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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Monday 6 September 2021

2.30 pm

Prayers—read by the Lord Archbishop of York.

Oaths and Affirmations

2.37 pm

Viscount Stansgate made the solemn affirmation, following the by-election under Standing Order 10, and signed an undertaking to abide by the Code of Conduct.

Retirement of a Member: Lord Beecham

Announcement

2.39 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, I should like to notify the House of the retirement, with effect from 1 September, of the noble Lord, Lord Beecham, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I thank the noble Lord for his much-valued service to the House.

Covid Precautions

Announcement

2.39 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, before we begin the business for the day, I would like to note that this is the first day in 18 months that we will be operating under our normal procedures, with a few innovations from the hybrid House which your Lordships decided to keep in July.

That does not mean that the pandemic is over, and Members will have read my message last week summarising actions we can all take to lessen the risk of Covid to ourselves and to the staff of the House. I particularly emphasise the position agreed by the commission that all Members should wear face coverings in the Chamber, Grand Committee and Select Committees unless they are speaking. This is an important thing we can each do to protect other people. I also remind Members to remain socially distanced from staff working in the Chamber.

Afghanistan: Security

Question

2.40 pm

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

To ask Her Majesty's Government what assessment they have made of the security situation in Afghanistan.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, the security situation in Afghanistan remains extremely volatile. There is an ongoing and high threat of terrorist attacks. As set out in UN Security Council Resolution 2593, we remain concerned about the security situation and call on the relevant parties to work with us and international partners to strengthen security. This resolution reaffirmed

"the importance of upholding human rights, including those of women, children and minorities"

and encouraged

"all parties to seek an inclusive, negotiated political settlement, with the full, equal and meaningful participation of women".

The British embassy in Kabul has suspended in-country operations and is, for the time being, based in Doha. We intend to re-establish the embassy in Kabul as soon as the security and political situation in the country allows.

Baroness Anelay of St Johns (Con): My Lords, the UN High Commissioner for Human Rights stated at the Human Rights Council that she had received "credible reports" of "summary executions" of civilians and Afghan nationals who had been in the security forces. The hundreds of British citizens and Afghans who have helped us along the way and are now trapped in Afghanistan have asked for advice from the FCDO. The advice they have been given is to stay in a safe place within Afghanistan. Where is safe for them in Afghanistan?

Lord Ahmad of Wimbledon (Con): My Lords, I totally agree with my noble friend's very valid point about the importance of the service given by people across Afghanistan in the security services and other areas where they were very much part of the NATO operations and the work on building Afghanistan. The advice that has been given to British nationals, their dependants and others is based on the internal situation, which I know my noble friend is following very closely and is very fluid. I can share with your Lordships' House that discussions are under way, as noble Lords will be aware, about ensuring secure and safe passage. We will certainly work with all key partners and, at an operational level, with those currently in control in the country to ensure safe passage. At the moment some of this work is very discreet and I can go no further, but I know my noble friend will appreciate what I say.

Lord West of Spithead (Lab): My Lords, nation building in countries awash with arms, with a narco economy, marred by corruption, with a totally different culture and where large portions of the population are opposed to change is a fool's game. When a maritime nation such as ours tries to do it in the middle of central Asia, it is even more crass. I hope that we have learned the lesson. In Afghanistan's case, it is exacerbated by the fact that it is landlocked by Pakistan and the ISI bears a huge responsibility for encouraging terrorism in that country. The shambolic departure of the US and allies was caused by a number of factors but would seem to indicate a failure of intelligence. Will the Government agree to the ISC's request to analyse all intelligence assessments which cover the outlook for the regime with regard to the final withdrawal of the United States and coalition forces from Afghanistan?

Lord Ahmad of Wimbledon (Con): My Lords, I note the noble Lord's request and assure him that that is being, and will be, looked at. I think this is a moment

[Lord Ahmad of Wimbledon]
of reflection. I agree with the noble Lord that with any intervention, we need to consider carefully the intent of intervening in a particular country; the purpose that we go in for; and, equally, the situation that we leave at the end. If we reflect on recent interventions, even in my own lifetime, these are questions that the Government—and, indeed, others, I am sure—ask themselves. It is important that the lessons that we have learned from our interventions continue to remain a focus of what we do in the future. Equally, for the here and now, I assure all noble Lords that we remain very focused on ensuring that the people in Afghanistan who are seeking to leave remain our key priority.

Lord Howell of Guildford (Con): My Lords, the Foreign Secretary was saying the other day that we should be talking to China and Russia about the next stage in the Afghanistan tragedy, despite, obviously, disagreeing on many other issues. Surely he is right. Afghanistan should not be a forum of hegemonic struggle but, clearly, nor is it a suitable area for the USA as a world policeman, as we have seen. Can my noble friend say whether these talks have been initiated in any way and what the main issues might be?

Lord Ahmad of Wimbledon (Con): My Lords, on my noble friend's second question, of course, the issues about security and safe passage of those wishing to leave Afghanistan are in front of us. The issues of human rights and humanitarian aid are all very much part of our discussions. We have engaged with China and Russia, in the formulation of the Security Council resolution that was passed. Further discussions are under way, and I am sure that my right honourable friend the Foreign Secretary will announce those in the near future.

Baroness Smith of Newnham (LD): My Lords, I am grateful to the Minister for his tireless efforts on behalf of those who have worked with the United Kingdom and those who have already been recognised under the ARAP scheme. What advice should be given to individuals who have been called forward and are now in Kabul but have not been allowed out of the country? Some of them have had no food and are having to move from safe house to safe house, which, after a while, cease to become safe for anybody at all.

Lord Ahmad of Wimbledon (Con): My Lords, I thank the noble Baroness and many across your Lordships' House and in the other place. The last three weeks have been an extremely testing time for all of us. The stories of courage that we have heard from individuals stuck in Afghanistan to whom we owe a responsibility are very clear. In this regard, I thank all noble Lords and those in the other place who have worked tirelessly across party lines to ensure that we do the right thing and get people out. That remains a central objective. The noble Baroness is right about the ARAP scheme. First and foremost, an assurance has been given that those who have been called forward, if they go to a third country, will be processed and brought back to the United Kingdom. The important issue is of safe passage. On the humanitarian side, today Qatar landed the first aircraft, which has provided humanitarian assistance, but the issues of security and stability in Afghanistan must remain primary in our minds. Anyone whom we seek to assist will have that particular context in relation to the advice that we give them. On ARAP specifically, anyone who is called forward through a third country—I assure the noble Baroness that we are working on that—can hold us to the obligation that we have given.

Lord Lancaster of Kimbolton (Con): My Lords, as distressing as it is to see a Taliban Government in Kabul and particularly galling for those of us who have served there, if we want to achieve our objectives of delivering humanitarian aid to the Afghan people and preventing Afghanistan becoming a hotbed of terror, governance in the country is needed, even if it is not good governance. I ask my noble friend: what are the Government going to do when it comes to managing this dilemma and engaging with the Taliban? What are our red lines?

Lord Ahmad of Wimbledon (Con): My Lords, my noble friend is absolutely right. I assure him that we are doing just that. At an operational level, we are already, through our diplomatic efforts, engaging with those on the ground to ensure that we can provide access and security and hold the Taliban true to their assurances of security within the country. Engagements with the near neighbours are equally important. In that regard, my right honourable friend the Foreign Secretary and I have just returned from various visits to the region, where we are also seeking to ensure safe passage of British nationals and others who seek to come to the UK eventually, but also seek a safe haven away from Taliban-controlled Afghanistan.

Baroness Coussins (CB): My Lords, how many Afghan interpreters who have already relocated to the UK had to leave behind wives and children still to be processed? While the Minister obviously cannot go into detail, can he at least give a firm assurance to the House that security arrangements which are proactive and targeted will be made so that these eligible dependants can come safely to the UK without delay?

Lord Ahmad of Wimbledon (Con): The noble Baroness is right, and there are many heart-rending stories in this respect of choices having to be made not in days or minutes but in seconds. In this regard, we have of course ensured the safe passage of 15,000 to 17,000 people —2,000 came through the ARAP scheme before the actual crisis unfolded in Kabul. However, in the short time that we had, over 15,000 people under three categories—British nationals, ARAP and others—were evacuated from Afghanistan. I assure the noble Baroness that, as I have said already to the noble Baroness, Lady Smith, the issue of security is important, and, in any support that we give, it has to be paramount before we can ensure safe passage. This is exactly what we are working on, including by engaging with the Taliban from an operational perspective—not through any issue of recognition, but to ensure that they remain true.

Lord Collins of Highbury (Lab): Every lever, especially economic ones, needs to be used to protect our security and prevent Afghanistan becoming once again a safe

haven for international terrorism. I hope that, this afternoon, we will hear from the Prime Minister a clear diplomatic road map for the way ahead. I welcome the steps at the UN that the Minister has referred to, but can he say a bit more on how we are working with our partners to deliver on the ground the essential humanitarian support that is most needed at this moment?

Lord Ahmad of Wimbledon (Con): My Lords, first I apologise to your Lordships' House for overrunning. In seeking your Lordships' indulgence, I hope that noble Lords will excuse me on such an important issue. In this regard, the noble Lord, Lord Collins, is right: we are working with key partners, including the Qataris and the Pakistanis as well as others, including through the UN and other vehicles, to ensure that exactly the points that the noble Lord raises are prioritised.

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

Residential Social Care: Staff

Question

2.52 pm

Asked by ***Lord Laming***

To ask Her Majesty's Government what steps they are taking to improve the (1) training, and (2) remuneration, of staff in social care residential services.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, we are incredibly proud of our health and care staff. As a nation, we are indebted to their selfless dedication, particularly over the last 18 months. The Government fund a range of training opportunities to support the development of care staff, including through a core workforce grant of £23.47 million. However, the vast majority of care workers are employed by private sector providers, who set their pay independently of central government.

Lord Laming (CB): My Lords, I am grateful, but the Minister will understand that, very often, the impression is given that the only qualification needed by these splendid staff is that of a kind heart. This is despite the fact that they are caring, day by day and hour by hour, for the people in our society with the most profound needs. Does the Minister accept that, in these circumstances, it is remarkable that the median pay for these staff is £8.12 per hour? Is it any wonder that there are 112,000 vacancies in this field? Could the Minister say whether the Government have any plans to support these staff with professional training and give them a fair salary?

Lord Bethell (Con): My Lords, I endorse the noble Lord's key point, which is that value is seen not through salary but through the skill, love and determination of our social care staff to do a fantastic job. We are extremely proud of the service that they provide. The provision of care in this country is being looked at in the spending review settlement, and the need to support the sector will be addressed in that.

Lord Hendy (Lab): My Lords, does the Minister agree that the best technique for improving and regulating the wages and conditions of those engaged in the sector is through sectoral collective bargaining—a technique that was established by legislation in 1909 and abolished in 2013—namely, the wages councils. These were designed specifically for the low-paid and those less well organised in trade unions. Is it not time that there was a wages council for social care?

Lord Bethell (Con): My Lords, I am enormously grateful for the insight of the noble Lord in this matter, in which I know that he is a great expert. However, he should of course remember that social care is provided through independent providers and local authorities. Social care workers are free to organise themselves as they wish, but that is not the arrangement that we have in this country.

Baroness Brinton (LD) [V]: Last week, three-quarters of providers in the United Kingdom Homecare Association said that recruiting social care workers is the hardest that it has ever been. In July, they warned that they faced a perfect storm of losing staff through Brexit and increased pay in retail and agriculture making their wages uncompetitive. They are at breaking point. One-third said that they are handing back some or all of their care contracts to local authorities because they cannot fulfil their contracts now—this is before they lose any unvaccinated staff—so what steps are the Government taking to urgently help the elderly in our care homes, the care homes and their staff going through this crisis?

Lord Bethell (Con): My Lords, I am aware of the anecdotes that the noble Baroness alludes to, but they have not been seen through the figures that we have in the department. However, we are providing support to providers: we have a national recruitment campaign that is running in the autumn; we have put in free and fast-track DBS checks for staff recruited in response to the pandemic; and we have the promotion of adult social care careers in our jobcentres.

Baroness Wheeler (Lab): My Lords, while we await the announcement of the Prime Minister's social care plan, after two frustrating years of non-action and delay, the continuing crisis in care homes needs to be dealt with now. With a possible 68,000 jobs now predicted to be lost in the light of the Government's 11 November deadline for all care staff to be vaccinated, feedback from care providers shows that both care workers and the most senior and experienced staff are leaving the care workforce, with registered nursing staff constituting a much higher proportion than other care staff. What action have the Government taken to address this potential crisis in both the staffing and the management of care homes, particularly since the number of nursing jobs, for example, has decreased by 17,000, or 33%, over the past year?

Lord Bethell (Con): My Lords, I do not completely recognise all of the noble Baroness's figures, but I acknowledge that recruitment in many sectors of the economy is tough at the moment, and that is why we

[LORD BETHELL]
are putting in the measures that I mentioned to the noble Baroness, Lady Brinton. I add that we are doing an enormous amount to fund: we have put £1 billion of additional funding into social care for 2021-22, on top of the significant support provided to the sector during Covid-19 over the last year. This is money directly to address the issues that she is concerned about.

Baroness Watkins of Tavistock (CB): My Lords, Plymouth's university trust had to shut to new admissions, except for emergencies, partly because 100 beds had people in them who would have been better off at home or in residential care. This was only last week. Does the Minister agree that any CCG or local authority contracts let to provide social care in residential settings should include allowances for the cost of staff, their training, PPE, sickness and annual leave, and be funded at least at the equivalent of the local living wage, so that we can get back to a normal NHS care situation?

Lord Bethell (Con): My Lords, I take on board the anecdote that the noble Baroness has just mentioned—I will look into that. I did not know about the arrangements at the Plymouth trust. On the whole, the arrangements for discharge have moved on a long way during the pandemic, and the financial arrangements for discharge have improved dramatically, so I am disturbed to hear the story that she tells, and I will definitely look into it.

Lord Hunt of Kings Heath (Lab): My Lords, a disproportionate part of the proposed rise in national insurance will fall on low-paid workers, including those in the care sector. When this announcement is made, I hope that the Minister will come forward with plans to ensure that staff in the sector get a decent living wage.

Lord Bethell (Con): My Lords, the noble Lord is right that taxes have to be spread across the whole country, but I remind him that the national living wage has risen by 2.2% in the last year, which benefits everyone across the population.

Baroness Barker (LD): My Lords, a number of local authorities, including Croydon, are insolvent. Have the Government or the Minister's department made an assessment of the impact of that on the viability of care providers and the capacity of people who need social care, and are entitled to it under the Care Act, to get the services that they need?

Lord Bethell (Con): My Lords, I acknowledge the pressure that local authorities are under. We do indeed keep in very close contact with local authorities that have financial pressure; I assure the noble Baroness that we will not be in a position where we breach the Care Act and that we keep very close tabs on the financial support that social care needs.

Baroness Blower (Lab): My Lords, there is a recruitment and retention problem in social care and a problem of youth unemployment. Does the Minister believe that his responses provide a basis for any young person to consider a career in social care, particularly his response to my noble friend Lord Hendy?

Lord Bethell (Con): My Lords, many young people do seek a career in social care. Many of them see it as interchangeable with work in retail and in hospitality; in fact, we have seen an enormous amount of displacement between those sectors during Covid. We have to make sure that as retail and hospitality open up, those who have moved to social care continue to stay in that setting. That is one reason we are investing in the kind of education arrangements I described.

Baroness Fox of Buckley (Non-Afl): My Lords, as the shortage of HGV drivers has led to a hike in their wages, does the inevitable increased staff crisis in care homes—effectively 40,000 to 60,000 workers will be sacked because of the illiberal mandatory vaccine for front-line workers—mean that they might get a decent amount? But seriously, does the Minister agree that any social care policy should prioritise improving working conditions and renumeration, and that this is key to the better protection of care residents and far more of a priority than obsessing about Covid at this stage in the pandemic?

Lord Bethell (Con): My Lords, the average turnover rate in social care is high, as noted by many noble Lords, as it is in some other sectors, including retail and hospitality. However, turnover rates are 8.1% lower in the past year among social care workers, down from 37.2% to 29.1%, which reassures us that many have in fact found it a fulfilling career.

Baroness Bull (CB): My Lords, can the Minister say what improvements have been made to staff training in light of the *Out Of Sight—Who Cares?* report from the Care Quality Commission, which highlighted the excessive use of restraint, seclusion and segregation in the care of people with learning disabilities and autism in residential settings?

Lord Bethell (Con): We are enormously grateful for that report, which has made a huge impact. I am not sure of the specific impact of the measures the noble Baroness describes, but I would be glad to write to her.

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

EU Bilateral Agreements for Asylum Seekers

Question

3.02 pm

Asked by ***Lord Liddle***

To ask Her Majesty's Government what progress they have made in negotiating bilateral agreements with European Union member states for the return of asylum seekers arriving in the United Kingdom.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, we are in discussions with a number of EU member states and other third countries to reach bilateral arrangements for the return of asylum seekers and intend to open further talks

with others. The political declaration agreed by the UK and the EU alongside the TCA noted the importance of this issue and our intention to engage bilaterally with member states on such arrangements. These take time and it would be inappropriate to disclose the nature of those talks.

Lord Liddle (Lab): My Lords, I thank the noble Baroness for her Answer, but is not the answer that very little progress has actually been made? It would be nice if she acknowledged the fact that it is because of Brexit that we have lost the right to return asylum seekers who could have claimed asylum in other EU countries. More to the point, without these agreements, does it not make the Government's plan to legislate to make all unauthorised arrivals on UK shores illegal not only unjust and possibly in breach of our international legal obligations but completely unsustainable?

Baroness Williams of Trafford (Con): I say to the noble Lord's final point that everything we are doing complies with all our international obligations, including the refugee convention. I see the noble Lord shaking his head, so let me underline that this allows for differentiated treatment where a refugee has now come to the UK directly from a country of persecution and did not

"present themselves without delay to the authorities and show good cause for their illegal entry or presence."

That is from Article 31.

The Archbishop of York: My Lords, care and justice for asylum seekers is obviously a matter very close to the heart of the Church, Jesus himself being a refugee. Last week, the Church of England published a toolkit for the many churches that have asked us what they can do to support Afghan refugees. The Minister will know that the Church and other faith communities are among the main support works for asylum seekers. There are more than 3,000 Afghan nationals with existing asylum claims waiting for a decision, some of whom have been waiting a long time. What steps are the Government taking to expedite procedures for dealing with existing or new asylum claims by Afghan nationals, given the very changed situation and the particular stress and trauma felt by these people?

Baroness Williams of Trafford (Con): I say to the most reverend Primate that I thank the Church of England in particular for everything it has done to support asylum seekers; the most reverend Primate the Archbishop of Canterbury has been the first person to take part in community sponsorship. The work of the Church has been incredibly important. Clearly, we will be trying to expedite asylum claims as quickly as possible. We have suspended returns to Afghanistan—understandably so—and I hope that the claims of all those who are waiting in the queue will be seen to as quickly as possible.

Lord Balfe (Con): My Lords, does the Minister accept that asylum seekers, who are not required to take any PCR test when they land in the United Kingdom—unlike double-vaccinated Members of this House—are put at a great disadvantage? Does she envisage that they will be required to take a PCR test before they can be sent back anywhere?

Baroness Williams of Trafford (Con): It would be helpful to outline the process here. All migrants are tested on arrival with a lateral flow test and any refusing are treated as though they are infectious and are isolated. Due to a small possibility of false positives associated with lateral flow, any individual who receives a positive result at a residential short-term holding facility in England or an immigration removal centre will be offered a PCR test to confirm the result, and any detained individual with symptoms of Covid, or testing positive for Covid, will be placed in protective isolation for at least 10 days.

Lord Hastings of Scarisbrick (CB): My Lords, is there not another question for the Home Office? Given the difficulties of last year's endless reporting on Windrush and the Wendy Williams report that said the Home Office was institutionally racist and ignorant, how will it handle new asylum and refugee cases? Is this the right department to handle the increasing number of asylum seekers and refugees? Given that the United Kingdom is one of the poorest countries for receiving refugees and then processing asylum claims, and noting that the BBC reported this morning that from 2008 to 2019 the UK sent back almost as many Afghans as we have just received, is the Home Office the right department to be operating this scheme?

Baroness Williams of Trafford (Con): I disagree with the noble Lord on a number of points. I think this country is incredibly generous in terms of how it supports and welcomes people who need our help. He mentioned Wendy Williams. I very much look forward to welcoming her back later this month when she reports on the findings of her first report. I am also very pleased that the Minister appointed for Afghanistan refugee resettlement is my honourable friend VickyAtkins, who will be a very compassionate and suitable candidate for the role.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, returning to the original Question, is not the truth that the Home Office has been unable to negotiate any bilateral agreements—indeed, none is in sight in the near future—causing chaos and confusion? The UN High Commissioner for Refugees has said that we are breaching the 1951 agreement. The truth is also that if we were still in the European Union, we would have the common European asylum system, which worked extremely well. Is this not all a self-inflicted disaster?

Baroness Williams of Trafford (Con): The noble Lord will not be surprised to hear me say that no, it is not a self-inflicted disaster. Of all EU states, we have been one of the most generous. As I said previously, we do not think we are doing anything that breaches our international obligations.

Lord Paddick (LD): My Lords, the Minister claims that the UK is very generous but, according to the Home Office, in 2019, there were around five asylum claims per 10,000 people living in the UK, compared with the EU 28, where there were 14 asylum claims per 10,000 people. What success does the Minister expect to achieve in returning asylum seekers to the EU when the UK does not appear to be taking its fair share?

Baroness Williams of Trafford (Con): I absolutely dispute that. We have granted protection or other forms of leave to 2,742 children alone, and to more than 47,000 since 2010. As I previously said, in 2020, the UK received the second highest number out of all European countries—nearly 3,000—of asylum applications from unaccompanied children.

Lord Rosser (Lab): My Lords, there appear to have been agreements involving money reached with the French authorities in connection with what the Government regard as irregular migrants who are trafficked across the channel in small boats. First, how much has been paid to the French authorities over the past five years and how much is still due to be paid? Secondly, since record numbers of people fleeing desperate situations have already crossed the channel this year, against what specific criteria do and will the Government assess whether that money paid has or has not delivered on whatever it is the Government expect from the French in return?

Baroness Williams of Trafford (Con): I fear that I do not have details of payments made to the French, but I can say that, so far this year, up to 25 August, our co-operation with French law enforcement has helped to prevent more than 10,000 migrant attempts. That compares to just over 4,000 for the previous period, in 2020. Clearly, how we are working together is having some effect.

Lord Singh of Wimbledon (CB): My Lords, does the Minister agree that asylum seekers who sometimes risk their lives in small, leaky boats, desperately trying to rebuild shattered lives, are human beings deserving of compassion, not unwanted objects to be shuttled between countries—particularly between countries that call themselves Christian?

Baroness Williams of Trafford (Con): I have no hesitation in agreeing with the noble Lord that asylum seekers are human beings who deserve our respect; they are not objects. Our Nationality and Borders Bill seeks to address the point that the people who are so culpable here are the criminals, who have no regard for lives, vulnerable or otherwise, and seek only to make money out of other people's vulnerability.

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

Deep Seabed Mining

Question

3.13 pm

Asked by ***Baroness Bennett of Manor Castle***

To ask Her Majesty's Government what plans they have (1) to support, and (2) to campaign for, an international moratorium on deep seabed mining.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the UK has a strong and respected voice in negotiations at the International Seabed Authority, where we continue to emphasise the need for the highest possible environmental standards. The UK has committed not to sponsor or support the issuing of any exploitation licences for deep sea mining projects unless and until there is sufficient scientific evidence about the potential impact on deep sea ecosystems and strong and enforceable environmental regulations and standards are in place.

Baroness Bennett of Manor Castle (GP): My Lords, will the Minister acknowledge that the rules to which he just referred are unlikely to be in place by July 2023, when, under current international regulations, full-scale mining, not just exploration, can commence—expert observers say that they are unlikely to be in place then? Further, does he think it acceptable that the International Seabed Authority—the licensing body for mining—benefits from revenue from that mining, giving it a clear conflict of interest, and that it has never turned down an exploration application?

Lord Callanan (Con): The problem with the noble Baroness's call is that if we just announce a moratorium, it will have no practical effect—other nations would just get on and negotiate treaties accordingly. We think the best, most constructive thing to do is to engage and make sure that strong and enforceable environmental standards are in place before any mining takes place.

Lord Randall of Uxbridge (Con): Notwithstanding the answer given just now by my noble friend, and bearing in mind that Her Majesty's Government have said that they will not instigate any damage to the seabed until the scientific evidence is there, does it not surely make sense to encourage a moratorium—although, as he says, discussions should still take place?

Lord Callanan (Con): I think my noble friend has said essentially the same thing: we should take part in constructive discussions; anything else is just rhetoric.

Lord McNicol of West Kilbride (Lab): My Lords, deep seabed mining is associated with the fragmentation of ecosystems and the loss of marine species. As we know, one of the best solutions is recycling and reusing minerals such as magnesium, cobalt and zinc, which are often the targets of deep seabed mining. What plans do Her Majesty's Government have to accelerate this principle of recycling? Can the Minister explain a little more about the consultation and discussions with the ISA?

Lord Callanan (Con): The noble Lord is absolutely correct. The net zero campaign that we all contribute to and support will produce massive demand for many of those minerals, so investing in two new interdisciplinary circular economy centres—one on technology metals and one on circular metals—will help. Separately, Defra will be consulting later this year on new measures that will ensure that we better manage electronic waste and do more to drive up reuse and recycling, because of course that is a much preferable solution.

Baroness Boycott (CB): Does the Minister agree that it seems deeply ironic that we are now about to dig up these nodules from the ocean without full

knowledge of what that will do environmentally? We did the same with oil, and now we are trying to retract. As was just mentioned, recycling is one method of finding the metals that we need, but scientists now know that there are many other ways to produce the necessary batteries and technologies. In the same way that solar and wind power have now taken over from fossil fuels, we can avoid digging up the ocean. I would call for a moratorium, and I should like the Government's opinion on how much R&D is going in the right direction.

Lord Callanan (Con): I know that the noble Baroness is a big supporter of our net-zero policy, but many of the critical minerals found on the deep seabed are important and often irreplaceable in electric vehicle batteries, offshore wind turbines and other technologies. But of course we need to pursue alternative research and development, and find alternative battery technology, and, as the noble Lord, Lord McNicol, said, reuse and recycling will also be very important.

Lord Bassam of Brighton (Lab): In the light of what the Minister just said, what metrics will the Government use to balance the need to reduce carbon emissions by encouraging the use of sustainable energy sources for the development of electric batteries against the potential for ecological damage caused by the extraction of seabed minerals used in battery production?

Lord Callanan (Con): It is important to say that there are no mining projects ongoing at the moment; there is a discussion about possible mining projects in future. Our position is that we need to ensure that, before any projects take place, strong environmental regulations and controls are put in place, and we are playing a critical role in helping to ensure that.

Baroness Sheehan (LD): My Lords, yesterday the congress of the IUCN, the International Union for Conservation of Nature, agreed the wording of a motion calling for a moratorium on deep seabed mining. How do our Government plan to vote on that?

Lord Callanan (Con): We are engaging closely in the process. We will possibly abstain on the final resolution, but we are working closely with our international partners to drive this and ensure strong and sustainable progress.

Lord Davies of Brixton (Lab): My Lords, the problem is the environmental degradation inherent in mining for manganese, nickel and cobalt, whether you do it from the seabed or on land. This issue has been mentioned already. Will the Government commit themselves to doing the massive research project that is required so that we can have batteries for our electric cars that do not require that sort of environmental degradation?

Lord Callanan (Con): The noble Lord makes a very good point. Indeed, we are doing just that, with the Faraday challenge and many of our other R&D technologies. We have an extensive programme of research into new technologies. Of course we have to do that; I completely agree with the noble Lord.

Baroness Stuart of Edgbaston (Non-Afl): My Lords, the integrated review quite rightly stresses the need to be an international lawmaker, and the United Kingdom should play a vital part in that. Given that the International Seabed Authority is part of the UN Convention on the Law of the Sea and that the United States has still failed to ratify that convention, will the Government use COP 26 and any other forum to ensure that the United States signs up to these international agreements?

Lord Callanan (Con): The noble Baroness is quite right: the US is not part of the UNCLOS treaty; a number of other states are also not part of it. Of course we continue to engage with all our friends and partners internationally to encourage them to take part in these initiatives.

Lord Berkeley (Lab): Does the Minister agree that, of the 12 countries on the list of countries that have exploration licences, a large number are clearly very small? They are reportedly relying on major international contractors to do all the work for them, including representing them on the International Seabed Authority. Does he therefore agree that there is a need for more independent technical expertise before this goes any further?

Lord Callanan (Con): We work very closely with the companies based in the UK, including those to which we have issued exploration licences and those conducting R&D. That has produced a tremendous amount of research—something like 70 scientific papers so far—which of course we will seek to draw from. But we need to be responsible. The UK deciding not to take part in this and issuing a moratorium does not of course prevent other countries from doing it.

Baroness Ritchie of Downpatrick (Non-Afl): My Lords, undoubtedly a moratorium is required. In view of this, will the Minister outline what steps the Government will take to safeguard our precious fishing industry and unique fish species?

Lord Callanan (Con): Of course, safeguarding the marine environment is extremely important. We would engage in extensive public consultation ahead of making any decision to issue or sponsor any deep-sea mining exploitation licences. That of course would include engaging fully with the fishing industry.

Baroness Wilcox of Newport (Lab): My Lords, BMW, Volvo, Google and Samsung are saying publicly that there should be a moratorium on the proposals to dig up metals from the deep sea and that other ways should be found to extract cobalt to make batteries to fuel the future switch to electric vehicles and increased mobile phone use. Can the Minister advise the House of the Government's position on the views expressed by these major car and technology companies?

Lord Callanan (Con): Well, of course they are entitled to their position; I would just advise the noble Baroness to read carefully exactly what they said in their declarations. The World Bank has estimated that something like 3 billion tonnes of metals and minerals

[Lord Callanan]
will be needed to fully decarbonise the global energy system by 2050, so we must be careful, proceed with caution and do all the appropriate scientific analysis. But there is widespread support in this House for the net-zero challenge and we must provide the means to do it.

Grenfell Tower: Demolition

Private Notice Question

3.23 pm

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what plans they have to demolish Grenfell Tower and what discussions they have had regarding the safety of the site and whether they have consulted with the survivors, families of the victims and the local community regarding the future use of the site.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I beg leave to ask the Question of which I have given private notice. In doing so, I refer the House to my relevant interests as set out in the register.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): The Government recognise how important and sensitive this decision is, particularly for bereaved families, survivors and local residents. Following important independent safety advice, the Government are engaging closely with the community as we consider what the future of Grenfell Tower should be. No decision has been made.

Lord Kennedy of Southwark (Lab Co-op): My Lords, over the weekend, survivors, victims' families and the local community found out about the plans to demolish Grenfell Tower through reports across the media. The decision to speak to the media before any consultation with those affected was completely wrong. Can the Minister confirm what discussions have taken place with structural engineers and other professionals regarding the demolition of the tower and the future of the site? Can he also confirm that full discussion and consultation on the demolition of the tower and the future of the site will take place urgently with survivors, victims' families, Grenfell United and the local community, and that he will ensure that there are no more of these lapses and no more of this frankly disrespectful treatment of those people by the Government? Also, will he take the opportunity now to apologise for the briefing over the weekend and the reports in the media?

Lord Greenhalgh (Con): My Lords, I want to be absolutely clear that this was not a briefing by the Government; it had nothing to do with the Government. On Friday, I had a meeting where it was made very clear that no decision had been taken—so I was as surprised as the noble Lord by what we read in the Sunday papers and subsequently. The Government have embarked on a phase of concentrated engagement on the future of the tower; this started around a year ago and has intensified since May, when we published a series of engineering reports that included a peer review of the major review that was carried out by Atkins. I can certainly continue to make the point that the Government will proceed by very carefully engaging with and consulting the community on this very sensitive matter.

Lord Naseby (Con): Is my noble friend aware that this site reminds one of the failures of building safety provisions? It has been there for too long now. The noble Lord on the Opposition Benches is right that we need to move on. Against that background, will my noble friend make sure that the project he has just outlined does not drift and that, certainly this side of Christmas, there will be a clear and concise provision of what is to happen?

Lord Greenhalgh (Con): My Lords, I underline that no decision has been taken, but we are aware that we have had unambiguous advice from engineering experts that the tower should be carefully taken down. We have published those studies, but I reiterate that no decision has been taken. Obviously, a decision on this cannot be put off indefinitely, and one will be made in due course—but not via the media.

Baroness Falkner of Margravine (CB): My Lords, will the Minister tell the House whether the Secretary of State is in receipt of a report that says that the physical infrastructure of the tower is extremely damaged and creates a potential hazard to a nearby local school, as well as other buildings, in terms of its safety? If that is the case, does he accept that it is vital that the residents surrounding the tower are also consulted on its future, alongside the victims' families?

Lord Greenhalgh (Con): My Lords, I am happy to clarify that there has been ongoing engagement not only with the bereaved and survivors but also with the community. I also want to put on record that there are no immediate safety concerns and that safety and maintenance are ongoing as part of a programme of works that will be completed only in the spring of 2022. Therefore, the coverage reporting that the school is in danger is absolutely wrong. At this stage, the tower is safe and is being kept safe until next spring.

Baroness Pinnock (LD): My Lords, I draw the attention of the House to my entry in the register of interests. As we all know, Grenfell Tower is the site of an appalling tragedy. The sight of it is a constant reminder of the building safety and fire safety crises that Grenfell exposed. Does the Minister agree that the demolition of Grenfell is also the removal of that potent symbol, which is a much-needed reminder of the absolute necessity that the Government solve the cladding and building safety crises that are destroying the lives of thousands of leaseholders? Does he also agree that demolition before the end of the Grenfell inquiry might remove some absolutely important information and facts that could lead to the resolution of this problem?

Lord Greenhalgh (Con): My Lords, I have been very clear that the police have said that they do not require any evidence from the tower as part of their investigation.

I am also aware that we need to engage very carefully on the future of the site. That is why we have asked an independent commission—the Memorial Commission—to look at options for the future. As I said in response to the noble Lord, Lord Kennedy, no decision has been taken at this point.

The Archbishop of York: My Lords, as I am sure many noble Lords know, my colleague, the Bishop of Kensington, and other community, Christian and faith leaders, have been hugely involved with survivors' and victims' groups in Grenfell, where there is, of course, much pain and anxiety caused by the newspaper reports over the weekend. Although it is good to hear the Minister say that there will be discussions with those community groups, I urge him to consider working with the Church and other community leaders to have these discussions as a matter of urgency, because there is such concern raised at the moment and people feel as though—whether the feeling is correct or not—they are not being consulted.

Lord Greenhalgh (Con): I thank the most reverend Primate for making those points. It is important to engage with faith communities and local residents as well as the bereaved and survivors. I assure the House that there have been weekly meetings with particular groups, fortnightly meetings, monthly meetings, online sessions and face-to-face meetings throughout the pandemic. We will continue to do our best to engage with the community, the bereaved and survivors.

Lord Anderson of Swansea (Lab): My Lords, I speak as a former councillor for the adjoining ward of Golborne, and someone who has a London base within sight of Grenfell. Grenfell obviously should go: there were massive failures by the local authority in the past in respect of consultation. Now there appears to be a very different view on the part of the local authority and a much greater readiness to consult, and this is very welcome.

Lord Greenhalgh (Con): My Lords, in addition to the consultation by the site team of my department, MHCLG, the local authority is engaging reactively. I heard from the leader of the council this week that it has another meeting to look at mental health and other well-being issues, and it has asked my officials to join that meeting. The Government at every level have a duty to do their best to make sure that we learn from this tragedy and that we continue to engage with the residents, bereaved and survivors.

Lord Young of Cookham (Con): My Lords, the Minister will know that the Kensington Aldridge Academy is located at the base of the Grenfell Tower. It had to move out following the fire and move back in 2018. What consideration has been given to the future of that school in the discussions referred to by my noble friend?

Lord Greenhalgh (Con): My Lords, despite the reporting, I can assure my noble friend that the school does not require any move or decant in the future. The tower is safe; there are no immediate safety issues. As I said, the programme of safety maintenance continues until the spring of next year.

Baroness McIntosh of Hudnall (Lab): My Lords, picking up on the points raised by the most reverend Primate, will the Minister tell the House what proportion, if any, of those who were displaced immediately following the fire and had to be found temporary accommodation are still in temporary accommodation? Of those, how many are still in the borough and how many have had to go elsewhere?

Lord Greenhalgh (Con): My Lords, I know that the vast majority of people have found secure, settled and long-term accommodation. I will have to write to her about the absolute number of people still in temporary, but relatively stable, accommodation and the number of those who are outside the borough.

Lord Tugendhat (Con): My Lords, I congratulate the Minister on coming before the House at such an early stage and subjecting himself to questions on this important matter. That is a token of good faith. I hope that, when the final decision is taken, there will be a suitable memorial for what has happened. The point about lessons to be learned is something of which we all need to take note. There will need to be an appropriate memorial, not only to the lives that were lost but for the reasons those lives were lost.

Lord Greenhalgh (Con): My Lords, as someone who was made a Minister in March of last year and entered this House only the following month, this is certainly a new experience for me. Actually, it is slightly more enjoyable than what we have experienced, as we are able to see more faces on these Benches. I can assure the House that the work of the independent memorial commission is designed to do precisely that: to find a fitting and long-term memorial to mark the greatest loss of life in a fire since the Second World War. We want to make sure that we get that right and the commission needs to do its work in time.

Procedure and Privileges

Motion to Agree

3.34 pm

Moved by ***The Senior Deputy Speaker***

That the Report from the Select Committee *Sitting times of Grand Committees; Timetabling of Thursday debates; Legislative Consent Motions for Lords Private Members' Bills* (2nd Report, HL Paper 61) be agreed to.

The Senior Deputy Speaker (Lord Gardiner of Kimble): My Lords, the three proposals in the report before the House concern matters previously considered by the House in July 2021 and October 2020. Noble Lords will recall that the first two issues fulfil undertakings in the report that the House agreed on 13 July. That report established the nature of the business in the

[Lord Gardiner of Kimble]
Chamber from today, as we return from hybrid to physical sittings. Accordingly, the report before the House makes a recommendation on the sitting times for Grand Committee, bearing in mind, among other things, the new timings for Oral Questions and Private Notice Questions. It also makes a recommendation on a more streamlined way for timetabling Thursday debates.

The third issue concerns Private Members' Bills. In October 2020, the House agreed to a proposal from the committee that Ministers should explain to the House before Third Reading any circumstances where a devolved Assembly has not provided its legislative consent to the Bill. This requirement does not fit well with Lords starting Private Members' Bills, for which the normal expectation is that legislative consent is sought before Committee stage in the other place. Should we fail to address this, a ministerial Statement will almost always be needed, but will add no obvious value to the House and will risk asking devolved Assemblies to spend their time considering questions of legislative consent on measures that may have little prospect of reaching the statute book. I beg to move.

Motion agreed.

Environment Bill

Order of Consideration Motion

3.37 pm

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

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 22, Schedule 1, Clauses 23 to 48, Schedule 2, Clause 49, Schedule 3, Clause 50, Schedule 4, Clause 51, Schedule 5, Clause 52, Schedule 6, Clause 53, Schedule 7, Clause 54, Schedule 8, Clause 55, Schedule 9, Clauses 56 to 66, Schedule 10, Clauses 67 to 72, Schedule 11, Clause 73, Schedule 12, Clauses 74 to 82, Schedule 13, Clauses 83 to 94, Schedule 14, Clause 95, Schedule 15, Clauses 96 to 110, Schedule 16, Clauses 111 and 112, Schedule 17, Clauses 113 to 126, Schedule 18, Clauses 127 to 133, Schedule 19, Clauses 134 and 135, Schedule 20, Clause 136, Schedule 21, Clauses 137 to 145, Title.

Motion agreed.

Environment Bill

Report (1st Day)

3.37 pm

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

Amendment 1

Moved by ***Lord Teverson***

1: Before Clause 1, insert the following new Clause—

"Purpose and declaration of biodiversity and climate emergency

(1) The purpose of this Act is to address the biodiversity and climate emergency domestically and globally.

(2) As soon as reasonably practicable and no later than one month beginning with the day on which this Act is passed, the Prime Minister must declare that there is a biodiversity and climate emergency domestically and globally.

(3) The Government must have regard to this purpose and declaration when implementing the provisions of this Act."

Member's explanatory statement

This amendment would have the effect of the UK Government declaring a climate and biodiversity emergency.

Lord Teverson (LD): My Lords, it has been two months since we debated the Bill in Committee over a period of three weeks, but the planet has not stood still over that time. First, the Intergovernmental Panel on Climate Change—the IPCC—released its sixth report prior to COP 26, on which the Secretary-General of the United Nations, Mr António Guterres, commented:

"This is code red for humanity."

This is an absolutely accurate declaration to my mind.

However, this is not just theoretical: let us look at other things that have happened during the end of July and beginning of August. First, we could look at fires: we have had forest fires in the northern hemisphere, almost unknown before, in California, Canada and Siberian Russia, where some 4 million hectares of forest have burned down and are still burning in parts of Siberia even today.

In terms of flooding, we have seen flash floods just now in New York. It was almost unexpected there, let alone down in the southern states of the United States. We have now had some 300 deaths in the north-east of the United States from those flash floods. Earlier, in July or August, some 300 people died in Henan province in China, many of them in underground metro systems, again in flash floods—something that had never happened in that way before. Of course, nearer home, in Europe—in Germany and close-by states—we had some 200 deaths because of flooding, which was unprecedented and unpredicted in terms of conventional weather forecasting.

In terms of temperature, in Lytton in British Columbia we had the highest temperature ever recorded in Canada at 49.5 degrees centigrade. More staggering was the fact that that was 5 degrees—I repeat, 5 degrees—more than the previous record. All those incidents and that report have happened since we last debated this legislation in this House.

We have also had, in July, the Government's response to the Dasgupta report on biodiversity. They accepted, quite rightly, that we have to reverse biodiversity loss by the end of this decade; it is something that has been going backwards for decades and we have to amend that within a period of nine years.

We are now a month closer to the beginning of COP 15 next month, the biodiversity equivalent of COP 26, the first half of which will be centred around Kunming in China. Of course, we are now only 56 days away from COP 26 opening in Glasgow on 1 November. I also remind Members of the House that we had a report in June, again from the IPCC—the Intergovernmental Panel on Climate Change—and the secretariat of the biodiversity equivalent, which made it quite clear that these two crises, climate change and biodiversity, are absolutely and inextricably linked. You cannot solve one without solving the other. That is why this is an important area, an emergency, a real area and a place where the planet is globally changing.

We want this to be a landmark Bill; in fact, the Government declare this to be very much a landmark Bill, and we all want it to be so. But what I find it difficult is that it is not yet that. I welcome many of the Government's amendments that they want to put forward, but it is not yet a landmark Bill, as the Climate Change Act 2008 was at that time. I do not believe that it is credible that this House, this country, can have what will become an environment Act without pointing out and declaring the obvious—that we have at the moment a climate change and biodiversity emergency.

I am sometimes asked whether this is the way we do things in the United Kingdom, and I had some arguments with the Public Bill Office around this when I put down this amendment. But I remind Members that over 200 local authorities in our land have already declared a climate emergency, and many of those are now also declaring a biodiversity emergency. I believe that what is right for them is right for us as a Parliament. Also, the way that we in the United Kingdom show unity in parliamentary politics is through legislation, because that brings the two Houses together, together with the Government. Having a declaration in an Act of Parliament brings together the House of Commons, the House of Lords and the Government, and I believe that this is absolutely what is needed to make this a landmark Bill.

I believe this amendment would achieve leadership for this country—globally as well as nationally—in both those crises. I believe it will give us extra credibility and leadership at COP 26 and COP 15. I believe it will make this Bill something like the Climate Change Act for the future, and that it will also bring biodiversity, which is so important to this Bill, up to a similar status to the Climate Change Act. As I said, I think it brings together the two Houses and the Government in a unity that is important and that we saw in the citizens' climate assembly.

3.45 pm

I am also sometimes asked, "Is this just politics?" It is not, because we all know that these crises are real, and we all know that we want our means of combating them to be effective. Here I would like to quote President Biden; he was asked a similar question and was talking about Hurricane Ida and its effect on the north-east of the United States. He said categorically, "This is not politics". The climate crisis is here; it is now, it is here, it is happening. This is not about politics.

I was also very grateful to the noble Baroness, Lady Boycott, for adding her name to this amendment, even though it was after the date when it could be published on the Marshalled List.

This is exactly the right time for the Government to make such a declaration. We have this potentially landmark legislation going through the House, which will be completed—we hope—before COP 26. It is time to bring us together and confirm our leadership, and it is also the opportunity to recognise something that is real and happening now. At COP 26 we have the opportunity not just to have the presidency but to take global leadership. I believe passing this amendment would be part of that, and I beg to move.

Baroness Boycott (CB): My Lords, I am very happy to support this amendment. As the noble Lord, Lord Teverson, said, I joined up a little too late.

Biodiversity is all too often seen as the poor relation of climate change and somehow less important. It is not. It is just as important and life threatening as any weather patterns, droughts or floods—and they are indeed all connected. So what is it? In essence, it is the variety of life on earth and all its interconnectedness. But it is also the product of millions of years of learning—of trial and error—by all the creatures, flora and fauna on earth to arrive at a system where this planet flourishes and where we can exist on it. Everything is in its place and everything is doing its bit—sometimes large, sometimes microscopic—and it keeps our planet in the healthy state that we want to preserve.

I have heard what we are doing now described as "burning the library of earth". To take something really complex that we have made, let us think of an aeroplane going to New York, carrying 600 people. Out falls one rivet—not too bad. Out come two—maybe not a big deal. But suppose 10, 20 or 30 come out; at some point that aeroplane is going to come crashing down to earth—and that is what we are doing now with the complex world of our biodiversity. We do not know quite when we will pass the tipping point, but we are clearly very nearly there.

I have a few examples relating to the insect world, which is endlessly dismissed, but—as Einstein, apparently, famously said—the planet would survive without us, but it would not survive without insects. They are essentially the unseen rivers that keep the planet functioning, yet we have not managed to identify them all—and yet we are cutting down their environments. As I said, no one knows how close to the edge we are, but in China they are pollinating apples and pears by hand. In Bengal they are doing the same for squash plants. In Brazil it is passionfruit, and it is blueberries in Canada. Even the French beans in Kenya are now having to be mechanically pollinated because we have trashed the insects.

Clearly, many parts of the world—and, indeed, under the oceans; we have the temerity to think that we should destroy the ocean bed like we have destroyed the land above—have a huge value: trillions of dollars, or around double the world's current GDP. In Europe alone it costs the 3% of GDP that we get from our natural services.

I thoroughly support the amendment. This is an emergency. That message needs to come from the Prime Minister and it needs to be made clear to everyone that we have only one planet and that we have to protect it. Biodiversity is extraordinary and amazing. It is up to all of us in this House to ensure that this becomes part of the Bill.

Baroness Bennett of Manor Castle (GP): My Lords, I support both these amendments: Amendment 1, so ably introduced by the noble Lord, Lord Teverson, and backed by the noble Baroness, Lady Jones of Whitchurch, to which I am pleased to have attached my name; and Amendment 21 in the name of the noble Lord, Lord Bird, and signed by the noble Baroness, Lady Boycott.

In introducing his amendment, the noble Lord, Lord Teverson, looked at what happened in the timeframe from when we last debated the Bill to today. I will take

[Baroness Bennett of Manor Castle]
a different timeframe and go back to when the Bill was first introduced on 15 October 2019. A lot has happened since then. Obviously, we have had, and still have, a global pandemic, which is related to our biodiversity and climate crises, but in reaction to it we have seen enormous, massive and rapid change. We have seen the invention from scratch of highly effective new vaccines from a range of technologies. We have seen billions of doses of those vaccines already delivered. We have seen transformation on an almost daily scale of our entire way of life. The previously obscure word "lockdown" has become daily currency. International travel has almost stopped. "Zoom" has become a verb.

What has happened to the climate in those two years? Emissions fell in 2020, chiefly because of the pandemic, but a lot less than people expected. They then started to rise again. We have seen Extinction Rebellion out on our streets regularly and the climate strikers have become part of the national life of countries all around the world. But we have yet to see the scale of reaction that is needed to these emergencies, which are on the same scale as the pandemic. Just look at the contrast between those two scales of reaction and the fact that the Bill was written two years ago. In the age of shocks, with time moving so fast, that is an age. Amendment 1 would update the Bill to be fit for today, as it must be, and create the frame for it to be fit for the future.

I will briefly address Amendment 21. It is particularly important because we are starting to see the word "resilience" in news coverage, which was once an extremely rare occurrence. It is starting to rise up the news agenda. I speak as a former journalist. Amendment 21 seeks to address the risks, identify them and report on them.

I will focus in particular on proposed new subsection (2)(c), which would ensure that the views of 11 to 25 year-olds in the United Kingdom are continuously engaged in debating these risks. I reflect on that because yesterday I was in Sheffield, where I joined the Young Christian Climate Network, which is on a deliberately very slow pilgrimage from Truro to Glasgow, stopping in as many communities up and down the land as it possibly can to engage communities, particularly young people, on this issue. Climate strikers, young pilgrims and Extinction Rebellion are leading. The amendment would ensure that the Government and the Bill are at least in the right place to catch up.

Baroness Jones of Whitchurch (Lab): My Lords, I will speak to Amendment 1, to which I added my name. I also thank the noble Lord, Lord Bird, for his helpful amendment. We agree that assessing long-term environmental risk should be an essential part of setting environmental targets and improvement plans.

I thank the noble Lord, Lord Teverson, very much for setting out why recognising our climate and biodiversity emergency is so important. He and other noble Lords set out the case with clarity, passion and commitment. As he said, this is indeed code red for humanity.

We had a number of excellent contributions in Committee which all strengthened the importance of having Amendment 1 underpin the Bill. It has of course become commonplace for government and civic society to acknowledge that we have a climate change emergency. The recent global evidence that the noble Baronesses, Lady Boycott and Lady Bennett, referred to reinforces this view. Quite frankly, it has made a mockery of the dwindling band of climate sceptics.

However, we still have some way to go to put the biodiversity crisis on an equal footing with the climate crisis, with comparable attention and resources. As the noble Baroness, Lady Boycott, said, biodiversity is seen as the poor relation, yet, as we have heard, the evidence of a biodiversity emergency is all around us. At a UK level, the RSPB's *State of Nature* report showed that 41% of our species are declining and one in 10 threatened with extinction. We are one of the most nature-depleted countries in the world. At a global level, the WWF has documented the international failure to meet the UN biodiversity targets, with an average 68% of species decline across the world. We see the impact of this decline in our gardens, countryside and waterways. For many of us, it is personally heartbreaking to see nature suffering and declining in this way.

We now understand more than ever that nature is not just a "nice to have"; it underpins our very existence and regulates the earth's climate. As the House of Commons Environmental Audit Committee's report concludes:

> "Biodiversity and well-functioning ecosystems are critical for human existence, economic prosperity, and a good quality of life."

Of course, this echoes the previous conclusions of the much-quoted and seminal Dasgupta report.

That is why Amendment 1 is so important. A government declaration of a climate and biodiversity emergency would be more than symbolic. It would make it clear that the two issues are inextricably linked and that both require action on an urgent scale. In Committee, the Minister acknowledged these arguments. He said:

> "We absolutely recognise the extent of the crisis"

that the noble Lord, Lord Teverson, and I had relayed. He went on to say:

> "There is no doubt that the facts on the ground tell us that we are in crisis territory",

but he also acknowledged that international action on climate change is well ahead of any comparable action on biodiversity. As he said:

> "It remains the case … that of all international climate finance, only 2.5% to 3% is spent on nature-based solutions."—[*Official Report*, 21/6/21; col. 37.]

This lies at the heart of the problem. A group of us were involved in debates on the Financial Services Bill earlier in the year. It was clear then that banking and businesses in the UK are slowly waking up to their climate change commitments, but I do not recall much mention of biodiversity in their strategies for the future. So far, it seems that biodiversity and nature-based solutions are seen as Defra issues, not government-wide issues. I do not doubt the Minister's sincerity or commitment on this issue, but the evidence seems to show that the department is struggling to get other government departments to take this issue seriously. This is why it is important that the Government as a whole recognise the joint emergency of climate change

and biodiversity, and why the Prime Minister needs to recognise the emergencies and put action on both issues at the heart of government policy for the future.

Nature will not wait. We are spiralling into levels of extinction that cannot be reversed. As the noble Lord, Lord Teverson, said, this is the right time to make this declaration. I therefore hope that noble Lords will heed our call and support our amendment if it is put to a vote.

4 pm

The Earl of Caithness (Con): My Lords, I have listened carefully to the very powerful arguments that have been made. I believe that what is happening with biodiversity is more of an emergency than the climate. I am not certain that I like subsections (2) and (3) of the amendment from the noble Lord, Lord Teverson, and I do not like Amendment 21, which is grouped with Amendment 1 but is not consequential on it. That would make it harder for the Government to pursue their environmental improvement plans and 25-year plan. There would be unnecessary duplication with the amendment from the noble Lord, Lord Bird. I am very happy with subsection (1) of the amendment from the noble Lord, Lord Teverson. The purpose of this Act is to address the biodiversity and climate emergency domestically and globally. Once that is in print, it will be acknowledged by the Government as an emergency. Surely that meets the noble Lord's point, and if my noble friend the Minister accepts subsection (1), I will be perfectly happy.

Baroness Jones of Moulsecoomb (GP): My Lords, it is a curious experience to be standing up without being called.

The noble Earl, Lord Caithness, has made the classic Conservative error of separating biodiversity from climate. It is all interconnected: you cannot talk about either without accepting that each has an impact on the other. Every noble Lord must understand that we have a climate emergency, and therefore this government Bill is not good enough. We all know that–it is why there are so many amendments at Report. It is our job to improve the Bill and it is the Government's job to listen and, I hope, accept our improvements.

Lord Deben (Con): I hope that your Lordships will remember the words of the Pope in *Laudato Si'*, when he said that climate change was the symptom of what we had done to the world. That brings together biodiversity, imposed poverty, the lack of fertility in our soil, modern slavery and a whole range of other things. Climate change is the planet crying out for the elimination of its disease.

I was not present for his speech but I read carefully what my noble friend said about his commitment to both these things. I hope that, when he comes to answer this debate, he realises that it is extremely difficult for us in the Climate Change Committee to explain to people why biodiversity is part of the answer—putting that right is just as important as a range of other things, and we cannot divorce them from each other. It is difficult, because we have already started doing that, making climate change one sort of thing and these other things different from it. I hope that the Government will understand why this amendment has been put down and why it is important to connect these things. If I have a difficulty, it is that a lot of other things ought to be connected as well, but these two are particularly important this year, given the nature of international negotiations in this area.

I hope also that my noble friend will think to himself a very simple thing: if the Government will not accept the amendment or rewrite the Bill—my noble friend Lord Caithness may be right; I am not arguing in detail about the particular amendment—it is perfectly possible for them to come forward and make a statement in the Bill which makes it clear that the biodiversity and climate emergencies are intimately and intricately connected. I hope my noble friend will realise that, if he cannot say it, he will be showing that the Government are not prepared to say it. That would be really worrying. The reason the Government have to say it is that there is a fundament problem with government: it has a series of silos, and if we are not careful these big issues get caught up in some ministries and not others. Unless we make it clear that this should be a driving force in, say, the Department for Digital, Culture, Media and Sport as much as in the Department for Education, Defra or BEIS, we will not win this battle.

I hope my noble friend will recognise that the House is asking for a very simple statement. If it is refused, I really would not blame people outside for questioning the commitment of the Government as a whole to these two essential parts of the same problem. I look to him if not to accept these amendments then to at least tell the House that, at Third Reading, he will introduce an amendment that will assert publicly the Government's commitment to these being urgent, necessary issues that deserve the title that we have asked for. I hope he is able to say that; if he is not, it will send the wrong signal, at a time when we should be united in sending the right signals, so that in all discussions people will know precisely where Britain stands.

Lord Krebs (CB): My Lords, in supporting the amendment from the noble Lord, Lord Teverson, I draw attention to a particular feature that has been mentioned but perhaps could be made more explicit. It is a feature of both the climate emergency and the biodiversity emergency: the discontinuities that will arise as a result of incremental change. My noble friend Lady Boycott alluded to this in talking about the rivets in an aeroplane: it does not matter, perhaps, if one, two or three rivets fall out, but when more than a critical number fall off there is a discontinuity and the plane falls out of the sky. This is true, as we know from the IPCC and others, of the climate emergency. We hear over and over of the notion of dangerous climate change, whereby if we exceed a certain boundary then we will tip into a new world in which life becomes intolerable and many regions of the planet are uninhabitable for the human species. That is equally true of the biodiversity emergency.

I am an academic ecologist, and so I will refer back to the scientific literature. Back in 1969, an American ecologist, Robert T Paine of the University of Washington, drew attention to the notion of keystone species. He was studying a species of starfish that lives in the

[Lord Krebs]
intertidal zone of the north-western United States—Washington state. If this species of starfish disappears then the whole ecosystem flips to a new state, because the starfish is the keystone species that maintains the equilibrium of the intertidal ecosystem. The same will be true in many other situations.

It is not just the number of rivets that fall out of the plane that is important; it is particular, key rivets. The sad thing is that, if we lose some of these keystone species, we will be among the ones that suffer, because we will suddenly find that the systems we rely on to produce food, purify our water and provide other ecosystem services will simply not exist any more. A genuine emergency is created by crossing these thresholds: once we have crossed them, it will be too late.

The Archbishop of York: My Lords, in the Book of Common Prayer, the Lord's Prayer says:

"Our Father in heaven,
hallowed be your name,
your kingdom come,
your will be done,
in earth as in heaven."

I repeat, "in earth". It was not the work of some liberal conspiracy in the Church or the Liturgical Commission but, somewhere in the last 300 or 400 years in the popular saying of the Lord's Prayer, it somehow changed from "in earth" to "on earth". This tiny change encompasses for me all that is wrong in our relationship with the earth of which we are a part. We used to understand that we live in it, we are part of it, we depend on it and that, as good stewards of the earth, the earth depends on us. Then, somehow, we decided that we did not live in it any more but on it; it was ours and we could do with it as we wanted.

Therein lies the whole challenge to the human race. What I want to hear from the Government on this crucial amendment is a clear signal that we have recognised—as a human race, as a nation and as the Government of this land—that there is an emergency, and that what is happening to our climate and to biodiversity is completely connected. At the same time there must be recognition of the terrible responsibility that we bear for having imagined that we lived on the earth rather than in it. By giving that signal, everything else could follow.

Baroness Altmann (Con): My Lords, I echo the words of my noble friend Lord Caithness. The Government are to be congratulated on the first major piece of environmental legislation in two decades; I congratulate them on this. It will set a world-leading framework for environmental improvement and vigilance. I believe that the Government—certainly my noble friend on the Front Bench and our excellent Minister in the other place—recognise the scale of the crisis. That has been said in the House already.

It is inevitably the case that the climate change emergency is much better recognised than the biodiversity emergency, yet the two are so linked. Indeed, it is frightening to see the decline in biodiversity. The figures announced by the noble Baroness, Lady Boycott, for example, are a telling reminder of the dangers to our precious planet and the interconnection between all species on earth. Part of my religious belief is founded on the amazing magic that nature produces. This world has been created for us, yet we are in danger of ending the precious balance that has, in my view, been created for us. I hope that those who do not agree with my underlying religious belief on this matter will forgive me.

I hope that my noble friend might be able to accept the first part of Amendment 1, which aims to address the biodiversity and climate emergency both domestically and globally. I am not convinced that proposed subsections 2 and 3 are clear in what they imply. What does this mean? What do these extra bits add? What we want—and I think this House is keen to see—is that we are addressing a crisis in biodiversity and in climate change. Of course, there is pollution and waste management. All these things are incorporated in this crisis. I cannot support Amendment 21, but I hope that my noble friend will be able to speak to the first bit of Amendment 1.

Lord Cormack (Con): My Lords, I wish very briefly to endorse everything that my noble friend Lady Altmann said a moment ago. There is a great deal to be said for clarity and simplicity and I believe that the first part of this amendment moved so ably by the noble Lord, Lord Teverson, frankly, says it all. We do not need the encumbrances. We need this clear, unambiguous, emphatic statement. If my noble friend the Minister will agree to give us that, I think it would be unwise of the House to seek to vote on the composite—as the trade unions would call it—resolution. This is what we need.

The most reverend Primate the Archbishop of York put it very well when he quoted from the Lord's Prayer. We are in earth. As president of the Prayer Book Society, I always say that and would not say anything else. I beg my noble friend the Minister to take on board the wise words of my noble friends Lady Altmann and Lord Deben—how good it is to have him back in the Chamber—and that he will accept this; then, we can move forward.

4.15 pm

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 am delighted to be back debating the Environment Bill on Report and not least to be able to do so in person. I thank noble Lords for continuing to meet me and my officials over the Summer Recess.

Off the back of much of that engagement, as well as the many insightful contributions in Committee from right across this House, noble Lords will have seen that we have secured and tabled some significant amendments to the Bill. I outlined these in a letter to your Lordships last week and I look forward to discussing these in more detail as we progress the debate.

Moving on to the important issues at hand, I thank noble Lords for their contributions to this debate, and particularly the noble Lord, Lord Teverson, for his Amendment 1. He described an emergency; I reassure him that the Government fully recognise the seriousness of both climate change and biodiversity loss, which, as a number of noble Lords have said, must be addressed in tandem if we are to protect the planet. There is no credible pathway to net zero that does not involve the

protection and restoration of nature on an unprecedented scale. Indeed, there is no pathway to meeting our sustainable development goals—any of them—without massive efforts to protect and restore nature. We know that those people who depend most on the free services that nature provides, and which have been described by a number of speakers today, are in the most vulnerable and poorest communities. As we destroy nature, we destroy those services and plunge people in huge numbers into base poverty.

The noble Baroness, Lady Jones, pointed out that of total global climate finance, less than 3% is invested in nature-based solutions to climate change. An attempt to shift that balance and get that 3% much closer to 50% is at the heart of our ambitions as the president of COP. In addition to committing to double our own international climate finance to £11.6 billion, we have committed that nearly a third of that will be invested in nature-based solutions, including forests, mangroves, seagrasses and more. As part of our diplomatic efforts in the run-up to COP, we are talking to other donor countries on a regular basis to try to persuade them to do something similar. There has been some progress and I hope that, by the time we reach COP, I will be able to present significant movement in that area.

My noble friend Lord Deben, who I too am very pleased to see here and who is an authority on climate change, quoted the Pope; I am not sure whether it was the current or previous Pope but he quoted a Pope. The point he made was absolutely right. Climate change has been described by others—perhaps from a less theological point of view—as a fever caused by decades and generations of our abuse of the natural world. The more we can see it in that way, the more likely we are to deliver appropriate solutions. COP will be a nature COP; this is at the heart of what we are attempting to do with our presidency.

I take issue with one suggestion that the noble Lord, Lord Deben made: that we need to make it clear to others where the UK stands on these issues. I would not pretend that there is a country in the world, including the UK, that is doing enough. The gap between where we are and where we need to be is vast; that is true of every country on earth, and that is why we are having this discussion today. But where the UK stands on climate change and nature already sends a pretty powerful message to the world. I think we are regarded internationally as leaders: we were the first major economy to legislate for net zero by 2050; we have committed to ending taxpayer support for fossil fuel projects overseas, which the noble Lord has been urging for many years; we are the first to make our land use subsidy system conditional on environmental outcomes; we have doubled our international climate finance, as I said; and we have committed to a third of investment into nature-based solutions. As COP president, we are all engaging in intense diplomacy to try to raise ambition across the world.

Lord Deben (Con): I think my noble friend misunderstood my point. My point was that, given the opportunity to declare this simple thing in an Act, the Government, if they do not take it, cannot avoid the fact that many will say they do not want to. The Government have the opportunity. I do not want the rest of these amendments; I just want the statement, and then no one can argue. If he cannot give that, I merely say that people outside will think we are not willing to do so.

Lord Goldsmith of Richmond Park (Con): I thank my noble friend for his intervention, and I will address his question directly.

The Environment Bill contains numerous world firsts as well—for example, legislation to move illegal deforestation from supply chains, which we are trying to persuade many other countries to emulate, and with which we think we are making some progress. Biodiversity net gain is, I believe, a world first. I am delighted to introduce a legal requirement, which we will debate later today, to everything the Government can do to bend the curve of biodiversity loss by 2030. The Bill will enable us to improve air quality, address nature's decline, deliver a resource-efficient economy, tackle the scourge of single-use plastics and ensure we can manage our precious water resources in a changing climate. All climate change legislation in England will be part of the enforcement remit of the office for environmental protection, including enforcement of the net-zero target. The OEP will work closely alongside our world-leading Committee on Climate Change on these issues, ensuring that their individual roles complement and reinforce one another.

Through the Prime Minister's 10-point plan, the Government set out steps to achieve net-zero emissions by 2050. This innovative programme outlines ambitious policies and includes £12 billion of government investment to support up to 250,000 green jobs, accelerate our path to reaching net zero by 2050 and lay the foundations for a green recovery by building back greener from the pandemic. The Government have also published their energy White Paper, transport decarbonisation plan and hydrogen strategy, and we will bring forward further proposals, including a net-zero strategy, before COP 26—a strategy that all government departments, without exception, are working on. We will continue to tackle these interrelated crises in an integrated way, internationally, as hosts of COP 26 and by playing a leading role in pushing for the development of an ambitious post-2020 global biodiversity framework to be adopted at the CBD COP 15.

Briefly, in response to the noble Baroness, Lady Bennett, who talked about the need for action alongside this but questioned the action taken during the passage of the Bill, most of the examples I gave earlier are things that have happened during the passage of the Bill but, in addition to that, the Government announced a few months ago the £3 billion green investment fund to create thousands of green jobs and upgrade buildings; a £2 billion green homes grant; the England peat action plan, produced by my honourable friend Rebecca Pow in the other place; the England trees action plan, which was part of my portfolio; and a £5.2 billion fund to better protect properties from flooding, increasing amounts of which will be invested in nature-based solutions to try to deal with numerous problems using the same investment. We are taking action.

In response to the amendment, but also to the point made by the noble Lord, Lord Deben: it is clearly the action against which a Government will be judged.

[Lord Goldsmith of Richmond Park]
Any Government can make declarations, as we have seen. As we approach COP, every declaration made so far in relation to deforestation globally has been missed. The Aichi targets were missed catastrophically. I cannot think of a single grand statement about the environment, biodiversity or climate change that has in fact been met—not a single one. It is the steps—the actions—that Governments take against which they should be judged.

A number of noble Lords have described an environmental crisis, a biodiversity crisis and a climate crisis. I have, in the short time I have been in this place, described those crises myself. Indeed, the reason I am in politics is to tackle those crises. It is hard to talk about the scale of the crisis. The noble Baroness, Lady Bennett, gave the example that the populations of key species have declined by nearly 70% in my lifetime, and that would not even qualify as a nano-blip in evolutionary terms. One more nano-blip like that and we are in very serious trouble. Of course this is an emergency; there is no doubt that we are describing, combating and tackling a biodiversity and climate emergency. But adding this proposed new clause to the Bill would not, we believe, drive any specific further action. It does not change the nature of what we need to do or of the action we are already taking. While I agree completely with the sentiment behind the noble Lord's amendment—and I think the Government have demonstrated, in the steps they have taken, that they share that sentiment—respectfully, we do not see that this amendment would have any material impact.

Amendment 21 was tabled by the noble Lord, Lord Bird, but he has not spoken to it, so I hope it is okay if I address it. I am not sure what the protocol requires, but I will do so unless I am told not to. I firmly believe that environmental risks are already accounted for under the Bill—in numerous ways, such as the environment improvement plan and annual reports that will consider risks related to improving the natural environment and be actively managed through ongoing performance management. These reports will be published and scrutinised by Parliament and the office for environmental protection. Furthermore, the Government report publicly on specific environmental risk, including long-term environmental trends and high-impact environmental risks, through Defra's annual reports and accounts and the outcome delivery plans for each government department. These are all available online.

Regarding youth engagement, a point raised by a number of speakers, we have consulted the Youth Steering Group and are exploring new approaches to youth engagement as part of the EIP review due to take place in 2022. In addition, the emphasis being placed by the COP president-designate on the value of youth engagement and youth involvement cannot be overestimated, and that is demonstrated through the actions he is taking and the plans he is making.

The Bill and the actions we are taking elsewhere will deliver on the sentiments behind both amendments. Therefore, I ask the noble Lord to withdraw his amendment.

Lord Cormack (Con): Before my noble friend sits down: if the noble Lord, Lord Teverson, or anyone else for that matter, brought back at Third Reading proposed new subsection (1) of Amendment 1, which is merely a headline, would my noble friend pledge to accept that it does not detract one iota from the Bill? Yet headlines can be useful—they can be pointers—and I would urge my noble friend to do that. It is a pity to start on a Division when we all agree that that is the one thing on which many of us feel particularly strongly.

Lord Goldsmith of Richmond Park (Con): I thank my noble friend for his intervention and his earlier comments, but the reality is that I, the department I work for and the whole of the Government will be tested and judged against the actions we take—actions and commitments we make in the run-up to COP and alongside the Bill. My view, and that of the Government, is that accepting this amendment and writing these words into the eventual Act would have no material impact on policy whatever. The reality is that securing changes to a Bill requires a great deal of heavy lifting. There are areas where I hope noble Lords will see that the Bill has improved considerably in recent weeks as a consequence of arguments put forward by noble Lords in this House. But those are material changes that will have a material impact on our stewardship of the environment.

Lord Marlesford (Con): My Lords, if my noble friend is not prepared to give the very simple assurance that at Third Reading he will have some form of declaration, he is being politically most unwise. What is more, he is setting himself up to have a great deal more trouble with this Bill than he otherwise would.

4.30 pm

Lord Goldsmith of Richmond Park (Con): I simply say to my noble friend that I am not in a position to accept this amendment. If the House feels strongly on this issue, then it is important that it tests the amendment in a Division. Accepting it is not something that I am able to do or, frankly, that I think would make any material difference to government policy.

Lord Deben (Con): I do not want this to start off so badly, but the fact is that many of us do not want to have various bits of this amendment and it is not our fault that my noble friend has been offered the opportunity to make this statement. I have to ask him: is he really going to stand up and say that, if just that bit were put in at Third Reading, he would whip his side to vote against it? If he did that—and that is the only way in which he could stand behind refusing such an amendment—then that seems to open up the reality of the question that he has been asked.

I agree with him about statements. I am constantly attacking the Government for not doing the things that are necessary to achieve the ends that they have so nobly accepted, so he must not accuse me of being in favour of declarations. However, when he has been asked to make a declaration and he does not do so, that seems to me to be a very different circumstance.

Lord Goldsmith of Richmond Park (Con): Perhaps I have misunderstood my noble friend. If he is asking me to acknowledge, as I have done many times in this House and outside it, that we face a biodiversity and

climate emergency then I believe I have already done so. However, it is not for me to unilaterally accept an amendment on behalf of the Government that would have no material impact. As my noble friend says, we have made some big commitments; accepting the amendment would not change our commitment to net zero or to reversing biodiversity loss by 2030, or indeed in relation to any of these issues. I am afraid I have to come back to my noble friend and others by saying that if the feeling is strong then this issue needs to be put to a Division.

The Earl of Caithness (Con): I would just like to get clarification on this. Since it is now so difficult to table an amendment at Third Reading, it needs my noble friend to say that he would consider it before Third Reading. As I understand it, that would allow the noble Lord, Lord Teverson, to bring it back at Third Reading. If my noble friend is point blank saying that he will not even consider it, then the noble Lord has no alternative but to divide the House.

As I said, I like subsection (1) of the proposed new clause but not the rest of the amendment, which puts me and indeed quite a lot of us on the Benches behind my noble friend in an extremely difficult position. I think it is essential, as my noble friend Lord Deben said, that we get subsection (1), but we would have to vote for the noble Lord, Lord Teverson, in order to get it into the Bill.

Baroness Young of Old Scone (Lab): Could I summarise what I think I have heard the noble Lord say?

The Earl of Courtown (Con): My Lords, I am afraid the noble Baroness cannot summarise. The rules in the *Companion* are quite clear that interruptions on Report are solely for points of clarification. I think we should let the Minister move on with this.

Lord Goldsmith of Richmond Park (Con): I have been told to finish but I am not sure how; this is the first time I have been asked to finish in these circumstances. I will repeat what I said earlier: all I can suggest to the House is that if feelings are strong then this question should be put to a Division. I do not see an alternative to doing so.

Lord Teverson (LD): My Lords, in all my time in this House, this is the first time that I have got to a point where the Minister is calling for a Division on an amendment that he does not agree with. We have perhaps made history this afternoon.

This is a very serious matter. I listened carefully to the noble Baroness, Lady Altmann, the noble Lord, Lord Cormack, and the noble Earl, Lord Caithness. If subsection (1) had been accepted by the Government then I would have been in a great dilemma, because it does not quite say what I wanted to say but gets pretty close to it. The reason why it is written as it is, I have to say, is partly because of the Public Bill Office. I would have appreciated the Government's help in getting it right and we could have done that at Third Reading, but we are not in that position.

I want to be quite clear about this. These are key issues where what we say matters as much as what we need to do. All of us here believe there is no difference between saying what we want and actually doing it; we all know that we need both of those, not just one. The Bill goes on to do a lot of what we need in some of those areas.

I thank all noble Lords for their contributions. I particularly thank the noble Baroness, Lady Jones, for her in-depth look at biodiversity. As the noble Baronesses, Lady Boycott and Lady Bennett, and other Members have said, biodiversity has to be brought into greater focus. The point is that, in public life as in private, there is a big difference between acceptance and public declaration. That is why the amendment is so important for the Bill and why I, like the Minister, would like to test the opinion of the House.

4.36 pm

Division on Amendment 1

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Courtown, E.
Couttie, B.
Craigavon, V.
Crathorne, L.
Cruddas, L.
Cumberlege, B.
Davies of Gower, L.
Dobbs, L.
Duncan of Springbank, L.
Dunlop, L.
Eaton, B.
Eccles of Moulton, B.
Eccles, V.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Falkner of Margravine, B.
Fall, B.
Farmer, L.
Flight, L.
Fookes, B.
Foster of Oxton, B.
Freud, L.
Frost, L.
Fullbrook, B.
Gadhia, L.
Garnier, L.
Geddes, L.
Gilbert of Panteg, L.
Gold, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Greenhalgh, L.
Greenway, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Harding of Winscombe, B.
Harlech, L.
Hay of Ballyore, L.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Hope of Craighead, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Jopling, L.
Judge, L.
Kamall, L.
King of Bridgwater, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Loomba, L.
Lucas, L.
Manzoor, B.
Marland, L.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Meyer, B.
Morrissey, B.
Morrow, L.
Moylan, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Nicholson of Winterbourne, B.
Noakes, B.
Norton of Louth, L.
O'Shaughnessy, L.
Parkinson of Whitley Bay, L.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Ranger, L.
Rawlings, B.
Reay, L.
Redfern, B.
Risby, L.
Robathan, L.
Rock, B.
Rotherwick, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Sharpe of Epsom, L.
Sheikh, L.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Stuart of Edgbaston, B.
Sugg, B.
Suri, L.
Swinfen, L.
Taylor of Holbeach, L.
Trefgarne, L.
Trenchard, V.
True, L.
Tugendhat, L.
Tyrie, L.
Udny-Lister, L.
Vaux of Harrowden, L.
Vere of Norbiton, B.
Wasserman, L.
Watkins of Tavistock, B.
Waverley, V.
Wei, L.
Wharton of Yarm, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Young of Cookham, L.
Younger of Leckie, V.

4.58 pm

Clause 1: Environmental targets

Amendment 2

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

2: Clause 1, page 2, line 4, at end insert—

"(e) soil health and quality."

Member's explanatory statement

This amendment indicates that soil health and quality are a priority area for environmental improvement.

Baroness Bennett of Manor Castle (GP): My Lords, Amendment 2 appears in my name and those of the noble Lords, Lord Whitty, Lord Curry of Kirkharle and Lord Randall of Uxbridge. I thank them all for their support, as well as others who would have offered their support had there been space under our procedures.

We have here a very simple amendment, but an improved amendment from Committee. As I listened to the discussion in Committee, it became obvious that we really needed to ensure that this amendment addresses both the health and quality of soil. I am simplifying slightly—I refer noble Lords to the discussion in Committee—but in a sense, in recent decades we have come to realise, in a way we had not before, that soils are complex ecosystems in their own right. The "health" element of this amendment very much addresses that biology aspect, whereas the "quality" element speaks more specifically to the chemical and physical composition of the soil. It is interesting that in our first debate today, the noble Lord, Lord Deben, highlighted the importance of soils when we are talking about biodiversity and climate. That is a useful introduction to this debate.

We debated soils at great length in Committee, so I will just briefly summarise some of the points raised. The UK loses more than 3 million tonnes of topsoil every year. Soil is degraded even while it remains in situ; almost 4 million hectares are at risk of compaction—the life and air squashed out of the soil, mostly by the passage of heavy farm machinery. Soil can also be contaminated through dangerous, damaging substances being swept or blown or landing on it—or still sometimes, sadly, being deliberately placed on it through error or fraud. We are also just beginning to understand micro-plastic pollution, something that cannot be escaped anywhere on this planet. Soils are stores of carbon too, of course. They are rich ecosystems and stores of life and biodiversity on a scale that we have barely begun to understand.

It is important to acknowledge that the Government, at least in some quarters, recognise the scale of this issue. The 25-year environment plan—supposedly the big, set-piece document outlining what the Government intend to do on many pressing issues—says that England's soils must be sustainably managed by 2030. To drive home that point, that is little more than eight years away. In terms of farming practice, farmers are buying new machinery now that they might expect to use for many decades. In terms of the need urgently to plant trees, which is a soil health and quality issue as well as one in so many other areas, eight years is obviously not very long at all for them to reach any kind of size. Food manufacturers will have to think about their plans for the future and what crops might be available to them.

I credit the noble Earl, Lord Caithness, for highlighting in Committee how your Lordships' House, after a long wrestle, got a significant reference to soil in the Agriculture Act. This is very much its sister Bill, so surely we have to do the same thing here to get the two fitting and working together. In the priority areas of this Bill we have air and water quality, then there is a gap where soil obviously belongs and where this amendment puts it.

I want to address a couple of the points the noble Lord, Lord Goldsmith of Richmond, made in Committee. One response was that

"the Bill gives us the power to set legally-binding long-term targets on any aspect of the natural environment".

A Secretary of State could set a target at any time, but given that there are a scant eight years to reach the Government's own aim of 2030, why wait? Why would a world-leading Government wait?

The second response from the noble Lord, Lord Goldsmith, was that there is not enough information and knowledge about soils to know what the targets could be. I acknowledge, as I did in Committee, that there is a dreadful shortage of information on and understanding of soils. This is a result of the failure to fund independent agricultural research extending over decades and the outsourcing of it to agrochemical companies that have advocated highly profitable—for them—practices which have had such a disastrous impact on soil health and quality. I suggest that the Minister then contradicted himself when he said:

"Developing targets is an iterative process".

In other words, this is something that is developed, evolved and finessed over time. These targets can be set, improved, developed and worked through. What we need in this Bill is a statement that soil has to be there with air and water.

Without this amendment, we have a Bill that is a two-legged stool. Someone pointed out to me that they were once used in dairy farming because you could wobble by hanging on to the cow, but that is not quite a practical arrangement for a legal process. Stools need three legs. What this small, modest, but important amendment does is put that third leg on the stool. In our Committee debate, the noble Earl, Lord Devon, said that soil

"warrants its own independent priority status"

and added that

"we are in danger of giving it a permanently second-tier status"—[*Official Report*, 21/6/21; cols. 87-93.]

without the addition of this amendment. If we are going to be able to grow our food, cultivate and support our natural world and store the carbon that we must in the coming years, decades and centuries, this amendment has to be in this Bill.

Noble Lords will note that the noble Lord, Lord Curry of Kirkharle, who might be expected to be in his place and commenting on this amendment, having attached his name to it, is not here. The noble Lord asked me to send his personal apologies for being unable to be here and to share some of his thoughts. He said: "I have attached my name to this amendment

[Baroness Bennett of Manor Castle]
because it is illogical not to include soil health and quality as a key environmental indicator. Soil is our most precious asset, and its status will determine whether or not we achieve net zero by 2050 and whether or not we can feed 10 billion people by 2050. Nothing can be more important than these two objectives. The Republic of Ireland has just committed €10 million to carrying out a nationwide soil testing programme to establish a baseline of soil health and quality. We have the opportunity to do the same through the ELMS if we specify the standard of testing required and create a national database. Why could we not take this unique opportunity to position ourselves as global leaders in this crucial area, particularly with COP 26 approaching?"

I have indicated informally and will now indicate formally that, unless I hear an acceptance from the Minister that the Government will put the final leg on the stool, I intend to push this amendment to a vote. I really feel we can do nothing else; we will be utterly failing the future if we do not do this. I beg to move.

Lord Deben (Con): My Lords, the Climate Change Committee has made it very clear that the soil is a crucial part of our remediation policies to deal with climate change. I declare an interest because, in a small way, I am an organic farmer and I have a son who is particularly interested in and works with those who want to use soil for sequestration. Whatever one's interests may be, it is quite clear that the importance of soil is universal; it is a world problem. We have reduced the fertility of our soil almost universally over the past 40 and 50 years. I often want to say that five a day is worth about what four a day might have been some time ago. I am not sure that is scientifically accurate, but it expresses what the difference is—not only is it the fertility of the soil, but the trace elements in the soil.

What is rather curiously called "conventional farming" suffers from the problem that is does not put back the richness of the soil in the same way that historic methods of farming have done. We have to recognise that we have to change, because we cannot go on doing this. If you come, as I do, from the east of England, you know that more and more conventional famers are recognising that the way we farm gives us very few more harvests because we are denuding the soil.

The first reason that soil is crucial is because it is getting far less useful—if we only want to look at it from a utilitarian point of view. The second reason is because we need it to be better able to sequester. That means we really have to bring the soil back to the kind of strength that it had before the war.

The third reason it is crucial is that there are particular soils with special issues. I draw my noble friend's attention to the question of peatland, which is a remarkable and wonderful sequester of carbon. But if it is ruined or torn up, it becomes the opposite and it exhales carbon, so we have a double whammy. The fact is that the Government have not even embarked on a peatland policy that will reach the level the Climate Change Committee says is essential to meet net zero—to restore all our peatlands by 2045. If we do it at the speed which is, at the moment, being celebrated by Defra, we will not get there.

It is crucially important—some sort of animal has just landed on me and clearly wishes to sequester upon me—to note that, unless we act on soil, we have very little chance of reaching net zero, because the "net" bit of net zero is about sequestration. It is not just about planting trees, although that is crucially important; it is about the whole way we deal with soil, including how we deal with the bare period, which should be covered, and the sorts of things that we can do and which we have to make sure are part of ELMS when it comes to the detail. All those things are essential.

The noble Baroness, Lady Bennett, referred to a very interesting thing: of earth, air and water, earth is the first. Again, one comes back to the words of the most reverend Primate the Archbishop of York, who reminded us of the nature of the Lord's Prayer.

It is very important that soil should be part of this. My reason for speaking is simply because we have made that very clear in the Climate Change Committee's report—which has been accepted by the Government and is the basis of our commitment to net zero and the way in which we are going to get there. It would be a great pity if we cannot find a way of including soil. It may be that the way the noble Baroness, Lady Bennett, wants to do it has some technical problem which I have not so far seen, and I am perfectly prepared to be led down some path which enables some other way of doing this. But if we do not include soil, we are again saying something. There is no such thing as being able to negative something without making a statement. Therefore, we either have to do what the noble Baroness, Lady Bennett, would like us to do, or we have to find another way of making sure that soil is part of this.

I end by saying to my noble friend that there is a particular reason why Defra should be saying this: we have not heard enough from Defra about how we are going to improve the soil—we have not heard enough about the details. Therefore, we are not sure that Defra has really taken this on board. The Climate Change Committee is, I think, trying to say to Defra that this is central. For example, we have not yet banned horticultural peat. What on earth are we doing making it worse? We could do that immediately; the industry is ready for it, but we have not yet done it because we are still talking. Climate change gives us no time to talk about this—something that we should have done a long time ago. Please can we have this in the Bill, so that we know where we are and the Government can be held to it?

Lord Whitty (Lab): My Lords, I added my name to this amendment and I congratulate the noble Baroness, Lady Bennett, on the way that she presented it and added a few more points from the noble Lord, Lord Curry, in his absence. Now, the noble Lord, Lord Deben, has spelled out most of what I was about to say. The reality is that this is a very straightforward amendment and one which would be easy, sensible and logical for the Minister to accept.

In relation to the back end of the remarks by the noble Lord, Lord Deben, Defra really has no excuse now. I have to admit that, 20 years ago, when I was a Defra Minister, soil management was not very high on the agenda; it was there, and it was vaguely there in the common agricultural policy and agro-environment

schemes, but it was very low priority. And yet it is such a central issue to life on this earth and the future of the human race that we have a soil—both cultivated and in the wild—that will continue to be sustainable and be resilient enough to provide the multitudinous plants that sustain life for ourselves and for almost every other species on earth.

5.15 pm

It is very odd that soil is not included in this simple subsection. The Minister should recognise that what has been obvious to farmers through the centuries and to gardeners every day—that we have to maintain the health of the soil—has been set back by practices over the last 50 or 60 years. It is not just pollution of the soil, loss to urbanisation and industrialised agriculture; it is also what we put on the soil through cheaper chemical fertilisers and pesticides. Some soil mismanagement is ancient, such as overploughing and trying to extract too many harvests, but some is very modern. We are capable of stopping it now and beginning to reverse this trend.

As the noble Lord, Lord Deben, said, the horrifying thing is that there has been huge research over the last 20 or so years, in Britain and around the world, showing that the soil in almost every habitat has seriously declined and is continuing to decline. In northern Europe, if we carry on like this, we will perhaps have only 50 more harvests sustainable by the nature of our soil. People who are born today will be only in mid-life by the time that crisis hits us here in prosperous, climate-friendly northern Europe.

Look at sub-Saharan Africa. If we are not careful, and if COP 26 and the other mechanisms the international community has do not give us a lead on soil, what was one of the most fertile areas of the world will go the way of north Africa several hundred years ago. That is a very real threat to us and to biodiversity.

As the noble Lord, Lord Deben, has also underlined, soil is a very important part of our fight to reduce carbon. If soil is incapable of sequestering and retaining carbon, whatever targets we have on carbon reduction become meaningless.

I plead with the Minister simply to accept this amendment. It must be part of the agenda and should be upfront in this clause as a priority issue to address. I believe that, today, he could unite the House in accepting this amendment.

Lord Cameron of Dillington (CB): My Lords, I support this amendment very strongly. First, I declare my interests—for the whole of Report—as a farmer and landowner, as chair of the UK Centre for Ecology & Hydrology and as chair of an internet parking business.

For too long, in this country and elsewhere, we have ignored the importance of the 1 billion bacteria that should exist in every teaspoonful of our top-soil. We have ignored their vital importance for the foundation of life on our planet—food, habitats, everything. As the noble Lord, Lord Whitty, has just said, the situation is particularly serious in sub-Saharan Africa, where we are losing good agricultural soils at a devastating rate. While obviously this Bill can do nothing about that, it would be good if the UK could lead by example and set the model for others to follow. Having soil as a priority area in our Environment Bill, and later, when we come to Amendment 18, having a serious soil management strategy, would be a good way to do this and would create a model for other countries to follow. I commend the emphasis on soils in this amendment and look forward to hearing the Government's response.

Baroness Brown of Cambridge (CB): My Lords, I support this amendment very strongly. I speak as the chair of the Adaptation Committee of the Committee on Climate Change. In June this year, we gave our advice to the Government on climate risks faced by the UK, and three of our eight urgent priorities are to do with the impacts of the changing climate on our soils—so it is not just those historic and current farming practices but the fact that our soils now have to put up with droughts, floods, high temperatures and wildfires. Of course, these are unfortunately only going to get worse. This means that we are giving them a very hard time—yet we are expecting them to sequester carbon and support the 30,000 to 50,000 hectares of trees that we need to be planting per annum to meet net zero, and we are expecting them to support increased food productivity to make room for planting those trees. We are expecting a lot from our soils; they need the support of this amendment.

Lord Randall of Uxbridge (Con): My Lords, I added my name to the amendment of the noble Baroness, Lady Bennett, and I was pleased to do so because I, like others who have spoken, realise the importance of soil. In fact, I doubt that there is anyone in this Chamber today who does not appreciate that.

The question is whether we should put this where it is on the face of the Bill. As has already been said, my noble friend Lord Caithness's amendment about a soil strategy will come later. I am very taken with the idea of putting this in the Bill. However, I have one note of caution. The next amendment, which I will speak to, will put in something else that I think is a priority, and I dare say that there are plenty of, or quite a few, others that people could put forward as priorities—we have our own pet subjects. I really want to hear from my noble friend the Minister—I know that he believes in this—what Defra and the Government are taking seriously about this and how they will deal with it. This may not be the way to put it forward in the Bill, but at the moment it seems like the best way. I am very taken with my noble friend Lord Caithness's amendment that we will come to later, which might be a better alternative. That said, I shall listen to what my noble friend says.

Baroness Young of Old Scone (Lab): My Lords, I urge the noble Lord, Lord Randall, to be of good cheer and believe that this is the solution—because it seems to me that we have heard, from many noble Lords of high esteem, just how important soil is as a fundamental part of the environment. Indeed, two of the Government's priorities in Clause 1(3), "water" and "biodiversity", are crucially dependent on soils, apart from anything else. It is true to say that, as well as very many noble Lords being able to lay down the

[Baroness Young of Old Scone]
case very clearly for soil being part of the Government's priority list, the Government themselves have said that: in their 25-year environment plan, they mentioned soil quality 17 times, so it does not seem to me to beyond the wit of man to believe that that looks like a bit of a priority and probably ought to be in this list.

I know that, in Committee, the Minister said that the science will not let us measure soil health, but there has been research on soil quality for the last 50 years, and lots of measures have been put forward as indicators of soil health, ranging from microbes to organic matter to earthworms. The Government just need to make a stab at a basket of indicators and get on with measuring and incentivising improvement.

Although I have banged on for many years about government needing to incentivise people to produce outcomes, in this particular case I want to recant from that and ask for the reverse practice, which is to incentivise practices that have a proven effect for good on soil health. If we can get farmers, land managers and others who have an impact on the soil to do the right things, good soil quality will result.

The noble Lord, Lord Deben, talked about a few of those things, such as minimum tillage, crop rotations, applications of manures and composts, use of cover crops and effective management of field margins. If farmers and land managers were incentivised to do all of those, we would be almost absolutely guaranteed to be improving the health of the soil. As such, I urge the Minister: soil health is too important to say, "It is too difficult" and to leave it out of the Government's priority list.

The Earl of Caithness (Con): My Lords, I rise to support the amendment of the noble Baroness, Lady Bennett, and I am grateful to my noble friend Lord Randall for pointing out that my Amendment 18 is coming up, complementing this amendment in that it asks the Government to "prepare a soil … strategy". No one could have put it better than the noble Baroness, Lady Brown of Cambridge, just now, and much of what she said is reflected in the wording that I have in Amendment 18, which we shall come to.

However, the Government must include plans for the integration of soil management with environmental objectives, such as climate mitigation, flood-risk minimisation, water-quality measures and policies relating to food production. All of this is so integrated that, unless one has a comprehensive approach to it, one will fail. In my view, it is very sad that the Government have got policies for air and water but no statutory policy for soil. My Amendment 18, which I will not speak to at length because I am speaking to this amendment, is equally as important as this amendment.

My noble friend Lord Deben mentioned that soil is a great sequestrator of carbon. Indeed it is, but saying "soil" is like saying "fruit"—there are so many different types of soil that a different approach will have to be taken on most farms, probably, because the soil varies so much. Some of the sandy soils are not terribly good sequestrators; they could be made much better with improved farm management, but, if you have a heavy clay soil, you have an inbuilt advantage for sequestration from day 1.

The noble Lord, Lord Whitty, said how little Defra spent on soil. It is rather frightening that only 0.4% of the environmental budget is spent on soil—that is a catastrophically low amount of money, which is why this amendment is so important and why my Amendment 18 is equally important. The whole question of soil and research needs much more expenditure and we need to be clearer on it, but let us have one basic fact in mind: about 25% of our biodiversity is in our soil. That is why we need to get this amendment—and mine —in the Bill.

The Earl of Devon (CB): My Lords, I should note, for the record and for the whole of Report, my interest as a Devon farmer. For many years, we have been adding organic matter to our porous red sandstone soils to increase sequestration, combat run-off, build resilience to drought, decrease the need for chemical fertilisers and provide Teignbridge District Council with somewhere to put all the garden waste.

In Committee, we debated a number of potentially priority areas in Clause 1(3). I am glad that this one in particular has returned, and I will strongly support it. I would have added my name to it if it had not been so eminently oversubscribed. I am less keen on Amendment 3, the light-pollution amendment, which pales in comparison and importance to this one.

The prior debate on these amendments only explained how important this is. In Committee, the Minister confirmed that our understanding of soils is

"not as complete as it should be."—[*Official Report*, 21/6/21; col. 95.]

He begged for more time to gather the necessary data. There is simply no more time to do so: our soils are in a crisis and have only a few harvests left, as we have heard from a number of noble Lords. If it is not a priority, how will we ever gather that data? How will Defra be instructed to gather it? The absence of data is seriously damaging the debate on environmental matters, and it is encouraging a number of extremes.

Take the debate on grass-fed meat and dairy. It is a topic close to the hearts of all Devon farmers. We all agree on the negative impact of indoor lot-fed meat and dairy consuming grain and soya in terrible welfare conditions, but no one knows the net environmental impact of beef and sheep fed on the ancient green pastures of the West Country because the data and the science are not there and everybody has an argument. This was confirmed to me just last week in discussions with an eminent environmental scientist at Exeter University. We really need that data, and this amendment needs to be made to encourage Defra to collect it.

5.30 pm

Finally, if we do not have all the data, this does not preclude soil being a priority area. Clause 1(2) requires only that the Government

"set a long-term target in respect of at least one matter within each priority area."

Surely Defra can come up with a single priority or measure with respect to soil that it will be happy with. As we heard from the most reverend Primate the Archbishop of York, we live in the earth; that is, the soil. As the noble Lord, Lord Deben, and the Climate Change Committee have said, this amendment should be made.

Baroness Parminter (LD): My Lords, we very much thank the noble Baroness, Lady Bennett, for moving this amendment on soil. As noble Lords have mentioned, if we do not have soil as a priority area, how will we have the sustainable food we need in future and how will we support the essential microbial organisms that live in and on the soil? Indeed, as noble Lords including the noble Lord, Lord Deben, and the noble Baroness, Lady Brown, asked, how will we manage our carbon sequestration and net-zero targets without that? It is absolutely essential that the Government make soil a priority.

We accept some of the arguments put forward by the Minister in Committee—the noble Earl, Lord Devon, referred to them—concerning issues that the Government have had. The progress achieved has not yet resolved the definition and description of soil quality. However, as the noble Baroness, Lady Bennett, said in Committee, it is something of a chicken-and-egg situation. Do you have the research base first so that you can sort out the targets or do you need the targets first to ensure that you then get the information?

That pertinent point has informed our thinking on this because there are other ways in which the Government could show that soil is the priority it needs to be. For example, they could go along the route of the soil strategy of the noble Earl, Lord Caithness. It is a compelling approach; he sees it as complementary. Perhaps that is another route. As the noble Lord, Lord Deben, said, this House wants the Government to show that soil is a fundamental, critical issue and, as the Member's explanatory statement says, to indicate

"that soil health and quality are a priority area for environmental improvement."

That is the purpose of the amendment. The question is whether the route taken—having a long-term target—is the best way forward. I must say, I have gone back and forth in my mind about whether it is, but I have come down in favour of supporting the noble Baroness's approach should she press this amendment to a vote because, as the noble Earl, Lord Devon, said, we must undertake this research to ensure that we can define and describe soil quality. It is a fundamental requirement for us to get the point where we can achieve what we need to on soil quality.

In my mind, if we do not set soil as a priority area, there is a real risk that the Government could choose to spend money in other areas. In future years, there will be myriad requests of Defra for research in the environmental field. We have so much to do in such a short space of time. Projects will come in left, right and centre, looking for money to take forward. If we do not specify that we have a long-term target for soil health, there is a real fear that future Defra budgets will be under serious constraints to deliver that necessary work.

Therefore, unless the Minister can, in summing up, assure the House that there will not be a curtailment of finances to resource this essential work on soil in future—we have to do that work to protect soil for all the important reasons outlined so eloquently by others—we will support the noble Baroness's amendment.

Lord Khan of Burnley (Lab): My Lords, the noble Baroness, Lady Bennett of Manor Castle, has spoken eloquently on this issue, both in Committee and during this stage of the Bill.

By failing to list soil health alongside air, water and biodiversity in the Bill, the Government have missed the opportunity to list the important aspect of monitoring soil health as a means of improving the environment. I hope that they can address this and show that they mean business by giving the important issue of soil health the attention it requires. We are all aware of the firm commitment to improved soil health in the new Agriculture Act, yet, to reverse the degradation of our soils and return them to a healthy state nationally, we need a long-term commitment to monitoring at both the farm and national level.

The simple truth is that, without a functioning monitoring programme, we are being kept in the dark over the state of our soils. A freedom of information request made by the Sustainable Soils Alliance revealed that, unlike for water and air, no single policy instrument exists to improve and protect them, and they are suffering as a result. As a BBC article states, the alliance discovered that

"just 0.41% of the cash invested in environmental monitoring goes on examining the soil"—

a point also made by the noble Earl, Lord Caithness. The article goes on:

"That's despite the fact that soils round the world—including in the UK—are said to be facing a crisis. The figures are startling: £60.5m goes to monitoring water quality, £7.65m to checking on air—but just £284,000 to auditing soil … Its director … told BBC News: 'This figure is staggering—but not surprising. It reflects the widespread under-investment in soil health compared to air and water. We could be actually saving money—and the environment—by investing in soil monitoring because understanding soil would tell us a great deal about the health of our water and air too.' … A report by the Commons Environment Audit Committee in 2016 warned that some of the UK's most fertile fields were losing so much soil they could become unproductive within a generation … The Department for Environment, Food and Rural Affairs (Defra) told BBC News"—

this was in March last year—

"it was planning to design an indicator for healthy soils, and to establish a new national soil monitoring scheme. It says powers in the Agriculture Bill could be used to support the monitoring."

What is the update on this? Currently, we see no evidence that Defra will commit to funding soil monitoring.

The noble Lord, Lord Deben, made the point that we just have not heard enough from Defra. My noble friend Lord Whitty said that there can be no time for excuses from Defra. What does the Minister plan to do to address the concerns of the noble Baroness, Lady Bennett, and noble Lords across the House regarding the lack of references to soil health in the Bill, and to ensure that soil health is not left as an afterthought? I know that he will refer the House to the power in Clause 1 to give the Government the ability to

"set long-term targets in respect of any matter which relates to … the natural environment, or … people's enjoyment of the natural environment."

However, this power must be used actively to focus government action on environmental improvement in areas where the need is greatest.

[Lord Khan of Burnley]

We urge the Government to address the clear desire for stronger action on monitoring soil health through the target development process that the Bill will establish. This must be done holistically and transparently with early and effective stakeholder engagement. The Government should publish a timetable and plan for how they intend to progress targets. On current performance, they are failing soil health and, ultimately, the environment.

Lord Goldsmith of Richmond Park (Con): I thank all noble Lords for their contributions to this important debate, and the noble Baroness, Lady Bennett of Manor Castle, in particular, for tabling Amendment 2 on soil health. She made a compelling speech, as she did in a previous session, describing soil as an ecosystem in its own right: an ecosystem—or ecosystems—that we are plundering and destroying at an extraordinary rate of millions of tonnes every year.

It is often cited as an example of extraordinary human progress that we have managed to treble food production in the past 40 years, and that is true, but we have done so at the expense, undoubtedly, of many future generations. It is the case, as the noble Lord, Lord Whitty, pointed out, that many of the bread baskets of the world have been pretty rapidly converted into deserts. According to the latest data that I have seen, at least 500,000 small farmers in the world are currently having to deal with diminishing yields as a consequence of their impoverished soils. As a Minister in the FCDO with some responsibility for part of our ODA budget, this is something I am trying very hard to shift the focus towards, so that it is a problem that, I hope, the UK will be able to have a positive impact on.

Bringing this back to the domestic, I would like to reassure the noble Baroness, Lady Bennett of Manor Castle, that we are working out now how to develop the appropriate means of measuring soil health. It is complicated but we are doing that work and its results could be used to inform a future soils target. However, as I outlined a number of times in Committee, long-term targets set under the framework of the Bill have to be capable of being objectively measured. If we commit in the Bill to setting a target by 2022, without the reliable metrics needed to set a target, and then measure its progress, we could be committing to doing something that ultimately we cannot deliver or might not even know whether we have delivered it. We therefore cannot commit to set a soil target in the Bill, but I can assure the noble Baroness of a number of things.

The first is that we are focusing our efforts already on developing a soil health measuring and monitoring scheme, which will produce a baseline assessment of soil health against which change can be measured. This, as I said, could inform a future long-term soil target. Secondly, we are currently identifying soil health metrics as the basis of a healthy soils indicator. This will complement a future soil health monitoring scheme by providing a straightforward measure—

The Earl of Devon (CB): Does the Minister accept that under Clause 1(2) we need to set only a single metric? Is he saying that there is not a single metric that Defra can set that would impact soil? Is that correct?

Lord Goldsmith of Richmond Park (Con): I was coming to the point made by the noble Earl. As part of the soil health measuring and monitoring scheme, we are developing methodology to enable visual field assessments of soil health to be carried out by farmers and land managers across all land uses and all soil types. That will be supported by the development of field protocols and the production of field guides instructing land managers how to do the sampling. That work will, we hope, be a user-friendly and relatively easy way of measuring long-term trends, which I think is what the noble Earl was getting at—trends that can easily be understood by those on the ground who actually manage the soil. Data collected by land managers will then provide a baseline for an informal, non-statutory target, which in turn could inform the future, robust and well-evidenced soil health target that will be established under the Environment Bill. The data from the soil structure scheme would feed into future soil health monitoring.

In response to the noble Baroness, Lady Bennett, we are also proposing additional actions that support land managers and farmers to achieve sustainable soil management. For example, the sustainable farming incentive scheme—she referred to it as ELM, but I think it is now referred to as the sustainable farming incentive scheme—includes practices such as the introduction of herbal leys, the use of grass-legume mixtures, cover crops and so on.

I make two additional points. The first, very briefly, is that by setting, as we are committing to do in the Bill, a 2030 biodiversity target, and having already set, on the advice of the Climate Change Committee, a net-zero target by 2050, in addition to all the other targets that are either in the pipeline or already committed to, it is inconceivable that we could achieve either of those headline targets without addressing soil, for all the reasons mentioned and explained so well by noble Lords today: we cannot get to net zero without addressing soil.

The noble Lord, Lord Deben, mentioned peatlands, which are particularly important for the reasons he described. Although I think we shall debate this issue later—potentially today in response to the amendment of the noble Earl, Lord Caithness—I just mention that earlier this year we published the *England Peat Action Plan*, setting out the long-term vision for large-scale management, protection and restoration of our peatlands, which are critical carbon stores but, when mismanaged, can become a source of carbon. This will enable them to deliver a huge range of benefits for people, wildlife and the planet. It sets out a number of policies to achieve that vision: the announcement of a nature for climate peatland grant scheme, through the Nature for Climate Fund; an immediate commitment to restoring 35,000 hectares through that fund; a commitment to end the use of peat in amateur horticulture by the end of this Parliament; longer-term plans that we are setting out, as all departments are, in our net-zero strategy—peatlands will be a critical part of getting to net zero; and a new spatial map of England's peatlands to enable us to make more robust estimates around the mitigation of greenhouse gas emissions from peatlands and to prioritise investment in restoration.

5.45 pm

Lord Krebs (CB): I thank the Minister very much for allowing me to intervene briefly. I want to wind back a few moments in his response to this debate, in which he said, as I heard it, that we will not be able to achieve the biodiversity target without improving soil health. I want to clarify what was meant by that. Does it mean that, in the indicator species that will be part of the biodiversity target and halting species decline—the billion bacteria to which my noble friend Lord Cameron of Dillington referred, as well as the tens of thousands of protozoa and fungi in a single teaspoon of soil—they will be part of the species abundance target and therefore soil health will be folded into that objective?

Lord Goldsmith of Richmond Park (Con): I thank the noble Lord for his intervention. We will talk in detail about the target shortly—perhaps even next—but my point is less about the individual fungi or bacteria; it is that you cannot deliver a reversal of our catastrophic biodiversity loss without tackling ecosystems and, as the noble Baroness, Lady Bennett, make plain in her speech, soil is the basis of so much of our biodiversity and ecosystems, so it is logical that you cannot do one without the other—and likewise with net zero, for all the reasons that my noble friend Lord Deben pointed out.

So, as I have outlined, we are very much on the case. We are developing a metric and prioritising soil health in numerous ways, through this Bill but also other actions. The amendment would undoubtedly pre-empt the process of developing that metric and, for that reason, we cannot accept it—but, with the assurances I gave, I hope that the noble Baroness can be persuaded to withdraw her amendment.

Baroness Bennett of Manor Castle (GP): My Lords, I think this has been some of your Lordships' House at its finest and I thank everyone who has contributed to this debate. It is extraordinarily striking that, from all corners of this House, we have seen overwhelming support for Amendment 2.

I do feel I must address the comments of the noble Lord, Lord Randall of Uxbridge, who signed the amendment and then expressed some concern about it. I do not believe that there is any form of conflict or competition between this amendment and Amendment 18 from the noble Earl, Lord Caithness. This amendment sets out that there must be a target; Amendment 18 sets out a process, scheme and operational activity. So they are not in competition. I strongly urge your Lordships' House to support the noble Earl's amendment. Indeed, I attempted to sign it, but, as with a number of others, it was already oversubscribed.

I should love to go through so many contributions—each has added something to the debate—and acknowledge them all, but I know that some of the people who are keen for the Bill to progress would be right on my case if I did that, so I will not. But I shall pick out just a couple of contributions, because I think they are particularly important. They are from two members of the Climate Change Committee: the noble Lord, Lord Deben, and the noble Baroness, Lady Brown of Cambridge. This is the expert view saying that the amendment needs to be in the Bill; that is the independent view, in all senses. The noble Baroness, Lady Brown, made a point that no one else has made in our long discussion of soils, about the way in which climate change is putting pressure on soils: drought, flood, fires and all the extra damage to what has already been done.

I also want to note the contribution of the noble Baroness, Lady Young of Old Scone. She has been a particularly fervent supporter of this amendment, and I thank her for that. I also thank her for counting the number of times that soil quality appears in the 25-year plan; I confess that I had not done that. That shows that the Government kind of see the issue but are just really not engaging with it in the Bill.

So I will address a couple of points that the Minister made. He talked a lot about what Defra is doing operationally and what it is setting out, but he did not really address my point that the 25-year plan says that we will have sustainable management of soils by 2030. How can we do that without having this long-term target to progress towards—without, indeed, having the noble Earl's strategy? It was particularly telling that one of the other chief points of the Minister's argument was, "Oh, well, we deal with these other things—biodiversity and water—and that will fix soils". That is making soils a second-order issue, which is putting it in profoundly the wrong place. This amendment puts it in the right place: in the Bill. As we have discussed in so many other areas, whatever the department might be doing under one Secretary of State, there is no guarantee that it will continue under another Secretary of State. Issues must be put in the Bill.

I well understand the pressures in your Lordships' House against calling votes; I understand the desire to progress the Bill. But, having listened very carefully to the Minister and having heard the very strong support for the amendment from all sides of your Lordships' House, I must ask to test the opinion of the House.

5.51 pm

Division on Amendment 2

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Amendment 2 agreed.

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6.09 pm

Amendment 3

Moved by ***Lord Randall of Uxbridge***

3: Clause 1, page 2, line 4, at end insert—

"(e) light pollution."

Member's explanatory statement

This amendment aims to set a commitment to act on matters which relate to light pollution that are currently omitted from this Bill. It aims to ensure that the Government must produce targets to reduce levels of light pollution in England.

Lord Randall of Uxbridge (Con): My Lords, Amendment 3 in my name is also in the names of the noble Baroness, Lady Bakewell of Hardington Mandeville, and the noble Baroness, Lady Jones of Moulsecoomb, to whom I am grateful. I declare my environmental and conservation interests as on the register, and it is also relevant—although not registerable—that I am a member of Buglife, the invertebrate NGO. Perhaps one of the flies which have been annoying my noble friend Lord Deben is an agent.

Artificial lights disrupt the world's ecosystems, human health and, I submit, society in general. Most of the earth's population is affected by light pollution, as 80% live under skyglow, and very few in the UK can experience a natural night sky from where they live. Those few who do see a night sky naturally without light pollution are amazed by what they see on a clear night.

Light pollution is increasing from a variety of sources, including residences, public infrastructure such as lighting along motorways, and industrial activity such as energy infrastructure. Ironically, the rapid switch to LEDs is contributing to the installation of brighter lights, in places increasing light pollution and missing the opportunity to reduce it. That is ironic because LED is much better for the environment if used appropriately.

The 25-year plan for the environment states:

"We must ensure that noise and light pollution are managed effectively."

However, no indication of how existing light pollution will be reduced has been proposed by Her Majesty's Government. As far as I can see, the Environment Bill does not currently offer a suitable location for this form of pollution to be addressed. The amendment would ensure that the Government set out how they will reduce light pollution levels.

In Committee, 12 noble Lords spoke in favour of my very similar amendment on light pollution, covering a range of issues including the impact on invertebrates, astronomy, human health and bats, among other things. I was extremely grateful for their powerful arguments and I am extremely grateful for the many who support today's amendment in the Chamber and elsewhere. Noble Lords shared their own experience of light pollution and provided compelling reasons why this issue should be included in the Bill.

In his reply, my noble friend the Minister did not seem to acknowledge the overwhelming evidence of environmental and health damage. His response, as drafted, was disappointingly focused rather narrowly on uncertainty about whether it has been proved that light pollution is the main driver of insect loss. That is one of the main reasons why I tabled this amendment: because I do not think we had a proper discussion of some of the other harmful effects of light pollution. Perhaps his department was unaware of the recent science review "Light pollution is a driver of insect declines", published by Owens and others in 2020. Since that debate, many noble Lords may have seen that newly published evidence has confirmed that light pollution has a negative effect on local moth populations. The response given in Committee also did not address the other issues raised in the debate or recognise the cross-departmental benefits that reducing light pollution would bring.

In recent years, evidence of the impacts of light pollution on species and ecosystems has grown and consolidated. Increased artificial light at night is now directly linked to measurable negative impacts on energy consumption, human health, and wildlife such as bats, birds, insects, reptiles, amphibians, mammals and plants. As I mentioned in Committee, noble Lords who saw the David Attenborough documentary will have seen turtles, instead of going towards the moon as they go back to sea, going back to some taverna on a Greek shore. This resulted in many of their deaths.

Unnecessary artificial light increases financial costs and contributes to greenhouse emissions. I submit that light pollution should be treated with the same disdain with which we treat other forms of pollution. As I mentioned, recent studies from Germany suggest that a third of insects attracted to street lights and other fixed-light sources will die. This results in the death of an estimated 100 billion insects in Germany every summer. As many noble Lords will recognise, insects are an incredibly important part of our whole ecosystem.

My amendment aims to set a commitment to act on matters relating to light pollution that are currently omitted from the Bill and would ensure that the Government must produce targets to reduce levels of light pollution in England. I will not go through all the examples I have written down, because I think that many people know them for themselves; besides which, we are a little pressed for time. However, speaking as a trustee of the Bat Conservation Trust, I know that artificial lighting can cause many problems for bats, including disrupting their roosting and feeding behaviour and their movement through the landscape. In the

[Lord Randall of Uxbridge]
worst cases, that can directly harm these protected species. Even hedgehogs have been shown to avoid lighting, restricting their movements in areas of high artificial light.

6.15 pm

Light pollution has been identified as a serious threat in many areas biodiversity areas, but the amendment is not just for the birds and the bees. Lighting is estimated to account for 15% of global electricity consumption and 5% of global greenhouse gas emissions. Social inequalities in exposure to light pollution occur across urban and rural settings. Light pollution is negatively impacting astronomy and our ability to observe the stars. The British Astronomical Association estimates that 90% of the UK population are unable to see the Milky Way from where they live.

The Environment Agency's state of the urban environment report acknowledges that light pollution comes with urban life and identifies an uneven distribution of the natural environment across all sectors of society, leading to issues of environmental justice. Humans have evolved to rely on the cycle of night and day to govern our physiology, and evidence suggests that light exposure at the wrong time has profound impacts on human circadian rhythm, affecting physical and mental functions. Studies have also shown links between artificial light at night and low melatonin levels and disrupted circadian cycles with heart disease, diabetes, depression and cancer, particularly breast and prostate cancers.

To me, the evidence is clear that light pollution has a significant impact on the normal activity of invertebrates, birds, bats, plants and humans. These impacts are more than sufficient to require action. It would be a failure not to address this before we have the long-term data. Doing so would go against the Government's draft environmental principles, in particular the precautionary principle but also the prevention and rectification at source principles. As it is, there is no official report for the UK on light pollution levels. However, and distinct from the previous debate in which we talked about soil and how difficult it is to measure soils, measuring light pollution is simple to do. Satellite images can be used to establish pollution levels, and the CPRE has developed a nine-band classification system that could form the basis of monitoring change.

My amendment is designed to provide clarity on how the Government will reduce the impact of light pollution on nature and people's enjoyment of it. I am very grateful to my noble friend the Minister. We have had some very good discussions on this during the Recess. I know he understands it and I recognise that many noble Lords regard this as a serious matter. Perhaps, as the noble Earl, Lord Devon, said, it is not of the same magnitude as soil, and it is possible that we cannot keep adding more and more to the list of priorities, but I think that national targets should be set to include, at a minimum, no net increase in light pollution, with an ambition to reduce existing levels.

I have received a certain amount of support on this, but I will wait to hear what my noble friend the Minister has to say. If he can give me ample reassurances, we might not have to test the electronic voting system again—but no promises yet.

Baroness Jones of Moulsecoomb (GP): It is a pleasure to follow the noble Lord, Lord Randall, on one of his and my pet topics. He has covered the issue extremely well. We have all had a very good briefing from Buglife, which I thank very much, supported by Butterfly Conservation, the Bat Conservation Trust, Froglife, the Mammal Society and the Royal Astronomical Society. This comes from a lot of areas of expertise. They all draw attention to the fact that light pollution impacts on humans and other species. I argue that it also impacts on the planet in terms of energy consumption and contributes to greenhouse gas emissions, whether we use LED lights or not. It deserves a place in the Environment Bill.

The last comprehensive consideration of this issue by the Government was the 2009 report of the Royal Commission on Environmental Pollution, *Artificial Light in the Environment*. Almost none of its recommendations have been implemented, and tackling this cannot be achieved by planning alone. There is also the fact that humans have evolved to rely on the cycle of night and day to govern our physiology. I am a very primitive soul: I would actually like to go to bed when it gets dark and I always wake up at first light, so I am extremely vulnerable to light exposure at the wrong time. I would like the Government Whips to note that when they insist on keeping us here beyond 8 pm. It is inhuman; it goes against human health, and it leads to underperforming. There is also a link to health conditions. We are much better off if we understand that light pollution is not good for us and it is not good for other species.

The noble Lord, Lord Randall, mentioned several species. I would like to add birds that migrate or hunt at night: they navigate by moonlight and starlight, so artificial light might cause them to fly to lit areas, which may or may not have their prey. Many marine species, such as crabs or zooplankton, are attracted to artificial lights, and that can disrupt their feeding and life cycle. All in all, it is an important environmental issue that we really should not ignore.

Lord Carrington (CB): My Lords, there is very little that I can add to the speeches of the two noble Lords who have spoken already, but I will make one small point. The opportunity to prevent species' decline and improve our environment is certainly presented by this Bill, and this amendment would assist. Addressing light pollution offers a simple solution for the species that we are trying to enhance and protect. We should bear in mind, however, that the pollution that we are trying to address does not linger when the source is dealt with—it is an easy win. It also has the added advantage of reducing carbon gases, so these two are major issues that are worth considering in relation to this amendment.

Viscount Trenchard (Con): My Lords, I spoke in favour of my noble friend Lord Randall's similar amendment in Committee. I confess to being a little disappointed that the Minister has not brought forward an amendment to deal with this. While I think that adopting too many targets that cannot be realised is not necessarily a good thing, to adopt a target for light pollution would at least show that the Government accept that it should be included together with other

types of pollution. As the noble Lord, Lord Carrington, has just pointed out, it is certainly true that it can be dealt with immediately—unlike the soil—by just switching off lights or reducing the number of lights.

There is strong evidence that light pollution has a detrimental effect on birds, bats and insects. I am certainly no lover of clothes moths, and would love to find a way of introducing light pollution to my cupboards to protect my clothes, which have been devastated during lockdown. However, the Government are committed to increasing biodiversity, which means a wide range of species, including insects. Studies from Germany are among the clearest, as my noble friend Lord Randall pointed out, in showing how serious a problem light pollution is for insects, frogs, bats, birds and hedgehogs, among other species.

As for homo sapiens, we have indeed evolved to rely on the cycle of night and day to govern our physiology. We all know how exposure to light at the wrong time affects our mental functions. Light pollution is not included within the existing priority areas in the Bill. My noble friend's amendment would provide clarity on how the Government could reduce the impact of light pollution on nature and, especially, on people's enjoyment of it.

Lord Hodgson of Astley Abbotts (Con): My Lords, I have not yet participated in the discussion of light pollution during the stages of this Bill. That is not due to idleness: it is because at the times the Committee or the House were discussing the light pollution issue, I was double-booked on the Charities Bill or the Dormant Assets Bill, in both of which I have a particular interest. That failure means that I should be very brief this afternoon, and indeed I will be. I add my support to the very important point made by my noble friend Lord Randall of Uxbridge and others, and will just make a comment about the all-pervasive nature of light pollution.

I have a house in Shropshire, on the Welsh border, well in the country, 500 feet up. If you go into my garden at night, the whole of the eastern horizon is suffused by the glow of the conurbation from Birmingham. If you swing your eyes round, you hit Kidderminster; south is Hereford; and even when you turn to the West—to Wales—there are frequent patches of light from small towns and villages. I hope, therefore, that the Minister will give due weight to the very important points made by people who are much more expert in this area than I am.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I support the amendment in the name of the noble Lord, Lord Randall of Uxbridge, to which I have added my name. The noble Lord set out the case for this amendment previously in Committee and has reiterated his arguments this afternoon. I agree with him and the other speakers—the noble Baroness, Lady Jones of Moulsecoomb, the noble Lords, Lord Carrington and Lord Hodgson of Astley Abbotts, and the noble Viscount, Lord Trenchard. I declare my interest as a member of the APPG for Dark Skies and am lucky enough to live in a village with no street lighting. I appreciate, however, that street lighting is an issue that can divide communities. I agree with the noble Earl, Lord Devon, that light pollution is not as important as soil quality, but it nevertheless has a place in this Bill.

Street and security lighting, which are on throughout the night, can have a number of serious side effects. For plants, there is no real darkness in which to rest; nocturnal animals, birds and insects become confused, and this affects their well-being and, subsequently, their numbers. As has already been stated, moths, in particular, being attracted to light, struggle to maintain their normal life patterns. This is particularly damaging, as moths are essential pollinators, which is something we do not always recognise as happening at night. The lack of a plentiful supply of insects and moths has a knock-on effect on bats, for whom they are the main food source. Over recent years we have seen a steady decline in the number of bats. For us humans, exposure to excessive artificial light can lead to sleep deprivation, which affects our overall health and well-being, as was so eloquently demonstrated by the noble Lord, Lord Randall of Uxbridge.

A number of amendments will be debated over the next two weeks that seek to address climate change and redress the loss of biodiversity and species. Light pollution is undoubtedly contributing to this loss, and adding this amendment to the Bill would contribute towards halting and redressing it. The evidence is slim that switching off streetlights late at night causes a spike in crime. Security lights, which cause the greatest distress when excessive, should be focused on the ground, not pointing upwards towards the night sky.

There is also the effect on children's development. The wonder of the stars at night is lost to millions of children who live in urban areas, where streetlights are never switched off at night. I am lucky enough that I can frequently go out and optimistically think that I can look for a UFO. I never see one, but I nevertheless look up into the dark sky.

The satellite illumination profile of our country shown on TV news programmes clearly demonstrates the level of light pollution over the whole country. There are very few dark sky areas. The exceptions tend to be the national parks, such as Exmoor, which has declared itself a dark sky area.

Light pollution may seem like a very minor issue for some people, but for me, it is absolutely vital that each one of us should be able, if we choose, to go outside at night and enjoy the night sky and the creatures that should, by right, be able to thrive in the darkness. I fully support the noble Lord, Lord Randall, and hope that the Minister will, on this occasion, have some encouraging words for us.

6.30 pm

Lord Khan of Burnley (Lab): My Lords, the noble Lord, Lord Randall of Uxbridge, has made important and eloquent points in relation to light pollution throughout the passage of the Bill. Not only is this crucial for our insects and wildlife, but it is important that we can see the stars and better understand our place in the universe.

The 25-year plan for the environment states:

"We must ensure that noise and light pollution are managed effectively."

[Lord Khan of Burnley]
However, no indication of how existing light pollution will be reduced has been proposed by the Government and, as the noble Lord, Lord Randall, indicated, the Environment Bill does not currently offer a suitable location for this form of pollution. The Minister needs to acknowledge and deal with this important area, as encouraged by the Government's draft environmental principles, encompassing both precaution and prevention.

The briefing from Buglife, which, to be honest, the noble Lord might have authored himself, stipulated that light pollution is a real contamination of our environment. It affects not only human, animal and bird health but insect health—not only how they function but how they can act as pollinators. There are serious environmental consequences of light pollution.

In Committee, the Minister's response did not acknowledge the overwhelming evidence of environmental and health damage, focusing narrowly on uncertainty about whether it has been proven that light pollution is a main driver of insect declines. I know we cannot vote on everything we care about, as we will never finish the Bill, but I use this opportunity to ask the Minister again what action the Government will take to reassure us and provide clarity on how they will reduce the impact of light pollution on nature and people's enjoyment of it.

Existing UK law and regulations relating to light pollution do not provide sufficient guidance and are not strong enough to tackle its increasing impact. There are now several examples of countries that have introduced a national policy on light pollution, such as Germany, France, Mexico, South Korea, Croatia and Slovenia. Will the UK also produce a national plan intended to prevent, limit and specifically reduce light pollution, including a series of targets and a programme of monitoring?

Lord Goldsmith of Richmond Park (Con): I thank all noble Lords for their contributions to this debate and particularly the noble Lord, Lord Randall of Uxbridge, for his Amendment 3.

As my noble friend campaigned for, the Bill requires the Government to set a legally binding target to halt the decline in species abundance by 2030, and we will talk more about that shortly. But to meet a species abundance target we will need to address the multiple interacting causes of nature's decline, including light pollution. This does not mean that we need to or should set targets for each and every cause of nature's decline. The species abundance target will drive the right mix of policies and actions. For light pollution, this includes measures such as planning system controls for street lighting improvements. Through the designation of the dark sky reserves that a number of noble Lords mentioned, we are also working to protect exceptional nocturnal environments that bring great natural, educational and cultural enjoyment to members of the public.

The noble Lord, Lord Randall, made a compelling case, as he did in Committee. I should start by saying that if I appear to play down the importance of light pollution, the seriousness of the issue or its impacts on a whole range of things, including biodiversity, that certainly was not my intention. I say that in response to the comments from the noble Lord, Lord Khan, as well. The noble Lord powerfully summarised the impacts of light pollution. He gave the example of insects in Germany, the turtle hatchlings which a number of us saw on that powerful Attenborough programme, and bats. I also saw the Buglife briefing, which was full of examples as to why this is such an important issue. I thank the noble Lord for bringing some of those recent papers to my attention. I can tell him that my officials are already in touch with many of the academics and researchers behind that work, as well as with the NGOs that have been cited by him and others. That work is happening.

Although I cannot accept the amendment, I can commit to the noble Lord that we will continue to take action both to minimise risks and to improve our understanding of the impact of light pollution. We will continue discussions with PHE—Public Health England—and DHSC, focusing on the impact of light pollution on human health and the best approaches with which to tackle it. I am also happy to relay the noble Lord's points on the planning system and light pollution to ministerial counterparts in MHCLG, and I will ensure that his remarks both now and from a couple of months ago are conveyed to them.

It is probably worth noting that the National Planning Policy Framework includes consideration of the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation, but I do not think anyone pretends that this is an issue that has historically received the attention that it should. I hope that, using his powerful words, I will be able to move things a bit in MHCLG. I am also happy to confirm that we will continue to work with our academic partners to keep emerging evidence under review, and the Government can set a target in secondary legislation if it is judged to be the best way to deliver long-term environmental outcomes and subject to this review.

I hope this has reassured noble Lords that the Government are taking serious action to act against light pollution and that they agree that these amendments are therefore not necessary. I hope this reassures noble Lords and I beg the noble Lord, Lord Randall, to withdraw his amendment.

Lord Randall of Uxbridge (Con): My Lords, I would like to thank my noble friend the Minister very much. He has gone a lot further than he was able to in Committee, and for that I am very grateful. I am also extremely grateful to all noble Lords who have lent their support and spoken in this debate. It is a very important issue and something that we will continue to hear about. While the noble Baroness, Lady Bakewell of Hardington Mandeville, is looking for UFOs, I tend to look for the drones from the Whips' Office to keep an eye on me at these crucial stages of Report. So far, they have managed to keep away from me.

As I said, I am extremely grateful; we have had a good debate. I think the things my noble friend has said about the other departments are also very important, particularly planning. I have attended many planning meetings over the years, and I am not sure that that has ever really come up. Perhaps that is another tool

that some people, when they are having big developments, should look at. So there are some good things. As the noble Lord opposite said, we cannot vote on everything. With that in mind, I beg leave to withdraw my amendment.

Amendment 3 withdrawn.

Clause 2: Environmental targets: particulate matter

Amendment 4

Moved by ***Baroness Hayman of Ullock***

4: Clause 2, page 2, line 24, leave out subsection (2) and insert—

"(2) The PM2.5 air quality target must—

(a) be less than or equal to 10μg/m3,

(b) so far as practicable, follow World Health Organization guidelines, and

(c) have an attainment deadline on or before 1 January 2030."

Member's explanatory statement

This amendment sets parameters on the face of the Bill to ensure that the PM2.5 target will be at least as strict as the 2005 WHO guidelines, with an attainment deadline of 2030 at the latest.

Baroness Hayman of Ullock (Lab): My Lords, I rise to move Amendment 4 and speak to Amendment 12. Both are in my name and the names of the noble Baronesses, Lady Walmsley, Lady Finlay of Llandaff and Lady Jones of Moulsecoomb, and I thank them for their support.

Amendment 4 would ensure that the new legal target for fine particulate matter, or PM2.5, commits the Government to reducing this pollutant to within the existing World Health Organization guidelines by 2030 at the latest. Amendment 12 would ensure that the importance of protecting health is reflected in the target review process set out in the Bill. But before I get into the detail of why these amendments are so important, I express my thanks both to the Minister and to the Defra officials for their time in meeting with me and others during the Recess and for the detailed information provided on their work in this area.

In his response to our amendment on air quality in Committee, the Minister said that

"the Government recognise the importance of reducing concentrations of PM2.5 and the impact this has on our health."—[*Official Report*, 23/6/21; col. 306.]

Air pollution is also recognised by the UK Government to be the single largest environmental risk to public health that we have.

In Committee, noble Lords drew the Minister's attention to the role that air pollution played in the death of nine year-old Ella Adoo-Kissi-Debrah. I was privileged recently to meet her mother, Rosamund, who shared with us her frustration at the Government's lack of urgency in tackling damaging toxic air, despite recognising the serious health implications for people and communities. The motivation driving her campaign is simple: to make sure that what happened to her daughter does not happen to other people's children. Amendment 54, in the name of my noble friend Lord Kennedy of Southwark, seeks to enshrine in law the recommendations of the coroner's prevention of future deaths report into Ella's death, and we strongly support it.

Sadly, air pollution accounts for eight to 12 deaths every year in London alone, and it is 13 to 15 year-olds who are most at risk. Until our air is clean, our children will continue to die. The Government must grasp the urgency of this. The UK currently complies with the less ambitious existing legal limit of PM2.5, which is double the WHO guideline. Reductions in this pollutant have stagnated in recent years, so setting a more ambitious target in the Bill would drive action to better protect people's health. The Minister assured the Committee that the Government's target on PM2.5 would be ambitious, and he acknowledged the gravity and urgency of the situation. However, we then heard that until the Government completed the ongoing work and consulted the public again about the kind of restrictions that would be needed to be placed upon us, particularly in large cities, it would not be appropriate to write that limit into law.

We understand that reducing PM2.5 to meet the WHO recommendations is not easy—there are uncertainties about the future and the impact of climate change, and there are natural ways in which these particulates are produced so we can never bring the limit down to zero. However, we are deeply concerned that the Government are still researching, modelling, discussing what to do and looking at further consultations two years after the publication of the clean air strategy and after the Committee on the Medical Effects of Air Pollutants, which provides independent advice to the Government, said that reducing concentrations below the WHO air quality guidelines would benefit public health.

We have SIs promised for October next year but no indication as to exactly what the targets will be. It worries me that the Government's unwillingness to accept this target and put it in the Bill might reflect their concern that the target is simply not achievable. The Minister has previously informed your Lordships' House that

"at this stage the full mix of policies and measures required to meet the current WHO guideline level of 10 micrograms per cubic metre is not yet fully understood",—[*Official Report*, 23/6/21; col.306.]

yet in 2019 Defra had technical analysis from leading scientists at Imperial College London and King's College London which concluded that achieving the WHO guideline of PM2.5 was technically feasible. The analysis also highlighted that the measures the Government have already committed to as part of their clean air strategy could take us 95% of the way towards the WHO recommendation for what should be the basic level of protection.

Further independent analysis by King's College London commissioned by the Greater London Authority, which I referred to in our previous debate, has subsequently shown that, with additional action, achieving the WHO guideline of PM2.5 is feasible by 2030 in our most polluted city in this country. Surely that should remove the main barrier to achieving this goal. The Minister also referred to the Mayor of London study, confirming that officials were going through it and taking it into account. Does his department now agree with its findings, and what action is being taken as a result of it?

[Baroness Hayman of Ullock]

Today we have seen the publication of a report, funded by the Greater London Authority and carried out by researchers at Imperial College London, that provides a comprehensive overview of the most credible evidence of the links between air pollution and Covid-19. We already know that air pollution has harmful effects on the lungs, but until now it has been most associated with non-infectious or non-communicable diseases that cannot be directly transmitted between people—for example, the links between air pollution and cancer, stroke and asthma are all well established. Covid-19, however, is an infectious lung disease, and questions have begun to be asked about whether air pollution played a role in the spread of this devastating disease.

6.45 pm

The report published today shows that the researchers have found, first, that exposure to air pollution before the pandemic increased the risk of severe outcomes if a person became infected with Covid-19. In other words, if you were living in an area of high pollution before the pandemic, you were more likely to end up in hospital or even die if you became infected. Secondly, exposure to air pollution may increase the likelihood of contracting Covid-19 if you are exposed to the virus. This is a new and evolving area of research because not everyone who is exposed may become infected. However, research is showing that people who are exposed to pollution may be more likely to become infected. Finally, there is pre-existing evidence that exposure to air pollution increases susceptibility to, and worsens the outcome from, a range of infectious lung diseases such as pneumonia and bronchitis.

Until now, the role that air pollution plays in increasing the risk of infectious respiratory diseases, including acute bronchitis in children and pneumonia, has been overlooked and underestimated. I ask the Minister if the Government accept these findings. Does he agree that this new evidence makes tackling air pollution even more urgent?

The WHO's director of public health and environment, Dr Maria Neira, says that with the Environment Bill the Government need to

"raise the level of ambition".

I wholeheartedly agree. This is a moment in time when the Government can be genuinely ambitious, not just talking about urgency but acting urgently. As the UK moves to a post-pandemic recovery and towards our net-zero carbon targets, action taken today to reduce air pollution will be crucial to ensuring a healthy, resilient nation, and put an end to even more families suffering as Ella Adoo-Kissi-Debrah's family has done.

I know that the Minister understands this. I ask him to listen carefully to the debate today, to recognise the importance of urgent action—"urgent" means now, not next year—and to accept our amendments in good faith so that we can tackle the terrible effect of toxic air on our families and communities.

I am minded to test the opinion of the House on this issue but I will listen to the debate and look forward to hearing from the Minister.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I have tabled Amendment 54 in this group. Like my noble friend Lady Hayman, I had the privilege of meeting Rosamund Adoo-Kissi-Debrah. I was at the meeting that she had with the Minister last week, and I thank him for being generous with his time. I am sure that, like my noble friend Lady Hayman, he could not help but be impressed by Rosamund's humanity and commitment, and her determination to ensure that her daughter's tragic death is not something that will happen to other families. That is why I have tabled this amendment, which I also tabled in Committee. I also very much support Amendments 4 and 12 in the name of my noble friend Lady Hayman.

In our meeting we were all in agreement—the Minister and Rosamund agreed about everything—until at the end there was the problem of the "but". The Minister said, "Of course we will have to do some more consultation and look at this a bit further. We are with you, but". Probably the only difference on both sides now is that "but"; apart from that, I think we are all in agreement. I hope that the Minister can go further than that today and give us some good news. If not, I know my noble friend Lady Hayman will test the opinion of the House on Amendment 4, and in those circumstances, I hope the House votes for it.

I want to talk about what happened to Ella. Rosamund and Ella lived near me in Lewisham. Ella died at the age of nine while suffering from one of the most serious cases of asthma ever recorded in the UK. Her chronic condition lasted 28 months. She suffered greatly, and fought to breathe right to the very end. On Ella's final night in Lewisham, the borough recorded one of its worst spikes ever in air pollution. She had been hospitalised 28 times in 28 months, admitted to the ICU five times, and had fought back many times from the brink of death. Her condition meant that her lungs constantly filled up with mucus and made her feel that she was suffocating.

In December 2020 there was a landmark victory for Ella and her family. She became the first person in the UK—and the world—to have air pollution listed as a cause of death. The coroner, Philip Barlow, found that she had died of asthma that had been contributed to by exposure to excessive air pollution, and the primary source of that was traffic emissions.

Eight years after Ella's death, we have also learned that between 36,000 and 40,000 people in the UK die prematurely due to exposure to air pollution annually, and that all of us suffer from its negative health effects. Thousands are impacted every year and, across the UK, 22 to 24 young people die of asthma, eight to 12 of them in London. The UK has one of the highest death rates from asthma in Europe. In countries such as Finland no child dies from asthma. Toxic air impacts on the health of all of us, from cradle to grave. It is now a public health emergency, and Covid has highlighted the inequalities in health.

This is, in many respects, a very good Bill, but it completely fails to address the issue of air quality. That is why we are tabling these amendments. I hope that the Minister will respond positively and give us more than the "but" that we got at our meeting with him last week. If not, I hope, as I have said, that my noble friend will divide the House. I will support

Amendment 4 tonight. I support all the amendments: Amendments 4 and 12 and Amendment 54, to which I am speaking now.

All we are asking is that the Government adopt the World Health Organization's guidelines and targets. That is a pretty reasonable way forward: the World Health Organization's particulate matter targets. I hope that the Minister can give us some good news in his response to the debate.

Baroness Finlay of Llandaff (CB): I support Amendments 4 and 12, and I am most grateful to the noble Baroness, Lady Hayman of Ullock, for the superb way in which she introduced this group and encapsulated the strength of feeling about the importance of these amendments.

I remind the House that air pollutants reach every organ of the body. They affect growing foetal tissue, not just adults. They affect organs as they develop in children and throughout people's lives. Very small particles are a particular problem because they stay suspended in the air for prolonged periods and have a propensity to penetrate the deep parts of the lung. Ultrafine particles are especially problematic because in many respects they behave like a gas. As particles become smaller—into the nano scale—their surface area increases exponentially, so chemicals carried on their surface are released into cells and become bioavailable as toxins in the mitochondria within cells. The damage goes throughout the body.

The WHO guidelines are health-based and due to be revised downwards. They will not remain at their current level for many years: they will get tighter, because large epidemiological studies have shown that there are no safe levels of pollutant exposure. I remind the Government that as far back as 2001 their own advisory committee on air quality stated:

"Impact analysis of policies or specific developments, whether for industry, transport, housing etc, should take account of the interlinkages of emissions of air quality and climate change pollutants".

That has still not occurred.

To increase the relevance of air pollution controls in environments where people live and move around requires greater input that takes into account real-life exposures in different settings, especially urban environments where people work and live close to busy roads and the foci of traffic congestion.

It has been shown in the bay area of California that there is a direct link between health impacts and the levels of pollutants in the air. There are enormous impacts, even from a single two-hour commute in a car. That has been shown to increase human stress metabolism, with very clear differences between people with normal lungs and those who are asthmatic. People with asthma are particularly vulnerable to air pollution.

I stress that point because, in addition to the growing evidence that air pollutant exposure increases susceptibility to SARS-CoV-2 infection, as has already been said it enhances the severity of, and likelihood of death from, a lot of other lung diseases. It is all linked to the social determinants of health. Ella's death illustrates the tragedy for many.

I remind the House again: the UK has the worst death rate for asthma in Europe and one of the highest incidences of asthma. I worry that short-term finance is driving resistance from the Government, because monitoring levels of these very small particles requires different equipment from that in use at the moment. To avoid doing this properly, however, is a real false economy. Quite apart from tragic deaths, there is the cost to the health service and social care. By installing equipment to measure particulates equal to or less than 10 micrograms per metre cubed, the Government will be prepared and able to set an example to other nations when the WHO guidelines change.

This amendment sets a quality target with a deadline far enough ahead to be achievable. Delay will simply mean that we will be playing catch-up, rather than providing the leadership that is desperately needed.

Baroness Jones of Moulsecoomb (GP): My Lords, I have been working on the issue of air pollution for more than two decades. I thank Simon Birkett of Clean Air in London and Rosamund Kissi-Debrah, who are fantastic campaigners, and so tenacious. It moves me that I am able to present some of what they think and are fighting for. I also congratulate the noble Baroness, Lady Hayman of Ullock, on her excellent opening speech—it was far better than anything I can do, I am sure, though I will try.

Amendment 4, on which we may divide, is crucial: it could save your life. The other two amendments are great, because they will help with your health as you go through our filthy London streets, but Amendment 4 is basic. We have to reduce PM2.5. Exposure to these fine particles is the main cause of death for most people who die early from air pollution. These are tiny bits of soot and grit that are so small that they not only stick to the lungs but can pass through them. The noble Baroness, Lady Finlay of Llandaff, explained it much better. We must understand that this is incredibly difficult to control without targets.

Amendment 12 is also extremely important, because the World Health Organization is due to publish its updated air quality guidelines this month, possibly within days. I try never to use the words "air quality", because we do not have air quality—we have air pollution. We have to remember that. It is filthy and harmful. Many countries around the world follow the previous World Health Organization guidance, which was issued 16 years ago, but we still have nothing. We have a public health crisis leading to tens of thousands of premature deaths and we have identified the main cause, but still we do nothing.

Incinerators can be built and ignore this pollutant. Heathrow can be expanded and ignore this pollutant. Local authorities and national government are making decisions that will potentially damage human health and increase these emissions, but we allow it because we ignore the scientific advice. That really should not be acceptable.

7 pm

The interim advice from our own scientists, published two months ago, is that reducing concentrations below the World Health Organization's air quality guideline would benefit public health; that is so obvious. It is what we should do, and I hope that Defra will eventually set world-beating targets—but that is certainly not what it has done for the past 20 years, and that is why

[Baroness Jones of Moulsecoomb]
this amendment is necessary. It would immediately introduce a minimum standard and start us down the path to a healthier environment.

When I was on the London Assembly, Ken Livingstone, to his credit, did his bit; he introduced the congestion charge, which helped. I was a fierce critic of our current Prime Minister, Boris Johnson, when he was Mayor of London, because his solutions to the problem of air pollution in London, particularly in the lead-up to the Olympic Games, were to put plants along the main road towards the Olympic stadium and, secondly, to rely on the measurements from an EU monitoring station on one of the most polluted roads in London but set at 12 feet in the air so that it did not actually measure the air pollution on the ground.

I gather that the noble Lord wants to interrupt me, even though I am making a really important speech.

Lord Berkeley (Lab): The noble Baroness is making a very important speech; I will just add to what she has said. In addition, the Mayor of London covered up the monitoring stations on the roads leading to the Olympics. Otherwise, the pollution would have been worse than it had been in Beijing four years previously.

Baroness Jones of Moulsecoomb (GP): But he did put potted plants there; let us give him some credit.

Amendment 54 is also incredibly important, because it would achieve three important outcomes. First of all, it would put health at the heart of government policy-making. I am an ex-Southwark councillor, like the noble Lord, Lord Kennedy. On the old town hall, there was a translated Latin quotation:

"The health of the people is the highest law".

That is what this Government absolutely ignore.

Secondly, Amendment 54 would ensure that air quality targets are based on WHO air quality guidelines and achieved as soon as possible. Thirdly, it would ensure that air pollution is properly monitored, particularly where it is a problem, and that people are warned about it.

Please understand that this is a public health crisis. I have tried to get the issue of air pollution into other Bills, but I was always put off and told that whatever Bill it was was not the right Bill to put air pollution in. When we are talking environment, this is the Bill to add air pollution as a serious issue.

Lord Whitty (Lab): My Lords, I declare an interest as I am still a vice-president of Environmental Protection UK, which for most of its lifetime was the National Society for Clean Air. In that capacity, I was a bit remiss in not putting down an amendment myself. I was originally fooled by the Government; it does not happen very often, but it did on this occasion. I thought that by having this as the second clause and PM2.5 right up front in the Bill, they had really seized the opportunity. I did not read it properly.

Clause 1 sets a particular status for long-term targets that then run through the rest of the Bill, but this clause says the target for PM2.5

"may, but need not, be a long-term target."

Parliamentary draftsmen are usually comfortable putting "may", because that gives them a certain amount of flexibility, but on this occasion they put "but need not" very clearly. That means that the target envisaged in this clause, as it stands, does not have all the overriding principles and follow-through in the rest of the Bill that a long-term target has. That is why the clause, as it stands, has to be amended.

I support all these amendments. I just want to say two or three other things that colleagues have not yet covered. Before I do so, I say to the House that, in the debates on air quality over the years, one supporter was the late Viscount Simon, a lifelong sufferer from asthma who normally took part and had a lot of insight; we will miss him.

I point out, first, that the WHO targets were set on the basis of health information from over a decade ago. Hopefully, the new ones will be updated. The limits that we have been working to on EU standards were largely set—and I speak as a pro-European—by what the German motor manufacturers would put up with. Even then, they fiddled the testing. So, what we put in as our targets here have to be robust, health based and universally recognised.

It is also important to mention something else. There is a bit of an assumption that, since traffic has been the biggest contributor to air pollution, this is being resolved as we move away from diesel cars. It is not. A lot of pollution from traffic comes from brakes and friction between tyres and the road. In any case, of course, traffic is significantly increasing. The problem will not automatically resolve itself. We need new measures, both for vehicles and for the way we manage traffic. Also, as I believe is covered more fully in a later amendment by the noble Lord, Lord Tope, there are a lot of non-traffic-related sources of PM2.5 and other forms of pollution. They have to be covered just as rigorously.

Thirdly, as my noble friend Lord Kennedy pointed out, the tragic death of Ella Kissi-Debrah happened because of where she lived: on the South Circular, an already heavily polluted road. I would ask local councils of all political complexions not to alter their traffic arrangements to divert the heaviest traffic to areas where the poorest live and where there are likely to be more pedestrians and more children. Moving air pollution around is not a solution. I hope that is recognised.

I support these amendments as they stand. I hope that the Government will be prepared to take at least some of them on board and we can start making a dent in what is a truly terrible aspect of urban life and the health of our people.

Baroness Walmsley (LD): My Lords, I support Amendments 4 and 12 to which I have put my name. Before I come to that, I will say something about Amendment 54 in the name of the noble Lord, Lord Kennedy. I particularly liked the last two provisions—subsections (2)(e) and (2)(f) of his proposed new clause—on the training of professionals and, especially, on public information. I strongly believe that, if the public had any idea of the fatal effects of PM2.5 and their effects on health, they would be much more likely to accept some of what might otherwise be quite unpopular actions that needed to be taken to reduce the concentration of those particles. I very much support that.

I now come to Amendments 4 and 12. I have spent the last 18 months conducting my work in your Lordships' House remotely via the wonders of modern technology, from rural Wales and, occasionally, Scotland. In those parts of the UK, air pollution, including from PM2.5 particulates, is low. Yesterday, I came back to London. As someone who suffers mildly from asthma, I noticed the difference immediately. I am now inclined to wear my mask outdoors on the street as well as indoors, not just to protect myself and others from Covid-19 but to avoid breathing in unfiltered London air.

The challenge of reducing the amount of PM2.5 in our air is a complex and difficult one, which the Government, assisted by dozens of scientists and economists, are already tackling to some extent. I do not underestimate the difficulty of reducing our national and local concentrations of these particles to below 10 micrograms per cubic metre. These materials are produced by many human activities, and some natural weather systems, which are beyond our control. Controlling some of them also requires international co-operation. But just because it is difficult does not mean that we should not set out to do it—and do so expeditiously.

The reason is, of course, that polluted air is the greatest danger to health of our time. PM2.5 causes damage to health from before birth, when it affects children's brain and lung development, right up to old age, causing pulmonary and cardiac disease, liver damage, and damage to the brain—probably including dementia. The noble Baroness, Lady Finlay of Llandaff, has explained all that in great detail, so I need not go into any more detail. Everybody knows that polluted air can be fatal—sadly. That is why I support everything the Government are doing, including their dual target to reduce both national levels and population levels, particularly where pollution levels are high and health inequalities are greatest. To do that, they must support local authorities—but that is a debate for another time.

Our Amendments 4 and 12 do not impact on any of these activities or targets. The 10 micrograms in our amendment is not a target but a maximum—and if the WHO guidelines suggest a lower maximum, we should follow that. In other words, nobody will be happier than me if we can reduce it further. The Government tell us that they will announce their target and the date by which it should be achieved in October next year. Well, we all know how these things slip. Setting a target is one thing; achieving it in practice by a certain date is quite another. Our amendments simply hold the Government's feet to the fire to achieve what Ministers themselves, including Mr Michael Gove, have said they want to achieve. This is for the sake of the health of the whole population, as there is no safe level of PM2.5, according to the WHO.

However, there are two other very important reasons why I want to see this target minimum level in primary legislation, and they concern wider climate-change policy. The Government have set the target of net-zero carbon emissions by 2050, but as yet there is no detail as to how this will be achieved: no road map. There are many possible routes and combinations of policies and technologies that could lead us to achieving net zero. By setting in primary legislation the maximum PM2.5 emissions at 10 micrograms per cubic metre of air—or whatever the current WHO-recommended level is—we will influence the Government to choose those routes to achieving net zero which do not contribute to small particulates in the air.

Some people might think that surely all activities which reduce CO_2 emissions must necessarily contribute to clean air—but this is not so. For example, the burning of biomass might emit less CO_2 in the long run than burning fossil fuel, but this combustion emits small particulates—which is why wood burning stoves should be banned, at least in towns and cities where pollution is already high. There is more than one route to net zero, and we should choose the cleanest and healthiest. I accept that the Government will want to convince themselves of the feasibility of the target they set, but many scientists have advised us that the 10 micrograms maximum can be done by 2030, and I would like to see the Government set out seriously to do so.

My final reason is that the Government's record on air quality has not been of the best. In one of its final judgments before the UK left the EU, the European Court of Justice—which was instrumental in enforcing environmental protection—judged that the UK had "systematically and persistently" broken legal limits on air pollution, which, as we know, hastens the death of 40,000 people per year. The replacement for this enforcement body is the OEP, which is introduced by this Bill, which is why the noble Lord, Lord Krebs, and a cross-party group of Peers are trying to amend the Bill to ensure the new OEP is properly independent and has teeth. It is also why we who have put our names to this amendment seek to ensure that the Government are legally obliged to set and achieve ambitious targets for air quality.

7.15 pm

The Duke of Montrose (Con): My Lords, in the midst of all this great technical expertise, I would like to follow up one point that the noble Baroness, Lady Walmsley, touched on, which is how all this will be achieved. This amendment asks that a further metric be added to those already in the Bill. The Secretary of State is tasked with setting targets for the annual mean level in ambient air, and an amazing combination of statistics will be needed to get that.

Clause 17 asks the Secretary of State to prepare a policy statement, but who is actually going to produce all these measures? The noble Lord, Lord Whitty, hinted at what local authorities could do, but is the Government's policy to pile all these tasks on to local government? Who will be blamed if the measures are not produced? Are the Government considering what the financial demands are likely to be? The noble Baroness, Lady Finlay, has given us some indication that they may be considerably more than is currently the case.

Lord Mackay of Clashfern (Con): My Lords, I think the later contributions have shown that it is vital, in this connection, for the Government to focus on changing the materials that produce this. It is one thing to say, for example, that we want to go to zero carbon by a certain date. Well, surely we should have that kind of system applied to the way this development arises. Nobody wants to kill people, yet there is a substantial amount of this trouble arising in our country,

[Lord Mackay of Clashfern]
and the remedy must be focused on getting rid of the particulates as far as possible. That is a very high aim, which is not always made prominent in the literature and the policies.

Lord Goldsmith of Richmond Park (Con): I would like to thank all noble Lords for another important debate and to reassure the House that the Government view this matter as one of the utmost seriousness. As I have set out in previous debates that we have had on this issue, we are committed, through this Bill, to set at least two air quality targets. They will complement each other to fundamentally reduce air pollution in the worst areas, while driving continuous progress to benefit the health of all citizens across England.

Turning first to Amendment 4, tabled by the noble Baroness, Lady Hayman of Ullock, I would like to thank her for the time she has given me over the past few weeks, discussing this and other issues. I know she has also met with my officials and Professor Alastair Lewis, chair of the Air Quality Expert Group, to better understand all the other work we are doing on PM2.5. I thank her for her time in all those meetings.

I will start by reiterating the assurance provided in Committee, first, that the Government want stretching and ambitious targets, like everyone who has spoken in the House today, and, secondly, that the Government are following a robust and evidence-based process to set those air quality targets, which will focus on delivering the greatest possible public health benefits.

The Government are committed to working with internationally renowned experts to deliver evidence to inform air quality targets. We regularly engage with independent expert groups, such as the Air Quality Expert Group and the Committee on the Medical Effects of Air Pollutants, to ensure the process is informed by their advice and reflects the latest evidence, which includes WHO air quality guidelines.

In July, advice from the Air Quality Expert Group and the Committee on the Medical Effects of Air Pollutants was published. This showed that both groups support the proposal to set a concentration target and an exposure reduction target for PM2.5, though both acknowledged the difficulty in setting targets in this area. The Air Quality Expert Group highlighted the substantial challenges associated with modelling future PM2.5 concentrations, a point made by the noble Duke, the Duke of Montrose, including the many uncertainties and significant unknowns. For example, as our climate changes, the potential to reduce PM2.5 concentration also changes, because climate and weather strongly influence pollution levels. We may experience more rain and wind, which disperse pollutants and clean the air, or conversely more heatwaves, which lock in and exacerbate pollution. Some sources of pollution, such as shipping in the English Channel, require work with international partners to reduce emissions. This point was also made earlier.

As we take action to reach net zero, policies such as active travel will have co-benefits, but others may create tensions, as we see with anaerobic digestion and biomass burning. Many of these issues are not easily resolved or modelled, and this demonstrates why we should not be pre-empting or short-cutting the evidence required to underpin long-term target-setting decisions. While it is absolutely necessary to continue to achieve reductions in key pollutants in the air we breathe, the inherent complexity and diverse range of sources of PM2.5—both natural and manmade—means that significant reductions are much more difficult to achieve in practice.

Before setting these targets, it is vital to ensure that both the Government and the public understand the kinds of actions needed and the restrictions which may be required for them to be achieved. This is why we will be consulting on proposed targets and actions required, which may include significant changes to how we heat our homes and travel within towns and cities, early in 2022.

I will briefly respond to a point made by the noble Baroness, Lady Walmsley, about the timetable slipping. On the assumption that the Bill becomes law in its current form, or even in an amended form, allowing the timelines to slip would be a breach in law. We would be breaking the law and that is not something the Government could do, so we will not see this timeline slipping.

We are still working to understand the full mix of policies and measures that would be required to meet the WHO guideline of 10 micrograms per cubic metre, but we know that a range of restrictions on activities are likely to be needed in urban areas to meet any ambitious target. Meeting 10 micrograms would likely require policies, as I said in previous debates, including

"reducing traffic kilometres across our cities by as much as 50%"

and

"a total ban on solid fuel burning".

As I said in Committee, I do not think it is

"right for us to set a target … that would impact millions of people and thousands of businesses"—[*Official Report*, 23/6/21; cols. 306-7.]

without first levelling with people about what would be needed and ensuring that we bring them with us in understanding the health benefits of achieving that target. Without fully understanding the policies needed to meet such a limit, we cannot know where the burdens of these policies will fall.

To date, this debate has focused primarily on the concentration target but, again, I remind noble Lords that we are setting two targets that will work side by side. To respond to the noble Lord, Lord Whitty, we have to set a long-term target under Clause 1 and the PM2.5 target under Clause 2. It is not a choice we have; it is inherent in the Bill. This dual-target approach is strongly supported by experts.

In addition to the concentration target, we are developing a new type of target that focuses on reducing people's exposure to pollution. The population exposure reduction target will be a more important driver for achieving health benefits, both at national and local level. Experts tell us, and a number of speakers today have made plain, that there are no safe limits for PM2.5.

The long-term exposure reduction target will drive a process of continuous improvement to reduce people's exposure across the whole country, even in locations where the concentration target has been achieved. It will inform how local interventions need to be targeted, particularly where the most people are exposed to

elevated levels of pollution. The concentration target that we have spent much time debating serves to provide a general minimum standard and will focus on reducing levels where concentrations are highest, but it is not by any stretch the whole story.

As I have repeatedly set out in debate, in letters to the House and in meetings over the past year, we are working at pace on this. But it would not be right for us in this House to set a target without understanding the measures needed to meet it and bringing the public on board. The Government are therefore not able to accept this amendment.

Amendment 12 was also tabled by the noble Baroness, Lady Hayman. I assure her that, as air is part of the definition of the natural environment, it already falls within the scope of the significant improvement test. In future EIP reviews, we expect new evidence—including updated WHO guidelines, emerging scientific evidence and the like—to be relevant to an assessment of whether further measures are needed to meet interim and long-term targets. The intent of the noble Baroness's amendment is therefore already delivered by the Bill as drafted and I ask her not to press it.

On Amendment 54, tabled by the noble Lord, Lord Kennedy of Southwark, I thank him for meeting me and Rosamund Kissi-Debrah the week before last. I can say only that if I was not already convinced of the urgency of the case, I certainly would have been by that conversation. Rosamund is an extraordinary campaigner and speaks with huge authority; of course, what happened to Ella is heartbreaking on every level.

In setting these air quality targets, it is as crucial to have a scientifically reliable understanding of the pollution sources and their dispersion as it is to have in place sufficient means to monitor progress and assess compliance. I assure the noble Lord, Lord Kennedy, that the Government are working extensively with experts to seek advice on this and that the details of the targets, including monitoring requirements, will be set out in secondary legislation following a public consultation.

Making sure that information about air pollution is publicly available is clearly important; we already have legal obligations to do so. We do this through a range of channels, in particular the UK-AIR website, which carries an air quality five-day forecast and live information about pollution levels around the country. We are committed to improving the accessibility and usefulness of that information to a wider range of users, and we will undertake a thorough and comprehensive review of the UK-AIR website and the daily air quality index to ensure that they are doing what they are supposed to be doing.

In addition, the Government are funding work with health professionals in a number of therapeutic areas to develop advice for patients about air pollution. They are also looking at working with relevant health charities in longer-term campaigns aimed specifically at the most vulnerable groups.

The amendments tabled by my noble colleagues are hugely important contributions to this debate. I think we all agree that air pollution, particularly fine particulate matter, needs to be reduced urgently to protect the nation's health. We know that, in setting both the concentration target and the population exposure reduction target, we need to be ambitious. Indeed, we are determined to be ambitious; that is a view shared right across government.

However, we also have to be realistic in how we set that ambition and consider the practical challenges and costs before enshrining new targets in legislation. It is so important to bring society with us and therefore consult properly and meaningfully on the measures that we are likely to need to implement to achieve those significant reductions in air pollutant levels in the future; that is something we will have to do.

I hope that I have managed to reassure at least some noble Lords of the seriousness with which we take this issue, and I beg them not to press their amendments.

Lord Lucas (Con): Before my noble friend sits down, could he confirm that I understood him aright that the current situation, where we do not know the origin of 80% of the particulate matter, is not satisfactory and that the Government will fund more and better research so that we have a grip on where this is coming from?

Lord Goldsmith of Richmond Park (Con): That is a really important point. In this debate and previous debates, I have said that our knowledge base is not complete, and it needs to be much more complete. It may not ever be totally complete, but the Government—particularly Defra, working with the Department for Transport and Public Health England—are researching the issue exhaustively, with a view to informing the targets that we are obliged to set in the short term.

Baroness Hayman of Ullock (Lab): I thank all noble Lords who have taken part in this short debate. I will be very brief because I know that we are all looking forward to a break. I will not go into any detail about individual contributions, but I thank everyone who has spoken in support of my amendments—it is very much appreciated, and it has demonstrated that there is a lot of very strong feeling in the House about the concerns that we have raised.

I come to the points that the Minister made. Having met Defra officials on a number of occasions, I do not doubt at all that they are working extremely hard on this issue—for example, the planned exposure targets are extremely important—but that does not alter my frustration, and that of many others, that the urgent action that we need now is simply not happening and is being put off yet again. We have heard time and again that this is a health emergency, and I do not believe that the Government are treating it as an emergency. If that was the case, these amendments would be accepted, in my opinion.

We believe that our amendment is critical to drive the progress that we need. We also believe that a lot of existing evidence and information is already available in order for the Government to start taking action. On that basis, I would like to test the opinion of the House on my Amendment 4.

7.30 pm

Division on Amendment 4

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Amendment 4 agreed.

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7.47 pm

Consideration on Report adjourned until not before 8.47 pm.

House of Lords Appointments Commission

Question for Short Debate

7.47 pm

Asked by ***Lord Norton of Louth***

To ask Her Majesty's Government what plans they have to place the House of Lords Appointments Commission on a statutory basis.

Baroness Scott of Bybrook (Con): My Lords, this debate is limited to one hour. That is very tight and, in order to give time for the Minister to respond, all noble Lords apart from the noble Lord, Lord Norton of Louth, need to stick strictly to no more than two minutes.

Lord Norton of Louth (Con): My Lords, my noble friend Lord True will note the number of Peers contributing to this short debate. Each, as has been mentioned, will have two minutes. My noble friend will have 10 minutes to say what he could probably say in 10 seconds: namely, that the Government have no plans to put the House of Lords Appointments Commission on to a statutory basis. They should have: for some of us, this is unfinished business.

I have the honour to be convener of the Campaign for an Effective Second Chamber. My noble friend Lord Cormack chairs the campaign. We formed it more than 20 years ago to make the case for strengthening the existing House in the valuable work that it does. The key changes that we sought were embodied in the House of Lords Bill introduced by Lord Steel of Aikwood. Some of what we included in that Bill we have managed to get enacted, primarily through the House of Lords Reform Act 2014. The House of Lords Bill included a clause establishing the House of Lords Appointments Commission—that is, putting it on to a statutory basis. I wish to explain why it should be done and how it can be done.

In an Ipsos MORI poll in 2007, respondents were asked which factors were important to determine the legitimacy of the House of Lords. The option attracting the most support was "Trust in the appointment process"—75% of respondents ranked it as "very important" and 19% as "important". Trust in the appointment process ranked higher than "The House considering legislation carefully" and "Having many Members who are expert in their field". I note that it considerably outstripped "Having some Members elected by the public". How appointments are made is thus crucial to how the House is seen by the public. At present, the process falls short. At times it is mired in controversy, and there is little transparency in the selection of nominees. However worthy the individual nominees may be, their merits are lost in media criticism of the process and public perceptions of the type of person elevated to the peerage.

The existing Appointments Commission examines all nominations and puts forward nominations for Cross-Bench Peers, but it is limited in two significant respects. It can examine nominations only in terms of propriety, not suitability, and it is the creature of the Prime Minister. Having an Appointments Commission that is not only independent of the Prime Minister but is seen to be independent strengthens both the Prime Minister, confirming the merits of the persons nominated, and the legitimacy of the House.

Putting the Appointments Commission on to a statutory basis is necessary, but it is not sufficient. Powers will have to be vested in it and, I shall argue, can be without jeopardising the Prime Minister's role as principal adviser to the sovereign in recommending individuals for peerages. How, then, can it be done? As noted in the Library briefing for this debate, I have introduced a Bill that has now had its First Reading. I have sought in it to ensure that the commission can have an impact through vetting nominations to ensure that they meet a high-quality threshold, through requiring the Prime Minister to await the advice of the commission before putting forward names to the Crown, and through ensuring transparency in the process by requiring the Prime Minister, and other party leaders as appropriate, to inform the commission of the process by which the names were selected to be put forward. As noble Lords will see, it also includes provision for the Prime Minister to have regard to the principles that I believe are widely supported by the House, not least in terms of size.

The case for putting the commission on to a statutory basis has been made by a number of bodies, including the Government, over the past two decades. It was made by the Royal Commission on the Reform of the House of Lords, chaired by my noble friend Lord Wakeham. It was a proposal that was accepted by the Government but not acted on. I served on the Joint Committee on the draft House of Lords Reform Bill, which also endorsed the proposal. As I said, it was a key provision of the House of Lords Bill that was variously debated and widely supported in your Lordships' House.

The proposal itself is modest relative to the report of the royal commission, which recommended transferring the power to nominate Peers from the Prime Minister to the Appointments Commission. My proposal would

retain the existing position whereby the Prime Minister recommends names to the sovereign, although he would be required to wait until such time as he had received the advice of the commission. The Government, in 2001, proposed that the commission should have responsibility for managing the balance and size of the House. My Bill provides for the commission to offer advice on how to reduce the size of the House, but does not empower it to determine the size. This, therefore, is a modest proposal, and it may be prudent for the Government to accept it rather than wait until overtaken by more radical demands for change.

When questioned on the issue of reform of this House, my noble friend Lord True said that the Government did not support piecemeal reform. Well, as a Conservative, I do—and so, too, to judge by their election manifesto, do the Government. The 2019 manifesto stated that the Conservative Government had enacted legislation to enable Peers to retire and to remove those who committed a serious offence. That was not strictly accurate. What they had done was support, or at least acquiesce in, the passage of the Private Member's Bill that I drafted, which was introduced in the Commons on behalf of the Campaign for an Effective Second Chamber by Dan Byles and taken through this House by Lord Steel. That was piecemeal reform, which I believe has proved its worth.

The same applies to the House of Lords (Expulsion and Suspension) Act 2015, introduced by the noble Baroness, Lady Hayman. She is unable to be here for this debate, but she would very much like to have been, to support the case for putting the Appointments Commission on a statutory basis.

Even if my noble friend Lord True says that the Government have no plans to place the commission on a statutory basis, he could indicate a willingness on the part of the Government not to oppose such a move. Simply saying that there are no plans does not mean that the Government do not accept the merits of the case. My noble friend has not really engaged with the principle. He has the opportunity today to say whether he accepts the principle. The Government need not commit significant resources, including time, to getting a measure through. They can instead facilitate the passage of the Bill or another Private Member's Bill with a similar aim. The important thing is to get it on the statute book.

In short, it can be done. My contention is that it should be done. It will not undermine the position of the Prime Minister but rather bolster it, certainly in the case of a confident Prime Minister, in making nominations, and it will enhance the legitimacy of this House.

7.56 pm

Lord Grocott (Lab): My Lords, in my priceless two minutes I will raise a couple of issues that I believe any statutory appointments commission would need to address. The first is the question of political balance. Since the House of Lords Act 1999, which removed most of the hereditaries, it has always been assumed that the governing party should never have an overall majority of those taking a party Whip. There was never any possibility of the last Labour Government dominating politics in the Lords. Indeed, for eight of Labour's 13 years in office, the Conservative Opposition had more Members than the Labour Government. Even at its highest point in 2010, the number of Labour Peers was 235 and the number of Tories was 214. How different things are today, after 11 years of Tory Government. There are now 263 Tories and just 173 Members of the Labour Opposition.

Perhaps even more significant is the balance between the Government's supporters on the one hand and the main opposition parties on the other. Today, for the first time since the 1999 Act, the Conservative Party in the Lords has a majority over Labour and the Liberal Democrats combined—something no one thought was ever likely to happen under any Government. That is why I believe that any appointments commission should have a remit to report on the effects of its decisions on the political balance in the House—not to make those decisions, but to report on their effect.

Very briefly, I cannot make reference to a possible statutory appointments commission without mentioning its impact on the system of by-elections for hereditary Peers. The noble Lord, Lord Norton, in his excellent Bill says that

"the Commission must have regard to the diversity of the United Kingdom population."

I, of course, want the by-elections to end, but any statutory appointments commission must surely apply that principle of diversity to the hereditaries as well as to the life Peers. I remind the House that the 92 hereditaries include no women and no ethnic minorities—and that, to put the icing on the cake, 50% of the hereditaries elected under the by-election system went to Eton. So I would require the Appointments Commission to report on the extent to which the register of hereditary Peers meets the requirement of having regard to the diversity of the United Kingdom—and all I can say is good luck in doing that.

7.59 pm

Lord Kerr of Kinlochard (CB): My Lords, we have to recognise that Mr Johnson has damaged this House in three ways. First, he has not followed the advice of the Appointments Commission on a point of propriety, damaging his own reputation but also ours. Secondly, the flow of Peers coming here on the recommendation of the commission seems to have dwindled to zero. Thirdly, of course, he has ignored the Burns report, ignored the restraint of his predecessor and reversed all the progress that we had made in reducing the size of the House. So, let us be realistic. Of course the commission should be on a statutory basis, but what is the chance of the Prime Minister agreeing to do that? What is the chance of the Prime Minister agreeing to limit his options, to fetter himself even very loosely? I think there is no chance at all, unless we separate the honour from the job, as the Burns report in fact recommended.

Detailed legislative work is an acquired taste, and it is clear that some of the recent creations have no desire to acquire it. So be it. If they do not want to do the job, why could they not just join the majority of Peers who do not sit in this place and do not receive a Writ of Summons, the majority being those culled in 1999 and their successors, as well as the growing number of us who have wisely decided to retire—a

number that would grow much faster if the Burns "two out, one in" recommendation were accepted? The commission's scrutiny of candidates to work in this House could then be confined to only those willing to work here, and not to the unwilling who would not come. Thirty years ago, the Queen was good enough to give me a knighthood. She did not require me to pick up a lance and get on a horse. It is was an honour with no equestrian duties attached—which was a relief to me and could be a precedent for the House.

Baroness Scott of Bybrook (Con): I remind noble Lords that the time limit is two minutes.

8.02 pm

Lord Anderson of Ipswich (CB): My Lords, on a day when the noble Baroness, Lady Kidron, has been credited by the *Daily Telegraph* with world-leading rules on online child safety, and scientists and technologists as distinguished as the noble Lord, Lord Krebs, and the noble Baroness, Lady Brown of Cambridge, have shared with us their vast expertise on the Environment Bill, no further reminder is needed of how the effectiveness and reputation of this House have been enhanced by Peers recommended for appointment by the Appointments Commission. It is a shame, as my noble friend Lord Kerr has just said, that this stream of talent has recently slowed to a trickle. As one of just five Cross-Benchers since 2015 to have enjoyed the good fortune—the outrageous good fortune, in my case—of appointment by this route, I support the Private Member's Bill brought forward by the noble Lord, Lord Norton, and his remarks in opening this debate.

Another appointed second Chamber, the Canadian Senate, has been transformed over the past five years by the creation of an independent advisory board made up of federal and provincial members. The board recommends five non-political appointees for each vacancy and the Prime Minister chooses between them. Independent Senators now outnumber those with a political affiliation. The House of Lords Library reported last year that almost 60% of Canadians thought that these changes would improve the Senate in the longer term.

The constitution of Canada prevents the board being established under statute, but no such constraint exists here. So I hope noble Lords will share my view that this is not only a "Worthwhile Canadian Initiative", as the award-winning headline famously had it, but an idea that we could and should build upon.

8.04 pm

Baroness Noakes (Con): My Lords, whether or not the Appointments Commission is made statutory or not is a sideshow. The real issue is whether the Prime Minister has the final say on appointments to your Lordships' House, and whether he can therefore determine its size. I am clear that he should retain that power. Opinions from the commission on individual appointments or the size or composition of the House should never be binding on the Prime Minister or otherwise inhibit his actions.

Ironically, the commission itself has provided the best evidence for not changing the existing constitutional arrangements. Let us look at the commission's record. For the last 20 or so years of its life, it has recommended the appointment of 74 new Cross-Bench Peers—how successful has that been? From the early days, it was clear that there was a desperate search for diversity, but the most important diversity—that of perspective and thought—seems to have been ignored. Not to put too fine a point on it, the Cross Benches have become more representative of metropolitan liberal groupthink. They cannot be relied upon to reflect the views of the British public. Our debates and votes on Brexit in 2019 are all the proof that is needed of that.

As my noble friend Lord Strathclyde has observed, this House has become a House of opposition to the Government. It is a no-brainer that the Prime Minister must tilt the balance back, even if that means increasing the size of the House. He should not have to wait for the opinions of a commission to do so.

8.06 pm

Baroness Prashar (CB): My Lords, I strongly support the comments made this evening by the noble Lord, Lord Norton, and his Bill. As he said, successive reports have recommended that the House of Lords Appointments Commission should be on a statutory basis, and we have had several Bills to that effect. I fail to understand the Government's rationale for their reluctance and resistance to doing so. Other significant appointment commissions, namely the Judicial Appointments Commission and the Civil Service Commission, are on a statutory basis. Would the Minister agree that unconstrained power of the Prime Minister in making appointments of public significance is inappropriate, and that statutory checks and balances are needed in the appointments process to maintain legitimacy and the trust of the House?

8.07 pm

Baroness Fookes (Con): My Lords, I was very taken with the suggestion made by the noble Lord, Lord Kerr, that there should be a division between those who came here to work and those who received a peerage as an honour. Indeed, it reminded me of something the late Lord Weatherill said to me many years ago. He said that the trouble with this House was that it was never decided whether it was an honour or a job. I think that remains true, unfortunately. I certainly regard it as both an honour and a job, and this is why it is important that we have a commission set up on a statutory basis to look more closely at the suitability of candidates, particularly their willingness and ability to work. That should be a dominant and key theme when anybody is looking at a potential candidate to come to this place. We do not want those who just enjoy the honour but do not do any of the work.

It is also extremely important, and a great possibility of the commission, to widen the spread geographically. There is sometimes a thought that too many people come from the south-east, but I think that overlooks the fact that many people have come from different parts of the United Kingdom and settled here in the south-east because of—what should we call it?—the gravitational pull. None the less, it would be a wonderful opportunity for the commission to look at the further

[Baroness Fookes]
reaches of the kingdom—Scotland, Wales and Northern Ireland, and the far-flung parts—and so get a better balance. This would be a particularly helpful way of proceeding.

I am conscious of the time, so any further remarks will remain with me.

8.09 pm

Lord Foulkes of Cumnock (Lab Co-op): My Lords, recent appointments to the Lords have been scandalous on four counts. The first is cash for honours, under which the Government have bestowed peerages principally to party donors—the most outrageous being when the recommendation of refusal by HOLAC was overruled by the Prime Minister for the first time ever.

Secondly, many of those ennobled, including the noble Lords, Lord Spencer, Lord Bamford, Lord Cruddas and Lord Ranger, have hardly spoken or asked a question since their appointment. They bring this House into disrepute.

Third is the blatant contempt for the views of this House by the Prime Minister, ignoring our decision that the size of the House should be reduced, as the noble Lord, Lord Kerr, rightly said.

Finally, there is the appointment of so many Brexit fanatics, including some who purported to be Labour, solely because they campaigned with the Tories on Brexit. Incidentally, they might have the courtesy to sit on the other side of the House, where they belong, when they are in here.

The Honours (Prevention of Abuses) Act and the Public Bodies Corrupt Practices Act could and should be invoked. Until HOLAC attains a degree of independence, which statutory provision would give it, I fear we are in for much more of this corruption.

8.10 pm

Lord Balfe (Con): My Lords, I give general support to the idea put forward by my noble friend Lord Norton, but I reflect on the words of my noble friend Lady Noakes that any appointments commission would probably end up appointing people like itself. That concerns me. For a start, I doubt I would be here if there was such an appointments commission. I also doubt that the noble Lord, Lord Foulkes, would be here, because he tends to step out of line from time to time. I am happy with there being an appointments commission, but I think it should have clear criteria for turning people down, and that should then be the end of things; it should not be able to be overruled.

I also think we need to look again at political balance. Although my party has far more than the other parties, I do not think it healthy for this to carry on. I would like to see some agreement on political balance, because one of the strengths of this House is that it can defeat the Government. As was said to me when I first came here by the noble Baroness, Lady Anelay, who was then the Chief Whip, the difference between here and the Commons is that in the Lords you must win arguments and in the Commons you can just win votes. That is an important principle of this place.

My final point is that we need to distinguish between honorary peerages and working Peers. I came here to work but some people did not. Basically, they take up a place that they should not be taking up, so we also need to look carefully at having working Peers.

8.12 pm

Baroness Meyer (Con): My Lords, the old saying goes that hard cases make bad law. I would like to paraphrase that a little and say that lone cases make bad law. It appears that we are having this debate today because the Prime Minister chose to ignore a recommendation from the House of Lords Appointments Commission as to the fitness of a certain noble Member to join our ranks. In some quarters, this has raised a terrible stink because the Prime Minister has, shock-horror, exercised his powers of patronage. In our political universe, if anyone should have powers of patronage it is surely the Prime Minister, the democratically elected Member for Uxbridge and South Ruislip, elevated to the leadership of his party by a vote of its members and elected Prime Minister by a stonking majority by the people of this country. Against this background, the notion that he should be stopped from deciding who to send to this House by placing an unelected commission on a statutory basis is using a sledgehammer to crack a nut—and a poorly aimed one at that.

The day will come when we are reformed, though it is unclear how. That will be the moment to consider these things. In the meantime, does my noble friend the Minister not agree that it would be better to let sleeping dogs lie?

8.14 pm

Lord Berkeley of Knighton (CB): My Lords, I fear that I take a rather contrary view to the noble Baroness, but then perhaps I am a rather awkward nut. I will contribute a few words from the point of view of another person who, like my noble friend Lord Anderson, joined your Lordships' House through the HOLAC route. This gave me an impressive insight into the workings of the commission and convinced me that this must surely be the most democratic route into your Lordships' House that exists. Although it would be naive to think that the support of highly regarded and influential Peers does not play an important role, that is true in any walk of life where references are required.

I assure your Lordships that the stages of submission and interview are no doddle. I recall being thoroughly put through my paces by the late Lord Hart of Chilton—Garry Hart. In the same year, 2013, my noble friend Lady Lane-Fox was the other recommendation—so, in that year, an internet expert and a musician were ennobled. Thus, the desire to have the commission bring in people who might widen the expertise of the House but would not perhaps emerge through the political system of nominations was continued, as mentioned by my noble friend Lord Anderson of Ipswich.

Given its impressive work, HOLAC surely deserves and needs to be put on a statutory basis. Otherwise, we risk insulting people who do hours and hours of work thinking very carefully about who should and who should not be Members of your Lordships' House.

8.16 pm

Lord Shinkwin (Con): My Lords, I fear that putting the commission on a statutory basis would not conceal our Achilles heel: the fact that we are so unrepresentative as an institution, particularly on disability. The presumption of privilege that permeates how your Lordships' House operates only, sadly, emboldens those who would deride us as a relic of a bygone age, ripe for abolition.

We know that the demographics of your Lordships' House do not reflect the diversity of the people whom we serve. Indeed, the whole Westminster bubble is still made up of, exists and functions for non-disabled people. It is where the UK's 14 million disabled people are always the other—for and to whom things are done.

Today, in 2021, you can be the chief executive of a hugely successful FTSE 250 company while also being a wheelchair user—yet the layout of this Chamber and that of the other place make it impossible for a wheelchair user to speak from the Dispatch Box. However inadvertent, disability discrimination is built into the very fabric and modus operandi of your Lordships' House. It is the status quo, and it is a completely untenable situation.

I appeal to the Prime Minister to send us more new blood that reflects the richness of the UK's diverse talent pool and to the House authorities to redouble their efforts to put our own House in order. We do not need a statutory commission to make that happen; we just need the political will.

8.18 pm

Baroness Wheatcroft (CB): My Lords, according to today's *Times*, the publisher of *Burke's Peerage* put in a draft letter to Mahfouz Marei Mubarak, saying that his donations to Prince Charles's charity would ensure him a knighthood, followed by membership of the House of Lords. We do not know if that letter was sent, but we do know that Mr Mubarak received a CBE and that the author of the letter was instrumental in getting that. We also know that this episode can only add to the belief that membership of your Lordships' House can be purchased.

Unfortunately, the actions of this Government have given credence to this view—most notably, as the noble Lord, Lord Foulkes, has pointed out, in the case of the Prime Minister's decision to appoint as a Peer someone whom the House of Lords Appointments Commission had vetoed but who had given large sums to the Conservative Party. That this decision was rewarded by the new Peer making a further substantial donation to the party perhaps should not have been surprising.

It will only further damage the standing of this House if such behaviour occurs again. The noble Baronesses, Lady Meyer and Lady Noakes, may defend the power of patronage in the Prime Minister, but surely that power can exist only if it is to be used responsibly. Putting the Appointments Commission on a statutory footing would ensure that it could only be used that way. The noble Lord, Lord Jay of Ewelme, who chaired the commission between 2008 and 2013, expressed the view even then that it needed the powers of a statutory body, and that is even more the case today.

8.20 pm

Lord Cormack (Con): My Lords, being a Member of your Lordships' House is something that we treasure, but it is clearly important that the principles of the Burns committee are properly accepted and that we do not continue to inflate our size. Being here should be regarded as a vocation to public service, and those who are honoured in another way do not have to come here, as the noble Lord, Lord Kerr of Kinlochard, indicated.

There are rumours swirling around even as I speak that another 30 Peers are to come here next month. I profoundly hope that that is wrong, because it is important that we have balance. It is important that no single party has an overall majority. There is no point or purpose in your Lordships' House unless it truly scrutinises legislation and has the opportunity to ask the other place to think again, and it cannot do that unless the Government of the day are defeated from time to time. They can always put it right; the other place has the final word. That is as it should be for an elected House, but we should be able, without fear or favour, to scrutinise, to suggest improvements and amendments, and to be prepared to press them up to a point if we believe that necessary.

It is crucial, however, that there should be a degree of true impartiality in the selection of those who sit here. That can be brought into effect only if we have a proper statutory Appointments Commission. As my noble friend Lord Norton indicated, his Bill allows the Prime Minister to have the last word, and that is right—but he is not the fount of all knowledge and should not be the fount of all appointments.

8.22 pm

Lord Desai (Non-Afl): My Lords, I quite agree with the proposition that we should have a statutory commission, but I argue that that is not the problem with this House. The problem is that this House has no legitimacy of its own. It is not an elected Chamber, and its only legitimacy comes from the fact that one elected person—the Prime Minister—will be trusted to make the correct appointments.

I know things go on which should not go on, and I know that many of the people here work very hard and are not here only for the honour. But, unfortunately, the honour is such that more people desire it than really deserve to be here. Unless we improve the legitimacy of this House—noble Lords will not be surprised that I would like it to be elected—we can devise as many appointments committees as we like, but the legitimacy will come only from the Prime Minister and no one else. That is our problem.

Every time this House defeats the Government, the Government are tempted to add another three dozen Members because they want this House to comply with what the other place does. That is our problem, and statutory commissions are not going to cure it, no matter how honest and good they are.

8.24 pm

Lord Hannan of Kingsclere (Con): My Lords, everyone likes the idea of a neutral expert. One of the most depressing things in politics is how easy it is when you

[Lord Hannan of Kingsclere]
are on "Question Time" or "Any Questions?" to get a round of applause by saying about virtually any subject: "This is too important to be a political football. Why can't all those elected politicians back off and leave it to the professionals?" Yet I have to tell noble Lords that there is no such person as a disinterested patriot who can raise his eyes above the partisan scrum and describe the true national interest. No such person exists; we all have our assumptions and prejudices. The only distinction is that some of us have to test those in elections and others do not.

I very much agree with what the noble Lord, Lord Desai, just said. We have, at the moment, a system where the power of appointment is with one elected person, directly elected in a constituency and then indirectly elected in another place. You might make an argument, as he did, that we should go further and have an appointments body made up of the electorate as a whole. That is a good, consistent, coherent argument. But moving in the other direction and placing the oligarchic power of appointment in the hands of an unelected group that, by definition, will like to appoint people who share its own assumptions and opinions is a step away from accountable government and would be a retrograde step.

8.25 pm

Lord Lucas (Con): My Lords, we should put the Appointments Commission on a statutory basis. Yes, it is a piecemeal change, but evolution not revolution is the Conservative way, and it is the way we should handle things when we change the constitution. We should ask the Appointments Commission to make sure all appointees are committed to and are capable of working in this place. We should ask the Appointments Commission, in respect of its own appointments, to ensure diversity both of roots and of thought, and to act in an advisory capacity to political parties in that regard. It should also be commenting on the percentage make-up of the House and its size.

It should operate under a mandate from Parliament. I thoroughly agree with what my noble friend Lord Hannan just said: that it should not be an oligarchy but a creature of Parliament. It needs to have that accountability. I am unimpressed by what the Appointments Commission has achieved to date in terms of working pattern and diversity. If we give a body the powers contemplated by my noble friend Lord Norton, we must be able to hold it to account.

8.27 pm

Lord Wallace of Saltaire (LD): My Lords, attacks on the alleged metropolitan elite entrenched on the Cross-Benches and on these Benches by wealthy Conservatives who grew up in the Home Counties and made their careers in the City of London are absurd. For the record, I spent the Recess on the outskirts of Bradford, not in Islington or Surrey.

Fundamentally, as the Minister will recognise, this is about the power of the Prime Minister to exercise prerogative powers without restraint. As the ability of the monarch to constrain her Prime Minister shrunk, the exercise of Crown prerogative powers by the Prime Minister was moderated by the willingness of successive political leaders to behave within the limits of what was regarded as acceptable behaviour. Eton educated political leaders were assumed to be the most trustworthy in this respect. They had been taught the importance of conventions and constraints on power, and the sense of shame for those who broke them.

Now we have an Etonian Prime Minister who does not accept the importance of constraints or of advisory bodies in ensuring that conventions are observed and who appears to have no sense of shame. Today we are discussing the Lords Appointments Commission, but this also applies to observance of the Ministerial Code, the appointment of non-executive directors to Whitehall departments and to many other aspects of the standards of our public life.

When politicians refuse to observe established conventions of appropriate behaviour, it becomes necessary to strengthen those rules by statute. Decisions on the size of our second Chamber and the qualifications for membership of it have constitutional implications. I accept that David Lloyd George in his time abused prime ministerial power in Lords appointments. That was corrupt. Boris Johnson is abusing prerogative power in the same way. To paraphrase Lord Acton, all power corrupts; unconstrained power corrupts without constraints.

8.29 pm

Baroness Smith of Basildon (Lab): My Lords, one of the clearest things this debate has illustrated is the pride and the value that we place in our work as Members of your Lordships' House. As has been pointed out, as an unelected House we do not have the legitimacy or authority of elections, which is why the integrity of appointments is all the more important. We value that integrity.

Looking at reform of your Lordships' House, I do not think that just putting the commission on a statutory basis does what the noble Lord says, and he did not argue that as a standalone. But contrary to the idea that we cannot make any reform unless we have a big bang reform—that piecemeal reform should be derided —we should accept piecemeal reform to address some of the points made by the noble Lords, Lord Shinkwin and Lord Grocott, about the social balance of your Lordships' House. We should not deride or ignore piecemeal reform.

The fact that we do not have the authority or legitimacy of elections in no way reduces the commitment or integrity of our membership. In fact, it makes it all the more important that we have that confidence. The role of the commissioners of the House of Lords Appointments Commission is to advise and make recommendations to the Prime Minister, and I think that is the right way to do things. But they are obliged by their code to abide by the highest standards of impartiality, integrity and objectivity, and I use that as an illustration of the expectations this House has of the members of the House of Lords Appointments Commission. The noble Lord made a powerful case in that regard.

The urgency in looking at this now is because the Prime Minister rejected the advice of HOLAC. This could not possibly have been the first time a Prime Minister did not agree with had been said by HOLAC,

but it is the first time it has been overridden in such a blatant way. In looking at how the House of Lords Appointments Commission operates, we should take note of what the noble Baroness, Lady Hayman, has said previously about having the resources and the ability to look in more detail at its work. This raises wider issues, and the noble Lord, Lord Grocott, talking about the political balance of your Lordships' House and what has happened under Conservative Prime Ministers—first David Cameron and now Boris Johnson—is equally important to the integrity of how we work.

I have to say that attacks on Cross Benchers because they do not agree with the noble Baroness, Lady Noakes, is really not the way this House should operate. Every Member of this House is equal. Some of us bring party political affiliations, and I make no apology for those, but others do not. We have to accept that if they do not have party political affiliations, sometimes they will agree with us and, as I found on many other occasions, sometimes they will disagree.

I thank the noble Lord for raising this issue. The Minister has more than his 10 minutes to reply, and I look forward to perhaps a more positive response than we have had previously.

8.32 pm

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, it is very good to see the old House back. I fear that one thing that might not change is that from this Dispatch Box I am not necessarily able to give the noble Baroness opposite the delightful response that she might wish.

I thought it was an interesting short debate, and it is right that we debate these topics. The only speech to which I took exception, which I am sad about, because it was by a noble Lord I greatly respect, was by the noble Lord, Lord Foulkes, who talked about scandal and corruption. There was a sub-theme that was taken up by one or two others who spoke. It serves none of us to present an image of this House or any political party as imbued and filled with scandal, corruption and fixing of the kind which the noble Lord implied. It helps no one. I could say that those in glass houses should not throw bricks, but I am not going to go back over ancient history that does not help any of us.

I thank my noble friend Lord Norton of Louth for the spirit and intelligence with which, as ever, he put forward his arguments. He spoke with the authority of, as he described it, the Campaign for an Effective Second Chamber. I always feel, when that great pressure group is mentioned, that I should go to the House of Lords Library after the debate and look out for the minutes of this extremely powerful group that seeks to influence the composition of Parliament and the avowed list of its members. Those matters may well be available in your Lordships' House, but given that we have heard from a spokesman for that group, I think that many in the House would like to know more about it.

I thank my noble friend for this opportunity to discuss the important work of the House of Lords Appointments Commission; it is important work. As many of us will recall, the commission was set up in 2000 after a period in which—I am sorry to remind the noble Lord, Lord Foulkes of Cumnock, of this—there had been, shall I say, considerable comment on the nature of appointments to your Lordships' House. It is an independent, advisory, non-departmental public body and its purpose, as noble Lords well know, is to recommend non-party-political appointments to this place as well as to advise on all House of Lords appointments for propriety. I think it would be fairly acknowledged by noble Lords on all sides of the House that this is a job that the commission does well and has done well. In doing that job, it is treated with all due respect—full respect—by my right honourable friend the Prime Minister, as it was by preceding Prime Ministers.

The noble Lord, Lord Grocott, made a point that is important in an appointed House. As he knows, if we have a non-elected House and there is an elected House, the public decide the balance between the parties. However, the balance of political strength in the House is obviously always an issue for discussion and consideration; my noble friend Lord Balfe made a similar point. I remind the House of what was said by my noble friends on this side: a commanding majority was given to my right honourable friend Mr Johnson in the last election. Despite what was said, it is a travesty to say that the Conservative Party is in a position to dominate your Lordships' House. I respectfully refer noble Lords to the three Divisions that have already taken place today and the others that I suspect will take place after dinner. The fact is that, numerically, the Conservative Party is 130 short of a majority; of course, it is far more than that in mathematical terms because the appointment of more Peers would increase the number.

The background is that, at the end of the period of the struggles over Brexit, this House fell away from one of its duties, which is to pay due respect to the opinion of the public. We lived through a period in that zombie Parliament in which the House of Commons and some Members of your Lordships' House made it difficult for the Government to be carried on. One of the fundamental principles of our Parliament is that a Government must be able to get their business. That does not mean that they must win every vote—the Government do not ask to win every vote; they wish to listen to the points of view put forward by your Lordships' House, and indeed always do—but, at the end of the day, the Government must be able to get their business. That is the background to this debate; I will come back to it a little later.

The noble Lord, Lord Kerr of Kinlochard, made an interesting point, which was taken up by others, including my noble friend Lady Fookes. He asked whether it was necessary that everyone who wishes to have a peerage, or who is felt worthy of having one, needs to be a Member of your Lordships' House. That is an idea that I have heard mooted before. It is not something on which I am going to comment in this debate, but I will simply say that I thought the noble Lord made an interesting point.

The noble Lord, Lord Anderson of Ipswich, complained about the representation of Cross-Bench Peers in the House. Setting aside the category of non-affiliated Peers, about which many of us with different points of view may have opinions, Cross-Bench Peers currently account for 23% of the composition of

[Lord True]
your Lordships' House. Almost any proposition for reform that has come forward in the time that I have been following your Lordships' House has said that somewhere between 20% and 25% is probably about right for the independent Cross-Bench element.

Lord Anderson of Ipswich (CB): I would like to clarify that I made no such complaint, and no such complaint was intended.

Lord True (Con): I am grateful that it was not intended. What I heard was a complaint that not enough Cross-Bench Peers were being appointed, and I think Hansard will show that the noble Lord made that point. One of the considerations regarding who is to be appointed is the overall balance in the House, a point that has been made from every perspective in this debate. To me it is perfectly legitimate, in the light of the noble Lord's complaints about the number of appointments, to point out the current level of composition of Cross-Bench Peers.

The commission has two main functions, which are to nominate and recommend individuals for appointment as non-party-political life Peers and to vet nominations for life Peers, including those nominated by the political parties, in order to ensure high standards of propriety. I repeat that I believe it does this well. I am not going to follow any personal attacks on any Member of your Lordships' House. I believe in the traditional principles of this House that all noble Lords stand on their honour and behave honourably, and I believe that those who are sent here and will serve here will demonstrate that they can aspire to and deliver those high standards.

It is worth noting that the conclusions reached by the House of Lords advisory committee regarding nominations are advisory. That is the gravamen of this debate although, as far as I can hear, no one who was arguing for a statutory commission said that it should be more than advisory. Everyone concedes—including even my noble friend Lord Norton of Louth; it is in his Bill, as I read it—that the Prime Minister should be able, in exceptional circumstances, to ignore and appoint outside the advice of the appointments commission. The conclusions reached by the commission are considered by any Prime Minister, alongside other wider factors, on a case-by-case basis. Ultimately, it is for the Prime Minister to recommend which individuals should be appointed to the House of Lords. As my noble friend Lady Noakes pointed out—firmly, I accept—it is the constitutional position in this country, as was also implied in the remarks of the noble Lord, Lord Wallace of Saltaire, about the disfavour into which David Lloyd George fell, that ultimately there is accountability for a Prime Minister in the way in which he uses that power.

I do not wish to pick an argument with my noble friend Lord Norton of Louth on opinion polls, but while he was speaking I looked up the 2017 poll to which he referred. In it, when people were asked which were the most important factors in determining how legitimate the House of Lords was as a Chamber of Parliament, the first, with 37%, was the view that the House should make decisions in accordance with public opinion, while the second was that the House should consider legislation carefully. My noble friend Lady Noakes alluded to one of the problems with those who have been appointed by the House of Lords Appointments Commission. This is no criticism of the commission; it is a fact. When it came to the first big vote in 2017 on seeking to obstruct Brexit, the Cross-Benchers who had been appointed by the House of Lords Appointments Commission between 2001 and 2015 were split five to one against the Government, a few months after a 52% to 48% referendum.

On the advice of the Prime Minister, the sovereign, who is the fount of all honour, formally confers all peerages, and I believe that should continue to be the case. The House of Lords Appointments Commission has an important advisory role, but it is advice. That is the situation that was created by a Labour Government and operated by them for 10 years, by the coalition for five and by a Conservative Government for six.

The Government have no plans to change the role or remit of the Appointments Commission. The organisation's legal status does not affect its remit. It will continue to advise on appointments in the same way that it does now. I can assure the House that the Prime Minister will continue to place great weight on the commission's careful and considered advice. The noble Lord, Lord Desai, made a courageous point, which is never welcome to your Lordships' House, but I do not think it is specifically germane to the question of my noble friend Lord Norton.

To sum up, the Government consider that the House of Lords Appointments Commission performs an important role in advising the Prime Minister on appointments. I do not agree with the noble Lord, Lord Berkeley of Knighton. The Prime Minister continues to place great weight on this advice, and the Government have no plans to place the commission on a statutory footing.

8.46 pm

Sitting suspended.

Environment Bill

Report (1st Day) (Continued)

8.47 pm

Clause 3: Environmental targets: species abundance

Amendment 5

Moved by ***Lord Randall of Uxbridge***

5: Clause 3, page 3, line 6, leave out "further" and insert "meet"

Member's explanatory statement

This amendment would set a clear requirement for a target to halt the decline in the abundance of species by 2030.

Lord Randall of Uxbridge (Con): My Lords, I am delighted to move Amendment 5 in my name, which has also been signed by the noble Baronesses, Lady Parminter and Lady Jones of Whitchurch, and the noble Lord, Lord Krebs. This is something that we raised in Committee, and during the Summer Recess—or just before—we had a very useful meeting with a few chief executives of environmental and conservation NGOs and the Secretary of State. We reinforced our

view on this, and I am delighted now that they are giving fulsome praise, because the Minister and his Secretary of State obviously persuaded those elements of government that were reticent about some of this. They have seen the error of their ways and introduced government Amendment 6, which is exactly the sort of thing that we have been asking for. In fact, this amendment was the one thing that I was really prepared to die in a ditch for. Although some people might be disappointed to find that the ditch is now unoccupied, there may be other ditches in future, but for the time being, I remain extremely happy. I trust that other people at that meeting are as well, although I can see another amendment that possibly just pushes it a little further, but it is always worth a try—that is the way I would put that.

The other amendment in this group that I want briefly to speak to is Amendment 9 in the name of the noble Baroness, Lady Young of Old Scone, to which I put my name, on habitats. I do not want to dwell on it for too long, especially because we have the amendment to get the target to halt the decline in the abundance of species, but I will say—I am sure we will hear a lot more from a much more erudite Member of your Lordships' House—that species decline is inextricably linked with habitats. I promised the Secretary of State that I would be good on this if I got what I wanted, but I cannot resist saying that habitats are extremely important too.

I beg to move but I will withdraw my amendment; I do not know the procedure for that. I will move it, but then I won't.

Baroness Young of Old Scone (Lab): My Lords, after that stunning introduction by the noble Lord, Lord Randall, I feel I ought to speak to my amendment, although I do not think I can be as erudite as he thought. I am delighted that he, the noble Lord, Lord Krebs, and the noble Baroness, Lady Boycott, are my co-signatories.

First, in anticipation of him moving it, I thank the Minister for government Amendment 6, which toughens up the commitment to halt species decline. That is fine, but I am less well behaved than the noble Lord, Lord Randall. I am a bit like Oliver Twist—I want more—so I also support Amendment 7 from my noble friend Lady Jones of Whitchurch, which would go further and quite rightly seeks not just to halt but to begin to reverse species decline. It is a bit like target golf: I am not entirely sure that you could halt species decline without being on a trajectory that will take you towards recovery anyway. No doubt my noble friend will illuminate us.

The noble Lord, Lord Randall, was absolutely right in saying that species are not sufficient and we need to talk about habitats as well. The twin currency of biodiversity conservation has for generations been both species and habitats, so in speaking to my Amendment 9 I am trying to lay out that we need targets to be set to improve the extent and condition of important wildlife habitats by 2030 as a complementary and twin part of the effort towards the species recovery targets also being debated.

My amendment has three prongs. The first is an increase in the area of the national protected sites network, which is not complete yet. The second is an increase in the area of the important habitats that are not protected sites. Many of our important habitats have no protection whatever at the moment. Noble Lords have heard me bang on about ancient woodland many times; I promise that I will bring on more when we get to the tree bit of the Bill. The third prong is that at least 60% of our sites of special scientific interest—these jewels in the crown of nature conservation—need to be in a favourable condition.

Why should the Minister accept this amendment? I will give him five reasons; I will be brief. Protected sites, by which I mean sites of special scientific interest, European protected sites—heaven knows what they are called now; they used to be called Natura 2000 sites—and even sites such as national parks and areas of outstanding natural beauty have been, as I said, the jewels in the crown of our nature conservation effort for more than 70 years. It would be nothing short of weird if a government commitment to halt biodiversity loss by 2030 made no reference to this network of sites and ecosystems, because they support the species that we want to see recover. They are fundamental; they are the webs of life within which these species exist.

The second reason is that sites of special scientific interest are the most wildlife-rich places we have. They are absolutely fundamental for species recovery, yet we have gone backwards rather than forwards in improving their condition. Over the past decade, many of our SSSIs have not been monitored at all. Our current estimate is that only 39% of SSSIs are in favourable condition, so a commitment is needed urgently to improve their condition.

The third reason is ancient history. I am very old, in common with many Members of your Lordships' House, and, once upon a time, in the 1990s, the NGOs worked incredibly hard and produced a detailed recovery plan for nature, the biodiversity action plan. This was so good it was adopted by government. It was judged essential that it contain action plans not just for declining species but for important habitat types, with measurable actions and outcomes. So why would we feel less able to do this now? That is ancient history, and they did it then.

The fourth reason why the Minister should adopt the amendment is that habitats are easy, not less easy, to assess and monitor. I know that his officials in Defra are telling him that habitats are very difficult to monitor, but that is absolutely not the case, especially with modern technologies such as satellites and drones. Habitats are big stretches of land; they do not move around; they are not complicated, like beetles with no names; they are pretty straightforward to assess and monitor.

Lastly, and this is my trump card, the Prime Minister's father phoned me up and pointed out to me—I hope the Minister noted that, but I am sure he pointed it out to the Minister as well, because he told me he had—that the latest draft of the global biodiversity targets for 2030 under the convention on biodiversity, the CBD, which will be agreed in China, or remotely through China, in October at the Conference of the Parties 15, combines species abundance and habitat extent and quality. So if we do not have targets that combine the two, we will be out of step with what is being aimed at by the rest of the world. I know that the UK Government

[Baroness Young of Old Scone]
are playing a key leadership role in COP 15, and it would be pretty strange if they were settling here, back home, for a less effective target based solely on species abundance and not habitats.

Lord Cameron of Dillington (CB): My Lords, I put my name to Amendment 7 at the end of July, before the Government's Amendment 6 was tabled and was public knowledge, because I think species abundance really matters. I am one of those, perhaps because I am a countryman, who gets worried about the state of our biodiversity. I worry that the CBD and COP 15 are almost never heard of in the press and in public, compared with COP 26—because COP 15 matters as much, if not more, to the future of our planet as COP 26 on climate change, although I realise completely that they are inextricably linked. In many ways, I am very glad that COP 15 has now been delayed until next spring, because the extra time might enable us to get better commitments from the rest of the world. To my way of thinking, government Amendment 6 is as good a way as any of throwing down the gauntlet to the rest of the world: "Copy that", we are saying. Hopefully, with the extra time now available before COP 15 meets, it might encourage some countries to respond in similar vein. I am always eternally optimistic.

I give the Government credit, first, for introducing Clause 3 in Committee and now for giving it the greater commitment of Amendment 6. I realise that, in government terms, setting a target of this nature is quite a bold step. After all, 2030 is not so far off and, in spite of all the new habitats we hope to create before 2030, from ELMS, net gain, conservation covenants, local nature recovery strategies, et cetera, no one can really predict how nature will respond to these incentives and whether we will get our habitat creation exactly right first time. I suspect not, but it is great that the Government have given it such a priority and, as I say, challenged the rest of the world to follow their example. So I thank the Minister, whose personal hand I detect here, and the Defra team involved.

9 pm

However, rather like the noble Baroness, Lady Young, in the long run I still believe that merely halting the decline in species abundance is not going to be good enough for our generation—although, like her, I probably mean the next generation, actually. We are starting at a very low level—an appallingly low level—and we need to not only flatten the curve but eventually bend it into a proper recovery. We really need to put right and actually amend the damage we have done in our lifetime. We must start to restore, not just patch up, the fabric of our environment.

So, having set this ambitious target now, through Amendment 6, I hope that at some time in the future the Government might wish to extend the timetable from 2030 to, say, 2040, and, within that time, aim for a proper reversal of the decline of species that our generation has been responsible for: in other words, not just halting the drop but actually growing the abundance and distribution of species in our country, as our Amendment 7 suggests. I believe we owe it to our grandchildren.

Lord Krebs (CB): My Lords, I have added my name to the amendment in the names of the noble Lord, Lord Randall of Uxbridge, and the noble Baronesses, Lady Parminter and Lady Jones of Whitchurch. I join other noble Lords who have already spoken in warmly welcoming government Amendment 6, which accepts the spirit of the amendment we had put forward. To halt the decline in species by 2030 is a very stretching target and I congratulate the Government on their clear ambition.

For many species, reversing the declines and halting them will require dramatic changes in land use and in habitat restoration. It will involve responding to the vagaries of unpredictable events, such as extreme weather and disease that could easily set progress back. So it is, without doubt, a very stretching target. I will ask the Minister to clarify a few points about it—perhaps, even if he cannot now, he might be able to subsequently in writing. First, what will be the baseline from which the target of halting will be judged? Secondly, which species will be included in the target? Thirdly, how will a composite measure of halting declines be computed if, as seems likely, some species will continue to decline while others do not? Fourthly, who will carry out the independent monitoring to check whether the target has been met: will that be the role of the OEP? Last but not least, who will be accountable if the target is not met?

I now turn to the two other amendments in the group. The amendment to which my noble friend Lord Cameron of Dillington has just spoken seeks to go further by requiring the Government to reverse the declines. I support it, but, as my noble friend said, this should be a longer-term aim. If the near-miracle of halting declines by 2030 is achieved, I think, inevitably, as the noble Baroness, Lady Young of Old Scone, said, the measures put in place to halt declines will, in the longer run, result in reversal of the declines—for example, by habitat restoration or creation.

That brings me neatly to Amendment 9 in the name of the noble Baroness, Lady Young of Old Scone, to which I have added my name, along with those of my noble friend Lady Boycott and the noble Lord, Lord Randall of Uxbridge. As the noble Baroness, Lady Young, said, no one would dispute the fact that, if you wish to maintain or restore species abundance, you have to create, maintain or restore the habitats on which those species depend. Therefore, this amendment is, in effect, a necessary precursor to government Amendment 6. Achieving the objective of halting and eventually reversing species decline will depend entirely on our understanding of and restoration of the habitats on which those species depend.

Habitat restoration is in itself a subtle art. In Committee, I referred to the example of the large blue butterfly and the complexity of its habitat requirements that have led successfully to its recrudescence in the south-west of England. Habitat heterogeneity is often crucial. Ecologists agree that one of the important ways in which agricultural intensification has caused dramatic declines in wildlife is because it has replaced a patchwork of different habitats with uniform monocultures. The relationship between species abundance and habitat heterogeneity is complex and needs to be understood.

Finally, in relation to habitat restoration, the so-called Lawton principles, put forward by Sir John Lawton in his review, *Making Space for Nature*, emphasise that not only do habitats have to be improved—be bigger—but they also have to be better connected, so that fragments of high-quality habitat are connected and crucial individuals and species can move between them. Amendment 9 is part of the package for halting species decline, and I hope that the Minister will accept that it is an essential precursor and adjunct to Amendment 6.

Baroness Bennett of Manor Castle (GP): My Lords, I briefly offer my support for Amendment 7 in the name of the noble Baroness, Lady Jones of Whitchurch, to which I thought I had attached my name; it was an administrative failure on my part that I did not. I also support Amendment 9 in the name of the noble Baroness, Lady Young of Old Scone. Both amendments have strong cross-party support. It is a great pleasure to follow the noble Lord, Lord Krebs. Indeed, his questions about how the Government plan to define and measure biodiversity are questions that we canvassed extensively in Committee. I do not believe—I would be happy to be corrected if I am wrong—that we have received any answers to them. It is essential for the understanding of this Bill that those things are defined and set out because, as we discussed in Committee, there are many different aspects of diversity, from genetic variance within a population to the number and range of species, and indeed the range of their habitats.

I will comment briefly on Amendment 6. Like other noble Lords, I welcome it, in that one always has to welcome progress and acknowledge the huge amount of work done by campaigning NGOs and campaign groups to get us this far. There is, however, a thing called "shifting baseline syndrome". In the brilliant *State of Nature* reports, which are issued regularly by our NGOs, the baseline is often the 1970s. To quote one figure, more than 40% of species have declined since the 1970s. However, based on the figure from 50 years earlier than that there has been a massive decline. If you go further back, it becomes evident that we live in an incredibly impoverished landscape. In the UK we have lost 133 species since the 1500s. These include obviously charismatic species like the lynx and wolf, but also the apple bumblebee, Mitten's beardless moss and the common tree frog, which fails to live up to its name.

I was reading, in preparation for this debate, a book called *An Environmental History of Wildlife in England*, by Tom Williamson. It speaks of 17th century England teeming with wildlife. The polecat and pine marten were present in every county. The great bustard was still a common sight on open land. We should be aiming to restore those kinds of wild landscapes, at least in part, and stopping decline does absolutely nothing to get us to that destination. That is where the habitats amendment, Amendment 9, is really important.

I was once lucky enough to visit in France one of 234 sites that are called—I apologise for my French, which I am told I speak with a broad Australian accent— réserves biologiques intégrales. They started in 1953 and that are quite small pockets of land that have essentially just been left untouched. I was lucky enough to visit one of these sites, and what amazed me was a depth of lichen on the trunks of the trees that you could touch; you felt that your hand sank into it and it went on for ever. That is a depth of richness of wildlife that we are so far away from now but need to start to head back to.

I strongly commend Amendments 7 and 9 to the House, but particularly Amendment 7. This is where I am afraid I will disagree with the noble Lord, Lord Krebs, in that I do not think that halting decline is an ambitious target. It is holding us in a state of extreme poverty of nature. We have to do better.

The Earl of Caithness (Con): My Lords, this has been a very interesting debate to listen to. I congratulate my noble friend the Minister on bringing forward his amendment. I made up my mind to speak when I listened to the speech of the noble Lord, Lord Krebs. He put his finger on something very important but then moved off it. Which species are we going to keep? Who is going to decide which species will be protected? One thing that is absolutely certain is that the law of unintended consequences will continue: human beings will get involved in one area that will help some species but will be to the detriment of others. So I hope that my noble friend will tell us how exactly this part of the Bill is going to work.

The noble Lord, Lord Krebs, said that success relies entirely on habitat, but, thank goodness, he changed his mind a little later and went on to say that it is part of a package. Habitat alone will not solve the problem and halt the decline of biodiversity. We need proper farming practices, we need habitats, we need winter feed and spring feed, which farming practices have all but eliminated on agricultural land, and we need predator control. It is a hugely complicated and difficult area. To give a simple example, many of us feed birds in our garden and think that we are doing a great job for nature. We are benefiting some birds; blue tits have certainly increased. But, as a result, a lot of other birds have not increased, because blue tits are quite territorial and quite vicious towards other birds. In this mix, we have some species increase but also some species decline.

To move to a perhaps more rural aspect, one could look at the work that the Game and Wildlife Conservation Trust has done with the Allerton Project. It has been trying for years to bring back waders, but unsuccessfully. If my noble friend says that we must bring back waders and even the Allerton Project cannot do so, how will this succeed and what will be the price?

My noble friend the Minister is, I know, terribly keen on white-tailed eagles. They are one of his specialities and he mentioned them in Committee, but they are vicious birds and not terribly good breeders. They are vicious in that, in parts of Scotland that I know, they have driven out the golden eagle. They fight golden eagles and kill hen harriers and peregrines. That is the nature of white-tailed eagles. They are lovely birds to look at, but if you get too many of them you will destroy a whole abundance of species that have been living happily on the moor for hundreds and thousands of years. As they are not terribly good breeders, man will have to intervene to make certain that the numbers were maintained by bringing in hand-reared chicks.

[The Earl of Caithness]

Whatever we do, we are upsetting the balance of nature. Can my noble friend explain how he and the department, and subsequent Ministers, are going to handle this? To me, this is crucial. I thoroughly approve of not only halting the decline but turning it round, but we must be cognisant of the fact that some species will be far worse off. Who will make that decision? Will it be transparent, so that we can all decide whether those are actually the species we want to see decline and the other species increase?

9.15 pm

Baroness Parminter (LD): My Lords, government Amendment 6 is truly world-leading. Here in the UK it will be pivotal in delivering the Government's ambitions through the Environment Bill, and indeed it could be pivotal globally—as the noble Baroness, Lady Young of Old Scone, said—by ensuring that, in the run-up to the CBD next year, other countries deliver the level of ambition that we have.

I am grateful to be one of the co-signatories of Amendment 5, which the noble Lord, Lord Randall, so eloquently introduced. I hope he helped apply a little pressure, as this House did, to ensure that this state-of-nature amendment was strengthened. It was not just us four—we would never dream of thinking we were that influential. The House of Lords Environment and Climate Change Select Committee, which I am privileged to chair, made a strong case, I believe, to the Secretary of State to do likewise. I pay tribute to the many hundreds of small charities and organisations and thousands of individuals who have been part of the state-of-nature campaign and who put pressure on the Government to deliver this amendment. As I say, it is a truly world-leading amendment, and the Government are to be congratulated. I will come back to that in my final remarks, but I want to say two brief things about Amendments 7 and 9.

As the noble Lord, Lord Krebs, says, it will be enough of a stretch to achieve the target outlined in Amendment 6, let alone that in Amendment 7. For my money, Amendment 7 has served its purpose. We created a strong pincer movement to ensure that the Government felt the full weight of pressure, and Defra was perhaps able to persuade other departments that there were far worse pressures out there if they did not acquiesce to Amendment 6. While I accept the case, I think it has served its purpose.

On Amendment 9, with apologies to the noble Baroness, Lady Young of Old Scone, with whom I rarely dare to disagree, on this occasion I again feel that there are times in politics when you just have to stop, look the opposition in the eye—in this case it is the Government—and say thank you, recognising the enormity of what has been done in Amendment 6. Therefore, we will make no further requests on this issue. There will be plenty more on many other issues, as I know the Minister will expect, but it is time to stop and say thank you.

Baroness Jones of Whitchurch (Lab): My Lords, I am speaking to Amendment 7 in my name, and to support Amendments 5, 6 and 9. We had an extensive debate in Committee on the Government's new clause setting out the need for species abundance targets, and many of the arguments have been reiterated today. It followed the excellent work of my colleagues in the Commons, who set out proposals for setting out and meeting a state-of-nature target, which we still believe is a clearer and less ambiguous concept than species abundance.

The flaws in the Government's new clause were clear for all to see when it was published—in particular, the lack of determination to meet the new target and instead only a requirement to

"further the objective of halting a decline in the abundance of species."

It also remained unclear which species would be covered by the target and whether they would be given equal weight. The noble Lord, Lord Krebs, quite rightly raised those questions today, as well as asking about the baseline, metrics and monitoring. Those questions still remain to be answered, and I am sure the Minister will address them.

However, since the debate, we have been grateful to Ministers for meeting with us and discussing whether the commitment in the Bill could be tightened up. We are obviously pleased that the Government have now tabled a further amendment to the Bill, making it clear that they now commit to halting species decline by 2030. But unlike the noble Baroness, Lady Parminter, I regard this as only a partial success. I very much thank my noble friend Lady Young, the noble Lords, Lord Cameron and Lord Krebs, and the noble Baroness, Lady Bennett, for sticking with me on Amendment 7 and continuing to support it. The government amendment is a far cry from the action that is really needed and from the Government's promises on this issue.

I will not rehearse it all again but, in Committee, we heard about the Secretary of State's Delamere Forest speech, in which he made it clear that this is about not just halting the decline of nature but stemming the tide of the loss and turning it around. We know that the G7 communiqué states

"our strong determination to halt and reverse biodiversity loss by 2030".

So my question for the Minister is this: if not in this Bill, when will we see the actions necessary not just to halt the decline in species but to begin to reverse it? Surely our credibility at COP 26 will rest not just on the pledges and promises of our leaders but on their determination to make the commitment a reality. This is why we tabled Amendment 7, which would make it clear that the objective is to halt, and then begin to reverse, the decline.

In Committee, the concept of bending the curve was raised several times; it has been repeated again this evening. This is what our amendment seeks to address. Regretfully, we are still on a downward spiral of biodiversity decline. We cannot halt the decline overnight, but we can begin to slow and reverse that trend so that the curve begins to go in a positive direction by 2030. Indeed, the Minister confirmed in his response at the time that

"We are on a downward trajectory both here and elsewhere in the world. That is why our challenge and our objective is to bend that curve."—[*Official Report*, 23/6/21; col. 339.]

That is what our Amendment 7 will deliver, with nine years to halt and begin to reverse that downward trajectory. The alternative, as the noble Baroness, Lady

Bennett, said, would be a state of nature destined to be much worse than it is now, with no way back. This is why we think that our amendment is simple and modest, and why it is the logic of everything that the Minister has argued up to now.

Nevertheless, we accept that the Government have listened on this issue. As I said, we welcome their Amendment 6 in the spirit of compromise, because I know that it was not an easy decision. We all know that the target to halt the decline of species abundance, although vital, is a stretched target and will not be easily reached. We pledge to do everything that we can to support the Government in delivering this commitment and begin the reversal of the decline, so we will not put our amendment to a vote. But we sincerely hope that such a reversal is the ultimate outcome of the pledge that the Minister has given today.

I want briefly to say something in support of my noble friend Lady Young's Amendment 9. As ever, she set out the arguments with huge authority and clarity, and I will not attempt to compete with her. She rightly made the point that species recovery and habitat protection should go hand in hand. Individual species need suitable habitats to thrive. What we need are equivalent targets for habitats, also to be delivered by 2030, which would contribute to a positive state of nature by then. Whether it is hectares in the national site network or sites of special scientific interest, we need stronger measures to enhance and preserve them. I hope that, in his response, the Minister will be able to assure my noble friend that this is the Government's intention and that these two strands of nature recovery will work in parallel and to the same timeframe.

On that basis, I 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): Again, I thank all noble Lords for their contributions to this debate. It is clear, as it was in previous debates, that there is strong support from all sides of the House for restoration of our precious species and the habitats they call home.

Government Amendment 6 is relatively straightforward. It requires the Secretary of State, when setting the species abundance target, to be satisfied that meeting the target would halt a decline in the abundance of species. The amendment puts beyond any doubt the Government's existing commitment to nature. It is a credit to the tireless campaigning of noble Lords across the House, notably my noble friend Lord Randall of Uxbridge—who texted me rather too many times on the issue—the noble Lord, Lord Krebs, the noble Baronesses, Lady Jones of Whitchurch, Lady Hayman and Lady Parminter, whom I thank for her very kind words, as well as numerous green groups, such as Greener UK, the RSPB, Wildlife and Countryside Link and Wildlife Trusts, and over 200,000 members of the public who signed a petition on this issue. I am extremely grateful to them all for applying the pressure they did.

We are leading the way internationally in requiring a target like this to be put into legislation, and I hope that your Lordships are as delighted as I am that we are breaking new ground. I hope this will encourage international partners to make similarly ambitious commitments. The ambition for this target is in line with the previous commitments made by the Prime Minister at the G7 summit, in the G7 nature compact and in the *Leaders' Pledge for Nature*, which the UK was very much involved in drafting.

The target is particularly important because it will strengthen our hand as we encourage other countries to make similarly ambitious commitments during the 15th Conference of the Parties for the CBD—the Convention on Biological Diversity—in spring 2022. Only with a global and truly collaborative approach will we be able to turn the tide on the global loss of nature.

I again thank noble Lords and all the various campaign groups who worked so tirelessly on this hugely important issue. I thank my noble friend Lord Randall for indicating his intention to withdraw his amendment and the noble Baroness, Lady Jones, for indicating that she will not press hers.

To answer some of the points raised by the noble Lord, Lord Krebs, nature has been in decline for decades, as he observed, and halting the decline of species in the timeframe we have—by 2030—will be a major challenge. Through the target we are committing ourselves to an undoubtedly ambitious objective, and we are leading the way internationally in doing so. But we are working now with scientific experts to try to model species outcomes—this also addresses some of the points made by my noble friend Lord Caithness—so that we can set a target that is evidence based and so that the Government understand what has to be done in order to deliver it. We do not have all the answers now; those answers will have to emerge as a consequence of that process. We will also need to ensure that the metric used to evaluate the success of this target is based on the best available data, that we have high confidence that it will continue to be collected, and that trends will be clearly identified over time.

In answer to the noble Lord's question about who will hold the Government to account, that will be the OEP. It will hold the Government to account on progress towards the targets, and every year it will be able to recommend how we can make better progress towards meeting those targets. The Government, as ever, will have to respond.

The noble Baroness, Lady Bennett, talked about shifting baselines. This is a well-documented phenomenon for land but also particularly in relation to ocean abundance. I hope that she, like me, will take some comfort in trends in recent years with the re-emergence of the pine marten, the proliferation of the beaver—with a green light from Defra, more or less—and the increase in the number of wildcats and other species, not all as charismatic, as well.

In response to my noble friend Lord Caithness, the truth is that no one can fully predict what is going to happen as nature recovers. It is just not possible. I do not think that anyone would have been able to predict the full impacts of the introduction of the beaver to certain environments. The impact has been phenomenal and profound, and it has created more dynamism in nature and more biodiversity than I think anyone would have been able to predict in ways that people

[Lord Goldsmith of Richmond Park]
were not able to predict. Likewise, the experience in Ireland is that the pine marten has a hugely disproportionate impact in terms of driving out the grey squirrel in a way that—again—I do not think anyone was able to predict. In those areas where wild boar proliferate, that comes with various problems, but there is no doubt that the presence of the wild boar in certain ecosystems is also enormously beneficial for lots of different types of species that might not otherwise flourish. So it is very difficult.

We are not starting this process on the assumption that we know all the answers. We do not know the answers—I do not think that anyone does—but we will put details in secondary legislation, and we will be conducting as robust and full a public consultation as we can early in 2022, to which I hope numerous noble Lords will contribute. I am afraid I am not giving my noble friend the specific answers he was looking for, but I do not think those answers exist.

9.30 pm

In Amendment 7, the noble Baroness, Lady Jones of Whitchurch, highlighted the importance of ambitious targets for biodiversity, and of course I support the sentiment. However, nature has been in decline for many decades, and halting that will be a real challenge. A decade is not a long time from the point of view of biodiversity and the interventions we will need to meet that target will continue to be beneficial long after that date. But having bent the curve of destruction by 2030, it is in no one's interest that we should then flatline. The ambition is not to stop the loss of biodiversity, but to bend the curve, the implication being that once we have managed to do so in such a way that we have halted the destruction, the curve will continue to move in the same direction and we will continue to see nature restored. That is what we are aiming for. All the policies we will introduce to halt destruction by 2030 will be just as important in reversing the loss we have seen in recent generations.

Assessing the impact of policies aimed at recovering our biodiversity demands a rigorous, evidence-based process and this is the approach that the Government are taking. We have listened to stakeholders and campaigners alike and understood and share their concerns, and we have pushed this issue as far as we can. I hope that what we have done reassures the House, and in particular the noble Baroness. I am grateful to her for saying that she will not be pressing her amendment.

On Amendment 9 tabled by the noble Baroness, Lady Young of Old Scone, given that habitat loss is one of the principal drivers of species loss—as we have already debated—our domestic 2030 species target will not only benefit species but will encourage actions to improve habitats, ecosystems, and the services they provide. The Prime Minister also announced in September 2020 that we will protect 30% of the UK's land by 2030. That involves not just lines on a map, but improving the quality of land protected as well, a point which has been made by a number of noble Lords. This amendment is therefore not necessary, and I respectfully ask the noble Baroness to withdraw it. Indeed, in light of the significant step we have taken in this area, I ask all noble Lords not to press their remaining amendments on this issue.

Lord Randall of Uxbridge (Con): My Lords, we have had a very good debate, and I have a new vision of the noble Baroness, Lady Young of Old Scone, as Oliver Twist. I was thinking which Dickensian character I might be; I was hoping for the Artful Dodger, but after my procedural mistakes earlier, I am only going to be Mr Bumble.

I am extremely grateful to all noble Lords who have taken part in this debate and who have also worked very hard to get where we are, and particularly to the Minister. I beg leave to withdraw my amendment.

Amendment 5 withdrawn.

Amendment 6

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

6: Clause 3, page 3, line 6, leave out "further the objective of halting" and insert "halt"

Member's explanatory statement

This amendment requires the Secretary of State, when setting or amending the species abundance target, to be satisfied that meeting the target or the amended target would halt a decline in the abundance of species.

Amendment 6 agreed.

Amendment 7 not moved.

Amendment 8

Moved by ***Baroness Jones of Whitchurch***

8: After Clause 3, insert the following new Clause—

"Environmental targets: plastics reduction

(1) The Secretary of State must by regulations set a target (the "plastics reduction target") in respect of a matter relating to reducing plastic pollution and the volume of non-essential single-use products (including but not limited to plastics) in circulation.

(2) The specified date for the plastics reduction target must be by 31 December 2030.

(3) Accordingly, the plastics reduction target is not a long-term target and the duty in subsection (1) is in addition to (and does not discharge) the duty in section 1(2) to set a long-term target in relation to resource efficiency and waste reduction.

(4) Before making regulations under subsection (1) which set or amend a target the Secretary of State must be satisfied that meeting the target, or the amended target, would further the objective of reducing the volume of non-essential single-use products (including but not limited to plastics) in circulation.

(5) Section 1(4) to (9) applies to the plastics reduction target and to regulations under this section as it applies to targets set under section 1 and to regulations under that section.

(6) In this Part "the plastics reduction target" means the target set under subsection (1)."

Member's explanatory statement

This new Clause would require the Secretary of State to introduce a target for reducing plastic pollution and the volume of non-essential single-use products (including but not limited to plastics) in circulation in the economy and society.

Baroness Jones of Whitchurch (Lab): My Lords, I am moving Amendment 8 and speaking to Amendments 10 and 36 in my name, and I thank the noble Baronesses, Lady Bakewell of Hardington Mandeville and Lady

Jones of Moulsecoomb, and the noble Viscount, Lord Colville of Culross, for adding their names in support. We are now moving on to a different but equally important issue.

These amendments would require the Secretary of State to set an overall target for reducing the amount of single-use and other plastics in circulation by 2030. Amendment 8 provides a specific obligation that would require more urgent action than the longer-term measures in the 25-year environment plan. Amendment 10 would require draft regulations to be set before Parliament by October 2022, and Amendment 36 would create a new clause to deliver an overarching "plastics strategy" to Parliament. This would include a reduction in plastics use, waste and pollution as well as avoidance of harmful substitutions and measures to help to mitigate impacts on climate change.

We believe that these are necessary because current UK legislation, and indeed the proposals in the Bill, address only four of the top 10 types of plastic pollution—and, even then, only in part. Yet we are surrounded by evidence that plastic pollution is suffocating our planet: it is choking our wildlife and it is in the food that we eat and the air that we breathe. This is why we need a target and a strategy to reduce plastic pollution overall, rather than dealing with it piecemeal. This is what our amendments would deliver.

Meanwhile, the current target, in the resources and waste strategy, of eliminating all avoidable plastic waste by 2042 is simply not bold enough. We had an excellent debate on this issue in Committee, and it attracted widespread support. There was huge frustration that the Government are not being tougher on this issue. Noble Lords all had excellent examples of how waste plastic was damaging their local habitats and waterways, how discarded fast-food containers were littering the streets, how wet wipes were blocking the sewers and how single-use plastic bags were fouling our rivers and destroying marine life. Then there are plastic sachets of cosmetic goods, single-use plastic masks and polystyrene packaging—the list goes on and on. The noble Baroness, Lady Jones of Moulsecoomb, rightly made the point that health issues also arise from plastic waste, which is increasingly being digested by humans in the food chain, with as-yet unknown consequences for public health.

All the evidence shows that the public want to see urgent action to limit the use of plastic. They increasingly understand the environmental damage that it can cause. Almost 80% of British people are trying to use less single-use plastic—but, although they are doing their bit, they also want action by businesses and government to address the main causes of plastic pollution, so there would not be a political problem in moving more quickly on this issue.

I acknowledge that the Government have taken some action already: the action on microbeads and plastic straws, stirrers and cotton buds is welcome, as is the increased charge for plastic bags. However, with the best will in the world, these issues are just the low-hanging fruit; they do not address the major causes of plastic pollution. We know that just 10 products, including plastic bags, bottles, food containers and fishing gear, account for three-quarters of global ocean litter. Plastic bottles and beverage containers alone contribute 33% of plastic pollution in our oceans and are a major source of street litter, despite the fact that alternative, recyclable drinks containers already exist.

It is a step forward that the Government have now announced that they are taking action on plastic knives, forks and plates—but this involves yet another consultation on a very small part of the plastics mountain, with an implementation date of 2023 at the earliest. We will make very slow progress if the Government are going to have a separate consultation on every knife, fork and spoon in production. Meanwhile, the EU and the devolved nations are already moving ahead on implementing a ban on these items.

The fact is that action on plastics so far has been painfully slow and beset by delays. As it stands, the Bill simply gives the Secretary of State powers to act on these issues; it does not set meaningful deadlines for change. In his response to the debate in Committee, the Minister talked about needing

"a more holistic approach to reduce consumption, not just of plastic, but of all materials."—[*Official Report*, 23/6/21; col. 255.]

He said that that was why he felt that a long-term approach was needed—but we do not need to wait until 2042 for this holistic approach to be rolled out.

We all want to see a more circular economy with more resource efficiency and less waste. We also understand the need to guard against undesirable substitutions for plastics, but we believe that our deadline of 2030 is quite modest and would deliver the more holistic approach we all recognise is necessary. I therefore hope that noble Lords will see the sense of our amendment and give it support. I give notice that I am minded to press it to a vote, depending on the Minister's response. In the meantime, I beg to move.

Viscount Colville of Culross (CB): My Lords, I have added my name to Amendments 8 and 36. It has been four years since "Blue Planet II" seared on our minds the image of the pilot whale mother refusing to let go of her dead calf. In the commentary, David Attenborough tells viewers that it could have been poisoned by its mother's milk, contaminated with microplastics she had absorbed from the plastic pollution in the ocean. It thrust into the public mind the unseen blight of microplastic pollution on our planet, which is destroying the health, and often the lives, of billions of creatures. New studies show that it is also having an adverse impact on human health.

This pollution comes not just from broken down plastic packaging and products but from microbeads in our cosmetics. As the Minister has said repeatedly during this Bill, the Government want to deal with this problem holistically. However, the clauses he cites to support this claim and the action the Government have already taken to reduce plastic pollution will give neither a holistic response nor the means by which it can be measured.

The noble Baroness, Lady Whitchurch, mentioned the ban on microbeads in rinse-off personal care products. It is important to emphasise that, while this is laudable, the ban still allows trillions of microbeads from cosmetic and sunscreen products to pollute our seas. This now

[Viscount Colville of Culross]
represents nearly 9% of microplastic pollution. Of course I welcome the Government's ban on plastic stirrers and cotton buds and the consultation launched on plastic cutlery and plates, which is to take place this autumn. These are supported by voluntary agreements, such as Textiles 2030 and the plastics pact. All these measures are important, but they are piecemeal attempts to deal with a massive planet-wide problem. To tackle such a huge issue, we need to look at the economy as a whole and for this country to lead the world in creating a path to resolving the dreadful scourge of plastic pollution. Equally importantly, we need to know that, beyond the warm words, progress is being achieved.

The noble Baroness, Lady Jones, has explained the deficiencies in the 2018 government resources and waste strategy. It is a very ambitious document; I spent much of the first lockdown reading it and felt that the Government had the issue in hand when I first read it. However, the target to eliminate all avoidable plastic waste by 2042—although excellent and most welcome—misses out the steps to achieve that target. To reach any target you need milestones along the way that allow industry and consumers alike to organise a progressive and achievable series of intermediary targets. That is what proposed new subsection (2) of Amendment 8 offers, with an earlier target of 31 December 2030. I fear that without progressive plastic reduction targets for the coming years, we will not succeed in beating one of the great scourges of our times.

I am aware that there are doubts about the targets for measuring microplastic pollution and how it can be measured. In the past there have been similar doubts about measuring carbon emissions. However, scientists have come up with amazingly accurate metrics in this field. The same is being achieved for plastics pollution. The Joint Research Centre of the EC worked with 100 laboratories across the globe last year and came up with 16 different methods for measuring plastics in the water. If a target is included in the legislation, I hope the OEP can work with these scientists to harmonise the best ways to measure and monitor the problem.

It is in the Government's interest to focus the public's minds on the steps they are taking to reduce plastic pollution. If they can prove by December 2030 that they are being effective, the public support will be enormous. Recent polls show that 92% of people in this country are concerned about this issue. It is easier for the public to monitor visible plastic pollution such as litter and discarded plastic masks; however it is harder to focus the public's minds on the invisible microplastic pollution which makes up 50% of plastic pollution in the ocean. I ask the Minister to respond to public concern by having a target for reduction in nine years' time, which can quantify the effect of the Government's action.

9.45 pm

I have also put my name down to Amendment 36, which calls for a plastics strategy for England. I am glad this is grouped with Amendment 8. As the noble Baroness, Lady Jones, pointed out, the two amendments work in tandem. A plastics strategy on the face of the Bill will allow Parliament to hold the Government to account on tackling this issue, and a plastics pollution target will allow that strategy to be checked against quantifiable goals. The only reason I can think of why the Government would not want to introduce a pollution target is a fear that they might fail to meet it.

I ask your Lordships' House to support Amendment 8. In doing so, noble Lords will respond to a huge public concern. In the coming years, it will allow Parliament to hold the Government's feet to the fire and ensure that this country leads the world in determinedly and continually bearing down on the scourge of plastics pollution in all its forms.

Baroness Jones of Moulsecoomb (GP): My Lords, I have signed Amendment 8, and I support the others in this group. I congratulate the noble Baroness, Lady Jones of Whitchurch, not just on an excellent, very clear introductory speech but on her relatively simple, clear Amendment 8. Is it not obvious to everybody that we need to reduce the volume of non-essential single-use plastic products—and more than just plastic, but plastic predominantly?

Plastic is the most incredible material. I could not function without it. But, before lockdown, my partner and I had reduced our single-use disposable plastic to virtually nothing. Covid put a hole in that, because so much food is wrapped up and there was not much choice. But now we do have a choice, and it is obvious to everybody that we have to encourage a policy environment that diverts food manufacturers and retailers towards, for example, compostable materials for food-contact packaging instead of plastics. Of course, we have to make sure we can compost those materials easily and not just by some special arrangement with local authorities.

A Plastic Planet is a global solutions organisation, and it has the single goal of inspiring the world to turn off the plastics tap by working with politicians, the UN, scientists and industry to convey the importance of the situation and to take action in reducing the use of plastic. It has created several schemes. Our Government could just pick up many of those schemes and use them immediately; they are ready-made and oven-ready.

According to 2020 figures from WRAP, flexible plastic represents a quarter of all UK consumer packaging, and plastic packaging is 40% of global plastic production. It is a problem. Only 4% of that consumer plastic packaging is currently recycled. The rest ends up in landfill or incineration, contaminating other waste streams such as food waste or, worse, our oceans and natural habitats where wildlife is threatened. It is threatened not just by contamination but by direct injury. We have all seen photographs of animals tied up, and birds tied up in plastic and dying. As WRAP acknowledges in its road map:

> "Urgent action is required to address the complex challenges that underpin this: poor design, collection infrastructure, inconsistent communications, sorting challenges, reprocessing technology, capacity and unstable end markets."

The Government claim to be a leader in tackling plastics pollution, but Greenpeace pointed out that they are actually fuelling the plastics crisis. The UK is the biggest contributor to this waste production behind the USA. What we do is force our waste on other

countries. Some have refused, but, apparently, 40% of our plastic waste is sent to Turkey, where of course it is producing serious health problems for the people in the surrounding areas, such as respiratory issues, nosebleeds and headaches. So the Government are fuelling not just the nature emergency but health crises as well, and you have to take responsibility for that.

The Green Party has a long-term policy whose aim is to have no more than 20% residual waste and to recycle and compost more than 80%: also, to have the costs of disposal charged to all district councils in direct relation to the quantity of waste collected for disposal by each district. This provides an incentive to district councils to promote waste reduction and increase recycling, as they will save directly on disposable costs. I hesitate to put more pressure on councils, because they are already incredibly strap-cashed—I mean cash-strapped; it is getting very late for me, it is 50 minutes past my bedtime. They are already deprived of funds by this Government, so they would have to be funded to do this.

Baroness McIntosh of Pickering (Con): I am very persuaded by my noble friend's argument for a holistic approach to waste. Could my noble friend take this opportunity, in the context of these amendments, to set out how his approach would differ from the circular economy which we were signed up to when we were members of the European Union? I hate to deprive the noble Baroness, Lady Jones of Moulsecoomb, of her beauty sleep, but, at the risk of doing so, I will ask my noble friend why we are continuing and indeed increasing our export to countries such as Turkey and, I understand, other third countries, considering that we have the facilities to dispose. We are a first-world country and have much better facilities to dispose of this. My understanding is that landfill sites, certainly in England, are full and that many have already closed. I just wonder how, in the context of disposing in particular of plastic waste, we will address this issue as a responsible Government.

Lord Blencathra (Con): My Lords, it is always a pleasure to listen to the noble Baroness, Lady Jones of Moulsecoomb, but I was getting increasingly worried, over the years, that I was tending to agree with so much of what she said. Then I realised, when I saw her sitting temporarily behind me, that she might be a closet Conservative after all. I was quite overwhelmed and thought how much more joy there is over one sinner that repenteth than over 99 just persons.

I was tempted to support these amendments, even to the point of a vote. When I heard the announcement last week from my noble friend at Defra that they were planning to ban single-use cutlery and plastic plates, I asked myself: if a Minister has the power to do this without putting anything in the Bill, can he extend it to other plastics as well? That is my main question for him. If he can do that, I would like him to target my bête noire which, initially, is polystyrene. There is absolutely no justification now for any polystyrene food dishes whatever: whether they are used as takeaways, for carry-outs or plastic cups, there are paper alternatives.

The other totally unjustified use of polystyrene—without rehearsing the speech I made in Committee—is in packaging material, whether it is those awful plastic bubbles that go everywhere and get stuck to everything under the sun, or large pieces of polystyrene holding televisions or tape recorders and so on. There is no need for them whatever, because cardboard can do the job infinitely better—it is just as sound and can protect valuable material. I also suggest that that should be a target: one could move on that very quickly indeed. The polystyrene used in house construction is another matter; it could take longer to come up with an alternative.

There is a final form of plastic I would like the Minister to tackle. If one buys ready meals, for example, some seem to come in grey containers, some in white containers and some in black containers, but I understand that if they are all mixed together in recycling, the whole thing is useless—only some of them are recyclable. So I simply say to my noble friend that, if he has powers to do so, can he start to compel the food manufacturers and supermarkets to go for a plastic microwavable dish that is recyclable and get rid of those which destroy the recyclability of the good ones?

Those are the only points I wish to make to my noble friend and I come back to my question: can he reassure me that he and Defra have all the necessary powers, in due course, to ban any other forms of plastic, whether it is horrible little sachets with shampoo in them, plastic food containers or polystyrene? That is all I seek from my noble friend tonight.

Viscount Trenchard (Con): My Lords, there is an emerging consensus that plastics are worse for the environment than other substances used in single-use products. The plastics tax scheduled to be introduced next year will create an incentive for suppliers to shift away from plastics towards other substances, such as glass, aluminium and cardboard. However, this will not necessarily benefit the environment in all cases. I agree very much with what my noble friend Lord Blencathra just said about polystyrene, but the situation as far as plastic bottles are concerned is different. The carbon footprint released by the manufacture of glass and aluminium is around five times greater than that released by PET manufacturing. In other ways, too, PET has advantages over other substances for water and soft drinks bottles. Do we want a return to the days when there was a significant risk of cutting your foot on broken glass discarded on a beach?

Furthermore, there is growing public acceptance of a higher proportion of recycled material within bottles on the market today. Many brands of bottled water now supply bottles containing 50% recycled material. As far as plastic bottles are concerned, the answer is surely to introduce a deposit return scheme similar to that in operation in Germany, which should enable us to equal the German achievement of recycling 98% of plastic bottles compared with our record of around 68%.

Amendment 36 in the name of the noble Baroness, Lady Jones of Whitchurch, would introduce a plastic strategy for England. I think it should cover other materials besides plastics. It is also essential that discussions with the devolved authorities result in the adoption of a single coherent strategy for the United Kingdom as a whole. The Scottish deposit scheme, for example, requires producers to provide a great deal of detailed information, but, bizarrely, does not require labelling

[Viscount Trenchard]
to state clearly whether a product can be recycled. This is very difficult for small brewers that sell through wholesalers that distribute products in England and Scotland.

I do not know whether the noble Baroness and her co-signatories recognise the conflict inherent in subsection (3) of their proposed new clause. Subsection (3)(a) seeks to achieve

"a reduction in single use plastics".

This is surely incompatible with subsection (3)(b), because the shift to greater use of glass and aluminium will result in increased carbon emissions.

As far as bottles are concerned, if we can move to a culture of recycling based on an effective deposit return scheme, there are reasons to retain PET. We should not throw the baby out with the bath-water.

The Earl of Caithness (Con): My Lords, my noble friend raises an important point: we must not condemn plastic out of hand if it is a better option than another. Regarding Amendment 36, which is the one that I like in this group, his concerns will be covered under proposed subsection (2), where the Secretary of State sets out his objectives. If the objective quite clearly states that plastic is the best material for a particular process and preferable to another for carbon, the strategy would take that into account.

Baroness Neville-Rolfe (Con): My Lords, I rise mainly to speak to Amendment 8, though my observations are also relevant to the other proposals. I share the mover's desire to reduce plastic use and plastic waste, especially given the damage they are doing to our rivers and oceans and the creatures they support. We have all seen the horrific pictures of fish throttled by plastic, and there is growing awareness of the growth of plastic use and its irresponsible disposal—but this amendment would not provide the best way to achieve the desired objectives.

The proposals are inappropriately interventionist and wasteful of administrative effort and political capital. They are also insufficiently radical, as they mainly focus on single-use plastic. Using a bag, a cup or a fork—or, indeed, a plastic car part—twice is only marginally better than using it only once. The question is whether the use of the resource is justified or whether the need could be satisfied in a way that did not use damaging plastic.

10 pm

I am also of the view that we should not focus the Bill and our efforts on yet another strategy and yet more targets in this area. We need action now—I think that the noble Baroness, Lady Jones of Whitchurch, feels the same way—and preferably on an international basis. What plans does the Minister have to encourage international effort in this area? Do the Government perhaps envisage raising it at COP 26, when all those who could drive real change on plastics are gathered together?

We also need research to develop and get to market substitute products that break down safely and rot in a few years. I have seen everyday plastics that break down within 18 months pioneered at Imperial College. The French have developed plastic substitutes made from vegetable crops and the Italian fashion industry has pioneered the reuse of plastics such as fishing nets in its designer clothing. Use of such technologies should be invested in around the world.

Plastic is oil based, and the stratospheric growth in its use needs to be reduced by international action and domestic taxation. Small changes such as the phasing out of plastic straws, forks and microbeads are fine and to be commended, but they do not begin to bring about the change in resource use that we need. Sadly, the Government have been too slow in reducing the damage caused by plastics. I have been calling for many years for a decent national recycling system for plastics, with proper labelling of products and recycling bins backed by sensible incentives to replace the motley collection of schemes run by different local authorities. I welcome the move towards a single, consistent scheme of recycling across the UK, and ask my noble friend the Minister when that will come in. In this case, we should have a uniform system of bins and labelling to get recycling up from current levels, reducing the pressure on landfill, which has been mentioned in this debate, and making it easy for the consumer to help with the change that we need in plastic use.

In conclusion, I am grateful to my noble friend the Minister for the progress that is at last being made on plastics with this Bill—and I think there are a lot of powers in the Bill—but I urge him to focus on the detail and actually to deliver. I thank the noble Baroness, Lady Jones of Whitchurch, for initiating this debate, but I believe that her objectives could be better met by other means.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, given the hour, I will try not to duplicate the contributions of others. I will speak to Amendment 8, which I have signed, and I support Amendments 10 and 36 in the names of the noble Baroness, Lady Jones of Whitchurch, and others. The noble Baroness introduced this important group of amendments with knowledge and passion. Others have also spoken with passion and repeated their comments from Committee.

Plastic pollution is all around us, yet we seem unable of our own free will to tackle its use, reduce its impact and move to alternatives. It is therefore imperative that we use the opportunity of the Environment Bill to take bold steps to legislate to ensure that plastic use and pollution are reduced as quickly and effectively as possible. It is, of course, true that not all single-use items are made of plastic. Other items have a limited use, and it is time to move away from a throw-away society. Plastic is the most invidious and long-lasting material, contaminating our countryside, waterways and seas. It kills our wildlife, which becomes entangled in its web, and poisons those animals and birds that unwittingly eat it.

A target for reducing the use of plastics must be set for December 2030. This target must be stringent to be effective. Vital to achieving reduction in the use of plastics is a properly thought-out plastics strategy. This should be laid before Parliament by March 2023. This is not an unreasonable target for completion. Plastic reduction was trailed in the 25-year environment plan, and much work has been done on this subject already.

I welcome the contribution from the noble Baroness, Lady McIntosh of Pickering, and agree that we should not be exporting our waste to other countries; I spoke to that in Committee. Microplastics are present in all areas of our life: our oceans, landscapes and mountains. All around us, microplastics are polluting our lives and wildlife. Plastic bottles and polystyrene packaging and food wrap, however well designed, are still causing pollution. Microplastics, which occur from plastics breaking down into tiny pieces, must be tackled. Legislation to ban microbeads in wash-off products was welcome, but this dealt with only 1% of plastic pollution, whereas beverage litter contributes to 33% and tyre dust to 18%. It is really time that we met this challenge head on and produced both targets for plastics reduction and a proper plastics strategy to ensure that this happens, with milestones to ensure that progress is being made.

The country as a whole is extremely concerned about the use of plastic and the pollution it produces, the effect it is having on our wildlife and the unsightly detritus around our countryside. Now is the time to show that the Government are taking this matter seriously. If the noble Baroness, Lady Jones of Whitchurch, presses the amendment to a vote, we on the Liberal Democrat Benches will be supporting her.

Lord Goldsmith of Richmond Park (Con): I thank all noble Lords for their contributions to this important debate. The Government of course share the concerns of the noble Baroness, Lady Jones of Whitchurch, regarding plastic pollution, and we are already working hard to address this urgent issue. Building on the action taken to date on the most commonly littered items, we announced just a few weeks ago that we will carry out a consultation this autumn on banning single-use plastic plates, cutlery and polystyrene drinks containers. The noble Lord, Lord Blencathra, will be pleased with the last one, and I confirm that the answer to his question is yes: we already have the power to extend that ban to any items that cause environmental damage. I strongly agree with his condemnation of the foam used to protect televisions, sachets and all the rest of it. I hope that we will be able to go much further than we currently have.

The noble Viscount, Lord Trenchard, made the point about the carbon footprint of plastic versus the alternatives. He is right in some circumstances—a paper bag versus a plastic bag, for example—but it is not just about carbon, as a number of noble Lords have said. The damage that plastic does when it gets into the environment goes far beyond its carbon impact, as we saw in those extraordinary David Attenborough images.

Regarding Amendments 8, 10 and 36, tabled by the noble Baroness, Lady Jones of Whitchurch, the Government's view is that publishing a separate plastics strategy and setting a plastics target in isolation from the wider waste agenda risks detracting from the action that we are taking now to achieve our overarching circular economy ambitions. It is worth emphasising that our profligate attitude to resources is doing immeasurable harm to the natural world, and not just our use of plastic. Extraction and processing of those resources in the round contributes to about half of the total global greenhouse gas emissions, as well as 90% of biodiversity loss. And the problem is growing. Globally, we extract three times the amount of resources from nature as we did in 1970, and that figure is set to double again within a generation unless we change course.

The Government are committed to reviewing the resources and waste strategy every five years, and this provides an opportunity to set out further detail on our approach to tackling plastic pollution within our transition to a circular economy. The Bill already requires the Government to set and achieve at least one long-term target on resource efficiency and waste reduction, and we intend to set a target to reduce consumption of all materials, including plastic. In addition, the Government are already exploring packaging recycling targets, under the proposals for extended producer responsibility for packaging. We have made progress to increase reuse and recycling and combat unnecessary single-use plastics. The Government introduced bans on plastic straws, stirrers and cotton buds last year, and I have already outlined our next steps to build on that. Following the success of the carrier bag charge in reducing consumption of single-use carrier bags by 95% in the main supermarkets by 2020, the Government have increased and extended it to all retailers in May this year.

In addition, this Bill includes a number of measures targeting all stages of a product's lifecycle, which will enable the Government to further tackle plastics and plastic waste as well as drive toward a more circular economy. These measures include powers to enable us to apply extended producer responsibility across a wide range of material and product streams, introduce deposit return schemes and establish greater consistency in the recycling system—a point made by my noble friend Lady Neville-Rolfe. The Bill will also allow us to place charges on single-use plastic items, set minimum resource efficiency and information requirements for products, and ban the export of plastic waste to non-OECD countries.

In response to a comment made by the noble Baroness, Lady Jones of Moulsecoomb, local authorities have always been, and will always be, under pressure, but we have committed that any additional cost incurred as a consequence of this Bill will be covered by central government.

On the international front, we are very much engaged in trying to encourage other countries to tackle their waste problems. We set up the Commonwealth Clean Oceans Alliance, and well over half of Commonwealth members have signed up and committed to it. Many of them have already introduced legislation to reduce single-use plastics. We are one of the leading countries calling for an international plastics treaty—a sort of Kyoto agreement for plastic—and we are very active members and funders of the Global Ghost Gear Initiative. More than half of the waste in our oceans is actually ghost gear, abandoned fishing gear, as opposed to plastic bags and the like. We are doing a great deal internationally. We can and should do more, but we are objectively world leaders in relation to the international campaign.

This Bill provides a robust approach for ambitious targets and takes action to achieve them. The amendments are therefore worthy but unnecessary. I hope the examples

[Lord Goldsmith of Richmond Park]
that I have put forward reassure the noble Baroness that we are very much on the case in tackling single-use plastic as well as plastic more broadly, and I beg that she withdraws her amendment.

Baroness Jones of Whitchurch (Lab): My Lords, I thank all noble Lords who have spoken. Once again, the examples that people have given underline the scope and scale of the task. I think there was also consensus on the need for urgent action.

I have listened carefully to what the Minister had to say. I absolutely accept, of course, that there are consultations taking place, but our concern always has been and continues to be that they are happening on a piecemeal basis. It is also true that the Bill gives Ministers powers to take further action but, again, there are no deadlines in the Bill for those measures, so we are left waiting—step by step, item by item—for progress to be made. I know that there is a lot of activity, but not much is landing at the moment in terms of practical measures to cut back on the use of plastic.

The fundamental problem here is that the Bill has a fragmented approach to reducing plastic pollution rather than, as I was saying earlier, a holistic approach to tackling all plastic pollution. I say to the noble Baroness, Lady Neville-Rolfe, that our Amendment 8 is not just about single-use plastics; it is about an overall reduction in the plastic in circulation, setting a precise target that we believe will focus minds and deliver what the public are crying out for. There is huge public pressure for this.

The Bill has measures on resource efficiency and waste production, and those are welcome, but, as it is framed, it is likely to miss out, for example, lightweight plastic products and microplastics, which have little monetary value but cause huge damage to the ecosystem —one of the points that the noble Baroness, Lady Bakewell, was making. It is also true that it says very little about other important issues, such as discarded fishing gear, plastic pellets and synthetic fibres, which are part of the campaign of the noble Lord, Lord Blencathra.

I agree with the noble Baroness, Lady Jones of Moulsecoomb, that there is the continuing scandal of exporting our waste. I heard what the Minister said about that and I am pleased to hear that those talks are taking place but, again, this requires more urgent and immediate action.

Fundamentally, we believe that our amendment is practical and achievable. In a sense, it is much easier than some of the complex issues that we were talking about earlier, to do with tackling soil and air quality. This is something to which we know the solution now—we know the answers. For most of the issues that we are talking about, there are alternatives to using plastic. It is not as though we are waiting for the science to catch up with us.

A plastics strategy is required to reduce the use, manufacture and sale of single-use plastics. We need to make sure that we avoid switching to more damaging alternatives, but those issues can and should be delivered by 2030, in line with the other shorter-term measures in the Bill. It would require ambition and leadership, and that is what we expect from this Government.

Amendment 8 says that we should set a deadline for an overall reduction in the use of plastics. I am sure that everybody here agrees with that and believes that this is what needs to be done. We need to write it into the Bill, so that we can make sure it happens to a sensible deadline. It can be done by 2030, and we believe it should be.

I regret that the Government have not felt able to embrace our proposal, and on that basis I would like to test the opinion of the House.

10.15 pm

Division on Amendment 8

Contents 81; Not-Contents 107.

Amendment 8 disagreed.

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10.28 pm

Amendment 9 not moved.

Clause 4: Environmental targets: process

Amendment 10 not moved.

Consideration on Report adjourned.

House adjourned at 10.29 pm.

Grand Committee

Monday 6 September 2021

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): My Lords, the Grand Committee is about to begin. If there is a Division in the House, the Committee will adjourn for 10 minutes.

Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) (No. 2) Regulations 2021

Considered in Grand Committee

3.30 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) (No. 2) Regulations 2021

Relevant document: 8th Report from the Secondary Legislation Scrutiny Committee.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, I beg to move that this Committee approve the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) (No. 2) Regulations 2021, which were laid before the House on 21 June 2021.

The emergence of the Covid-19 virus has posed the greatest threat to our way of life in a generation, and the past 18 months have been a challenge for us all, both as a nation and as individuals. The essential restrictions placed on our day-to-day activity have saved lives and limited the spread of the virus, but they have of course placed unprecedented pressures on many businesses. I am sure all noble Lords will share my optimism that the early signs of a strong recovery signal a return to normality. However, many businesses are not out of the woods just yet.

The four-step road map offered a road back to normal life while our world-class vaccination programme was successfully rolled out. Each step of the road map was implemented to safely reintroduce social contact for businesses, schools, activities and events based on the contemporaneous data. Step 4 was successfully launched on 19 July and led to the removal of all legal limits on social contact and the reopening of many premises. I am delighted to report that as of today, 6 September, more than 60% of the UK population are now fully vaccinated, and 71% have received their first dose.

Since the start of the pandemic, the Government have put in place an economic support package totalling £352 billion through the furlough scheme and the Self-employment Income Support Scheme, support for businesses through grants and loans, and business rates and VAT relief. In March, during the Budget speech, the Chancellor announced a generous extension of economic support for businesses and individuals, with many schemes continuing well beyond the end of the road map to help businesses to bounce back. The Government continue to support businesses by once again extending this key protection to prevent companies being forced into liquidation where their debts are due to the effects of the virus.

It has been widely reported that although many businesses are now open and trading they have continued to feel the effects of the periods of shut-down and limited trading over many months, and it will take some time for them to get back to normal financial health. This instrument will help companies while they get back to more normal activity by extending to 30 September 2021 a measure first introduced by the Corporate Insolvency and Governance Act 2020: specifically, the temporary suspension on issuing statutory demands and the restrictions on company winding-up petitions.

This measure has been extended several times by regulations, most recently from the end of March to 30 June, and this instrument seeks to extend it a further time, giving businesses the chance to trade free from creditor action to liquidate them for debts that arose because of the unique situation that many businesses have been in. This extension will allow them to sort out any financial difficulties that have arisen during the enforced restrictions over the last year or so, while the economy gets back to normal.

Since its introduction in June last year, the measure has protected many viable companies from aggressive creditor enforcement action during really difficult trading times. The temporary restriction on company winding-up petitions means that anyone who wishes to wind up a company that has not paid its debts must satisfy a court that those debts are not Covid-19 related. This extension aims to give many companies much-needed time to get back on their feet as the economy begins to return to normal: time for them to generate income, take advice, reach out to their creditors and, where appropriate, time to restructure.

The Government have helped companies while they had to stay shut, and, now that they are able to open, it is crucial that we do not withdraw that help prematurely before they are given the chance to trade back to financial health. Although this measure is intended to help companies that may be subject to aggressive creditor enforcement, the Government have always been clear that it is not to be seen as a payment holiday. Where companies can pay their debts, they should do so.

I know that many businesses and their business representatives will welcome the continued support that these regulations offer, but of course I also acknowledge that this measure will mean a further period of uncertainty for creditors where their rights to enforce recovery of their debts are temporarily restricted. We do not take this action lightly, and we are very aware of the impact on creditors. However, as I have said, the measure is intended to help those in financial difficulty as a result of the pandemic and

[Lord Callanan]
must not be used as an excuse to avoid payment. So where a company can pay its debts, of course it is right that it should do so.

We will continue to monitor the situation carefully, consulting with stakeholders and the business community to determine what further action may be necessary when these regulations expire at the end of this month. I commend these regulations to the Committee.

Lord Leigh of Hurley (Con): My Lords, I declare an interest. Since we last debated this subject, I have become a non-executive director and chairman-designate of Manolete Partners plc, an AIM-listed company involved in insolvency litigation. Therefore, I have a vested interest in addition to my other business interests.

I again congratulate the Government on the swift and decisive action taken with the introduction of this legislation in responding to the economic crisis. We did not agree on every aspect of the legislation, particularly some details of the moratorium, but we did agree on the direction of travel and the effect that all this has had. This debate is of course in respect of regulations which, as I understand it, expire at the end of this month, so although necessary, because of the way the regulations are drafted, it is probably the shortest-term effect of any regulation that has gone through this House.

More important is to know and understand what will happen after the end of this month. A number of us would argue that the time has come to relax these regulations and to rely on the market in which this Government have such faith. The market will determine which companies should have more capital allocated to them, which companies are zombie companies and which companies do not have a future. That will be decided partly by creditors and partly by people choosing whether to invest in companies that need such cash to face creditors.

It is interesting to look at the situation regarding creditors' voluntary liquidation. Creditors' voluntary liquidation is essentially when directors decide to throw in the towel because the business cannot carry on of its own volition. The figures published by the excellent Insolvency Service just the other day show that the level has returned to pre-pandemic levels, about 2,800 companies in the last quarter, which is roughly where it was pre-pandemic and is constant. So the market is returning to normal where it can. I very much hope that the Minister can give us an indication soon of the Government's thinking on this extremely important issue.

Lord Sikka (Lab): My Lords, there are many industries that are still not fully on a path to recovery, good examples being hospitality and events management. If we are thinking about terminating this legislation at some stage, surely before we do that the Government will have to present us with some evidence of what the impact of the cliff edge will be on those and other industries.

Clearly a cliff edge is looming, although the can continues to be kicked down the road. What will happen when suddenly, as has been said, you let the market forces rip? What will be the effect of this legislation upon creditors who would perhaps have expected to have some recovery but who now must wait to recover? Clearly there is a knock-on effect, but the Government have not really presented any estimate of that. When the cliff edge comes, what restraints will be exercised by banks, private equity, hedge funds and other secured creditors, or will they all simply be rushing to collect their resources, collect their money, and put businesses into liquidation? That will clearly have a huge negative effect.

The Government need to present us with a plan. What exactly is the value of the debts that are affected? How many businesses? How many creditors? We have heard absolutely no information from the Government. When market forces are allowed to rip, what exactly would be the constraints on the insolvency practitioners who charge mega sums for insolvency fees that actually worsen the crisis? The BHS liquidation began in 2016 and is still not finished. Carillion began in 2018 and is still going. Thomas Cook is still going. Maplin is still going. Monarch Airlines and many others have been going for decades and decades. There seems to be absolutely no check. If the Government are really planning ahead, they need to present a plan about how they are going to constrain the insolvency industry. We have not really heard anything about that. I have asked in PQs for information about the values that unsecured creditors may lose. I am told that the Government have no figures. Again, I ask: what is the Government's plan to deal with the cliff edge ahead?

Lord Hodgson of Astley Abbotts (Con): My Lords, I declare an interest. I am chairman of the Secondary Legislation Scrutiny Committee, which has reviewed these regulations, but I speak this afternoon not as its chairman, nor indeed for the committee at all; I speak entirely in a personal capacity.

My noble friend the Minister will be aware of my interest in these matters, and it would be right for me to begin by thanking him and his officials, led by Paul Bannister, for the time they have given me and other interested Members of your Lordships' House over the past few months to look at aspects of the particular problem we are dealing with this afternoon. Indeed, they have given us not just time but action in the sense that we have had some really sensible regulations about pre-packs, which have become a feature of choice and often with connected persons. The regulations which the Government have produced have done much to block that loophole and, judging by my postbag, they seem to be working well so far, although, as the noble Lord, Lord Sikka, has pointed out, the point of maximum strain will of course come when we reach the end of the subsidies, whenever that may be.

I have a couple of points to make this afternoon. The first is about how we judge when "can't pay, won't pay" moves to "can pay, won't pay". My noble friend the Minister will say that paragraph 7.3 of the Explanatory Memorandum says that that is when the court is satisfied that the company's inability to pay is not due to coronavirus. That may a possibility for a large and well-resourced company, but it is certainly beyond the resources of a small or medium-sized enterprise to go to court to try to prove this issue, which is pretty hard to prove anyway. I do not think that the Government should think that this offers anything other than the

largest companies a proper balance in the argument about "can't pay" and "can pay, but not bothering to pay".

Of course, one understands, and has an instructive and instinctive view, that one should be helping people whose lives, efforts and companies have been set back by the pandemic, an issue over which they have no control. Of course you feel sympathy for them. However, we always have to balance that sympathy with the knowledge that this is a zero-sum game. One person's gain is another person's loss. I may be a supplier and may therefore be caught up in this; I may be unable to get paid and my business may be affected. It is always tempting to think that one should be trying to help those who are in difficulties and forgetting those who are strong. We need to avoid, or at least to minimise, situations where businesses that are already weak—perhaps for reasons beyond coronavirus, although that has created an additional strain—are kept afloat at the expense of suppliers and landlords.

In summary, we need to avoid taking policy decisions that benefit the weak and weaken the strong. When my noble friend winds up, it would be helpful if he could give us a stream of consciousness that will guide us as to how the Government judge all this. I understand the magic references to constant review in the Explanatory Memorandum; viable but cash poor is in there as well.

3.45 pm

It would be helpful if the Minister could broaden out, in a slightly philosophical way, how his department is considering the matter and how it will make judgments in the future. Please, it must not fall back on saying, "It's up to the court", because the court is a court and not always as well able to judge commercial matters as the Government and advisers to them. That is my first point.

My second point concerns the position of landlords. They are always unpopular; nobody likes paying rent, and people always try to avoid it. However, we need to remember that big and small landlords provide the foundations for a huge swathe of our industrial, commercial and residential activity. As before, this is not just an academic exercise. The pensions that many of us enjoy, or hope to enjoy, are underpinned in large measure by real estate values. If we allow this sector to be savaged, the impact will be felt by pensioners up and down the country. Our environment, our neighbourhoods and in particular our high streets will depend for their vitality on a continuing flow of real estate investment. If we allow landlords to become too much the target, we run the risk of damaging those important factors.

My noble friend needs to be aware—I am sure he is already—that the position of landlords under the present regulatory regime, the landlord restructuring plan, is giving cause for concern. At this point, I need to declare a second interest, in that I have a shareholding in a family investment company that rents out commercial property—happily, to date, without any of the problems to which I will refer, but the Committee needs to be aware that I have that conflict.

I will have just a word on the specific challenges, for which I would be grateful for my noble friend's reaction this afternoon or, if he feels that I have gone too far off-piste and his brief is not ready for this, I am happy to receive a letter, and I am sure other Members of the Committee will be happy to do so too.

Noble Lords interested in the area will be familiar with what are called, in current legislation, cross-class cram-down provisions. These prevent a small group of creditors greenmailing—holding a restructuring plan to ransom. In that sense, they seem reasonable enough and sensible, but they also enable one group of creditors to bully another into accepting unfair terms. There are many constraints on individual classes of creditors, and landlords can have difficulty obtaining appropriate compensation or protection. First, it is very costly. The Virgin Active restructuring cost about £3 million. It has to happen very quickly. A real estate company or landlord has three weeks to get its case together, brief its Silks—its legal advisers—and get to court. Once again, these are sufficiently high hurdles that small and medium-sized companies just cannot go there. Big ones can, but smaller ones are left behind. Secondly, life being what it is, unscrupulous firms facing difficulties can make their financial affairs even more difficult in advance of such an issue, so it is even more problematic, costly and complicated for a landlord seeking to obtain protection to go to court and get it.

There is also the concern that landlord restructuring plans can go much further than what is needed just to save the business, if that business is in danger of going into administration. It is what is known in the legislation as the relevant alternative. A firm in trouble has an incentive to plan its financial performance as part of a restructuring likely to lead to administration and so set landlords in particular, but also other creditors, at a disadvantage.

My last point on this matter, and the Government understand this, is that there are not now the protections against connected parties. In company voluntary arrangements, less than 50% must be connected parties. There is no such provision in this measure. With a landlord restructuring plan, 70% of the connected parties —shareholders, creditors, whatever—could vote in favour, with the landlord unable to obtain redress for it.

Those are just some of the issues bubbling up as part of the situation that we face and which the Government now need to think about. What could be the solution? Without diving too deeply into the detail, I point out that the Government have powers under the Corporate Insolvency and Governance Act to introduce further secondary legislation to address these challenges specifically. First, they can amend the rules governing cross-class cram-down provisions. Secondly, they could introduce the 50% unconnected creditor test for LRPs, which, as I have mentioned, presently applies to CVAs.

When my noble friend responds, he may claim that there has been only a limited number of cases of this abuse so far, but, as the noble Lord, Lord Sikka, and I said earlier, the point of maximum danger will be when the pandemic measures are withdrawn, if we extend beyond 30 September. Acting then will be too late: the horse will have bolted. However, if the Government decide to act now, there is a reasonable prospect that the new regulations could be in place in time to keep the horse in the stable. I look forward to hearing my noble friend's reaction.

Lord Bassam of Brighton (Lab): My Lords, we are back again debating measures to extend the restrictions on the use of statutory demands and winding-up petitions. I think this is the third time we have debated them, and every time we welcome, as we would from our Benches, the Government extending the safety net for businesses in distress because of the pandemic.

Just as we supported the emergency legislation last year, we welcome any measures to support the businesses that closed to keep us safe. As the Minister knows well by now, we argued then that the protections in the Act should be extended over a long period. As the Government extend them again, we reiterate the point, as we have before, that these short extensions cause real uncertainty and worry for businesses in the run-up to each expiry date, concerned as those businesses are with the cliff edge.

As the economy opens and restrictions end, it is right that these measures are kept under review, but we must also remember how many people are still affected by insolvency. The Government's recent statistics, from July 2021, showed that there were 1,094 registered insolvencies. This was 13% higher than the number registered in the same month in 2020. Does the Minister expect this yearly increase to continue for the rest of 2021? Before he gets into the stream of consciousness response which the noble Lord, Lord Hodgson, so eagerly anticipated, perhaps he could answer a few other questions as well.

Will this be the last extension of these measures, or will we be back in a couple of weeks, or a month or so, since the current extension is only to the end of September? What has changed since the last SI is that some support was not extended beyond the end of June. This includes the small supplier exemptions from the termination clause provisions and the suspension of viability for wrongful trading provisions. The Government have said that these measures were allowed to lapse to enable a gradual return of the insolvency framework to its normal operation. Can the Minister explain how this decision was made? What evidence was it based on? What impact has it had on businesses since June?

As we return fresh from recess, can we hear from the Minister about any new plans the Government have for wider reform of our insolvency laws, including providing some greater protection and support for key industries and their key workers? As Covid support continues to be pulled away, we must ensure that we do not see a whole wave of insolvencies during the latter end of this year, provoking rises in unemployment and making businesses less certain of the environment in which they will work. We need to get the right support to thrive in the post-pandemic period, whenever we feel that comes.

Having listened to noble Lords around the Committee, I think we are all in need of some reassurance. Some colleagues here want to see market forces let rip, but I do not think that doing so is necessarily the best option here, although of course we all want to return to normal. I look forward to the noble Lord's reassurances and some answers to those key questions, as well as to those raised by the noble Lord, Lord Hodgson of Astley Abbotts.

Lord Callanan (Con): First, I thank all noble Lords for their interesting and, as always, valuable contributions to this debate.

It is worth reiterating that, since the emergence of Covid-19, businesses have received billions in loans, tax deferrals, business rate relief and grants to support them and, vitally, to help them to preserve jobs. The Government's road map for the staged lifting of restrictions has in my view been a success in protecting the UK from the spread of Covid-19 while the vaccine programme was rolled out, and we can all begin slowly to return to normality.

However, we must recognise that many businesses and others have suffered from the impact of the pandemic for over a year now, and in many cases it will take time to return to full pre-Covid financial health. The Government will continue to do what it takes to support businesses through this period of economic recovery.

The points raised have highlighted the importance of the measure being extended by these regulations and the necessity of extending it once more so that businesses can continue to benefit from it. These regulations will provide the much-needed continued support for businesses to concentrate their best efforts on continuing to trade, preserve jobs and build the foundations for our economic recovery. I sincerely hope that companies and their creditors will come together in good faith to maintain their future trading relationships and secure the benefits for both themselves and the economy as a whole.

I will answer some of the points that were quite fairly put to me in the debate. The noble Lord, Lord Sikka, and my noble friend Lord Leigh asked a very pertinent and relevant question about what will happen when these measures come to an end in a little over three weeks' time. The Government recognise that there is potential for what I think both noble Lords referred to as a cliff-edge scenario involving the accumulation of unpaid debts becoming due when these restrictions and government fiscal support expire. I can tell noble Lords that work is ongoing with businesses and key stakeholders to develop solutions to enable a viable exit from these measures. All options are being considered, and I hope to make an announcement on this very shortly.

The noble Lord, Lord Sikka, asked what the Government are doing to support creditors who are unable to recover their debts and who are putting their own businesses at risk. To reiterate, this is a temporary measure that is intended to help struggling businesses during the continuation of the pandemic. It does not, as I said initially, permanently prevent the possibility of a creditor serving a statutory demand and/or presenting a winding-up petition. When the legislation expires, a creditor will be able to pursue their debt. We expect this to encourage businesses to continue, wherever possible, to meet their ongoing liabilities as far as they are able to do so.

There is a range of other legal options available to creditors seeking to recover debts which are unaffected by the changes being made here. If is, for example, possible to bring a civil claim to recover a debt. Also, where a company's inability to pay is not related to Covid-19, it will still be possible to present a petition for winding it up, notwithstanding the points correctly raised by my noble friend Lord Hodgson. There is evidence to suggest that winding-up petitions are still being presented in appropriate cases.

4 pm

My noble friend Lord Hodgson also raised an important point about what the Government are doing to support landlords. We recognise the current challenges facing commercial landlords and the significant impact these are having on their business models. We also recognise that many landlords are demonstrating what we would regard as best practice by working closely with tenants to find solutions that work for both parties, and we are grateful to see many of these discussions continuing to take place.

The Government have extended the commercial rents moratorium to March 2022 and will introduce legislation to support the orderly resolution of commercial rent arrears where tenants are affected by restrictions during the pandemic. The legislation will ring-fence rent debt accrued and set out a process of binding arbitration between landlords and tenants.

My noble friend Lord Hodgson also raised many points regarding landlord restructuring plans and—one of my favourite phrases to emerge from all this—cross-class cram down: I managed to say it. I recognise the concerns about restructuring plans and how the new cross-class cram-down provisions are working, and indeed I have been approached separately by landlords, as have officials, and have recently written to them on this; I can share the correspondence with my noble friend Lord Hodgson if that would be helpful. However, the provisions are still relatively new and there have already been some very successful rescue plans. We will, as always, monitor the situation closely, and I pay tribute to him for all the work that he does on this and for his suggestion for the use of powers under the Act. We are more than happy to work with commercial landlords going forward, as my noble friend has suggested.

The noble Lord, Lord Bassam, asked why some of the temporary measures, such as the exclusion of small businesses from termination clauses and the return of personal liability for wrongful trading, were allowed to lapse at the end of June. The answer is that we use a range of evidence and criteria to make such decisions, and we took the view that returning the regime to its normal operation was of vital importance as the economy reopens and we start to get back to normal. Impact assessments will be published in due course.

I hope that I have answered most of the questions that were put to me, and yet again I thank the small number of specialists in this field from whom this House has once again benefited in their useful contributions to this debate.

Motion agreed.

4.03 pm

Sitting suspended.

Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2021

Considered in Grand Committee

4.05 pm

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

That the Grand Committee do consider the Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2021.

Relevant document: 5th Report from the Secondary Legislation Scrutiny Committee.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, these regulations contain modest measures to help to support the hospitality industry's recovery from the economic impact of closures and restrictions on its operation during the Covid-19 pandemic. The measures will help hospitality businesses to recoup some of the revenue they have lost since March of last year. They will also allow greater flexibility in the way in which licensed premises operate if circumstances change.

Data from trade organisations and other sources show significant financial losses for the hospitality industry as a consequence of the pandemic. Curren Goodden Associates, a data and research company, reports that around 6,000 licensed premises closed in 2020 across Britain. The British Beer and Pub Association has estimated a year-on-year decrease in beer sales of £7.8 billion in 2020. Office for National Statistics data up to the end of May this year showed that payments to suppliers from food and drink businesses remained at around half their pre-pandemic levels.

The statutory instrument contains three measures to help. The first will extend provisions in the Business and Planning Act 2020 to allow for a further year, until 30 September next year, sales of alcohol for consumption off the premises to licensed premises that did not have that permission. This will allow up to 38,000 licensed premises that did not have permission to make off-sales when the Act commenced last year to continue selling alcohol for consumption outdoors, to take away or for home delivery.

The second measure amends the limits prescribed in Section 107 of the Licensing Act 2003 to increase the allowance for temporary event notices that a premises user can give in respect of a premises from 15 to 20 and increases the maximum number of days on which temporary events may be held at such premises from 21 to 26, in each of the calendar years 2022 and 2023. The increase in premises allowances of temporary event notices will enable unlicensed premises to host more revenue-generating events, such as wedding receptions and markets where alcohol is sold, as well as enabling licensed premises to extend hours by way of a temporary event notice to accommodate celebratory occasions.

Finally, the statutory instrument amends existing regulations, the Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005, to make consequential amendments to the relevant forms for temporary event notices and counter-notices. All businesses should still comply with the latest government guidance on working safely during the pandemic.

I reassure the Committee that, before this order was laid, Home Office officials consulted the National Police Chiefs' Council about the effects that the temporary off-sales permission has had thus far. The view of the police then was that it had not caused any increase in crime and disorder.

Alongside the extension of the temporary off-sales permission, the statutory instrument will extend an expedited review process which allows responsible authorities to quickly alter the licensing conditions

[Baroness Williams of Trafford]
granted to premises or to remove the permission for sales of alcohol for consumption off the premises. I know that noble Lords will appreciate the impact which the pandemic has had on the hospitality industry, and I hope that the Committee will support these measures to aid its recovery. I commend this order to the House. I beg to move.

Lord Jones (Lab): I thank the Minister for her cogent introduction to the regulations and for the copious, detailed, helpful Home Office Explanatory Memorandum. I am sure that all of us seek progress for these regulations. It is so good to see my noble friend Lord Coaker in his Front-Bench seat. I recollect his determination, diligence and command of subject in another place. Can the Minister throw any further light on how previous provisions for Covid have fared in Wales? Was there easy acceptance or did her department detect some resistance? How did her department liaise with and consult the Senedd in Cardiff? Speedily, was it? Or was it dilatory? What form did the consultation take? Was it ministerially, face to face? I think not, from paragraph 10 of the Explanatory Memorandum. Was it official to official? Again, paragraph 10 is specific. Why was it not ministerially face to face? Were there problems? Surely the Minister will surely dispel those considerations. Has the department made any assessment of the differences in the reception of and obedience to the previous post-Covid provisions? What was the link between her department and the department of health? How were these links between departments managed?

Finally, the Committee may know that many decades ago there was a referendum in Wales to determine Sunday opening for public houses. Nonconformist opinion rallied negative forces. The referendum was lost and many remained thirsty on Sundays. I hasten to say that Wales is not a land of hypocrisy and whitewash, but in those days in much of Wales every Sunday there was a procession of buses carrying thirsty Welshwomen and Welshmen to borderland English pubs. Several decades later the second referendum was positive, possibly because the chapels were emptying. I remind the Committee that the great Welshman and Prime Minister Lloyd George enacted legislation that impinged strongly on pub opening times, but the World War I war effort was judged to be the better for it.

Lord Paddick (LD): My Lords, I thank the Minister for explaining these regulations. I am concerned that the information that she gave to the Committee appears to be somewhat out of date. For example, she gave information about the sale of beer until May this year. Looking at the press, the evidence is that the hospitality sector has recovered extremely well in recent months, what with staycations and people enjoying their newfound freedom. I wonder whether she has any more up-to-date information about why these regulations are necessary.

Of the three measures, the last one is consequential in terms of applications for temporary event notices, and the increases to the limits for temporary event notices are only marginal. My major concern, which we have previously discussed, is about on-licence premises being allowed to sell alcohol to take away. When we discussed this previously, I expressed concern about alcohol being sold in open containers, allowing customers to purchase alcohol and then to walk down the street unsupervised, to the annoyance of passers-by and local residents. Of particular concern was if the alcohol was served in containers made of glass which could be broken and used as weapons.

4.15 pm

I note that the Minister said that the National Police Chiefs' Council—presumably consulted earlier this year—said that there was no increase in crime and disorder as a result of the change allowing on-licence premises to sell alcohol to take away. But that was before the recovery in the hospitality sector that we have seen in recent months. Again, I wonder whether there is a growing problem of disorder as a result of the sorts of changes that these regulations are looking to extend.

The Explanatory Memorandum states that the measures are

"intended to assist the recovery of the hospitality industry in response to the coronavirus pandemic."

To an extent, that is still a problem as far as city centres are concerned. Although noble Lords and our colleagues in the Commons are back, many offices are still not being occupied in city centres. I can understand that there is a continuing problem for the hospitality sector in city centres, but that is not the case in terms of venues where people live.

It is also a little confusing that Westminster Council, for example, has decided not to grant any more pavement licences from the end of this month, and to reopen roads, particularly in Soho. My understanding is that these regulations are an integral part of pavement licences in that, if alcohol is served by an on-licence premises to people sitting either on the pavement or in the road, that counts as off-sales. Therefore, these regulations are integral to pavement licences if the service provided by premises where there are pavement licences is to include the serving of alcohol. It seems confusing that local authorities are not extending pavement licences—presumably they know better about the concerns of local residents, which is why they are not continuing with the process—yet the Government continue to proceed with these regulations.

The other concern I have is that, as I understand it, the reason why on-licence premises were given permission to sell alcohol to take away—they were given off-licences, effectively—was because of social distancing restrictions, which restricted the number of customers who could be served inside the premises. Now, as we know, all legal restrictions on social distancing inside premises have been removed and, therefore, the main reason for these regulations in the first place seems to have gone. Indeed, as we have seen in the media, nightclubs have reopened, and pop festivals and the like are taking place where you are getting significant numbers of people into very small venues. Again, one has to ask why regulations designed to compensate for the fact that you could not accommodate as many people inside premises are continuing when the restrictions on people inside premises are no longer there.

The whole basis of these regulations is to help the hospitality industry, but at the same time as saying that they want to do that, the Government, according

to the Vaccines Minister yesterday, are about to introduce compulsory Covid passports or Covid vaccination proof for entry into many types of premises in the hospitality industry. This would seem to contradict what they are trying to do with these regulations.

It is not simply a case of excluding people who have decided not to be vaccinated, nor simply a matter of keeping people safe. In July in the other place, the Government's Vaccines Minister said that, by the end of that month, those who had been vaccinated overseas would be able to have a discussion with their GP, and if they were satisfied that the vaccinations that they had received were in compliance with UK rules, the information would be uploaded to the NHS system and people could then access their Covid pass via the NHS app.

This is still not possible, so almost daily I am getting emails from people who have been double vaccinated in Australia or Singapore but cannot access the Covid pass—the same pass that the Government apparently will demand that people have, to access the sort of hospitality industry premises that they claim to want to help in the regulations. It is not simply a health issue of ensuring that people are double vaccinated before they can go into venues. These people have been properly vaccinated yet they will not be able to prove through the NHS app that they have been doubly vaccinated, so they will be barred entry to the sort of premises that the Government are intending to enforce Covid passes for by the end of this month, according to the Vaccines Minister yesterday.

Therefore, I have concerns about whether these regulations are necessary. Local authorities seem to be taking a different view, and I am concerned that the apparent proposal to insist on Covid passes for entering many premises within the hospitality industry will have the reverse effect to what the Government are trying to achieve through these regulations.

Lord Coaker (Lab): My Lords, it is good to be here discussing this important SI. I say at the outset that we support the regulations but, as we have heard from the noble Lord, Lord Paddick, and my noble friend Lord Jones, there are some questions which quite rightly people will want asked. However, I thank the Minister for a helpful introduction, particularly in trying to answer some of the questions before we had asked them—for example, on the consultation with the national police chiefs.

My noble friend Lord Jones got off to a good start by saying how well I did in the other place—so I thought his was a brilliant speech. e made some important points. It is interesting to look at the history of Wales around the referendum on drinking on a Sunday, some of the implications of that and changes that have taken place over the years. The noble Lord, Lord Paddick, is absolutely right: the Explanatory Memorandum talked about all the difficulties that there have been, with 6,000 licensed premises closing and over £7 billion lost, but the point of the regulations was to help. It would be helpful, as I think the noble Lord, Lord Paddick, was saying, to ask what the positive outcome of some of that was. How many places would have closed and how much money would have been lost had that not happened?

I say to the noble Lord, Lord Paddick, that there clearly is a real problem. You cannot drive around the country without seeing closed restaurants, closed hotels and closed pubs. I am not a statistician but I can see where I live—Cotgrave in Nottinghamshire—that there were two pubs and now there is one, which is working as hard as it can but is facing difficulty. The hospitality industry needs support and help. I accept the point about the need to be positive, particularly as some of the regulations have been relaxed, so what additional benefits are there? That is an important point about why the regulations are necessary and what we say to the public about them. From the evidence of my own eyes as I drive around, I cannot believe that there has not been a disastrous effect. I have a number of questions, as it has made a difference to the industry as a whole.

I turn to the points made by the noble Lord, Lord Paddick, about crime and disorder as there are questions we need to ask about that. When the SI went through before, my colleagues raised a number of issues which were taken on board, including the cost and the increased workload for local authorities. What assessment has been made of that? What support has been given to the licensing authorities in local authorities to deal with it? Have any problems emerged as a consequence? I will come on to anti-social behaviour and the potential for crime.

On access to toilets, I am bemused by the fact that the availability of public conveniences is shocking across the country. I know everybody blames everybody else. Whoever's fault it is, it is a real problem. If you look at the night-time economy, there was a problem before and there continues to be a problem with shop doorways being used and so on. The issue has been raised before, and is important. I do not know whether people are embarrassed to talk about it or just assume the worst, but the reality is that we all need a toilet and sometimes a public toilet is not available and perhaps it should be. We raised that as the SI went through before.

The availability of support for smaller breweries is an issue. They provide so much of the local pub scene. Has any work been done to see whether the help for them has been significant?

The Minister answered a question about the National Police Chiefs' Council. It would be interesting to see whether there are any differences between what it is saying and what local police forces say. The Local Government Association talks about informal discussions with it. I am not sure what the Minister said about what it said, unless I missed it. I notice from the Explanatory Notes that no formal review of the impact of the regulations will take place. I think everything needs to be reviewed. It can be a quick review, but it is important to look at what we have seen and what we can learn from it.

I want to make a suggestion on crime and disorder that I hope the Minister will take on board and find helpful. It may answer the point made by the noble Lord, Lord Paddick. Paragraph 23 of the Explanatory Memorandum explicitly says that there may well be an increase in crime and disorder. The Government's publication in evidence states that we could see an increase in crime and disorder because of pent-up demand for alcohol, that it is possible that it may be at

[Lord Coaker]
a greater than previous level due to pent-up demand for drinking alcohol in a public house social situation, and that there is considerable uncertainty around the impact given that the current situation is novel and has few comparisons. There is clearly potential for a problem here. That is not to say that the regulations should therefore be imposed but, given that the Government think there is a potentially a problem, the public, the police, local authorities and the sector itself would expect something to be done about it.

4.30 pm

However—this is the helpful comment which I hope that the Minister will take on board—the very next paragraph points out that, despite the fact that there are considerable uncertainties, objections can be made to temporary notices and the various licensing activities that can happen; they can be modified or, indeed, rejected, if deemed to be a problem. Specifically, if the police believe that TENs may lead to a disproportionate increase in crime and disorder, they can do something about that. It would be helpful if the Minister could say a little more about what would be possible for local authorities and the police to do if they feel that it is inappropriate for there to be an extension to a licence granted, whether it be about the number of days or about pavements, or whatever. I think that is what people want; people are very sensible about these things, but they want reassurance about what will be done about it, given that the Government themselves think that there may be a problem.

The other aspect that I do not understand, which the Minister may be able to comment on, is whether the public are able to object. The police may be able to object—it says here that they can—and the local authority may be able to object, but what if a group of residents decides that something is inappropriate or unacceptable? Can they object to it? There are a number of issues here around support for local authorities, around consultation and public toilets, and around what powers are available to people if they believe that the pavement cafe or extension is inappropriate or not right, and what the Government are going to do to explain to the public and local communities what powers they have if there is a problem.

I conclude by saying that the Government are right to look to extend the SI. It seems a reasonable and very sensible thing to do, as it has clearly made a difference—but it would also be helpful for the Minister to tell us, if not now then at some point in future, what benefits there have been of the existing legislation that have caused the Government to decide that extending it is worth doing. I look forward to the Minister's response.

Baroness Williams of Trafford (Con): I thank noble Lords who have made points during this debate. The noble Lord, Lord Coaker, follows in a fine tradition from the noble Lord, Lord Rosser, who always ends his speeches with about 20 questions. He has not disappointed there—and I look forward to further discussions of this nature.

On the first points made by the noble Lord, Lord Jones, he is absolutely right to raise the matter of Wales. The measures cover England and Wales. The department spoke to Wales very early on, although that has not happened recently with the Department of Health and Social Care—but we have regular catch-ups with that department. He asked about Minister-to-Minister engagement, and I do not have an answer on that, but I know that we speak regularly with the devolved authorities and they have been satisfied with the approach that we have taken. I hope that is sufficient for the noble Lord, Lord Jones.

The noble Lord, Lord Coaker, talked about the additional workloads on local authorities. Absolutely, they do have them—and were this to be on a permanent basis it would require a change in legislation. Of course, because of the very temporary nature of it, that sort of impact has not had to be substantially considered.

On public toilets, I spent my life in local government talking about public toilets. It is something that really interests the public. I am not sure that there has been a decline in the number of public toilets over the past couple of years, but the fact that people are drinking outside certainly means that public toilets have needed to be more accessible for them. I do not know whether it is the same in the noble Lord's area, but I have found that the attitude of various premises towards people being allowed to use their toilets has been much more sympathetic and empathetic because of the difficulties that we have all faced. I totally agree with him about local breweries. I do not know how many of them have been forced to close, but I am sure that local breweries have benefited from some of the business support that the Government have given.

On whether there has been any difference of opinion between the NPCC and local police forces, the NPCC speaks for everyone as a whole. I am sure that there have been differences of opinion across the 43 local police forces. If I have any information on that, I will give it to the noble Lord. On what happens if the public object, the public are part of the licensing system. The police, the licensing authority and the public all have a say. If the public object—particularly if there is noise nuisance—the licensing authority can revisit its decision.

The noble Lord also asked, on the back of the point made by the noble Lord, Lord Paddick, why it was necessary at this stage to extend the provisions. Over the year, pubs and licensed premises have really suffered. The last few months have clearly been quite positive in terms of what they have been able to do. On the point made by the noble Lord, Lord Paddick, about why it is necessary—

4.37 pm

Sitting suspended for a Division in the House.

4.46 pm

Baroness Williams of Trafford (Con): My Lords, if I may continue, picking up where I left off with the noble Lord, Lord Coaker, on why it might be necessary to continue, businesses in particular have a long way to go before they get themselves back on their feet. Particularly for small premises, this extension will give additional capacity that those businesses might need. He made a very good point about how much money would have been lost without the regulation; I do not

know whether we have quantified or assessed that, but a lot more businesses would certainly have gone to the wire without our assistance.

The noble Lord, Lord Paddick, made a point about Westminster council and pavement licences. They are entirely a matter for it. Local authorities must have that say over what happens in their locality. He also made a point about Covid passports. I do not know that anything has been officially decided on that, but he is right that there has been a lot in the press about them. Even so, it is obviously a matter for DHSC, not us, although I know his story of having been vaccinated several times and the problem of having one country accept another country's vaccines and the other problems that leads to.

I draw noble Lords' attention to other powers that the police and councils will have. Under Section 76 of the Anti-social Behaviour, Crime and Policing Act, they can issue a closure notice if there are reasonable grounds to consider

"that the use of particular premises has resulted, or … is likely … to result, in nuisance to members of the public".

In terms of off-sales leading to anti-social behaviour, under Section 76 they can also issue a closure notice if they see fit.

Alongside the extension of the temporary off-sales permission, the statutory instrument—I might have said this already—will extend an expedited review process, which allows the responsible authority quickly to alter the licensing conditions granted to premises or remove the permission for sales of alcohol for consumption off the premises.

I hope I have covered everything noble Lords have asked.

Motion agreed.

4.49 pm

Sitting suspended.

Conference of the Parties to the United Nations Framework Convention on Climate Change (Immunities and Privileges) Order 2021

Considered in Grand Committee

4.51 pm

Moved by ***Lord Parkinson of Whitley Bay***

That the Grand Committee do consider the Conference of the Parties to the United Nations Framework Convention on Climate Change (Immunities and Privileges) Order 2021.

Lord Parkinson of Whitley Bay (Con): My Lords, this instrument was laid on 7 July in accordance with Paragraph 10 of Schedule 1 to the International Organisations Act 1968. It confers privileges and immunities in support of the 26th Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change: COP 26. That will take place in Glasgow from 31 October to 12 November this year. This order is required so that the UK can comply fully with the obligations of the host country agreement that we have negotiated with the secretariat of the UN Framework Convention on Climate Change.

As president of COP 26, we are hosting the biggest event of this kind that the UK has ever seen. It presents us with a unique opportunity to demonstrate our global leadership on the issue of climate, delivering our objectives to accelerate worldwide action to tackle climate change and to deliver a green recovery and sustainable jobs. We are committed to delivering a whole-of-society conference in Glasgow and are working with the Scottish Government, the Welsh Government and the Northern Ireland Executive to ensure an inclusive and ambitious conference for the whole of the United Kingdom.

During the opening days of COP 26, we will host a world leaders' summit. We are expecting up to 120 world leaders to accept the Prime Minister's invitation to attend in person. The summit will set the stage for 12 days of talks. Teams of negotiators, government representatives, businesses and citizens will work together to develop solutions to the challenges that are now global priorities for us all. While interlinked, the world leaders' summit and COP 26 are separate events in administrative terms. This SI deals with COP 26 only. Separate provisions are being made for participants in the world leaders' summit.

A core principle of this framework is that functional immunities be accorded to all those performing functions in connection with the conference and all those invited to the conference. Ensuring that all participants feel that they can discharge these functions without fear of official or legal consequences is a fundamental requirement of a successful COP. We expect to welcome more than 25,000 participants to Glasgow and recognise the need for them to be able to perform their functions freely. If we were to accord privileges and immunities to all, however, we would be going far beyond what we would consider functional need. In particular, protections regarding freedom of expression and freedom of assembly already exist under UK domestic law.

Negotiations have taken place with the UN, at the highest levels, to keep the number granted privileges and immunities as small as possible without compromising participants' freedom to function. We have reassured the secretariat and the UN that the extensive protections that exist in UK domestic law as regards freedom of expression and freedom of assembly negate the requirement for the widespread granting of privileges and immunities.

I am pleased to confirm that we have been successful in reaching agreement that we shall confer privileges and immunities on only three categories: UN officials who do not already enjoy them; the delegations of member and observer states, otherwise known as the parties; and core personnel from the Clean Development Mechanism, the Green Climate Fund, the Adaptation Fund and the Global Environment Facility. These privileges and immunities include immunity from arrest and detention and from suit and legal process for certain individuals while they are exercising their functions in connection with the conference. It does not grant personal immunity or inviolability, nor will it extend to British nationals, permanent residents or their spouses or partners.

[Lord Parkinson of Whitley Bay]

We have carefully considered the effects of the ongoing pandemic and the interplay between privileges and immunities and a COP held in that context. We have agreed with the UN Secretary-General and the Executive Secretary of the UNFCCC that a robust Covid management plan will be put in place and that the observance of those provisions will be enforced through a code of conduct which all participants will be required to accept.

Along with our colleagues in the Scottish Government, Glasgow City Council, public health bodies and the UN system, we are continuing to monitor the pandemic and are developing a comprehensive package of measures to help protect participants and the local community from the risk of Covid transmission during COP 26. The measures we have identified include vaccination, quarantine arrangements, bespoke test, trace and isolate procedures, hygiene protocols and enhanced ventilation. We are strongly recommending that participants be vaccinated, and the UK will work with the UN to provide vaccines to COP 26 participants who would otherwise be unable to secure them.

This instrument forms a necessary part of the UK's compliance with the obligations in the host country agreement to be signed by the UK and the UNFCCC secretariat. It balances, on the one hand, the desire to limit the granting of privileges and immunities to a minimum, and on the other, the COP's founding principle that all participants should be able to voice their legitimate opinions without fear of legal repercussion. It avoids setting unwelcome precedents for UN conferences held in countries which do not have the level of personal freedoms that we enjoy here in the UK, for instance by limiting freedom of assembly, which can allow the general public to express views through peaceful demonstration. It is a fundamental element of success as we demonstrate to the world that the UK is a global power that respects the rules-based international system and can respond to an ever-changing global environment.

We will continue to join forces with our global counterparts, civil society, the private sector and those on the front line of the fight against climate change to inspire action ahead of COP 26. We are firmly resolved to uphold the principles of freedom of expression, inspire debate and lead a movement towards consensus. In this way, we can achieve our ambitious goals to reduce emissions and rebuild through a green economy.

The UK is clear in what we want to achieve through our COP presidency. This instrument is an important step in welcoming the world to Glasgow so that the international community can agree decisive action to win the fight against climate change. I beg to move.

Lord Oates (LD): My Lords, I thank the Minister for his introduction to this SI, which is obviously necessary in line with our obligations as host nation. He talked about the three categories of people who will be granted immunity. Can he give us an indication of how many in total that will be? Can he also go a little further in explaining the extent of immunity from suit? He said that it related only to actions relating to the duties of these delegation members in connection with the conference. However, if they act illegally while attending the conference outside it are they immune from prosecutions for, for example, being drunk and disorderly?

Can the Minister tell us what is the nature of the privileges and immunities relating to personal baggage, which is mentioned specifically, and does that mean that baggage is exempt from searches? If so, how will the Government ensure that these privileges are not abused and what degree of scrutiny, given what I imagine is a fairly large number of individuals, will there be to ensure that such immunities are not provided to individuals who could pose a security risk?

5 pm

I shall go beyond the specifics of the SI and ask the Minister about the granting of visas for the associated events that will go on around the summit, for instance, the youth summit. I declare my interest as a vice-chair of the All-Party Parliamentary Group for Africa. He will be aware of the deep concern expressed in its report a year or two ago about the persistent failure to grant visas to people from Africa, particularly young people. Again, when I was a member of the governing council of the International Planned Parenthood Federation, our youth representatives were almost always not allowed to join us at our six-monthly meetings in London because they had been refused visas. Can he give some assurance that, conducive with all the necessary security and other factors, we will provide access to young people who represent the youth in their countries?

Lord Collins of Highbury (Lab): My Lords, I join the noble Lord, Lord Oates, in saying that the instrument is an essential part of hosting COP 26; it is a long-standing convention with summits held away from the UN headquarters. As the Minister said, we are also implementing a host-country agreement. With COP 26 now only a short time away, the Government must use it as our last and best hope of a global breakthrough to limit temperature rises to 1.5 degrees.

As we have heard, the order reflects the immunities and privileges instruments that the House has debated in recent months, such as the order on the Bank for International Settlements. In this case, privileges and immunities will be received by representatives of parties and observer states, officials of the specialised agencies of the UN and select other representatives, such as those from the Adaption Fund, the Green Climate Fund and the Global Environment Facility. While that is standard practice for the first group—representatives of parties and observer states—I reiterate the point made by the noble Lord, Lord Oates: what risk assessment has the department made of the possibility of hostile individuals or states abusing their immunities and privileges while in the UK? Also, in relation to the privileges granted to UN officials, the list in the order includes only specialised agencies. Does that mean that attendees from other UN bodies, including the UN Environment Programme, will not be given immunity? Was that issue raised during negotiations on the host agreement?

The period for which immunities and privileges apply is between 31 October and 12 November, which reflects the slightly extended duration of the summit,

which is now set to begin on 31 October rather than 1 November. When the decision was made to extend the summit, the reason given was that it would allow additional time to complete its work. Can the Minister expand on that and explain why the summit was extended? I have no objections, certainly if it means that we reach agreement, but it would be good to have a better understanding of the decision.

I turn to the host agreement which the instrument relates to. In addition to agreeing to the immunities and privileges, which the Minister mentioned, as well as Covid arrangements and all the requirements that we are undertaking to make the summit safe, one of the other commitments made in the host agreement is that we must

"provide facilities that are environmentally sound and in accordance with the ideals provided for under the United Nations Framework Convention on Climate Change … the Kyoto Protocol and the Paris Agreement."

Can the Minister explain exactly what steps we have taken, along with the devolved Government in Edinburgh, to meet that objective? Given that the host agreement also refers to a "separate supplementary agreement" for "pre-sessional meetings", can the Minister confirm whether any further instruments are expected as a result of that agreement? Will we be extending immunities for those particular sessions?

In conclusion, this is a decisive decade in the fight against climate change and environmental breakdown but the world is currently not on track to meet the goals of the Paris Agreement. Therefore, COP 26 is a critical moment for our planet and our country and we can all hope that the Government will use this event to keep alive the hope of limiting global heating to 1.5 degrees centigrade. I look forward to the Minister's assurance on the questions I have put to him.

Lord Parkinson of Whitley Bay (Con): My Lords, I am grateful to the noble Lords, Lord Oates and Lord Collins of Highbury, for their questions and points on this statutory instrument. I am grateful too for their recognition that this is in line with the obligations on us as the president of COP and, indeed, with long-standing precedent. I will address the questions that they have posed today, and if I miss any, I hope that they will forgive me for writing with further detail, but I shall attempt to cover all the points that they raised.

The noble Lord, Lord Oates, asked about the extent of the immunity. The UNFCCC requirement is to grant

"immunity from legal process in respect of words spoken or written and any act performed … in connection with"

participation in COP 26 to the registered COP 26 participants under the agreed Article 2 categories. Many participants in COP 26 and associated meetings will already enjoy privileges and immunities by virtue of their function or position if they are a Head of Government or have diplomatic status, for instance. It is standard practice, as the noble Lord recognised, for host Governments to grant appropriate privileges and immunities to UN-associated international conferences, based on the UN general convention of 1946.

The privileges and immunities accorded to participants in COP 26 and associated meetings will apply only when participants are exercising their official functions at the conference and associated meetings. The purpose of the privileges and immunities is not to benefit individuals but to ensure that they are able to perform their official duties smoothly and efficiently. We expect all participants to respect our laws and regulations. I hope that addresses the question on the extent.

The noble Lord, Lord Oates, asked how many people will be combined within the three categories mentioned. Obviously, it depends on those participating in person, but I can give a figure of around 12,000 people. The noble Lord also asked about personal baggage. That will not be immune from search, but official papers and baggage will be protected.

The noble Lords, Lord Oates and Lord Collins, both asked about security risks. We are partnering with the United Nations, and the UK will have the opportunity to vet all participants. Their privileges and immunities granted under this SI are limited to their official acts.

The noble Lord, Lord Oates, asked about visas. Visas for other meetings will depend on the status of the meeting, so if it is part of COP 26, the COP rules will apply. That is primarily a question for the Italians as it will apply from 28 to 30 September but I will certainly follow up the points he raised, particularly on Africa.

The noble Lord, Lord Collins of Highbury, asked about the rationale for the extension of the dates. I cannot speak about the policy extent of COP more broadly today but, from the point of this statutory instrument, the dates cover the dates where we would expect people to be in Glasgow performing those official duties. He asked whether other statutory instruments would be needed for supplementary meetings. We do not think other statutory instruments will be required.

I hope that addresses all the questions but, as I say, I will make sure that I consult the official record and provide answers to any that I have not. With gratitude for noble Lords' support, I commend this order to the Committee.

Motion agreed.

Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations 2021

Considered in Grand Committee

5.12 pm

Moved by ***Baroness Stedman-Scott***

That the Grand Committee do consider the Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations 2021.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, I am pleased to introduce this instrument, which was laid before this House on 21 June. Subject to approval, these regulations will continue the Government's

[Baroness Stedman-Scott]
reform of occupational defined contribution—DC—pension schemes and prepare them for the opportunities that lie ahead.

With more than 10 million workers now saving for retirement in an occupational pension thanks to the success of automatic enrolment, we want these savers to achieve the best possible outcome in retirement. These regulations put improved member outcomes at the centre of the defined contribution occupational pensions market in the UK and ensure that the best interests of pension savers are driving the administration, governance and investment strategies of schemes.

By introducing a new "value for members" assessment for schemes with less than £100 million in assets and which have been operating for at least three years, we will ensure that members are not languishing in poorly governed and under-performing schemes. By requiring the trustees of certain occupational DC schemes to publish information on the performance of their investments for the first time, we will ensure that competition on overall member value replaces a narrow focus on cost.

By allowing occupational DC schemes to smooth performance fees over a multi-year period within the charge cap, we will make it easier for trustees of such schemes to pay higher fees for products where they have evidence that this will provide greater returns to members.

The Government are committed to building on the success of automatic enrolment with a consolidated, innovative, member-focused market for saving in occupational DC pension schemes. These regulations take significant action to this end. I am satisfied that the Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations 2021 are compatible with the European Convention on Human Rights.

Occupational defined contribution schemes, or DC schemes, are the future of occupational pension saving. The Government are committed to ensuring that the DC market in this country can continue to grow and deliver the best possible outcomes for the millions of workers now saving in a DC scheme. These regulations take forward several measures which amend a number of existing sets of regulations. The first of these, which is made by Regulation 2 of this instrument, is the introduction of a new "value for members" assessment for occupational DC schemes with less than £100 million in assets. While there is currently more than £100 billion of pension savings in occupational DC schemes, this is split among more than 3,000 schemes. This system risks inefficiency and creating inequality. For example, some people, as a result of the scheme their employer chose, possibly years ago, may be getting a lower return on their savings, paying higher charges or having a worse customer experience, therefore limiting their engagement with their pension and outcomes in retirement. We aim to change this.

That is why this instrument amends the Occupational Pension Schemes (Scheme Administration) Regulations 1996 to require trustees of relevant schemes, a term which covers most occupational DC schemes, with less than £100 million in assets and which have been in existence for at least three years to conduct an annual assessment of the value that the scheme offers to its members. The regulations specify the criteria that must form part of this assessment. They include the quality of the scheme's record-keeping, the promptness and accuracy of administration and the extent to which existing requirements in the Pensions Act 2004 concerning trustees' knowledge and understanding are being met.

However, the most important aspect of this assessment is the comparison between the scheme's net investment returns, ie the performance of its investments less costs and charges, relative to three larger schemes. Larger schemes are likely to be better governed and to achieve greater investment returns than a smaller scheme with limited expertise, capacity and budget. We expect that the majority of schemes will not perform favourably in this test.

Regulation 3 of this instrument requires schemes to report to the Pensions Regulator the outcome of this "value for members" assessment. If schemes in scope determine that they do not offer value for members, Regulation 3 of the Register of Occupational and Personal Pension Schemes Regulations is amended by these regulations to require such schemes to inform the Pensions Regulator of whether they intend to wind up the scheme or to explain the reasons for not doing so and the immediate improvements that will be put in place. These measures will encourage a quicker pace of consolidation in the occupational DC pension schemes market and help members who are stuck in schemes that are delivering sub-optimal retirement outcomes for them. Scheme consolidation is a priority for DWP so that members are able to benefit from the economies of scale and access to a diverse range of asset classes that larger schemes bring.

The other measures in this instrument aim to broaden the range of asset classes available to occupational DC schemes. At present, occupational DC schemes are primarily invested in traditional assets such as listed equities and bonds. Only a small number of the largest schemes are accessing so-called illiquid assets, such as infrastructure, property, private credit and private equity. These illiquid assets have the potential both to diversify an investment portfolio and deliver greater returns. As a result, Regulation 2 of this instrument amends Regulation 23 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 to require occupational DC schemes to report, for the first time, the return on investments after deduction of any charges or transaction costs, known as net investment returns. We believe that members deserve to know how their investments are performing and how they fare relative to other schemes.

This will also catalyse competition between pension providers not just on cost but on overall value. Employers, consultants and members should be able to assess a scheme based on this metric, and competition should incentivise trustees of occupational DC schemes to explore illiquid assets and other innovative investment strategies. This is essential given that net investment returns have a much greater effect on retirement outcomes than whether a scheme charges its members 0.3% or 0.4%.

Both these measures, the new "value for members" assessment and net investment returns reporting, have been introduced alongside statutory guidance entitled *Completing the Annual Value for Members Assessment and Reporting of Net Investment Returns*, which will help trustees of schemes that are in scope to meet these requirements.

Finally, this instrument makes additional changes to regulations to improve governance of occupational DC schemes. All occupational pension schemes will be required to report on the total assets of the scheme annually to the Pensions Regulator at the scheme year end.

The changes to regulations in this instrument will also require schemes to produce costs and charges illustrations for all funds and not just those currently available. They will exempt wholly insured schemes from some governance requirements and ensure that occupational DC schemes "with a promise"—a small number of schemes that contain a commitment to members—report on their statement of investment principles to those members.

In conclusion, the measures in this instrument offer opportunities to improve member outcomes and help prepare the occupational pensions market for the challenges that lie ahead. I therefore commend the instrument to the Committee and beg to move.

Baroness Janke (LD): My Lords, we certainly agree with the policy aims and mechanisms of this instrument and endorse the Government's actions to make sure that

"members do not languish in sub-optimal arrangements that do not meet governance requirements and are unable to take full use of investment opportunities, to the benefit of the end saver's eventual retirement outcome",

as the Explanatory Memorandum states.

As the Minister has said, paragraph 7.6 of the Explanatory Memorandum explains that Regulation 2 requires that schemes holding assets worth less than £100 million and which have been operating for three or more years are to compare charges, transaction costs and the return on investments with three other schemes. We are not clear how those schemes are to be selected and who is to select them. Is it the trustees, for example? Are there selection criteria other than that they have assets of more than £100 million and are personal pension schemes? If it is not the trustees, who selects the comparator schemes?

Paragraph 7.8 states:

"Where the trustees have reported that the scheme does not provide good value for members, they are also required to report whether they propose to wind up the scheme and transfer the members' rights into another scheme or explain to TPR why … not … and what improvements they are planning to make."

What happens if these improvements are not acceptable to the Pensions Regulator and what powers does the regulator have based on compliance or non-compliance with Regulation 3?

We would probably all agree that it is a good idea to encourage smaller funds to transfer rights or improve if Regulation 2 comparisons show poor performance, but what about larger funds? Should there not be a requirement for them to undertake the same comparisons and take the same actions if their schemes show poor value for money for their members? It is easy to see why small funds should be encouraged in this way but hard to see why larger firms are not similarly encouraged. I would welcome the Minister's clarification on these points.

Baroness Drake (Lab): My Lords, I refer to my entry in the register of interests, particularly as trustee of a large master trust and the Telefónica pension scheme. I thank the Minister for the clarity of her explanation. It is a pleasure to talk face to face, rather than digitally, for once.

Of the three main provisions in these draft regulations, one requires smaller DC schemes with less than £100 million to demonstrate overall good value. If they cannot, the expectation is that they will wind up and consolidate into another scheme. The regulations also require schemes to take their net investment returns and increase flexibility to take account of performance fees when calculating the 0.75% pension cap on pension savings.

I support the focus on smaller schemes and the drive to consolidate them into larger schemes. The TPR evidence reveals that many smaller schemes struggle to match the governance, investment opportunities and charges delivered by schemes operating at scale, but the Minister's aspirations are high. I quote Guy Opperman, who wrote:

"It is not my intention to stop at £5 billion",

and that

"There is no doubt in my mind that there must be further consolidation",

and that

"further action will follow".

However, even a threshold of £5 billion goes beyond small and will catch all but the very largest of DC schemes.

The Minister believes that consolidation drives better member outcomes, a view again with which I agree, and I accept that scale matters. The Minister wants to understand the barriers to further consolidation through two lenses. He stated:

"I am particularly keen to understand how the creation of greater scale in the DC market can benefit members through economies of scale and access to alternative investments."

However, the Government have to recognise that they created some of those barriers, even though the case for scale was well documented at the time. When auto-enrolment was introduced, they took the view that there should be an open market with virtually no barriers, or few barriers, to entry, with the inevitable proliferation of provision and the acceleration of small pot numbers that followed, which made decisions for employers even more complex. The transfer of the cost of market failure on to the members of the growing number of poorly regulated master trusts was eventually recognised and led to the new authorisation regime. At the start of that authorisation regime there were 90 master trusts; 37 were granted authorisation, a reduction in the overall size of the market by 58.8% in a little over a year, perhaps an indication of how inefficient the original policy had been. Is it anticipated

[Baroness Drake]
that the drive to accelerate the consolidation of schemes will lead to a further reduction in the number of authorised master trusts? Will the TPR be expected to modify its approach to the authorisation criteria? Given the Minister's aspiration and the Government's drive for greater consolidation, what do they consider would be the optimal outcome in terms of the number of schemes? How do they define optimum scale in terms of assets under management?

The Government's policy that consolidation into fewer and larger DC schemes will facilitate greater investment into a wider range of assets and bring benefits to scheme members and the UK economy was captured in the letter of 4 August from the Prime Minister and Chancellor, entitled *Igniting an Investment Big Bang: A Challenge from the Prime Minister and Chancellor to the UK's Institutional Investors*. They called for the need to,

"seize this moment … to unlock the hundreds of billions of pounds sitting in UK institutional investors"—

particularly pension schemes—

"and use it to drive the UK's recovery",

and growth. They added that the Government were,

"doing everything possible—short of mandating more investment in these areas as some have advocated—to encourage a change in mindset and behaviour among institutional investors, and we remain open to addressing further barriers".

5.30 pm

The three main measures in the SI are clearly intended to encourage DC schemes to invest in more illiquid assets, private equity and venture capital: first, by driving consolidation to create scale; secondly, by amending the charge cap regulations to allow schemes to smooth performance fees so that the 0.75% cap can be breached in any one year as long as at the end of the multiyear period the mean average across the years is within the cap; and thirdly, by requiring schemes to state their net investment to returns, the intention being to get schemes to shift their focus away from low-cost investment to overall value, which may push trustees to more illiquid asset classes.

Again, to quote the Minister:

"The cap itself continues to offer members' important protections against high or unfair charges. However, costs should not be the sole factor in determining overall value for members. I want to see schemes considering overall performance and returns on investments for members as well as costs."

I certainly support greater visibility for net returns, but the Government seem to be moving to a view that charges must rise to secure greater value for members or that the high fees charged by some asset managers are reasonable, when in fact they may not be fair value for members. There are many able and committed professional and lay trustees who already consider overall performance and returns on investment, including net returns, risks and volatility, and consider more than costs in assessing value for members. The Minister is not working, as he may suggest, on a completely blank canvas.

I am wary also of a reverse call that lower costs must indicate lower value. Scale and transparency can drive costs down without prejudicing value. There are strong providers in the market offering good-value, diversified propositions at significantly below the 0.75% cap. The CMA, the FCA and others have provided evidence on the sometimes weak correlation between higher charges and higher performance. It is to be remembered that the 0.75% cap was introduced in significant part in recognition of the fact that when the Government increased private saving by harnessing the inertia of many millions of people, they had to address inefficiencies in the investment markets, whereby complexity, lack of transparency, lots of intermediaries in the supply chain and the weak position of the end investor had led to higher charges which did not provide fair value for pension savers.

Trustees' fiduciary duties require them to take account of all long-term financially material considerations. Indeed, they are under increasing pressure from regulators and Governments on how they interpret that duty when making investment decisions. What is considered good practice is changing, as with ESG and the green economy; it is now a near-universal truth that if the climate is not addressed then pension scheme members' interests and values will not be addressed in the longer term. By investing in companies and infrastructure that will drive growth and prosperity across the UK, there can be a virtuous alignment between the needs of the economy and the value delivered to the members of the pension scheme.

However, charges and member value remain important, and the governance around such a policy is key. The Government need to create the environment to allow that virtuous alignment, but not to transgress into appropriating the long-term private savings of many millions of people. It is those with a fiduciary duty who should decide which particular investments are in the interests of their scheme members. Any assurance from the Minister about the intent behind the 4 August letter on "Investment Big Bang" would be reassuring in that context.

Lord Davies of Brixton (Lab): My Lords, I thank my noble friend very much for her remarks. She has obviously been much more deeply involved than I have been. I have come to these regulations pretty fresh, but a number of points strike me about them, and I would be grateful for the Minister's comments.

It is important to appreciate that we are only talking about the default schemes. To get a feel for the significance of this impact, we need some idea of how significant default schemes are. My understanding, having seen figures, is that virtually everyone joins the default schemes, but this applies only to the default arrangements within a scheme. Does that mean that those people who for whatever reason choose the non-default arrangements are left uninformed about these important arrangements? Surely value for money is just as important? I accept that they are very difficult to judge, but value for money applies as much to the non-default arrangements as to the default ones.

The other exclusion from the regulations is that of small, self-administered schemes and EPPs. The notes are a bit weak on justifying that exclusion. There was probably more debate during the course of the consultation, but the comment is made that most

small businesses do not run their own schemes. Well, "most" implies that some do run their own schemes. Will they be left to drift? Why do they not fall within the remit of this protection for members?

Regarding small schemes, I never believe very round figures, and £100 million is an extremely round figure. The table in the Explanatory Memorandum had the number of schemes in different sizes. The issue comes up of why, if we are going for £5 billion, why not to go for £5 billion? I think that I am echoing my noble friend's question. Another question lies behind that. Is this really just a way of getting rid of small schemes? Are we establishing a bureaucratic mechanism that will make small schemes think that it is just not worth the candle? Which of those small schemes that we are envisaging will say: "We are prepared to go through this process, we believe that we are providing value for money, and we want to continue?" Which are the schemes that this regulatory structure is being introduced to cater for? Would it not be more straightforward just to say "£5 billion is it" and that you want to get rid of small schemes?

On the policing of the process, the question of who selects the three comparators is being asked. Is there some scope there for gaming the system? What protection do we have on which schemes get selected as comparators? Advisers could have 10 comparator schemes that were not really suitable. Will the Pensions Regulator have the power directly to prevent the choice of inappropriate comparators? It may be explained somewhere, but I can see nothing explaining how the choice of comparators will be policed.

It comes back to the question of what is perceived by the Government and/or the regulator as the endgame here. Is this a one-off, and we will continue with this situation, or is this just one step in a longer term process of eliminating smaller schemes and ending up with a relatively limited number of mega-schemes catering for this particular market? I am not convinced that this is necessarily in the members' favour. It would be good to have an idea of whether this is part of a longer process, whether there is an endgame here and this is just one move on the chessboard, with other complicated moves coming up later, or whether it is just there on its own terms?

Then there is the more important question. In setting up this structure and this process, how meaningful is the information that is going to be provided to members? Is this the sort of information that members are looking for? Is it the sort of information they will understand? Has there been any research into the value and effect of providing this information for members? We also need a bit more clarity, which perhaps the Minister cannot give. I believe the Pensions Regulator could be clearer as to what exactly it will do if the trustees produce a report saying that they are not providing value for money, in effect—I am sure they will dress it up in particular words—but in practice are not going to do anything about it. We need greater clarity on what steps the regulator will then take in response. It is all very well having the information that a scheme is not providing good value for money, but the regulator needs to be clear in exactly what it will do in response to that situation.

Baroness Sherlock (Lab): My Lords, I thank the Minister for her careful explanation of these regulations. I must say it is a pleasure to see her in person across the Dispatch Box once again, especially on so exciting a subject. I also thank all noble Lords who have contributed today.

There have been so many policy and statutory interventions into the private pensions scheme post auto-enrolment that I have to say that I am slightly with my noble friend Lord Davies here. It is quite hard to follow the long-term strategic objectives and outcomes that the Government are seeking to achieve. I get that this set of regulations is designed to take forward government policy to enable and encourage DC schemes to invest in a more diverse set of growth assets, including private equity and venture capital, in the belief that this will benefit both the British economy and the interests of pension scheme members.

We have heard the headlines today. Trustees of smaller schemes will have to do a more holistic annual "value for members" assessment and, if the regulator does not think that they can demonstrate good value, they will be pushed to wind up and consolidate. Trustees of all relevant schemes will have to give net investment return statements for default and self-selected funds. Then there is an amendment to the charge cap regulations to smooth the impact of performance fees over five years.

As we have heard, the Government in their call for evidence are seeking views on how to accelerate the pace of consolidation of schemes and are looking ahead to the second phase of consolidation for medium to large schemes with assets of between of £100 million and £5 billion. As my noble friend Lady Drake was hinting, £5 billion is way more than small. Obviously, strengthening the regulatory framework in pension schemes is welcome and, presumably, here the aim is to do that through more stringent "value for members" assessments, reporting on investment performance net of fees and the promotion of consolidation into larger schemes to create scale and leverage to deliver value, drive down charges and consider more diverse and innovative investment strategies that will benefit members. However, given the Government's intention to drive greater consolidation, even of schemes with assets of above £5 billion, we really do not have much detail as to how and when this accelerated consolidation into a much smaller number of very large schemes is going to take place.

My noble friend Lady Drake was pushing into this subject. We need to know what the optimal number of schemes is against which the Government are benching their drive to consolidation. I think the Committee deserves to have a clear answer to that. If we are to be asked to approve one set of interventions after another, it is only reasonable to be given a vision of the end state the Government have in mind once they all work their way through the system.

5.45 pm

I therefore have some questions. What guidance will be given to trustees and, indeed, to employers who may be keen to consolidate their own occupational schemes but who do not want to transfer their members

[Baroness Sherlock]
and their assets into schemes which may subsequently become subject to regulatory pressure to wind up under the "further action to follow" and "not stopping at £5 billion" statements of Guy Opperman?

We know that the Minister for Pensions supports collective DC schemes as a way of sharing risk more efficiently between scheme members and achieving better outcomes in retirement. At the moment, authorisation of CDC schemes is restricted to single or associated employers, which must of course limit their scale. What are the implications of driving the consolidation of schemes with assets both below and above £5 million for the Government's policy on encouraging the growth of CDC schemes?

The Government seem to believe that requiring schemes to state their net investment returns will push trustees away from a preoccupation with costs to consider how investments in more illiquid assets and growth equity might improve member outcomes in a way which would also be beneficial for the UK economy. The joint letter issued by the Chancellor and the Prime Minister spelled out the Government's reasoning. My noble friend Lady Drake made the point that investing more money in the companies and infrastructure that will drive growth and prosperity across the UK could lead to a virtuous alignment between the needs of the economy and the value delivered to members of pension schemes, but she was spot-on in saying that charges and member value remain important and governance around such a policy is key.

One sentence in that letter from the Chancellor and the PM states:

> "The Government is doing everything possible—short of mandating more investment in these areas as some have advocated—to encourage a change in mindset and behaviour among institutional investors, and we remain open to addressing further barriers where they are identified."

I confess to being a little surprised that a letter of this magnitude chose to reference those who advocate mandating trustees on where they should invest. I hope that was not a hint to the sector. There is a lot at stake here. Given the current, very high level of public trust in auto-enrolment, the double-default on which scheme and investment fund, and all the associated fiduciary and regulatory oversight of their interests which has produced such a positive behavioural response, we cannot put that at risk.

In their call for evidence, the Government advised that they wanted to establish the likely appetite for investment in illiquid assets and/or growth equity and offered the prospect of removing the look-through requirement for closed-end funds among the possibilities for removing potential barriers for investment in such asset classes. The Government's aim was to publish a response on this matter before the Summer Recess, but they have not been able to do so. When do the Government anticipate publishing such a response?

As they look to the funds in pension schemes to support the rebuilding of the UK economy, it is crucial that the Government do not weaken their commitment to transparency and to protecting members against high or unfair charges. Do the Government have any plans to raise the 0.75% charge cap?

These regulations, which we are debating at the back end of the first day back in a wholly physical Parliament, are part of a government trajectory which could have a significant effect on the pensions landscape in the UK. We need some solid answers, and I look forward to hearing them.

Baroness Stedman-Scott (Con): I thank everybody who has taken part in this interesting debate for their contributions. I shall take some of the points that noble Lords have raised and will deal with them as they come.

I thank the noble Baroness, Lady Janke, for her positive endorsement of the regulations. The noble Baroness and the noble Lord, Lord Davies, asked how the schemes are to be selected. We would expect trustees to choose the scheme to compare their scheme to, and master trusts are likely to be the best schemes to compare against.

The noble Baronesses, Lady Janke and Lady Sherlock, asked about the Government's plans for future DC consolidation. The Government have been very open that consolidation is key to the future of the defined contribution pension market and that the pace of consolidation must increase. Consolidation will improve governance and enable more occupational DC schemes to reach the critical mass needed to access a broader range of investments and drive down costs through economies of scale. In September 2020, DWP consulted on new regulations to require trustees of occupational DC schemes with less than £100 million in assets to justify their continued existence via a new "value for members" assessment, and this will come into force this autumn. This was phase 1, and now we turn to phase 2, which will look to drive consolidation further and faster.

The noble Baronesses, Lady Drake and Lady Sherlock, both raised a question about the call for evidence, which was launched on 21 June, being far too ambitious. We know from other countries such as Australia that scale is among the biggest drivers in achieving value for money for savers and ultimately better retirement outcomes. It is therefore important that we move quickly, and I echo the commitment made by the Minister for Pensions. However, we recognise concerns about the pace of change. That is why we have developed a phased approach, starting with occupational DC schemes with less than £100 million in assets. The call for evidence closed in July. We are currently considering the responses received and will issue a response in due course. We are exploring options for consolidation, and, as the Minister for Pensions said, this is likely to include all schemes, including master trusts.

The noble Baroness, Lady Drake, made the point that the PM and the Chancellor are calling for an "investment big bang" and that these measures could wrongly force schemes to invest in illiquid assets. The Government do not wish to direct the investments of trustees of pension schemes. Trustees must invest in line with their fiduciary duty—that is, in the best financial interest of their beneficiaries. Instead, we are seeking to remove barriers to investments in illiquid assets. The provisions in this instrument have received support from the pensions industry.

The noble Baroness, Lady Drake, raised the point that the Government believe that high charges are fair. We want to ensure that net returns are considered, which balances cost against performance. Low-charging investments can deliver value for money, but cost should not be the only factor.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): My Lords, there is a Division in the House. The Committee will adjourn for 10 minutes.

5.51 pm

Sitting suspended for a Division in the House.

6.01 pm

Baroness Stedman-Scott (Con): The noble Baroness, Lady Drake, referred to the PM and the Chancellor calling for an "investment big bang" and said that these measures wrongly force schemes to invest in illiquid assets. The Government do not wish to direct trustees of pension scheme investments. Trustees must invest in line with their fiduciary duty; that is, in the best financial interest of their beneficiaries. Instead, we are seeking to remove barriers to investments in illiquid assets. The provisions in this instrument have received support from the pensions industry.

The noble Lord, Lord Davies, talked about default schemes. He is correct that almost all members save into the default arrangement. Those who self-select still receive regular information on charges and are generally engaged. He raised the subject of the threshold for "value for members" assessment being set at less than £100 million, which had increased from £10 million at consultation. He asked whether it would increase further in future. The Government increased the "value for members" assessment threshold following consultation with industry. The reason for this was to capture as many potential poorly performing occupational DC schemes as possible. We have evidence that the smaller a scheme is, the more likely it is to be poorly governed. By our moving the "value for members" assessment threshold from assets under £10 million to £100 million, more occupational DC schemes will have to undergo this rigorous new assessment. This will mean that more members will benefit from improved governance, administration and returns as a result. We will review the assets under the £100 million threshold regularly but have no plans to change it at present.

The noble Lord, Lord Davies, asked how meaningful to members the information would be. The Government are taking forward several measures—dashboards and simpler statements among others. The SI is about how these schemes are governed internally. We are intervening to prevent members languishing in poor schemes.

The noble Baroness, Lady Sherlock, raised a point about CDC. I am advised that we will write to her on that. She also asked what the instrument would mean for the future of look-through and said that the Government had said that they would advise on a policy in July. The instrument does not amend the Government's policy on treatment of such costs. In our consultation response on improving outcomes for members, published on 21 June, we state that occupational DC pension schemes should continue to look through closed-ended funds as they would all funds of funds and incorporate such costs within their regime of charges levied on members.

If there are points raised by noble Lords that I have not dealt with—

Baroness Sherlock (Lab): I am grateful to the Minister. Could she write to me with that last point, as I did not quite catch the bit about look-through funds and look-through operations of closed-ended funds? I asked two questions. First, my noble friend Lady Drake and I both asked what the Government's optimal number of schemes is. Would it be one big or enormous scheme—would that be fine? Is it fine to have lots of schemes? Can the Minister give some idea what the centre is in that? The other thing I asked about, which I do not think she answered, was what guidance would be given to trustees or employers who might want to consolidate but were concerned that the moving goalposts would mean that they could end up simply being moved again and, potentially, again. If she did respond to that, I apologise for having missed it.

Baroness Stedman-Scott (Con): I will write to the noble Baroness on the three points she has raised and put a copy in the Library for everybody to see. If there is anything, having looked at *Hansard*, that we have not dealt with, other than that which the noble Baroness raised, I will write to all noble Lords.

This instrument makes several different changes to several different sets of regulations. It has one theme at its core: improving outcomes for pension savers. We have a duty to ensure that those who have engaged in pension saving in their workplace as a result of automatic enrolment can rest assured that their occupational DC pension scheme is on course to deliver the best possible outcome for them. This instrument does this by tackling poor levels of governance, shifting the attention of the market from a narrow focus on cost to overall value, and removing barriers to schemes allocating to a wide range of different assets. I therefore commend it to the House and beg to move.

Motion agreed.

Pensions Regulator (Employer Resources Test) Regulations 2021

Considered in Grand Committee

6.06 pm

Moved by ***Baroness Stedman-Scott***

That the Grand Committee do consider the Pensions Regulator (Employer Resources Test) Regulations 2021.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, I am pleased to introduce this instrument, which was laid before the House on 28 June 2021. Subject to approval, these regulations provide essential details on the new employer resources test that was introduced by the Pension Schemes Act 2021 in connection with changes to the contribution notice regime.

[Baroness Stedman-Scott]

The new employer resources test will enable the Pensions Regulator to overcome existing challenges of assessing the "act" or "failure to act" that has affected the financial strength of the sponsoring employer, and therefore its ability to support the scheme, rather than damaging the scheme directly.

These regulations outline that the profit before tax measure will be used to assess the resources of the employer. This measure is widely known and understood by the industry and gives the most appropriate picture of net profits available to provide support for a defined benefit pension scheme. The regulations set out specifically how the value of the resources of the employer is to be determined, calculated and verified.

I am satisfied that the provisions in the regulations are compatible with the European Convention on Human Rights.

Part 3 of the Pension Schemes Act 2021 strengthens the powers of the Pensions Regulator. It fulfils our manifesto commitment to take action against those who think they can plunder the pension savings of hard-working employees. These regulations provide essential details on the new employer resources test which forms part of the Pensions Regulator's contribution notice regime. This regime enables the Pensions Regulator to demand that money is paid into a pension scheme from those found to have caused it detriment. A recent example is Dominic Chappell, who was ordered by the Pensions Regulator to pay £9.5 million into the British Home Stores pension scheme.

The new employer resources test, which these regulations relate to, will enable the Pensions Regulator to overcome existing challenges of assessing the "act" or "failure to act" that has affected the financial strength of the sponsoring employer and therefore its ability to support the scheme rather than damaging it directly.

With these new provisions, we will also avoid the associated challenge of having to project into the future to assess the likelihood of members receiving their accrued benefits. The purpose of the employer resources test is to provide the Pensions Regulator with a tool to make a simple snapshot assessment of the impact of the act or failure to act on the employer at the time. This allows for the act or failure to act to be assessed on its own terms, relative to the employer's current potential exposure to the scheme, rather than an assessment of what could happen in future. Assessing whether the act or failure to act has reduced the value of the employer's resources is just one part of the wider employer resources test. The Pensions Regulator, in addition to looking at the health of the employer, also has a focus on the scheme, where it is required to assess whether the reduction of the employer's resources was material when compared to the scheme's estimated Section 75 liability.

On the specifics of these regulations, what constitutes the resources of the employer is determined as being the employer's profits before tax. This is a widely known and understood measure used by the industry and gives the most appropriate picture of net profits available to provide support for a defined benefit pension scheme. How the value of the resources of the employer are determined, calculated and verified are set out in these regulations. The general approach assesses the annual profit before tax position of the employer had the act or failure to act not occurred, which is then compared to an assessment including the act or failure to act. An adjustment is then applied to the profit before tax position that represents the impact which is expressed as a pound figure. The calculated figure would then be assessed against the scheme's Section 75 debt immediately before the act or failure to act occurred. When the employer resources test has been met, the Pensions Regulator will follow the existing contribution notice process, whereby it will consider other factors, including the reasonableness of issuing a contribution notice.

Working in tandem with these regulations is the Pensions Regulator's code of practice, which aims to provide further clarity to the industry on how it will interpret and use the powers. The Pensions Regulator launched a consultation in May 2021 on its contribution notice code of practice, which included clear examples covering scenarios of how the different tests would apply. The consultation concluded in July, and the Pensions Regulator is reviewing the responses with a view to publishing the code later in the year.

In closing, we remain committed to ensuring that there should be no hiding place for those who put workers' retirement savings at risk, and these regulations will play a vital role in enhancing the Pensions Regulator's ability to take action to protect pension scheme members. I commend this instrument to the Committee and beg to move.

Baroness Janke (LD): My Lords, enabling the TPR to use contributory notices more widely to correct any detrimental action or failure to act is very welcome. However, I have a few questions about the method chosen for defining employer resources.

The Explanatory Memorandum refers to other methods being considered— EBITDA, or earnings before interest tax depreciation and amortisation, and a holistic measure based on covenant strength—but they were dismissed. Can the Minister explain why they were rejected, particularly the holistic assessment based on covenant strength? She will be aware that in very large university superannuation schemes, the level of contributions is affected by covenant strength. Can she explain why a snapshot of net income or profit before tax provides a better approach than this? If the snapshot route is to be followed for defining employer resources, what about the strength of employer assets? What part do they play in any assessment? I also question whether it is reasonable to allow the TPR absolute discretion in determining what are or are not exceptional or non-recurring items. I would welcome the Minister's clarification on these points.

6.15 pm

Baroness Drake (Lab): My Lords, I thank the Minister for her clear explanation of these regulations. I welcome them, but I would like to raise one or two questions which seek some clarity.

The Pension Schemes Act 2021 gave the regulator new moral hazard powers with the introduction of two new criminal offences and by extending the flexibility available to the regulator to make connected parties such as group companies and directors liable for pension scheme deficits, and make payments to a scheme, by issuing a contribution notice. The Act introduces two new tests for imposing contribution notices: when the regulator considers that an act or failure to act materially reduces the employer debt likely to be recovered if a Section 75 debt has fallen due immediately after an insolvency event or reduces the resources of the employer in a manner which was material when compared to the debt in the pension scheme—the employer resources test, which is the subject of these regulations.

They set out that employer resources test for assessing whether a relevant act or failure to act reduced the value of the employer's resources and whether that reduction was materially relevant to the pension scheme's debt. I read in detail that the employer resources will be assessed through the pre-Act normalised annual profit before tax measure, under which non-recurring or exceptional items are removed, and then the impact of the act or failure to act on that profit is determined. If that impact is material, the regulator can start to build its case for a contribution notice. Indeed, it is a measure akin to the employer's ability to support the scheme. The measure is sometimes used in the preparation of an employer covenant analysis undertaken for trustees.

For the record, as it is not clear, can the Minister say how dividends, including payments within a group of companies, will be treated in the normalised annual profit before tax measure and in the assessment of material detriment? That certainly proved a controversial issue of concern during scrutiny of the Pension Schemes Act 2021, and it is not clear—certainly not to me—how those will be considered under the new test. From a pension scheme member's point of view, if the resources of the employer sponsoring the scheme are weakened through transferring assets or dividends, leveraging more debt or some other reason, the employer basically may be less good for the money and pension benefits will be less secure. They will look to the cavalry at the regulator to come over the hill and issue a contribution notice, and they need to have the confidence that that will actually be done with more focus, positivity and speed of action than the past has demonstrated.

In their response to the consultation published on 29 June, the Government set out their reasoning for the employer resources test. In summary, it said that, in the majority of past contribution notice cases, the regulator faced

"difficulty in forecasting the medium and long-term performance of a business for the purposes of the … 'material detriment test'."

This is because it had to extrapolate from an employer-related act into the future, with the uncertainty and challenges that causes evidentially. Indeed, trustees can experience exactly those similar difficulties in trying to assess those implications for the employer covenant, because there is no industry consensus on how to value the employer covenant. Therefore, the employer resources test removes the need to forecast how the employer might or might not have performed in the absence of that act and assesses the impact on a snapshot basis. So it is quicker, sharper and more efficient.

However, the regulator still will not be able to issue a contribution notice if a party can show that they meet the conditions for a statutory defence and can provide reasonable excuse. The three premises are that they gave prior consideration to the test and to the extent that the failure or failure to act would reduce the value of the employer's resources in a material way; that they took all reasonable steps to mitigate any such detrimental impact; and that it was reasonable for them to conclude that the act would not detrimentally affect in a material way the likelihood of the scheme members receiving their benefits.

I sighed a little because, even after applying the employer resources test, the regulator still has to conclude that it would be reasonable to impose a contribution notice, taking into account all relevant factors including the extent of any mitigation provided and a broader assessment of the employer's strength. I just wonder whether we are going to face a potentially long and drawn-out process, which the employer resources test was intended to remove, in the way in which the defence arguments can be applied and whether the Government's intention of deploying an employer resources test as a quick and efficient snapshot—rather than on a holistic basis—could be undermined.

I ask the Minister: what powers or processes are relied on to prevent the statutory defence conditions undermining the policy intention to have a quick and efficient employer resources test? Is it the intention to issue fuller guidance on how measures to mitigate the detrimental impact on pension schemes of an act or failure to act will be assessed as to whether they are sufficient to meet the statutory defence? These are the kind of realities that trustees will need to understand and employers will need to know.

Just as a concluding line, poor behaviour affects not only the value of members' benefits paid but, as the Pension Protection Fund is funded by a levy, it affects those businesses which abide by the rules but end up bearing the costs and subsidising those businesses which seek to avoid their pension liabilities. Good employers and trustees or members have an interest in these new regulations working efficiently.

Lord Vaux of Harrowden (CB): My Lords, it seems like quite a long time ago that we were last in this Room. In fact, I think the last time I spoke in this Room was in the discussion on pension schemes, so it is nice to see a lot of old faces. There is a nice feeling of déjà vu about it. These regulations are reassuringly brief, so I will try to keep my comments equally brief, if I can.

First, I was a bit confused by the name of this, which refers to an employer resources test, that test being profit before tax. Profit before tax is not a measure of a company's resources. It is a backward-looking measure of a company's profitability. I question the comments in the Explanatory Memorandum that

"profit before tax … is less subjective than other options".

Notoriously, profit before tax can be made to be whatever one wants it to be. A cash-flow measure would be an altogether less subjective, more objective

[Lord Vaux of Harrowden]
measure. Profit before tax also does not, as the noble Baroness, Lady Drake, has said, take account of other forms of leakage of resources out of the company, be they dividends, share buybacks or massive capital expenditure. It is perfectly possible for a company to be highly profitable and highly indebted at the same time and therefore to have very low levels of employer resources.

I was a bit confused by the title, and would therefore like to add my name, as it were, to the question asked by the noble Baroness, Lady Janke, about why the Government did not go down the holistic route of looking at multiple measures that give a full picture of the employer resources rather than this one very narrow picture which is only a backward snapshot.

I have two other questions that relate to the discussions we had at the time of the Pension Schemes Bill. This instrument is obviously relevant to the subject of dividends that companies with deficits pay. The noble Baroness will remember that we had quite a lot of discussions about that back then. Indeed, the Minister at the time agreed that the Government would keep the question of dividend payments by companies in deficit under review.

I have two questions. First, can the Minister explain what assessment the Government have made of the impact that these regulations might have on the ability of companies to pay dividends? There has been some speculation in the press that it might significantly depress the payment of dividends by companies, something which on the whole is a good thing, but there could be situations where that could be a negative. Secondly, I would welcome confirmation from the Minister that the Government are still keeping under review the question of payment of dividends by companies that have deficits, as they promised.

Lord Davies of Brixton (Lab): I am glad that it was an accountant who made the comment that profits can be whatever you want them to be, which was my concern. However, I am struggling to grasp what role this is playing. In some ways, I suspect that we could overengineer the definition of "resources" and make it very complicated. There are strong arguments for keeping it as simple as possible so that the regulator can take a holistic view. This is what I understood the process to be. My guess is that the regulations will enable the regulator to do what we always thought it could do in the first place, and it tripped over some regulatory legal point. There are strong arguments in favour of keeping it simple and leaving it essentially to the judgment of the regulator.

Whenever I mention the regulator, I have to add my qualification that of course it does not represent scheme members in any way. It does not have the accumulated knowledge of unions and employers who actually do the business of agreeing pension schemes. I have questions about the Pensions Regulator but the ideal should be a Pensions Regulator that knows the field and can apply the test proportionately.

I have one specific question. I have no idea what this means. Regulation 4(8) says that

"the Regulator must take into account all relevant information in its possession".

Well, yes, it is not going to take into account information that is not in its possession. However, it goes on to use the word "verification". I am not sure what "verification" is doing in that paragraph.

Baroness Sherlock (Lab): My Lords, I thank the Minister for her explanation of the reasoning and intent behind the employer resources test, and all noble Lords who have spoken. I too welcome a move to strengthen the power of the Pensions Regulator. We should say that most employers with DB schemes act professionally and responsibly and maintain good relations with their scheme trustees. However, the Pension Schemes Act 2021, from which these regulations flow, rightly gave the Pensions Regulator stronger powers to deal with the small number of circumstances where parties decide to evade their obligations to their pension schemes or behave recklessly. The test is whether these measures will enable the regulator's approach to be clearer, quicker and tougher. This is what we are exploring today, so I hope that the Minister can help to reassure us on that point.

I will not go back over what the regulations do, but as we have heard, employer resources will be assessed through normalised annual profit before tax, with non-recurring or exceptional items removed. The Minister explained how that would happen: you would take NAPBT, the regulator would then look at the impact on NAPBT caused by the act or the failure to act, produce an adjusted NAPBT and then decide whether to issue a contribution notice. It would compare the two and then argue that the reduction was material in relation to the estimated Section 75 debt.

The case for the test must be that it removes the evidential challenges and uncertainties in forecasting how the employer might or might not perform in the future— absent the act or failure to act—and therefore presumably would provide a quicker measure of assessing the employer's ability to support the scheme and reveal whether a reduction in resources was material.

6.30 pm

The Minister indicated her belief that a simple snapshot would give the regulator a quicker, more efficient tool to make an assessment. I shall not go back over the questions raised by the noble Lord, Lord Vaux, the noble Baroness, Lady Janke, and my noble friends Lord Davies and Lady Drake, about whether this was the right measure and how well it would work—they have done that way better than me and I am certainly not an accountant—but underlying this is a problem which this is trying to tackle. While it acknowledged that most employers with a DB scheme act responsibly, the information gathered and published by the Work and Pensions Select Committee when it looked at controversial cases of poor and reckless company behaviour towards their DB schemes provided clear evidence of the weaknesses of the existing regime where there is poor employer conduct. So we need some action.

Where the employer test is met and material detriment is revealed as a consequence of an act or failure to act, there is then a separate statutory test for reasonableness, where the regulator must take account of all relevant

factors before imposing a contribution notice. As we have heard, that can include a broader assessment of the employer's strength than that provided by the resources test. Does that not reveal some uncertainty and ambiguity about how quick and efficient the amended contribution notice regime will be? My noble friend Lady Drake raised the question of a statutory defence. I want to ask the Minister some specific questions. Where a party invokes the statutory defence of reasonableness, will there be a time limit on the submission of evidence relied on in support of that defence? What are the limits on the regulator's powers to determine whether the statutory defence has been met by a party whose act or failure to act has resulted in a material detriment to their scheme?

On the employer resources test, Regulation 4(3)(a) refers to the regulator determining whether an item is to be treated as non-recurring or exceptional or the value of such an item when determining the value of the profits of the employer. To what extent is the regulator's determination of that binding on the relevant parties?

In the consultation, some stakeholders asked how the regulations would apply to charities and non-profit bodies—which I am sure the Minister's past will stand her in good stead to answer. The Government's response is in the form of Regulation 3, which states that

"in the case of an employer which is … (i) not trading for profit; or … (ii) a charity, any reference to 'profits' in these Regulations shall be read as if it referred to 'net income' … In this regulation, 'net income' means income after the deduction of expenditure".

While helpful, that is not quite as helpful in the case of charities—I think we want a bit more than that. What is the definition of net income in the case of charities subject to the SORP? Is it total net income? Is it just net unrestricted income? If it is total income, I presume that the net income includes restricted items which the charity may or may not be able to apply to the pension scheme depending on the nature of those funds—the Minister will know what I am talking about; she, like me, has run charities and we have all wrestled with restricted funds and their accounting over the years. I would be interested if she could unpack that a bit.

Under the contribution notice regime, the Pensions Regulator can make connected third parties liable for pension scheme deficits and make them make payments to the UK DB schemes. Given that we have left the EU, and given the regulator's previous experience in pursuing foreign parent companies for payments—which we discussed at some length during the passage of the then Pension Schemes Bill—has any thought been given to complications that might arise in seeking contributions from such parent companies?

Finally, once the new contribution notice regime commences in October, companies will have to assess the impact of their business activities against the new tests and conclude whether a reduction in employer resources and/or reduction in scheme insolvency recoveries are material. The companies and connected third parties may need or want to apply to the regulator for clearance to get comfort that it will not exercise its own powers to issue a contribution notice. Have the Government made additional resources available to the regulator to meet such a demand? Equally importantly, will it be able to recruit people with the requisite skill sets? I look forward to the Minister's reply.

Baroness Stedman-Scott (Con): Again, I thank all noble Lords for their contributions. I shall start with the points raised by the noble Baroness, Lady Janke, and the noble Lord, Lord Vaux, on why we do not have a holistic measure. There is no industry consensus on how to value an employer's covenant strength, and we believe that introducing a holistic measure would introduce a number of uncertainties. There is a statutory requirement for the regulator to consider whether it is reasonable to impose a contribution notice, which includes an obligation to take account of all relevant factors, including the broader assessment of the employer's strength. We therefore believe that the wider regime should provide comfort to those concerned that the regulator will not take a holistic view.

The noble Baroness, Lady Janke, raised the issue of earnings before interest, tax and depreciation. I confirm that we looked very closely at the suitability of this and concluded that it is unsuitable, as it is not covered by the financial reporting standards relating to accounting practice published by the Financial Reporting Council and is therefore not audited. We think that it is relevant to have the interest charge allowed for in the figure, which earnings before interest, tax, depreciation and amortisation does not take into account, because that could be where the detriment was reflected if the company raised more debt.

The noble Baroness raised a point about why we have selected the profit before tax measure. The purpose of the employer resource test is to provide the Pensions Regulator with a tool to make a simple snapshot assessment of the impact of the act or failure to act on the employer. Profit before tax was selected for measuring the resources of an employer because it is a term widely understood by the industry and regulator. We believe that it is less subjective than other options that would be indicative of the employer's ability to support the scheme.

The noble Baroness also raised how the Pensions Regulator would determine and remove exceptional and non-recurring items from an employer's annual accounts. The Pensions Regulator would not ordinarily exercise its discretion in relation to exceptional and non-recurring items in audited accounts which mirror the prescribed test period because an audit process will already have examined them. When no accounts are produced, for example, non-recurring and exceptional items will be determined by the regulator, which must have regard to the financial reporting standards relating to accounting practices published by the Financial Reporting Council.

The noble Baroness, Lady Drake, raised a point about how dividends will be treated in the profit before tax test, and I am advised that we will write to clarify that and, of course, place a copy in the Library for everyone to see. The noble Baroness also raised a point about the regulator's guidance. The Pensions Regulator launched a consultation on the revised code 12 contribution notices code of practice, which includes clear illustrative examples covering scenarios of how the different tests would apply. This would provide further clarity on how the regulator will interpret and use the new powers. The regulator has received useful feedback from stakeholders as part of the consultation which it

[Baroness Stedman-Scott]
is currently analysing, and I understand that the regulator intends to use that feedback to strengthen certain aspects of its policy and further illustrate the approach that will be taken and where its interests lie in terms of acts and conducts pending from any decisions from the courts on these points.

The noble Lord, Lord Vaux, understandably raised the question of why we selected the profit before tax measure. The purpose of the employer resource test is to provide the Pensions Regulator with a tool to make a simple snapshot assessment of the impact of the act or failure to act on the employer. Profit before tax was selected for measuring the resources of an employer because it is a term widely understood by the industry and the regulator. We believe it is less subjective than other options and will be indicative of the employer's ability to support the scheme.

The noble Lord, Lord Vaux, also raised the issue about the new pension rules change threatening to scupper a big dividend pay-out. We do not wish to crowd out investment, nor do we wish to prevent the payment of proportionate dividends to shareholders. During the passage of the then Pension Schemes Bill through Parliament, the Government opposed and defeated opposition amendments which sought to subject dividend payments by companies with a pension scheme funding deficit to approval by the Pensions Regulator. We argued that it could deter investment and undermine employers.

The noble Lord, Lord Davies, raised the point of verification. The regulations set out that the Pensions Regulator is making a determination and must take into account all relevant information in its possession. The prescribed methodology set out in the regulations also makes it clear that annual accounts will be used which will have already been verified. In terms of verifying the regulator's determinations, ultimately, any target can make representations to the regulator about the determination, and any decision to impose a contribution notice can also be referred to the Upper Tribunal.

The noble Baroness, Lady Sherlock, raised the question of reasonableness of statutory defence, and whether the Pensions Regulator has a way to determine if this is met. The Pensions Regulator will publish a code of practice and guidance that will illustrate how the tests will apply. The noble Baroness raised the very important issue of charities, and I am advised that we will write to her with clarification on the points she raised.

The noble Baroness also raised the issue of recovery from overseas employers. Again, we will continue to review the situation. She also asked whether this will create an influx of clearance requests and whether the Pensions Regulator is resourced to handle them. The Pensions Regulator does not expect that there will be a significant increase in clearance requests coming in but, if this is the case, the regulator is used to reprioritising its resources and activities, as it has demonstrated during the recent Covid crisis.

To confirm, the draft regulations debated today provide greater security for members' defined benefit retirement savings by setting out the details of the employer resources test that the Pensions Regulator can use in combating acts of those seeking to avoid their responsibilities to pension schemes. I commend this order to the Committee.

Motion agreed.

Committee adjourned at 6.42 pm.