and it is important that we share our learnings on the journey towards a smoke-free 2030. We must also learn from the successes of other countries. We will be closely monitoring the outcome of the Canadian approach. International studies of smoke-free parks and beaches, including in New Zealand and Canada, have found evidence through litter collections of continued smoking, suggesting that successfully enforcing any restrictions will involve considerable resource, including training people, such as park staff, in enforcing new policies.

I hope noble Lords will recognise that there is a real commitment in government to a smoke-free United Kingdom, but at this stage we are looking for an extension for a year. This is a temporary pavement licence extension of provisions that have worked incredibly

well, as many noble Lords commented in Grand Committee. I emphasise that this Government are committed to reducing the smoking impacts of outdoor eating and drinking, both in terms of these regulations and, importantly, in future policy. Therefore, I ask the noble Lord, Lord Faulkner, to withdraw his amendment.

Lord Faulkner of Worcester (Lab): My Lords, I shall be very brief. I thank the noble Baroness, Lady Northover, and my noble friend Lady Blake for their splendid speeches and strong support for my amendment.

The noble Baroness, Lady Northover, reminded us of the transformation that smoke-free legislation has brought about in our society. There is no need for us to go into detail about that now because that is no longer an issue between the parties or, indeed, with the British people; it is accepted. That is one of the reasons why I find it so inexplicable that the Government did not take advantage of the pavement licences provision to extend that smoke-free regime to cover the outside areas. As the noble Baroness, Lady Northover, said, the pavement outside a pub or a café is essentially an extension of the indoor rooms of those premises, and the people who go there, particularly those with children, are entitled to enjoy a smoke-free environment.

My noble friend Lady Blake referred—very tellingly, I think—to the impact of smoking on people with severe health conditions, perhaps brought on by Covid. Limiting the exposure of those people to second-hand smoke is particularly important and we should be doing all in our power, including making pavement licence areas smoke free, to achieve this.

I thank the Minister for his speech and the considered way in which he has approached this issue, and I recognise that he has repeated the Government's commitment to a smoke-free Britain by 2030. That is good news. But I ask him and other noble Lords to reflect on whether the adoption of smoking as part of the pavement licence helps that process or makes it more difficult. I think most people would argue that it is making it more difficult. It is an unnecessary obstacle.

I am pleased that the Minister also referred to passive smoking concerns and the fact that the Government now accept them. Again, this is another reason why pavement licences should be smoke free.

Interestingly, the Minister did not answer the point made by the noble Baroness, Lady Northover, about consultation with the Department of Health over these regulations. We did not get an answer to that question a year ago or last week in Grand Committee, and we have not had one today. It is fair to say that the Department of Health takes a rather different view of these matters from that of the Ministry of Housing, Communities and Local Government.

The Minister also did not refer to the extraordinary letter that the Secretary of State in his department wrote to Manchester City Council last August attempting to talk it out of its proposals with a series of arguments that, as the noble Lord, Lord Young of Cookham, demonstrated last week in Grand Committee, were completely spurious.

The House should have an opportunity to express a view on the regulations and on my amendment. I therefore wish to test the opinion of the House.

1.31 pm

Division conducted remotely on Lord Faulkner's amendment

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Motion, as amended, agreed.

Charities Bill [HL]

Second Reading

1.45 pm

Moved by ***Baroness Barran***

That the Bill be now read a second time.

Considered in Second Reading Committee on 7 July.

Bill read a second time and committed to a Special Public Bill Committee.

Environment Bill

Committee (8th Day)

1.46 pm

Relevant documents: 3rd Report from the Delegated Powers Committee, 4th Report from the Constitution Committee

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): I will call Members to speak in the order listed. During the debate on each group, I invite Members, including Members in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request.

The groupings are binding. A participant who might wish to press an amendment other than the lead amendment in a group to a Division must give notice in debate or by emailing the clerk. Leave should be given to withdraw amendments.

When putting the Question, I will collect voices in the Chamber only. If a Member taking part remotely wants their voice accounted for if the Question is put, they must make this clear when speaking on the group.

Debate on Amendment 262A resumed.

Lord Randall of Uxbridge (Con) [V]: My Lords, I will not detain noble Lords for long. Suffice it to say that I supported a similar amendment in the Fisheries Act that was also tabled by the noble Lords, Lord Teverson and Lord Krebs. As the noble Lord, Lord Teverson, said in his speech on Monday, this is just as much in the interests of monitoring what species are caught, not just fish but by-catch such as cetaceans and sea-birds. I will be very interested to hear what the Minister has to say about the consultation. I do not share the gloomy aspect of the noble Baroness, Lady Jones of Moulsecoomb, on this issue; I know these things take time and I am sure the Government want to move forward with this. I look forward to hearing from my noble friend.

Baroness McIntosh of Pickering (Con): My Lords, I commend the amendment and thank the noble Lord, Lord Teverson, for having moved it so eloquently. I endorse everything he said. I have visited ICES in Copenhagen a couple of times and have been hugely impressed. It has had a lot of footfall over the years from visitors such as the Scottish fishermen, and I think its research is first class. I am delighted that, having left the European Union, we continue to rely on ICES for the excellent research it produces.

I would like to ask my noble friend one question for when he comes to sum up the debate. I know that in the fullness of time, if maybe not in the context of this Bill, remote electronic monitoring will be used on all vessels in British waters. Can he confirm that it will be an essential criterion for the issuing of licences to fish in British waters that the vessel will be fitted with remote electronic monitoring equipment?

Baroness Jones of Whitchurch (Lab): My Lords, I welcome Amendment 262A, which was so ably introduced by the noble Lord, Lord Teverson, and supported by the noble Baroness, Lady Jones of Moulsecoomb. They were both still going strong when we finally halted the debate on Monday, just before midnight. As noble Lords have made clear, this is an issue left over from consideration of the Fisheries Bill, which we thought was being resolved. However, as with other amendments dealing with the marine environment, the consequences are ongoing and equally valid for this Bill.

Without REM, we will not have the full and verifiable real-time documentation of catch on which all other calculations are based. This solid evidence should form the backdrop to a truly sustainable fisheries management plan. It will enable us to be more responsive to the movement of different fish stocks around our warming waters. It could also provide new economic opportunities where fishing opportunities are aligned with the real-time scientific evidence. For example, the evidence could potentially allow more species to achieve Marine Stewardship Council sustainability certification, which would boost sales in the retail sector.

In the past, the Government argued that this policy would be a distraction from vessel monitoring systems and aerial surveillance. These have their place but do not provide the detail that cameras on board the vessels would, particularly on the types of species caught and to ensure that discarding is not taking

[Baroness Jones of Whitchurch]
place. We argue that we need to embrace all the opportunities of improving data that new technology can bring, and that REM is one of these. It is also the case that many boats already use REM on a voluntary basis, so all this amendment would do is to raise the standard to the best and create a level playing field based on a true system of sustainable fishing.

During consideration of the Fisheries Bill, we were told that Ministers were thinking about introducing compulsory REM. The noble Baroness, Lady Jones of Moulsecoomb, quoted a helpful contribution from the noble Lord, Lord Gardiner, which talked of consulting on the use of REM in the first half of 2021 with implementation following thereafter. Can the Minister say what the result of these consultations was?

Meanwhile, the Secretary of State told us in a separate meeting around that time that he was also sympathetic to the proposal but needed time to consult others, including the devolved nations, to ensure there was common consent about implementation. A year has gone by since the Secretary of State said that, so perhaps the Minister can update us on the status of the consultations and those negotiations. We believe the case for the introduction of REM is compelling, so I hope we can be assured that is imminent. In the meantime, we support the amendment from the noble Lord, Lord Teverson, and look forward to the Minister's response.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): I thank the noble Lord, Lord Teverson, for raising this important issue and the noble Baroness, Lady Jones, for her contribution in the last session. The Environment Bill, when combined with the Fisheries Act, will place the Government's 25-year environment plan—including its goal of securing clean, healthy, productive and biologically diverse seas and oceans—on a statutory footing. The Bill enshrines environmental principles through a policy statement in law for the first time. Ministers must have due regard to the environmental principles policy statement when making policy. This includes making fisheries policy and will complement the eight objectives found in the Fisheries Act 2020, six of which, as the noble Lord will certainly know, are purely environmental in focus.

The policy statement required under the Environment Bill will be supplemented by the joint fisheries statement. The office for environmental protection, established by the Bill, will have a scrutiny function to report publicly on the action that government is taking to improve the environment. It will be able to consider fisheries legislation relating to the environment. As we have already discussed, the inclusion of "marine" within the meaning of the natural environment in the Bill ensures that it is fully included within each element of the environmental governance framework.

As the noble Lord, Lord Teverson, notes, the Government support the principle behind Amendment 262A and, although we cannot support the amendment, I can assure him and the noble Baroness, Lady Jones of Moulsecoomb, that we are taking action in this area. We remain committed to increasing the use of remote electronic monitoring, but we need some flexibility to work through how best we can increase its use. The amendment proposes powers to mandate remote electronic monitoring. The Government do not believe these powers are necessary, as Section 36(4) of the Fisheries Act 2020 provided the Government with the necessary powers to mandate the use of REM.

As the noble Lord, Lord Teverson, also noted, last year we launched a call for evidence, which my noble friend Lord Gardiner of Kimble spoke about during the passage of the Fisheries Bill, now an Act. The call for evidence has given us much food for thought. We published our response in May 2021. The responses received were predictably mixed, some wanting pace and broad coverage and others more cautious. A number of responses described global best practice, which will, of course, be enormously helpful in getting our own approach absolutely right.

For example, New Zealand, Australia and Denmark were cited as having good experience which we intend to learn from and build on. Their schemes, as well as existing and previous schemes in England and Scotland, were commendable because they had clear objectives. They considered the scale of the programme and included government support. It is important that the global best practice quoted in the call for evidence noted that it is vital to work with the industry. We want to work collaboratively with the industry, scientists and other stakeholders to make the best use of it. We have begun engagement with the industry and stakeholders, following the call for evidence, and will ramp up further now that we have boosted the resources in Defra looking at remote electronic monitoring.

Remote electronic monitoring could be so much more than a mere enforcement tool, as the noble Lord, Lord Teverson, also noted. However, a wide range of questions still need to be answered, for example on cost and data protection. This amendment would make it harder to consider all the options available to us as well as new approaches in future. Do we want cameras recording the catch or monitoring the gear underwater? Do we want strain gauges to show how heavy nets are or soak timers that show how long gear has been in the water? Do we want temperature gauges, or all these things? How will we process and store the vast amount of information that we would be collecting? Artificial intelligence may well play a role here, but we need to develop our ability to handle and use the data in step with rolling it out on boats. These are important issues that we will be working with the industry and stakeholders on over the next few months.

Another reason why this amendment does not work for us is that we want to move at pace, as we have said, but we are not convinced that extending REM to all vessels of over than 10 metres is necessary or proportionate or, indeed, better than a more risk-based or nuanced approach. Some fisheries, the pelagic fisheries, for example, tend to be very clean: they catch only what they specifically target, even though the vessels are sometimes very large, so the data provided and the harms recorded would be low. So it is too for a 15-metre vessel potting for crabs, which is unlikely to catch anything other than crabs. It may well be that some vessels under 10 metres would benefit from a form of remote monitoring as well.

We are pressing ahead with plans to ensure that vessels under 12 metres have electronic vessel monitoring systems on board, as it is vital to gain a better understanding of where they fish and their fishing patterns. Getting these basic fisheries management tools in place is vital. There is much more we need to do in this space, as well as focusing on remote electronic monitoring which, while helpful, is nevertheless just one tool. Some important calls for evidence and consultations on wider fisheries management are being published in the next few weeks and months that I hope the noble Lord will find useful. They will demonstrate that we are making good our intention to manage our fisheries more sustainably, using all the tools at our disposal.

The noble Lord mentioned advice provided by the International Council for the Exploration of the Sea—ICES. The letter he quoted raises some complex issues that Defra, alongside colleagues in the devolved Administrations, is considering carefully, but it is clear that North Sea cod stocks remain in a poor state. As he explained, the use of remote electronic monitoring will, among many other benefits, help improve our scientific understanding, including of stocks.

2 pm

I will briefly set out Defra's progress on a number of other issues that we debated during the passage of the Fisheries Act but which are relevant to this debate today. Work is progressing to develop the programme for delivering the fisheries management plans required by the Act, and this requires harvest control standards being developed that build upon global best practice. On the development of fisheries management plans, we are prioritising a number of shellfish plans, given their commercial importance and environmental vulnerability. All these have been developed in collaboration with the catching sector and with environmental NGOs, and REM may well feature in them alongside other fisheries management measures. These are big, complex and ambitious pieces of work that we are doing. I hope that, alongside a number of other consultations and calls for evidence that are being launched very shortly, as I mentioned earlier, they demonstrate our commitment to building sustainable fisheries for future generations.

I hope I have reassured noble Lords that the Government are committed to making serious progress in relation to the remote electronic monitoring of fishing vessels. I ask the noble Lord to withdraw his amendment.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): I call the noble Lord, Lord Teverson, who wants to ask a question before proceeding.

Lord Teverson (LD) [V]: I thank the Minister for that good reply. I will sum up in just a second but I have a specific question. He said, and I take some encouragement from this, that he wanted to "move at pace". When will we next hear back from the Government about what they are going to do specifically on REM and, hopefully, how they are going to apply the method of data collection?

Lord Goldsmith of Richmond Park (Con): I thank the noble Lord for his question. We have a number of consultations and calls for evidence coming up over the next few weeks and stretching out over the next few months. I will set out the exact choreography to him in a letter, but obviously that work needs to happen before any firm dates can be set. I hope that provides a clear agenda of what we are doing and that the next steps will go some way towards answering his question.

Lord Teverson (LD) [V]: My Lords, I thank the Minister for his comprehensive and actually quite encouraging reply. I thank the noble Baronesses, Lady Jones of Whitchurch and Lady Jones of Moulsecoomb, and the noble Lord, Lord Randall, who has been very supportive in this area, as has the noble Baroness, Lady McIntosh. This is one way that we can start to make progress on what we understand about the marine environment, by catching that data and, hopefully, encouraging much better management of that environment. I look forward to the Minister's letter and to the fisheries management plans that we were promised being concluded. In the meantime, I beg leave to withdraw the amendment.

Amendment 262A withdrawn.

Schedule 16: Use of Forest Risk Commodities in Commercial Activity

Amendments 263 to 265D not moved.

Schedule 16 agreed.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): We now come to the group beginning with Amendment 266. Anyone wishing to press this or anything else in this group to a Division must make that clear in the debate.

Clause 110: Conservation covenant agreements

Amendment 266

Moved by ***The Earl of Devon***

266: Clause 110, page 109, line 11, leave out "appears from" and insert "is stated within"

Member's explanatory statement

This amendment, along with others to this Clause, is intended to add formal requirements for an agreement to qualify as a conservation covenant.

The Earl of Devon (CB): My Lords, I shall also be speaking to my Amendments 267, 268, 269, 274 and 276. These are amendments to Part 7 of the Bill, which introduces into English law for the first time the important and radical concept of conservation covenants. Following in part the Law Commission's 2014 report on conservation covenants, the provisions of Part 7 are a hugely significant change to long-standing principles of English property law—a radical departure, in the words of the Bar Council, from the centuries-old rule that only restrictive covenants benefiting neighbouring property can run with the land and bind successors in title.

The Law Commission proposed a stand-alone Bill to introduce these significant changes, as would be appropriate. It is therefore regrettable that such radical

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new property provisions, including significant departures from those proposed by the Law Commission, find themselves tucked away in Part 7 of the Environment Bill and are afforded only a short slot for debate on the eighth and last day of this Committee.

I am grateful to all noble Lords willing to consider these provisions and to the NFU, the CLA, the Bar Council and many others for their support and insights. Having started my career as a junior property barrister, the intricacies and implications of the significant change to the law of real property are clear to me, but they may not be to noble Lords who do not keep a copy of *Megarry & Wade* to hand, so excuse me for providing some context.

Conservation covenants are central to this legislation. They are the principal vehicle by which the private finance will be brought into the brave new world of biodiversity net gain—the means by which developers will be able to ensure that the biodiversity lost to their development will be off-set, plus 10%, on someone else's land. If successful, they will be a key tool in turning the environmental tide and an important alternative source of funding for farmers, whose basic payments are rapidly diminishing. They are an exciting development on which the Government are to be congratulated and which many in the farming community, including me, strongly support.

However, as the Minister described on day six of the Committee, the Bill creates an entirely new market in biodiversity net gain, the likely size and extent of which the Government are unwilling or unable to specify—despite repeated requests. It is described by some as the wild west of ecosystem services. It is a new frontier, and I am aware that a number of major financial institutions are prospecting with keen interest.

I am therefore surprised that the Government cannot estimate the likely size of the market. It must be a simple calculation to estimate how much biodiversity will be lost over the next decade, given the Government's proud housing and development aspirations and the recent publication of the updated biodiversity metric. An impact assessment should be possible, and it seems a mistake to launch such a radical new land use and property law scheme without at least trying to understand what its impact will be. You do not venture west without a telescope to see where you are going. Can the Minister please say whether the Government will be able to provide an impact assessment of biodiversity net gain by Report?

Given this background of considerable uncertainty, the aim of my amendments is to ensure that this new market actually works, that trust and good practice in conservation covenants are established at the outset and, most particularly, that we are able to protect our natural environment and those who work it from the disastrous impacts of poorly conceived covenants entered into by cash-strapped farmers dealing with sophisticated for-profit commercial operators.

This is a complex area of law, and the covenants entered into will have long-standing—potentially perpetual—implications for generations. If they are wrong at conception, both farmers and their land will suffer and the market will not succeed. If they are right, well drafted and clear in their terms, they will be a vital tool to achieve the biodiversity net gains we all aspire to.

In legislating for conservation covenants, the Government have departed significantly from the Law Commission's cautious recommendations by introducing for-profit companies as responsible bodies capable of entering into, registering and enforcing conservation covenants. The Law Commission proposed that only public bodies, registered charities and local authorities be able to enter into such covenants but, in their efforts to inject the energy of private markets and finance into this sector, the Government have opened it to any private body that the Secretary of State designates, so long as at least some of the body's main activities relate to conservation.

In response to this proposal, the Bar Council stated:

"We do not see that there is any case for this. A for-profit company does not appear to us to be an appropriate body to hold the benefit of such covenants."

It noted the danger of a private, for-profit entity being able to recover exemplary damages and the potential for abuse of a system that may allow for-profit companies to enter covenants for tax management purposes—that is, to adjust land values.

Conservation covenants bind successors in title and are able to be registered as local land charges on the land charges register. In the Land Registry's own words,

"land charges are generally financial charges or restrictions on the use of land which are governmental in character and imposed by public authorities under statutory powers".

It is therefore a major departure from standard Land Registry practice to permit for-profit enterprises to wield such quasi-governmental functions, particularly as the Minister has admitted that we simply do not know how they would work in practice.

There are multiple other significant and potentially dangerous implications to entering into a conservation covenant. I have already noted the right to claim exemplary damages from a landowner who unwittingly breaches the covenant—an extraordinary remedy in the hands of a for-profit company—plus the fact that the covenant binds successors in title, thereby banishing once and for all English property law's long-held aversion to the perpetual control of land by the dead hand of one's predecessor. Beware the zombie habitat banks—and here I am not being facetious. Conservation covenants will bind land to a particular use by default in perpetuity, and the land management prescriptions that may be agreed in writing now between a farmer and a developer might well fail the test of time, particularly given that this has never been done before. As the Minister so clearly explained last Wednesday, there are simply not ecologists and consultants currently in the market who know how to make this happen. It has never been done before, and we are entering wholly uncharted territory.

I ask noble Lords to consider the intervention of the RSPB on Exminster Marshes, which I have mentioned previously, which showed that even the most well-funded and well-intentioned land management prescriptions can have disastrous implications for the flora and fauna they aim to protect. In that case, on taking over the marches from traditional pasture farmers, the

RSPB set about 20 years of intervention, removing livestock, minimising pest control and flooding fields to create an artificial wetland. When ground-nesting birds all but disappeared and Canada geese took over, the RSPB abandoned those practises, restored ditches and reintroduced pest control and grazing cattle. Ground-nesting bird numbers are now increasing again, but all those steps towards recovery would be likely to be in breach of a conservation covenant had one been put in place 20 years ago.

Part 7 offers only limited statutory defences to a breach of covenant, and it is no defence to a claim for breach that the farmer's other property would otherwise have been damaged. Thus, if a farmer is faced with an imminent flood, caused perhaps by a beaver damming the local river upstream, which will wipe out his stored grain after harvest, it would be no defence to a breach of covenant if the farmer redirects that flood to a field subject to a conservation covenant prohibiting standing water. Assuming that he damages a nest site for a pair of cirl buntings, he will be facing a claim for damages in excess of £70,000 plus exemplary damages.

Equally of concern is that, in absence of provision to the contrary, the responsible body is free to transfer its interests to any other responsible body unilaterally. Thus, the local farmer may negotiate and agree the outline terms of a conservation covenant with a local developer's ecologist who he knows and trusts, leaving the complicated details to be worked out as the habitat bank is developed, only to find that the local developer transfers its interests to the ecosystems services department of an international banking conglomerate with no local presence and a for-profit obligation to maximise shareholder returns.

I know that I am presenting a parade of horribles here, identifying all the things that can and might go wrong. However, that is the job of a lawyer being asked to advise a client entering a new and radical agreement.

This brings me to my principal amendment, Amendment 267, which seeks to ensure that conservation covenants are executed by deed and not merely by signed writing. As any law school graduate knows, signed writing in this modern day can be achieved simply by an exchange of email evidencing sufficient intent to be bound to an agreement and no legal advice needs to be given on their execution. Therefore, a conservation covenant tying land to perpetual obligations could conceivably be created by no more than an exchange of messages, which do not even need to state that they are intended to amount to a conservation covenant so long as it appears from the language that a covenant was intended. Amendment 266 addresses that anomaly.

Defra's draft fact sheet on conservation covenants released last week recognises the danger of entering into agreements without legal advice and states that the Government's forthcoming advice will recommend that those entering conservation covenants take advice. Will busy farmers even read that guidance? Amendment 267 will ensure that legal advice is sought such that all conservation covenants that are entered into are properly drafted to achieve the effects required.

In conclusion, consider a hypothetical because lawyers love a hypothetical. The typical English farmer is in his late 60s. He is seeing his BPS payments decrease year on year and the margins on which he subsists are rapidly decreasing. He disagrees with his children about to the future of the farm, and he cannot understand the myriad government strategies being trialled elsewhere. However, the farm having been in his family for generations, he does not wish to take the Government's money to retire.

2.15 pm

A local developer meets him to discuss biodiversity net gain opportunities arising from a local housing development and subsequently offers by email to maintain annual payments equal to what he was getting for BPS so long as he ceases grazing the riverside fields to encourage ground-nesting birds and decrease run-off. The email suggests that five breeding pairs of birds per year should be achievable, for which the fields must be kept dry and in long grass over the summer months. The farmer responds "Yes" to the email, expecting formalities to follow, but none do because the farmer unexpectedly dies.

The conservation covenant contained in the email exchange is binding on his children, who are committed in perpetuity by default because no period of time was stated. The payments in return for the ecosystem services are fixed at the current BPS equivalent with no increase for inflation. Given the conservation prescriptions preventing any farming, the land is no longer treated as agricultural land for inheritance tax purposes, so agricultural property relief is unavailable and an unplanned tax burden falls due. A year later, that flood comes, causing considerable damage. In order to save their grain store, the children redirect the flood water into the conservation habitat fields, which are thus flooded in the summer months, in contravention of the covenant. The children become liable for contractual and exemplary damages and by this time the responsible body is no longer the local developer but a multinational with no desire to resolve the matter amicably.

The children might have to sell the farm to pay the legal fees and damages, but they cannot sell the fields themselves because no one will purchase land burdened with such an inexact and expensive covenant with only diminishing payments in return. Some years later, the responsible body goes bankrupt for unrelated reasons, at which point the Secretary of State becomes the custodian of the covenant and under Clause 125(8) has no obligation to make even the small compensation payments that had been made previously, thus all income from the land ceases. It has fallen into ruin and is blighted in perpetuity, losing even the biodiversity value it had before the covenant came into being.

I accept this is a long and gloomy hypothetical, but it could well happen if conservation covenants and their radical and far-reaching implications are not clearly understood by those entering into them. Farmers and land managers will be desperate over the next few years to make up for the loss of basic payments and will be presented with a range of confusing options under ELMS and the various environmental strategies we have been debating. If they are not obliged to take legal advice by ensuring that conservation covenants

[The Earl of Devon]
are enforceable by deed, they will be taken advantage of. If covenants can be covenants without saying so on their face, without being by deed, without expressly stating their duration, terms and the payments due thereunder and without the responsible body being predominantly conservation-focused, they will be taken advantage of.

The NFU, in particular, is concerned about this, given the extreme vulnerability of many of its members. I am grateful for its assistance in drafting these amendments, which are supported, as I said, by the CLA and the Bar Council. I should note for the record that I am a barrister, a landowner and a farmer, albeit I am not a member of the NFU or the CLA. I sit on the Devon CLA committee on behalf of my law firm, Michelmores, which represents numerous clients active in this space, including farmers, investors and other operators in the market for ecosystem services. I believe they would all appreciate better formalities. Indeed, I cannot think of any that would object, albeit all lawyers would say that.

I do not know whether or why the Government would resist these important and entirely reasonable amendments. I am sure that, like me, they want biodiversity net gain and conservation covenants to be a roaring success. I have requested a meeting with the Minister and the Bill team, but we have not yet had a chance to discuss. Perhaps we can meet before Report where these amendments will return if they are not accepted. In any event, I look forward with anticipation to the Minister's reply and beg to move.

Lord Cameron of Dillington (CB): My Lords, it is always a pleasure to follow my noble friend Lord Devon and his forensic legal approach to these issues. In this case, I am highly persuaded by his arguments. Fifteen minutes ago, I had relatively few doubts about this chapter on conservation covenants, but now I seem to have loads of them. I should also say that this is my first appearance in this Chamber since March 2020, and it is good to be back.

I shall speak to my Amendment 276A in this group. I should say at the outset that it is very much a probing amendment. There is no doubt that overgrazing on many of our hills and commons has been a problem for several decades. One of the best things that we could do for biodiversity in these areas is to find a way of reducing the number of grazing mammals or changing the variety of them or possibly, in some cases, removing them altogether. That is what the amendment seeks to do. I hope it would enable the peat and blanket bog to rebuild itself to help the climate change agenda and to improve the biodiversity of the common in question.

It appears that ever since the Commons Act 2006 it has been difficult to buy grazing stints without having also to buy the land to which the stints are attached. As I understand it, this linkage was made under the previous CAP regime in an effort to limit grazing numbers, as linkage to the dominant tenement restricted the number of stints that the tenement could tolerate for overwintering on its own land. This regime also meant that the stint holders tended to farm adjacent to the common, which helped to keep the link between the stint holders and the management of the commons.

Now, of course, we are entering a completely new land management regime, ELMS, so it seems that it would be in the interest of conservationists and conservation organisations, such as Natural England, for them to be able to buy stints without having to buy the farm to which they are attached. I know Natural England is supportive. It also seems that such a regime would also be in the interests of the farmer and the commoner. He or she would be able to sell some of their stints, even to the extent of selling all of them, without having to sell their farm and/or their home. Life under ELMS is going to be very different and maybe even difficult for some of these farmers, so the more flexibility that we can grant them, the better.

If the right to buy that I am proposing were limited to "responsible bodies" as defined under this chapter, I believe there would be no chance of other farmers, landowners or even shooting tenants moving in and buying these stints for their own purposes. I hope that these stints are either going to disappear altogether or at least be managed for the benefit of the environment.

I am aware that the law and history surrounding commons are immensely complicated, and I am certainly no expert—unlike some noble Lords, I am sure—but I know enough to realise that tabling an amendment such as this is the equivalent of sticking my hand into a wasps' nest. That is the reason why I felt that consultation, although hopefully not for too long, would be a good idea, and why in this instance I put "may" rather than "must" at the beginning of the amendment. I know that Natural England approves of my intentions, and I hope the Government will support the amendment.

Baroness Jones of Moulsecoomb (GP): It is my pleasure to welcome back the noble Lord, Lord Cameron of Dillington. I had not actually realised that he was not here because I have seen him so often on screen. It is good to see him.

I have a slight confession to make. When I first looked at these amendments, all my working class instincts—which have served me quite well over the past 70 years—started coming out about supporting something that seemed sensible but was from a landowner, and then another landowner came in with another amendment. However, I fought down those suspicions and in fact I welcome the concept of new conservation covenants in the Bill.

I would probably benefit from some more explanation. I know the noble Earl, Lord Devon, gave an extremely comprehensive introduction to this topic, but I still have a few small queries. However, I want to put on record the Green group's support for these amendments. They appear to be an essential tool for modifying the law of land ownership towards a greener system that understands that land is the primary source of all real wealth, which is held in trust by humans on behalf of all species and future generations.

Regarding the noble Earl's introductory speech, the minute that anyone uses words like "offsetting" and "market", all my green instincts come out. I have a slight problem with those words because both those things normally mean a complete scam as far as environmental issues are concerned.

This would be a landmark change to the law because it expands on some traditions in English land law—common land, public rights of way and other traditional rights and obligations arising under various circumstances—but the amendments in this group also highlight some of the real difficulties of the law of the land. So much of land law is focused on formalities, and if the necessary formalities are not met then everything can unravel.

Amendments 266, 267 and 268 in the name of the noble Earl, Lord Devon, focus on the formalities needed for a valid conservation covenant. This is where I would like a little more explanation, particularly if the noble Earl is going to push them through to the next stage.

Amendment 276 in the name of the noble Lord, Lord Cameron of Dillington, probes another issue, one that I find quite perplexing, the question of why Clause 125(8) explicitly states that

"the Secretary of State has no liability with respect to performance of any obligation … under the covenant"

during any time that the Secretary of State is custodian of the covenant. Why have the Government chosen that approach? If they are not responsible during this time, who is? Will these important natural sites go untended, unmanaged and uncared-for into abandonment? Unless the Government can give some convincing reason, it seems that Amendment 276 would be an important change to the Bill—in fact, to law—to ensure that these covenants are upheld and natural sites protected.

I once again commend the inclusion of these covenants in the Bill, and I hope noble Lords can iron out these few small queries so that the covenants work as effectively as possible.

Lord Lucas (Con) [V]: My Lords, I share all the reservations expressed by the noble Earl, Lord Devon. In dealing with perpetuity in this section of the Bill, the Government seem quite laid back about it, whereas my suggestion of perpetuity earlier on in the Bill caused an attack of the heebie-jeebies. I find this strange because here we are dealing with individual farmers, who, as the noble Earl pointed out, may often be vulnerable, while in the case of biodiversity gain we are dealing, by and large, with professional builders, who are in a completely different position when it comes to understanding the law and in the state of their finances. In both cases, I support perpetuity but when it comes to dealing with individual farmers, we must have something which is much more cautious and much safer.

I agree with the noble Earl that there really is no place in this system for commercial enterprise. Nature changes. What happens in the course of perpetuity—what the right action is—is going to move; it is never static. If there is a conservation obligation—say, to keep a certain number of ground-nesting birds in a particular space—and 10 years later a big badger sett is established next door and it is no longer a place where ground-nesting birds can survive, we need to be able to alter the covenant and adapt it to the changed circumstances. If we have a commercial entity in place, which perhaps is only after gain at that stage—it may not be looking to do more or to continue in the business—the poor farmer is going to be in a very poor place indeed.

The holders of these covenants ought to be organisations which are likely to continue, and to value their reputation. for a very long time and which are likely to want to continue to enter into new covenants on the basis of their reputation. There are quite a number of big conservation-oriented organisations that that would apply to. It should not be a matter for commerce.

2.30 pm

Viscount Trenchard (Con): My Lords, I declare my interests, as stated in the register. It is a great pleasure to follow my noble friend Lord Lucas, who always speaks with great knowledge and experience on these subjects. I listened to the interesting speech of the noble Earl, Lord Devon, at Second Reading and again today, on conservation covenants. Unlike the noble Earl, I am not a lawyer, but I could understand his argument that, under English property law, it is not possible to bind a successor in title.

These provisions amount to a significant change in English property law, and I wonder whether they would work in practice. I understand that a number of estates are already operating similar schemes, but, rather than a covenant, they have a lease in place, with a restrictive user clause. In the majority of cases, a lease will usually work. Can my noble friend the Minister confirm that, in the case of a covenant, as introduced by the Bill, you need a dominant and a servient tenement? In other words, the covenant restricts something on one piece of land in favour of another.

In the case of conservation covenants covering isolated plots of land, with no adjacent retained land, will there not be difficulties in enforcing such covenants? I would like to hear from the Minister what the Government's view is on this question and the others raised by the noble Earl and other noble Lords. Certainly, I agree with the noble Earl that covenants of this nature should not be entered into lightly. His amendments generally make it clearer that to encumber land with such obligations is a weighty matter and that requiring such covenants to be signed as deeds probably makes a great deal of sense.

It is a great pleasure to see the noble Lord, Lord Cameron of Dillington, back in his place after a long time. In his Amendment 276A, he seeks to extend this structure to common land, which is a very interesting idea, but it is complicated, as he said. I am not quite sure how this will work, and I look forward to hearing what my noble friend Lady Bloomfield thinks about that.

Baroness McIntosh of Pickering (Con): My Lords, the House owes the noble Earl, Lord Devon, a great debt of gratitude for bringing to our attention some of the shortcomings of the existing proposals in the Bill, with regard to this whole new concept of property law, as it relates to the land. My initial reading of it was not clear, and I obviously received a brief from the NFU and others. I am grateful to the noble Earl; his amendments are eminently sensible, and I urge the Government to support them.

I will speak at greater length. I welcome back the noble Lord, Lord Cameron of Dillington, to his place—it is good to see him back in person. However, I caution my noble friend the Minister most strongly against

[Baroness McIntosh of Pickering]
accepting this amendment for a number of reasons. I was closely involved with some issues relating to common land, particularly grazing rights on it in the part of North Yorkshire that I represented between 2010 and 2015. The role of graziers there is very important. They are granted rights, again, in perpetuity and have existed for many generations.

There are sometimes tensions with others in the hierarchy of interests, we might say, on common land, particularly with those involved in grouse shooting. I happen to have been brought up very close to two of the best grouse-shooting moors in the country, in Teesdale in County Durham, and I believe that, for the most part, the overgrazing problems, where they exist, have been managed extremely well through voluntary arrangements via stewardship schemes.

The main issue that I have is a potential hidden agenda here that it is very important to put in the public domain, appealing to the best instincts of my friend the noble Baroness, Lady Jones of Moulsecoomb, in this regard. However, we need to see a balance in the countryside, and, among the hierarchy of interests, I place on record my particular concern about the plight of the small family farm. I would place that at the very top of the hierarchy, with grouse shooting and other interests perhaps towards the middle—or, in my case, the lower end. It has become of far greater economic importance than it had 20, 30 or 40 years ago. I pay particular tribute to the work of the NFU and the Tenant Farmers Association in regard to the rights of graziers to graze in perpetuity on common land. I was struck today by, and pay tribute to, the work of the Prince of Wales in this regard. He said today, on the BBC Radio 4 "Today" programme, that we lose them at our peril, and I echo that.

I hope that my noble friend Lady Bloomfield will confirm that there is a role for graziers going forward and that their rights will be protected in perpetuity and will not be at the expense of other, perhaps larger, farming—or, dare I say, shooting—interests in this regard. We should have respect for existing property rights, as defined in relation to land under the Law of Property Act 1925 and other legislation. We should recognise that these rights of commoners go back as far as the Magna Carta of 1215 and the Charter of the Forest of 1217.

I welcome the opportunity that my noble friend Lord Cameron of Dillington— I call him my noble friend because we served together on the EU Environment Sub-Committee—has given us in this regard, but I urge my noble friend to approach this cautiously, particularly as it would potentially shift the balance in the countryside, without even meaning to do so.

The Earl of Caithness (Con): My Lords, the Committee will be extremely grateful to the noble Earl, Lord Devon, for tabling these important amendments. I confess that I have not given them the attention that I should have done, and it is clear that a lot of attention needs to be given to this part of the Bill between now and Report. The fact that we are on the eighth day does not mean that these amendments are any less important than the first amendment on day 1—they need careful scrutiny.

To my friend the noble Baroness, Lady Jones of Moulsecoomb, I say that I am not a landowner, but I was a land agent, and the implications of what the noble Earl said in moving his amendment fill me with some trepidation. He made a perfectly plausible case—it was not extreme—about a situation where a farmer hurriedly enters into a conservation covenant to boost his income at a time of stress, when his basic farm payments system is collapsing and he needs the money. That is not an unlikely scenario in the future, but the consequences of what he does are terrifying for the future because they are in perpetuity and binding on his successors. This could go disastrously wrong for the Government. This is the way that we will improve biodiversity, but, should it get off to a bad start and should some notorious cases hit the press, that will stop any chance of this becoming the full-blown operation that it should.

I have a number of questions for my noble friend on the Front Bench. If this a covenant in perpetuity, a farmer may enter into one on what is at the moment an outlying field but then ceases to be so, given the proposed massive housing development in this country, with the local authority wishing to develop it or use it for amenity purposes, as part of the increased use of that area. As I understand it, it will not be able to do so—but, when it has built houses all around that field, there is absolutely no way that the covenant will be able to be maintained. Is there a way in which this could be changed so that there is more flexibility?

When the noble Earl was talking, I wondered about the case of landlords and tenants. I presume it will be the landlord who enters into the covenant, and with the agreement of the tenant, but that could have serious consequences for the future letting of that land and keeping it in a tenancy. If for any reason the covenant was unable to be fulfilled, no tenant farmer would wish to take on that bit of land again in the future.

It would also affect the price and balance of farmland, because if it goes wrong and the land becomes of little value, it will upset the whole biodiversity and nature balance in that area. If one is talking of a landscape issue—for instance, a valley in the south-west or north-west where the whole area is properly managed but there is a conservation covenant in the middle of it that goes wrong—that could be utterly detrimental. I hope that my noble friend the Minister will reflect on this so that he is absolutely confident that the balance is right for the future.

Lord Inglewood (Non-Afl) [V]: My Lords, I wish to speak principally about Amendment 276A, which relates to common land and which I have discussed with the noble Lord, Lord Cameron. The reason for that is that there is a very large amount of common land in the bit of north-west England where I come from, currently known as the county of Cumbria. I should declare that I am president of the Uplands Alliance and I own on my own account a few common rights and a very small area of registered common. I am also a farmer in his late 60s looking into the future.

I begin by reassuring the noble Earl, Lord Devon, that one of the advantages of speaking remotely is that I can, and do, have a copy of *Megarry & Wade* to hand. I urge your Lordships to take seriously the

points that he has raised, because he is talking not merely as somebody who understands the way land works in the real world but as a property lawyer. His indictment of the implications of what is currently in the Bill is significant. There are massive potential problems here, starting with the definition of "responsible body" and going through the saga of how disaster can strike. It is not merely a matter of disaster hitting the particular owners or successors in title of owners of bits of land; it is potentially a disaster for the countryside and the environment as well. For what it is worth, my advice to the Government would be to tear these proposals up, start again and, if necessary, bring them back in another place and we can vote on them again at a later time after a period of reflection. It is not the aspirations behind what is contained in the Bill which are flawed; it is the mechanisms that they put in place to try to bring them about.

As has already been said, common land is a very complicated legal and administrative matter, as the discussions on the most recent Bill to pass through your Lordships' House, in 2005, show. In that Bill, a balance was struck between a range of interests which do not always see eye to eye. Common land is as legitimate a form of land tenure as the more usual form found across much of lowland England and Wales. While it was at one time more widespread than it is now, it is still an entirely appropriate basis for farming and land management in a number of upland and lowland, particularly wetland, areas of England and Wales. It is not a hangover from feudal England, although its ancestry lies there, nor is it an anachronism in the 21st century. The various rights which exist under it are in legal terms qualitatively no different from those that exist elsewhere in land law. Furthermore—and this is important—it is a cultural phenomenon which is part of the basis of the rationale for the Lake District National Park having been designated as a world heritage site.

I can see what the noble Lord, Lord Cameron, is trying to do, and I have no criticism of it. However, I feel that he has oversimplified some things in a number of ways. Issues relating to conservation and the environment are not the only part of the story; there are other aspects—for example, grazed habitats; cultural landscape, which I have already mentioned; traditional farming systems; rural communities and so on. Furthermore, one thing we can learn from the history of commons is that the interests of the owner of the soil and those of the owner of the common rights are not necessarily the same. Indeed, the interests of different owners of rights, which are not all the same, are in turn not necessarily the same. I must confess that I am not happy that the owner of the soil could gain a kind of advantage over all the other legitimate legal rights involved in it in the way that has been described, particularly in respect of the long-established rights of commons, as mentioned by the noble Baroness, Lady McIntosh of Pickering. It seems to me that if someone involved in common land wants to buy up some other land or rights or soil, they should do so in the ordinary way in the open market.

2.45 pm

There are also the problems that have been described as pertaining to farming over common land, but an awful lot of them can be dealt with in different ways. For example, Section 46 of the Commons Act gives Natural England powers in the case of inappropriate agricultural activity, while, in the case of SSSIs, Natural England has legal powers to manage grazing via the consenting process.

As I have said, commons have complicated management systems overseen by commons councils. While all these might seem like parish pump matters to many, they can be very important to some of those directly affected. The 2006 Act, which I have referred to, introduced an overdue degree of stability into the way in which common land is managed across England and Wales. Over the years, these things have been far from straightforward. To introduce a further destabilising aspect of this kind is likely to be undesirable.

Speaking personally, I cannot see why, if we were to go down this route, the owner of the soil should not be capable of being bought out at the behest of one of the rights holders in the way the amendment proposes. After all, that would be even-handed. I certainly do not think all this is likely to be helpful in the real world. I urge the Government to approach the direction of travel proposed by this amendment with the greatest circumspection. I anticipate it would end up causing more harm than good, and the silver tongue of the noble Lord, Lord Cameron, is unlikely to make me change my mind.

Lord Oates (LD): My Lords, I also welcome the noble Lord, Lord Cameron, back to his place in this House. Like the noble Baroness, Lady Jones of Moulsecoomb, I must admit that, due to the diligence of his attendance on-screen, I too had not been aware that he had not been present. I understand the arguments made by the noble Lord for his Amendment 276A and recognise that he has proposed it very much as a probing amendment, but it seems a complex concept to introduce at this stage and it would need quite a lot of consideration.

I want to concentrate mainly on the amendments in the name of the noble Earl, Lord Devon. I am neither farmer, landowner nor lawyer, but, like many others in this Committee, I found his arguments compelling. As he said, conservation covenant agreements offer a potentially exciting and positive development, but, as he also told us, there are significant complexities. I am not sure that I agree with the noble Baroness, Lady Jones of Moulsecoomb, that they are just minor wrinkles to be smoothed out, because they seem pretty fundamental. Like the noble Earl and the noble Lord, Lord Lucas, I feel that introducing for-profit organisations into this area does not seem sensible, particularly at such an early stage in their development.

Likewise, the ability to bind successors in perpetuity is clearly very significant, as is the ability to seek exemplary damages on the basis of those agreements. Whatever one thinks, the idea that a landowner could find themselves bound in perpetuity to a commercial interest and subject to exemplary damages simply by the exchange of messages, as the noble Earl explained, just cannot be right. While I am instinctively suspicious of a proposal from a lawyer, even one as articulate as the noble Earl, Lord Devon, to provide more work for lawyers, nevertheless on this occasion I accept fully the argument that he makes. Any agreement

[Lord Oates]
of such enduring significance must surely first be explicitly recognised as a covenant agreement, not just something that seems to be one—and surely no one should enter into such agreements without professional advice, given their significance.

As the noble Earl said, covenant agreements offer an important new approach that could be extremely significant. However, given that they also trespass on very complex areas of law, they should be treated and proceeded with cautiously. Therefore, I hope that the Minister will take very seriously the arguments put forward by the noble Earl and look at how the Government can address this important part of the Bill.

Baroness Jones of Whitchurch (Lab): My Lords, I declare an interest as a member of the South Downs National Park Authority. I am very grateful to the noble Earl, Lord Devon, for tabling these amendments and introducing them with such clarity. As the noble Lord, Lord Cameron, said, he was very persuasive. On that subject, we welcome the noble Lord, Lord Cameron, back to his seat—he made his own very persuasive and silver-tongued contribution. I listened very carefully to what he was saying, but I am afraid that, like other noble Lords, I was not totally persuaded. Perhaps it is just because we have not had enough time to consider what seemed, the more we talked about it, to be a more and more complex issue. Forgive me if I do not dwell on that, because I feel I am out of my comfort zone in understanding the implications for the use of common land. Perhaps we can return to that issue at some point when we have more time to debate it in detail.

I return to the amendment proposed by the noble Earl, Lord Devon. We welcome the essential principle of the conservation covenants in the Bill, which the noble Earl said was a result of the Law Commission's recommendations. As a number of noble Lords have said, there are real concerns as to how these covenants will be applied in practice. The noble Earl said that it was particularly important that smaller farmers understood the full implications of entering into these covenants and are protected from exploitation. He has given some examples of the perverse consequences of historic covenants in the past, and I suspect that they will become more common in future. Already we are hearing in the south downs about farmers being approached by public bodies that want agreements to provide a home for their carbon offset obligations. I have no doubt that those sorts of pressures are only going to increase.

As the noble Earl says, it is in danger of becoming a bit of a wild west situation. It is likely that biodiversity net gain will create a new swathe of developers, public and private, looking to do deals with farmers to offset the damage that they are doing to the environment elsewhere. Already we are hearing talk of environmental stacking, whereby farmers have multiple obligations to different bodies to deliver environmental benefits, with all the legal complexities that would ensue if that became commonplace. Incidentally, this once more underlines the case of my noble friend Lady Young of Old Scone that we need a land-use strategy so that growing food, carbon offsetting and enhancing biodiversity all develop into a coherent policy whole, and we know where the priorities lie.

Of course, these developments could be an advantage to farmers and the environment if they were managed properly, but these agreements need to be managed with care to ensure that farmers are not exploited by big corporate players and their lawyers. That is why the noble Earl, despite being a lawyer, is quite right to pursue these amendments. They would make it clear that the covenant was a formal legal document, signed as a deed, which one hopes would ensure that the farmer received appropriate legal advice.

The noble Earl is also right to probe, in Amendment 274, what organisations that are not public bodies or charities can be defined as responsible bodies for the purpose of this clause. We agree that there are real concerns about for-profit organisations entering this market, with the potential lack of responsibility and knowledge that many of these organisations will have. We need to be assured that all the organisations described as responsible bodies have expertise in conservation. Since many of these agreements will be for the long term, we need to be clear about what happens if a responsible body holding a covenant subsequently becomes insolvent or ceases to exist, or simply sells that covenant on. A number of noble Lords have probed the consequences that could occur from applying those covenants in perpetuity, and the impact that that could have on the individual.

It seems to me that we need answers to this, and the noble Earl's amendments go a considerable way to addressing it. I also agree with the amendments laying greater duties on the Secretary of State to manage the covenants in those circumstances, particularly in the longer term. As the noble Baroness, Lady Jones of Moulsecoomb, said, what is the point of having the stopgap of the Secretary of State if he is not required to do anything, as is the case under the current provisions?

In conclusion, I very much believe that the noble Earl has made a powerful case for these amendments. Alarm bells are ringing about the actions we need to take to get this right. I hope that the Minister has heard the concerns from around the Chamber. It would be helpful if, as a matter of urgency, she was able to meet the noble Earl—and I hope that we will be able to find a solution and a revised wording of the Bill.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I thank noble Lords for their consideration of this part of the Bill. I also take this opportunity to thank the Law Commission, as this part of the Bill is based on its work and the draft Bill that it prepared. Its ongoing support as the Bill has moved through the various parliamentary stages has also proved invaluable.

Conservation covenants are an important and flexible tool for the environment's conservation and improvement—and I know that there is some frustration that this was not drafted as a specific Bill, but it is right that we legislate for them now rather than waiting. They complement other measures in the Bill, such as biodiversity net gain. Conservation covenants are private agreements entered into voluntarily to deliver long-term conservation outcomes for the natural and heritage

features of the land—and I welcome the broad support of noble Lords from around the House, particularly that of the Green Party. Importantly, the legislation allows for covenants to bind successor landowners, which ensures that they can deliver lasting conservation for future generations; the legislation also allows for them to be modified or discharged to cater for changing circumstances.

Amendments 266, 267 and 268, tabled by the noble Earl, Lord Devon, seek to ensure greater formality in the process for creating these covenants. Before I get into the detail, I emphasise again that these agreements are voluntary, and a covenant needs to be exercised as a deed to be entered as a land charge, which I hope goes some way to reassuring noble Lords, including the noble Baroness, Lady Jones of Whitchurch. Conservation covenants cannot be imposed—rather, the parties will need to work together to set them up in line with the requirements set out in the Bill. As these are legally binding agreements, there needs to be a degree of formality, and the Bill's provisions ensure that there is.

3 pm

Agreements must be in writing, signed by the parties, and must make clear that the parties intend to create the covenant. I assure all noble Lords that the Government's guidance will reinforce these points and explicitly encourage parties to secure legal advice before entering into covenants. A covenant would be effective only against future landowners, in perpetuity or otherwise, once registered as a local charge, as an additional step needed beyond entering into the agreement itself. I also reiterate that if a landowner wanted to change or discharge the covenant they negotiated or inherited, they could agree this with the responsible body. Ultimately, if they could not reach agreement, they could go to the lands tribunal for a decision. I hope that this reassures my noble friend Lord Caithness.

The Government wish to allow flexibility, given the wide range of scenarios in which covenants might be used. Parties should be allowed to shape their covenants to their circumstances, including on matters such as duration and consideration, and to convey their intention to create their covenants and execute them in the manner that they so wish. The parties can set the duration of the covenant to suit their particular circumstances. The Bill simply ensures that, where the parties choose not to specify duration, a default duration in perpetuity applies. Guidance will make this very clear and will encourage the parties to seek independent legal advice, so that decisions taken about duration are taken with a full understanding of their implications.

My noble friend Lord Trenchard was also concerned about enforcement. Where one party breaches a conservation covenant, it falls to the other party to take enforcement action. They can aim to resolve the breach themselves, use alternative dispute relation mechanisms or ultimately take the matter to court. A range of court remedies are potentially available, including injunctions to stop damaging activities, orders requiring performance of the covenant and awards of exemplary damages to ensure that there is no financial gain from the breach. I will write to my noble friend with the details on his other points.

I fully appreciate the sentiment behind these amendments, as do the Government. However, we feel that adopting them would curtail some of this flexibility. These amendments might even lead to certain covenants being invalid, where the additional requirements proposed by the noble Earl, Lord Devon, were not met, resulting in lost conservation opportunities. The approach in the Bill as drafted gets the balance right. It was also supported by over 80% of the respondents when the Law Commission proposed it in its consultation. The noble Earl, Lord Devon, also asked about an impact assessment. We have already published one on biodiversity net gain, which is available in the Printed Paper Office and on the parliamentary website.

Amendment 269, from the noble Earl, Lord Devon, aims to ensure that payment and access obligations are given statutory effect. I can reassure him that this is already accounted for. Clause 111 as currently drafted already gives statutory effect to ancillary provisions which support the performance of the covenant's core provisions. Paragraph 983 of the Explanatory Notes explicitly cites a payment provision as an example of an ancillary obligation. The legislation needs to be cast broadly enough to capture a range of different ancillary provisions, and it would not be possible or appropriate to list all potential types of ancillary provision in the Bill.

Amendment 274, from the noble Earl, Lord Devon, limiting responsible bodies from the charitable and public sectors to those whose sole purpose is conservation, risks excluding some bodies with a wider focus. The national parks authorities are a good example. They have an important conservation function, though clearly it is not their main purpose, and they may wish to become responsible bodies to support that function. For-profit companies, such as the water companies, may have relevant expertise, and there may be some landowners who would simply prefer to enter into a covenant with a body outside the public or charitable sectors. The Government's consultation in 2019 proposed broadening the scope of the bodies that could apply to those from the for-profit sector. The majority of respondents were in favour. Responsible bodies will be integral to conservation covenants and what they deliver, and the Government do not want to rule out any organisations that have the expertise and resources to help deliver the long-term conservation benefits that these covenants will make possible.

I should add that any prospective organisation must be designated by the Secretary of State, who will make their decision based on published designation criteria. It is highly unlikely that developers would meet the eligibility criteria, as a number of noble Lords have suggested; conservation is unlikely to be one of their core functions. The National Farmers' Union and other key stakeholders, such as the Country Land and Business Association, have been involved in developing these criteria to ensure that they are robust. I hope I can reassure the noble Earl that there will not be some sort of unregulated free-for-all, with unscrupulous organisations designated and trying to trick unsuspecting landowners into signing up to unfavourable terms.

Amendment 276, tabled by the noble Earl, Lord Devon, deals with the role of the Secretary of State as custodian of covenants or holder of last resort—I know this is of

[Baroness Bloomfield of Hinton Waldrist]
concern also to the noble Baronesses, Lady Jones of Moulsecoomb and Lady Jones of Whitchurch. This really is an important safeguard, as it ensures that the conservation covenant can continue in the absence of a suitable responsible body. But we do not feel that it would not be right to legally require the Secretary of State to perform the responsible body's obligations, as the amendment proposes. These obligations could be very onerous and financially very sizeable, resulting in significant financial liabilities to the public purse, but I do hear the concerns raised.

In response to the noble Earl's scenario, there would of course be recourse to a number of courts and law tribunals, but, fundamentally, the Government will designate only responsible bodies that want to do conservation. As I have said before, predatory multinationals would not fall into this category. We will write in response to his specific example on damages, to give a more considered response, and would be happy to arrange a meeting between officials and Ministers for the noble Earl and the team.

Finally, I turn to Amendment 276A, tabled by the noble Lord, Lord Cameron of Dillington. Given that the main role of a responsible body is to oversee the performance of the landowner's obligations under the covenant, this amendment does not appear to be appropriate. A responsible body would not acquire any rights in land by virtue of entering into a conservation covenant, and if the responsible body wanted to buy rights of common land, or benefit from rights of common land for any reason, it could do so in the normal way, as the noble Lord, Lord Inglewood, suggested. To reiterate, and to reassure my noble friend Lady McIntosh of Pickering, the noble Baroness, Lady Jones of Moulsecoomb, and the noble Lords, Lord Inglewood and Lord Oates, conservation covenants will not override pre-existing rights, whether statutory rights or private property rights. Commoners—people who have rights in or over common land—will therefore be able to enforce their rights, regardless of the later creation of a conservation covenant. The noble Lord, Lord Inglewood, was absolutely right to emphasise the importance that they have to our cultural heritage.

I thank noble Lords for raising all these important points regarding the implementation of conservation covenants. I welcome the broad agreement that, on balance, they are a good thing. It is a technical area, but it is important that we get it right. I ask noble Lords not to press their amendments.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): I have received one request to speak after the Minister, from the noble Lord, Lord Lucas.

Lord Lucas (Con) [V]: My Lords, I am comforted, to some extent, by what my noble friend has said, but I very much hope that I might be included in the meeting that she proposes between officials and the noble Earl.

It is extremely important to get the practical application of this system right. In particular, I remain extremely cautious about broadening the ambit of responsible bodies to include organisations which are fundamentally commercial. What is needed here are bodies that are fundamentally ecological—that have an established long-term interest in getting the ecology of an area right. National parks obviously come within that—that is not a problem, as far as I can see—but something with a more commercial bent, however ecologically expert it is, seems a very questionable road to go down and likely to result in a great deal of heartache.

When it comes to my own meeting with officials, I will certainly be interested in the way in which perpetuity is so comfortable to them here but is such a problem when it comes to biodiversity gain. I cannot see the logic that goes through here. Biodiversity gain is, by and large, negotiated with people who are well informed, well set up and, in particular, stand to make a large amount of money from a transaction where the costs of the biodiversity gain are not going to be substantial. Here, we are dealing with people who are in a very different relationship with the responsible body.

Perpetuity seems to me to be right, because we are trying to do something for the very long term—but it has to be perpetuity with flexibility. To have perpetuity without flexibility, as we have here, or flexibility without perpetuity, as we have with biodiversity gain, seems the wrong road to go down. I very much hope that we will make some progress on that between now and Report.

Baroness Bloomfield of Hinton Waldrist (Con): I believe that the Government and my noble friend are in agreement on the criteria for selecting a responsible body, whose main purpose or function must relate to conservation. I would be delighted to include him in a future meeting with the noble Earl, Lord Devon, and officials and perhaps we could address some other concerns at that meeting.

The Earl of Devon (CB): My Lords, I am grateful to all noble Lords who have participated and voiced, in general, considerable support for the amendments that I have proposed. It is particularly pleasing to hear support from the Green Party—despite the aristocratic proposer of these amendments—and from other Benches; it is much appreciated. I am pleased to hear that the Government take these amendments seriously and are willing to meet me; I look forward to that meeting.

A number of points were raised. The noble Earl, Lord Caithness, raised the issue regarding landlords and tenants. As I read the legislation, tenants will be able to enter into conservation covenants so long as they have at least seven years left on their tenancy. Of course, what happens on reversion of the tenancy once they have converted a farming field into a bog is yet another complexity that I did not have time to get to in my hypotheticals.

I also appreciate the support from the noble Lord, Lord Lucas, but, contrary to him, I think there is a role for for-profit companies within this marketplace. It is an exciting opportunity for environmental land management to bring in private finance but, if we are to do that, we absolutely must control and manage it, which is what these amendments are designed to do.

I thank the noble Baroness for the Government's reply; she suggested that covenants can be easily modified or discharged in sites in application to the lands tribunal. In response to the Law Commission's inquiry, the Bar

Council pointed out that even the most modest application to the lands tribunal costs at least £50,000, and I am not sure that a small farmer would be willing to spend that to modify a covenant. She says that, to be registered as land charges, they must be executed by deed. I do not see that in the legislation and, as I understand it, they have effect as land charges even if they are not registered, so they still have this quasi-governmental function. As I understand it, they also continue to permit the responsible body to enforce exemplary damages, whether they are registered or not. Those are very significant impacts.

I am afraid that the noble Baroness may have misunderstood my Amendment 274, because it did change. The amendment is to the provision that applies to the for-profit, non-charitable, non-local authority entities. My aim is to ensure that any entities designated thereunder have conservation as their core function because, at present, the legislation does not permit for that. It is absolutely important that, if we are to have private enterprises involved, they need to be conservation enterprises; they cannot be banks that are just seeking to make a profit in developing an ecosystems services arm.

Finally, as to Amendment 276, while it is right that conservation covenants should be preserved, the reason why large payments will be made under them is because the landowner—the farmer—has to spend a lot of money maintaining the land in that way. If no payments can be made by the Secretary of State when that person takes responsibility for the covenant, there will be income for the land to be maintained in the way that it is meant to be. If payments are not made, the conservation purposes will necessarily fall away or the farmer will once more go bankrupt. There are a huge number of issues to be dealt with here. I do not think it is enough that this can just be packed in at the back end of Committee; we have a lot more work to do and I look forward to meeting the Minister and the Bill team. On that basis, I beg leave to withdraw the amendment.

Amendment 266 withdrawn.

Amendments 267 and 268 not moved.

Clause 110 agreed.

3.15 pm

Clause 111: Conservation covenants

Amendment 269 not moved.

Clause 111 agreed.

Clause 112: Responsible bodies

Amendments 270 to 275 not moved.

Clause 112 agreed.

Clauses 113 to 123 agreed.

Schedule 17 agreed.

Clause 124 agreed.

Clause 125: Body ceasing to be a responsible body

Amendment 276 not moved.

Clause 125 agreed.

Clauses 126 to 129 agreed.

Amendment 276A not moved.

Clause 130 agreed.

Schedule 18 agreed.

Clauses 131 and 132 agreed.

Schedule 19 agreed.

Clause 133: Amendment of REACH legislation

Amendment 277 not moved.

Clause 133 agreed.

Amendment 278

Moved by ***Lord Goldsmith of Richmond Park***

278: After Clause 133, insert the following new Clause—

"Amendments of Schedule 7B to the Government of Wales Act 2006

(1) Schedule 7B to the Government of Wales Act 2006 (general restrictions on legislative competence of Senedd Cymru) is amended as follows.

(2) In paragraph 9(8)(b) (exceptions to restrictions relating to reserved authorities)—

(a) omit the "or" at the end of paragraph (v);

(b) after paragraph (vi) insert "; or—

(vii) the Environment Act 2021."

(3) In paragraph 11(6)(b) (exceptions to restrictions relating to Ministers of the Crown)—

(a) omit the "or" at the end of paragraph (v);

(b) after paragraph (vi) insert "; or—

(vii) the Environment Act 2021."

Member's explanatory statement

Several provisions of the Bill give both the Welsh Ministers and the Secretary of State functions relating to Welsh devolved matters. The amendments made by this new Clause enable Senedd Cymru to remove the Secretary of State's functions relating to Welsh devolved matters without the Secretary of State's consent.

Amendment 278 agreed.

Amendment 279 not moved.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, we now come to the group beginning with Amendment 280. Anyone wishing to press this or the other amendment in this group to a Division must make that clear in debate.

Amendment 280

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

280: After Clause 133, insert the following new Clause—

"Research into impact of offshore windfarms

(1) The Secretary of State may by regulations provide that before planning permission is granted, research must be undertaken by companies seeking to construct and operate offshore windfarms into the cumulative impact on—

(a) the environment,

(b) marine life, and

(c) sea mammals,

of the construction and operation phase of such windfarms.

(2) Regulations under this section are subject to the affirmative procedure."

Baroness McIntosh of Pickering (Con): My Lords, I am grateful for this opportunity to debate Amendment 280 standing in my name. I am delighted to have to the support of the noble Lord, Lord Teverson. I also wish to speak briefly on Amendment 285 in this group, in the name of the noble Baroness, Lady Jones of Moulsecoomb. I would like to think that my noble friend the Minister will take the opportunity to confirm that there is currently a moratorium on hydraulic fracturing both on land and at sea in England which, in that case, would be extremely welcome. It is good, however, to debate the issue in the context of Amendment 285. I am mindful of how any proposal for fracking, particularly on land, causes great consternation among local people, as we saw in North Yorkshire.

To return to Amendment 280, may I ask the Minister for what reason there is currently no requirement for an undertaking to perform any form of research before planning permission is sought or granted in connection with offshore wind farms? My noble friend will be aware of what witnesses who appeared before the EU Environment Sub-Committee—so ably chaired by the noble Lord, Lord Teverson, until it wound up earlier this year—told us about the increasing urbanisation of the sea by the introduction, increasingly, of turbines, and the sea-change, if noble Lords will pardon the phrase, and the stepping-up of wind farms that we are currently seeing. One witness in particular referred to how this changes the ecology and the whole ecosystem, in particular by introducing fixed structures, cables, armoury, turbines and so on. What assessment has been made of the cumulative impacts, not just at the construction phase but more especially at the operational phase? I know that the Minister is aware that I am concerned about the impact at the operation phase of wind farms on porpoises, dolphins and minke whales.

We should also be aware that offshore wind is a very new sector. Because it has expanded so incrementally and so quickly, having been around for only 10 years, we have never actually paused to consider what the repercussions will be on the seabed, marine life and mammals of extensive construction over such a short period of time. I understand that the focus to date has been largely on what the disbenefits might be to marine life of the construction phase, but my understanding is that no research has been undertaken to consider what the impact will be of the operation phase. I know that the Danes have done some work on this; at one stage, they stopped building wind farms on land because the farmers complained about the constant hum and the impact they were having on their animals.

I am equally aware that the Minister is aware—he has referred to this previously—of the tensions between offshore wind farms and other uses of the sea, in particular the North Sea, such as, for example, fishing and shipping. I am not yet convinced that the Government have set out how these tensions will be resolved. I also understand that, in relation to the North Sea, there is currently no government forum to facilitate international co-operation and, for example, the sharing of knowledge or, perhaps, the ability to undertake joint research in this regard. As the hosts of COP, which I am sure we are all immensely proud of, will the Government use that as an opportunity to show leadership and set out how the UK will deliver their offshore wind ambition in a sustainable way, and with international partners as well?

I will end with a couple of questions; perhaps we can carry on the discussion, now that we are planning to meet, which I warmly welcome. I felt very much left out, so my heart is severely warmed by this. How will the Government resolve the tension between competing interests such as wind farms, fishing and shipping, particularly in the context of the North Sea but also in other areas where this takes place? Will they take the opportunity to commission research on the potential cumulative impacts before further construction, or planning permission is given for the siting, of wind farms? Will the Minister commit to a more strategic and precautionary approach and set out exactly how marine life and mammals operating within the North Sea will be protected going forward?

Baroness Jones of Moulsecoomb (GP): My Lords, it is a pleasure to follow my friend opposite, the noble Baroness, Lady McIntosh of Pickering. I sort of see the point in her amendment; I had better not say that I support it, because I would probably get rude emails from the Green Party saying it has not been party policy, but obviously I would be happy to discuss it. On the issue of not being invited to meet the Minister, the Greens still have not been invited to meet him, and I cannot decide whether that is because we completely trust the Minister to understand everything that we are saying; I cannot think of any other option. We obviously trust the Minister completely to take our point of view back to Defra.

My amendment is on something that I care about very deeply, namely fracking. I have tabled it with a view to banning it once and for all. In doing so, I want to celebrate all the hard work of campaigners and activists across the country who delivered massive opposition against this dirty and dangerous polluting industry, often in the face of poor policy decisions by the Government and the fracking industry's might-is-right attempts to quash them. In particular, I applaud the Preston New Road campaign in Lancashire. It was a thousand days of protest by the anti-fracking Nanas, a bunch of mainly older women led by Tina Rothery. They fought so hard in the face of well-financed and rather nasty, threatening behaviour by Cuadrilla.

In the 2019 general election, it was announced that we had won on this particular issue. The Conservatives, along with every other political party in Parliament, declared themselves to be against fracking. However, we in the UK are still supporting fracking in Argentina, which means we are offshoring the horrid stuff, so we do not have to count all the carbon emissions and so on, and Namibia is being exploited by a Canadian company. Ireland called for an international ban this year, and calls are now growing for an Irish-led global ban on fracking. I would be interested to hear from the Minister whether that is something that the Government might support.

Here in the UK, there are still legal loopholes that could allow fracking to be forced on communities. I am most worried that, even if the Secretary of State did reject planning permission for fracking, this could be overturned in a judicial review. The Government may have changed their policy to be against fracking but, if this conflicts with the law in a judicial review, their policy will be ruled unlawful. For this reason, we must change the law to reflect what is now common agreement: that fracking is banned in the UK. I hope that the Minister will agree.

Lord Teverson (LD) [V]: My Lords, I am very pleased to follow the noble Baroness, Lady Jones of Moulsecoomb, and her strong advocacy, which I very much respect. I am going to speak to Amendment 280, to which I was very pleased to put my name, alongside that of its proponent, the noble Baroness, Lady McIntosh of Pickering. As the noble Baroness said, this is an area that the EU Environment Sub-Committee looked at. When we started looking into the areas of research, planning and the various impacts of wind farms, we found far more questions than answers. I look forward to the Minister coming back in this area.

I clearly welcome the renewable energy programme that we have. Obviously, offshore wind—whether it be floating or on the seabed—is going to be a very major part of that. However, it is important to make sure that that programme has the least negative impact on the environment, whether it be all the marine areas that the noble Baroness talked about, or birdlife—seabirds and migratory birds as well. There is not enough research in this area; there ought to be research for the future shared among all the countries around both the North Sea and the Celtic Sea, so that we can make sure that we locate turbines in the most favourable way to protect—and, in some areas, to encourage—environmental life at marine level. As the noble Baroness said, there might be positives in this area as well.

I want to ask the Minister about the fora that we deal with now on energy in the North Sea. We have been excluded—I think unreasonably—from one of the main European ones, which was not an EU institution, and included us in the past. However, I understand that there is a new forum that we might be involved in where these discussions are taking place. This is important because, clearly, the locations of wind farms in the North Sea and, in future, the Celtic Sea should be co-ordinated, if for no other reason than to make sure that as much infrastructure as possible is shared. I would be interested to hear from the Minister how we will ensure, as we start to develop the Celtic Sea as well, that we do not have multiple landing points and multiple cables put down, as has happened in the North Sea. We should have some co-ordination there to minimise damage.

3.30 pm

I will not detain the Committee further, except to say that this is a key area which will be increasingly important because of our renewable energy programme, much of which is based offshore. We are going to be moving ever more from ground-based or sea-based turbines to floating wind turbines; I am sure there will be differences there in ecological impact, so how will that be taken into consideration, in terms not just of research but of planning and, particularly, keeping our marine plans up to date and helping us make the right decisions in this area?

Baroness Fox of Buckley (Non-Afl): My Lords, I am here to speak against Amendment 285. It seems to me that making fracking effectively illegal is an extreme reaction. That seems short-sighted. It closes down any possibility of looking at the issue again or objectively, and potentially feeds into an atmosphere in which we cannot have a sensible debate on energy policy because we start criminalising innovations every time they come along. We have heard that the Government have a moratorium on fracking. I feel that is overcautious and potentially unhelpful but, regardless of that, to make it illegal feels completely over the top.

I understand that fracking is controversial as a method of drawing shale gas from the ground. Certainly, as the noble Baroness, Lady Jones, explained, environmental activists have been hyperactive in ensuring that there is a popular image of fracking as dangerous and dirty, but I do not know that that should pass for science or evidence. I am not for or against fracking, but I am against moralising on the issue and, right from the start, I have been shocked by the venomous demonisation of what, after all, is just an energy source. There has been a lot of misinformation and scare stories around the issue.

I call, rather, for a calm discussion about the kind of tremors caused—they would be caused by any mineral extraction, whether quarry blasting or any major civil engineering project. I worry about a tendency to portray the worst-case scenario, with scary stories of earthquakes, water contamination and poisoned water tables. I feel that is a distinctly evidence-free approach and I do not feel the Bill should be associated with something quite so ideological in that way. I am calling for a more neutral and nuanced cost-benefit analysis approach.

I remember when the former Labour MP and fracking tsar, Natascha Engel, said that government policy was being driven by environmental lobbying rather than science, evidence and a desire to see the UK industry flourish. Indeed, I was shocked by how many rejoiced at what Ms Engel described as a "perfectly viable" industry being wasted, regardless of that industry's massive potential for jobs and local prosperity in places such as the north-west, North Yorkshire and north Derbyshire. It promised to bring energy prices down. If it did not work out, fine, but to celebrate that as a big gain seemed to me inappropriate.

I also worry about the billions being spent on importing gas, which could be better spent. I have plenty of ideas, particularly in health and social care and in rebuilding post-Covid society. I am not keen on dependence on Russian gas, but even beyond the question of energy security, it seems to me that, even within the terms set by net zero—even though that is not a target I am particularly obsessive about, as others are—shale gas production could have had few carbon emissions, far fewer than hydrocarbons. It always surprises me, when we talk about reaching carbon emission targets, that we would rule out getting gas out of the ground in the UK, rather than importing it. It feels, with nuclear

[Baroness Fox of Buckley]
power as well, that every time a new energy solution is proposed that is not wind or solar, we get a kind of moral panic led by activism.

Finally, the noble Lord, Lord Teverson, talked about the problem of finding any energy source that will not disrupt the environment and nature. I was involved in an argument some years ago after Lancashire County Council rejected an application for exploratory drilling—not in relation to the safety of fracking per se, but based on the negative visual impact, increased traffic on rural roads and that kind of environmental disruption. Would not such concerns condemn industrialisation in general? How can there be economic development without traffic, or some changes to the skyline or, indeed, to the environment? I think we need that.

My priorities are to generate wealth—not personally; I have never been able to do that—to see that society is able to generate wealth and, in the process, make people's lives more comfortable and open opportunities for humanity. We need industrialisation in general, and more energy production in particular, and that will involve infrastructural environmental disruption. Shale gas might not be the energy we need, but we should note that the wider ideological rejection of economic growth and progress sometimes afflicts this discussion and we should avoid it. We definitely do not need an amendment to the Bill that would make fracking, or any energy source, illegal. I would even urge the Government to look again at the moratorium.

Lord Cameron of Dillington (CB): My Lords, I shall speak to Amendment 280 in the name of the noble Baroness, Lady McIntosh, and the noble Lord, Lord Teverson. This is a very interesting area and it is important that we continue to carefully research the impact of individual wind farms, as well as—perhaps more importantly, as the noble Lord, Lord Teverson, mentioned—their cumulative effect on many species, from benthic invertebrates through sand eels and fish to birds and the larger sea mammals. I shall start by highlighting the approach taken on this subject by the National Audubon Society, the equivalent of the RSPB in the USA. It says, and I gather that many scientists here agree, that climate change is the biggest enemy of our avian population. As wind farms are one of the best weapons in our arsenal to fight climate change, we must be careful about putting too many barriers in the way of their development, albeit with a clear understanding of their effects and what mitigation could be put in place.

The noble Baroness, Lady McIntosh, is right that research on the effect of offshore wind farms on marine mammals and cetaceans is still, shall we say, in its infancy. However, the research on wind farms and their effects on birds is reasonably well advanced, so I shall focus on that. The Scottish Government, through their all-encompassing research programme on marine energy, ScotMER, have taken a very good strategic approach to this issue, working with research institutions, notably the UK's CEH, which I happen to chair, alongside some important private-sector players; the Swedish company Vattenfall and the Danish company Ørsted being two good examples.

On the question of where offshore windfarms should be situated, we are pretty well aware of their effects during the seabird breeding season. By putting GPS tags on birds during the breeding season, we now know precisely where wind farms should not go, which is a very good start. The winter season is more difficult, however. GPS tags are not yet light enough or durable enough to provide reliable long-term information during this highly sensitive period. I call it a sensitive period because most seabird mortality happens during winter, and winter deaths are the critical factor in the survival of their colonies—more so, it seems, than their breeding success.

The main problem encountered during winter by our seabirds is the lack of food. The main food they eat are sand eels, which, as their name indicates, live in the underwater sands of the North Sea, let us say, where most wind farms are. Maybe the abundance of sand eels is affected by the sands themselves being disturbed by the building of wind farms and, more importantly perhaps, by the submersion of miles and miles of cable. But we do not yet have the data on that.

However, I should point out at this stage that, where you have wind farms, you will probably not get fishing boats, because of the likelihood of drift and getting the nets entangled in turbine towers. In the long term—we do not yet know—by building wind farms, we might well be creating the equivalent of what should be happening in our marine protected areas in terms of no-go fishing areas, where many species, including sand eels, could be given a real chance to flourish. Wind farms could be the best thing for both our abundance of fish and our birds. Who knows?

Coming back to the existence of offshore wind farms and their effect on birds, it is notable that the worst effects are on high-flying birds such as gannets and kittiwakes, whereas low-flying birds such as razorbills, guillemots and shearwaters tend not to be too troubled by them. Kittiwakes seem to be the worst affected species, and it is good that Ørsted, for instance, is building artificial kittiwake nesting sites at the Hornsea Three development off the Yorkshire coast by way of mitigation.

Returning to the amendment, I am not sure that its emphasis is right. Private companies already have to carry out basic environmental monitoring exercises both before and after their developments. As I have said, some of them go very much further, with Vattenfall actually paying for a PhD student to assist in the ScotMER research project I mentioned just now.

In many ways, having private companies judge the environmental viability of their own project is not as good as getting them to contribute to more strategic research into the overall cumulative effects of offshore wind farms and the best ways of mitigating their effects. The current view is that having lots of small turbines placed close to each other is more damaging than having modern large turbines placed a kilometre or so apart, but we do not yet really know. Is it best to leave 2-kilometre-wide corridors through wind farms or does this only confuse the situation? Further research has found that if you paint one blade of each turbine all black, the birds seem to keep away—but again, more data is needed on this.

Coming back to the kittiwake issue, and on the subject of strategic planning, there is a big question as to whether we should be thinking of the kittiwake population as a local problem or, as they do in the United States, thinking of the kittiwake population as a whole. In other words, if a colony on the Yorkshire coast is threatened, maybe it would be better to encourage more kittiwake growth in Wales or Cornwall, and not in Yorkshire. We might have more overall success that way. Again, more research is going on in those fields. If overwintering is the main problem, as I said, we should definitely combine our research strategies, not only with all the UK nations involved but also, as mentioned by the noble Baroness, Lady McIntosh, with other countries such as Iceland, Norway, Denmark, et cetera.

In conclusion, the problem is a very good one to raise in the context of this Bill. It is an important issue and I thank the noble Baroness for raising it, but I am not sure that the amendment as it stands quite puts its finger on the right solution.

Lord Khan of Burnley (Lab): My Lords, I will speak to Amendment 280 in the name of the noble Baroness, Lady McIntosh of Pickering, and Amendment 285 in the name of the noble Baroness, Lady Jones of Moulsecoomb. It is a great pleasure to follow the noble Lord, Lord Cameron of Dillington. It is great to see him in person, although we also appreciate seeing him virtually and hearing his expertise.

Amendment 280 would allow the Secretary of State to gain a stronger understanding of the impact of offshore wind farms on the environment, marine life and sea mammals. The UK is a global leader in offshore wind—Prime Minister Boris Johnson has said that we are the Saudi Arabia of wind power—but, with the energy source powering millions of homes across the country, it is also an area that the Government have identified for growth, with the world's largest wind farm under construction off the north-east coast. To allow such expansion, Ministers have been uncharacteristically generous in extending the work visa waiver scheme for relevant workers.

As the noble Baroness, Lady McIntosh of Pickering, has said, there has not been enough research in this area; the noble Lord, Lord Teverson, said that we must look at the most favourable way to ensure that the decisions are right. The noble Baroness looked in particular at the impact of wind farms not just operationally but from a construction point of view on the ecosystem, looking at the fixed structures and turbines themselves.

3.45 pm

Wind farming is an important part of our energy mix. Concerns have been voiced for many years over its impacts on the environment, including the potential for displacement of breeding grounds and broader destruction of ecosystems. I hope the Minister can explain the work being undertaken by the department to expand its evidence base in this area. As noble Lords have said, more data is needed.

Amendment 285 is on a very different but equally important topic. I am a resident of Lancashire so speak with great concern about the impact of fracking, as the noble Baroness, Lady Jones of Moulsecoomb, said, and pay tribute to the activists at the Preston New Road site, who have been there for over 1,000 days—I visited one afternoon in solidarity with them. In 2018, Cuadrilla was given permission to frack by this Government, against the wishes of local people and local councils. When it started, in just two months 57—I repeat, 57—earthquakes were detected in Lancashire. Cuadrilla actually stopped fracking five times because it triggered earthquakes that were bigger than government rules allowed. Even more disturbingly, a year later an earthquake measuring 2.9 on the Richter scale led to a review by the Oil and Gas Authority. Worryingly, it concluded that it was not possible to predict the probability or size of tremors caused by fracking.

A few months later, the Government launched a moratorium halting fracking and exploration with immediate effect. The campaign group Friends of the Earth was naturally delighted, saying:

> "This moratorium is a tremendous victory for communities and the climate. For nearly a decade local people across the country have fought a … battle against this powerful industry. We are proud to have been part of that fight. We must now ensure that legislation is passed so that the ban is made permanent."

Where is the legislation? Many years later, it is not here in the Environment Bill. Why? We now know from the Lancashire experiment that fracking is a risky way of extracting dirty energy. France, Germany, Ireland, Bulgaria, New York state, the Netherlands, Scotland and Wales all agree. Many risks surround fracking. The Government know this, or they would not have called a moratorium.

The noble Baroness, Lady Fox of Buckley, made some interesting points. Unfortunately, I cannot agree with any of them. According to the British Geological Survey, groundwater may be contaminated by extraction of shale gas, both from the constituents of shale gas, the formulation and deep injection of water containing a cocktail of additives used for hydraulic fracturing, and from flowback water, which may have a high content of saline formation water. In England, groundwater is used to supply a third of our drinking water.

The assertion that fracking will lead to a jobs boom is also not true; Cuadrilla stated in its Lancashire licence application that just 11 jobs would be created at each of the two sites. Most importantly, scientists agree that, if we are to avoid dangerous levels of global warming, fossil fuels need to stay in the ground. With every licence application comes huge environmental concern, local opposition and widespread protest. As mentioned in the other place by Ruth Jones MP, we believe this Bill is the Government's chance to tell the fracking companies that their time is up. However, given the choice between doing something bold and doing nothing at all, we know what Defra under this Secretary of State always goes for.

Lord Goldsmith of Richmond Park (Con): I thank noble Lords for their contributions to this debate. Although energy production is not directly covered by the scope of the Bill, its impact on the environment clearly is hugely important. The urgent need to decarbonise our economy means that we need to greatly increase our deployment of renewable energy projects in the coming years.

[Lord Goldsmith of Richmond Park]

I thank my noble friend Lady McIntosh for Amendment 280. She is right that the development of offshore wind farms needs to be achieved in a way that protects fragile marine environments and, as she said, the many mammals and other forms of marine life that live there. It is all too common when pursuing a solution to one problem to simply brush aside the creation of other problems in the excitement. I pay tribute to her for raising these important issues, as she has done on many occasions in this House. I reassure her that applications for development consent for offshore wind farms made under the Planning Act 2008 are required to undertake an environmental assessment that includes consideration of the impact of development on marine life and sea mammals. This process can be used to secure mitigation to minimise any adverse effects of development.

I can confirm to my noble friend that Schedule 4 to the 2017 infrastructure planning regulations sets out the environmental information that developers have to provide in the environmental statements that accompany applications. This includes information on the cumulative impact. However, I am very happy to have that discussion with her when we meet shortly.

Both the examining authority and the Secretary of State are able to request further information during the application process if they consider that the information supplied by the applicant is insufficient. The information provided allows the Secretary of State to decide what level of mitigation or compensation should be required if there are adverse impacts on the marine environment. The Secretary of State must take into account both the benefits and the impacts of the project and any proposed mitigation or compensation in deciding whether to grant or refuse development consent.

More widely, the Secretary of State may set out in the relevant national policy statement any particular information applicants need to provide as part of their application for development consent for specific technologies. As my noble friend knows, the Government are in the process of updating the national policy statements for energy, and intend to publish the revised plans by the end of this year. There will be a full public consultation, as well as an opportunity for parliamentary scrutiny, before the updated statements are designated.

Supported by an investment from the Treasury's shared outcomes fund, Defra is also leading work to improve the understanding of environmental impacts from construction, as well as looking at how we can reduce the impacts of underwater noise. We are also developing a mechanism for introducing net gain through offshore wind deployment and improving the accessibility and provision of data to improve consenting and monitoring. Defra is working very closely with BEIS, environmental NGOs and the offshore wind sector to make sure that any such mitigation or compensation is both effective and deliverable. The Government are also considering how future developments can be planned and delivered in such a way that any adverse environmental impact is significantly reduced.

In response to the noble Lord, Lord Teverson, and my noble friend Lady McIntosh, the offshore transmission networks review, which is led by BEIS and Ofgem, is currently working to increase co-ordination of offshore transmission to reduce, we hope, the overall amount of new offshore investment that is going to be needed to achieve targets. I hope this reassures my noble friend and that she feels able to withdraw her amendment.

I move on to Amendment 285, in the name of the noble Baroness, Lady Jones of Moulsecoomb. It is not possible to have too many meetings with the noble Baroness, and so I would be delighted to have more. The Government have always been clear that the development of domestic energy sources, including shale gas, must be safe, both for communities and for the environment. The Minister, Rebecca Pow, offered numerous assurances on this in the other place, and I am very happy to repeat them now.

In November 2019, the Government set out their position in a Written Statement to the House, in which they stated:

> "The Government will take a presumption against issuing any further hydraulic fracturing consent."

As the noble Baroness has explained, the experience of fracking so far has been costly. There are undoubtedly numerous questions about safety and environmental impacts. In respect of fracking and shale gas development, the Government have taken a science-led approach to exploring the potential of the industry, underpinned by strong environmental and safety standards. Following the events during fracking operations in 2019, which the noble Baroness referenced, the Government subsequently introduced the moratorium.

I add that the latest joint annual *Statutory Security of Supply Report* from BEIS and Ofgem, published on 18 December last year, does not use hydraulically fractured shale gas in any of the security of supply assessments. The Government have no plans to review the moratorium on fracking, nor will we support shale gas exploration unless and until the science demonstrates categorically that it can be done safely for both people and the environment.

I end by thanking all noble Lords for their contributions to this debate. I hope I have been able to reassure your Lordships' sufficiently, so that my noble friend feels able to withdraw her amendment.

Baroness McIntosh of Pickering (Con): I am grateful to all noble Lord who have spoken, and give special thanks to the Minister for his full reply. I am delighted to hear of all the work that is currently ongoing. I am grateful to the noble Lord, Lord Teverson, for his support and confirmation of the issues that we heard during the evidence session in the sub-committee on the environment.

I listened very carefully to all the research that my noble friend—if I may call him so—Lord Cameron of Dillington set out on birds. It showed how much need there is for marine life and mammals to be considered. He mentioned Ørsted doing the research into birds. I do not know why, if it is good for private companies to look into birds, it is not good for them also to do research into mammals. I hope that is something that the Government will explore.

I hope also that my noble friend will be able to tell us what the procedure will be for reducing tensions between fishing, shipping and wind farms. As the

noble Lord, Lord Teverson, mentioned, if we go down the path of floating structures, I imagine that this could be more of a problem to fishing and shipping as well. I obviously pay tribute to the energy that we are harvesting from the seas, but I am grateful to the Minister for setting out the mitigation measures that the Government have put in place.

I have one final word on fracking, in connection with Amendment 285. There are absolutely no economic grounds for fracking; I think that has been proven in this country and elsewhere. It causes distress to local communities, and there are other means of energy. Look at Denmark as an example. It had a torrid time during the 1973 energy crisis, because it had no energy reserves of any note. It has made a comeback, and now it is in a very strong position, because of renewables. There are other forms of energy.

I think the Government's position is quite sound, although I am not saying that I would not like to see a permanent ban on fracking—I am well signed up to that. For the moment, I beg leave to withdraw my amendment.

Amendment 280 withdrawn.

Amendments 281 to 285 not moved.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): We come now to the group beginning with Amendment 286. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Amendment 286

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

286: After Clause 133, insert the following new Clause—

"Strategy for new economic goals to deliver environmental protection and societal wellbeing

(1) Her Majesty's Government must prepare a strategy for the adoption of new economic goals to deliver environmental protection and societal wellbeing.

(2) "Environmental protection" in subsection (1) means the protection of humans and the natural environment from the impacts of human activity as defined in section 44.

(3) The new economic goals must address—

(a) the environmental targets in this Act,

(b) the Climate Change Act 2008,

(c) the United Kingdom's commitments under international environmental agreements, laws and treaties,

(d) the wellbeing of future generations,

(e) the overseas environmental impacts of UK consumption and economic activity, and

(f) the contribution of the UK's consumption and production to the state of the global environment, in relation to nine planetary boundaries—

(i) stratospheric ozone depletion,

(ii) loss of biosphere integrity (biodiversity loss and extinctions),

(iii) chemical pollution and the release of novel entities,

(iv) climate change,

(v) ocean acidification,

(vi) freshwater consumption and the global hydrological cycle,

(vii) land system change,

(viii) nitrogen and phosphorus flows to the biosphere and oceans, and

(ix) atmospheric aerosol loading.

(4) The strategy must—

(a) set out how the new economic goals will replace growth in gross domestic product as the principal measure of national economic progress,

(b) set out a vision for how the economy can be designed to serve the wellbeing of humans and protect the natural environment,

(c) include a set of indicators for each new economic goal, and

(d) set out plans for the application of new economic goals and indicators to central and local government decision-making processes including but not limited to Central Government Guidance on Appraisal and Evaluation produced by HM Treasury (the Green Book).

(5) In drawing up the strategy, Her Majesty's Government must obtain, publish and take into account the advice of—

(a) experts in the field of ecological economics,

(b) a nationally representative citizens assembly,

(c) trades unions,

(d) businesses,

(e) statutory agencies,

(f) representatives of local and regional government, and

(g) any persons the Secretary of State considers to be independent and to have relevant expertise.

(6) The strategy must be laid before Parliament within 12 months of the passing of this Act.

(7) The Secretary of State must lay before Parliament an annual report on progress towards meeting the new economic goals and their efficacy in delivering environmental protection and societal wellbeing.

(8) A Minister of the Crown must, not later than one month after the report has been laid before Parliament, move a motion in the House of Commons in relation to that report."

Member's explanatory statement

This new Clause requires the Government to prepare a strategy for the adoption of new economic goals that are designed to deliver environmental protection and societal wellbeing and to report annually on these goals.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I will be speaking to Amendment 286 in my name in this two-amendment group. My noble friend Lady Jones of Moulsecoomb, who is following me, will speak to Amendment 288. You can take it as read that I am entirely behind that amendment as well.

I make no apologies for referring again to the New Zealand living standards framework which guides every decision of that nation's Treasury. That is truly world-leading, and this amendment seeks to take us a long way towards catching up. The amendment might be taken as a continuation of my efforts to help the Minister convince the Treasury that it is operating on flawed assumptions. The Treasury currently acts as though it is there in the interests of that entirely artificial, thoroughly discriminatory and deeply flawed construct, the economy, rather than operating for the well-being and security of people and planet. This amendment would provide a legal framework for change. It is essentially the same amendment that was tabled in the other place by Green MP Caroline Lucas, where it attracted cross-party backing.

[Baroness Bennett of Manor Castle]

This morning I was at an international event talking about how the people are leading on climate and biodiversity crises, with businesses and Governments trailing behind. Our long slog on the Environment Bill—a reflection, as my noble friend said in our last session, of the way the Government have failed to provide the necessary steel in its contents fit for this desperately late year of 2021—means its timing is fortuitous, for today a report was released by the Institute for Public Policy Research, drawing on the views of citizen panels in the South Wales valleys, Essex, Aberdeenshire, Tees Valley and County Durham. All of them offered their views on how the country should reach net zero by 2050 via a series of panels held over 18 months.

4 pm

I go to the agreed conclusions of the Tees Valley and County Durham panel:

"Action to address the accelerating climate and nature emergencies can be about more than staving off the worst; it can be about imagining a better world which we can build together. A future where people and nature can thrive, with resilient local communities, good jobs, successful low-carbon businesses, and where inequalities are reduced and opportunities offered to all. A future where progress is measured"—

I emphasise "measured"—

"by the quality of life, security and wellbeing of all citizens as well as the health of our natural world."

What this is talking about is reprogramming the economy. In practical terms, there are more than 100 recommendations in the IPPR report, ranging from upgrades to local public transport and policies to make it free by 2030, with free bus travel by 2025 as a first step. It also calls on the Government to launch a huge annual green housing scheme, similar to its flagship Help to Buy scheme, to help people replace their gas boilers with green alternatives and make energy efficiency improvements. It urges Ministers to introduce a "right to retrain" scheme for a just transition.

So it is deeply disappointing that we heard today that the Department for Business, Energy and Industrial Strategy is rejecting calls to include a VAT cut for green home improvements, which is the kind of thing that this amendment would surely point towards. This is in the context of our buildings continuing to account for 14% of our carbon emissions, and we are seeing precious little sign of progress. In a letter seen by the *Guardian*, the Treasury Minister said:

"The government has no plans to change the VAT treatment"

because

"this would still not bridge the price gap with gas boilers".

No one is saying that this should be the only measure, but it is certainly a no-brainer.

Turning directly back to the amendment, proposed subsection (3) consists of a long list of the environmental impacts to be considered. In short, it covers the planetary boundaries that we are already exceeding, are at risk of exceeding or, frighteningly in some cases, still do not know where we are but know we are at risk. I draw attention particularly to sub-paragraph (viii) about nitrogen flows, where we are—on one calculation at least—the nation most exceeding those planetary limits and that needs to reduce them by 89%. That, of course, is of intimate concern to the Environment Bill, as it is wrapped up in artificial fertiliser use, factory farming, soil erosion and the management of sewerage. Phosphorus, on 85%, is only marginally less bad and tied with many of the same issues. Proposed subsection (4) addresses the need for new goals, new vision and indicators—something that New Zealand has already done. But, to put it directly in our terms, it makes clear the need to use these in the *Central Government Guidance on Appraisal and Evaluation* produced by the Treasury, otherwise known as the Green Book.

You do not have to rely on the people to identify the need for this amendment. In a recent report for the OECD, a group of leading economists warned that patterns of economic growth are now generating "significant harms", including

"rising inequality and catastrophic environmental degradation."

The report calls for a paradigm shift in the way developed countries approach economic policy—so that, instead of focusing on GDP, they prioritise sustainability, human well-being, inequality reduction and the strengthening of economic resilience. The economists go on to call for a new metric, such as gross ecosystem product, to enable countries to go beyond GDP and integrate the value of nature into all decision-making.

Noble Lords can, of course, read for themselves the details of the amendment, but I draw attention to one final element of it. Proposed subsection (5)(b) says that, in drawing up the strategy, the Government must obtain, publish and take into account the advice of

"a nationally representative citizens assembly".

If the Government want to be world-leading, or at least in the front of the pack, there it is: a method of direct deliberative democracy, by engaging the people in this dreadfully urgent task of tackling the climate emergency, nature crisis and all the pressing environmental and social issues we face. It has a proven pedigree internationally. Look at the progress in Ireland on gay marriage and abortion law, the experiments run here on local issues in England, our national Climate Assembly and the examples with which I began this speech.

I have no doubt that the UK will eventually get to implementing a system something very like this amendment proposes. But we cannot wait. We need it now. I thank all the other noble Lords taking part in this debate, and I look forward to the Minister's response.

Baroness Jones of Moulsecoomb (GP): My Lords, what a pleasure it is to follow my noble friend Lady Bennett of Manor Castle. I would like to thank the Chief Whip for giving us our very own Green group grouping; I think that is very forward-thinking of him. It is probably about time that we had our own space on the Order Paper as well and, of course, Green group debates in the new Session. I really feel we are moving on here.

My amendment touches on the same philosophical question as my noble friend's. Mine is predominantly about clean air, because this is getting very urgent, but it also mentions net-zero emissions. The question is: what is government for and how should it act? If our 20th-century nation state is to develop into a 21st-century sustainable society, the purpose of government should

be to preserve and enhance human health, life and the environment, both for current and future generations. Nations and states are less important than clean air, clean water and a liveable planet.

We need public authorities to have legal duties and the funding to improve the health of people and the environment—particularly air quality, as that impacts on so many other parts of society, including placing a burden on the NHS now and reaching into the far future because of the damage being done to the lungs of children. Whether you are a parish councillor, a Secretary of State, a governor or the Secretary-General of the UN, people at every level of government and governance need to be racing to clean up our planet, to cut our air pollution and to cut back to net zero as soon as possible. I would argue that a liveable planet is actually a human right, and every single person on this earth, now and in perpetuity, deserves it.

The Earl of Dundee (Con) [V]: My Lords, I support these amendments in the names of the noble Baronesses, Lady Bennett and Lady Jones, and will refer to three aspects.

The first is how the pursuit of new economic goals, as here indicated, can be consistent with or complementary to the pursuit of previous and different economic goals.

The second is the need for greater clarity about what they actually are, not least as communicated between government and local authorities.

Thirdly, promoting the joint interest of humans and the natural environment together is not a vague aspiration but instead a concrete aim which deserves to be represented by very specific plans and particular called-for action dates—such as, in the second amendment, net-zero emissions by 2030, an achievement which, of course, benefits not just the environment but, in the context of the first amendment, humans and the environment together.

In the latter terms, these useful and coherent amendments thus assist the Bill's purposes, including initiatives for producing our own food, fuel and housing, and with restoring biodiversity and capturing carbon, while at the same time avoiding negative international impacts, whether in general or from our own exports to others overseas.

Lord Lea of Crondall (Non-Afl): My Lords, I am very pleased to see the relationship with the economy being brought to the fore here for two reasons: one is its inherent importance; the second is the query lurking around somewhere about whether the Bill should have anything to do with the economy. Before Glasgow, that query will be blown out of the water. We cannot just go on saying that we are doing things about greenhouse gases, and about what we might call the coefficient between the growth of greenhouse gases relative to the growth of GDP, and thinking everything in the garden is lovely. It is not; the opposite, I am afraid, is true. We have until Glasgow to make sure we are not blown out of the water when it comes to our credentials.

I have raised both in Grand Committee and here, in different contexts, how we are going to make sure that we have a relevant metric—that is what the noble Lord, Lord Callanan, called it—to measure the development of greenhouse gases, the growth of the economy and, above all, the desired change in the coefficient so that greenhouse gases are going downwards, relative to the growth of the economy, rather than upwards.

Whitehall government is falling between some stools here, and I would like the Minister to take on board the fact that we need to get our act together with some statistical compatibility between the things we think we are talking about. There is no point repeating mantras such as "net zero" and looking at many decades if we cannot even get our quarterly data to make sense. We need to have quarterly data that puts together the recent change in the gross national product on the one hand and the greenhouse gas data on the other. The work done by the Committee on Climate Change leaves open to discussion an alarming divergence, in the wrong direction, of these two metrics.

I am not coming from the same place, politically, as Members from the Green Party. However, some clarity about how our economy, in the short to medium term, should be developing in terms of greenhouse gases, and how this can be made into a more credible picture before Glasgow, is—for the Labour Party and others taking a serious interest in this matter, I am sure—a hugely important requirement. We hear very little about it, and it is partly because of the environment being in a different silo in Whitehall from the economic silos in the department of business and the Treasury. We have some experience of those sorts of arguments; I recognise one when I see one.

I will table an amendment on Report on precisely these questions. This is a good moment, I hope, to flag up the importance of getting something into the Bill which will be an opportunity to make some progress before Glasgow, so that we do not look like the emperor with no clothes.

Baroness Parminter (LD): My Lords, I support the green grouping, as it has been classed; as we are in coalition with a Green group in my local borough of Waverley, I am keen to do some cross-party supporting of this. It goes slightly broader than the Bill, but there is nothing wrong with that to me. I would not wish to suggest what was in the minds of the two noble Baronesses, but I have a strong sense of the frustration that we are facing this ecological crisis and getting to the end of the Bill, but are we using every single tool in the toolbox to make sure that we address this issue? I commend the ambition, and I am grateful to them for bringing this forward.

The noble Baronesses are right that the first amendment, in the name of the noble Baroness, Lady Bennett of Manor Castle, focuses on economics. As we all know, it is always a case of "follow the money," and it is right that we should put on more pressure to ensure that the Treasury embeds the climate and environmental goals into our future national accounting structures. It would be fantastic if we were standing here today and by now had seen the net-zero strategy and had an idea of the Government's thinking on this.

4.15 pm

We have not mentioned Dasgupta for a while, so I thought I would slip in his name. We have had the response to the Dasgupta review, but it is absolutely clear that there needs to be far more embedding of approaches

[Baroness Parminter]
to natural capital and environmental protection in our national accounts. I hope that the Minister will be able to say a few things about how his department will be working very closely with the Treasury over the coming months to deliver further progress on embedding those environmental considerations into our national accounts.

I want to make a slightly broader point. The amendment focuses on the economy, but we know that we need the Government to use other tools if we are to deliver on the Bill in particular, and if we are to embed the environment right across government. If the Minister is not able to accept these amendments—I do not know his views—I hope he might be able to say a bit more about some of the other mechanisms that the Government will use to ensure that their ambition is embedded right across government.

We have heard a lot, first, about targets, which are a key way of getting the whole of government to take the environmental ambitions forward. We have seen that with climate change. But here we have been debating the state of nature targets, which are not ambitious enough, and we hope the Government may look again to strengthen those targets. But it is not just targets; we know we also need to think, secondly, about overseeing bodies. We have the Climate Change Committee for the climate, but the Government have heard from noble Lords right across the House that the office for environmental protection needs its independence protected and its enforcement mandate strengthened. Thirdly, the Government need to move very quickly to get the statement on environmental principles right, because that is what is going to take the environment throughout all government departments.

In this House, we clearly said there were two major exemptions around the MoD and the Treasury—loopholes that needed to be closed. Last week, the office for environmental protection gave the Government its advice, saying that the guidance to government departments needs to be strengthened and clarified to ensure it is robustly taken through all the departments.

This first amendment talks about economics, and it is right to do that. I hope the Government will take the opportunity today to say a bit more about those other mechanisms to deliver environmental protection right throughout the Government—the targets, the overseeing bodies and the environmental principles. If the Minister is not able to accept quite everything in these amendments, I hope that he will at least accept the spirit in which they were tabled, because we all in this House want to ensure that the Government use every tool in their toolbox to help us tackle this ecological crisis we face, which we are grateful to both the noble Baronesses for highlighting at this late stage of the Bill.

Baroness Jones of Whitchurch (Lab): My Lords, I thank the noble Baronesses, Lady Bennett and Lady Jones of Moulsecoomb, for tabling these amendments and allowing us to have this broader and important debate. The noble Baroness, Lady Bennett, talked about reprogramming the economy fundamentally, and she set out a compelling case for linking our economic goals with biodiversity, health and well-being goals, which we know are all needed to protect our planet for the longer term.

This clearly needs a rethink at the highest level but so far it seems that the Treasury, which commissioned the Dasgupta report, has had the least to say about its conclusions. As the noble Baroness, Lady Bennett, said, it is not just the Dasgupta review; a wealth of accumulated expertise is pointing in the same direction and saying that we need new and different economic goals. I thought she made that case very well. Sadly, change on that scale will come only if there is leadership from the top and all Governments commit to play their part. As she illustrated, this is simply not happening at the moment.

The noble Baroness, Lady Jones of Moulsecoomb, talked about rights and duties, and I agree with that concept, but if we are to adopt that approach, I would be a bit bolder than the public sector duty to ensure everyone can breathe clean air—important though that is. I would include, for example, the right to access parks and green spaces within walking distance; the right to swim in unpolluted rivers; the right to plant trees and vegetables on unused public-sector land; the right to a service that recycles all unusable waste, underpinned by a vibrant circular economy; the right of every child to access to fresh fruit and vegetables every day; the right to social prescribing in the health service and to locally sourced food in hospitals and care homes; the right for every child to spend a night under the stars, and for nature to be back on the curriculum. I could go on.

The point is that if we are going to take forward all the discussions we have had over the past few weeks, let us think big about the kind of country we want to live in, so that the Bill becomes just the first step on a much bigger journey.

Lord Goldsmith of Richmond Park (Con): I welcome Amendment 286 and the thoughtful and interesting speech of the noble Baroness, Lady Bennett of Manor Castle. The challenge is that GDP has been used by Governments pretty much everywhere as a proxy for well-being ever since it was developed half a century ago, but GDP was never designed to be an all-encompassing measure of welfare. In basic terms, it simply measures economic activity, indiscriminately—it cannot distinguish between growth that is or is not sustainable, or even good. GDP measures what we produce, but it ignores the cost of what we destroy to make it. It can add, but it cannot subtract.

It is possible to imagine that you could empty the oceans of all fish, chop down every last tree, fill our rivers with poison, pollute every last breath of air that we take, and all the time, GDP could still be rising and the economy still be growing. Ironically, the man who helped develop the concept of GDP in the first place, Nobel Prize economist Simon Kuznets, never anticipated its use as a comprehensive measure of progress. In 1934, he wrote:

"The welfare of a nation can scarcely be inferred from a measure of national income."

Robert Kennedy said something similar: that GDP

"does not allow for the health of our children, the quality of their education or the joy of their play. It does not include the beauty of our poetry or the strength of our marriages, the intelligence of our public debate or the integrity of our public officials. It measures neither our wit nor our courage, neither our wisdom

nor our learning, neither our compassion nor our devotion to our country, it measures everything in short, except that which makes life worthwhile."

The problem is that numerous organisations have over the years attempted to develop alternative indicators. I worked for one myself—it feels like many decades ago. The results of their work have often been overly complicated metrics that Governments would struggle to use in a practical way, but we need to find additional ways to measure the health of our economies. It is surely madness that the Amazon rainforest, on which the world fundamentally depends—each and every one of us—and without which the world would be thrown into chaos and turmoil, has no real recognised value until it is cashed in for commodities and throwaway goods. That just does not make sense.

That is something that the Government understand and are grappling with. For example, we are aligning our economic objectives and decision-making processes with our net-zero commitments; we are moving towards nature-proofing our decisions as well, and this Bill is a part of that.

The Treasury's Green Book, which the noble Baroness mentioned, requires that all impacts on society as a whole, including environmental impacts, are assessed when policy is developed, and that includes monetised and non-monetised climate environmental impacts. The Treasury is currently conducting a review into the application of the discount rate for future environmental impacts, to try to ensure that decision-making probably accounts for the value of the environment. In their response to the Treasury-commissioned Dasgupta review, the Government have committed to ensuring that their economic and financial decision-making and the systems and institutions that underpin it support the delivery of a nature-positive future.

As all speakers so far in this debate have acknowledged, we have a very long way to go. It is not easy, but it needs to be done. Without that, we will fail to reconcile lives and the economy, nature and the economy, in the way that we will need to if we want a sustainable future.

Moving on to Amendment 288, I reassure the noble Baroness, Lady Jones of Moulsecoomb, that, as the Environment Secretary set out in his response to her Private Member's Bill on this subject, the Government take their air quality obligations extremely seriously. In this Bill, we have committed to setting ambitious, legally binding targets on air quality, to drive further emissions reductions, which will deliver significant benefits to the environment and human health. Specifically, the Secretary of State, will be required to set a new target on PM 2.5 to act as a minimum standard across the country, and an additional long-term exposure-reduction target to drive continuous improvement, including in areas that meet the new minimum standard for PM 2.5. This novel, dual-target approach is strongly supported by the experts and will deliver significant public health benefits by reducing our exposure to this pollutant in all areas of the country.

The Bill also includes measures to require regular refreshers of the national air quality strategy. The first review will be published in 2023, and we will be looking to develop a stronger support and capability-building framework, so that local authorities have the necessary tools to take the action needed locally to reduce people's exposure to air pollutants.

Alongside that, the Bill changes the local authority air quality management framework to promote co-operation at all tiers of local government and with relevant public authorities. This will ensure that central and local government and public authorities work together towards achieving cleaner air and a healthier environment for us all. The Government continue to work closely with the Department for Health and Social Care, the Department for Transport, the Air Quality Expert Group, the Committee on the Medical Effects of Air Pollutants and a wide range of other sector experts to drive concerted action to improve air quality.

However, not all air pollution is under the control of government, either nationally or locally. Significant contributions to UK air pollution can come from other countries, depending on the weather. For example, up to a third of the UK's current levels of particulate matter pollution comes from other European countries. UK air quality can be affected by distant volcanoes and dust flowing in from as far away as the Sahara. The transboundary and transnational nature of air pollution therefore makes it ill-suited to be a general or formalised human right.

I thank noble Lords for their contributions on these important matters, and hope that they will not press their amendments.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I thank all noble Lords who contributed to the debate and all their expressions of support for the amendments—perhaps even, in intent, at least, from the Minister; and I thank him for his detailed answer. My noble friend Lady Jones of Moulsecoomb asked, "What is the Government for?" Surely, one of the purposes is to ensure we have clean air to breathe and to ensure that we have a healthy life for future generations—something that the noble Lord, Lord Bird, is trying to do by other means.

The noble Earl, Lord Dundee, offered welcome support and said very clearly that we need goals to be identified and made concrete, acknowledging that we must consider the global impact of our environment. The noble Lord, Lord Lea of Crondall, said that we cannot go on just generating greenhouse gases—how could it be better summed up?—particularly highlighting our position of COP chair, and stressed the need for statistical compatibility and credibility in Glasgow. I think perhaps we may just park the emperor with no clothes metaphor, but it is certainly apt.

The noble Baroness, Lady Parminter, stressed the need for the Treasury to engage in this debate, with which I can only very much agree, and spoke about the need for all departments to be engaged in environmental issues, with which I of course agree. My amendment is focused on the narrow issue of economic measurement, moving away from the failed, damaging emphasis on GDP.

The noble Baroness, Lady Jones of Whitchurch, focused on reprogramming the economy, something we clearly need to do, and said that it needs a rethink at the highest level. As she was speaking, I thought that

[Baroness Bennett of Manor Castle]
perhaps the highest level in the Government should be Defra, because that is the place where it all starts. She also stressed the need for leadership from the top.

I particularly have to welcome the Minister's comments, many of which reflect speeches that I give regularly about the total misalignment of using GDP as a welfare measure. I just wish that we could hear that from the noble Lord, Lord Agnew, or Rishi Sunak in the other place, instead of only from the noble Lord, Lord Goldsmith. He referred to the Dasgupta report, which is useful and important. At least by using pound values it puts all the issues into terms that the Treasury can understand.

4.30 pm

However, I want to tackle the Minister's suggestion that the alternatives are overly complicated. In my speech, I set out a suggested measure presented by a group of distinguished economists working with the OECD, and I should be happy to share their paper with the Minister. As I said at the start, the New Zealand Treasury has managed to master all these mathematical and statistical challenges. One might say that New Zealand is a smaller country than the UK, but if the New Zealand Treasury can manage it, perhaps ours should be able to, too.

When reflecting on my noble friend Lady Moulsecoomb's amendment, the Minister said that the Bill sets out ambitious, legally binding air quality targets. Those are like the targets we had under EU membership for decades, which we have been breaking regularly and over which ClientEarth took the Government to court successfully again and again. This matter is not at all under control, and I welcome the Minister's comments that we need to co-operate with our neighbours on that. I should like that idea to be reflected across government.

This has been a useful debate. Perhaps we have taken things a little further forward, particularly given the Minister's comments. We will probably be back somewhere on these grounds on Report. However, in the meantime, I beg leave to withdraw the amendment.

Amendment 286 withdrawn.

The Deputy Chairman of Committees (Lord Alderdice) (LD): We now come to the group beginning with Amendment 287. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Amendment 287

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

287: After Clause 133, insert the following new Clause—

"International crime of ecocide

(1) It is an objective of Her Majesty's Government to support the negotiation of an amendment to the Rome Statute of the International Criminal Court to establish a crime of ecocide.

(2) In pursuance of subsection (1), a relevant Minister of the Crown must propose, either independently or jointly with other sovereign states, an amendment to the Rome Statute of the International Criminal Court within 12 months of the passing of this Act.

(3) In this section "ecocide" refers to harm to nature which is severe and widespread or long-term."

Baroness Bennett of Manor Castle (GP) [V]: My Lords, this group of amendments is simple and coherent. Both the amendments address the proposed international offence of ecocide. Noble Lords will see that the amendments have cross-party and non-party support. I thank the noble Baronesses, Lady Whitaker and Lady Boycott, for supporting them.

Amendment 293D sets out the definition of ecocide, which means,

"unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts".

The treatment that the planet and many of its people have received is criminal, and it is time that the crime was acknowledged and prevented. We are killing the ecosystems on which we rely and gravely depleting the natural world, putting at risk the many wondrous and beautiful natural systems of which we have so little understanding.

In acknowledgement of that, for more than a decade lawyers have been working on a new international law to protect this fragile planet—a law of ecocide. It is proposed that it becomes part of the Rome statute, which contains the international crime of genocide. Many people will associate this campaign with the late, great barrister and campaigner Polly Higgins. The crime of ecocide has been a topic of debate since the Vietnam War when Agent Orange was used by the US Army to defoliate vast areas of jungle. Since then, incidents of irreversible destruction to ecosystems and the ocean have led to further and ongoing proposals for this crime to be adjudicated by the International Criminal Court.

I first encountered this proposal at a one-day seminar at the British Library in 2008. Work then was already well advanced but, in the decade since, it has advanced much further. The French have already written the crime into their climate law. The Belgians and Dutch are considering doing likewise and nearly a dozen national constitutions include a recognition of ecocide. Research by the European Law Institute seeks to draw up a model law for the EU. In May, the European Parliament encouraged the EU and its members,

"to pave the way within the International Criminal Court (ICC) towards new negotiations between the parties with a view to recognising 'ecocide' as an international crime".

Three of the countries that already recognise this crime are signatories to the Rome statute. Therefore, if, as I suggest, the UK successfully proposed an ecocide amendment, a total of 130 countries would recognise it as a crime, 123 of which could then take a case to the ICC for adjudication. I note, however, that the US, China and India are not state parties. There has also been publicly recorded interest from Bangladesh, Canada, Finland, Luxembourg, the Maldives, Spain and Vanuatu.

Noble Lords will note that Amendment 293D arrived rather late to this Committee. That is because it uses a new, further-developed definition of the law of ecocide that has only just been released by a distinguished expert international panel of jurists. The definition in the amendment, however, differs from the international definition by excluding a reference to outer space. The Public Bill Office declared that that was out of scope of the Bill, and while there is an argument for outer

space being part of our environment, I decided to leave that discussion to another day. I note for noble Lords' interest that the maximum penalty of 30 years' imprisonment reflects that which applies to genocide under UK law.

When—and I am sure that it is when—the crime is incorporated into the Rome statute, it will eventually make its way into UK law. Surely not even the current Government's carelessness as regards international law would prevent that. But the world and our nature-depleted, plastic and pollution-choked islands cannot wait, which is why I put forward Amendment 293D.

It is worth noting that, astonishingly, the Bill as it currently stands makes no mention of ecosystems and, therefore, there can be no protection of ecosystems. Amendments contain at least five references to ecosystems, which shows that there is a desire across the House to introduce this, and introducing a crime of ecocide would be a comprehensive way in which to do that.

The lead amendment, Amendment 287, offers the international perspective and calls for the Government to commit to supporting the international Stop Ecocide campaign and within 12 months of the Act coming into force to present—alone or, I expect, with others—a proposal to amend the Rome statute.

I should love to think that the Government will embrace both these amendments but I am a realist. I am aware also that creating a whole new legal offence is something our legal eagles and those across the country are likely to want to chew over for some time. I am very much looking forward to the thoughts of the noble and learned Lord, Lord Thomas of Cwmgiedd, on Amendment 293D, which I am sure will help inform future thinking on the UK offence. There is a definite opportunity for a stand-alone Private Member's Bill here. So I am unlikely to pursue that amendment to Report but regard it as a start to the UK debate.

However, that is not the case with Amendment 287. As countries, campaign groups and lawyers across the globe line up behind the call to amend the Rome statute, the UK needs to be on board. As the chair of the COP 26 climate talks, how could we be anywhere else?

I am almost finished, but I have one final question for the Minister. Will he agree to meet with the ecocide campaign and have his officials look at the outputs from the Independent Panel for the Legal Definition of Ecocide? I thank other noble Lords who are taking part in this debate and those who have already offered their support. I look forward to the Minister's response. I beg to move.

Baroness Boycott (CB): It is a great delight to support the noble Baroness, Lady Bennett, in the amendment. I, like her, believe that ecocide will be introduced as a crime on an international basis and will join the Rome statute alongside the more familiar crimes of genocide and crimes against humanity.

The point about ecocide is that it has to be wanton and deliberate. Here are just a few examples that might be able to have that label attached to them. In Jack Harries's new powerful film "The Breakdown", he shows us a closed-door meeting with Exxon executives in 1977. Their scientist James Black delivers a presentation called "The Greenhouse Effect" in which he warns that carbon dioxide from the world's use of fossil fuels is warming the planet and will eventually endanger humanity. He is quoted as saying:

> "Present thinking holds that man has a time window of five to ten years before the need for hard decisions regarding changes in energy strategies might become critical."

Exxon in 1977 took his report seriously and over subsequent years invested millions upon millions of dollars into cutting-edge climate change science and hired the world's top scientists and engineers to help to get to the bottom of the inconvenient truth. Therefore, weirdly, a lot of early science was done by the fossil fuel companies, in part to understand the impact of their work but in part to understand where their new drilling opportunities might be. It was, strangely, the first golden age of climate research.

However, quite quickly—by 1982—the research had piled up, and it did not look so good. The impact of fossil fuels on climate change was now unquestionable. In a leaked document addressed to "Exxon personnel only", environmental affairs manager MB Glaser wrote:

> "Mitigation of the 'greenhouse effect' would require major reductions in fossil fuel combustion."

He suggested that if this was not done—again, this was in 1982—there could be "potentially catastrophic events" such as the melting of the Antarctic ice sheet, which would cause a sea level rise in the order of five metres.

The men in charge did not like what they were hearing—it was too big and too bothersome and it was going to threaten their livelihoods—so, in 1983, a year later, they decided to stop listening to the scientists and listen to their accountants instead. Overnight, the troublesome little hitch called climate change effectively ceased to exist in the annals of the coal industry. Overnight, Exxon cut the funding for climate research from $900,000 a year to $150,000 a year—out of a total research budget that stood then at $600 million—and those pessimistic sponges in lab coats stopped being invited to meetings. A culture of denial was born, lifted straight from the tobacco industry—the one that said, "Cigarettes won't give you lung cancer, keep buying them". In this case, the industry said, "No, climate change isn't real, so fill up your tank".

I know that it is not within our remit—and never will be within anybody's remit, I think—to prosecute ExxonMobil, which, as Channel 4 revealed a couple of weeks ago, is still at it. It has been pressurising President Biden over his green economy and new deal, to the extent that a lot of the investment in new green jobs has been taken away. As the lobbyist on "Channel 4 News" said, "We're really happy because he's sticking to infrastructure and roads and highways as a way of creating new jobs".

Coming back to our own climate disaster, after the death of young Ella Kissi-Debrah a couple of years ago, the law did find that her death had been made possible or enhanced by the fact that she was breathing bad air. The fact that the fossil fuel companies played a part in this starts to make two parts of the story come together.

As I say, the question of ecocide is a question of intent. The £90 million fine handed out to Southern Water last week is a great step; £90 million is a lot of money.

[Baroness Boycott]

Even so, the company's profits that year were about £200 million. Its pollution has killed countless fish and destroyed habitats and wildlife, not to mention the sea creatures whose homes have been irreparably damaged by raw sewage. As the *Guardian* reported:

"Andrew Marshall, appearing at the sentencing hearing for the regulator, told Canterbury crown court that Southern Water, which is ultimately under the control of Greensands Holdings"—

a private company—

opened storm tanks to release raw sewage into coastal waters in north Kent and the Solent to increase its own financial benefits. The company also allowed storm tanks to be kept full and to turn septic, instead of putting millions of litres of raw sewage through the treatment process as required by law."

This flagrant and wanton act was carried out with the full knowledge of the damage that could ensue. So, yes, £90 million is terrific from one point of view, but is it not also something more? Should not a crime that would send people to prison or really shame them, such as ecocide, be attached to Andrew Marshall, the boss of Southern Water? The threats to nature and wildlife that our current practices present are talked about a lot these days. Finding someone responsible is never easy; we have not even managed to hold anyone responsible for Grenfell yet. Yet here is a case where we are damaging and threatening our natural world every day.

As the noble Baroness, Lady Bennett, said, many countries in Europe are already debating whether to introduce an ecocide law into their home legislation. A number of countries already have their own ecocide laws. For instance, Article 358 of the Russian criminal code states:

"Massive destruction of the animal or plant kingdoms, contamination of the atmosphere or water resources, and also commission of other actions capable of causing an ecological catastrophe, shall be punishable by deprivation of liberty for a term of 12 to 20 years."

Kazakhstan, Tajikistan, Georgia, Belarus, Ukraine, Moldova and Armenia have also passed laws which mean that the country can send someone to prison for a wanton and knowing act of ecological disaster.

Frankly, it is uncertain how many people will die in the next few years because of climate change and nature depletion, or how many more millions of people will be forced to leave their homes, looking for sanctuary in the remaining kinder climates—but it will be a lot. It will dwarf previous acts of genocide and crimes against humanity. We must start to hold individuals accountable. Obviously, this law needs to be international—I urge the Government to work with others to make it so—but could we start by at least discussing it as a possible national offence, too? We cannot expect the world to adopt this if we do not apply it here. As we all know, on the eighth day of this long and wonderful environment debate, we have only one home; it is very precious and we need tougher laws to protect it.

4.45 pm

Baroness Fox of Buckley (Non-Afl): My Lords, I was actually disappointed—but perhaps not surprised—to see this amendment tabled by the noble Baroness, Lady Bennett of Manor Castle. For some time, I have been following the way in which "ecocide" has become a fashionable term to hype up human engagement with nature in a wholly negative way. I am not as familiar as the noble Baroness is with the legal definitions that she explained, but I feel that "ecocide" is an especially emotive word cynically designed to invoke thoughts of evil genocide. It implies that our relationship with nature and the different ways in which we interact with the environment are as heinous, deliberate and destructive as the Holocaust—which, to be frank, I find distasteful.

The term I am more familiar with is on the level of cultural discussion and the way in which the term "ecocide" has been used to criminalise, even if metaphorically, a whole range of human activities that have an impact on the environment. There is an unpleasant misanthropic aspect, as well, in associating human impact with wanton ecological destruction—something that I raised in my remarks at Second Reading.

Reading the literature on ecocide over the years, I have seen humans described as "a cancer on the environment", "a parasite species on the planet" and "a virus infecting the earth's body". This emphasises the negative aspects of human culpability and destruction, rather than seeing humanity and civilisation as a source of creative solutions, which is more helpful. Civilisation and development have allowed our species to use knowledge, reason, ingenuity and innovation to aspire to improve the conditions of life. I would rather we celebrated the huge gains of the progress, political change and technological innovation that have driven humanity from the Stone Age through to the 21st century, yet "ecocide" and the discussion around it focuses wholly on humanity as an agent of destruction.

I worry that the whole discourse on "ecocide" expresses a disillusion with those gains—the fruits of modernity and the economic growth that we have benefited from and witnessed, particularly in the West. It views the rapid development of the rest of the world in a wholly negative way, as though somehow the use of fossil fuels in order to grow is potentially akin to mass murder, as the comparison with genocide suggests. It flirts dangerously closely with romanticising Stone Age lack of development elsewhere. In debates on earlier groups of amendments, I heard a number of noble Lords criticise GDP and say that it does not represent very much. Well, in my view, we do not have enough GDP. I want more of it for the masses of the world. Certainly, without it, well-being is nigh on impossible, and I have worried throughout this discussion on the environment that a clash is being set up between GDP—that is, economic development and growth—and matters around the environment.

It certainly seems to me that charges of activities typically dubbed ecocide are too easily levelled at countries and people trying to develop to escape immiseration, poverty and hunger. China, India and Brazil are often discussed in these terms, and I wonder who will be charged with ecocide. The noble Baroness, Lady Boycott, listed a number of big bad companies—in her view. That anti-corporate "They should be held responsible and blamed for the people killed" is something we are familiar with.

But I worry that ordinary people in Brazil and other parts of the developing world are implicated and criminalised for felling forests and clearing land for

agriculture, as we in the West have done before and benefited from, in industrial revolutions and modernisation. I get nervous, in this discussion of ecocide, of a rather arrogant neocolonial instinct about who will be accused of ecocide, who will police those accused of it and even whether it will become a justification for western intervention, with all these green-helmet lawyers going around the world saving nature from the destructive activity of ordinary people. I totally reject this amendment.

Baroness Whitaker (Lab): My Lords, it is interesting to hear the views of the noble Baroness, Lady Fox, but I take a different line. As a member of Peers for the Planet, I congratulate the noble Baroness, Lady Bennett of Manor Castle, on introducing the concept behind these amendments to your Lordships' House and I am pleased to add my name to them.

I confess I was disappointed when my questions to the noble Lord, Lord Goldsmith, about adding the crime of ecocide to the Rome statute received, first, the answer that there were no such plans. His next answer, which I have just received in time—for which I am grateful—adduced various traditional diplomatic reasons, but I still hope we can make a start. I think we should.

Of course, ecocide is an innovatory idea, and innovations are disturbing and disruptive. This one requires different thinking about human rights. The Rome statute and, for that matter, the United Nations human rights instruments have a specific human focus on what is needed to establish and maintain well-being. We in the UK have taken an even narrower view, in that we have not implemented the economic and social rights set out in the convention, only the civil and political ones. But the concept of ecocide is hardly dangerously revolutionary; it was mooted by Olof Palme in 1972 and, as the noble Baronesses, Lady Bennett and Lady Boycott, say, France and others are in the process of incorporating it into their laws.

Our environment is so critical to our well-being that we need to think in new ways about how to protect it from the damage being done to it. I think all your Lordships value our natural environment. That clearly emerges from the debates on this Bill and the answers of the noble Lord, Lord Goldsmith. We should put that into practice by cherishing its biological and botanical elements and, therefore, ought to support efforts to get this into international law.

Already one of our most distinguished human rights lawyers, Philippe Sands QC, is working on how this value can be made justiciable at the International Criminal Court. The definition has now been agreed by all 12 of the eminent international lawyers in the group he chairs. For once, I hope our Government can be a bit ahead of the curve and support these amendments.

Lord Thomas of Cwmgiedd (CB) [V]: My Lords, I congratulate the noble Baroness, Lady Bennett of Manor Castle, on tabling these two amendments, which give us the opportunity to consider these important issues. I broadly welcome the principles underlying them both and will take each in turn, first, that relating to international law. Before doing so, I briefly mention, as disclosed in the Members' register, that I am a vice-president of the European Law Institute. Although I am not directly involved in its work, to which I will refer, I take a close interest in it.

It is important to appreciate that the development of international crimes has, over the centuries, reflected the desire of nations to ensure that international criminal law keeps pace with evolving standards. At present, the only international environment crime under the Rome Statute of the International Criminal Court is environmental damage as a war crime, under Article 8(2)(b)(iv). It has a high threshold, as it requires:

> "Intentionally launching an attack in the knowledge that such attack will cause … widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated".

That is a high standard and is set out in the context of war, but we have moved on. It is now necessary for us to examine what should be an international crime in the context of the environment outside war.

Progress has been made in a number of individual conventions directed at certain trades but, as was set out in the 2018 report of the UN Secretary-General, *Gaps in International Environmental Law and Environment-related Instruments: Towards a Global Pact for the Environment*, there is no single overarching framework. The law is piecemeal and reactive and, for the most part, conventions depend on national law for their enforcement.

In this context, the important steps of the last few years have seen developing impetus for the designation of a more general crime of ecocide triable before the international court. As the noble Baroness, Lady Bennett, mentioned, the late Polly Higgins spent much of the latter part of her life moving this forward. Again, as has been mentioned, last month, a panel of international experts put forward a definition of ecocide. While this requires detailed consideration and, in my view, further work, it is a further important step in getting to grips with establishing an international crime.

It seems plain to me that transnational concern for the environment and evolving standards have now reached the stage where the international community can begin to move towards designating ecocide as an international crime. I therefore ask the Minister, given Britain's new global role, where it is important that we show leadership, what steps are we taking as a nation to keep up with this evolving international standard, in accordance with the long traditions of the development of international criminal law?

In parallel to this work, as it may take some years to move international criminal law forward—one has to be realistic about this—the UK ought to consider moving forward its own criminal law to establish the crime of ecocide, or other similar crimes, as set out in Amendment 293D. As has been mentioned, the European Law Institute is looking at a number of matters: first, the definition put forward by the panel of experts; but, more importantly in the domestic context, devising a model law. This would primarily be for the use of the European Union but, as the institute is Europe-wide, for other nations as well. It will provide a definition and workable set of principles to criminalise this activity and, importantly, civil remedies in tort or delict. I therefore welcome Amendment 293D in principle, although it is clear that more work needs to be done in this area.

[Lord Thomas of Cwmgiedd]

Therefore, my second question to the Minister is: what are Her Majesty's Government intending to do in this respect? Have the Law Commission and the Scottish Law Commission, which are the prime movers of legal thought in England, Wales and Scotland, been asked to consider this work and provide a crime of ecocide?

5 pm

Lord Khan of Burnley (Lab): My Lords, when I saw that the speakers' list said Baroness Khan, I was worried. I thought I might have to text my beloved Lady Khan in Burnley and ask her to come and represent the Front Bench.

The question of whether the UK should adopt and build on proposals currently being considered by members of the International Criminal Court is an interesting one, and we are grateful to the noble Baroness, Lady Bennett of Manor Castle, for tabling these amendments. Their message is clear; they are simple and coherent.

The first amendment asks the UK Government to play an active role in the international negotiations to establish a crime of ecocide. We hope that the UK, as a state party to the Rome statute, is indeed participating in those discussions and playing a constructive role. Can the Minister confirm what position we have been taking in such talks? I look forward to hearing from him on that. The second amendment seeks to establish a domestic criminal offence of ecocide. The noble Baroness, Lady Boycott, spoke with great expertise and knowledge when she talked about domestic laws coming in in Russia, Belarus and Kazakhstan, where people are causing ecological disaster.

The crime of ecocide has been a topic of debate since the Vietnam War, as has been mentioned, when the US army defoliated vast areas of jungle for military advantage. Since then, instances of irreversible damage or destruction to ecosystems—for example, to boreal forests, tropical forests and the oceans—have led to proposals to make ecocide an international crime on a par with genocide. The point that this is on a par with genocide and crimes against humanity has been made very eloquently by noble Lords.

In 2018, 94 UK academics urged those with power to defend life itself from an unprecedented disaster of our own making. The UK Parliament responded by becoming the first country to declare a climate emergency. Since 2019, 2,000 places across 34 countries have declared a climate and ecological emergency at local, regional, state or national level.

A suggested solution to the climate and ecological emergency has been gaining traction in legal, political and academic circles. The use of ecological law has been put forward as a solution, focusing on criminal damage to, or the destruction of, ecosystems, which has been mooted as the ecocide law. The question of whether to establish a criminal offence and, if so, how such a process should be undertaken is always complex. We have interpreted the amendment as a means of probing the Government's intentions in this area. We hope the Minister can provide a detailed response, either from the Dispatch Box or in writing following the conclusion of the Committee.

Lord Goldsmith of Richmond Park (Con): I thank the noble Baroness, Lady Bennett of Manor Castle, for Amendments 287 and 293D on ecocide. I strongly agree with the premise of her argument. The appalling fact is that we are currently destroying life on earth. Each minute we lose around 30 football pitches-worth of tropical forest. We have seen a 70% decline in key species since 1970, which is a mere nanosecond in evolutionary terms. Nowhere is spared: a third of marine mammals are threatened with extinction; an estimated 35% of the world's marine and coastal wetland areas were lost between 1970 and 2015, at three times the rate of forest loss; and half the world's seabird species are already affected by ocean plastic. At the same time, we are destabilising the world's climate. Although there is no computer model in the world sophisticated enough to fully predict the effects, we know that they will be dire.

It is of course a tragedy in and of itself, but it is also a human tragedy. A billion people depend on forests for their livelihoods. As those forests are destroyed, so too are their livelihoods. Around 200 million people depend on fish for their livelihoods. As we exhaust the oceans, those people and their families are often left destitute. When ecosystems fail, so too do the many free and hopelessly undervalued services that nature provides. Because it is the world's poorest people who are likely to depend most directly on those free services, it is they who will suffer first and worst. I say that in response to comments from the noble Baroness, Lady Fox.

Ultimately, we all depend on the health of the planet, and its destruction has grave implications for us all. Indeed, as we sit in this Chamber, metres apart, it is worth reflecting that coronavirus itself is likely a symptom of our dysfunctional relationship with the natural world. Even if that is wrong and in this instance it is not, it is certainly the case that most pandemics are.

Objectively, it must be the case that killing ecosystems on which so many people depend has to be among the most serious of crimes. I recognise that not everyone will agree with that, but I ask those people to consider what their response might be to someone pouring poison into another person's water supply, pumping toxic gas through someone's window, or setting fire to a person's farm. No one, I think, would doubt for a second the gravity of such crimes, so it should not be seen as any different when it is done by a multinational corporation in a foreign land, except, of course, at a bigger scale.

We have strong environmental laws in England, which carry fines and potential imprisonment for the most serious offences. There is a whole ecosystem of enforcement authorities: the Environment Agency, Natural England, the Forestry Commission, the Marine Management Organisation, Ofwat, the Drinking Water Inspectorate, local authorities, the police and Defra itself. In particularly egregious cases, significant sanctions are sought. For example, as has been mentioned, only last week Southern Water was fined £90 million for pumping raw sewage into protected waters around the south-east coast. There were also convictions against several employees of Southern Water, who obstructed Environment Agency investigators. But there is no doubt that our regulatory framework can be improved. That is one of the things we are trying to do with this Bill, not least with the new OEP.

There is no doubt that, around the world, the true cost of serious environmental crime or ecocide is not reflected in our response to it. Sadly, ecocide is not yet a crime recognised under international law and there is currently no consensus on its legal definition. Indeed, before the ICC and the crimes it has jurisdiction over could be established by the Rome statute, which was adopted in 1998, ecocide had to be removed in the drafting stages due to a lack of agreement among the states party to the court. The Rome statute provides for some protections for the natural environment in armed conflict—it designates international attacks that knowingly and excessively cause

"widespread, long-term and severe damage to the natural environment"

as war crimes—but ecocide as a stand-alone crime is not yet recognised.

The UK's current priority regarding the International Criminal Court is to try to reform it, so that it functions more efficiently and effectively and can deliver successful prosecutions of crimes in its jurisdiction and bring accountability for victims. I know that noble Lords on all sides of the Committee will share that ambition. Reform of the court is a long and complicated process, driven by the states party to the Rome statute. Their involvement is fundamental to success. A significant amendment such as that proposed by the noble Baroness is unlikely to achieve the support of two-thirds of the states party, which is necessary to amend the Rome statute to make ecocide an international crime. The view, therefore, is that pursuing it would require an enormous amount of heavy lifting diplomatically, with little prospect at this stage of succeeding. That would likely also detract from the goal of improving the court's effectiveness, which, in any case, would be a prerequisite for any meaningful application of ecocide.

I will end there. We are unable to accept the noble Baroness's proposals. I therefore ask her to withdraw her amendment.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I thank everyone who has participated in this very informed and informative debate. The noble Baroness, Lady Boycott, stressed the basis of this crime as being wanton and deliberate action, using two very clear examples. The first is Exxon in 1977 in terms of its understanding of the climate emergency then. Secondly, flagrant breaches of the law are occurring on our own shores with the treatment of our water supplies and the spillages of sewage into them. Those are two useful examples of how we think an ecocide law would operate in practice.

Can we imagine, for a moment, being in a boardroom and hearing the chief legal officer saying to the chief executive officer, "If we took this action, the law of ecocide might just be used" and what a powerful force that would be? As the noble Baroness, Lady Fox, says, it is a powerful word and a rightfully powerful word for destroying the natural world, on which we all depend. The noble Baroness, Lady Boycott, made a very important point by saying that we cannot expect the world to go forward if we are not prepared to adopt this law and take action ourselves.

The noble Baroness, Lady Fox, suggested that this was looking at human interaction with nature in a wholly negative way. I am not sure how she could regard the two examples given by the noble Baroness, Lady Boycott, as anything but wholly negative. She also suggested that, at times, this term has been used metaphorically. But of course, that is not what we are talking about here; we are talking about law. The term "murder" is often used metaphorically but that does not stop it being an essential legal charge used in a legal way.

The noble Baroness, Lady Fox, also referred to the needs of the global south. It is the global south that has suffered probably the largest amounts of environmental damage, human rights abuse, poverty and inequality from our extractive, exploitative approach to nature. All around us, we have the products of the global south's land and, of course, the global south's labour and ingenuity—most often insufficiently remunerated.

I thank the noble Baroness, Lady Whitaker, for her support and commend her on championing the issue of ecocide through Written Questions. She highlighted the international support for the creation of this crime and the fact that the Briton Philippe Sands QC is working very much in the leading role on this, reflecting the UK's long-term position as a leader in international human rights law and legal protection.

I thank the noble and learned Lord, Lord Thomas, for his hugely informed and thoughtful contribution and expression of support for the principles. The historical perspectives that he provided were also particularly useful, acknowledging that international law has evolved with international standards and highlighting the developing impetus towards a crime of ecocide. He stressed the global role and the need for leadership and called for the UK to step forward and take a lead.

The noble Lord, Lord Khan, called for a constructive role for the UK in negotiation. I appreciate that call, which very much reflects the content of my Amendment 287. He spoke very effectively, saying that the law of ecocide is defending the land itself and made the link to the many declarations of climate and nature emergencies.

The noble Lord, Lord Goldsmith, gave us a very full account of the sixth great extinction and the way ecological damage does not impact just on nature but on human health and life—as we have seen with Covid. He said that there was no consensus, but surely the UK could and should be providing that leadership. As a nation, global Britain aims to be world-leading. I acknowledge his concern about the reform of the International Criminal Court, but that is a separate issue from the nature of the Rome statute. The Minister suggested that there was little prospect of this international drive succeeding. That is clearly not the view taken by the EU.

Before we come to the conclusion of this group, the Minister was asked a couple of questions that were not answered. I would like to put them to him again. First, I asked if he would be prepared to meet Stop Ecocide campaigners and ask his officials to take a look at the proposed new international definition. Secondly, the noble and learned Lord, Lord Thomas,

[Baroness Bennett of Manor Castle]
asked whether the Government would ask the Law Commission to consider this issue. May I put those two questions to the Minister before we proceed?

Lord Goldsmith of Richmond Park (Con): I am happy to agree to both requests.

Baroness Bennett of Manor Castle (GP) [V]: I thank the Minister for that one answer. For the moment, I beg leave to withdraw this amendment.

Amendment 287 withdrawn.

Amendments 288 to 293B not moved.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): We now come to the group consisting of Amendment 293C. Anyone wishing to press this amendment to a Division must make this clear in debate.

5.15 pm

Amendment 293C

Moved by ***Lord Khan of Burnley***

293C: After Clause 133, insert the following new Clause—

"Readiness of local authorities to deliver schemes enabled under this Act

(1) Within three months of the day on which this Act is passed, the Secretary of State must undertake a review of the readiness of local authorities to deliver environmental schemes established or otherwise enabled under this Act.

(2) The review under subsection (1) must include an assessment of the extent to which the current financial and staffing resource of local authorities is consistent with that required for such bodies to fulfil additional obligations as they arise.

(3) If the review determines that current resourcing for local authorities is insufficient for them to meet relevant obligations, the Secretary of State must, as soon as practicable, make a statement confirming—

(a) whether central government funding for local authorities will be increased accordingly, or

(b) what mechanisms Her Majesty's Government proposes to establish to enable local authorities to recover any additional costs.

(4) The Secretary of State must lay before Parliament and publish—

(a) the review under subsection (1), and

(b) any statement under subsection (3)."

Member's explanatory statement

This new Clause is intended to explore the extent to which local authorities are financially and otherwise prepared to deliver new schemes and responsibilities established under this legislation.

Lord Khan of Burnley (Lab): My Lords, I move Amendment 293C, tabled in the name of my noble friend Lady Jones of Whitchurch. In doing so, I thank the noble Lord, Lord Kerslake, for signing the text.

Local authorities have been underfunded for years, with the majority having a decreasing budget for waste and recycling services. This bleak picture will certainly present a challenge to implementation but, as we can see from other countries, recycling success can be achieved through targeted government investment.

Having served in local government for 15 years, including holding the cabinet position for finance at Burnley Borough Council, I have witnessed first-hand the effects of drastic cuts, with local councils barely able to deliver statutory services. My observations and experiences are backed up in terms of the environment by the Environmental Audit Committee's recent report *Biodiversity in the UK: Bloom or Bust?*. It highlighted that funding shortfalls and a lack of "in-house ecologists" in local authorities means that they may not have the capacity to deliver some of their statutory duties under the Bill, specifically biodiversity net gain and local nature recovery strategies.

For the Government's environmental ambitions to be realised, new duties on local authorities to help them deliver nature recovery must be costed and funded accordingly. Local authorities are essential to the successful implementation of many provisions in the Bill. For example, they will play an important role in co-ordinating and delivering nature recovery on the ground through the creation of local nature recovery strategies—as mentioned before. However, their effectiveness relies on the resources and expertise they have available to deploy these crucial tools. It is firmly believed that, due to recent funding cuts, only one in four local authorities in England currently has access to an in-house ecologist. Costs incurred by local authorities to implement new schemes resulting from the Bill should be covered by the Government's new burdens obligation. It would be helpful if the Minister could make an unequivocal statement on this in the Chamber.

This proposed new clause is intended to explore the extent to which local authorities are financially prepared to deliver new schemes and responsibilities established under this legislation. This is day eight in Committee and many noble Lords at Second Reading and in Committee have talked about this being a landmark, historic Bill —something that will be working for generations for the future of our children. However, you need to give the relevant stakeholders—in particular, here, local authorities —the tools and support. This amendment gives us the opportunity to look at the cost and funding element of local authorities. I have been there as a local government member making those tough decisions. These tough decisions are for the benefit of our future.

If we do not support local authorities, it is like asking noble Lords to run across Westminster Bridge or a race of 100 metres without any trainers or adequate footwear. It is not fair; you need to give them the right tools to do the job. This is essential to ensure that we are not setting up local authorities to fail and letting them down again—as, unfortunately, this Government have a habit of doing.

Baroness McIntosh of Pickering (Con): My Lords, I welcome Amendment 293C. I am sure we are all pleased to see the noble Lord in his place and that his wife was not called upon on this occasion. I am pleased to speak to this amendment because I am asking my noble friend the Minister to join me in applauding and valuing the work of local authorities in delivering schemes, particularly under this Bill, but also historically and to-date.

The noble Lord, Lord Khan, spoke with great authority on waste disposal schemes and recycling. I will speak of my experience of the role that they play

so effectively in flood-prevention schemes. Being closely associated with the Pickering Slowing the Flow pilot scheme, I think that this was exemplary because it included just about every level of local authority—Ryedale District Council, North Yorkshire County Council, Pickering Town Council, the Environment Agency and many others—which enthusiastically supported and contributed financially to it.

The weight of responsibility on local authorities will be eased in this regard if we could rope more private partners into these schemes, as I know that the Government are trying to do. I look forward to supporting anything that the Government can come up with in this regard.

However, upper-tier councils and unitary authorities play another role: an ongoing role of monitoring flood risk and identifying and mapping the areas most at risk. This is a crucial role that is often forgotten in times outside flood periods. Councils have come under huge pressure and have performed extremely well during the pandemic, which should be noted and celebrated.

However, if we value their work in this regard, as I do, will my noble friend seek to use his good offices to ensure that the work they do and the money that is allocated to it are ring-fenced and do not come under increasing pressure from the other work that they do, particularly caring for the vulnerable, such as the elderly, and providing education for the very young? I am grateful for the opportunity, in the context of this amendment, to make those few points and applaud the work of local authorities in this regard.

Baroness Quin (Lab) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady McIntosh of Pickering, whose work on the Bill has been so thorough and admired. I welcome the tabling of this new clause and agree very much with the points made by my noble friend Lord Khan in speaking to it. As we all know, the role of local authorities has been important—indeed, crucial—in the battle against Covid. These same local authorities will also play a key role in helping to deliver environmental and climate change targets.

I will supplement some of the points made by my noble friend Lord Khan, having taken some soundings from local authorities in my own area in the north-east, including one covering a large rural area, with Conservative control, and another in an urban area, with Labour control. It was interesting that, despite these obvious differences, the authorities were largely in agreement about the opportunities and challenges presented to them by the Bill.

The authorities concerned have a strong commitment to biodiversity and the principle of biodiversity net gain. Where I live in Northumberland, we are very much on the front line in the efforts to prevent the disappearance of the red squirrel, and, on this issue, there is not just local authority support but very strong public support. On Tyneside, the area that I used to represent in the other place, the importance of biodiversity was publicly understood by the presence of the farthest inland colony of kittiwakes and the establishment of the Kittiwake Tower local nature reserve around the Newcastle-Gateshead Quayside. For that reason, I was particularly interested in what the noble Lord, Lord Cameron of Dillington, said about kittiwakes earlier.

The authorities that I have consulted are strongly committed to the principles of the Bill; they all supported biodiversity net gain, the importance of local nature recovery strategies and the importance of consistency, and the highest standards of recycling and waste collection. However, all were agreed on the following points. First, they were concerned about having the necessary resources. Secondly, they felt that, in many ways, the devil was in the detail, so clear guidance would be crucial and their continued involvement in such guidance would also be very important.

On resources, it was felt that, if not properly resourced, outcomes would be unsatisfactory and not properly meet the obligations that the Government and the local authorities want to enter into. My noble friend made the point about additional skilled resources, and I ask the Government what assessment they have made of the availability of trained ecologists? Do they have a clear strategy in terms of how we can boost training schemes in a timely manner so that any shortfalls in skills can be addressed? I think that some local authorities worry that organisations like Natural England, which have understandably seen their budget increase in recent years, might be in a better place to recruit trained staff than local authorities, many of which, as was eloquently described by my noble friend, have experienced deep cuts in recent years and have had to concentrate on core services such as social care and cut back on other areas.

While there was strong support for the principle of biodiversity net gain, some worries were expressed in the response to the government consultation. I recognise that the Government have shown willingness to address the issues that arose in the consultation, but I also note that in their response, they said they did not think that any particular type of development would be disproportionately affected by their proposals. This puzzled me because it seems to me that there are concerns in urban areas that the proposals could cause problems.

Ironically, brownfield sites in urban areas can often be more biodiverse than sites in farmed countryside in rural areas because many of them have, in effect, been rewilded in recent years. However, because of low property values and the desire to see affordable housing built there, quite rightly, such sites may face financial viability issues. Rather than going into the details about this, I would like the Minister to engage with urban authorities to discuss in more detail their valid concerns about biodiversity net gain in such areas, simply to reassure them that they will not, for financial reasons, find difficulty in meeting the goals have been set and which they fully support.

There is also concern about the detail on waste and recycling standards, and there is keenness to see that money is spent to bring about the best environmental outcome. There are some concerns that what might seem cost effective or simply tick the right box on food collection, for example, is not the best environmental way forward. There is also the issue of current contracts, which needs to be looked at, if local authorities are already locked into longish or long-term contracts. In delivering these proposals, councils need to be fully funded and ring-fenced. They need to know how the

[Baroness Quin]
funding will be sourced, calculated and allocated, and whether this will have implications for other areas of the local government settlement. In short, this needs to be resourced for the best outcome.

On the detail of what local authorities are being asked to do, the point has been made to me that we need to reflect in detail on some of the difficult trade-offs that may arise. For example, local authorities might be asked to achieve the right diversity in the wrong place. I will give a local example: in Northumberland, we have Kielder Forest, which used to be a huge and very densely planted forestry area. It has become a very valuable tourist resource these days, but felling is taking place, and there will be pressure to plant more trees. Yet planting trees in peat bogs is not environmentally sound, and new trees, particularly native trees and anything other than the dreaded Sitka spruce, about which the Minister knows my views, might be better situated in some of the arable farming areas. However, that also gives rise to questions.

There can also be complications about trade-offs between, for example, the habitats of particular birds that nest in open countryside. We have to set that against the need to plant more trees, which is also environmentally very important—so, to resolve these issues, it seems to me that there will be a need for good communication between local authorities and the Government to ensure that local decisions, taken perhaps for very good reasons, do none the less fit into the wider vital effort to save the planet and fulfil wider environmental obligations.

I am sure that it would help the Government on many issues to deal with groups of local authorities, particularly in the context of nature recovery strategies. In the case of my own part of the world, I express the personal hope that the maximum amount of local authority joint working can be agreed, from Berwick in the north to the south of County Durham on the other hand, rather than a divide between north and south of Tyne, which makes no economic or environmental sense and ignores the increasing willingness of the authorities to work together. On the environment, my understanding is that there is already a good network of officer engagement, driven by practical considerations.

5.30 pm

I urge consistency across government between environmental and agricultural policies, so that local authorities, particularly in rural areas, understand and appreciate that. For that reason, the ideas put forward by my noble friend Lady Young of Old Scone about a strategy are very helpful. My own addition to that would be that the environment needs to be factored into trade policy. If huge efforts are made domestically to attain environmental goals, does it make sense to turn away from our nearest markets to incur more air and sea freight miles, for example? A joined-up approach is vital.

Finally, a clear message to enable local authorities to engage with residents, tourists and businesses in their area will be necessary. We are all used to the very effective message during Covid of "Stay at home, protect the NHS, save lives". Perhaps the environment also needs clear messages to avoid public confusion and mixed messages which would not help local authorities in their interface with their local community. I hope that the Minister will take on board local authorities' comments in the consultation as well as some of the points made in this debate, and see if further changes need to be made to the Bill before we deal with these issues on Report.

The Earl of Dundee (Con) [V]: My Lords, I support this amendment. Clearly, it is unsatisfactory if local authorities cannot deploy this Bill's prescriptions.

As is here implied, such failure might simply reflect lack of local government staff and financial resources. If so, it is up to the Government to redress that deficiency.

Yet at every given and relevant moment, central funding might well not be considered to be affordable at all, even if the Government might equally lament that their own legislation could not be deployed as a result.

However, that anomaly is prevented by this proposed new clause, which would make it obligatory for a future Government to provide funds so their own laws and prescriptions are properly carried out at local levels.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a pleasure to follow the noble Earl, Lord Dundee, and to offer the Green group's strong support for Amendment 293C. I thank the noble Lord, Lord Khan of Burnley, for his clear introduction and explanation. I also declare my position as vice-chair of the Local Government Association.

The noble Lord, Lord Khan, referred to the waste recycling problem, which gives me an irresistible chance to plug the need to reduce costs by promoting reusable nappies, an issue already discussed and which we will come back to. On the broader issue, it is worth noting that the National Audit Office, in its 2018 report on the financial sustainability of local authorities, found that recent government approaches had been

"characterised by one-off and short-term funding fixes"

and a

"crisis-driven approach to managing local authority finances".

Earlier this year, the NAO said that at least 25 councils were teetering on the brink of bankruptcy, which is hardly surprising when in the past decade the spending power of local government has been cut by one-third, while demands in many areas, notably adult social care, have grown.

If we are to give local authorities additional roles and responsibilities, this direction comes from Westminster, and the money has to come from Westminster too. I note that last December the Blueprint Coalition, formed from local government organisations, environmental NGOs and academics and supported by around 100 councils, warned that our 2050 net-zero target could be achieved only with the

"full participation of, and support for, local authorities".

That report was specifically focused on the climate side of the environmental equation but, of course, as this entire debate has acknowledged, these two issues are interlinked. I note that that Blueprint Coalition report stressed what the Minister might like to call nature-based solutions—the need to accelerate tree planting,

"peatland restoration, green spaces and other green infrastructure".

Those are all things that the Government say that they plan to support, but the delivery vehicle that is most effective and cost effective will very often need to be local authorities.

This is also happening in the context of the Skills and Post-16 Education Bill. The Green Alliance highlighted the need for training to ensure that, in local government, climate skills are embedded in all roles and there is widespread access to specialist skills, as the Committee on Climate Change recommended. That Green Alliance report found that many local authority representatives were terribly concerned that this was not available and that instead they were forced to rely on consultants—which, again, was a far more expensive option. This amendment is not only essential but could save money. How could the Government possibly oppose that?

Baroness Neville-Rolfe (Con): I rise to speak to this amendment in the names of the noble Baroness, Lady Jones of Whitchurch, and the noble Lord, Lord Kerslake. This is because I agree with them that it is important that local authorities are prepared to deliver the many new duties provided for in this Bill; they will, of course, be key to its success. I am always pleased to follow the energetic noble Baroness, Lady Bennett, but more particularly to have my first opportunity to welcome the noble Lord, Lord Khan of Burnley, who is adding a great deal to our proceedings, especially in his knowledge of how things actually work in local government.

The proposers of this amendment appear to want to see a review, three months after the Bill's passage, of the funding and staffing required and of how additional costs should be covered. I am afraid that I am more impatient; I would like to hear now from my noble friend the Minister how the burdens on local authorities will be dealt with. Will it be through the rate support grant? Will special funding be provided from the Defra budget, and will it be ring-fenced, as my noble friend Lady McIntosh of Pickering asked? Does he have a feel for the total likely to be needed, in terms of hundreds of millions of pounds?

Improving skills is probably more important to productivity growth than any other investment we can make. There is already a skills and staffing gap in local government, partly because of the needs of environmental measures in planning and building, at which the Built Environment Committee, on which I sit, is already looking. The Bill will make that gap a great deal bigger.

The noble Lord, Lord Khan, mentioned ecologists and recycling but there is, of course, a broader challenge. Competition for talent, from Natural England and others, as the noble Baroness, Lady Quin, said, is also likely to cause problems. What is the plan for gearing up the skills we need in local government in preparation for their new duties? Also to return to an earlier theme of mine, how will this be communicated?

Baroness Bakewell of Hardington Mandeville (LD): My Lords, it is a pleasure to follow the noble Baroness, Lady Neville-Rolfe. I declare my interest as a vice-president of the LGA.

Whether local authorities were likely to be prepared for the implications of this Bill for their operations was discussed briefly on Monday evening, when the noble Lord, Lord Kerslake, opened a long debate which featured mainly the need for more trees. Although the debate was long and extensive, I fear that the issue of whether local authorities were likely to be properly resourced to carry out their functions as described in the Bill was somewhat lost in the debate about trees and tree planting, vital though that was. The amendment in the name of the noble Baroness, Lady Jones of Whitchurch, and co-signed by the noble Lord, now stands alone and we have an opportunity to debate to what extent local authorities can fulfil the expectations that the Bill places on them. The noble Baroness, Lady Neville-Rolfe, asked exactly how the money will be provided and just how much will be required. These are vital questions.

The last 16 months have not been great for local authorities. Their councillors have been meeting for the most part remotely, and this has meant that the public have not had the same access to their decision-making as previously. Their staff have been redeployed to other tasks: in some cases, it was making up food parcels for families and children; in others, it was helping to staff vaccination centres and adjoining car parks. Others were ensuring that the homeless were removed from the streets to places where there was shelter and they were safe from Covid. The noble Baroness, Lady McIntosh of Pickering, congratulated local authorities on the excellent work they do. I echo that.

Now that councils are beginning to return to some form of "normal" working, whatever normal is for each council, the Environment Bill, long trailed and expected, is about to pass into law with requirements for local authorities to step up to the mark. They are, of course, willing to do this, as reinforced by the noble Baroness, Lady Quin. It is their ethos that public service should come first. However, a lot is expected of them.

Local authorities are expected to create local nature strategies. Due to previous funding cuts, it is estimated that only one in four currently has access to an in-house ecologist, as raised by the noble Lord, Lord Khan. If those ecologists are spread evenly around the country, those without may be able to buy into the expertise of their neighbours. But such even distribution is rare, and it is likely that some areas of the country will have no access to an in-house ecologist. I can see a burgeoning market here for budding ecology entrepreneurs.

The Environmental Audit Committee's recent report, *Biodiversity in the UK: Bloom or Bust?*, indicated that a lack of funding along with a shortage of ecologists meant that some authorities would struggle to produce their biodiversity net gain and local nature recovery strategies, as the noble Lord, Lord Khan, indicated. Similarly, on the changing rules around waste measures, many authorities do not currently have separated recyclable waste collections. Others may have it in place but are seeking to widen the variety of items collected, and this will place added burdens on already stretched budgets. The noble Baroness, Lady Quin, raised the issue of long-term waste collection contracts.

As the Minister will know, the minimisation of waste is very dear to my heart. Local authorities which collect all their recyclables together are likely to be those that bundle all their plastics together and despatch them to what they believe are licensed disposal plants.

[Baroness Bakewell of Hardington Mandeville] As debated earlier, this is often not the case. I have spoken at waste conferences on the need to have a single-pass vehicle that collects the majority of recyclables—plastic, glass, paper, cardboard, aluminium cans—which the householder will have separated and put out in different containers for collection. This has not always been welcome, as the cost of changing collection vehicles is often prohibitive. The public want to play their part and local authorities want to play their part, but adequate funding for them to be able to make the change is vital for success. Those authorities which have been collecting separated waste for some years are in a much better position to ensure that each item of waste is recycled appropriately or disposed of safely and to maximum benefit.

All this requires funding, as the noble Earl, Lord Dundee, made clear, and the noble Baroness, Lady Bennett of Manor Castle, raised possible local authority bankruptcies. The noble Lord, Lord Khan of Burnley, has given an excellent exposé of just what the impact could be for hard-pressed local authorities. I fully support his bid to ensure that the Government properly assess the effect of the measures in the Bill on both the staffing and the financial resources of local authorities at this critical moment. We all want the measures in the Bill to succeed, but this will not happen unless sufficient funding is provided. I know the Minister is keen for the Bill to be a success, and I look forward to his positive response to this amendment, which supports local authorities to play their part.

5.45 pm

Lord Goldsmith of Richmond Park (Con): I thank the noble Baroness, Lady Jones of Whitchurch, for her Amendment 293C and the noble Lord, Lord Khan of Burnley, for introducing it. I reassure noble Lords that the Government are proactively involving local authorities in preparations for implementing the measures in the Environment Bill. Local authorities are key partners for delivering the Bill, from introducing consistent recycling collections and delivering biodiversity net gain to improving air quality. We have worked closely with local authorities in designing the Bill's provisions and are committed to engaging with them as we implement it, seeking to maximise effective delivery and minimise unnecessary burdens. We have held over 15 public consultations, which provided a critical perspective on the Bill's measures and received extensive contributions from stakeholders across all parts of society, including local authorities. These were on key measures such as consistency in household and business recycling in England, updating planning requirements with biodiversity net gain and introduction of a deposit return scheme in England, Wales and Northern Ireland. The responses to those consultations have been used to develop the Bill's measures as well as informing upcoming secondary legislation, with further detailed consultation on measures to come.

Noble Lords will know that the Government have committed to funding in full all new burdens on local authorities arising from the Bill. We are working closely with MHCLG to ensure that funding for local authorities is delivered sensibly. We have to be conscious of the established process for funding local authorities through the local government finance settlement. The settlement is unring-fenced to ensure that local areas can prioritise based on their own understanding of the needs of their local communities. However, as I said, we have committed to fully fund all new burdens on local authorities through the Bill. This is in addition to making sure that the costs of protecting the environment, which currently fall on many local authorities and consumers, are shifted to those who may damage it, including through extended producer responsibility or biodiversity net gain. When we look at the global figure, there is of course increased expenditure, which we will cover, but there are also various sources of income.

We have also built in appropriate transition periods. For example, the Government have built in a two-year transition period post Royal Assent for local authorities on biodiversity net gain. The Government are also providing training to local authorities on biodiversity net gain and are in close dialogue on how local nature recovery strategies will be delivered, including through recent pilots. In answer to a number of questions raised, including by the noble Lord, Lord Khan, I say that the Government have committed to providing training and guidance to local authorities on, for example, biodiversity net gain. We have been working closely with local government organisations on implementation matters. Furthermore, we have funded a multi-year project delivered by the Planning Advisory Service for a suite of training and guidance resources for local authorities to ensure that they have access to the right skills and knowledge to implement biodiversity net gain.

I hope I have reassured the noble Baroness who tabled the amendment and others of how we have already worked closely with local authorities on these measures and how we will work going forward. We believe that setting an arbitrary date for reviewing the preparedness of local government to deliver on the Bill, which would not reflect the different timelines for the respective measures, is unnecessary, but this is an important issue and the noble Baroness is absolutely right to raise it. I hope I have reassured her and that I can persuade her to withdraw her amendment.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): My Lords, I have received no requests to speak after the Minister, so I call the mover, the noble Lord, Lord Khan of Burnley.

Lord Khan of Burnley (Lab): I thank all noble Lords for taking part in this very informative debate and for the many thoughtful contributions across the House.

I agree with the noble Baroness, Lady McIntosh of Pickering, that the amendment will allow the weight on a local authority to be eased. She talked about councils coming under huge pressure, as they have done during the pandemic. The noble Baroness, Lady Bakewell of Hardington Mandeville, also mentioned how brilliantly local authorities performed in providing support to communities during the difficult, challenging times of the pandemic.

In her excellent, detailed and comprehensive contribution, my noble friend Lady Quin talked about having consultations with various councils and through them finding out the important shortfalls in skills that

must be addressed, and about local authorities being concerned about not having the necessary resources and wanting clear guidance. Goals must be set that are deliverable and financially possible.

The noble Earl, Lord Dundee, was very succinct in saying that the amendment would help laws to be carried out properly at local level. As always, the noble Baroness, Lady Bennett of Manor Castle, talked about the difficulties and challenges of 25 councils that are looking at bankruptcy. Funding is a huge concern and the point was made very eloquently by the noble Baroness, Lady Neville-Rolfe. I thank the Minister for his reply to that, but there was a lack of discussion about the different funding streams that the noble Baroness talked about, in particular looking at whether this would be a local government settlement grant increase or whether Defra would have a funding stream. I thank the Minister also for his reassuring commitment to work closely with and consult local authorities and not to overburden them, as well to training and guidance—but there was no detail on funding streams to local government.

I welcome the very important points made by the noble Baroness, Lady Bakewell of Hardington Mandeville, in relation to stepping up to the mark. From her contribution I took away the fact that there are huge expectations on local authorities to deliver on the important outcomes of this Bill. We expect the Government to ensure that they recognise the challenge that lies ahead. The noble Baroness mentioned the great work of local authorities during the pandemic. When I was a local council cabinet member for finance and introduced iPads, getting rid of papers and documents in meetings, people looked at me in a very bizarre manner, as if to say, "What is he talking about? Why are we doing this?" I got a lot of distress, but after the pandemic and 16 months of being Teamsed out and Zoomed out, they were very appreciative of innovation. We would like local authorities to continue being innovative but also for it to be recognised that to be innovative and creative they need support and guidance.

For now, I beg leave to withdraw my amendment, but I am sure that these arguments will come up again.

Amendment 293C withdrawn.

Amendment 293D not moved.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): We now come to the group consisting of Amendment 293E. Anyone wishing to press this amendment to a Division must make that clear in debate.

Schedule 20: Amendment of REACH legislation

Amendment 293E

Moved by ***Lord Whitty***

293E: Schedule 20, page 247, line 19, at end insert—

"(1A) Regulations made under this paragraph must not reduce the protections or standards of any Article or Annex of the REACH Regulation.

(1B) Subject to sub-paragraph (1A), the Secretary of State may by regulations seek to maintain or exceed regulatory parity with any new or amended regulations of the European Parliament and of the Council concerning the regulation of chemicals.

(1C) The Secretary of State must prepare an annual report explaining each decision not to align with new EU restrictions and authorisations on chemicals, and Candidate List Substances of Very High Concern.

(1D) The annual report must include an assessment of the environmental, economic and public health impact of any such decisions.

(1E) An annual report must be laid before Parliament before the end of the 3 month period beginning immediately after the last day of the period to which the report relates.

(1F) The Secretary of State must publish annual reports laid before Parliament under this section."

Member's explanatory statement

This amendment would remove the possibility that a Secretary of State might lower standards that are in place currently while enabling them to easily meet or exceed new EU chemical protections and standards. It would also place an obligation on the Government to transparently justify any decision to deviate from EU control on chemicals.

Lord Whitty (Lab) [V]: My Lords, this amendment amends the rather confusing Schedule 20 and would clearly and unambiguously provide that UK standards for the production and use of chemicals would not regress or fall below European standards without a clear and transparent justification from Ministers for so doing being presented to Parliament and reported on annually.

At present, the default position is that, if the European regulatory position on chemicals changes or, even more importantly, deals with new chemicals which have not previously been covered, the UK would remain where we are—in practice, at the end of the transition period. This is going back a bit. Those with long memories might cast their minds back to the immediate post-Brexit vote period and the 2016 EU withdrawal Bill. Some noble Lords might remember that, during the lengthy proceedings on that Bill, I took a particular interest in the future relationship between this country and the executive agencies of the European Union, of which there were about 40, one of them being the European Chemicals Agency.

That was one of the most important of them, for a number of reasons. The chemicals industry was and is the most integrated of all European industries, in its production of chemicals across borders, in its trading of those chemicals, which many downstream industries and firms use, and because thousands more businesses and consumers use the products of this integrated pan-European and international process. Those thousands of chemicals have a potentially dangerous impact on humans, animals, nature and the environment, and all of them were subject to registration, authorisation, testing for toxicity and other potential harms, and restrictions on use by the European Chemicals Agency—a process that was respected by the industry, by scientists and intellectual property lawyers and, in the main, by campaigning environmental and medical groups across Europe.

We could have negotiated a special arrangement with ECHA, as Norway did. Indeed, the then Prime Minister, Mrs May, in what was at that time seen as her definitive Mansion House speech, singled out the European Chemicals Agency as one of only three EU agencies with which her Government considered that we needed to maintain an involvement. The rationale

[Lord Whitty]
for retaining that involvement was clear to much of the industry: for chemical registration and authorisation, to do anything else would mean duplication for industry and user businesses.

However, when his regime took over, the present Prime Minister apparently decided that duplication was just what we wanted, so instead we established a parallel REACH process, put under the control of the HSE. Producers of chemicals, and also importers, exporters and manufacturers of downstream products, and retailers and users of those products, have to check registration with UK REACH administration, even if it has already been cleared by REACH in Europe. Complications abound—of paperwork, legal access, and intellectual property rights—and so does the possibility, debated earlier in Committee, of duplication of testing, on animals in particular.

At the time of the withdrawal Bill, I and others sought assurances that the HSE would have the expertise, the staffing levels, the money, and the resources, to conduct this duplicate REACH process. Ministers gave those assurances nonchalantly, but in the few months of operation since the end of the transition period, those assurances have appeared to be hollow. We have not been able to match the European Chemicals Agency system. The UK has already fallen behind on new registrations and restrictions of substances of very high concern: those chemical products which have intrinsic hazards—carcinogenic, mutagenic, toxic et cetera—to humans.

Since the end of transition, ECHA has dealt with eight new substances of very high concern, whereas the UK parallel system has dealt with only two. Therefore, the UK has not added conditions for six of those substances, which may well have significant conditions on their use. These include three flame retardants and a toxic endocrine disrupter. Thus, we have ended up in a position where we have de facto divergence through institutional slowness, which in practice means that UK standards already not only diverge from but are lower than EU standards.

I recognise that it will take time for the new UK system to get fully into gear. Hopefully, the HSE process will speed up, but the key issue—and the basis for this amendment—is not the rights and wrongs of duplication, but divergence, and of the UK adopting or failing to adopt standards that, in practice, means lower standards in the UK; whereas we were constantly assured during the passage of the withdrawal Bill that our standards would be at least as good as EU standards. At present, as I say, we are seeing some divergence by default. Now I accept that, in future, there may well be good reasons for divergence, but if the protection and conditions are less in the UK than in Europe, divergence needs to be clearly justified publicly and scientifically to Parliament and beyond.

6 pm

Divergence for its own sake was never a sensible policy. Divergence to lower standards was declared by the present Government not to be their aim. Divergence by default was deemed impossible but has already apparently happened. Divergence simply for a trade advantage, moreover, would likely trigger retaliatory action from the EU. This amendment would mean that the default position would instead always be to stay in line with existing and future EU standards, unless there was a clear, transparent and publicly justified reason for not doing so. That would protect our people and our environment. It would avoid many of the costs of duplication and of testing, and regulatory alignment would support free trade within an often highly integrated multinational supply chain.

The supposed benefit of post-Brexit regulatory divergence would of course still be open to Ministers, but they would have to be fully and explicitly justified. Ministers would be able to introduce UK standards that were higher than the European ones or that better reflected UK conditions. That option is indeed a possible benefit of Brexit. But what Ministers could not do, if this amendment or something like it were adopted, is to just leave the regulations as they were before transition or simply have no regulations because the European agency has only dealt with a substance or its application since Brexit. This is particularly important because the European agency is now focusing in some cases on cocktails of chemicals, which it had not explicitly dealt with prior to Brexit. That is a development within ECHA that we need to follow.

As we saw when we discussed pesticides the other day, there are human health and environmental hazards arising from cocktail combinations of chemicals that can be different from and often more dangerous than those of individual chemicals used and regulated on their own. The noble Lord, Lord Goldsmith, indicated that, in the case of pesticides, he was not clear whether cocktails of chemicals were being addressed; the reality is that they are not. But the European agency has now embarked on a programme that does address such combinations of more general chemicals. It is not clear, however, that the HSE and UK REACH have any plans for equivalent processes.

I will take another potential example. The European body has started on a process of restricting microplastics use, whereas the HSE and UK REACH appear to have no plans for an equivalent process beyond what they have already started with microbeads in cosmetics, which in practice account for less than 10% of the problem.

This amendment would also prevent Ministers reducing the current protections, which in general means that the regulations under what was EU law are now transposed into UK law. At least, they could not do so without explaining themselves to Parliament. This is not just theoretical. In 2019, a change in endocrine disrupting chemicals nearly slipped through our processes via secondary legislation, until it was spotted by the UK Trade Policy Observatory. The Government then had to retract and correct it.

My amendment would therefore prevent regression from current standards and, crucially, also ensure that we kept up with European standards unless Ministers presented to Parliament a good and transparent case for divergence. What it avoids is regressive divergence and divergence by default. I beg to move.

The Earl of Dundee (Con) [V]: My Lords, I support this amendment moved by the noble Lord, Lord Whitty, for it guards against lowered standards while still enabling the United Kingdom to do much better. It also requires transparency on any change from EU standards on the control of chemicals.

No one would argue in favour of slippage of standards. However, many of us believe that, as the noble Lord, Lord Whitty, has just outlined, for technical and other reasons such standards can slip very easily all the same.

This amendment prevents that. Yet its expedients should not wrongly be viewed as a restrictive measure of conformity to the EU, of which we are no longer a member, but instead as an opportunity for the United Kingdom to take a lead internationally by setting even higher standards of our own.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a great pleasure to follow the noble Earl, Lord Dundee, with another message on the need for environmental protection. I will speak briefly in support of Amendment 293E and thank the noble Lord, Lord Whitty, for moving it and for his long-term concentration on the issue.

We are yet again in a non-regression cause—I feel something like a broken record. We were promised non-regression; we heard it again and again through the whole Brexit debate and subsequently. We need to consider this amendment in the light of the debate that was conducted publicly in February and March, when the industry initially proposed a light-touch registration of chemicals that were already on the EU REACH registration at the end of the transition period, effectively allowing a rubber stamp on those already in use. In response to that, environmental groups warned that this would contravene the principles that are apparently contained in the Environment Bill, which commits to maintaining the "no data, no market access" principle on which REACH is based.

The noble Lord, Lord Whitty, made some very important points about how the EU is progressing with investigations of the impacts of cocktails of chemicals—something that is highly relevant to Amendment 152, which we debated some weeks ago, also in the name of the noble Lord, Lord Whitty, about the impact of pesticide applications near homes.

If we do not have full data on each and every chemical, the Health and Safety Executive will simply not be able to do its job and will be at risk of legal challenge. The data being out there somewhere is not enough. Regulation is an ongoing and continuous process that requires access to high-quality, up-to-date data. I note the response in March from Breast Cancer UK, which said that such an action would weaken the Health and Safety Executive's ability to protect public health.

This is my final contribution to this very long Committee, and indeed the final contribution of the Green group. So, if the Committee will allow me a couple more sentences, I will say that it has been a long and fruitful haul, at least in the airing of issues and the identification of many flaws in the Bill. That is not surprising, perhaps, as this is such a fast-moving area and we have been dealing with a Bill so long in gestation. We have given the noble Lord the Minister a busy Recess in terms of meetings and, we hope, the drafting of government amendments reflecting our debates. The noble Earl, Lord Devon, back at Second Reading, said that this was the Green Party's Bill. We have done our best to make a positive, constructive contribution to this Bill, and we hope that we will see some results. I will see all noble Lords in September.

Baroness Neville-Rolfe (Con): My Lords, this amendment from the noble Lord, Lord Whitty, for whom I have a great deal of respect, is about the REACH directive, which brings us back to the vexed issue of Brexit and how we take things forward independently. This is a part of the Bill—especially the wide enabling provisions for regulation tucked away in Schedule 20—that really shocked me. On this occasion, I do not agree with most of the noble Lord's amendment.

My criticism is not to do with animal welfare and testing, which was dealt with at an earlier sitting. My concern is that the REACH directive—short for the grand-sounding registration, evaluation, authorisation and restriction of chemicals—has had a damaging effect on our industrial base since its implementation in June 2007. The directive has had a burdensome impact on most companies, including the most responsible. It applies to all chemical substances, not only those used in industrial processes, but also to those used in our day-to-day lives, such as cleaning products, paints, clothes, furniture and electrical appliances. If you handle any chemicals in your industrial or professional capacity, you may have responsibilities. REACH is compliance heavy and has made many UK companies operate in very different way. Again, the Roman system of law prevails over a more objective-based common-law approach. We have apparently had that in spades with the dual system that has been adopted since Brexit, described by the noble Lord, Lord Whitty.

I remember visiting an excellent small paint company in the Midlands, serving the advanced engineering industry, when I was a Minister. They were tearing their hair out over rules that were slowly bankrupting them, partly because of the heavy-handed way in which the big multinationals they supplied were loading all these new EU costs and responsibilities on to them. I raised their concerns with Defra, but to no avail. The attitude that the environment must take precedence over every other concern lives on, and that is unbalanced. Companies established outside the EU have not been bound by the obligations of REACH, even when exporting to the EU. Registration and everything else is the responsibility of the importer, and that makes life easier for third-country competitors. That sort of unfair, burdensome regulation helped to fuel Brexit.

What amazes me is that, now that we have left the EU, I have heard nothing about steps to help our industrial sector on this sort of detailed regulation; indeed, very much the reverse, as today's debate suggests. Will the Government agree to a business-led review of REACH with a view to using the new powers to improve productivity and competitiveness without, of course, undermining essential environmental safeguards? Although we come at this from a different direction, this might actually appeal to the noble Lord, Lord Whitty, because it could be a constructive way of getting rid of the problem that we have. The grace-period provisions in REACH that the Minister alluded to on 28 June are

[Baroness Neville-Rolfe]
not enough and are probably no good to the innovators and new entrants that we need in our engineering industries. The Minister might become very popular with small businesses in the Midlands and, indeed, in the red-wall industrial areas, if she agreed to a new post-Brexit review of this burdensome regime and how we can make it better.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, it is a pleasure to be taking part in this debate. I congratulate the noble Lord, Lord Whitty, on his knowledgeable introduction to this amendment, which seeks to provide safeguards for the vital REACH section of the Environment Bill. Many of his comments will be reinforced by my contribution.

During the run-up to Brexit, my noble friend Lord Fox and I had a meeting down at Marsham Street with the then Minister, the noble Lord, Lord Gardiner of Kimble, and Defra officials on the implications for the UK of not transferring the REACH regulations from EU to UK law. We were assured by officials that a better regime covering Great Britain—excluding Northern Ireland, which would remain within EU REACH—would be established. I regret to say that we were not convinced, and I am still not convinced. This landmark Bill gives the Secretary of State the power to alter the UK REACH system. This could cause deregulation and instability. Despite reassurances that the UK would not diverge from EU protections just for the sake of it, divergence looks set to widen over time.

The noble Lord, Lord Whitty, has already referred to that fact. During the debate on the use of pesticides, reference was made to the mixture of different chemicals and the cumulative effect that these have, which far outweighs the damage that the individual chemicals do on their own. The EU chemicals strategy has powers to restrict the cocktail effect, in order to reduce the exposure to endocrine-disrupting chemicals. Can the Minister assure us that the Secretary of State is not likely to relax the UK REACH standards, which could enable exposure to this risk?

6.15 pm

During the last year, the UK REACH has initiated restrictions on just two chemicals, compared to 18 under the EU REACH standards. Of course, there were going to be differences between what the UK and the EU implemented on a variety of measures. That was the whole point of Brexit, but there are some areas where the public will want to know that they are safe and protected from extremely toxic and dangerous chemicals. As a country, we are trailing behind: the ECHA has taken action to prevent more than 90% of the pollution caused by intentionally added microplastics, whereas the Government point to the UK ban on microbeads in wash-off cosmetics as our contribution. This measure only prevents less than 9% of microplastics entering our wastewater systems.

The Government are dragging their feet. UK REACH will be considering unspecified criteria on whether toxic chemicals will be suitable for Great Britain, but it will not be publishing either the criteria or the substances. The amendment of the noble Lord, Lord Whitty, would ensure, in sub-paragraph (1C), that the Secretary of State reports to Parliament on whether the UK is aligned with the EU on chemicals and on the candidate list of substances of very high concern—SVHCs. Entry on the candidate list means that companies have immediate obligations to provide information on the safety and protective measures in place for their product. Of course, this may involve businesses in some additional bureaucracy, and I understand the viewpoint of the noble Baroness, Lady Neville-Rolfe. Surely, however, it is better for this to be open and transparent, so that the public are aware of potential dangers, than for them to be unwittingly exposed to toxic chemicals that damage their health. Prevention is always better than cure.

Can the Minister say how many substances the Government have included in the SVHC list between January and today, and whether they have considered and rejected substances that include endocrine disruptors and, if so, why? Given that the deadline for companies to submit information on substances to be placed on the authorisation list is the end of October 2025, would it not be better for the Government to automatically adopt the ECHA's recommendations until that time? Would the Minister care to comment?

The UK gave an undertaking that it would not diverge from EU standards just for the sake of divergence. If that is the case, then it would seem appropriate for this clause to be on the face of the Bill. Companies that manufacture and export to the EU are obliged to operate the same standards existent in the EU. Any divergence from EU standards is likely to cause these companies additional costs, as they will have to meet two different standards in what could well be the same chemical product if they wish also to trade in the UK. The noble Lord, Lord Whitty, has given details on this. I look forward to the Minister's comments and fully support the noble Lord, Lord Whitty, in his amendment.

Baroness Hayman of Ullock (Lab): My Lords, I offer our strong support to Amendment 293E in the name of my noble friend Lord Whitty. I thank my noble friend for his detailed and knowledgeable introduction, explaining why it is so important we do not have non-regression in chemicals industry regulation. Plans as to how the Government intend to regulate the UK chemicals sector following Brexit and our departure from EU REACH have been of significant concern for the UK chemicals industry for some time. This amendment would remove the possibility that a Secretary of State might lower current standards, while enabling them to easily meet or exceed new EU protections and standards. It would also oblige the Government to transparently justify any decision to deviate from EU control on chemicals—noble Lords have talked about the importance of transparency.

Concerns were raised by the noble Baroness, Lady Bakewell of Hardington Mandeville, that provisions in the Bill give the Secretary of State the power to alter the UK REACH system, including through deregulation, which is causing instability. Concerns have also been raised about the potential for a reduction in protections and standards. The noble Baroness, Lady Bakewell of Hardington Mandeville, also talked about the potential for a toxic mix of chemicals, as we have heard in other debates during the progress of the Bill. The UK is

already falling behind EU protections. Divergence is set to widen over time, despite assurances that the UK would not diverge for the sake of it, and this brings with it considerable associated economic and political costs. I would be interested to hear from the Minister the Government's perspective on this divergence and how they will manage it. The current regulatory processes for GB controls lack transparency and do not match the pace of EU action. They also do not appear to consider or attempt to mitigate the effects of divergence. My noble friend Lord Whitty mentioned the issue of new chemicals in particular, and how that is being managed.

Going back to our negotiations on Brexit, it was hugely disappointing that the Government ruled out what we believe would have been the best outcome for both the environment and human health, as well as for industry: for the UK to remain within the world's most advanced system for regulating hazardous chemicals, the EU REACH system. The decision instead to set up UK REACH will substantially increase costs and bureaucracy for UK companies, while bringing real danger through the reduction in protection for the public, workers and the environment from hazardous chemicals. But we are where we are, and the priority now has to be for UK REACH to be the best it can possibly be.

The provisions in the Bill present an opportunity to ensure that UK REACH reflects available scientific evidence and allows for a regulatory environment which is fit for purpose. The noble Earl, Lord Dundee, said we now have an opportunity for higher standards, and I agree with him. Schedule 20 gives the Secretary of State wide-ranging powers to amend the UK REACH regulation and the REACH Enforcement Regulations 2008. Such amendments would have to be in line with Article 1 of REACH, which outlines its aim and scope. Several provisions are protected from modification by SI under these powers. However, we are concerned about granting the Secretary of State such a sweeping power to amend the main UK REACH text, which could then be used to reduce the level of protection for the public and the environment from hazardous chemicals. My noble friend Lord Whitty talked about the potential for huge damage if we do not manage our chemicals industry correctly.

There are many concerns from industry about access to data and divergent sources of data: different data can mean different decisions. The noble Baroness, Lady Bennett of Manor Castle, talked about a lack of data undermining HSE's ability to do its job properly. Now that we have left the EU, the UK does not have access to the same EU databases and the 98,000-plus dossiers of commercially sensitive safety and technical data for more than 22,000 substances. I have spoken many times in this House and the other place about my concerns about the risk of duplicate animal testing, and I know other noble Lords are concerned about this. We have had assurances from the Government, but no real explanation about how it is going to be prevented. When scientists and technical review panels cannot see the same scientific data and cannot discuss this data with scientific counterparts in the EU, inevitably we could find that different decisions are being drawn.

My noble friend Lord Whitty talked about his concerns around divergence by default. In a divergent regulatory system, the Government must be careful to avoid any lowering of our current high standard of environmental protections and increasing risk to public health, solely for the purpose of quick, short-term economic international trade wins or rapidly rolled-out innovations. I ask the Minister for her reassurance that this will not happen. Furthermore, a divergent chemicals regulatory system in the UK will bring additional cost burdens to business and, if standards are lowered or untrusted, will bring consequences to the ability to trade products with the EU. The noble Baroness, Lady Neville-Rolfe, talked about the burdens on business if we do not get this right. We have to put safety first and consider the impact on the environment.

Significant divergence giving the UK a competitive advantage risks triggering rebalancing measures by the EU, such as retaliatory tariffs, under the EU-UK Trade and Cooperation Agreement. Remaining closely aligned with EU REACH would ensure that UK consumers and the environment continue to benefit from the EU's relatively high protections as they continue to improve, and would also avoid unscrupulous manufacturers dumping products in the UK that fail to meet EU standards. The amendment we have been debating would provide important benefits and protections from damaging divergence that could lower standards. I urge the Minister to consider the benefits of supporting it.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I thank the noble Lord, Lord Whitty, for his Amendment 293E. As I have outlined in previous groups, the Bill will enable the Government to update our REACH regulation to ensure it keeps pace with the latest scientific developments and to prevent our chemicals regulation becoming frozen. I start by reassuring the noble Lord that there are already several safeguards included in the Bill. Changes to the REACH regulation have to be consistent with Article 1 of that regulation, including ensuring a high level of protection for human health and the environment. The Secretary of State must publish an explanation of why he considers that to be the case before making any changes.

I know the noble Baroness, Lady Hayman, was particularly concerned about the powers that the Secretary of State is taking to amend this. An ability to make supplementary, incidental, transitional or saving provisions is a standard provision in legislation. The aim is to make sure that we avoid inconsistencies, discrepancies or overlaps developing in the statute book, but it would not enable us to make wholesale changes to the protected provisions. To take an example, Article 35 of the REACH regulation is a protected provision which gives workers the right to access information that their employer receives under other provisions of the REACH regulation, Articles 31 and 32, concerning a chemical substance or mixture they use or may be exposed to. If we were to extend the scope of those other REACH provisions to also cover information about substances in articles, we would want to amend Article 35 to reflect these changes.

I should say at the outset that both the UK and the EU recognise that EU REACH is part of the single market. Access to EU REACH or associate membership

[Baroness Bloomfield of Hinton Waldrist]
of the European Chemicals Agency are tied to the single market, and the EU insisted on this. The Government have already made it clear that we would not accept being subject to the European Court of Justice, and associate membership would mean just that. However, the EU-UK Trade and Cooperation Agreement still provides for co-operation between the EU and UK chemicals agencies.

I should also stay at this juncture that, while I take the point about the larger resources that EU REACH has, Defra has asked HSE to work on two restrictions to date. I know that, normally, the EU would probably do five or six a year, but we have a significant time advantage: even with the Secretary of State asking the devolved authorities' consent, we still have a speed advantage because we do not have to get agreement from 27 countries, which, in chemicals terms, can actually take many years.

We have also provided over 20 provisions relating to the fundamental principles of REACH, listed in the table in paragraph 6 of Schedule 20. They include: the "no data, no market" principle; the last resort principle on animal testing; the aim of progressively replacing substances of very high concern through the authorisation process; the effect of restrictions; the importance of communicating information to the public on the risks of substances; and various provisions to ensure that UK REACH will be properly transparent.

6.30 pm

The Secretary of State is required to consult on any proposed amendments to REACH and to obtain the consent of the devolved Administrations on devolved matters. All amendments will be subject to the affirmative procedure and must therefore be fully debated in Parliament. In addition to these protections that apply expressly to REACH, the office for environmental protection has general powers to give advice to a Minister on any proposed changes to environmental law. This includes any relevant amendments to the REACH regulation. This advice would be published and the OEP could comment if it thought the Government were seeking inappropriately to amend a protected provision.

We ought to be ambitious and not look solely to the EU to define a successful chemicals regulation. We should follow the best scientific advice and adopt the most appropriate approaches for it. One must remember that the UK is a world leader in the management and regulation of chemicals. That will not change now that we have left the EU. We will build on our global reputation for scientific expertise and continue to provide a strong and influential voice on the world stage as an active party to the four UN conventions on chemicals and waste.

We will continue our work to improve regulations, strengthening the evidence base and ambition globally. The intention of the provisions in Schedule 20 is to make sure that we have the means to keep UK REACH fit for purpose. We can look inside this country, while continuing to look elsewhere in the world, for the best ideas. Schedule 20 gives us that flexibility while still providing necessary protections. The Environment Agency, for example, has built up considerable expertise on the risks associated with chemicals used as flame retardants. When we have more experience of operating UK REACH, we may well see opportunities to streamline processes without sacrificing rigour.

The noble Baroness, Lady Bakewell, asked about adding to the list of substances. The UK has not added or rejected any substances for the candidate list of substances of very high concern. The HSE, just like the ECHA, will add to the candidate list periodically, not on a rolling basis. I will write to her with more details on microplastics, because she answered the one on facial products and beauty products, but I think we have more that we can say on that issue.

The noble Baroness, Lady Bennett, mentioned her concerns about the "no data, no market" principle still holding. UK REACH maintains this core principle, which is necessary. It is the means by which the regulator can check that companies are properly meeting their duty to ensure the safe management of chemicals. It provides assurance to the public that businesses understand the hazards and risks of the chemicals they are using and know how to manage them. It also gives the authorities information they can use to help identify and place controls on the use of dangerous chemicals.

A number of noble Lords mentioned non-regression and the worry that we would regress our standards, which I have answered in general terms. Since the UK is a world leader in the management and regulation of chemicals, there are no plans to diverge from EU REACH for the sake of it. The UK has established UK REACH, as it must, as its own independent chemicals regulatory regime. This will ensure that we can both take the best ideas from inside and outside the EU and act on the best available evidence and in the UK's best interests when circumstances dictate.

Lastly, the noble Baroness, Lady Neville-Rolfe, made a number of constructive suggestions which might help the burden on small businesses. I am very happy to suggest that we discuss this in the department. But for the moment I hope that noble Lords are reassured and that the noble Lord, Lord Whitty, is able to withdraw his amendment.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): I have received a request to speak after the Minister from the noble Baroness, Lady Neville-Rolfe.

Baroness Neville-Rolfe (Con): I rise to ask two questions, which I think have been answered. One is about microplastics and how they are covered by REACH; in writing to the noble Baroness, Lady Bakewell, it would be extremely helpful if the Minister could copy me in too. They are a genuine area of concern. Secondly, I want to pursue the idea of a business-led review of REACH, not to undermine environmental standards but to make sure that the nonsenses of this area are tackled. I would be very happy to talk to my noble friend about that.

Baroness Bloomfield of Hinton Waldrist (Con): I am very happy to take both issues back to the department.

Lord Whitty (Lab) [V]: My Lords, I thank the Minister for that reply, which attempted to reassure me—I am not sure it did entirely. I also record my thanks

to the noble Earl, Lord Dundee, the noble Baronesses, Lady Bakewell and Lady Bennett, and my noble friend Lady Hayman for their support for this amendment.

The Minister attempted to be reassuring, but the wording of Schedule 20, introduced by Clause 133, does not give the cast-iron guarantee that she appeared to be giving. I appreciate that there are other developments in this Bill and elsewhere which would restrict her or any future Minister's freedom of manoeuvre in this area, but an explicit requirement to report to Parliament if they intend not to follow the EU level of protection is important. I do not think that the combination of Schedule 20 and the text of the Bill delivers that. I ask the Minister to get her officials to have another look at it, but if she were forthcoming with an alternative amendment herself I would certainly have a look at that.

Chemicals have been a great boon to mankind. The chemicals industry is one of our great successes in industrial life, but it has also been shown to be quite damaging in a number of serious respects. The misuse of chemicals, the wrong disposal of chemicals, the wrong combination of chemicals and the wrong application of chemicals to humans, products, the landscape and the environment have caused a large number of problems. It was therefore important that Europe, when we were members, developed an effective system of regulating chemicals; effectively, if there was no data indicating their safe use, they would not be given access to the market. That is the basis of REACH.

I was interested in the views of the noble Baroness, Lady Neville-Rolfe, and I know that she reflects serious concerns from parts of industry. On this one, I think she is slightly out of date. It was certainly true when REACH started to be established, from 2007 roughly, that there was considerable concern throughout the chemicals industry that the regulations and the data required would be too burdensome, prevent innovation and cause difficulties for the sector. That concern continued for a number of years, but two things have happened since.

First, public concern about the impact of chemicals on human health and the environment has seriously grown, and so likewise has the industry's recognition that it needs a robust system of regulation to which it can be party. Secondly, the REACH system has bedded in across Europe. As I said in my speech, we must recognise that the European chemicals industry is pretty pan-national, in terms of both large companies and small companies with which they have a supply chain or a contractual arrangement, as well as importers and exporters. There is a lot that the industry has had to get used to, some of which it did not initially like, but it has now proved a rather more effective system of regulation than some others in the armoury of the European Commission, I would argue, and certainly much more accepted, both scientifically and by those who are concerned, and by the industry itself. It was therefore a bit of a surprise to hear the noble Baroness express such concerns—there may be some companies still upset by it, but in general it has been accepted.

I also think that the decision to duplicate on the same basis, in effect, as the European system has caused some frustration to industry but it is that duplication, rather than the essence of the European regulatory structure and regulatory process, that is causing any irritation now. That may also settle down. What I hope for in terms of those who are looking for protection from the impact of chemicals is that the HSE, Defra, the Environment Agency and everybody else who is involved in this area develop a speed of reaction that matches that of Europe. If they do that, then duplication ceases to be quite so important.

At the moment, that is not the case and we therefore potentially have three different sorts of divergence. We have a divergence because Europe has moved on but we have not got round to doing it—I call that divergence by default. We have divergence because the UK has decided explicitly that it wants a rather different system that would be less restrictive than Europe. We have divergence because the UK has decided that it wants better regulation. Both of those are possible under my amendment but they have to be explained to Parliament and justifiable in the terms of the original REACH proceeding. I do not think that the wording of Schedule 20 gives that degree of certainty. We need more clarity, not less. We need more understanding of what we are trying to protect in the chemicals regulation in terms of its impact on human health, animal health and welfare, wildlife and everything else this Bill is concerned with before we try to change the system significantly.

Therefore, this is an attempt to ensure that there is no regression, that any divergence is beneficial and that it is clearly explained to Parliament. I hope that the noble Baroness, Lady Neville-Rolfe, and others who might oppose this amendment recognise the importance of that. However, I take comfort from the support around the rest of the Committee for at least the principle of this amendment. In the meantime, I will withdraw it and we will, no doubt, come back to something like this on Report.

Amendment 293E withdrawn.

Amendments 294 to 297 not moved.

Schedule 20 agreed.

Clause 134 agreed.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): We now come to the group beginning with Amendment 297A. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Clause 135: Regulations

Amendment 297A

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

297A: Clause 135, page 123, line 5, at end insert—

"(10) Except for regulations under this section, regulations under this Act expire after the period of five years beginning with the day on which this Act is passed.

(11) The Secretary of State may by regulations substitute a later date for the purposes of subsection (10).

(12) Regulations under this section may make different provision for different purposes or areas.

(13) Before exercising the power under subsection (11), the Secretary of State must review the effectiveness of the regulations to which the power relates and conduct an assessment of the costs of the policy or provision relative to the benefits, having regard to a broad range of factors, including—

(a) effect on economic growth;

(b) costs to industry, in particular small and medium-sized businesses;

(c) social impact.

(14) Regulations under subsection (11) are subject to the affirmative procedure."

Member's explanatory statement

This amendment sets a sunset provision after five years for regulations made under the Bill, including those relating to targets. If the Government wishes to renew regulations, it must conduct a cost-benefit analysis first.

Baroness Neville-Rolfe (Con): My Lords, it is a pleasure to be introducing this final group and to have the support of my noble friends Lord Ridley and Lady Noakes. It is fair to say that we have been troubled by the sheer scale of this Bill and the new duties and responsibilities within it. It is clear that we are not going to be able to get all the provisions right and that the regulations made under the Bill are in many cases still being developed.

There is generous use of the affirmative procedure in the making of these regulations, for which the Government have been praised by my noble friend Lord Blencathra. However, the fact is that Parliament almost never secures changes to an affirmative resolution SI, so it is mainly a debating trigger. It is no substitute for knowing what will be in subordinate legislation and knowing it at the time that powers are granted in an enabling Bill. The power grab by bureaucrats is exactly what critics used to blame the European Union for when it brought in directives, but ironically it was more transparent about its plans and there was a well-understood process of both public consultation and scrutiny of detail in the European Parliament.

I should add that when I used to be responsible for Bills, parliamentary counsel wanted details of what the powers would be used for. They do not seem to be as firm as they used to be, which is a loss of democracy.

6.45 pm

I am also concerned that the cost benefit—especially the cost element—the funding of the many different parts and the level of enforcement are all uncertain in this Bill. Moreover, the Government's plans have changed hugely since the impact assessments were prepared in 2019 so we cannot really rely on them for the usual elucidation, although I give due credit to the Minister for producing assessments so sadly lacking on the Agriculture Bill until after it was passed.

Our amendment is exploratory in nature, but against this awkward canvas it introduces a necessary fail-safe mechanism. It brings in an automatic system of review by requiring targets and regulations each to sunset five years after they are put on to the statute book. By that time, we will have a fair idea of what works or is beginning to work and what does not. The regulations can be renewed and most will indeed need to be, but that can happen only after a proper cost-benefit analysis has been carried out. That needs to look not only at environmental impacts, which will be the department's natural concern, but broader factors such as the effect on economic growth, costs to industry—especially small and medium-sized businesses such as the small farmers HRH the Prince of Wales was talking about this morning—and other stakeholders affected by this legislation. I would also like to understand their social impact, for example on employment in the countryside and elsewhere and on income disparity.

Across the House we have come at this piece of legislation from different directions, but many of us worry about the vague provisions and plans we are approving in this gargantuan Bill. Have you ever seen quite so many regulation-making powers gathered together in one place? There are, I acknowledge, some review provisions in some sections as I am sure my noble friend the Minister will explain. I thank the Bill team for the helpful note it sent me before the debate today.

However, I make the case—and make it strongly—for something more systematic and I would like the opportunity to work with the Government on an appropriate amendment. I have supported the Government by helping them to argue against criticism of many aspects of this Bill from the other Benches. I am also expert on sunsetting and the impact assessment system from the work I do on a whole series of Bills from a common-sense perspective, including Covid legislation. I very much hope for a positive reply.

I also look forward to hearing from the noble Lord, Lord Berkeley, on Clause 136 on Crown application, a subject I have had detailed experience of in a number of Bills over many years. I am delighted to be in the same group as the noble Lord as we sit on a committee together. I beg to move.

Lord Berkeley (Lab) [V]: My Lords, it gives me great pleasure to follow the noble Baroness in this grouping. I am not sure why we have been grouped together but I think it will work well and I am sure that her advice on some of the things I am going to say will be welcome, if not during the debate, maybe later on.

This is a probing amendment. I first need to tell the House that I am not opposing the clause but this is the only way I could find, with the help of the excellent clerks, of coming up with something that enabled me to start a debate on something that I think is quite important in a Bill that is as wide as this and, of course, includes issues, as the noble Baroness said, about the Prince of Wales's support for small farmers. I certainly welcome that. He is right.

When it comes to the Crown, however, it gets a bit more complicated. I think noble Lords will know that the Crown normally comprises four elements: the Crown itself and its public element; the Duchy of Lancaster; the Government, or various government departments; and the Duchy of Cornwall. It is clear to me that the Duchy of Cornwall is different, as it claims to be in the private sector, which means that one ought to look at the role of the Duchy of Cornwall and the benefits that it gets rather separately from the other three parts of the Crown. As the noble Baroness said, of course, one issue is the Crown exemption clauses, which sometimes avoid the Crown needing to comply with legislation. I shall come back to that. I therefore have a number of

questions for the Minister, which I suspect he will not be able to answer today, but I would be very pleased if he could write to me on them.

As I said, there are three categories of Act in relation to the Crown. I am very grateful to a good friend of mine, Dr John Kirkhope, who is a real expert on this. He has helped me with what I am about to say, because it is quite complicated. First, there are Acts in which the Crown enjoys Crown immunity, which includes leasehold reform Acts, income tax Acts, et cetera. Secondly, there are Acts which bind the Crown, but if an Act does not say that it binds the Crown, it does not. Then there is a third category: those Acts that bind the Crown but where there is no criminal sanction if the Crown is in breach; these have what are called Crown exemption clauses. Of course, this brings me back to the Duchy.

Therefore, I have a number of questions on parts of the Bill and the effect it may have on the different parts of the Crown—be they the Duchy of Cornwall or the other parts—which I want to pose to the Minister. I start with Clause 30(3), which relates to the OEP and defines "public authority". It appears that the definition does not include the Crown, as defined in Schedule 18. Does that mean that the power of the OEP does not extend to the Crown? In particular, does it extend to the Duchy of Cornwall? Next, does Clause 49, in Part 3, apply to the Crown? In other words, if any Crown body is found to have dumped waste, would it be subject to the various sanctions outlined? Again, which Crown bodies are we referring to?

I note many references to the Environmental Protection Act 1990, but if noble Lords refer to Section 76 of that Act, in relation to the Isles of Scilly, or, more particularly, Section 159, it includes Crown exemption clauses. This means that there is no criminal sanction if the Crown—which includes the Duchy of Cornwall, where I live—is in breach.

I can go on. Another example is Schedule 21 to the Environment Act 1995, which includes a similar provision, to which reference is made in Clause 63 of this Bill. I also refer to Section 77 of the Water Industries Act 1991, Section 221 of which provides Crown exemption. I will not go through any more of these references in the Bill, but I am sure noble Lords have got the picture. Therefore, my question is: to what extent do all these references to other pieces of past legislation bind the Crown? Do they bind all parts of the Crown, or do they bind only the Crown, the Duchy of Lancaster and government departments, and not the Duchy of Cornwall?

Before putting down this question of whether the clause should stand part, I did think of trying to draft some amendments on this, but it is incredibly complicated. I would really welcome the opportunity to sit down with the Minister and his officials to see whether there could be some response which would clarify the Crown exemption clauses and where the Crown is and is not included. One suggestion would be to table an amendment which says that the Act binds the Duchy of Cornwall; that is another option. It is very complicated, but it is very important that the Crown and the Duchy of Cornwall are recognised for what they are and whether they should be included or not, and whether there need to be even some changes to previous legislation to clarify this, otherwise there is a danger that the Bill—which has some really good parts; we have discussed much of it over the last eight sessions—could get even more complicated. I trust that is helpful to the Minister and look forward to his response in due course.

Baroness Noakes (Con): My Lords, it is a pleasure to follow the noble Lord, Lord Berkeley, who always raises such interesting points. I agree with him that it is rather odd that his clause stand part debate has been grouped with my noble friend Lady Neville-Rolfe's amendment. I will concentrate my remarks on my noble friend's amendment, to which I have added my name. I have not hitherto taken part on this Bill, though I have sat in a few times and read quite a bit of the record of proceedings in *Hansard*, but my noble friend's Amendment 297A has tempted me in from the sidelines.

Bills such as this one, which are full of good intent and focused on issues that some are passionate about, often get very little scrutiny of their costs and the consequences of actions taken under them. At Second Reading there was very little focus on that. There were just two shining exceptions. The noble Baroness, Lady Fox of Buckley, emphasised the need for government policies to be prioritised and to ensure that actions taken under the Bill did not, for example, harm economic growth policies. The noble Lord, Lord Vaux of Harrowden, drew attention to the fact that actions taken in the interests of the environment involve trade-offs and that there was a lacuna in the Bill in respect of considering economic impacts when setting targets under it. I know that my noble friend Lady Neville-Rolfe has several times raised the issue of the costs and benefits of the Bill in Committee, and I am glad that she has tabled Amendment 297A to ensure that regulations made under the Bill's powers are rigorously assessed.

My noble friend's amendment gives the Government the benefit of the doubt for the first regulations laid under what will be an Act, and I know that my noble friend the Minister has said several times during Committee that full impact statements will be prepared for each of those regulations. The trouble is that impact statements are narrowly defined by the Cabinet Office and suffer from many defects. They commonly understate costs or do not cast the net wide enough to capture all of them. The analysis is typically based on identified persons or bodies, or groups of them, and hence fails to capture whole-system impacts, such as macroeconomic impacts. Impact statements often overstate the benefits or take a macro-level calculation of benefit and use that to frank all the micro-level actions, as the impact statement for this Bill does in respect of a global assessment of potential biodiversity gain. They are also generally optimistic about things such as new opportunities for businesses to innovate. The huge impact statement issued for this Bill suffers from most of these defects and is not decision-useful for assessing its impact.

I very much doubt that the final impact statements for individual regulations will be much better because of these structural deficiencies. The virtue of my noble friend's amendment is that she allows a five-year period—capable of extension—to gain evidence of the impact of measures. In addition, the amendment calls for a

[Baroness Noakes]
broad evaluation, not a narrow Cabinet Office-style impact assessment, before any regulations are allowed to continue, and it includes the economic impact—on economic growth—and social impact. Concentrating on these would go a long way to remedy the usual deficiencies of impact statements.

My noble friend's amendment is a modest and proportionate attempt to get some rigour into the parliamentary scrutiny of environmental policy-making, and I hope it will find favour with my noble friend the Minister.

7 pm

Viscount Ridley (Con) [V]: My Lords, it is a pleasure to follow my noble friend Lady Noakes, whose expertise on these matters is extraordinary, and to support the very important amendment of my noble friend Lady Neville-Rolfe. This is only the second time I have spoken in Committee, and I will try and keep it brief because I know we are at the end of eight long days.

At Second Reading, I paid particular attention to the issue that some environmental policies do not end up being effective—do not work. Others are worse; they actually produce counterproductive results in environmental and economic terms. This amendment is a way of making sure that this does not happen—at least, not for a long time—that we learn from mistakes, that we put things right and, as my noble friend Lady Neville-Rolfe put it, that we have a fail-safe.

I would like to give four short examples of policies that were brought in to help the environment and ended up hurting it in significant and expensive ways. The first was the policy of encouraging us all to buy diesel cars as opposed to petrol cars 20 or so years ago. There is no doubt, if you go back and look at the debates at the time, that this was pushed as an environmental measure, because diesel cars had lower carbon dioxide emissions per mile. It was pushed strongly by big German car manufacturers as a way of encouraging Governments to think they could get a quick win on the environment. Of course, the effect it had was to increase emissions of nitrogen oxides and particulates, which are much more harmful to human health, as well as to the environment.

The second example is the diversion into compact fluorescent light bulbs. Around 10 years ago, incandescent bulbs were banned, and we were all forced to buy compact fluorescent bulbs. This was pushed strongly as an environmental measure by the large manufacturers of compact fluorescent bulbs because they used less electricity to produce a given amount of light. But they were very unsatisfactory in all sorts of ways, including that they did not switch on very fast, gave a pallid light, were very expensive and were toxic for the environment if they broke. Along came a better technology, the LED bulb, which we have all willingly gone out and bought to replace them. It is even more efficient in terms of the environment, even more energy efficient; it is expensive, but not as expensive as compact fluorescent bulbs; and it has easily replaced both the preceding technologies. My point here is that we did not need the diversion into compact fluorescent bulbs. It probably delayed the arrival of LED bulbs. The evidence on that is quite good.

My third example is the fact that we are burning trees in Yorkshire in Drax power station to keep the lights on in Britain. The trees mostly come from North America; we are stealing the lunch of woodpeckers, beetles and other organisms to have electricity in this country. We are subsidising this. We are calling it renewable, because the trees regrow. But they regrow over decades and, even then, if we are continuing with this, we will presumably cut them down again. Doing this does not make any sense, because burning trees produces more carbon dioxide than coal in the production of electricity. About 7% of our electricity came from biomass burning this morning.

My fourth example is one I referred to in my Second Reading speech and is that some environmental policies have encouraged farmers to make peewit-friendly habitat, where lapwings will come and breed. That sounds good from an environmental point of view, but it has recently become clear that if you do that, but do not control crows, foxes and stoats in the area, you will draw in lapwings to what looks like an attractive place to breed, but they will never see any grandchildren, because the success rate of lapwings in these areas is about 0.1 chicks per pair, which is not sustainable. So you are draining the population of lapwings if you do only one part of the policy and not the other.

A similar point was made in an excellent speech by the noble Earl, Lord Devon, who talked about the problem of making conservation covenants in perpetuity, then struggling with what to do when we find that we have made a mistake in a conservation covenant and have put in place a policy for a piece of land that is inappropriate and doing more harm than good. That is why it is vital that we apply sunset clauses and cost-benefit analysis to environmental policies. We need a chance to pause and say, "Sorry, chaps. I know you are making a ton of money out of this policy, but it is not helping the environment, so we are going to shunt your gravy train into a siding, because it has failed a cost-benefit analysis". That is what we should be in the business of doing.

Those who support greater action on the environment ought to be especially welcoming of this amendment, because it is all about finding out what works, what delivers good value for money and what should be ditched because it does not work. If the Minister does not like this amendment, I would be grateful if he could set out how he plans to deal with it the next time we find that an environmental policy foisted on us by lobbyists turns out to be counterproductive for the environment.

Viscount Trenchard (Con): My Lords, it is a great pleasure to follow my noble friend Lord Ridley, who gave a fascinating speech. I was much impressed by his four examples of policies that we thought were going to be very good but turned out to be mistakes and had to be changed. I am sure the same will happen with some of the current policies being proposed for the environment and other things that we think, today, are bound to give the right answer when, in 10 or 20 years, some are certain to be counterproductive.

I will not detain the Committee long, but I extend my support to the sensible Amendment 297A in the names of my noble friends Lady Neville-Rolfe, Lord Ridley and Lady Noakes. The Bill takes no account of any negative impacts that the environmental targets set

may inadvertently cause. As your Lordships are aware, we do not always get everything right. We should pay attention to the proportionality principle, as sensibly proposed by the Taskforce on Innovation, Growth and Regulatory Reform, chaired by my right honourable friend Iain Duncan Smith.

My noble friend Lady Neville-Rolfe is the strongest advocate of impact assessments in your Lordships' House. As was also pointed out by the noble Lord, Lord Vaux of Harrowden, planting trees in areas that were not historically forests may assist climate change mitigation, but may also harm biodiversity. Similarly, some actions taken to advance environmental targets may have a negative impact on carbon emissions, such as the plastics tax, which is likely to cause a shift from plastic to glass and aluminium bottles—about which I spoke in an earlier debate. For these and other reasons so well explained by my noble friends, I hope the Minister agrees that it is right to include a sunset clause and that the Government should conduct a cost-benefit analysis if they wish to renew these regulations beyond five years after the passage of the Bill.

On the interesting subject raised by the noble Lord, Lord Berkeley, whose support on other aspects of the Bill I much appreciate, I am conscious of my oath of allegiance to Her Majesty the Queen and of everything His Royal Highness the Duke of Cornwall does for the environment. I would prefer to remain silent on this matter, but I look forward to hearing how the Crown replies to the noble Lord through my noble friend the Minister.

Baroness Hayman of Ullock (Lab): I thank noble Lords for this short but quite interesting and illuminating debate. As the noble Baroness, Lady Noakes, said, the two matters we are talking about do not really sit happily together, so I will take them in turn.

As we have heard, Amendment 297A in the name of the noble Baroness, Lady Neville-Rolfe, would set a sunset provision after five years for regulations made under the Bill, including those relating to targets, unless the Government conduct a cost-benefit analysis. She is certainly correct in her assessment of how extensive the Bill is, and of how much work it has been and will continue to be. We understand her concerns about costs and how difficult it can be to assess them accurately, and the fact that the impact assessments are now two years old, which I guess allows me to make the point that it is a shame this important Bill has dragged on for such a long time.

I was interested to hear what the noble Baroness, Lady Noakes, had to say about why impact assessments are not always entirely accurate. She knows far more about financial assessments and economic impacts than many noble Lords.

It was quite interesting to hear the different examples from the noble Viscount, Lord Ridley, of where policy made in good faith can turn out to be not what we expected and can often need rethinking. I agree that we always need to learn from mistakes.

I thank the noble Viscount, Lord Trenchard, for his contribution. I shall spend the next few weeks trying to encourage him to be more positive about efforts to try to improve our environment, while accepting that we do not always get everything right.

However, having said all that, much of the Bill will need to be enacted by secondary legislation, there are plenty of areas where there will have to be regular reports back to Parliament on progress, and we obviously also still have Report to look at how we can improve much of the Bill. We believe that there are many opportunities to revisit the Bill's implementation and its ongoing outcomes, so presently we would not support a sunset clause, but it has been very interesting to look at and discuss it because it has raised interesting issues about how we assess environmental policy as it moves forward.

My noble friend Lord Berkeley has given notice of his intention to oppose Clause 136 standing part of the Bill. I listened carefully to his concerns about Crown exemption clauses. The possibility is not something I was aware of at all, as I am sure many noble Lords were not. I was interested to hear his question about whether the OEP's powers would extend to the Crown, and would be interested to hear the Minister's response to that. If it does not, does that mean that if a Crown body dumps waste, for example—we have been hearing about Southern Water; I am sure that the Crown would never do something like that—it would not be subject to the sanctions outlined?

As my noble friend also asked, to what extent does the Bill bind the Crown? To what extent can sanctions be applied if the Crown acts in breach of any of its provisions? It is another interesting question. I agree with him that it also seems incredibly complicated, so I look forward to hearing the Minister's response—or will we be looking at his reply in writing?

7.15 pm

Lord Goldsmith of Richmond Park (Con): I thank my noble friend Lady Neville-Rolfe for tabling Amendment 297A and for her kind offer of help, which I will convey to colleagues in the department; I hope we will be able to take her up on it. The Government agree that it is imperative that legislation is subject to appropriate review to ensure it remains fit for purpose, and it is important to note that the entire Bill will be subject to the post-legislative scrutiny process.

However—I say this as a fan of sunsetting—I need to highlight that such a broad sunsetting provision in the Bill would be unworkable, as it would cover every regulation-making power in the Bill indiscriminately, and there are parts of it where sunsetting would be seriously problematic. For example, the Government would not wish the regulations providing for the PM2.5 target, the biodiversity net gains site register or the deposit return schemes to be automatically sunsetted. The Bill consists of numerous measures that are designed to drive long-term change, and the measures are too critical to stop after a five-year period. In addition, having regulations that expire after five years would undoubtedly create uncertainty for businesses and local authorities. The long-term targets, for example, have been welcomed by many business groups—for example, the Broadway Initiative and others—because they provide the predictability that businesses need to plan and invest.

I add that the Bill is, I think, exemplary, in that it contains within it, and all the way through it, an ongoing system of monitoring, reporting and evaluation.

[Lord Goldsmith of Richmond Park]
It requires constant evaluation against, for example, the long-term targets we set, so it should represent a turning point in how environmental policy is both designed and implemented.

I reassure my noble friend that we are working with local authorities to ensure that they are not overwhelmed by implementation—we discussed that in one of our previous debates. We are working to ensure that measures are implemented to sensible timescales to enable local authorities to be prepared. We will provide a range of additional impact assessments, to answer her question, on policies brought about through secondary legislation under the Bill—for example, the new targets delivered through Part 1—and this will cover a wide range of impacts, both economic and environmental.

I acknowledge the intervention by my noble friend Lord Ridley, who made a really important point about the need for good policy. That sounds like an obvious thing to say, but we have got it wrong many times. Four examples are: diesel, light bulbs, trees being grown to feed the monstrous—I probably should not say that; I am not allowed to say that—Drax, and the partial approach towards restoring the lapwing, which has backfired in the way that my noble friend described. He makes a very important point, and we need to get this policy right. But there are mechanisms within the Bill that will keep policymakers—whether me or the next bunch to come along—on our toes, and keep the policies that we are driving through in the Bill under permanent review.

I highlight to noble Lords that the Delegated Powers and Regulatory Reform Committee's report was hugely complimentary of the Bill and its approach to delegation and regulation. The Government have accepted all its recommendations and will bring government amendments forward at Report to deliver them. We are confident that we have the right procedures in place.

Turning to the completely different subject of Clause 136, this is a standard provision in many Bills, as the noble Lord will know. As a rule, an Act does not bind the Crown unless it does so expressly or by necessary implication. Therefore, the clause puts the matter beyond doubt, clarifying that the Act binds the Crown, subject to subsection (2), which sets out the position where the Act amends or repeals other legislation. If the clause were to be removed, there would be uncertainty as to which of the Bill's provisions bind the Crown, weakening them and potentially creating legal risk in various circumstances.

The noble Lord asked a number of technical questions, on which I shall have to get back to him in writing, but Clause 30 defines a public authority as

"a person carrying out any function of a public nature",

subject to a list of exemptions. This captures bodies with statutory powers and duties, so, to the extent that the Duchy of Cornwall or the Crown have any such duties, they will be captured. The Duchies of Cornwall and Lancaster are not exempt from any of the provisions under the Bill; this has been confirmed by the Queen's and the Prince's consent—I thank my noble friend very much for her last minute, very useful intervention. I therefore suggest that Clause 136 should stand part of the Bill.

This debate concludes the Committee. It has been a real pleasure to have debated this hugely important, landmark Bill for something like 80 or 90 hours. It has been a marathon and a test of endurance for many of us. I thank each and every noble Lord who contributed. It has been an extraordinarily important discussion.

I pay particular tribute to my counterparts on the opposition parties' Front Benches—the noble Baronesses, Lady Jones of Whitchurch, Lady Hayman of Ullock, Lady Parminter and Lady Bakewell of Hardington Mandeville, and the noble Lord, Lord Khan of Burnley—for their tireless work on each of our debates over the past few weeks. I also thank the noble Baronesses, Lady Jones and Lady Bennett, the representatives of the unofficial opposition, the Green Party. Both made some really important contributions throughout the passage of the Bill so far.

Of course, I thank all those who have made valuable contributions to the debate from the Back Benches. I also thank my noble friend Lady Bloomfield of Hinton Waldrist for her support during these debates. She has endured no less than anyone else in this Chamber.

I pay tribute to the clerks and parliamentary staff for their work to make these proceedings possible, especially during late-night debates. I also pay tribute to the many stakeholders, ENGOs, land managers, businesses and local authorities, and everyone else whose expertise has helped to shape so much of what the Bill contains.

I have listened carefully to each and every concern aired throughout Committee. I hope that I have managed to reassure noble Lords on just how important the environment is to both myself and the Government. This is of course not the last debate that we will have on this flagship Bill, as I really think it is, and I look forward to returning for Report after the Summer Recess. In the meantime, my door remains open and I look forward to continuing our discussions.

Baroness Neville-Rolfe (Con): I thank noble Lords for an interesting debate and the Minister for his words. I also thank the noble Lord, Lord Berkeley, for his clause stand part on application to the Crown and the way in which he cleverly used it to seek the clarification he needed on the Duchy of Cornwall. I just want to tell him that there is another complication that he did not mention: the Palace of Westminster and its well-known wildlife.

My noble friend Lady Noakes gave us a laser-like analysis of the impact assessment issue. I agree with her that assessments tend to be too narrow and that there is also a problem of optimism bias. As she said, I am trying to get some modest scrutiny into the process somehow to make us all do a better job. Of course, my noble friend Lord Ridley supported my idea of a fail-safe, with his excellent illustrations of things that we try to do to save the environment which are actually mistaken—the most obvious example of which is the diesel car.

My noble friend Lord Trenchard spoke about the precautionary principle, but he also brought out well the tension between different environmental measures, which will always be an issue. I particularly thank the noble Baroness, Lady Hayman of Ullock, for her support

on costs and learning from mistakes, which is something I have been devoted to all my life. I thought that there was a little door open there.

My noble friend the Minister rightly pointed to the constant process of evaluation that is provided for in this Bill, but I am not sure that we in Parliament get much of a look-in. That was one of the considerations behind the amendment I moved for debate today.

I believe that we need to have a clause that provides for more review and, in some cases, a pause. I also believe that sunsetting might be able to play a role. However, I look forward to helping my noble friend the Minister to find a way forward, if that is possible, between now and Report.

My noble friend the Minister has elegantly and delightfully thanked everybody but, as this is the last group, I thank him, my noble friend Lady Bloomfield and the Bill team for their sterling work and unfailing courtesy. I look forward to Report after a refreshing summer break. I beg leave to withdraw my amendment.

Amendment 297A withdrawn.

Clause 135 agreed.

Clauses 136 and 137 agreed.

Clause 138: Extent

Amendments 298 to 299A

Moved by ***Lord Goldsmith of Richmond Park***

298: Clause 138, page 123, leave out line 20 and insert "sections 16 to 19"

Member's explanatory statement

This is consequential on Lord Goldsmith's amendment to Clause 138, page 123, line 22.

299: Clause 138, page 123, line 22, at end insert—

"(ab) sections 16 to 18 (policy statement on environmental principles) extend to England and Wales and Scotland;"

Member's explanatory statement

See Lord Goldsmith's amendment to Clause 18, page 11, line 26.

299A: Clause 138, page 124, line 32, after "that" insert—

"(a) the amendments made by Schedule (Biodiversity gain in nationally significant infrastructure projects) (biodiversity gain in nationally significant infrastructure projects) have the same extent as the provisions amended, and

(b) "

Member's explanatory statement

This amendment makes provision for the extent, as a matter of law, of Lord Goldsmith's proposed new Schedule relating to biodiversity gain (which applies only in relation to development in England and the English marine area).

Amendments 298 to 299A agreed.

Clause 138, as amended, agreed.

Clause 139: Commencement

Amendment 300

Moved by ***Lord Goldsmith of Richmond Park***

300: Clause 139, page 125, line 16, at end insert—

"(ia) section (*storm overflows*) (storm overflows),"

Member's explanatory statement

This amendment provides for the new Clause relating to storm overflows to come into force two months after Royal Assent.

Amendment 300 agreed.

Clause 139, as amended, agreed.

Clauses 140 and 141 agreed.

The Deputy Chairman of Committees (Lord Alderdice) (LD): That concludes the Committee's proceedings on the Bill. The House will now resume.

House resumed.

Bill reported with amendments.

Armed Forces Bill

First Reading

A Bill to continue the Armed Forces Act 2006; to amend that Act and other enactments relating to the armed forces; to make provision about service in the reserve forces; to make provision about pardons for certain abolished service offences; to make provision about war pensions; and for connected purposes.

The Bill was introduced by Baroness Goldie, read a first time and ordered to be printed.

House adjourned at 7.27 pm.