Vol. 814
No. 54

Wednesday
13 October 2021

PARLIAMENTARY DEBATES
(HANSARD)

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 or for the Lords spiritual.

House of Lords

Wednesday 13 October 2021

3 pm

Prayers—read by the Lord Bishop of Oxford.

Energy Prices: Electricity Bills
Question

3.07 pm

Asked by ***Baroness McIntosh of Pickering***

To ask Her Majesty's Government what assessment they have made of the rising costs of wholesale energy prices, and of their impact on household electricity bills.

Baroness McIntosh of Pickering (Con): I beg leave to ask the Question standing in my name on the Order Paper and declare my interest as president of National Energy Action.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the largest element of gas and electricity bills, which is wholesale costs, has increased significantly. The Government are committed to protecting customers, especially the most vulnerable. Households will continue to be protected throughout the winter by the price cap and through the warm Home discount and the winter fuel payment and cold weather payment schemes. A new £500 million household support fund has also been made available to councils to help the most in need over the winter.

Baroness McIntosh of Pickering (Con): Given the record rise in wholesale gas prices and the fact that many fuels such as heating oil, coal and LPG, on which many rural dwellers depend, are not covered by the price cap, will the Government immediately lift the green levies on household bills, which account for 25% of the total, but ensure that energy companies pay for the green infrastructure from which they will ultimately profit, while targeting all available financial resources on those on the lowest incomes with the least efficient homes, to ensure that a further 1.5 million are not forced into fuel poverty?

Lord Callanan (Con): Heating oil and LPG are of course not covered by any of the levies that my noble friend refers to—that is, they are separately controlled. There is a free market in them and they have not gone up nearly as much as gas prices. But as with every other utility, the energy companies pass through the cost of investment in the sector's networks to end consumers, as well as the cost of additional energy infrastructure investment and environmental and social policies.

Lord Allen of Kensington (Lab): I declare my interest as chairman of Balfour Beatty and my other interests as in the register. When, back in July, I raised the issue of the high energy costs affecting the competitiveness of our steel industry, the Minister appeared to agree. Yet since then, the Government have offered no support when energy costs have gone through the roof. This will impact on jobs and people's lives throughout the country. As Gareth Stace put it well the other day, according to the newspapers, the energy crisis of today will be the steel industry crisis of tomorrow. What assistance are the Government currently giving to the steel sector and others that are highly dependent on energy consumption? More importantly, what are they planning to do not next year or next month but in the coming weeks to address this crisis?

Lord Callanan (Con): Many of these energy-intensive industries are already freed from the cost of the emissions trading scheme by being issued with free permits but, beyond that, the noble Lord makes a good point. My colleague the Secretary of State is regularly in urgent discussions with all these industries and, of course, we are urgently seeking a solution across government as to how we can do something to help.

Lord Oates (LD): The Minister will be aware of the bitter irony at this time of energy crisis that some £1 billion was spent in the last 12 months on paying wind generators not to generate energy. We need a proper energy policy that builds storage. When will the Government come forward with storage solutions that mean that this energy is generated and directed to green hydrogen, battery storage, compressed air or other forms or storage?

Lord Callanan (Con): Of course, we do have a comprehensive energy policy. Many of the technologies that the noble Lord refers to are difficult and expensive, but we are funding research into a lot of them. The problem with electricity, as the noble Lord will be aware, is that it is very difficult and expensive to store on a large scale.

Lord Howell of Guildford (Con): My Lords, it is obvious that in the short term, with soaring international gas prices, what can be done is understandably limited. Rescue support for heavy energy users obviously will help if it comes quickly, but should we not also consider temporarily suspending some of the heavy green surcharges, carbon penalties and the latest, rather poor idea, of taxing gas even further? For the medium term, have the real lessons been learned, namely that for an orderly and sustainable energy transition, we need more gas and electricity storage for back-up and swing supplies, a rapid sort-out of our faltering nuclear replacement programme, some coal-fired stations in reserve, and low rather than high home fuel prices to ease widespread hardship and prevent backlash?

Lord Callanan (Con): We are taking a range of important steps to decarbonise the electricity system and to provide more homegrown electricity generation as our supplies from the North Sea dwindle. The problem with my noble friend's argument is that providing more storage does not alleviate the high prices. Many European countries have much greater levels of gas storage, but their prices are even higher than those in the UK.

Lord Walney (CB): My Lords, will the Government redouble their efforts to persuade our European partners to resist the siren voices from the Kremlin over Nord Stream 2, in the knowledge that President Putin's regime will only try to exacerbate this cost-of-living crisis and not bring benefit to our or European citizens?

Lord Callanan (Con): The noble Lord makes an extremely good point. We remain very concerned about the impact of Nord Stream 2 on European energy security and particularly on the interests of Ukraine. We will continue to raise our significant concerns about the project, defend the interests of Ukraine, support future arrangements and give a significant transit role to them.

Lord Grantchester (Lab): My Lords, Labour will make Brexit work. Can the Minister confirm that he believes that the measures of support are sufficient this winter to help those in fuel-poor households and those with poorly insulated homes?

Lord Callanan (Con): We always keep these things under review, but I outlined the many steps that we are taking and if necessary, we will look further at what we can do to help.

Lord Roberts of Llandudno (LD): My Lords, does the Minister agree that the foolhardy thing is that universal benefit has been completely demolished just when the poorest, most vulnerable people will be fighting to keep warm this winter? Will the Government not reverse that decision, and can they give us something fresh that will help the most vulnerable in a very harsh winter?

Lord Callanan (Con): I outlined earlier the support mechanism that we already have in place: the warm home discount, the winter fuel payment, cold weather payments and an additional £500 million household support fund, which has been available to councils to help the most in need over the winter.

Baroness Jones of Moulsecoomb (GP): The Scottish Parliament, through the Green Party Minister Patrick Harvie—

Lord Foulkes of Cumnock (Lab Co-op): Oh no.

Noble Lords: Oh!

Baroness Jones of Moulsecoomb (GP): It has committed £1.8 billion to home energy efficiency measures. Given that this Government want to be world leading and they have a bit of a gap to fill, will they commit a proportionate amount—bearing in mind that there are 10 times more homes in England—of £18 billion?

Lord Callanan (Con): I have not had a chance to meet the noble Baroness's colleague yet. I was supposed to meet him a couple of weeks ago, but the meeting was cancelled. I look forward to discussing these important matters with him. As the noble Baroness will be aware, we are already spending considerable sums on home insulation and heating upgrade measures—some £1.3 billion over the last year. Of course, I cannot predict what might happen in the Chancellor's spending review, but we are already investing considerably in home insulation measures.

Lord Mackay of Clashfern (Con): I wonder who is responsible for this unprecedented rise in the price of wholesale gas?

Lord Callanan (Con): The noble and learned Lord is tempting me. Gas is traded in international markets, so the biggest factors influencing prices are global trends in supply and demand. Higher wholesale gas prices have been seen internationally since 2021.

Viscount Waverley (CB): My Lords, is there a correlation between consistency of supply from certain national gas producers and the state of some bilateral relations, with the EU generally and indeed further afield, that might be inhibiting the continuity of supply? If so, are ambassadors exploring strategy options with this in mind, and would the Minister care to give us some specific examples?

Lord Callanan (Con): Security of supply is of course absolutely vital. The UK derives this through its diversity of suppliers and by reducing reliance on any single source. In addition to our considerable domestic production, we import gas from Norway, Belgium, the Netherlands and further afield, via LNG terminals. Of course, through our ambassadors we are in regular contact with our energy partners, including Norway, the EU Commission and the International Energy Agency.

Lord West of Spithead (Lab): My Lords, for several years a number of us have been banging on about the looming national shortage of electricity. My concerns are that our present nuclear power stations are going out of service at an increasing rate and that no nuclear sites are being built or planned, yet they are absolutely crucial for the provision of round-the-clock, weather-independent, low-carbon electricity. We have all seen, as we expected, that renewables alone do not cut the mustard when we really need it. Does the Minister agree that there is an urgent need to complete Hinkley Point C and to get the final investment decision for Sizewell C? When will the decision to go ahead be made?

Lord Callanan (Con): I agree with the noble Lord. It has been a mistake and, indeed, it was a mistake for his party to announce a moratorium from 1997 on any new nuclear development, which lasted for 10 years. We need to get on fast with building new nuclear capacity, and we are doing just that. It will form a vital part of our baseload electricity demand.

Nutrition for Growth Summit

Question

3.18 pm

Asked by ***Lord Collins of Highbury***

To ask Her Majesty's Government when they will announce their strategy for the Nutrition for Growth Summit in Tokyo in December.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, the United Kingdom continues to work closely with the Government of Japan to make sure that the 2021 Tokyo Nutrition for Growth Summit generates meaningful action by Governments, donors, businesses, the UN and civil society. A decision on a UK commitment and wider strategy will be made following the conclusion of the spending review.

Lord Collins of Highbury (Lab): My Lords, I co-chair, with David Mundell MP, the Nutrition for Growth APPG. At the first summit in 2013, the UK played a pivotal leadership role. For this summit, the International Coalition for Advocacy on Nutrition, which includes Save the Children, UNICEF and other important NGOs, set out recommendations for the FCDO at Tokyo in its document *Time for Action*. I strongly recommend that the noble Lord reads that document because its key recommendation is that the Government should renew their commitment to reach 50 million people with nutrition interventions by 2025. Does the noble Lord agree?

Lord Ahmad of Wimbledon (Con): My Lords, I assure the noble Lord that I have read the documents in advance of this Question. Indeed, the recommendations made by ICAN are very much part of our thinking as we look to complete the spending review. I cannot give a specific commitment, but I recognise the work of the noble Lord and my right honourable friend David Mundell in this respect. We will work very constructively to ensure that we remain committed to this important priority.

Baroness Jenkin of Kennington (Con): My Lords, of course it is not only the UK Government whose job it is to end global malnutrition; others have roles to play, and we will be effective only if we work in partnership with like-minded allies. Which Governments are the FCDO speaking to ahead of the summit to ensure that our strategy is aligned with that of our closest allies, in particular the United States?

Lord Ahmad of Wimbledon (Con): My Lords, my noble friend raises a very important point. I assure her that we are talking to all our allies. Indeed, this has been part of our feature—talking about tackling, for example, famine, as part as our leadership under the G7 agenda. I hope to travel to the United States shortly to meet some of the new members of the State Department team and this will certainly feature in those discussions as well.

Baroness Boycott (CB): My Lords, I remind noble Lords that the ODA specific nutrition spend from 2016-19 was almost £110 million; this year it is projected to be only £37 million. Does the Minister not agree that maintaining good nutrition is one of the easiest and best ways to ensure a healthy population? This cut is not just drastic but extremely short-sighted. Once again, food has been penalised over other areas. Can the Minister tell the House when this budget will be restored and, indeed, increased to £120 million, which is what global experts recommend?

Lord Ahmad of Wimbledon (Con): My Lords, I can assure the noble Baroness and your Lordships' House that this remains an important part of our thinking. As I said in response to the noble Lord, Lord Collins, I cannot give a financial commitment at this stage because of the ongoing spending review, but I agree with the noble Baroness that the investment we have made over the current programme has seen great benefits, including on my patch. For example, in Bangladesh we have seen real achievements on the nutrition agenda.

Baroness Chakrabarti (Lab): My Lords, estimates suggest that we are currently on course to cut overseas funding for nutrition specifically by as much as 70%. That will inevitably cost lives and devastate the lives of millions of children in particular. Will the Government please take the opportunity of the summit to reconsider, if not reverse, that decision?

Lord Ahmad of Wimbledon (Con): My Lords, obviously a decision was taken on the reduction of the overall ODA spend but, as I have already said, we are working constructively with key partners and are supportive of the summit that will take place in Japan in December. Once the spending review has been completed, I will be able to share with your Lordships the nature of the exact spend. There are various streams to this funding, including the match funding. Again, on reviewing this area, I have seen the net benefit of how UK funding helps support generate further funding, including from the private sector.

Baroness Brinton (LD) [V]: My Lords, The Power of Nutrition charitable foundation says:

> "The Summit is a unique opportunity to accelerate financial commitments … With concerted, bold actions … from all sectors, we can make 2021 the year where progress on nutrition is not reversed but accelerated".

Can the Minister say whether the Government, under their chairmanship of G7, will set an example and increase their aid budget for nutrition to £120 million, reversing cuts made by the Chancellor earlier this year?

Lord Ahmad of Wimbledon (Con): My Lords, I believe I have already answered part of that question but let me reassure the noble Baroness that we are leading on this issue, including in discussions with G7 partners.

Baroness Sugg (Con): My Lords, my noble friend is, of course, aware of the significant cuts to the aid budget but implementing the OECD policy marker for nutrition at programme design stage will cost the Government nothing and make the remaining aid—what is left for nutrition—much more impactful. Do the Government have any plans to do this by creating nutrition objectives across broader development programmes?

Lord Ahmad of Wimbledon (Con): My Lords, my noble friend speaks with great insight and expertise. Let me assure her that the Government have worked with other key donors to promote adoption of the new OECD nutrition policy marker. Indeed, the UK's 2019 ODA spend data that was published recently

[Lord Ahmad of Wimbledon]
included the nutrition policy marker for the first time. She makes an important point, and it is very much part of our thinking.

Lord Krebs (CB): My Lords, are the Government prepared to show global leadership by tackling the massive problem of malnutrition in this country, in particular by bringing forward a food Bill in response to the recent Dimbleby report?

Lord Ahmad of Wimbledon (Con): Speaking to foreign policy, it is always important that, when we stand up and raise issues of prioritisation on the international stage, we do not forget what is happening at home. The noble Lord makes an important point, which I will discuss on my return with colleagues across other departments.

Baroness Stuart of Edgbaston (CB): My Lords, following on from the question from the noble Baroness, Lady Sugg, is the FCDO looking at its own key performance indicators when it assesses mortality rates for under-fives? Does it give a high importance to nutrition?

Lord Ahmad of Wimbledon (Con): My Lords, the noble Baroness raises an important point. I assure her that the issue of KPIs, in terms of our development spend, is consistent across many areas of budget. I used the example of Bangladesh earlier. We have seen infant mortality fall there from the direct support we have provided on various programmes, particularly among those under the age of five. That shows the real benefit of our investment in such parts of the world.

Lord McConnell of Glenscorrodale (Lab): My Lords, the cruel and short-sighted cuts to official development assistance already implemented will have a significant impact on nutrition and other life-saving programmes. That budget is now further threatened by the suggestion that the Chancellor might include IMF special drawing rights against the ODA budget rather than as additional aid. Can the Government give a cast-iron guarantee that there will not be further cuts to official development assistance programmes as a result of this proposal from the Chancellor and that the rest of the Government will stand up to him and this time say no?

Lord Ahmad of Wimbledon (Con): My Lords, as the noble Lord may have noticed, we have a new Foreign Secretary. One of the areas that I know my right honourable friend has prioritised is to look again at the issue of the aid budget. The noble Lord makes an important point about SDRs and I can assure him that we are engaging in very robust discussions with the Treasury.

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

UK Fashion Industry

Question

3.27 pm

Asked by ***The Earl of Clancarty***

To ask Her Majesty's Government what support, if any, they intend to provide to the United Kingdom fashion industry, in particular to support its work in European Union member states.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, the Government are fully committed to supporting our world-leading fashion industry. We are operating export helplines, running online seminars with policy experts and offering business support through a network of 300 international trade advisers. We are also investing millions of pounds in customs intermediaries and have launched the export support service for UK businesses. We engage closely with the fashion industry, including through the DCMS-led working group on touring, to support the sector to extend its international impact.

The Earl of Clancarty (CB): My Lords, I welcome the noble Lord to his new post. The fashion industry is hugely valuable culturally and economically, yet it faces serious Brexit-related concerns in manufacturing—garment workers should be added to the shortage occupation list—the debilitating cost and red tape of importing materials and exporting goods, and immobility. With visas, work permits, carnets and cabotage, it shares many of the same problems as the music industry. Is the Minister aware that there are now real difficulties getting models to shoots in Europe, the most valuable market, fast enough? How are the Government addressing this multiplicity of concerns, knowing that freelancers and smaller companies will be the first to suffer?

Lord Parkinson of Whitley Bay (Con): The DCMS-led working group is addressing the multiplicity of issues which the noble Earl mentions. The shortage occupation list is of course a matter for the independent Migration Advisory Committee. When it last looked at this, it found that occupations in garment manufacturing did not warrant inclusion, but it will be for that body to keep that under review. The working group on touring includes representatives from across the creative sectors, including the chief executive of the British Fashion Council. We have addressed a number of the sector's concerns already, such as by confirming that fashion professionals from the UK will not be double-charged for social security contributions, but that engagement and work continues.

Baroness Bull (CB): My Lords, the challenges of Brexit for the fashion sector and the wider creative industries have been clearly enumerated in my noble friend's Question, but we are repeatedly told that the agreement is a done deal and that unpicking one part would unravel the rest—ironically, an image drawn from fashion. Can the Minister explain why it is now possible for government to demand changes to one part of the UK's agreement with the EU but not

possible to reopen a considerably less contentious part and thereby protect the contribution of the creative sectors to UK jobs and to economic success?

Lord Parkinson of Whitley Bay (Con): My Lords, the European Union was very clear in its negotiations and, alas, did not accept the proposals which the UK put forward during them. That is why we are discussing bilaterally with member states these matters and the implications which she and the noble Earl mentioned and providing as much clarity as we can to the industry, including through specific landing pages on GOV.UK to help it navigate the new arrangements.

Lord Flight (Con): My Lords, people working in the fashion sector, as in the creative industries more generally, often have irregular working patterns. Do the Government appreciate that and how have they taken this into account in the visa rules they apply to people working in these important fields?

Lord Parkinson of Whitley Bay (Con): My noble friend makes an important point. On Monday, we launched a dedicated temporary worker route for creative workers, meaning that creative and sporting workers are no longer grouped together in one immigration route. The temporary work route permits a gap of up to 14 days between engagements. In April, the Home Office introduced a mechanism to stop the clock when calculating that 14-day period, so that any time spent outside the UK is not counted towards it. That new arrangement better reflects the working practices of people in the creative sector and, I am glad to say, has been well received.

Baroness Donaghy (Lab): My Lords, the Government were silent on the impact of Brexit on UK services. The sin of omission means that service professionals were not given the full picture. The fashion industry is worth £35 billion and has been seriously impacted, as outlined by the noble Earl, Lord Clancarty. Will the Government try to reach an agreement or a declaration with the EU on visa waivers? As has been said by the noble Baroness, Lady Bull, this would not require a renegotiation of the TCA. Finally, will the Government get a move on with creating craft and design T-level courses to help fill the thousands of vacancies at UK factories?

Lord Parkinson of Whitley Bay (Con): Regrettably, my Lords, we do not believe that a visa waiver is viable. During the negotiations last year, the European Commission argued that EU-wide visa arrangements would have to include binding non-discrimination clauses committing us to waiving visit visas for current and future member states of the EU, which is not compatible with the commitment in the manifesto, on which the Government were elected, to take back control of our borders. Of course, our new immigration system allows us to have and to continue our very generous offer to people working in the creative industries from all around the world—they are very welcome here in the UK.

On T-levels, I am pleased to say that the content for the craft and design T-level has been developed by employers. The appointed awarding organisation is now developing the technical qualifications and assessments, and it will be available for first teaching from September 2023.

Lord Foster of Bath (LD): My Lords, I too congratulate the Minister on his appointment. He will be well aware that the Government are currently considering introducing an international rather than a national intellectual property exhaustion scheme. Many of our very successful exporting creative industries, including fashion, believe that this move could be devastating, some even describing it as an existential threat. Do the Government share their concerns?

Lord Parkinson of Whitley Bay (Con): Sadly, the negotiated outcome which the UK proposed with the EU was not something it was willing to agree in the negotiations before we left the European Union, but the Intellectual Property Office is considering concerns such as those which the noble Lord raises to see whether any changes can be made to the UK's design systems to address the issue in the future.

Lord Vaizey of Didcot (Con): My Lords, I echo the congratulations offered to my noble friend on his new appointment on the Front Bench. We look forward to seeing him on the front row of many fashion shows at London Fashion Week next week, where he will be an adornment and perhaps even a distraction.

My noble friend will know that many highly successful domestic fashion companies manufacture in this country. They depend on high-net worth foreign individuals coming here and buying their stock. They used to come here because they could reclaim their VAT. The Chancellor has of course got rid of this scheme. Will my noble friend brief himself on the impact this has had on domestic fashion companies and keep engaged with the Treasury, as does our Business Secretary, on this important issue as it develops?

Lord Parkinson of Whitley Bay (Con): I thank my noble friend for his warm words of welcome. He knows better than most how lucky I am to have the job I have just begun.

The issue of VAT is one that my noble friend has campaigned on, both in your Lordships' House and in another place. We did not have the choice of maintaining the VAT retail export scheme as it was; the choice was between extending it to EU residents, at significant cost to the UK taxpayer, or removing it completely as WTO rules mean that goods bound for different destinations must be treated the same. I will of course look into this further, as he suggests, but my understanding is that fewer than 10% of visitors to the UK use the VAT retail export scheme and that extending it to the EU could increase total costs by up to £1.4 billion a year.

Baroness Wheatcroft (CB): My Lords, following on from the question from the noble Lord, Lord Vaizey, would the Minister inquire whether it was the ability of HMRC to deal with the extra paperwork that it felt would be generated by extending the scheme that actually put paid to it, and whether that is why 40,000 jobs are under potential threat?

Lord Parkinson of Whitley Bay (Con): I will certainly follow up with HMRC the point that the noble Baroness raises. I should add that tax-free shopping is still available in store when goods are posted to overseas addresses. People can still avail themselves of that.

Baroness Merron (Lab): My Lords, I welcome the Minister to his place and wish him all the very best. While the fashion and textile industry is a leading contributor to our economy, an engine room for jobs and a standard-bearer for British style and reputation, one could be forgiven for thinking it has been overlooked. Following the warning issued by ASOS and others about the impact of supply chain issues, how would the Minister ensure urgent support to the industry to overcome HGV driver and skilled worker shortages? Looking to the future, what plans are there for a major skills boost, so that we can see more and better clothing made for sale both here and abroad?

Lord Parkinson of Whitley Bay (Con): The sector certainly has not been forgotten. We continue to work very closely with the fashion industry to understand the challenges it faces and to identify new opportunities to develop it. It is a world-leading sector, of which we are very proud. I mentioned the working group which includes the chief executive of the British Fashion Council; that is just one of many ways we have engaged with the sector. My noble friend Lord Frost chaired the Brexit business task force on fashion and textiles in May, we have two trade advisory groups from DIT, and we have hosted a number of online seminars. We continue to engage with the industry, and I look forward to working with the noble Baroness and others as we do so.

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

UK Property Ownership: Overseas Jurisdictions

Question

3.38 pm

Asked by ***Lord Wallace of Saltaire***

To ask Her Majesty's Government what plans they have to increase the transparency of property ownership in the United Kingdom following media reports of the use of overseas jurisdictions to hide the identity of the beneficial owner.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the Government remain committed to establishing a new beneficial ownership register of overseas entities that own UK property in order to combat money laundering and achieve greater transparency in the UK property market. The register requires primary legislation for it to be established, and the Government will legislate when parliamentary time allows.

Lord Wallace of Saltaire (LD): Does the Minister recognise the complete contradiction between asserting complete sovereignty over Northern Ireland and failing to reassert sovereignty over who owns what land and property in the United Kingdom, as well as failing to prevent dirty money flowing in from authoritarian states? Why have the Government not yet found time to prioritise legislation that enables British citizens to know who owns what?

Lord Callanan (Con): I think these are two completely separate issues that the noble Lord is confusing. As I said, it remains a priority for the Government. We have already published a draft Bill, we have carried out pre-legislative scrutiny on the matter and we will legislate as soon as parliamentary time allows.

Lord Sikka (Lab): My Lords, the UK itself is a barrier to transparency. Any crook from anywhere in the world can form a company here without any checks on the authenticity of directors, and can conceal illicit financial flows. The Government have had 11 years to reform Companies House but have failed to do so. Can the Minister explain why reform of Companies House has not received greater priority?

Lord Callanan (Con): We are already investing £20 million in the reform of Companies House to provide many of the services the noble Lord refers to, but many of the reforms also require primary legislation and we will legislate when we can. The noble Lord is not correct in his basic assertion: the UK's anti-money laundering regime was reviewed by the Financial Action Task Force and the UK achieved the best rating of any country assessed so far in the round of evaluations.

Baroness Ludford (LD): My Lords, *Guardian* reporter Luke Harding, involved in analysing the leaked Pandora papers, has said, "There is a message for the super-rich here: don't hide your cash under a palm tree because, sooner or later, an investigative journalist will find it." That is just as well, because the Government seem very relaxed about dirty money buying up London. Why have only four unexplained wealth orders—McMafia orders—been issued since 2018 and none since July 2019? Is the Minister relaxed that a government assessment last November concluded that money laundering through the UK had actually increased since 2017?

Lord Callanan (Con): As I just said in the previous answer, we are absolutely not relaxed about this and we are determined to root out any financial chicanery and money laundering where possible. Investigations in which a UWO may assist are likely to be complex: application to a court for a UWO may take many months or years, but enforcement authorities continue to seek opportunities to utilise unexplained wealth orders in appropriate cases. These are difficult and complex matters.

Baroness Falkner of Margravine (CB): My Lords, the noble Lord mentions the establishment of the register, which is long overdue. Will he tell the House what merit he finds in our continuing to support the

existence of anonymous shell companies? As the Tax Justice Network has just said, nobody behaves better when they cannot be seen.

Lord Callanan (Con): If the noble Baroness means shell companies in British Overseas Territories and others, they are also convinced of the need for transparency and we continue to press them to provide full ownership and transparency details on these companies.

Lord Bassam of Brighton (Lab): My Lords, it is hard to take seriously the Government's claim that they aim to lead the global fight against illicit finance, or the register that the Minister has referred to. The Government claim they have impressive controls, but it is now three years since their consultation ended on the draft registration of overseas entities Bill, so can the Minister tell the House what plans they have to tackle our high-risk score, stop money laundering and protect the UK against terrorist financing?

Lord Callanan (Con): As I said, the Financial Action Task Force that we established got the best rating of any country assessed so far in the round of evaluations in countering money laundering. We are opposed to it and we will do all we can to fight it, as noble Lords will want us to do. We intend to legislate on the registration of beneficial ownership and will do so as soon as parliamentary time allows.

Lord Fox (LD): My Lords, as we all know, "legislate when time allows" is a phrase to kick things into the long grass. The evidence to date is that this item is nestling very deep in the long grass. The Government have had the time and the opportunity to bring forward legislation, so can the Minister be clearer to your Lordships' House why they have not done so?

Lord Callanan (Con): It is absolutely not an intention to kick it into the long grass: it remains a priority, which is why we published the draft Bill, why we invited pre-parliamentary scrutiny and why we have acted on many of the recommendations that were issued during that time, but there remains a lot of pressure on the parliamentary timetable and we will legislate when time allows.

Lord Harries of Pentregarth (CB): One hundred and thirty countries have now signed up for a global tax arrangement with a minimum tax threshold of 15%. What will Her Majesty's Government's attitude be towards tax havens where the tax is very much lower than that and which fail to sign up to this regime? In particular, what will their attitude be to UK property owners who register their property with companies in such tax havens?

Lord Callanan (Con): The Chancellor continues to work with other jurisdictions to expose many of these havens and to increase the tax take. Only recently, the G7 Finance Ministers agreed a minimum corporation tax that has been implemented in many countries across the world. So, the Chancellor and HMRC need no lessons to try to increase the tax take.

Baroness Donaghy (Lab): My Lords, we are talking about £170 billion-worth of property owned offshore. Think what the tax revenue could buy to sort out the energy crisis, the social care crisis and the low pay crisis. Will the Government bring back some legislation, or have they listened to the society for the protection of oligarchs? Ministers themselves claim that 75% of the property industry supports tougher action against foreigners who use the UK to wash their dirty cash. Is it not time that the Government made some parliamentary time for this?

Lord Callanan (Con): Again, the noble Baroness is confusing different issues. Having hereditary beneficial ownership—which we are greatly committed to and would be, I think, a great step forward—provides transparency. It does not, of course, itself increase the tax take. But she can be convinced that HMRC is very seized of this issue and is intending to increase the taxation take where it can possibly do so. Since 2010, the UK Government have secured and protected over £250 billion in tax revenue that would otherwise have gone unpaid, including an additional £3 billion from those trying to hide money abroad.

Baroness Bennett of Manor Castle (GP): My Lords, the Minister has said "when parliamentary time allows" a number of times. But, of course, your Lordships recently passed the Financial Services Act. Transparency International recently analysed 400 corruption and money laundering cases and identified 600 UK businesses, institutions and individuals that have helped those corrupt cases. Does the Minister acknowledge that the Financial Services Act, so recently passed, is inadequate in regulating the actions of our businesses and needs to be strengthened?

Lord Callanan (Con): I am not familiar with the details of that Act, but, as I said and will repeat again: the register of beneficial ownership remains a priority; the role of Companies House remains a priority; and we will come to this when parliamentary time allows.

Lord Foulkes of Cumnock (Lab Co-op): Could the Minister explain why we should not come to the conclusion that the reluctance to take action on this and other tax evasion and avoidance is because of the very generous donations given by Russians to the Tory party and Tory MPs?

Lord Callanan (Con): The noble Lord would be incorrect if he came to that conclusion. HMRC and the Chancellor have taken robust action against tax avoidance and evasion and will continue to do so. Many of the complaints I get from people about HMRC are that it is too aggressive in pursuing individuals and companies for its tax take. So, it will take no lessons from the noble Lord in wanting to increase its tax take.

Lord Alton of Liverpool (CB): My Lords, the All-Party Parliamentary Groups on Hong Kong and on Uyghurs, on which I serve as vice-chair, have drawn the Government's intention to the impunity of those such as Carrie Lam and Chen Quanguo, involved in the destruction of Hong Kong's democracy and the Uighur genocide. Will the Minister instigate a UK asset audit

[Lord Alton of Liverpool]
of such officials and the families of those responsible for these depredations, and accelerate scrutiny of Chinese-UK property developments, such as Nine Elms in south London? This has borrowed £430 million from banks, potentially leaving us vulnerable to collateral damage from the Evergrande crisis, with liabilities—in a re-enactment of the South Sea bubble—now topping some £2 billion.

Lord Callanan (Con): The financing of development activity is, of course, a commercial decision and the Government do not intervene in those investments. But, in March 2021, in a co-ordinated effort with the European Union, the US and Canada, the UK imposed sanctions, including travel bans and asset freezes, on several Chinese officials in response to the human rights abuses against the Uighur community. I assure the noble Lord that we continue to monitor the situation. The UK has introduced global human rights sanctions regimes, complementing our anti-money laundering measures, including those implicated in human rights abuses, ensuring that they cannot utilise funds that have been obtained illicitly in the UK.

The Lord Speaker (Lord McFall of Alcluith): My Lords, that concludes Oral Questions for today.

Northern Ireland Protocol

Private Notice Question

3.49 pm

Asked by ***Baroness Ludford***

To ask Her Majesty's Government, further to the speech made by Lord Frost on 12 October 2021, what plans they have to change the Northern Ireland Protocol.

The Minister of State, Cabinet Office (Lord Frost) (Con): My Lords, the objective of the Northern Ireland protocol was to support the Belfast/Good Friday agreement. It is now undermining it. I set out our proposals to change these arrangements to this House and in a Command Paper on 21 July. We expect written proposals from the Commission today in response to the current difficulties. I hope that we can resolve this situation by agreement but, if we are to do so, we will need to see significant change to the current arrangements.

Baroness Ludford (LD): My Lords, I want to ask the Minister two questions. First, apart from with the DUP, what consultation have the Government undertaken in Northern Ireland to lead the Minister to threaten to breach the protocol? The chief executive of Manufacturing NI says that

"no one in business has raised the issue of the ECJ oversight as a problem … It is purely a political and sovereignty issue, and not a practical or business issue."

Does ideology trump pragmatism and business in Northern Ireland?

Secondly, the Minister has trashed the political credibility of the Government and, indeed, its electoral legitimacy, given that the 2019 election was won on the basis of "Get Brexit done" triumphalism about the withdrawal agreement and the protocol. However, he is also trashing the UK's international reputation. In the words of legal expert Professor Mark Elliott,

"the UK, if it wishes to be part of the rules-based international order, cannot pick and choose the international legal obligations that it honours",

and to believe otherwise is "legally illiterate". Does that bother the Minister?

Lord Frost (Con): My Lords, there is quite a lot in that question but I will try to deal with the two points. We talk to people of all opinions across the spectrum of political opinion in Northern Ireland. In doing so, I personally have heard quite a lot of concern about the imposition of European Union law in Northern Ireland without democratic consent; of course, the Court of Justice stands at the apex of that system.

On the second question, we set out our approach in the Command Paper. I do not think that there is much more to say. We have been clear that the threshold for using Article 16 has passed; Article 16 is a mechanism in the protocol whose use is legitimate if the circumstances require it. We would prefer to find a solution by consensus but Article 16 is there.

Baroness Chapman of Darlington (Lab): My Lords, I welcome the Minister back from his brief stop in Portugal yesterday. I note that your Lordships' House was sitting then; we too would have appreciated hearing from him as he announced his new text.

Although we welcome the opportunity to hear from the Minister this afternoon, it is a shame that this Question is taking place at 3.45 pm, given that the EU's proposals for amending the protocol are due to be published in just two hours' time. Can the Minister confirm that he will consider the EU's proposals in good faith, and that the Government will engage constructively in finding solutions to protect livelihoods and communities in Northern Ireland? In his speech yesterday, the Minister said that he has drafted a new protocol. When will we see the legal text? Given the direct importance of this process for the people of Northern Ireland, has he consulted Northern Ireland Ministers on his text?

Lord Frost (Con): My Lords, my speech in Lisbon yesterday covered much more than the Northern Ireland protocol. I am sure that the noble Lords who have read it have seen that it was an attempt to set out our wider relationship with the European Union; the protocol policy was as set out in the Command Paper. I agree that we are looking forward to getting the proposals from the Commission later today. Obviously we will look at them positively and constructively; I am sure that we will want to discuss elements of them in more detail. We very much want to get into an intensive talks process on those proposals, as well as on the proposals we sent. As the noble Baroness points out, we have sent a draft of the legal text to the Commission. It is a negotiating document at the moment but, of course, I expect that we will make it public if that seems to be useful to the process in future.

Lord Lamont of Lerwick (Con): My Lords, would the noble Lord confirm that more than 200 GB firms have stopped supplying goods to Northern Ireland and that the Northern Ireland protocol is just not working satisfactorily? Secondly, as regards accusations that we are going against the rules-based international order and the rule of law, is it not a fact that Article 13(8) of the protocol itself envisages that it could be succeeded by other agreements?

Lord Frost (Con): My Lords, my noble friend is absolutely correct that 200 firms have ceased trading with Northern Ireland this year, including some quite significant ones. The existence of this customs process between Great Britain and Northern Ireland is at the heart of some of the problems we are experiencing with the protocol. My noble friend is also right that Article 13(8) of the protocol provides for successor arrangements. This was envisaged and explicitly written into the protocol when we negotiated it. It reflects the fact that it is not unusual in any way to renegotiate or supersede international agreements, which is what we hope to do in this process.

Lord Anderson of Ipswich (CB): My Lords, the Minister said in Lisbon that we are being asked to apply EU law in part of our territory without our consent. Article 5 of the protocol provides that significant parts of EU law,

"shall apply to and in the United Kingdom in respect of Northern Ireland".

Having agreed that protocol, how can the Minister say that this law applies without our consent?

Lord Frost (Con): My Lords, there is, of course, a difference between what is in an international legal instrument and what happens day to day, as I am sure is well understood. The political difficulty being created in Northern Ireland is because individual legal instruments, which come out in profusion from the European Union day to day, are applied automatically in Northern Ireland without any sort of process. That system is not sustainable, which is why these governance arrangements need to change to bring them more in line with democratic norms elsewhere. We need to find a solution that everybody in Northern Ireland can get behind and which they think represents their interests.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, this Question is about trust and reputation. The admission by the Northern Ireland Secretary last September in another place that his Brexit Bill broke international law in a very specific and limited way was denounced by Members of this House from all parties, including the noble Lord, Lord Howard, and others. It led to a tit-for-tat reaction from the EU that it would unilaterally reject the protocol and, later, that it might not ratify the withdrawal agreement. Can the Minister tell your Lordships from where this reputation-destroying tactic by the UK Government of abandoning the rule of law emanated?

Lord Frost (Con): My Lords, these matters were well debated at the time. The then UK Internal Market Bill is now a very good Act to protect the integrity of the single market of the UK. It does that very well. I am now looking forward. We are trying to find solutions to a problem that we hoped would not arise but which has now arisen because of the relatively insensitive way in which we have been forced to implement this protocol. We need to find a solution that everybody in Northern Ireland can get behind, which provides a better balance and which fully supports the Belfast/Good Friday agreement.

Lord Newby (LD): My Lords, in his speech yesterday, the noble Lord said that

"we are constantly faced with generalised accusations that we can't be trusted and are not a reasonable international actor."

Why does the noble Lords think that this is now the case?

Lord Frost (Con): My Lords, I asked myself that question implicitly in the speech and I still do not really know the answer. I think our behaviour since the start of the year as a fully independent country has been extremely constructive internationally. For example, we have established our own sanctions regime; we have been very proactive in it; we have welcomed citizens of Hong Kong to this country; we have been among the first to raise questions about the treatment of the Uighurs; and we have been the first to bring in sanctions against Belarus. I think we have been extremely constructive in this process over the years. I am sorry that from time to time we have faced accusations that we do not behave accordingly, but I do not think they are justified by the facts.

Lord Dodds of Duncairn (DUP): My Lords, issues of sovereignty and democracy lie at the heart of the problems with the Northern Ireland protocol. Does the Minister agree that we may solve some practical issues, and the EU will produce proposals on that later, but unless we do away with the issue of laws being made for part of the United Kingdom in the 21st century without any say—yea or nay—of elected representatives of Northern Ireland, it will store up future problems of divergence and diversion of trade? Therefore, issues such as the ECJ and the democratic deficit need to be addressed if there is to be a permanent solution to the problems of the protocol.

Lord Frost (Con): I very much agree with the thrust of the noble Lord's question. We would like to find a permanent solution to this problem, a solution that everybody can get behind in Northern Ireland and beyond and that represents everybody's interests. That is why partial solutions that tinker around the edges of the existing arrangement will not do the job. The question of sovereignty is fundamental. We have to find solutions that are consistent with UK sovereignty in Northern Ireland and, to come back to it, that support the Belfast/Good Friday agreement, which is fundamental to politics in Northern Ireland.

Baroness Ritchie of Downpatrick (Non-Afl): My Lords, reports about the EU's proposals, which are to be announced later this afternoon, suggest that they contain a lot of opportunities and solutions. Does the Minister agree that moving goalposts from positions which the British Government agreed with the EU and setting new red lines around the removal of the

[Baroness Ritchie of Downpatrick]
European Court of Justice, which is not a problem for Manufacturing NI, the leading law firms of Belfast and academics, keeps people divided and undermines businesses in Northern Ireland? Will the Minister ensure that this stops now?

Lord Frost (Con): My Lords, we wait to see what the EU proposes to us later this afternoon. We will look at those proposals very positively and, I hope, constructively. If there are elements in them with which we can work, we will seek to do so. I do not agree that we have been moving the goalposts. We have been clear on our position since we put forward the Command Paper in July. Although other people may use the words "red lines", I never do. We are beginning a negotiation. We have a track record of reaching successful outcomes in negotiations, despite the predictions that we would not. I hope that we will do so again this time.

Lord Cormack (Con): My Lords, as my noble friend bears some responsibility for this protocol, will he use all his diplomatic gifts, acquired during his years in the Foreign Office, to ensure that we emerge from this difficulty with friends in Europe—those who used to be our partners—and that European friendships at this time of world instability are strengthened, not weakened? Will he be the diplomat?

Lord Frost (Con): My Lords, my noble friend makes an extremely good, apposite point. I am sure he has read my speech made in Lisbon yesterday because I put great emphasis on the need to resolve the current problems, move forward and build friendships in Europe. We have too much in common to have unnecessary division over such questions. We need to resolve them. The western alliance has major interests and major problems to face around the world. We need to stick together and do that. That is why we want to resolve this question, so that we do not have to come back to it and can move on.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, I am afraid that the 15 minutes allowed for this Question have now elapsed.

Communications and Digital Committee

Constitution Committee

Special Public Bill Committee (Charities Bill)

Membership Motions

4.05 pm

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

Communications and Digital Committee

That Lord Foster of Bath be appointed a member of the Select Committee, in place of Baroness Grender.

Constitution Committee

That Lord McAvoy be appointed a member of the Select Committee, in place of Baroness Corston.

Special Public Bill Committee (Charities Bill)

That Lord Sharpe of Epsom be appointed a member of the Select Committee, in place of Baroness Barran.

Motions agreed.

Police, Crime, Sentencing and Courts Bill

Order of Consideration Motion

4.06 pm

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

That it be an instruction to the Committee of the Whole House to which the Police, Crime, Sentencing and Courts Bill has been committed that they consider the Bill in the following order:

Clauses 1 to 10, Schedule 1, Clause 11, Schedule 2, Clauses 12 to 42, Schedule 3, Clause 43, Schedule 4, Clauses 44 to 47, Schedule 5, Clauses 48 to 51, Schedule 6, Clauses 52 to 54, Clauses 62 to 67, Schedule 7, Clauses 68 to 74, Schedule 8, Clause 75, Schedule 9, Clauses 76 to 98, Schedule 10, Clauses 99 to 101, Schedule 11, Clauses 102 to 128, Schedule 12, Clause 129, Schedule 13, Clause 130, Schedule 14, Clauses 131 to 135, Schedule 15, Clause 136, Schedule 16, Clauses 137 to 157, Schedule 17, Clauses 158 to 162, Schedule 18, Clauses 163 to 169, Schedule 19, Clause 170, Clauses 55 to 61, Clauses 171 and 172, Schedule 20, Clauses 173 to 177, Title.

Motion agreed.

Environment Bill

Third Reading

4.06 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): My Lords, I have it in command from Her Majesty the Queen and His Royal Highness the Prince of Wales to acquaint the House that they, having been informed of the purport of the Environment Bill, have consented to place their interests, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Motion

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

That the Bill do now pass.

Lord Goldsmith of Richmond Park (Con): It is my pleasure and privilege to be responsible for Third Reading of the Environment Bill in this House today. Although the process has often been challenging, it has also been productive, thanks to the collaboration

and expertise of your Lordships' House. The benefits of the Bill will be felt by future generations, both in the UK and internationally, as we strive to leave the environment in a better place than how we inherited it.

Here is a Bill that will transform our environmental governance in a way that is better suited to our needs and seizes the opportunities of our exit from the European Union. It will set targets for fine particulate matter, the most harmful air pollutant, and—a world-first—to halt the decline in species by 2030. It establishes an office for environment protection, an independent body that will hold us to account in meeting these ambitious targets.

The Bill takes action across the product life cycle, with resource and waste measures that will advance us towards a circular economy, extending the responsibility on to the polluting producers, while empowering consumers to make more sustainable choices. It will improve our air and water quality to ensure that generations both present and future are not at risk of ill health from pollution to these most basic and crucial elements in life.

Here is a Bill that delivers not only protections for our natural world but strategies and duties to enhance our biodiversity, allowing it to thrive once again. The Bill mandates biodiversity net gain, a game changer, to ensure that new development truly enhances the environment, allowing our ecological networks to flourish. The Bill looks beyond the UK, with world-leading due diligence measures on our supply chains to tackle illegal deforestation around the planet, saving precious habitats in the Amazon as well as a multitude of other ecosystems.

As COP 26 approaches in less than three weeks, the United Kingdom can prove with tangible action its commitment on the international stage and encourage other countries to match this ambition with similar efforts. I am enormously grateful to my noble friend Lady Bloomfield of Hinton Waldrist, who has supported me both on and, even more so, off the Floor of the House to take through this gigantic Bill. I pay special tribute to the Front Benches and the noble Baronesses, Lady Jones of Whitchurch and Lady Hayman of Ullock, the noble Lord, Lord Khan of Burnley, and the noble Baroness, Lady Parminter, for all their invaluable contributions, which have been detailed and imperative. I extend that thanks to the countless other noble Lords and friends who, from these Benches, have provided ample helpings of constructive support and knowledge. I thank all noble Lords for taking part.

I thank the Lord Speaker and the parliamentary staff for their hard work behind the scenes, and I thank all the environmental stakeholders and committees that have campaigned diligently and effectively on so many of the issues in the Bill. I particularly thank the Bill team at Defra, who have been so extraordinarily patient and helpful throughout.

Across the myriad facets of this landmark Bill, I firmly believe that this legislation is more than just a credible step in the right direction. It is an ambitious answer to the scale of the task before us and provides the apparatus that we know we need if we are to recover nature. I hope it also acts as a rallying cry for others to move along with us.

Lord Berkeley (Lab): My Lords, I congratulate everyone who has taken part in this Bill. My own contribution was very small.

I want to ask the Minister why the consent of the Crown and the Prince of Wales is required. The roles and responsibilities are set out very clearly in Clause 147 and Schedule 19, which is pretty long, so what assets are actually involved? The Duchy of Cornwall has been saying for a long time that it is in the private sector. In that respect, there are thousands or maybe millions of other stakeholders who are also in the private sector, so why have the Government not sought the approval or consent of all these other people? What is so special about the Duchy? I look forward to his response.

Lord Goldsmith of Richmond Park (Con): I thank the noble Lord for that question—and for his advance notice of it. That has allowed me to provide an answer, which I probably would not have been able to provide otherwise.

I confirm that the Government have sought and secured the consent of the Queen and the Prince of Wales to a number of measures in the Bill that bind the Crown or apply in respect of Crown land, the Crown Estate or the Duchies of Lancaster or Cornwall. These include—in direct response to his question—provisions to give directions to waste carriers; an expansion of the powers of search and seizure to tackle waste crime; the operation of smoke control areas; changes to abstraction licences; changes to land valuation provisions for the purpose of internal drainage boards; biodiversity net gain, including for infrastructure and in the marine environment; improving the Forestry Act 1967 and provision for an ancient woodland protection standard; and conservation covenants. This is a standard process that the Government undertake for all Bills. Clause 32 of the Bill clarifies that the enforcement jurisdiction for the Office for Environmental Protection extends to all public authorities, including the Crown, and subsection (3) defines the term "public authority".

The Duke of Montrose (Con): I congratulate the Minister on the breadth of this Bill, in spite of many misgivings on the extent of the Henry VIII powers that it contains.

When the House was in Committee on the Bill in June, my noble friend the Minister moved two amendments to Clause 20 to do with the requirement for UK Ministers to adhere to environmental principles. The first of them disapplied a clause of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. In speaking to the amendments, he rounded off his speech by saying that

"this is in keeping with the devolution settlement. We will continue to work with the Scottish Government to ensure that our environmental approaches work together."—[*Official Report*, 28/07/21; col. 581.]

This action has provoked a flurry of objection north of the border and an added disagreement on the appropriateness of legislative consent Motions. This House has an important role to play in constitutional matters, and I think the Government should tell us whether discussions were held with the Scottish Government in relation to this action and whether there are any lessons to be learned about working together.

Lord Goldsmith of Richmond Park (Con): I reassure my noble friend that, throughout the passage of the Bill, Ministers and officials from the UK Government have worked very closely with Ministers and officials from the devolved Administrations. We have consistently engaged with the Scottish Government on many of its contents and will continue to do so in future. I hope that answers his question.

Baroness Stowell of Beeston (Con): My Lords, I apologise for intervening on a Bill that I have not been involved in, but my understanding of the procedure at this point is that those who wish to speak will do so and then the Minister will respond at the end, rather than this being a series of questions and answers. I wonder if that might assist the House.

4.15 pm

Baroness Jones of Moulsecoomb (GP): My Lords, I agree with the Minister that this Bill, as it stands now, is ambitious. But the Bill we had originally was a terrible Bill and that is why we so heavily amended it—it is quite unusual to amend a Bill to this extent. I hope that the Minister is going to push very hard, with the Treasury and his colleagues in the Commons, to make sure that they take out very few, if any, of our amendments.

Lord Krebs (CB): I thank the Minister and the Defra officials, who have engaged with me and many other noble Lords very constructively during the passage of this Bill through your Lordships' House.

I echo the point just made by the noble Baroness, Lady Jones of Moulsecoomb: the amendments that have been passed in this House have significantly improved the quality of the Bill. An important point to note is that the amendments had almost universal support from all groups in your Lordships' House. They were not party-political points; they were points made by those of us who believe passionately in the protection of the environment, now and in the future, to leave a better environment for our children and grandchildren than we have at the moment.

I hope, therefore, as the noble Baroness, Lady Jones, has said, that the Minister will do his very best with his colleagues to ensure that the majority, if not all, of the amendments survive their consideration in the Commons and that we do not have to start the arguments all over again at ping-pong in a couple of weeks' time.

Baroness McIntosh of Pickering (Con): My Lords, I congratulate my noble friend the Minister on what was, I think, his first Bill in this House, and my noble friend Lady Bloomfield, as well as the Bill team, who went the extra mile. I particularly pay tribute to my noble friend for the amendments that he brought forward, which is always quite an achievement for a Minister in this place.

I would like to press him a little bit further on reaching a balance, particularly in catchment management and the prevention of combined sewer overflow, an issue to which I am sure we will be returning. We have already seen substantial floods in this country and elsewhere, no doubt due to climate change, and I welcome the provisions of this Bill that will undoubtedly help to reduce that in the future.

I support my noble friend the Duke of Montrose in his comments. I will raise these issues further in the context of the debate on the common frameworks agreement later today.

I want to take the opportunity to congratulate my noble friend the Minister on bringing us to this stage, and to wish the amendments that we have carried a safe passage back to us when the Bill returns to this House from next door.

Lord Marlesford (Con): My Lords, if I may, in view of the fact that my noble friend rightly linked this important Bill with the coming COP 26 conference, I warn Her Majesty's Government not to be tempted to make announcements of targets to help COP 26 on its way which are unachievable for reasons of politics in a democracy or the realities of economic life.

Lord Cormack (Con): My Lords, very briefly, I endorse what the noble Lord, Lord Krebs, has said. This Bill has not been damaged or impaired during its passage through your Lordships' House.

I endorse everything that has been said in the way of compliments to my noble friend Lord Goldsmith and what he himself has said about participation across the Floor of the House. This is not in any sense a party-political Bill. It is a Bill that concerns each and every one of us, and our families, for generations to come. Therefore, we do not want to engage in ping-pong.

If my noble friend is to achieve his ambition of getting this on the statute book before Glasgow, which I entirely support, it is important that the House of Commons does not attempt unnecessarily to delete amendments that do not damage but rather enhance the basic principles and objectives of the Bill. It would be a great pity if in a fortnight, on the virtual eve of the conference, we began to indulge in a battle between the two Houses.

This House has an enormous amount—a great wealth—of experience and expertise, and that was perhaps more evident on this Bill than on most others. I know my noble friend the Minister would agree that everybody who spoke did so in a constructive and supportive spirit, so I implore him to use all his powers of persuasion with his ministerial colleagues and others to ensure that the Bill, as it now stands, survives as near intact as possible. Then our Ministers and the president of the conference can go to Glasgow knowing that there is a perhaps unprecedented degree of cross-party support and agreement for a Bill that does indeed, as I said at the beginning, affect us all and our families.

Baroness Parminter (LD): My Lords, it is appropriate that we have the Third Reading today as we see the close of the high-level segment of COP 15 and the publication of the Kunming Declaration, which makes it clear that setting nature

"on a path to recovery is a defining challenge of this decade".

This House has done its usual proper job of scrutiny of the Bill and has proposed measures to strengthen it that are definitely needed. I thank the ministerial team

and the Minister's colleagues for accepting some of those amendments, including the legally binding target for species abundance for 2030, and for including major infrastructure projects in the biodiversity net gain regime. Those are welcome measures that the Government have accepted. While we are thanking people, those on these Benches, like others, thank the ministerial Front-Bench team and the Bill team for their unfailing good humour, clear commitment and engagement with us throughout this process.

But, as others have said, many outstanding amendments remain. As we send this Bill down to our colleagues at the other end, be assured that we will work with them and with others around this House, as we have done so constructively through this process, to ensure that it is strengthened, in the way we all know it needs to be, for the future of our country, our people and our environment.

Baroness Jones of Whitchurch (Lab): My Lords, I too add my thanks to the Bill team for its patience and courtesy in responding to our concerns and for facilitating so many meetings over the summer. We have all been on a steep learning curve, and it has certainly helped to put us more in tune with the facts behind the thinking on the Bill.

I very much thank the Minister, the noble Lord, Lord Goldsmith, for staying the course. I am sure there were times when he wished to be somewhere else, perhaps even somewhere sunnier. Despite occasionally giving the noble Baroness, Lady Bloomfield, kittens when he went walkabout, he was assiduous in being here, doing the heavy lifting on the Bill and giving us all his attention and his very detailed and thoughtful contributions. On that basis, I thank the Minister for listening, because we received a number of concessions along the way and we are really very appreciative of that.

As other noble Lords have said, of course, we do not think that is quite enough. I hope the Minister recognises that the 15 amendments which we have passed make serious and important improvements to the Bill—and, as the noble Lord, Lord Krebs, and others have said, they have widespread support across the Chamber. I hope this is not the end of the road for the Bill. I hope that the Government have used the recess to reflect on our amendments and will feel able to support their key principles when the Bill goes back to the Commons next week.

We are of course aware that COP 26 is looming but, as we have always said, this is a once-in-a-generation opportunity for us to put the environment on the right course for the future. We still hope that we can reach consensus with the Government to achieve the ambition that I know we all share on this, so that we can reach agreement in the very near future on the final outcome for the Bill.

Lord Goldsmith of Richmond Park (Con): I am grateful for all the remarks by noble Lords and will address them briefly, because we will of course have more opportunities for debate. I thank the noble Baroness, Lady Jones of Moulsecoomb, the noble Lord, Lord Krebs, and indeed the noble Baronesses, Lady Parminter and Lady Jones of Whitchurch, for their polite encouragement as we come to the final furlong of this huge Bill. I absolutely assure the noble Baroness opposite that I will continue listening and engaging. Like everyone in this House, I am very keen for the Bill to be as strong as it possibly can be.

I sincerely thank many noble Lords for the pressure they have applied and the manner in which they have applied it over the last few weeks because that has led to improvements in the Bill, as a number of noble Lords have commented. It is not my place to discuss or make statements in relation to upcoming debates that we are likely to have. I cannot give my noble friend Lord Cormack a guarantee that we will avoid ping-pong; I encourage everyone to get their best bats, just in case. However, the pressure has been extremely effective and useful. I know that that pressure will continue in the same vein and be equally valuable.

My noble friend Lord Marlesford mentioned unachievable targets. We do not want to impose any unachievable targets. There are some things, no matter how difficult, that simply have to be done; I would say that the 2030 biodiversity target is one of them. There is no possible justification for not making that commitment in law and, although we do not know all the steps we will have to take to achieve it, we know that it will be extraordinarily difficult and that it has to be done. We must find a way but I take his broader point.

Finally, my noble friend Lady McIntosh mentioned storm overflows. This is one of the issues that we will return to in coming weeks but, again, it is a testament to the tireless campaigning of noble Lords, including the noble Duke, the Duke of West—I apologise but I have done it again; it is the noble Duke, the Duke of Wellington—and the pressure that he applied so effectively. As he would acknowledge, we have moved considerably on this issue but there are debates remaining to be had. That is probably enough said for the moment on that.

I hope I have answered the main issues that were raised. I repeat my thanks to noble Lords for their dedication to the Bill. It has been an honour to assist its passage and to serve your Lordships, and I beg to move that the Bill do now pass.

Bill passed and returned to the Commons with amendments.

Social Security (Up-rating of Benefits) Bill

Second Reading

4.28 pm

Moved by ***Baroness Stedman-Scott***

That the Bill be now read a second time.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, each year the Secretary of State is required by the Social Security Administration Act 1992 to undertake a review of social security and state pension rates to consider whether benefits have kept pace with inflation or, in some cases, the increase in earnings. This review is due to begin shortly, and the Secretary of State will report to Parliament in November.

[Baroness Stedman-Scott]

The Bill before us suspends for one year the requirement to undertake a review of trends in earnings and to increase certain rates in line with those trends. This is because the effects of the Covid-19 pandemic have caused distortions in the labour market, which have been reflected over two years in highly atypical trends in earnings growth. Last year, they slumped by 1%; this year, we expect them to increase by over 8%.

The Bill therefore replaces the link with earnings, for one year only, with a requirement to increase these rates at least in line with the increase in prices, or by 2.5%, whichever is higher. The relevant rates are: the basic state pension; the full rate of the new state pension; the standard minimum guarantee in pension credit; and survivors' benefits in industrial death benefit. Normally, the Secretary of State considers a specific reference period to measure earnings growth as part of her review. That same earnings reference period has been used for the past decade.

In preparing for the review last year, we saw an unprecedented fall in average earnings as a result of the Covid-19 restrictions we introduced to protect lives and the NHS. That is why we changed the law for one year to set aside the earnings link; otherwise, these state pensions would have remained frozen. The Secretary of State then decided to increase most of the relevant rates by 2.5%, once she had completed her assessment of the increase in prices, which was 0.5%, as measured by the consumer prices index.

As we prepare for this year's review, the economic context is very different now that our economy and businesses have reopened. Figures published by the Office for National Statistics yesterday confirm an increase in earnings of 8.3%, which is over two percentage points higher than at any time over the last two decades. These growth figures have been distorted due to the slump in wages at the start of the Covid-19 pandemic, along with millions of people having moved off furlough and back into work. The Government do not believe that it would be fair to younger taxpayers to increase these rates by such a high percentage, on top of the 2.5% increase last year, when earnings slumped by 1% and inflation stood at 0.5%.

Therefore, I am seeking the agreement of noble Lords to set aside the earnings link once more in 2022-23. I stress that this is for 2022-23 only; after that, the link with earnings growth will be restored. As I mentioned earlier, in place of the earnings link, the Bill requires the Secretary of State to increase the relevant rates at least in line with inflation, or by 2.5%, whichever is higher. We will know what the relevant CPI figure is on 20 October, prior to Committee.

While we await the actual figure, I can give noble Lords an indication of the increases that will apply to these rates if inflation in the year to September 2021 were 3.3%. This is in the range expected by internal analysis. The full rate of the new state pension would increase by around £309 a year, or around £5.95 a week. The basic state pension and the higher rate of the industrial death benefit would increase by around £237 a year, or around £4.55 a week. The single rate of the standard minimum guarantee in pension credit would increase by around £304 a year, or around £5.85 a week, and the couple rate would increase by around £463 a year, or around £8.90 a week. The additional state pension is not included in the Bill, since the Social Security Administration Act 1992 already provides that it must be increased annually in payment, at least in line with the increases in prices.

I was pleased to meet several of your Lordships between First and Second Readings to discuss the Bill. We covered a number of important matters, including the future of the triple lock, different ways of measuring earnings growth in the economy, the take-up of pension credit, progress on reducing pensioner poverty, and the effects of state pension uprating on the National Insurance Fund. I am sure that these issues will arise in our discussions today, and I look forward to addressing them in more detail in my closing remarks. It is my sincere hope that we can continue to engage in this way as the Bill progresses through the House. Should any noble Lord wish to discuss any part of the Bill between its stages, my door is always open. I propose to hold a further all-Peers briefing in between Second Reading and Committee—details of this will be forthcoming.

In conclusion, the Government believe that it was right to legislate to protect the value of the state pension in 2021-22, despite the decline in earnings by younger taxpayers, who met the cost of doing so. The Government believe that it is right to protect the value of the state pension again in 2022-23, while also protecting the interests of younger taxpayers by suspending, for one year, the link with earnings growth in the unprecedented circumstances brought about by the Covid-19 pandemic. I beg to move.

4.35 pm

Baroness Drake (Lab): My Lords, I recognise that while the 8.3% increase in earnings figure will reflect the exceptional pandemic impact on labour markets, it will not account for all of that increase. I have two real concerns flowing from this Bill and the public debate surrounding it: first, the growing assertion that pensioners have been excessively benefiting over recent years; and, secondly, that the removal of the earnings uplift for this year may be a Trojan horse for removing earnings on a permanent basis.

The state pension provides both an income for existing pensioners and a firm foundation on which workers can save and build for their income in retirement. Providing such a foundation was an integral part of pension policy reforms, which included increasing savings through auto-enrolment and raising the state pension age. It was the stated premise for the new state pension introduced in 2016. The Government presented it to Parliament as supporting pension savings so that current generations of workers had a decent foundation on which to build for retirement.

A fall in the value of the state pension against average incomes impacts existing pensioners but makes future pensioners poorer as their private pension savings would go to replacing the fall in the state pension, rather than improving their overall retirement income. Earnings are an essential part of the uprating formula to avoid future generations becoming poorer relative to average or median incomes and because of the spread of means testing.

Figures published by the DWP and the ONS reveal that in 2020 benefit income, including state pension, was the largest component of total gross income for both pensioner couples and single pensioners. It was 57% for single pensioners, and nearly two-thirds of the total income for single female pensioners was benefit income.

Pensioner poverty, when measured against median disposable income, has risen from 13% to 18%. That dominance of the role of state pension income will persist long into the future and may well increase. Although income from occupational pensions was 32% of total gross income for pensioner couples and 27% for single pensioners, those figures are likely to fall as future generations have declining access to more generous occupational pensions.

Looked at from a regional perspective, in the majority of regions in England, pensioner couples have average weekly incomes below the UK pensioner couple average. This includes the north-east, the north-west, the east Midlands, the West Midlands, Yorkshire and Humber, and London.

Pensioner incomes have been stable for 10 years. In 2020

"pensioners had similar average incomes after housing costs … to … 2010"—

a statement I lifted from the DWP's own figures and statements. Pensioner average income did increase significantly between 1995 and 2010, which also saw the introduction of the pension credit minimum income guarantee for the most impoverished pensioners.

Although it is clearly beneficial, we should be measured about the extent of the impact of the triple lock, particularly given that most current pensioners reached state pension age before the new state pension was introduced in 2016. For them, the triple lock does not apply to all of their state pension. It does not apply to the state second pension element and yet this accounts for 20% of state expenditure.

The triple lock has also operated at a time of significant cuts to health and social care spending, on which older people are so very dependent. These cuts will have contributed to the slowing down of improvements in life expectancy. We have yet to see how the NHS backlog aggravates that trend. A just-published Imperial College report now reveals falling life expectancy in urban areas such as Leeds, Newcastle, Manchester, Liverpool and others.

Pension credit, the means-tested, minimum income guarantee for the poorest pensioners—for which nearly 2.5 million are eligible but only 1.5 million claim—is not covered by the triple lock. The Government mitigated that omission by an underpin of a cash increase, but not by extending the triple lock. Pension credit is also a passport to other benefits such as reduced council tax and a free TV licence, which some 1 million of the poorest pensioners are missing out on. In the other place, the Minister advised that the department was engaged in a publicity campaign to raise awareness, but there are no figures available on any increase in pension credit claims occurring as a result. That underclaiming will be contributing to the rise in pensioner poverty.

Of course, the state pension has to be sustainable, and there are two key levers for controlling expenditure. One is making the state pension less generous over time, the other is increasing the state pension age. We risk losing sight of the significant accelerated rises in the state pension age already introduced, with more to follow. The number of pensioners has seen a fall. The full basic state pension is 10.3% higher than if it had been earnings-linked since 2011, but some of that gain will be clawed back through benefits and not applying an earnings uplift for this year.

We need to see this in total. Successive Governments allowed the value of the basis state pension to decline relative to earnings, from 26% in 1979 to around 16% by 2008. The Labour Government agreed to restore the earnings link, and the triple lock has resulted in the basic state pension rising from 17% of average earnings in 2011 to 19% in 2020. However, the new state pension has now replaced the basic state pension and the second state pension, and it applies to those reaching state pension age from 2016. It was set, as reported by the Government and the DWP, at a value just above the pension credit guaranteed income for the poorest pensioners, indexed by earnings, which the Government stated was sustainable and reduced pensioner benefit expenditure over the long term as a percentage of GDP, even taking into account the triple lock.

There is a cohort of retired people who are clearly better off, with access to generous occupational pensions, but that should not affect the perceptions of the financial position of pensioners as a whole. For the top fifth of pensioners, the largest source of income was their occupational pension, and they received a larger percentage of their income from earnings. Legitimate intergenerational fairness concerns, when looking at the most well-off pensioners, may be better addressed through the tax regime and national insurance rules for those working over the state pension age. Indeed, the Government have taken such a step in applying the 1.25% national insurance levy to the earnings of those over the state pension age. Weakening the state pension would be regressive, hurting those pensioners who most depend on it, and having the least impact on those who have a larger alternative source of income.

Turning to my second concern: the removal of the earnings uplift provision, even for a year, may be a Trojan horse for its permanent removal. When at the meeting that the Minister referred to, I asked whether there was a guarantee that it would be restored. I had the rather ambiguous answer that that will have to be argued next year.

The OECD figures reveal that in the UK, the average earner receives a replacement rate of income of 28.4% at retirement from the state pension, well below the OECD average of 58.6% and the EU average of 63.5%. However, in the UK, when workplace pensions are included, the net replacement rises to 61% compared to OECD and EU averages of 65.4% and 67% respectively. That tells us that the UK pension system relies heavily on private pension saving to fill the gap. Auto-enrolment is intended to maintain such a reliance, but it can do so only if the state pension is maintained as a firm foundation for those savings, at least holding its value over the long term against earnings. Otherwise, the savings of younger

[Baroness Drake]
workers will be covering the fall in their state pension rather than improving their retirement income, and they cannot fill that gap.

Private pension contributions above the statutory minimum will be impacted by the rise in national insurance contributions. There will be a substitution effect, particularly in the private sector where, prior to the pandemic, some 60% or more of workers were in SMEs and a very significant proportion of them in small and micros. Therefore, it is very important that this combination of the firm foundation and private savings is protected.

Can the Minister tell us—for the record and on the record, unequivocally—whether the Government are committed to maintaining the state pension as a firm foundation, holding its value against average earnings over the long term as a minimum upon which future workers, including young workers, can build for their retirement? Can the Minister also confirm that this Government will not reduce the value of the basic state pension relative to average earnings?

4.47 pm

Baroness Stowell of Beeston (Con): My Lords, it is a great privilege to follow the noble Baroness, Lady Drake, a renowned expert in this field, as indeed are many other noble Lords participating in today's debate, unlike myself. Some of her points were very interesting. Clearly, she approached this argument from a position of expertise based on wide financial and economic knowledge. My contribution will be very much principle-based, but from listening to her, there is some common ground between us, although what I have to say is rather different.

My noble friend the Minister made a strong case for suspending the pension triple lock for one year only. The key argument for me is one of fairness, something which pensioners will recognise too if they look at this from the perspective of their own experience. However, I share with the noble Baroness, Lady Drake, the view that this should be a suspension for one year only, and I would certainly seek my noble friend's confirmation that this is not a step towards permanently breaking the triple lock.

I make this point particularly on behalf of the over-75s—the silent generation, as they are described by researchers—and on behalf of older baby-boomers. When people comment on this who are not necessarily as informed and expert as the noble Baroness and many others here today, reference is made to what is seen as recent generosity to pensioners by way of pension payments. What gets overlooked is that older pensioners contributed a lot throughout their working lives.

These pensioners faced and overcame many challenges. I am talking not about the war but about growing up in an era when being poor meant that you went without or, maybe later, having to bring up a family on a three-day week. I am talking about the kind of people who did not enjoy free university education either. Although they may have bought their homes, which have gone up in value during the past few decades, before the 1980s getting a mortgage was probably harder than it is today. My point is that they got through all that without the advantage of the kind of benefits which are available today or were put in place after 1997 and caused among a lot of people a real sense of unfairness.

I agree with others that we need to make sure that our pensions and benefits system keeps pace with the changing world, which should include reviewing pensions policy as today's younger boomers get older—but on that I would defer very much to the experts who will contribute to today's debate. However, if we work on the general principle of fairness and that contribution is important to the legitimacy of the welfare system and to people's willingness to keep paying in even at times in their life when they are not in receipt of benefits, we should also recognise the experience of today's older pensioners.

As I have said, I am sure that many noble Lords can and will make a better economic case than me to justify the point that I am making, and some noble Lords may want to have an economic argument to claim that I am wrong, but I think that older pensioners, especially at a time when we are suspending the triple lock, need to hear us recognised not just what they have contributed in financial terms but that they have coped in situations without the kind of support that families and younger people receive now. Just to be clear, I am not arguing for a return to the past nor am I calling for us all to get nostalgic; the world is a very different place now and today's challenges are different. However, it might give older pensioners some confidence in the future that they are not going to see and yet hope for their children and grandchildren if we parliamentarians argue that there are lessons about financial management, getting our priorities right and making choices which they taught us and we must not forget. Indeed, they need and want us to promote those lessons as principles which remain as valid today as they have always been. I say all this because I think these are things which we know and sometimes take for granted, but that does not mean that they are not points that are worth restating and which people need to hear us say.

To pursue the principle of fairness, I want to ask my noble friend the Minister a question about working-age people. I know that she, like me, believes that it must always pay people to get work: work must always pay and it must always be the best option. As we come out of a phase where people have got used to support such as furlough, when people may need to take on extra hours because of the end of the temporary uplift in universal credit and when we face rising energy costs and other cost of living increases, what is the Government's position on reviewing and changing the universal credit taper rate so that people can enjoy greater returns for more hours at work?

4.53 pm

Baroness Smith of Newnham (LD): My Lords, the noble Baroness, Lady Drake, talked about a Trojan horse. With the Trojan horse bearing the Greeks, at least those in Troy thought they were getting something that was beneficial. With this Bill, I am wondering what the benefit could possibly be to anybody.

The Minister and the noble Baroness, Lady Stowell, suggested that the Bill is about fairness, but I suggest that there is something rather more insidious here.

The Bill is allegedly to make a change for a year. The same has been said about overseas aid. The same person, perhaps, has been drafting memos to Ministers saying that this is all because of Covid and is for just one year. However, for those people who will lose the uplift for this one year, just like for those people overseas who will lose the benefits of overseas aid "for just this one year", this does not feel fair. It feels incredibly painful.

My real concern is this: how can anybody be sure that this so-called one-off proposal is one-off? As the Minister has already told the House, it is not exactly a one-off because the Government had a one-off change last year, when they said that they wanted to change in order to be more generous. I am not quite sure in what way they were being generous last year. As I understand it, the triple lock has three elements. The earnings component was negative last year and inflation was at 0.5%, but the 2.5% uplift would have been in place anyway, so I am not sure why any change was required. Perhaps the proposals for 2022-23 are indeed a one-off.

All the reasons that the Secretary of State has given for the proposals relate to Covid. They all seem to suggest that the potential rise in wages or earnings of around 8% is because of the return to work from furlough and the end of the Covid arrangements. In that sense, the Secretary of State might be right. She said that the rate of increase in earnings is "unprecedented" and a

"distorted reflection of earnings growth."—[*Official Report*, Commons, 7/9/21; col. 185.]

How has she come up with this assertion? Is she sure of it? Can the Minister explain to the House whether the Secretary of State has done this analysis herself or engaged somebody else to analyse how far the increase in earnings in 2021 is associated with Covid? Could it not be that some of the rise in earnings is because of Brexit? After all, many of the EU nationals working in the United Kingdom before Covid, which just about coincided with Brexit and began just before the end of the transition period, have not come back to work here, and employers are now being urged to increase wages, particularly for those who drive heavy goods vehicles, for example. That is not about Covid. It is about the long-term consequences of Brexit. Nobody can claim that that is the impact of a year.

If those consequences are indeed for the medium to long term, can the Minister explain to the House what preparations the Government are making for the scenario in which earnings continue to rise in what the Secretary of State might think of as "unprecedented" or "distorted" ways? What safety and security can she give to pensioners who thought they were supported by the triple lock that they will not be told next year, yet again, "This is another anomaly and we just have to make a change for just another year"? Once a precedent has been set, the danger is that it becomes a tradition and never changes.

Of course, that does not happen the other way round. On the temporary uplift in universal credit, the Government said, "Oh, we've got to take that away because it was only temporary". I believe that the noble Baroness, Lady Stroud, will talk about this in more detail later in the debate, but I add my support to anybody in your Lordships' House and elsewhere who will make a case for keeping the £20 uplift because taking money away from people—particularly the most vulnerable in society—is far more difficult than if you never gave them that £20 in the first place.

Many of the people who have benefited from the £20 uplift were not on universal credit before the start of the current crisis. They have had to go and seek universal credit only since the start of the pandemic. It is very easy for the Secretary of State to say, "They can work a little bit longer; they can do more hours." But they might already be working as many hours as are legally possible. They need the support, and we should think about being generous.

I have a few questions for the Minister. There is not an impact assessment on these proposals, because we are told it is just for one year, so an impact assessment is not required. It may not be required, but it would be good practice, and it would help many of us making these decisions to understand what the impact is going to be. Perhaps the impact will not be as great as some of us fear. If pensioners who are concerned about the loss of the triple lock could be reassured, surely that would be in even the Government's interest. So, could the Minister explain why there is not going to be an impact assessment and whether it would not be a good idea to have one?

The triple lock, a very good policy brought in by the coalition—originally a Liberal Democrat proposal—was so good that the Conservatives put it in their manifesto for 2019. So it is a government pledge. Members of your Lordships' House, if asked to support the triple lock, would presumably feel honour bound under the Salisbury/Addison convention to support it. How can we then be asked to turn away from it? Why should we? As a Member of the Opposition Benches, I could think it is great that a Government are not delivering on their manifesto pledges; as a Liberal Democrat, I know all too well the difficulties that can face a political party that turns away from its manifesto pledges. But as a Member of your Lordships' House—somebody who is tasked with legislating on behalf of the most vulnerable—surely it is incumbent on me, and every Member of your Lordships' House, not to play politics but to think about the implications of turning our back on this pledge.

I understand that 8% might be too much to increase pensions by this year, but perhaps a middle way could be found. Could the Minister please think about that, take it back to her department, talk to the Secretary of State and consider whether a slightly better proposal could be brought back and whether amendments could be brought forward in Committee? If the Government do not bring amendments, the Opposition Benches will and perhaps some Members of her own Benches will as well.

5.03 pm

Baroness Greengross (CB): My Lords, I agree with the Government that the state pension triple lock needs reforming—but not, I am afraid, with these proposals. As many Members will know, I have spent much time recently with colleagues in the Intergenerational Fairness Forum, which I am privileged to chair, considering a

[Baroness Greengross]
new system for funding social care, with the aim of fostering intergenerational cohesion and mutual support across the generations—something I think we all agree would be extremely positive. One of the forum's recommendations was that the pensions triple lock be replaced permanently by a double lock, whereby it rises in line with average earnings or with inflation, whichever is the highest. We propose that any revenue saved by this measure should be ring-fenced and redeployed to fund social care.

We believe that our proposed double lock is justified because since 2010 the brunt of social security and tax credit changes has been borne by people of working age. We also agree with the House of Commons Work and Pensions Select Committee that, provided the state pension is maintained at the current proportion of average earnings, the aim of the Government to ensure a decent minimum income for people in retirement to underpin private savings will have been achieved. A double lock would also continue to protect people depending on the state pension against any periods of high inflation—a risk that, as we know, we may once again be facing.

We have strongly recommended that, alongside the state pension double lock, the Government should undertake a major social marketing campaign to encourage greater take-up of pension credit by those who are entitled to have it. It is dreadful that the estimated rate of pension credit take-up is just 60% and I hope the Minister will be able to give me an assurance that the Government have concrete plans to improve take-up of this vital benefit.

If these two measures were combined, pensioners living in poverty would be better supported, as they are entitled to be under the pension credit rules, while other pensioners would make a fairer contribution to the burden borne by wider society at a time when public expenditure is constrained. They would also share the benefits of economic growth, when it occurs, by retaining the historical link between pensions and average earnings. This combination of measures supports intergenerational fairness and social cohesion.

5.07 pm

The Lord Bishop of Durham: My Lords, when I read the title of the Bill I thought, "Good: we will have before us a measure that covers the wide issues of the uprating of the wide range of social security benefits we have, most notably pensions, universal credit and perhaps the question of legacy benefits." So I was very disappointed to discover that, actually, the scope of the content was purely to do with pensions.

In relation to pensions, I have sympathy with the proposals tackling a specific issue that appears to have emerged as something of an anomaly, given our recent experience of the pandemic. I think the triple lock was probably the right move when it was introduced and it has served pensioners well. However, I now have questions as to whether having such a lock in one part of the social security system actually prevents both the Treasury and the Department for Work and Pensions from truly looking at the system and its funding as a rounded whole—although I note with care the comprehensive and careful input of the noble Baroness, Lady Drake, and that of the noble Baroness, Lady Greengross, just now on the double lock. But this is an uprating Bill for the system, it is not about changing the system, so with some reluctance I accept the proposals in the Bill.

However, I now turn to my deep disappointment with the Bill. I join many noble Lords in raising a concern that the Bill does not address the universal credit uplift cut. I recall the debate in this Chamber back in February, in which many Peers expressed their concern that a Bill would not address what is historically one of the most significant cuts to social security benefits. The letter sent by the Minister outlining the content of this Bill began by stating:

> "Every year, the Secretary of State for Work and Pensions is required to undertake a review of social security rates to consider whether benefits have kept pace with inflation or earnings increases."

When we are considering a Bill that is so conscious of inflation and the broad economic environment, my question to the Minister is: why is this argument not being applied across the board? Why, since the Government are so consciously accounting for the economic environment for pensioners, are they not doing the same for benefit claimants, which they have stated in their letter they are obliged to do? The removal of the £20 uplift in universal credit and the quiet 0.5% increase in universal credit are tiptoeing around a serious issue affecting hundreds of thousands of lives and pushing many—including an estimated 290,000 children—back into poverty.

I have to say to the Minister that I have lost count of how many people have thanked me for speaking out on the universal credit cut. I was not going to speak in this debate; it was that public pressure that made me do so. Hence, if this House can legitimately find a way of ensuring that, through this Bill, the other place is given the opportunity to properly debate the £20 cut, I would support that. If there is no such mechanism, we might have highlighted a deficit in our polity. I also support the question asked by the noble Baroness, Lady Stowell, on the earnings taper in universal credit.

I support what is in the Bill—slightly reluctantly, as I have said—but I am deeply concerned at its massive omissions. These mean that hundreds and thousands will not be adequately supported through our social security system this winter and into the year ahead.

5.11 pm

Baroness Altmann (Con): My Lords, I declare my interests as in the register. I would also like to put on record my thanks to my noble friend the Minister and her officials for the very helpful and thoughtful engagement that she has had on this topic with interested Peers.

This is the fourth time since 2014 that legislation for uprating of pensions is being changed, yet this time there is no impact assessment or explanation of the impact on pensioner poverty. We are being asked to approve this—the House of Commons already has—before knowing what the CPI figure that may well be used instead of the 2.5% figure will be. I echo concerns about this setting a dangerous precedent.

However, I would like to help my noble friend, her department and all in your Lordships' House, including the right reverend Prelate the Bishop of Durham, to

see that this legislation is based on a false premise and is unnecessary. It is simply not the case that this Bill is needed to avoid an 8%-plus increase in the state pension or the pension credit. Section 150A of the Social Security Administration Act 1992 requires the Secretary of State to consider "earnings", but the law does not define this term.

The ONS has already very helpfully produced an adjusted figure to take account of the base effects from last year and the exceptional impact of the pandemic on average weekly earnings, which is the traditional measure that has been used for uprating. It has also estimated the composition effect. It has come up with an adjusted earnings figure in the range of 3.2% to 4.4%. My noble friend from the Front Bench has already suggested that the CPI figure that will be released next week could be around 3.3%.

Using the adjusted earnings figure could avoid this—draconian, in my view—legislation, which tears up years of protection for pensioners and breaks a manifesto commitment. I am sure that those of us on these Benches are particularly concerned about that. Using the adjusted earnings figure would still potentially allow significant cost savings of £3 billion or more relative to using the unadjusted earnings figure, which, as I have tried to explain, is not necessary.

We hear that this is for only one year and that there may well be a restoration of the earnings link. However, the triple lock—I agree with noble Lords who have already mentioned this—is not an ideal uprating mechanism in any case, especially since the new state pension. It is the 2.5% figure that is the anomaly; it has no social or economic justification. Yet we are being asked to remove the earnings link, which I am convinced from many years of working on pensions policy is the most important part of pension uprating, because the 2.5% figure was used last year.

The UK state pension is hardly a king's ransom. It is the lowest in the OECD, as the noble Baroness, Lady Drake, explained, and still below the 1979 levels, relative to average earnings. Millions of pensioners have no or very little income other than the state pension. Indeed, the pension credit designed for the poorest pensioners has always been uprated only by average earnings; it has never been triple-locked. The triple lock was a political construct that did not properly protect the poorest pensioners, yet here we are being asked to remove the earnings protection from the pension credit.

We have been down this road before. In 1979 Mrs Thatcher removed the earnings link from the basic state pension. As others have said, at that time it was worth 26% or so of average earnings. Subsequent to that, in 2010 it was worth 16% of average earnings. At the time there was some justification for removing the earnings link because we introduced a very generous state earnings-related pension, so that could carry the earnings uprating for pensioners.

The state earnings-related pension scheme, subsequently replaced by the state second pension, did provide earnings protection for many pensioners. However, millions—particularly the poorest pensioners, the lowest earners and mostly women—do not have the earnings-related bit of the state pension because they were not credited into it, they were not in the labour force long enough, they were caring for others, and so on.

We are therefore left looking at the basic state pension, the pension credit and the new state pension in this Bill because the additional parts are uprated only by prices, which is appropriate as they are mostly earnings-linked anyway. I argue that we are setting a very dangerous precedent if we fail to recognise the importance of protecting the poorest pensioners against falling behind the rest of society in earnings.

Let me give some figures. Average earnings are £540 per week. The basic state pension, after the triple-lock increases since the 2011 changes, which I supported at the time, is now £137.60 per week. The new state pension, which was brought in to encompass and incorporate the earnings-related bit of the state pension and the basic state pension for future pensioners, is now £179.60 per week. The pension credit, which the poorest and usually oldest pensioners rely on, is £177.10. We are not talking about well-off pensioners here.

We are now debating not increasing the state pension, their pension or the pension credit in line with average earnings, as adjusted by the ONS. This breaks a triple promise to pensioners. Breaking the triple lock, as proposed in the Bill, breaks only one of those promises. From the triple lock it retains the prices commitment and the 2.5% commitment—although I find that figure difficult to justify—but it breaks three promises: first, the triple-lock manifesto commitment, a political promise; secondly, the legal commitment to increase pensions at least in line with earnings; and thirdly, the legal commitment to increase pension credit at least in line with earnings.

We could still honour all these promises without the risks that this legislation entails if we used the adjusted figure. I urge my noble friend on the Front Bench, her department and noble Lords in this House to see what the CPI figure is when it is released next week. If, as expected, it is around the 3.3% level, I urge them to bear it in mind and to recognise that using the adjusted earnings figure would be a better way to amend legislation. It could, perhaps, be explicitly stated in primary legislation that the earnings index used should be at the discretion of the Secretary of State and could be adjusted in exceptional circumstances. I also urge my noble friend to consider the dangers of taking this protection away from pension credit.

Finally, I echo the call for a formal, comprehensive review of pensioner benefits and uprating to assess the triple lock, including the retention of the minimum 2.5%, and for rolling tax-free benefits such as winter fuel payments into a higher state pension which would then be taxable. This would allow us to avoid this constant round of having to amend legislation because previous commitments to uprating had caused problems.

I hope that we will be able to improve this Bill. I am very much looking forward to hearing the words of my noble friends Lady Stroud and Lord Freud on the issue of the uprating to universal credit.

5. 21 pm

Lord Davies of Brixton (Lab): My Lords, I echo the thanks offered to the Minister for the open way in which she has presented these proposals and for the extent to which she has been prepared to talk to us about them. It gives me great pleasure to follow the noble Baroness, Lady Altmann. She made a compelling case; not quite compelling enough for me to agree with it but, for the life of me, I do not understand why the Government do not agree with it. It seems a straightforward way for them to proceed. I hope that there will be further debate on this in Committee.

Other speakers have and will draw attention to the Government's shameful decision to break their election manifesto promise to retain the triple lock, as my noble friend Lady Drake has made clear. I want to talk about what the triple lock is for, why we have it, why it is important and why it should apply to the increase to the state pension in 2022.

The triple lock was introduced by George Osborne in his Budget speech, following the formation of the coalition Government in 2010. He promised that, from 2011, the basic state pension would be linked to earnings. He went on to say that pensioners would

"be protected by our new triple lock, which will guarantee each and every year a rise in the basic state pension in line with earning or prices or a 2.5% increase, whichever is the greater."—[*Official Report,* Commons, 22/6/10; col.180.]

This was the first time the phrase was used in Parliament.

This was not the Chancellor's idea, as the noble Baroness, Lady Smith of Newnham, pointed out. We have to acknowledge that the structure of the triple lock was included in the coalition's programme for government as an almost word-for-word lift from the Liberal Democrats' 2010 manifesto. The link to earnings was in the Tory manifesto but the triple lock was not. Credit where credit is due to the Liberal Democrats, although I think it was probably as much of a surprise to them as it was to the rest of us that they turned out to have the opportunity to make good on their commitment. What is not clear from the manifesto, the coalition Government agreement or the Budget speech is what the triple lock was for, apart from general comments about fairness to pensioners or that pensioners deserved dignity and respect in old age.

The implication is clear: many thought of it in pragmatic terms of keeping pensioners' income in line with those who are in work, while avoiding the embarrassment of an under-inflation increase or one of 75p. But any triple lock based on the highest of three separate figures is bound to result in what is described as the ratchet effect; in other words, over time, the pension covered by the triple lock is bound to increase by more than the increases determined by each of the individual elements, including earnings. In other words, the job of the triple lock is not just to protect pensioners in terms of earnings or prices: it is, over time, to achieve real increases in their incomes when measured against either of these indices. I argue that this ratchet effect is an inherent part of the triple lock which is enshrined in legislation. It is not an anomaly, a statistical quirk or something to be discarded when it is no longer convenient. It is an inherent feature of the triple lock—a feature, not a bug.

Whether you agree or not depends on whether you think that the state basic pension or the new state pension are currently high enough. If you think that they are, you do not need the triple lock, but if you want to see them increased, as I do, then the triple lock has a proven track record of gaining ground on that objective. It is not pretty but it appeared to work.

Again, some credit has to be given to Governments over the last 11 years, during which, because of the ratchet effect rather than any explicit policy decisions, there has been an increase in the state basic pension from 17% of average full-time earnings to 19% in 2020. That is too little and too slow, but it is real, nevertheless. Perhaps we could have a debate about what level of flat-rate state pension we need and what should be the target when we have a ratchet effect, but it is clear that 19% is not enough; it is well short of the 26% that was reached back in 1979. These benefits are not just inadequate; there is a long way to go before they become adequate. We definitely still need the triple lock. I am prepared to take something better and faster to replace it, but it is what we have got.

It is important to emphasise that the key advantage of the ratchet—of moving towards an adequate level of the flat-rate state pension—is that it is automatic. Until now at least, it has not been affected by short-term political considerations. I am afraid that the record of all Governments between 1979 and 2010 demonstrates that we cannot rely on ad hoc decisions to achieve increases in state flat-rate pensions. We need a mechanism that, like the triple lock, builds in a presumption that, over time, there will be increases in real terms.

This brings us to the increases due in 2022, as determined by this Bill. I believe that we can and should stick to the triple lock, as provided in legislation. Taking the increases to be made in 2021, 2022 and 2023 provides an ideal opportunity to achieve a significant increase in flat-rate pensions towards a more adequate level. This can be only a good thing. No doubt, it will be pointed out that this has to be paid for, but for today's debate I will dodge that issue, although I understand that my noble friend Lord Sikka will touch on it. I would like to make clear, however, that I support increases in taxation for those with the broadest shoulders to meet clear social need and, in particular, the restoration of the Treasury supplement to the national insurance fund.

I want to direct a few remarks to another feature of the triple lock. Too often in these discussions there is the implication that it applies to the totality of state pensions—people have repeatedly said today that the triple lock applies to state pensions. That is not correct: it applies only to the flat-rate elements. The rest of each individual state pension—whether the additional pension, increases for deferment or the graduated pension—is increased only in line with CPI. In practice, this means that those pensioners with smaller state pensions, for whom the flat-rate pension is a larger proportion of income, get a higher percentage increase. Equally, those with higher state pensions get a smaller percentage increase. This effect is magnified when you take pensioners' other incomes into account, where the increases that they receive tend to be in line with prices or less.

I have done some calculations of the impact on pensioners' incomes if we stick with the existing triple lock. Using data on pensioners' incomes and looking at single pensioners, I estimate that a pensioner at the lower end of the income scale—most of whom, of course, are women—on the first decile of income distribution will see an increase of about 7.5% if we stick with the triple lock. If we net off the expected increase in CPI of around 3.5%, the poorest pensioners get a 4% increase in price terms and less in earnings. Even after that increase, they will still be on only £170 a week total income.

A pensioner at the higher end of the income scale, on the ninth decile, will see an increase of about 4.5% in their overall pension. If we net off the expected increase in CPI of about 3.5%, the poorest pensioners will get a 1% increase in price terms—in earnings terms it probably means a standstill—but the better-off pensioners are, if anything, still falling behind. So the triple lock gives the greatest proportionate help to the poorest pensioners.

I want to draw the attention of the House to a serious defect in the triple lock that needs to be addressed. There is not enough time today to go into the details, but it needs to be understood that the triple lock discriminates between pensioners like myself, who receive the basic state pension, and those who reached their state pension age on or after 6 April 2016 and are entitled to the new state pension. As the rule stands, we older pensioners will receive smaller increases than those who retired more recently, even where our rights are identical. It looks likely in the coming year that this will not be a problem, but in the longer term it is a real issue, and it will not go away.

5.32 pm

Lord Freud (Con): My Lords, this Bill is designed to control pension spending and I am broadly in agreement with its direction. However, as the right reverend Prelate the Bishop of Durham has just pointed out, there is another pressing issue in social security: the removal of the £20 a week from universal credit at a time when pricing pressures on the poorest are intensifying.

There is a backstory here. Between 2010 and 2016, the Government were running two parallel welfare strategies. The first was from within DWP. The aim of the team was to transform the legacy systems that by then were falling apart, and the centrepiece of the reform was universal credit. The second policy emanated from the Chancellor, who was determined to cut the levels of benefit. With the Treasury acting as his enforcer, he aimed to take out £30 billion of welfare payments each year as part of an austerity strategy. That austerity was selectively targeted, with welfare recipients bearing a disproportionate burden. To summarise, our strategy in the DWP was to streamline and simplify while the Chancellor's approach was to cut and complicate. So the £20-a-week uplift last year was not simply a response to Covid-19 but a way of dealing with the general erosion of the levels of benefit.

If we take away the Chancellor's complexities, universal credit is one of the most important reforms, if not the most important, of the coalition Government. In its essence, it gets rid of all the separate benefits that had been trapping people in particular silos. It allows people the flexibility of life in the real world. Talk to any front-line DWP staff and they say the same thing: "At last, a system that works with the grain, not one that we have to struggle around." That is why I think it is essential to keep it on a proper footing with an adequate basic payment; I say "adequate" because an additional £20 a week is hardly generous. In that regard, I have a single question to ask my noble friend the Minister: could she tell us the department's central estimate, given the taper and the projections for employment, of how much the £20 uplift would cost to maintain in the next financial year?

I know this House believes in universal credit. It made herculean efforts during the passage of the original Bill and many of its best proposals were incorporated in the ensuing 2012 Act; I know that, because I made sure they were. However, speaking now to my colleagues on these Benches, I say this: universal credit is a major reform that is to the credit of the Conservative Party, and it is the height of foolishness to destroy that legacy in the name of a false austerity from a decade ago inherited by the current Chancellor. Many Conservative MPs feel exactly the same way, and, alongside my noble friend Lady Stroud, I will be endeavouring to ensure during the passage of this social security Bill that those MPs have a chance to vote their support for an adequate provision of universal credit.

5.37 pm

Baroness Lister of Burtersett (Lab): My Lords, it is a genuine pleasure to follow the noble Lord, Lord Freud, which is not something I thought I would be saying. Although the Bill is about the triple lock, it would not be right in the present circumstances to ignore the wider questions about the uprating of social security benefits that he mentioned, as did the right reverend Prelate.

First, however, I am on record as calling for a public debate about the triple lock's future, not least because the risk of poverty is now higher among children than among pensioners. That said, the rise in recent years in relative pensioner poverty, mentioned by my noble friend Lady Drake, reinforces the case made by a number of bodies and noble Lords, including today, for a proper strategy to improve the take-up of pension credit, which research by colleagues at Loughborough University indicates could reduce pensioner poverty significantly. Ministers have responded with a number of welcome measures, but they fall short of the kind of strategy called for. What progress has been made in improving take-up?

Despite the rise in pensioner poverty, I accept that it would be difficult to justify an 8% or so pensions increase, given the artificial nature of that figure. Speaking personally—I stress that this is a personal view—it is time for a review of the triple lock. The triple element of 2.5% is an arbitrary figure, as the noble Baroness, Lady Altmann, implied. The case has been made by a number of bodies for reverting to an earnings/prices double lock, which was abolished by the incoming Conservative Government in 1980, but with a smoothed earnings link that would maintain pensions at an agreed percentage of average earnings while ensuring that they did not lose their value at times when inflation outstripped earnings, a point made by the noble Baroness, Lady Greengross.

[Baroness Lister of Burtersett]

One reason why I believe it is time to review the triple lock is the growing gap between pensions and benefits for working-age people and their children, which, as we have heard, have been subject to a decade of cuts and freezes. As the Centre for Social Justice and others have made clear, this is the context in which we have to understand the widespread support for the retention of the £20 uplift to universal credit.

Given the likely effects of such a cut on many people in vulnerable circumstances, is it not extraordinary that Ministers tell us there has been no impact assessment on the grounds that the £20 was temporary and therefore an assessment was not required? If there has been no impact assessment, how was it that a Whitehall official was able to tell the *Financial Times* that internal modelling showed that the impact will be catastrophic in terms of increased poverty, homelessness and reliance on food banks?

I ask the Minister, who I know is a humane person, to put herself in the shoes of a mother struggling to make ends meet. If she first claimed UC since the start of the pandemic, the uplift, which was very welcome, is all that she will have known. If she is a longer-term claimant, she will remember how much more difficult it was to manage before it was added. Either way, she would really struggle now.

Academic research and evidence from civil society groups shows both the difference that the £20 has made and that life on UC has still been a struggle with it. Most recently, a large, nationally representative survey of claimants undertaken by the Welfare at a (Social) Distance project showed that half of UC claimants were food insecure and a quarter severely so even before the removal of the uplift. Not only will removing the £20 push many more people into poverty, as the Legatum Institute and others have warned, but it is likely to worsen deep poverty as UC recipients are pushed further below the poverty line.

To make matters worse, as debated yesterday, the cut coincides with an increase in inflation, particularly in basics that represent a disproportionate chunk of claimants' budgets. As the Resolution Foundation has pointed out, much of this increase will probably come too late to be incorporated into the uprating of UC based on the September inflation rate. Will the Minister undertake to look at how this problem might be addressed?

Ministers seek to justify the withdrawal of the £20 on the grounds that the priority must now be to get people back into reasonably paid work. Of course this is important, but nearly two-fifths of UC recipients are already in paid work and increasingly it is not providing an insurance against poverty. Also, as the New Policy Institute has shown, a significant proportion of recipients have caring responsibilities that limit the amount of paid work, if any, they can do. For instance, it is been estimated that more than 300,000 informal carers will be affected by the cut. Telling them to work extra hours to make up the loss is simply not realistic. Moreover, we know that hardship can undermine job-seeking efforts when energies are depleted by the exhausting struggle to get by on an inadequate income. There is evidence that the £20 has helped with job-seeking, so even in terms of the Government's own priorities the cut is likely to be counterproductive.

The Government have tried to counter the growing pressure to retain the £20 by announcing a new temporary local authority household support fund—a fig leaf waved prominently by the Minister yesterday. A discretionary fund is not an appropriate, efficient or secure way to meet everyday needs that cannot be met because of the cut to benefits, as the former Secretary of State Sir Iain Duncan Smith has pointed out. Although talk of a possible cut in the taper is welcome, it will not target additional help on those in greatest need.

The Government have also tried to argue that the country cannot afford to maintain the £20 without a tax rise—indeed, according to the Prime Minister, "There is no alternative". But the Centre for Social Justice has argued that the cost, which it suggests is in any case overstated by the Treasury, is not onerous and the consequences of withdrawing the money

"outweigh the benefits from any saving."

Of course there is an alternative because the decision to withdraw the £20 is a political choice. The cost is but a fraction of the annual £36 billion or more that has been estimated had been cut from social security benefits pre-pandemic. The refusal to go some way towards making good that loss speaks millions about the Government's priorities.

Not all benefit recipients benefited from the £20 uplift. Some lost out because of the benefit cap and others because they were in receipt of legacy or related benefits. The research on food insecurity, to which I referred earlier, found a sharp rise among the latter group during the pandemic but not among those who received the extra £20, which is significant. Disabled people in particular lost out as a result of the refusal to extend the uplift to legacy and related benefits. In this context, will the Minister say why the research commissioned from NatCen on the usage of health and disability benefits, which I understand was completed last year, has not been published or even referred to in the recent Green Paper *Shaping Future Support*, consultation on which has just ended? In an extraordinary exchange between the chair of the Work and Pensions Select Committee and the Secretary of State, the latter failed to give a reasoned answer to this question and the former suggested that the department may be in breach of government protocol on the publication of social research. The Government have certainly committed a breach of trust with the 120 disabled people who took part in the research in good faith, having been assured that the findings would be made publicly available.

What are the Government trying to hide? From the bid pack and the draft interview guide, it is clear that a wealth of data would have been generated about the extent to which the needs of those in receipt of health and disability benefits are, or are not, being met. Surely, as the Disability Benefits Consortium has argued, all this evidence should have been published to help inform the consultation on the Green Paper, which totally failed to address the crucial question of the adequacy of disability benefits. Will the Minister undertake to publish it now to inform the next stage of the process?

It is with this more general question of adequacy, which the noble Lord, Lord Freud, mentioned, that I want to conclude. I am very happy to echo the

words of another former Work and Pensions Secretary, Stephen Crabb, who suggested in the Commons that the £20 uplift constituted "a recognition that the" UC

"standard allowance … was too low to provide anything like a decent, respectable level of income replacement",

and he warned:

"It is that question of adequacy to which I think we will return time and again",

for

"Anyone who thinks that we have generous benefits in this country is wrong."—[*Official Report*, Commons, 15/09/21; col. 1004.]

Indeed, the IFS described their level as,

"unusually thin by international standards".

Two Lords committees have called for a review of benefit levels. The Economic Affairs Committee concluded that UC is too low and

"should be set at a level that provides claimants with dignity and security."

The Select Committee on Food, Poverty, Health and Environment called for benefits uprating to take account of official dietary guidance to ensure that claimants can afford to meet it. It cited written evidence from the Government that suggested the current benefit rates:

"derive from a review in the 1980s,"

but that review did not consider the adequacy of benefit rates. Indeed, according to the late Professor John Veit-Wilson there has been no such review of adequacy since the 1960s.

We have had review after review of benefits, yet it appears no Government for more than half a century have asked themselves whether the rates they set each year actually meet claimants' needs. The one independent benchmark we have, provided by Loughborough University for the Joseph Rowntree Foundation, indicates that UC rates are well below what the general public deem to be an acceptable minimum standard of living.

As Stephen Crabb underlined, the outcry over the withdrawal of the £20 uplift means it is high time that we considered the underlying question of benefit adequacy. A prominent slogan at the Conservative Party conference was "build back better". Restoring UC to its original meagre level is hardly building back better for our fellow citizens living in some of the most vulnerable circumstances, nor is it consistent with promises of levelling up, as a number of Conservative MPs have pointed out. If the Government continue to refuse to do the right thing, at the very least they could now promise a proper review of benefit adequacy as the first step towards building back better for those struggling to get by.

5.50 pm

Lord Flight (Con): My Lords, I support the Bill, which reflects a common-sense appraisal of the issues. Covid has caused an artificial boost in wages and potentially an 8% rise in state pensions. While excluding wage increases from the increased formula—now limited to the greater of 2.5% and inflation—the inflation figure is still likely to provide a significant rise in state pensions.

From the Bill, it is not wholly clear what are the relevant years' figures for calculation. Pension increases will be limited to the greater of inflation and 2.5% per annum, but it is not clear whether the increased pension for 2022-23 will be based on the data for 2021-22 or 2022-23. I would be grateful if the Minister would clarify this. Whichever year it is, either inflation or 2.5% is likely to be lower than the increase in wages, but the rise in inflation in 2022-23 may be larger than anticipated. The impact of Covid is expected to cause an artificial boost in wages and the 8% rise if applied to state pensions is hard to justify in comparison with other groups.

The triple lock has been generous to pensioners. Since 2010, the state pension has increased by 35%, versus 22% for inflation and 27% for earnings. State pensions are now at their highest relative to earnings in 24 years. Relative pensioner poverty has reduced. The state pension bill for 2021-22 was £105 billion, up from £70 billion in 2010, before the triple lock was implemented. Some 60% of UK welfare spending is now on pensions. If the triple-lock formula was not changed, pensioners may have two years of high pension increases. The Government had to act to avoid this and to limit state pension increase costs. I have not encountered much criticism of the decision to cut to only two possible locks.

The point is made that the UK state pension is less generous than EU state pensions, but European pensions do not include most of the additional benefits for UK pensioners: tax-free pension contributions worth £50 billion per annum, free winter fuel allowance, free eye tests, free TV licences, free bus passes, free NHS treatment and no NI if you are working aged 65 or more. Relatively few UK pensioners now remain in absolute poverty.

The triple lock is an expensive and unsustainable policy in the longer term, which ill suits the present economic climate. There is surely a strong case in the future for scrapping pension locks and setting state pension increases in line with inflation. The existence of the three options, under triple lock, tends to deliver higher state pension increases than increases in wages, and those increases are in line inflation or of 2.5%. I hope the Bill will be treated by the House with appropriate inquiry.

5.54 pm

Lord Hendy (Lab): My Lords, I rise to make a short point. The Treasury estimate is that the Government will save £5 billion next year by this change. That is to be added to the £6 billion that they save from not renewing the uplift to universal credit. That is £11 billion. Other noble Lords and noble Baronesses, in particular my noble friend Lady Lister, have described the impact that will have on the recipients of universal credit and pensioners.

I want to look at a point on the other side of the account book. This £11 billion is money that is spent by the recipients. It is spent in shops on goods and services. It is spent on food, clothes, heating and rent. It is all spent, every penny of it—or almost every penny of it. The names of the pensioners who are going to lose out on this are not names that you will find in the Pandora papers. This is not money that is stuck away, or invested in shell companies, banks or building societies. It is money that is spent in the local economy.

[Lord Hendy]
What assessment have the Government made of the loss of these billions of pounds to the local economies in which people actually live?

5.56 pm

Baroness Noakes (Con): My Lords, I do not like breaking manifesto commitments, so my support for the Bill is tinged with regret, but I do wholeheartedly support it. I am clear that Covid has created significant complications for the triple lock two years running. Last year, as we have heard, earnings growth was negative, which under the law should have resulted in a zero increase in pensions. My right honourable friend the Secretary of State for Work and Pensions brought legislation to ignore that and awarded a 2.5% increase. This year she has faced artificially high earnings growth and has wisely chosen to ignore that too, so she will make the determination based on the higher of 2.5% and CPI inflation. We should not look at this year in isolation.

I agree with my noble friend Lady Stowell, that the Bill is fair. In particular, it is fair to pensioners, whose income will be protected in real terms. Last year, their income increased above the rate of CPI inflation. This year it will be no worse than CPI inflation. Next year we should be able to return to the normal formula, so that if earnings growth continues, pensioners too will benefit. Noble Lords will know that this Government are committed to a high-wage economy, not a low-wage one. This is good news not only for those in work but also, through the triple lock, for pensioners as well.

While I support what the Government are doing in the Bill, I have never been keen on the triple lock, mainly because I believe that writing formulae into legislation is just a recipe for trouble. The last two years, in relation to pensions, are proof of that. We need to stop virtue signalling in legislation because good intentions often collide with reality and corrective legislation then serves to magnify the problem. So, I would take it out of legislation.

Some have tried to make a case that pensioners are particularly badly treated and that pensioner poverty is increasing, but those who do that tend to use selective measures of relative poverty and are highly selective about segments of the total pensioner population. If we look at absolute measures of poverty, there are 200,000 fewer pensioners living in absolute poverty than there were 10 years ago. We will probably never eliminate relative poverty, but we can and should focus on absolute poverty.

In addition, we should not look only to the basic state pension to ensure that pensioners receive an adequate income. In the long run, access to further pension income, by virtue of automatic enrolment, should be a significant element of pensioner income. In the short term, as other noble Lords have referred to, pension credit is important. As the noble Baroness, Lady Drake, pointed out, it is important not only for the increased income that it gives to some of the poorest old people, but also because it acts as a gateway to further significant benefits. It is therefore a real shame that the latest estimates from DWP show that nearly £2 billion each year is unclaimed and 1 million households are losing out.

I took part in the pension credit legislation when it was introduced in your Lordships' House almost exactly 20 years ago. Two highly expert and redoubtable Baronesses—both no longer with us, sadly—were on the Labour Benches. On the Front Bench was Baroness Hollis of Heigham and behind her was Baroness Castle of Blackburn. Baroness Castle disliked means-tested benefits and knew that pensioners in particular worried about the stigma attached to claiming benefits. She worried—and she was very worried—that 20% would go unclaimed, a figure in line with other similar benefits at the time. Baroness Hollis refused to give the Government's estimate for pension credit take-up. Baroness Castle must be turning in her grave at the fact that nearly 40% do not claim.

On our Benches, we pressed Baroness Hollis to say how the Government would ensure that pensioners got what they were entitled to without the Government incurring massive administrative costs. It is fair to say that we got no sensible answer to that question at the time and I believe that it still needs to be answered. The Government have said all the right things but I am not sure that their record on this is one to be proud of. Can my noble friend the Minister say what the Government's strategy is for pension credit uptake and when we will see real improvements in the rate?

Covid-19—or rather the Government's response to it—has had a massive negative impact on our economy that cannot be ignored. Support to individuals and businesses has cost over £400 billion and debt has risen to around 100% of GDP. While the economy is now recovering well, there is a lot of work to do to restore economic and fiscal health. In the meantime, the Government are going to have to make some hard decisions. In relation to this Bill, I believe that the Government have got it right with the state pension. It is a fair increase and a fair outcome for taxpayers.

Before concluding, I must say something about the universal credit uplift because several noble Lords have tried to drag the issue of its removal into this Bill. I believe that is a category error. It is quite unrelated to the level of the state pension and I sincerely hope that noble Lords will respect the narrow purpose of this Bill and not try to impede its passage towards Royal Assent.

6.03 pm

Lord Sikka (Lab): My Lords, it seems that there is a competition among Ministers to find novel ways of hurting the most vulnerable people in our society. After the cut in universal credit, the hike in income tax through frozen allowances and the new Johnson tax of 1.25%, the Government are clearly gunning for senior citizens. They have already taken away the free TV licence for the over-75s and are raising the age for free prescriptions in England from 60 to 66. The next instalment of the triple blow for seniors is to suspend the triple lock. I cannot support this cruel Bill.

The average UK wage is around £31,461 a year. The full state pension at the moment is £9,350, but only four out of 10 retirees receive it. Some 2.1 million pensioners receive less than £100 a week in state pension, most of whom are women. The actual average state pension, as Age UK has just reminded us, is

£8,000 a year or roughly 25% of average earnings. This is the lowest among industrialised nations, with the average being around 60% in OECD countries. The Office for Budget Responsibility said that by 2022-23, the state pension would form around 4.6% of GDP. Germany already allocates 10% of its GDP to the state pension.

A 2019 study noted that despite the triple lock the proportion of elderly people living in severe poverty in the UK is five times what it was in 1986. This is the largest increase among major western European countries. A major reason for this, as has already been pointed out, is the legacy of the Thatcher Government, who broke the link between pensions and earnings by cancelling the 18% supplement provided by the Treasury. We have never really made up that lost ground. Will we ever make up the lost ground from this proposed suspension of the triple lock?

The low state pension condemns millions to a life of poverty, insecurity and early death. According to Age UK, despite the triple lock, 2.1 million pensioners—18%—in the UK live in poverty. Some 1.25 million of these are women. The poverty rate has risen since 2012-13, when only 1.6 million pensioners—13%—lived in poverty. Some 33% of Asian retirees and 30% of black retirees, compared with 16% of white retirees, also struggle to make ends meet.

Malnutrition—or undernutrition, as some people would call it—affects over 3 million people in the UK and 1.3 million of these are over 65. Around 25,000 older people die each year due to cold weather and here we are busily reducing their income.

Rather than lifting retirees out of poverty, the Government are going to suspend the triple lock. They say that they cannot afford whatever the cost is, which may be up to £5 billion. That is certainly less than the £8.5 billion subsidy given to profiteering train companies last year.

Governments have bailed out banks and provided £895 billion of quantitative easing to speculators. However, when it comes to helping senior citizens, the usual call is "We can't afford it"—as though we can afford misery, squalor and early death. This is how the Government cheated 3.7 million women out of their promised state pension by raising the retirement age. The same slogans are being marshalled again.

Let us be clear. The Government can create any amount of money they wish to shape a society which is good for all of us. If that money creation is inflationary, they can remove some of it from the rich through redistribution—a phrase that all Ministers and the Prime Minister have carefully avoided, even during their party conference.

The extra £5 billion that is needed for the triple lock is already available. The 2020-21 cost of paying the state pension to 12.4 million retirees is £101.2 billion compared with £98.7 billion for 2019-20. If you look at the National Insurance Fund accounts for the year to 31 March 2020—the most recent information—they show a cumulative surplus sitting there of £37 billion. That is more than enough to meet the triple lock obligation of £5 billion. Will the Minister explain why this surplus is not being used to honour the triple lock?

The state pension, as has been pointed out, is a major—and in many cases the only—source of income for many people. It will be even more so in the future. Relentless attacks on workers and trade unions have sapped people's ability to save for private pension schemes. Today, workers' share of GDP in the form of wages and salaries is around 49.4%. It was 65.1% in 1976. That is the biggest decline in any industrialised nation over that period. Even before Covid, 14.5 million people were living in poverty. Household debt is currently £1.7 trillion. Young people saddled with student debt and astronomical housing costs are unlikely to accumulate wealth and will be forced to rely upon the state pension for their retirement.

The UK's six richest people have wealth equivalent to that of 13 million citizens. The richest 1% have 23% of all wealth, the top 10% have 44% and the poorest 50%, who are being condemned to a low state pension, have just 9%; the poorest fifth of society have only 8% of the total income, and the top fifth have 40%.

The ministerial reply to one of my Written Questions on 21 January 2021 was that 18.4 million individuals in this country have an annual income of less than the annual tax-free allowance, which currently stands at £12,570. The Institute for Fiscal Studies states that

"only 58% of the adult population (those aged 16 or over) receive enough income to pay income tax",

so 42% of adults pay no income tax because their income is already too low. How will they buy into these private pension schemes? Two days ago, during the debate on the Health and Social Care Levy Bill, the Minister said that 6.2 million people have earnings below the primary threshold for national insurance. How are these people going to save for so-called private pension schemes?

Even if impoverished people manage to put a few pennies into a pension scheme, the tax system works against them. At the moment, 1.5 million individuals are enrolled in a private pension scheme and receive zero tax relief because their annual income is less than the annual personal allowance. I hope the Minister will explain why people at the bottom of the ladder are being treated this way and not getting any help whatever.

This is a stark reminder of the inequalities in the UK. Present and future generations will rely upon the state pension more than ever before, and it is vital that it does not condemn them to poverty. I am opposed to suspension of the triple lock.

The state pension is too low. In July this year, we heard the Prime Minister say that he finds it hard to live on his £160,000 salary; last week, Peter Bottomley MP said that he cannot really survive on an MP's salary of £82,000. My reply is that they should try living on the £8,000 a year state pension and see how they get on—welcome to the real world. Perhaps the Minister would want to take up the offer of living on the state pension—I do not know, but I await a reply. We must lift retirees out of poverty and not only maintain the triple lock but go beyond it. We need to align the state pension with the living wage, and that should be enshrined in a future Bill of Rights. Nobody in a rich country should be living on such a low income.

[LORD SIKKA]

I have already pointed out that the Government have plenty of resources to achieve these aims. They could utilise the £37 billion surplus in the national insurance fund; they could restore the 18% Treasury supplement which was removed by the Thatcher Government. They could find the money by taxing capital gains in exactly the same way as earned income, which would raise £17 billion a year more and another £8 billion in national insurance contributions—at the moment, unearned income is exempt from national insurance. They could tax dividends in the same way as earned income, which would raise another £5 billion in taxes plus another £1 billion in national insurance. They could extend the current 12% rate of national insurance contributions to earned incomes above £50,300, which would raise another £14 billion a year. The Wealth Tax Commission told us earlier this year that, with an asset threshold of £2 million, a wealth tax could raise up to £80 billion a year. Billions could also be raised by extending the scope of financial transactions tax.

These few examples show that the Government's claim of not being able to afford the triple lock has no substance. It is a bogus claim which simply falls apart when examined. None of the examples that I have given requires an increase in the basic rate of income tax or the 40% rate of income tax, or an increase in national insurance contributions for the masses. It seems that the Government lack any will. They find it so easy to hurt the most vulnerable people, and that should not be accepted by anybody in the country. I will not support this Bill in any way whatever.

6.16 pm

Lord Shinkwin (Con): My Lords, I fully support the primary purpose of this Bill, subject to the proviso that these measures are for one year only. The Government's message to pensioners is clear: we support you and we will take account of your circumstances—for example, if you are on pension credit.

I echo my noble friend Lord Freud and the right reverend Prelate the Bishop of Durham in their implicit suggestion that this Bill also serves another important purpose. For me, as a disabled person, it provides the Government with the perfect opportunity to send a similar message of support to disabled people: namely, that we will support you to live your life independently and to realise your potential. My fear is that, by removing the £20 per week uplift to universal credit, or UC, the Government are sending the opposite message. We risk saying to almost half a million disabled households—according to figures from the Legatum Institute—that we do not actually care if you are plunged into poverty.

I welcome this opportunity to congratulate the Minister for Disabled People, Chloe Smith, on her appointment to her new role, but I do not envy her the task that she has inherited. I am referring, of course, to the aftermath of the publication of the Government's *National Disability Strategy*. As missed opportunities go, I am afraid that it does not get much bigger. The strategy was an opportunity to reset completely the Government's relationship with disabled people. Regrettably, it was squandered. The strategy was little more than yet another list of planned consultations, reviews and half-hearted commitments.

A commission which I chaired, made up of senior businesspeople from the private sector, academics and disability rights campaigners, produced a report specifically to feed into the strategy. Our report contained well over 100 exhaustively researched and oven-ready measures. The title of the report was *Now Is the Time*. In response, the title of the Government's strategy might just as well have been "Now Is Not the Time"—not the time for equality of opportunity, not the time for ambition and not the time for the promised transformation of the lives of the UK's more than 14 million disabled people.

I put it to my noble friend the Minister that now is indeed the time, in this Bill, to, at the very least, offer some reassurance to disabled people that their concerns about the end of the UC uplift have been heard and are being addressed.

Research to which I have referred shows that, of the 840,000 households projected to fall back into poverty by the ending of the UC uplift, 450,000—over half—include a disabled adult or child. Given that disabled people make up only 20% of the population, the impact of the removal of the UC uplift on disabled people is so disproportionate that it practically beggars belief. So I ask my noble friend the Minister if an impact assessment was done specifically on this, and, if so, that she put a copy in the Library. If one was not carried out, I would be very grateful if she could say why not.

The Government need to join the dots and decide what message they want disabled people to hear. I applaud the Prime Minister's levelling-up vision of giving everyone the chance to realise their potential. Of course he is right, but is that what disabled people are actually hearing in practice when they are hit by the double whammy of the end of the UC uplift and the increase in tax if they are in work? Is that the message that they are getting from a national disability strategy, spun to the media with the headline figure of £1.6 billion—less than 1% of which is actually new money—which lacks a road map towards the measurable outcome of equality of opportunity? For me, as a Conservative, that surely must be our goal, rather than damaging the legacy to which my noble friend Lord Freud referred.

In conclusion, the Government need to seize the opportunity that this Bill presents to reset their relationship with disabled people, starting with a rethink of the impact on them in particular of the end of the UC uplift. I look forward to my noble friend's response.

6.23 pm

Lord Desai (Non-Afl): My Lords, it is an eternal message: to him who has shall be given more, but from him who does not have will be taken away what little he has.

We have money to give people stamp duty holidays but we do not have money to retain the £20 allowance that people on universal credit were given. We always have money to buy banks that are going bankrupt. Remember that, in 2008, we bought banks that had more or less mismanaged their affairs, such as the Royal Bank of Scotland and Lloyds Bank; money was there to buy those banks—no questions asked, and nothing examined about whether it had been right or

not—because they were rich, and the rich can always be saved. We have just had a report that test and trace cost billions, and that a lot of money was wasted. Why? Because the people involved were friends of the Government.

It is only an issue when it comes to the poor. First of all, the Government boast about the triple lock and get a lot of kudos for being very generous. What is wrong with giving 6.6%? If earnings are rising by 6.6%, that is good, so let us give 6.6%. It is not going to break the bank or bankrupt the Government. We already have a 100%-plus debt-to-GDP ratio, so what is a couple of billion more? It will get lost in errors and omissions. It is the will that is lacking. These are not the Government's votes and these are not the Government's friends. Their party was not created to help the poor.

Whatever they may pretend, this is a disgraceful Bill, as the noble Lord, Lord Sikka, said. A tax of 1.25% has already been put on national insurance and it will, as I said, be increased to 2.5% in no time whatever.

On the other side, we are not willing to give even 6.6% for one year. When a promise is made, in order to fulfil that promise you have to take the consequences of what you said. You cannot say, "We have a triple lock but will give only the lowest of the three numbers because we really can't afford to give poor people any more money. We have far too many rich people waiting to claim, and they are our priority." I see no excuse whatever for making promises that seem generous and then, when push comes to shove, for the flimsiest reasons, not fulfilling the promise: "Oh, no, we didn't actually mean earnings. We only meant 2.5% or less." Why do they not say that the triple lock means that the lowest of the three will be given, because that is what was always intended? "We don't intend to give the poor any more money but, since we have to, we shall give the least that we can afford. We prefer of course to give nothing but, since these people are around, we will give them some money."

Gas prices are rising. If the rate of inflation goes to 6% or 7%, will the Government fulfil their promise to raise it by the rate of inflation, or will they say, "We didn't mean that, not 7% inflation; 2.5% is the best we can do"? Why do they not stop pretending and say that zero is what they will give people in need because their friends in the gas companies are going out of business and the Business Secretary has said he will arrange with the Treasury to bail them all out? All the gas companies that face bankruptcy will be bailed out but the poor will not be bailed out. That is the logic. Unfortunately, that is the world we live in.

When election time comes, they will become generous, and then after the election the promises will be broken. That is the way it is, and I think that will continue in this levelling-up business. I do not know who they are levelling up; certainly not those in need.

6.28 pm

Baroness Stroud (Con): My Lords, it is interesting that this is the Social Security (Uprating of Benefits) Bill. It could have been a Bill on pensions and the uprating of benefits, but it is not; it is the Social Security (Uprating of Benefits) Bill. While much of the discussion today has been focused on the triple lock, as has been implied, I want to focus on a different element of social security: namely, the universal credit £20 uplift. In a recent poll undertaken by iPolitics, only 3% of the British public said that the cut should come in this year and at this time. This is a staggeringly low number, particularly in the light of the twin instabilities caused by the rising cost of living and the global pandemic from which we are just emerging.

Let us just take a moment to look at each of the arguments put forward for dismantling the uplift and those against. I have heard it said by many that this £20 was for a crisis moment only, but we need to be honest here. The reality is that the pandemic made visible what had been invisible to many: that our safety net is in fact at its lowest value ever since its creation. Having been founded at 20% of the median wage, it is now at a value of 12%. This became visible to people whose lives would normally never have been touched by the welfare state, so the Government stepped in to protect new claimants and the public at large from being shocked by the level of welfare. But it is right to be shocked by the level of welfare, which creates a permanent state of crisis for many. Let us not delude ourselves that the crisis is over, particularly as energy prices and inflation both rise, creating a perfect storm.

We have an opportunity to think again and do something about this in the Bill. All six Conservative former DWP Secretaries of State since 2010 have written to say that this £20 uplift investment should remain. I have heard it said that the £20 uplift has to go to protect work incentives. This is a totally specious argument if you understand anything about universal credit. It may be an argument for increasing the work allowance, or lowering the taper rate, but it cannot be an argument for protecting work incentives. The work allowance always makes it pay to take work, and the taper rate always rewards progression in work. To be honest, if you wanted to strengthen work incentives, you would put the £20 into the work allowance and lower the taper rate from 63% to 60%, or even 55%, as was in the original design.

I have also heard it said that there are no poverty impacts from the removal of the £20 uplift. To be honest, this is the most staggering of all arguments. It can be said in only a technical sense because, in 2016, the Government abolished their official measure of poverty and have yet to replace it. But, by any measure of poverty, relative or absolute, if you take £20 a week away from those on low incomes, a proportion of them will move into poverty. If you use the measure recommended by former Secretary of State for the DWP Amber Rudd, the Work and Pensions Committee chairman, Stephen Timms, and the Office for National Statistics—namely, the Social Metrics Commission measure of poverty, in which I declare an interest—to analyse the removal of the £20 uplift, you will see in the cold light of day the impacts on 840,000 people, 290,000 children and 450,000 people in a family that includes a disabled person, either an adult or a child. Granted, a proportion of these will take the 1 million available jobs, and many will take advantage of any upskilling that is available, building this high-wage, high-skill economy.

[Baroness Stroud]

But if the Government really believe their own narrative, they know that they would never need to pay the £20 uplift because people would move beyond it. The fact that they say that they cannot afford the £20 uplift reveals that they know that it will take time to get there and, in the meantime, many vulnerable households will experience a cost-of-living storm and very real hardship.

But my real concern is for those to whom we say, "The welfare state is your safety net": those with disabilities that my noble friend Lord Shinkwin so eloquently referred to and those with children aged two and under, with whom we have a social contract. We say, "You are valued by our society, and we want to support you, even though we do not expect you to work". Those in this group have just lost £20 per week, are not expected to work and are about to experience rising inflation and higher energy bills in the midst of a pretty dark winter. If we do nothing else, the £20 uplift must be restored for this group. My other concern is that this seems to be news to those in government when I tell them, although not to my noble friend the Minister, who has spent a lifetime seeking to protect those who are vulnerable.

What is to be done? I have, first, a question for the Government and, secondly, a possible way forward. Following my noble friend Lady Altmann's speech, I have a question: could my noble friend the Minister clarify whether there are any savings from the Bill and, if so, what figure is being scored? My understanding is that there are no or low savings scored against the Bill. It has been laid before this House because of a concern that earnings are at around 8%—but it is also my understanding that the Treasury and OBR earnings are scored at 4.9% and that the ONS adjusted earnings may even be as low as 3.2%. Given that CPI is anticipated to be about 3.2%, apart from the Bill possibly being unnecessary, there appear to be no or low savings connected with it.

However, it is also my understanding that, were the Bill to be delayed, the basic state pension would be uprated by actual earnings, at about 8%, in which case, by the DWP's own admission, savings would be worth between £4 billion and £5 billion, which could be reinvested into UC, were it to be saved. It would help those of us seeking to lay amendments, and those advising us, to have an accurate understanding of the savings from the Bill.

I now move to a possible way forward. It is no secret that I am seriously concerned about the removal of the £20 uplift, but I am also really concerned about the democratic deficit connected with the removal of this uplift. The removal of it was brought about by the sunset clause on secondary legislation, which means that it just died, without a vote in the other place. If Brexit was about anything, it was about taking back control—about active democratic decision-making. If Members of the other place actively want to make this choice to let the £20 uplift die, then this House would respect that, but it should be an active choice because they are the ones answerable to their constituents.

So it is my understanding that there are two ways of giving the other place this active choice. One is through an amendment to the Bill, and the other is through an amendment to the process Motion of the Bill. Either way, it is likely that there will be much discussion about scope and precedent but, ultimately, scope and precedent are servants of the democratic process, and this is a social security uprating Bill, not just a pensions uprating Bill. This is a self-governing House, and this is a moment for us to work across party divides to uprate our social security in order to protect the most vulnerable of this nation at a time when the cold winds of inflation and high energy bills are swirling around them. If there is a way to bring forward such an amendment—and I believe that there is—it is my intention to do so in Committee.

6.38 pm

Baroness Janke (LD): My Lords, it is always a great pleasure to follow the noble Baroness, Lady Stroud, with all her knowledge and experience in this field. I very much support her arguments and hope that we can, through the Bill, create an opportunity for the Government to think again. I also pay tribute to all other noble Lords who have argued for the reinstatement of the £20 uplift: the noble Lords, Lord Freud, Lord Desai and Lord Shinkwin, the noble Baroness, Lady Lister, and, of course, the right reverend Prelate the Bishop of Durham, who has long campaigned for changes to benefits. All have eloquently stated the case, and we on this side will give our full support to them in seeking to restore this.

I first thank the Minister for her engagement with us all in preparation for the Bill. As others have said, it seeks to amend the triple lock for the second time, albeit temporarily, for another year. As my noble friend Lady Smith said, the triple lock was a key Lib Dem achievement during the coalition. It is an essential tool to protect pensioners from the effects of the devaluation of the state pension, which has occurred since the loss of the link with earnings in 1979. As the noble Baroness, Lady Drake, and the noble Lord, Lord Davies, said, it has improved things, although it has been slow. I would not agree that it needs to be reviewed; it needs to stay because it still has to do its job.

I also welcome the Government's declared commitment to the triple lock and, like others here today, I would very much welcome an assurance from the Minister that the Bill is no more than a temporary measure. The noble Baroness, Lady Drake, was particularly keen to have that assurance, while the noble Baroness, Lady Stowell, made a strong case for older pensioners, who are usually poorer, and the need for their confidence in messages from the Government when looking to the futures of their children and grandchildren. I would certainly support her request for a review of the taper of universal credit. My noble friend Lady Smith would like an assurance that this is not just another "temporary measure" being brought in under the curtain of the need to do things differently as a result of the pandemic.

In supporting the triple lock, I would say there are usually three main reasons given for abandoning it. The first is the idea that pensioners are now so well off that they do not need it; secondly, that young people are losing out compared with the elderly; and, thirdly, that the country cannot afford it. As others have said, there are 2.1 million pensioners in poverty who depend

on the state pension and very many others who are far from being well off. Allowing the state pension to devalue will severely impoverish them further. If many pensioners are rather too well off, surely progressive taxation is the way to ensure that they are not gaining excess advantage at the taxpayer's expense.

As far as young people are concerned, many will not have the benefit of private pensions and will depend upon a state pension. They will benefit only from a state pension that keeps its value and will suffer enormously if the state pension is allowed to devalue, as it did before 2010.

The UK has one of the lowest pensions in Europe, as the noble Lord, Lord Flight, mentioned. In the UK, spending on it is 5.9% of GDP; the Office for Budget Responsibility suggests that will increase to just under 8% in 2057-58. In many European countries, investment in pensions is much higher. In Germany, for instance, it is 10% of GDP. The noble Lord also made the point that other countries do things slightly differently, but I point out to him that they also make similar benefits available to their pensioners, as we do in this country.

The measures in today's Bill need a second look by the Government. Since the Bill was debated in the House of Commons, some circumstances have changed. A key development is the surge in price inflation. The new chief economist at the Bank of England has warned of higher inflation being around for longer than previously thought. Current predictions from the Bank of England put inflation at 4% for the last quarter of 2021 and at over 4% for the first two quarters of 2022.

The September inflation figure will not capture any of the following: increases in energy prices which happen between September 2021 and April 2022, when the pension increase is paid; the April 2022 council tax increase, when councils are already talking about extra increases next year because of social care cost pressures and the expectation that local government is unlikely to receive a particularly generous settlement, despite council services having been cut severely over recent years; and other inflationary pressures, perhaps arising directly from the energy price hikes as the supply chain becomes more expensive, which will feed through into food and other prices. Given that food, energy and council tax are likely to account for a lot of the spending of pensioners, and older pensioners in particular, inflation by next April is bound to be higher than this September, as the Bank of England predicts. As a result, if the Bill is not amended it will condemn pensioners to a cut in their real standard of living. They cannot just work an extra two hours, as the Secretary of State famously recommended to people affected by the universal credit cut.

I support the noble Baroness, Lady Altmann, in her request for a comprehensive review of pensions and would examine her suggestion of looking at the adjusted earnings figure. I certainly do not believe that what is contained in the Bill is fair to pensioners, as the noble Baroness, Lady Noakes, does. I will just touch on the point made by the noble Lord, Lord Hendy, about the importance of people having money in their pockets if they are to make any contribution to any economic recovery following the pandemic.

We have heard the reservations of many Members about these measures and, in the changed circumstances we now face, the Government need to take the necessary time to revisit these proposals. I hope that during Committee we will agree amendments that will not impoverish the poorest pensioners, who may be facing unprecedented external financial pressures, and arrive at a realistic increase that will ensure the newly emerging pressures are fully taken into account.

6.46 pm

Baroness Sherlock (Lab): My Lords, I thank the Minister for her introduction to this debate, and for her briefing and access to her officials. What a great debate—the House has come back in fine form. Once again, I have learned a huge amount from so many noble Lords. I will be going back to read the *Hansard* and do my homework before I reappear; I encourage the Minister to do likewise, as we are in for an interesting Committee stage.

My noble friend Lady Drake got us off to an amazing start with that wonderful look back over the history of pensions. Holding in front of us what the point of pensions policy is incredibly important.

As we heard, this Bill is needed so the Government—just for a year, we hope—can suspend the earnings-related part of the triple lock. But not only does this give today's pensioners a lower pension next year than they expected; it bakes in a lower value of the state pension for them and for all generations in future. As many noble Lords have said, the state pension in the UK is comparatively low—not surprisingly, given we devote a smaller percentage of GDP to state pensions and pensioner benefits than most advanced economies, a point made by my noble friend Lord Sikka and the noble Baroness, Lady Janke.

The last Labour Government introduced pension credit and then, from 2002, committed to the double lock of raising the state pension by the higher of 2.5% and inflation. The impact on pensioner poverty was clear and I am willing to face down the noble Baroness, Lady Noakes—terrifying though she is—by standing up for relative poverty as the global measure which is widely recognised. Using those official figures, when Labour came to power in 1997, 29% of pensioners in the UK were living in poverty. When we left office in 2010, 14% of pensioners in GB were living in poverty. Sadly, those gains went into reverse pretty quickly. Pensioner poverty started to rise in 2012 and by last year, 18% of pensioners were once again living in poverty. To put it in numbers, that is an estimate of over 2 million poor pensioners, including over 1 million in severe poverty. The context for any change to the state pension is a growing problem of pensioner poverty.

Pension credit is key. I loved hearing the noble Baroness, Lady Noakes, talking about Baroness Castle of blessed memory and my late and much-loved dear friend Baroness Hollis, who would have been here. Your Lordships can only imagine the speech Baroness Hollis would be giving today. The Minister must at least think she has been spared that, but we all miss her and wish we were here to hear it. What a joy it would have been.

However, I have to do my best. On my bad days, I just channel Baroness Hollis and I will try to bring forward what she might have said in this debate.

[Baroness Sherlock]

One thing she would have done is to push the Minister, irrespective of history, on what has been done about the take-up of pension credit. Six out of 10 is absolutely disgraceful; 40% of those pensioners are not getting the money, the TV licences or the passported benefits. What are the Government doing about it? Can the Minister bring us up to date?

As my noble friend Lady Drake and others mentioned, the triple lock applies only to the flat-rate state pension, not to the second state pension or pension credit. So far, the Government have passed through the triple lock increases so that the same cash amount in the state pension increase was put on to pension credit. But of course that means even when the state pension keeps up with earnings, pension credit does not. It is a larger amount and therefore a smaller percentage, so the pension is not keeping up with it. Can the Minister explain the rationale for not having pension credit in the pensions lock, and tell us why the Government decided to do that?

As we heard, the Government came to power on the back of a manifesto promise to maintain the triple lock. Let us look at the argument for ditching it now. The Secretary of State said:

"This Bill will ensure that a temporary statistical anomaly in wages does not unfairly track across into pensions".—[*Official Report*, Commons, 20/9/21; col. 62.]

The reference period for earnings growth for the triple lock is the year-on-year change in average weekly earnings for the period May to July, which, as we have heard, was 8.3% this year. There seem to be two key drivers for that high rate. The first is the base effect. In May to July last year, many workers were on furlough or had their hours reduced, pushing down weekly wages. This year, with fewer people on furlough and hours getting back to normal, weekly wages are higher. So the increase is higher year on year. The second is "compositional effects", which are about the make-up of the workforce. During the pandemic, more low-earners lost their jobs, so the average of the weekly wages of those who were left was higher.

The ONS did some modelling on this, stripping out both the base and the compositional effects, a point referred to by the noble Baroness, Lady Altmann, and it came up with a range of 3.6% to 5.1%, representing underlying earnings growth. Presumably the Secretary of State could have chosen to use a figure in that range had she wished. Since it is primary legislation, she can legislate for whatever she wants. It is not as though she could be JR'd on previous legislation; she is creating the legislation. Why did the Government not think about using that? They could also have looked at other ways of modelling earnings growth; for example, over a longer period, which I raised last year when we were discussing the emergency Bill. Why did the Government reject those alternatives?

The Secretary of State for Work and Pensions has been at great pains to assure us that while earnings growth might look enormous, it really is not, because of base effects, compositional effects, Covid and so on—it is barely visible to the naked eye; it is tiny. Unfortunately, at the same time, the Prime Minister was going around television studios saying that earnings growth was enormous. I quote him:

"Never mind life expectancy; never mind cancer outcomes; look at wage growth."

It cannot simultaneously be racing ahead of inflation or be misleading and in fact tiny. Can the Minister tell us which it is? Is wage growth racing ahead of inflation or is it barely inching up and not really there at all, with nothing to see?

While we are on the subject of working-age incomes, we have to talk about universal credit. I am sure the Minister did not really expect to get through the Bill talking only about pensions; if she did, she will have been disappointed. She will have heard the extraordinary concerns expressed around the House. I know that I have been banging on about the 20 quid for a long time, but it is not just me—this is coming from every Bench in this House. It is coming from the right reverend Prelate the Bishop of Durham. Everywhere I go, people raise it with me and talk about it all the time. That is because nearly 6 million people are losing a lot of money. Everybody has heard about it and people know that they cannot afford to do that.

It was a delight to welcome back the noble Lord, Lord Freud. In a fashion, the band is getting back together again. I have missed disagreeing so dramatically with him over so many years, but now he comes back and I am agreeing with him. It really is not fair. The noble Lord absolutely hit the nail on the head. As I said at the beginning, the welfare state is there to support people, for example, when they lose their jobs, but the only reason why the Government had to stick extra money into it when the pandemic hit was that they knew that it was not enough to live on. If it had been enough to live on, presumably it would have done its job perfectly well—that is what the automatic stabilisers in the economy are for. The point is that the Government knew that so much money had been taken out of the system that it was not enough to live on, and they had to do it. I do hope that George Osborne reads today's *Hansard*—I think I might send it to him. Where is he now? Is he at the *Standard*? I will send him a copy just in case he misses it—I would hate that. But it really is a powerful point.

The *Economist* says this week:

"The loss of £1,040 a year is the biggest single cut to social security since the foundation of the modern welfare state."

That is quite a hit. I was glad to hear the noble Lord, Lord Shinkwin, and my noble friend Lady Lister trying to crack this issue that jobs are just the answer. I have a rant which I do, sadly, even at dinner parties as well as in politics. The whole point of the welfare state and of in-work benefits, of universal credit and tax credits before it, is that they are there not just to supplement low hourly rates; they are there because a lot of people, as a result of their circumstances—they may have disabilities, caring responsibilities or young kids—cannot earn enough in the hours they can supply to meet their outgoings, but the state wants them not to starve and to be connected to the labour market and to stay that way if they can. Talking just about jobs is deliberately misleading when so many people are either in work or are not able—I shall stop the rant there; the point has been made well enough by others before me.

All this is happening at a time when Britain is facing a cost of living crisis. Poorer families spend more of their income on food and fuel. As my noble

friend Lord Hendy said, the point is that they spend this. Not only has this money been taken away from those families; it has been taken out of economies all around the country. I live in County Durham, where a lot of money has been taken out of the local economy. People who have this much money have to spend every penny; they cannot afford to save it, so it is hitting the economy as well as their pockets. The £20-a-week cut is happening just as food prices are going up and fuel costs are sky-rocketing, and in the run-up to a rise in national insurance, which also hits people of working age. The *Economist* analysed government forecasts and suggested that real-terms household net incomes are heading for the longest decline since the mid-1970s. Things are getting bad out there. The Government should not have cut this. I hope they are listening very hard to the message around the House.

I come back to the specifics of the Bill. Some people are affected both by the universal credit cut and by this Bill, because they are couples where one person is over state pension age and the other is under. Can the Minister tell us how many people are in that position? What assessment has she made of the impact of the Bill on pensioner poverty and on the number of pensioners heading for fuel poverty this winter?

We on these Benches understand the difficult situation with the anomaly in earnings, but it is surely up to the Government to find a way to deal with that while maintaining the earnings link to which they committed. That means being transparent about what is going on. When the Secretary of State announced the change, she reminded the House that she had had to legislate last year because earnings were negative. I will let the Minister explain the details to the noble Baroness, Lady Smith, but, essentially, if earnings are negative, the Government cannot apply the triple lock at all because there is not the provision in the original legislation, so the Secretary of State was right to do that. She said:

"This year, as restrictions have lifted and we experienced an irregular statistical spike in earnings over the uprating review period, I am clear that another one year adjustment is needed".—[*Official Report*, 7/9/21; col. 185.]

Last year's Bill set aside the earnings link because, otherwise, Ministers could not have increased pensions at all, as earnings growth was negative. The implication is that this is just a similar move this year, but let us be clear: last year, the Government rushed through emergency legislation so they could keep their manifesto commitment to the triple lock. This year, they are rushing through emergency legislation to break their manifesto commitment to the triple lock. They are not the same thing. There is a question of trust here and, I have to say, this is the third time in a few months. It is telling which manifesto commitments get dropped. There is something about priorities going on here. First, we had the overseas aid cut, then we had the national insurance rise, and now we have the triple lock, which Ministers repeatedly said they would protect. This Bill may be for one year, but we will be watching like hawks to see whether the Prime Minister and the Chancellor come back for more. As the noble Lord, Lord Freud, knows to his cost, once Prime Ministers and Chancellors get into the habit of dipping into the welfare budget like it is some sort of piggy bank which they can raid for their favourite projects, they tend to come back again and again, because that is what they have been doing up until now. It will not happen again if this House can do anything about it.

We will drill down into all these issues and more in Committee so that the House can understand the impact of the Bill and its interaction with other government decisions that are being made at the moment and have been made in the recent past. For today, I thank all noble Lords for a brilliant debate. I hope the Minister can answer the questions put to her and give us some assurances. I look forward to her reply.

6.58 pm

Baroness Stedman-Scott (Con): My Lords, I thank all noble Lords who have spoken today. Their contributions have been eloquent and focused. The House has great knowledge of and experience in pensions and social security, which has truly been demonstrated today.

The debate has been wide-ranging and has covered a number of topics. I want to address some of the key points that were raised. If I do not manage to cover them all, noble Lords have an undertaking that I will write after this Second Reading and we will meet again, when they will have further opportunity to drill down into the detail.

I reiterate that this Bill is not concerned, although noble Lords are, with benefits linked to prices, such as universal credit. Uprating decisions for those benefits will be made under the existing provisions in the Social Security Administration Act 1992 as part of the Secretary of State's annual uprating review in the autumn. The UC points that noble Lords have made are out of scope of the Bill, but out of respect for those who have raised the issues, I will endeavour to respond to them all. They will then be brought before both Houses through the annual uprating order, which is subject to the affirmative statutory instrument procedure and it would not be right for me to pre-empt that review.

The Bill sets aside the link between earnings growth and the uprating of the basic state pension, the full rate of the new state pension, the standard minimum guarantee in pension credit and survivors' benefits in industrial death benefit. It does this for 2022-23, and for 2022-23 only. In place of the earnings link, it requires the Secretary of State to increase the relevant pensions at least in line with price inflation, or by 2.5%, whichever is higher. We have discussed the reasons for this approach linked to the unique effects of the Covid-19 pandemic over the last two years of earnings growth.

The noble Baroness, Lady Drake, raised the 1979 pension level. It is difficult to make comparisons back to 1979, when price indexation was introduced—the pensions landscape has changed significantly since then. She also asked whether the state pension was fit for purpose. The new state pension forms a clear foundation for individuals' private savings to provide for the retirement they want. Together, the new state pension and automatic enrolment to workplace pensions provide a robust system for retirement provision for decades to come. The overall trend in the percentage of pensioners living in poverty is a dramatic fall over

[Baroness Stedman-Scott]
recent decades: there are 200,000 fewer pensioners in absolute poverty, both before and after housing costs, than in 2009-10, and we want to maintain that achievement.

The phasing out of the triple lock was raised by the noble Baronesses, Lady Sherlock and Lady Drake, my noble friends Lady Altmann and Lady Stowell, and the noble Lord, Lord Davies. After that, the legislation will revert to the existing requirement to increase these rates at least in line with earnings growth. The noble Baroness, Lady Smith, suggests that this may change because of Brexit. No, the link with earnings will apply.

I pay tribute to the noble Baroness, Lady Greengross, for her commitment to the more mature in our society and her consistent efforts to represent them. The triple lock commitment was raised by the noble Baronesses, Lady Greengross, Lady Drake and Lady Smith, my noble friend Lady Stowell and the noble Lord, Lord Davies. The Bill needs to be seen in the context of the Covid-19 pandemic and the Government's approach over the two years of the pandemic. After this year, the legislation will revert to the existing requirement to uprate at least by earnings growth, and the Government's triple lock manifesto commitment remains in place—there is no turning back.

The noble Baronesses, Lady Sherlock, Lady Lister and Lady Smith, raised the possibility of a poverty impact assessment. They asked whether the department had produced an assessment of the effects on pensioner poverty of increasing these rates by 2.5% in 2021-22 and then by 2.5% or in line with inflation, whichever is higher, in 2022-23. The department collects and publishes a wide range of data on income and poverty, which are released annually in the reports on *Households Below Average Incomes* and a report with estimates of pensioner poverty covering 2021-22 and 2022-23 will be published in 2023 and 2024 respectively. In the absence of actual data, the only way to provide an assessment would be to forecast and model how many pensioners might have their income lifted above the various low-income levels under an earnings uprating versus an inflation uprating. Assumptions would need to made about how each individual pensioner's income will change in the future under each scenario. This would require making assumptions about, for example, how each pensioner might change their behaviour around other sources of income, such as draw-down of income from investments or a change in earnings when faced with different amounts of state pension, which is virtually impossible to do with accuracy. These projected incomes would then need to be compared to projections of the various income thresholds, which are themselves extremely uncertain.

For absolute poverty, the threshold is increased each year by inflation during that particular year. As demonstrated in recent months, inflation is currently extremely volatile and there is a high level of uncertainty about what its level is likely to be over the next year. For relative poverty, the threshold is determined by changes in median income across the whole population. Given the volatility in the economy and labour market, again this is impossible to do accurately. Therefore, there is a very high risk that any analysis seeking to forecast the number of pensioners moving above or below these projected poverty levels is likely to be misleading, due both to uncertainty about the economy and pensioners' behavioural response to various levels of state pension.

I know that the noble Baroness, Lady Sherlock, has been waiting for this figure: drumroll—I am going to give it to her now. She asked specifically how many couples in receipt of universal credit include a partner in receipt of a state pension. We estimate this number to be around 50,000 mixed-age couples claiming universal credit in 2022-23.

The noble Baronesses, Lady Sherlock, Lady Janke, Lady Drake, Lady Greengross and Lady Lister, and my noble friend Lady Noakes, all raised the issue of pension credit take-up. We have had debates about this in the House and I promised to take action, which we have done. I know how passionate all noble Lords are about increasing pension credit take-up—I am in that club too. The Government are working with partners to raise awareness of pension credit and the department conducted a media day in June with support from Age UK and the BBC, in particular. We continue that engagement with the BBC, and I met the Minister for Pensions and the director-general of the BBC a few weeks ago to discuss how we can do even more to encourage people to claim what they are entitled to. I am no expert in social media, but I will take away the point made by the noble Baroness, Lady Greengross, and raise it. Furthermore, the Minister for Pensions and I held a stakeholder round table in May. Following that, the department established a working group involving organisations such as Age UK, Independent Age and British Telecom, as well as the BBC, to explore innovative ways to reach eligible pensioners. The group will meet again on 19 October.

We are also improving our direct communications. Earlier this year, more than 11 million pensioners in Great Britain received information about pension credit and this highlighted that an award of pension credit, as has already been said, can open the door to a range of other benefits, such as housing benefit, help with council tax and heating bills and help with NHS costs, as well as a free TV licence for the over-75s. We will continue to do this work and will be encouraging people in every way we can to claim their entitlements, building on some promising recent figures. According to the latest data, for the financial year ending in 2019, 77% of the total amount of the guarantee credit—the safety-net element of pension credit—that could have been claimed was claimed, up from 66% two years previously.

My noble friend Lady Altmann and the noble Baroness, Lady Lister, raised the possibility of a review of the triple lock. I must say that the Government have no plans to undertake a review; we are committed to the triple lock for the remainder of this Parliament.

An important issue raised by many noble Lords concerns a different measure of earnings. Several noble Lords asked why the Secretary of State does not use her discretion under the existing legislation to use an adjusted index of earnings growth to exclude the effects of the Covid-19 pandemic, or why the Government did not include such an adjusted index in th Bill. The answer is that there is no robust methodology for

establishing such an adjusted index. The existence of such a methodology would be crucial in assessing the degree of legal risk attached to veering from the conventional index, which continues to provide an accurate reflection of growth in earnings.

The Office for National Statistics has not published official statistics for any alternative estimates of earnings growth; it has published just a range of estimates of the potential scale of base and compositional effects caused by the Covid-19 pandemic. However, it has concluded that there is no robust method for producing a single figure for a measure of underlying wage growth that accurately takes account of temporary effects due to the pandemic that all experts could reach agreement on. This lack of an agreed robust analytical basis for an alternative figure means that there is a legal risk in breaking with precedent in the measure of earnings used. I am quite sure that we will wish to discuss this further between the Bill's stages—and we will.

My noble friend Lady Altmann has been a great advocate on the issue of pensioner poverty among women; in fact, she was referred to by the noble Lord, Lord Sikka. She asked about reforms to the state pension. These reforms have put measures in place to improve state pension outcomes for most women. More than 3 million women stand to receive an average of £550 more per year by 2030 as a result of the recent reforms. Women live longer than men on average and therefore receive pension payments for longer.

The noble Baroness, Lady Sherlock—she is a noble friend—was very animated in her contribution. Indeed, she was racing away; one of the things I have to work hard on is keeping up with her. We might have a chat about that another time. She asked whether wage increases are racing against inflation, am I correct? The response is that wages are increasing at 8.3% while inflation is at 3.3%, so wages are much higher. I am sure the noble Baroness will give me a list.

My noble friend Lady Noakes raised the issue of relative versus absolute poverty. The Government believe that absolute poverty is a better measure of living standards than relative poverty, which can provide counterintuitive results. The absolute poverty line moves with inflation so provides a better measure of how the income of pensioners compares with the actual cost of living.

My noble friends Lady Altmann and Lord Flight, and the noble Baronesses, Lady Drake and Lady Janke, asked about state pension comparisons with EU countries and others. This comparison is misleading due to differences in the pension systems. There are many factors to take into account, including different tax systems, different healthcare systems, different pension ages, the cost of living, access to occupational pensions and the availability of other social security benefits, as well as the provision of services and goods free to pensioners or at concessionary rates. In her contribution, the noble Baroness, Lady Janke, commented that other countries get them, so I suspect that this is another issue on the agenda for further discussion.

The noble Lord, Lord Davies, the noble Baroness, Lady Drake, and my noble friends Lady Altmann and Lady Stowell asked about the state pension versus the basic state pension. The new state pension system has been designed so that no more money is being spent now than under the previous one, and care has been taken to ensure fairness to both groups while delivering a sustainable system for the future.

The noble Baroness, Lady Janke, and my noble friends Lady Stowell and Lady Stroud raised the issue of the UC taper rate. All I can say at the moment is that no decision has been taken on it.

The noble Baroness, Lady Smith, asked why we needed a Bill last year. The Social Security Administration Act 1992 does not refer to 2.5% and, for the benefits in this Bill, refers specifically to earnings growth. Without suspending that link, the state pension would have been frozen.

My noble friend Lady Stowell referred to the state pension for over-75s. We are committed to supporting all pensioners, including those over 75. We spend more than £129 billion—5.7% of GDP—on benefits for pensioners, which includes spending on the state pension. It is also supported by further measures for older people, including the provision of a free bus pass, free prescriptions, winter fuel payments and cold weather payments.

My noble friend Lord Flight asked for clarification on the year. It is the CPI in the year to September 2021, so it will be 2021 data—the most up-to-date data we can use—for our hard IT deadline in November.

Now we come on to the £20 uplift. Virtually all noble Lords made reference to this. To start with, I must confess and confirm again—I know that this will rankle—that this was a temporary measure. People knew when it started that it would end. We extended it for six months, and it was an important measure to help people facing the greatest financial disruption to get the support they needed. In line with other emergency support that we rolled out at pace, the uplift helped protect livelihoods through the worst of the pandemic. The support we put in place did what it was intended to do, despite the biggest recession in 300 years. It is worth noting that unemployment is much lower than feared, at 4.6%, and for some, household savings are £197 billion higher. The poorest working households were supported the most.

I have been asked to make reference to something mentioned by the noble Baroness, Lady Smith. No money is being taken away because we budgeted to spend a certain amount. The increase of 2.5% or the rate of inflation, whichever is higher, will be applied. I just want to give a reminder that the Lib Dem Minister at the time, Steve Webb, supported this in legislation.

Baroness Smith of Newnham (LD): The Minister said that I was wrong and that no money has been taken away. I meant that it has been taken away from the individuals who benefited from the £20-a-week uplift but will now receive £20 a week less.

Baroness Stedman-Scott (Con): I am sorry if I did not make that point clearly. I agree with the noble Baroness. People were told that it would be there for a period of time but was not for ever. We extended it because the pandemic went on; we have therefore paid up what we committed to pay. We did not say that we would give it for ever but then took it away.

Baroness Janke (LD): I have a question. First, the Minister mentioned Sir Steve Webb, a former Minister. He too has pointed out that, since the Commons discussed this issue, the circumstances have changed and the indicators are that price rises will be much higher—something that the Minister did not address when she replied on that part of the Bill. Secondly, could the Minister write to me and tell me why exactly this Bill must have its Third Reading by November?

Baroness Stedman-Scott (Con): I thank the noble Baroness for pointing out the clarification on her previous colleague, Steve Webb. I will certainly write to her and, later, I will come on to the issue of gaining Royal Assent by November.

Let me turn to my noble friends Lord Freud and Lady Stroud. I thank my noble friend Lord Freud for the passion and knowledge with which he speaks. I pay tribute to his achievements as Minister for Welfare Reform. I must, however, reiterate that the Bill does not concern benefits linked to prices, such as universal credit—but thank God we had universal credit when the pandemic came. We will be for ever in the noble Lord's debt for making that happen. If I may say so, we will also be for ever in the debt of Baroness Hollis for the challenge that she provided in that; we all miss her.

In answer to my noble friend's question, making the uplift payment permanent would cost £6 billion; this is the equivalent of adding 1p to the basic rate of income tax, in addition to an increase of 3p in fuel duty.

I have been really pleased to engage with my noble friend Lady Stroud. We have worked together on many projects, and I have found our conversations really useful and helpful. I know that she has strong views on the universal credit uplift, and that dialogue will continue. As I said, the Bill is very short and not concerned with benefits—I do not say that to annoy people—so the Government would not encourage her to try to draw a false link between the two separate matters. Again, the universal credit uplift was always intended to be temporary.

Lastly, I remind noble Lords of the need for Royal Assent by 22 November. This will allow the Secretary of State to conduct a statutory review using the new powers in time for the DWP to meet its hard deadline of 26 November for reprogramming its computer systems, to ensure that the new rates of benefit and pensions are payable from April 2022. Any delay to this Royal Assent deadline will result in the review being completed under existing legislation committing the Government to uprate by at least 8.3%, which would not be fair to the current and future generations of taxpayers.

Baroness Altmann (Con): Can my noble friend clarify that the existing legislation permits the use of an alternative measure to 8.3%, and that the Secretary of State has discretion to choose to use a figure from the ONS that reflects the adjustment to earnings that the Bill is trying to ex out?

Baroness Stedman-Scott (Con): My noble friend has made this point on a number of occasions; other noble Baronesses and noble Lords have too. Before I bang a nail in, I think it is best that I write to noble Lords about that to make sure it is absolutely clear on that basis. I hope they will accept that.

My noble friends Lord Shinkwin and Lady Stroud raised the issue of a UC uplift impact assessment. The legislation enacting the temporary uplift, including its eventual removal, was approved by both Houses. No impact assessment was conducted when the uplift was introduced, as it was by law a temporary measure, as I have already said. No assessment was conducted on the reversion to the underlying rates of universal credit.

Do I have only 20 minutes for this? No? Okay, I am in charge. We will not be here for another half an hour. I want to pay respect to everybody, but I certainly do not want to abuse the House's good will.

I hope the noble Lord, Lord Sikka, will take this in the spirit in which it is meant: I thank him for the master class in economics. I hope the Chancellor will read *Hansard*, and I am sure he will be in touch if he wants to take it further.

Lord Sikka (Lab): I thank the Minister. I do not know what the tuition fee would be or whether it would have gone up by then. Can she please explain why the £37 billion surplus on the National Insurance Fund account is not being used to pay even £8 billion or £10 billion in extra pensions?

Baroness Stedman-Scott (Con): This is a pretty challenging question, and I do not know. I will go away and find out, write to the noble Lord and place a copy in the Library.

I will stop soon, but I want to come back to my noble friend Lord Shinkwin and the disability Green Paper. This issue is not in the scope of the Bill, as he will know. I assure him that I will raise his concerns with my ministerial colleagues. We have been blessed with the appointment of Chloe Smith. I have talked to her about my noble friend and I know she will meet him—because there will be trouble if she does not.

Without being disrespectful to anybody else, I would like to hold a further briefing and answer all the unanswered questions. I hugely appreciate the time and intent of all noble Lords, and I commend the Bill to the House.

Bill read a second time and committed to a Committee of the Whole House.

Critical Benchmarks (References and Administrators' Liability) Bill [HL]

Second Reading

7.26 pm

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

That the Bill be now read a second time.

The Minister of State, Cabinet Office and the Treasury (Lord Agnew of Oulton) (Con): My Lords, through this Bill, the Government are supporting the transition away from Libor by providing further legal certainty for contracts that rely on Libor past the end of this year.

This Bill builds on the Financial Services Act 2021, which provided the Financial Conduct Authority with powers to effectively oversee the cessation of a critical benchmark in a manner that protects consumers and minimises disruption to financial markets. In particular, it draws on the work and engagement of my noble friends Lady Noakes and Lord Blackwell, who proposed amendments to that Act which are similar to the provisions in this Bill. I thank them for their constructive engagement on this issue.

I will first take a few minutes to put the Bill in context and to explain the connection to the Act passed by Parliament earlier this year. A benchmark is an index in a wide range of markets to help set prices, measure performance or establish what is payable in financial contracts. Libor is one such benchmark. It seeks to measure the cost that banks pay to borrow from each other in different currencies and over various time periods. It is calculated using data submitted by a panel of large banks to Libor's administrator, the IBA.

Libor is used in a huge volume and variety of contracts, including in derivatives markets, mortgages, consumer loans, structured products, money market instruments and fixed income products. For example, a simple loan contract may say that the interest payable is Libor plus 2%. In this example, Libor represents the cost to the lender of getting access to the money to lend it out, and the 2% represents the additional risk to the lender associated with making the loan.

Libor was designated as a critical benchmark. This reflects the fact that it is systemically important. Libor is referenced in approximately $300 trillion of financial contracts globally but, from the end of this year, the FCA has said it is clear that Libor will no longer represent the interbank lending market it seeks to.

There is significant history to this. As many will remember, in 2012 it emerged that the Libor benchmark was being manipulated for financial gain. Following the subsequent Wheatley review, Libor came under the jurisdiction of the FCA in 2013. Significant improvements to the regulation and governance of Libor have been made since the Libor scandal. However, in 2014 the G20's Financial Stability Board declared that the continued use of these kind of rates, including Libor, represented a potentially serious source of systemic risk. The FSB said that financial markets should voluntarily transition towards the use of more robust and sustainable alternatives.

This is because Libor has become increasingly reliant on expert judgments rather than real transaction data, due to the structural decline in the frequency of banks borrowing from each other through the unsecured wholesale lending market. The market that the benchmark seeks to measure increasingly no longer exists. This underscores the fundamental need to transition away from Libor.

Since the FSB's recommendation, the Government, the FCA and the Bank of England have worked together to support a market-led transition away from use of the Libor benchmark. Primarily, they have pushed contract holders to voluntarily move to robust alternatives before the end of this year, in accordance with guidance from the FCA and the Bank of England. The vast majority of contracts are expected to make this transition away from Libor without any government intervention. We expect 97% of all sterling Libor-referencing derivatives to have transitioned by the end of the year.

However, despite this extensive work and progress, there remains a category of contracts that face significant contractual barriers to moving away from Libor by the end of this year. The measures in the Financial Services Act 2021 sought to provide a safety net for these "tough legacy" contracts. Through the Act, the Government granted the FCA powers to "designate" a critical benchmark if it determines that the benchmark no longer accurately represents what it seeks to measure. The Act also provided the FCA with powers to require the administrator of such a designated benchmark to continue to publish it and to change how the benchmark is calculated.

In the case of Libor, the FCA has announced that it will use these powers to compel the continued publication of Libor using a revised methodology, referred to as "synthetic Libor". The FCA has done this so that these tough legacy contracts can continue to function. They will have a Libor rate to refer to in its synthetic form, providing for the benchmark to cease in an orderly manner. It is important to emphasise that this synthetic rate is a temporary safety net for those legacy contracts that have not been able to move away from Libor in time for year end. It is not intended to replace Libor in the long term.

The Bill is vital to support the use of the synthetic rate. Clause 1 provides explicitly that Libor-referencing contracts can rely on synthetic Libor. This is covered in the new Articles 23FA and 23FB. Specifically, where the FCA imposes a change in how the benchmark is determined, such as a synthetic methodology, the Bill is clear that references to the benchmark in contracts also include the benchmark in its synthetic form. In the case of Libor wind-down, this means that where a contract says "Libor", that should be read as referring to synthetic Libor. The effect of that is to provide legal certainty for those contracts that now reference synthetic Libor.

The Bill also provides a narrow and targeted immunity for the administrator of the critical benchmark for action it is required to take by the FCA. This includes where it is required to change how a critical benchmark is determined, such as a change in the benchmark's methodology. This will protect the administrator from unmerited and vexatious legal claims. The Government have done this in the narrowest way possible. This does not protect the administrator in any area where they act with discretion. It protects the administrator only to the extent that it is acting purely on a direction from the FCA. It also does not in any way change the ability to challenge the FCA; its decisions on setting a synthetic methodology are subject to challenge on the usual public law grounds.

The Bill reaffirms the Government's commitment to protecting and promoting the UK's financial services sector. As the global home of Libor, having a clear legal framework and process in place for the Libor wind-down will further underpin our position as a global financial hub. However, I understand that some

[Lord Agnew of Oulton]
are concerned that the synthetic methodology may result in a rate higher than the current Libor rate. That is not an issue for the Bill, which does not seek to instruct the FCA on how this synthetic rate should be constructed. That role has already been delegated to the FCA under the Financial Services Act 2021.

It is appropriate that the FCA takes these technical decisions. Indeed, our regulatory system often sees independent bodies empowered to produce calculations which reflect and influence economic reality, such as the Bank of England setting interest rates. It is vital that the FCA is able to create the methodology free of political interference.

I understand concerns about the possible retail impacts of Libor transition and would like to try to address these. First, I remind noble Lords that Libor is primarily the preserve of sophisticated financial operators, not retail investors. The vast majority of Libor contracts are derivatives. These are sophisticated financial products and 95% of these will transition away from Libor voluntarily.

Secondly, synthetic Libor is a last resort. The regulators have been working with the market to encourage operators to move to alternative rates for several years. The vast majority of contracts will not need to use this synthetic rate at all. Thirdly, the FCA's approach is entirely in line with the global consensus among industry and regulators internationally.

However, I am sympathetic to concerns raised by some noble Lords about the impact this could have on some mortgage holders. I remind noble Lords that the Financial Services Act 2021 allows the FCA to impose a synthetic methodology only if it considers it desirable to do so to protect consumers or to protect and enhance the integrity of the UK's financial system. The FCA's proposals have been approved by its statutory consumer panel.

The FCA's synthetic rate seeks to provide a reasonable and fair approximation of what Libor would have been had it continued to be based on panel bank contributions, while removing a major factor in the volatility of the rate. This is to the benefit of mortgage holders and other retail borrowers, who will no longer be exposed to perceived changes in bank creditworthiness or liquidity conditions in wholesale funding markets.

Today's Libor rate is at historic lows, but it can fluctuate significantly. Three-month sterling Libor has varied from 0.28% in September 2017 to 0.92% at the end of December 2019 and is now 0.09%. The FCA's synthetic methodology will protect contract holders from these large swings. We do not know precisely what the difference between synthetic Libor on 4 January 2022 and panel bank Libor on 31 December 2021 will be. We can reasonably expect that it will remain at a historic low when the synthetic methodology is imposed and that contracts referring to this rate will be protected from large swings in the Libor rate.

Finally, only a relatively small number of mortgages use Libor in the UK—around 200,000 out of some 11 million. It is much more usual for a mortgage to reference the Bank of England base rate. The FCA estimates that only around half of these 200,000 mortgages are residential; the rest are buy-to-let mortgages. The FCA expects that the majority of these mortgages will transition away from Libor before the end of the year and so never use the synthetic rate.

Customers holding Libor-referencing mortgages should speak to their lender to switch to an alternative rate. The FCA does not expect firms' transition efforts to result in worse customer outcomes than would be achieved through synthetic Libor, given the clear market consensus on fair replacement rates that has been established in the market for some time. The FCA would pay close attention to any evidence or feedback suggesting the contrary and take the necessary action to intervene.

The approach the FCA has taken produces a fair approximation of the Libor rate and is the best thing for any consumers or businesses which will need to rely on this rate. The alternative is having no rate at all or being put on an unsuitable fallback rate, which may well be designed for a different situation, such as a short-term problem with publishing Libor.

The Bill supports the wind-down process. It ensures that contracts remain unaffected by the Libor transition if they are not able to move to alternative rates in time. The Government have carefully considered responses to their consultation and the complex range of contracts which reference critical benchmarks. The FCA has confirmed the process to wind down Libor by the end of this year. The Government will continue to engage with Parliament with a view to securing passage ahead of the end of the year.

I hope that, having provided the House with the background to the Bill, an explanation of its provisions and an update on the broader work being undertaken by regulators on the Libor transition, we can debate the provisions in the Bill in a constructive manner and push forward this vital legislation. I beg to move.

7.39 pm

Lord Sharkey (LD): My Lords, I thank the Minister, the Economic Secretary to the Treasury and their teams for their engagement with us on this short but complex Bill. The input from the Ministers and their teams has unravelled a lot of that complexity and answered a lot of questions. We broadly support the Bill.

The need to replace Libor has been well flagged. As the Minister has noted, the FSB made it clear in 2014 that the continued use of Libor represented a potentially serious systemic risk. It made this judgement in response to cases of what it described as "attempted manipulation" of the rate

"and declining liquidity in key interbank unsecured funding markets."

The imminent end of Libor has already been well flagged, at least to major players. Ideally, the Ibors would be replaced by risk-free rates, such as SONIA, but it has been obvious for some time that there would be existing, continuing contracts that would be unable to transition easily or in a timely fashion—or, perhaps, at all—to the new RFRs.

As the Minister has explained, the provisions of this Bill enable the FCA to address the problem. It gives powers to the FCA to allow, for some as yet unspecified categories of tough legacy contracts, continued use of synthetic Libor after the demise of the index at

the end of this year. The Bill also provides some narrowly drawn legal protections for the administrators of the synthetic Libor.

It is worth noting that the Bill does not include in its scope the synthetic Libor mechanism itself. There has been no parliamentary scrutiny of this mechanism. Consultation is not the same as, or equivalent to, parliamentary scrutiny. It is regrettable that Parliament has not had the opportunity to scrutinise this mechanism and its likely consequences, or any alternative mechanisms, such as the linear transition mechanism mentioned in paragraph 28 of the FCA's recent technical note. There is a very large gap in our scrutiny system where financial affairs are concerned. The exercise of unscrutinised power by the FCA illustrates the need, once again, for a dedicated financial affairs select committee.

The measures in the Bill are intended to produce an orderly end to the existing regime and to provide a temporary bridge for some exceptional contracts. I have been impressed by the depth and quality of the work that has gone into preparing for transition and for creating the synthetic Libor. I have no issues with the fundamentals of the proposals, but some questions remain, and I would welcome the Minister's clarifications.

The first question is to do with timing. Why was the end of this year chosen as the cut-off point? What discussions have we had with the US authorities about synchronising our moves away from Libor? Would it not have been better and simpler to act together and give more time for contracts to be transitioned, reducing the number of those moving to a synthetic Libor substitute.

My second question is also to do with timing—in this case, the timing of the formal announcement of who may use synthetic Libor. As things stand, the FCA's consultation on the matter does not close until the end of this month. Only after that will the FCA issue a formal policy paper setting out the rules for qualifying for the use of the synthetic Libor. That is two months before the general expiry of Libor—not long to prepare if the rules do not allow your contract to qualify. Why has it been left this late?

When I asked the Minister about this in our meeting on Monday, he pointed to the fact that the enabling powers in the Financial Services Act 2021 became active only in April. But we had been preparing this transition for long before that, and the Government cannot seriously have expected their proposals to have been overturned during the passage of that Bill. Surely, it would have been possible to at least have the consultation ready to go as soon as the Act was passed, or even to consult as it was being debated—something the Government have done in the past. I know the FCA has signalled that the rules may allow wide but time-limited scope, but can the Minister reassure us that it does not foresee the disruptive exclusion of significant tough legacy contracts from the synthetic regime?

My next question is about the absence of safe harbour provisions. The narrow immunity on offer to the administrator may not, of course, prevent an outbreak of lawsuits. New York has dealt with this problem more comprehensively than we propose to do by adopting safe harbour provisions.

During the Report stage of the Financial Services Bill 2021, the noble Baroness, Lady Noakes, who I am glad to see in her place, proposed, in Amendment 6, such a safe harbour provision. The Government rejected the amendment, and the Minister explained why, saying:

> "Amendment 6 may seem to solve those problems by seeking to give the Treasury powers to make regulations providing for contract continuity and safe harbour through secondary legislation, having had more time to consider these matters. The Government are of the view that, if legislation were needed to address this, it should be in the form of primary legislation. Further legislation providing for safe harbour, as proposed by these amendments, while consistent with the provisions already in the Bill, may be considered by some parties to represent a significant intervention in the contractual rights of parties using critical benchmarks. Primary legislation would therefore be preferable, to provide all parties with an appropriate level of transparency. Crucially, given the volume and value of contracts impacted, making such a provision in secondary legislation would carry a risk of legal challenge to the Government's exercise of their powers. Any such challenge could bring further uncertainty and disruption, which is precisely what these amendments are seeking to mitigate."—[*Official Report*, 24/3/21; col. 923.]

That was not a rebuttal of the notion of safe harbour. It was simply an explanation of why primary legislation would be a better way of achieving it. Well, we are now discussing primary legislation. Did we consider using safe harbour provisions similar to those adopted in New York and, if we did, why we chose not to use them? Did Her Majesty's Government identify any benefits provided by the safe harbour approach that would not accrue under our scheme?

Next, there is the issue of a possible cliff edge at the end of the year. In the first Peers' meeting with the Economic Secretary to the Treasury, we were told that there may be a difference of 10 basis points between the old Libor and the first runs of the new synthetic Libor. The very helpful FCA technical note on the end of year impact says in paragraph 23:

> "We do not know precisely or with certainty what the difference between synthetic LIBOR on 4 January 2022 and panel bank LIBOR on 31 December 2021 will be."

Does this not raise the possibility of significant market disturbances and disputes? The mechanisms proposed for generating synthetic Libor outputs have been published by the FCA in its draft notice of 29 September. Can the Minister say whether these mechanisms for determining synthetic Libor can be adjusted to produce a smoother, less step-like transition, if this looks to be desirable? If that cannot be done, can the Minister say what reactions he expects in the markets as a result of a variation of 10 basis points or more at the beginning of the new year. Can he also say what a realistic upper bound of this differential might be?

I have one further question: will there be some contracts which will never be able, or will decline, to transition to RFRs? If there are, what characterises them? Do we have any idea of how many there might be in number and value, and what does the FCA propose to do about them?

I realise that I have asked a lot of questions. I entirely understand if the Minister does not have time to answer them all this evening, but I would be very grateful for a written response before we get to Committee.

7.48 pm

Baroness Noakes (Con): My Lords, I declare my interests as recorded in the register and, in particular, my holdings in financial services companies, which could be affected by the Bill.

I welcome the Bill and thank the Government for responding to the very real issues that are raised by tough legacy contracts. I also thank the Minister and my honourable friend the Economic Secretary for arranging two very helpful briefing meetings for Peers. Before getting into my speech, I must say how much I am looking forward to the maiden speech of my noble friend Lord Altrincham, and I welcome him to the select group of noble Lords who speak on financial services matters.

When we considered the Financial Services Act 2021 earlier this year, I argued that we needed provisions beyond those contained in that Act to deal with tough legacy contracts. I tabled some amendments in Committee and on Report, none of which found favour with the Government. It was plain to me that legislation was needed to avoid disruption in financial markets, and I warned about the clock ticking down towards 31 December this year, when Libor ceases. I therefore rejoice that the Government have now seen the light, and I hope that this Bill can be speedily dealt with both here and in the other place.

In the previous Bill, I argued for two measures to deal with the tough legacy problem: a contract continuity provision and a safe harbour provision, as referred to by the noble Lord, Lord Sharkey. This is what the financial services industry said that it needed and what the responses to the Treasury's consultation showed. The Bill provides for contract continuity but not safe harbour. If nothing else, that is regrettable for being out of line with the approach already taken under New York law, where a safe harbour has been provided.

As I understand it, the Government believe that they have drafted the continuity provisions in such a way that a safe harbour is not needed. The theory is that the continuity provided by the Bill should be watertight against any actions that arise from transition to synthetic Libor. There are concerns about this. Experience shows that legal challenges can and do emerge to legal drafting, even if that drafting is initially believed to be bombproof—whether in contract or statute law. No self-respecting lawyer would claim otherwise.

There is clearly a risk of litigation by parties who think that they have suffered from the transition to synthetic Libor or who could gain from being released from a contract. The risk of successful litigation may not be high, but there is a risk. This could be disruptive and costly. I hope that my noble friend agrees that it is important to avoid this.

The scale of the risk may well be difficult to quantify and will, of course, depend on the number and type of contracts that actually transition to synthetic Libor at the end of this year. There will, however, be clear winners and losers. As the noble Lord, Lord Sharkey, said, the new, synthetic rate will probably be higher than Libor—possibly by about 10 basis points. I spent some of our recent Recess acquiring new knowledge about the overnight interest swap rate and the ISDA five-year historic median credit adjustment spread. If nothing else, this shows that your Lordships' House is a wonderful place for lifelong learning. Ten basis points may not be much on a retail mortgage but, on a large nominal in a commercial transaction, it could be a pretty big deal.

Last week, the Financial Conduct Authority provided us with a very helpful note on synthetic Libor. I fully accept that the FCA has consulted extensively and that there is general market acceptance that the methodology is the best that could be achieved for Libor-like rates. Nevertheless, there has not been a debate about the quantum of the difference between Libor and synthetic Libor and its impact on litigation risk. A question about quantum was tabled last week at a webinar arranged for the financial services industry together with the Treasury and the FCA, but that question was not selected for answer. This will be in the public domain at some stage and I believe it could increase the likelihood of litigation.

An important risk mitigant will be the clarity of the government messaging in relation to the impact of this Bill. I hope that my noble friend the Minister can be crystal clear on three points. First, the Government need to intend for the drafting of Clause 1 to have the same substantive effect as the New York legislation. In other words, the Government's clear intention should be that the continuity drafting must be watertight in relation to litigation targeting the transition to the use of synthetic Libor.

Secondly, the Government need to be very clear that the ISDA credit adjustment spread—the main source of the difference between Libor and synthetic Libor—is set by the FCA, that it may well result in higher rates, and that it is out of the control of the parties to the contract.

Thirdly, with the strong encouragement of the Treasury, the FCA and the PRA, the industry has been actively transitioning contracts by agreement, generally using SONIA—with or without a credit adjustment spread or base rate. The FCA briefing note to which I referred said that they regarded these formulations as fair. Do the Government agree that these rates are fair, given that they may not be the same as the synthetic rates to be used for tough legacy contracts? It is just as important to avoid litigation on contracts transitioned by agreement as it is on those designated tough legacy contracts, especially as the draft scope from the FCA will potentially put a very large number of outstanding contracts into synthetic Libor for 2022 at least.

I will touch briefly on the fallback provisions in new Article 23FB. It is certainly welcome that contractually agreed fallbacks can continue, particularly where they have been negotiated in the clear knowledge that Libor would be ceasing. However, many contracts and other documents have fallback language which would be problematic if they were saved by Article 23FB. The risk-free rate working group, which has done splendid work on Libor during the last couple of years, highlighted formulations which used "cost of funds" as being problematic. The term sounds more straightforward than it is. There is no agreed method of computation for standard market practice. It is thus a rich source of potential disagreement between parties and, hence, of

lengthy and costly litigation, which I am sure the Government will want to avoid. Can my noble friend say whether any contracts with cost of funds fallbacks are likely to stand, or is it expected that they will all be transitioned to synthetic Libor? The latter is clearly preferable, given the difficulty of applying that particular fallback.

Lastly, I want to raise the 10-year time limit on the use of synthetic Libor under the 2021 Act. The New York legislation does not have a time limit. I understand that it is widely believed that there will be a rump of contracts which will go beyond this period. Do the Government accept that some contracts will need a solution beyond 2031? If so, when do they expect to deal with these? I hope that we can avoid the brinkmanship that has characterised the timing of this Bill and some of the FCA decisions in the run-up to the deadline at the end of this year.

In conclusion, despite the concerns I have outlined, I am a big supporter of this Bill. I hope that it will become law as soon as possible and give the market the certainty it needs.

7.58 pm

Lord Altrincham (Con) (Maiden Speech): My Lords, I am honoured to follow the noble Baroness and to speak on this Bill and in this House for the first time. I declare my interest as a director of the Co-operative Bank in Manchester.

I should start with thanks for the welcome that I have received from all sides of the House and for the help from Black Rod, the clerks, the doorkeepers, security staff, technology staff and the Library, and for the welcome in the dining room. In working for this House, each of them is working for our country. I also thank my two mentors, my noble friends Lord Leigh of Hurley and Lord Parkinson of Whitley Bay, and my two noble friends Lord Sandhurst and Lord Leicester who were elected alongside me in June—the first time that three Peers have joined this House by election since 1816.

It is with sadness that I stand before noble Lords because my election follows the death of my father, Anthony, and of his brother, John. The Altrincham title was given to my grandfather, Edward Grigg, in 1945, for service in the wartime Government. It passed to John Grigg, who then disclaimed the title for life in 1963, events reconstructed in season 2 of "The Crown". Although I have lost my father, my mother, Eliane, is in good health. She was a child in occupied France and watched the RAF bombardment in 1944 from the air raid shelter in their garden.

With an English father and a French mother, I was lucky in my career. At 30, I was at Goldman Sachs and married to Rachel Kelly, a journalist on the *Times,* and we had our first child. The following year, 1997, I stood for Parliament in the general election. We had a privileged life, but we did not have privileged health. We were combining Goldman Sachs, the *Times,* the general election and little children. Later that summer, Rachel got very sick very quickly and we thought she was having a heart attack. I helped her into an ambulance and she was taken away to a psychiatric hospital, which was obviously quite a surprise. Then I learned that she had depression, and this was more or less the first time that I had ever heard of depression. That has been something important to our family ever since. Rachel recovered—she was sick for about a year—and went on to write about her experience in her bestselling book *Black Rainbow*, and subsequent books *Walking on Sunshine* and *Singing in the Rain*. I did not stand for Parliament again, but stayed at Goldman Sachs for another 10 years and then went on to work at Credit Suisse.

Libor was the bedrock of the financial system throughout this whole period but was shaken by the financial crisis. I saw the events of October 2008 as an investment banker working for the Labour Government at the time. We advised the Government on the rescue recapitalisations of both the Royal Bank of Scotland and Lloyds Banking Group—the so-called drive-by shooting. On the weekend of Saturday 11 October 2008, and on behalf of Her Majesty's Treasury, we took control of the Royal Bank of Scotland; the recapitalisations took place on this day, 13 October 2008. I also worked on the bank asset protection scheme through that period, which, as noble Lords might recall, was the insurance scheme put in place behind the banking system. The learnings around that are still very relevant to understanding sovereign credit today.

Libor was put under great strain during this period, as was subsequently revealed in 2012. Quite apart from the integrity issues, the market needed a new rate. The changeover to SONIA, as noble Lords will know, is now substantially done and this Bill picks up the residual issues that arise around the year end. SONIA, meanwhile, is correlated to base rate, is less volatile than Libor and tracks short-dated gilts very closely.

The Government would not normally interfere in contract, so this Bill is extraordinarily unusual for doing just that, but in the absence of what we are agreeing to today there would be extensive room for dispute over what to do at the year end. The Bill neatly reinterprets Libor as synthetic Libor, as a direct intervention. However Libor is expressed in a contract, it would just be reinterpreted as synthetic Libor, which is a very neat solution, albeit highly unusual under English law. That should be effective in closing off most areas of litigation. It is also worth adding, as the noble Lord mentioned, that the FCA has still not defined which regulated loans will go into this safety net. It is now relatively urgent for the FCA to decide on that because the loans are not defined in this legislation.

The Bill is a reminder of the importance of financial services to London, and maybe also a reminder of the importance of financial services, regulation and law to this country. The Bill also, in a sense, closes a chapter from 2008.

This is an important day for me. I first stood for Parliament 24 years ago. It is very meaningful for me to be here today. I still believe that government and regulation can be a force for good. I look forward to working with noble Lords and for this House for many years to come.

8.05 pm

Lord Moylan (Con): My Lords, in following my noble friend Lord Altrincham and his maiden speech, I start by saying that I think it is the first time since I came into your Lordships' House a year ago that a

[LORD MOYLAN]
maiden speech has been delivered with members of the family present in person to hear it. I take that as a very encouraging sign for our return to normality and a sign of great confidence. I thought it worth mentioning.

There is another first going on at the moment. This is, as my noble friend explained, the first time since 1963 that an Altrincham has sat in your Lordships' House. That was something of a vintage year for departures from your Lordships' House: I note that another peerage is returning that has been absent since 1963, though on the opposite Benches. Who knows what fruit might yet be harvested from that vintage year?

My noble friend is a banker. It is very brave nowadays to say you are a banker, and he had the courage to confess that he has spent most of his life as an investment banker. He has advised Governments and major companies, and since then he has gone on to set up his own corporate finance firm. Unlike some bankers—in the context of this Bill, I think everyone will know what I mean—his reputation for integrity in the course of his career has not only emerged intact but, in fact, been enhanced.

However, my noble friend is more than simply a banker. As he said, he has a keen interest in mental health issues, arising from his own family's experience. His wife Rachel's books have brought consolation to countless readers suffering from depression and, indeed, quite a lot of joy to those not suffering from depression. They are rather good and useful books in their own right, I have found. My noble friend will use part of his time in your Lordships' House to promote interest in and support for mental health problems. I am confident that, with his great gifts and broad sympathies, he will make a wonderful contribution to your Lordships' House.

Turning briefly to the matter of the Bill, we have come today to bury Libor. Not many people know—perhaps there is no reason why they should—but I spent a number of years lecturing on financial services and capital markets, and Libor was the meat and drink of what I did. I rather feel that Libor is something of an old friend. I have listened and learned a great deal from speakers in this debate so far about the very fine technical points that are at issue and dealt with in this Bill, but I would feel bereft if an old friend such as Libor were to be buried without someone like me at least reminiscing, in a mournful and doleful tone, about its departure. My old friend will be greatly missed.

As my noble friend the Minister said in his letter circulated before the debate, this is the only critical benchmark left that is generated in London. The loss of that is a harm to the prestige of London as a financial centre. It also raises a very small question mark about the robust connection with the legal profession and the documentation of financial services transactions. It is one of the boasts of London as a financial centre that the documentation is done under English law. Part of that was that connection with Libor, and that is gone. I do not think we are advancing when we see the City of London—not just the financial side but the associated legal side—lose the only benchmark generated in London.

Who killed my old friend Libor? A certain number of people have suffered criminal convictions and that is part of the answer, but the suggestion was also made at the time that the Bank of England was reasonably aware of what was going on. That suggestion—I know I am straying a bit into the history of the matter—was of course robustly denied by the Bank, but in 2008 or thereabouts the Bank was trying to drive interest rates down for monetary-management reasons while a very uncertain market, faced with a great deal of risk, was trying to put interest rates up, and to some extent Libor was the victim crushed between those two forces. Of course, I have no reason to doubt the Bank of England's denial of that allegation, but I am sure that in the course of time more will be learned—although I do not know if I will be alive when it is.

Could my old friend Libor none the less have been resuscitated? I think in fact he could have been. If our regulators had had more confidence and less fear, and if they had not had removed from them at the time their earlier obligation to maintain the competitiveness of the City of London as a financial centre, I think that, with imagination, something could have been done to retain a London-based benchmark.

Of course, it is all too late for that. We are here simply to invite in the undertakers, and there is no going back. However, I hope that my noble friend and the Government will learn at least one lesson from this: if we are to have, as I hope we will, a successful and indeed internationally dominant financial services sector in this country—with the benefit that flows from that to other professional services such as law, accountancy, and so forth—then we need to have a clear framework for regulators that directs them to support that competitiveness and encourage the success of the City of London. Regulation is not all about risk minimisation. After all, if one were to minimise risk utterly, there would be no banking—it is a risk business by definition.

8.12 pm

Lord Blackwell (Con): My Lords, I welcome my noble friend Lord Altrincham into the House. He brings huge expertise in financial services, which will be extraordinarily valuable.

Before I address the substance of the Bill, I should declare my interest, or at least my former interest, as the chairman of Lloyds Banking Group until the beginning of this year, and I confirm that I have no ongoing interests other than as a shareholder.

Like other noble Lords, I very much welcome the Bill. I add my thanks to the Minister and his honourable friend the Economic Secretary to the Treasury for their efforts in listening and responding to the concerns that industry and a number of us have raised. There has been widespread acceptance in the remarks made so far in this debate of the need to replace Libor, and of the importance of doing so in a way that both is fair and provides legal certainty. I will not go over those arguments again but, as the Minister recognised, despite the best efforts of banks and other institutions to migrate contracts, there are, I understand, currently some 55,000 sterling Libor contracts with a value of around £340 billion that are still unresolved. While I

hope the Minister and the FCA are right that most of those will be resolved by the year end, there are likely still to be a number left on Libor. Many of those will be individual mortgages and small business loans where the individual businesses or consumers simply have not responded to the offers made to them. However, there may also be some where the counterparty has deliberately withheld consent in order to achieve a better outcome.

As my noble friend the Minister has said, all of these are contracts that, under Libor regulations' Article 23C, can be designated by the FCA as tough legacy contracts. Where they can then be mandated by the FCA for these contracts, references to Libor can continue—but, with the way that Libor is determined, replaced by a synthetic substitute, using the methodology that the FCA defines under Article 23D.

This methodology has been widely consulted on, and I am comfortable that it appears to be a sensible approach that will reduce some of the volatility that there has previously been in the market and that should provide a sensible outcome. Could the Minister confirm that this methodology—which, as he pointed out, the FCA, rather than he, is responsible for—is consistent with the internationally accepted methodology for Libor replacement and with the methodology that has been used by most commercial contracts so far in reaching voluntary agreement?

The reality is that there is no perfect substitute for the interest rate that might have prevailed under Libor, with the resultant risk that some counterparties might claim that the change negates their contracts or causes them losses. I welcome fact that the Bill provides the legislative underpinning to provide legal certainty that synthetic Libor should be recognised as a valid substitute for Libor in these legacy contracts.

The key provision is that this applies to contracts designated by the FCA, as covered by the legislation. As other noble Lords have pointed out, it is not yet clear what those contracts are, but my understanding is that this is expected to cover all outstanding contracts for a period of 12 months. To avoid further uncertainty, could the Minister, although he is not responsible for this, confirm that that is his expectation and that there is no intention to have a hard cut-off at 12 months or to exclude certain contracts from ongoing cover under these provisions at the end of 12 months? It would also be helpful if he could reconsider whether it is necessary to have a 10-year time limit for the use of synthetic Libor, given the tenure of some of those contracts.

As my noble friend Lady Noakes pointed out, the Government have decided not to include the other provision that they consulted on of a safe harbour against litigation, as a belt-and-braces measure to reinforce the legal certainty. I understand the reluctance to make provisions that might hinder legitimate claims of mis-selling, but I share the reservations that potential claims that run against the intention of this legislation may still be pursued and can be costly, even if they do not ultimately succeed. If the Government choose not to legislate for the safe harbour following these debates, it would be helpful if the Minister could put on the record that it should not be grounds for mis-selling simply to claim that the provider did not communicate any potential weaknesses in Libor as a benchmark or did not envisage or provide for a replacement if Libor ceased.

In confirming the intent of this legislation, on which I acknowledge that my noble friend the Minister has said some very helpful words, it might also help if he could confirm on record the specific and very helpful wording set out in writing in paragraph 25 of the Explanatory Notes to the Bill, which do not form part of the legislation, as it stands. It says:

> "The provisions … are … intended to ensure the application of a synthetic methodology … does not inadvertently give rise to breach of contract claims or provide a vehicle for one party to claim that the contract has been frustrated."

I also ask Minister to consider whether, as another way to discourage vexatious claims, it would be helpful, as an exception to the normal rules, to publish the Government's legal advice that has given them confidence that the legal certainty provided under this legislation is adequate to avoid potential unwarranted litigation risks.

I very much welcome this legislation. I will support it through the House, and I thank the Government for bringing it forward.

8.20 pm

Baroness Kramer (LD): My Lords, I begin by welcoming the noble Lord, Lord Altrincham, to the House. I think that is a maiden speech that we are all going to remember. We particularly look forward to hearing him speak on Treasury issues but also very much on mental health issues. If one had to pick two issues pertinent to our time, I would say that those must be the two. I very much welcome him but have to warn him that to go from being a banker to being a politician is to go from one much-despised profession to another. I hope he recognises that he is unlikely to have any better reception in public today than he did as his former self. We recognise his capacities and honestly and sincerely welcome him.

I join others in thanking the Minister and the Economic Secretary to the Treasury for the briefings that they provided to us and particularly for the meeting that many of us were able to participate in yesterday with the relevant officials from the Treasury and the FCA. I know that I felt a much greater peace of mind at the end of that meeting. It was extremely helpful to have that level of expertise and people who have been so engaged in the process brought into that meeting with Peers.

We have always supported the essential tenets of this Bill—immunity for the administrator, synthetic Libor and provision of legal certainty that legacy contracts will remain valid. We in no way wish to challenge that. However, I am very much with my noble friend Lord Sharkey on the questions that he raised—I am not going to repeat them as this House and the Minister will now be fully aware of them—and on the questions raised by the noble Baroness, Lady Noakes, and the noble Lord, Lord Blackwell. We have to have some constructive responses to those.

I want to pick up on two questions that have particularly exercised me, although that is not to say that they are more important than the other questions.

[Baroness Kramer]
In a sense, both questions come down to the mechanism that the FCA has selected to determine synthetic Libor—how it determines the spread above the risk-free rate. As I say, I took a great deal of comfort from the conversation yesterday with the FCA but I think there must be some mechanism whereby this House should be able to scrutinise the process that leads to a mechanism of such significance. Again, it underscores the gap we have in making a regulator accountable to Parliament. I hope that the Minister will take that back. It is not a criticism of the regulator but points out the absence of an appropriate mechanism. We need to have that put in place.

My second concern has always been that cliff edge. On 31 December we will have a Libor rate created through the historic process and by the mechanism people expected to be used when they signed their various agreements. Then four days later synthetic Libor is likely to deliver a difference of something in the range of 10 basis points. I find that rather extraordinary. I hope it does not lead to the kinds of legal disputes that the noble Baroness, Lady Noakes, has indicated would be possible. I think it could. It also somewhat disturbs me that we have not found a better way to smooth that transition. Like others who have been bankers in this House, I suspect, I have fought hours through the night for one or two basis points; 10 basis points is such a significant differential. I am delighted if the financial services industry finds this entirely acceptable but I just wonder whether it will not be rather surprised when it actually sees the number.

One of my concerns has always been that that kind of gap as a result of two different approaches to creating a Libor benchmark also indicates the potential for various financial institutions to arbitrage and game in various ways because of the difference and the change. I have taken some reassurance from the FCA trying to explain that it does not think that small individuals will be the victims of any such gaming and arbitrage. I have concerns because loans to small businesses are not regulated and therefore the FCA's ability to monitor them is very different from its ability to monitor loans to consumers. If it is the big boys all playing games with each other, I must admit my concerns are rather fewer, but I have concerns around that area.

I am going to close because so much of what has needed to be said has been said, but I want to pick up on the issue raised by the noble Lord, Lord Moylan. I, too, feel an incredible sadness in saying farewell to Libor. Back when I was in the United States, I spent more than 10 years structuring loans and a variety of transactions—some of the earliest swaps—around Libor, and I took great pride in a benchmark that was set in London not just for sterling but for every meaningful currency across the globe and all time zones. I confess the shock that I experienced, never having worked in the City of London, only in the United States in direct lending and structuring, to find that Libor had been manipulated, and so blatantly, by major financial institutions and that it was apparently well known to their chief executives.

I was on the Parliamentary Commission on Banking Standards. Those masters of the universe were very well aware of the manipulation that was going on and, frankly, the regulator was too weak or too deferential to intervene. It was a stain on London and on financial services in the UK and I am sad that that stain still overhangs this ending of Libor. I agree with the noble Lord, Lord Moylan, that there are consequences because of the loss of prestige and international standing that is attached to the disappearance of the role that London played in virtually every lending transaction across the globe. It is with sadness, and perhaps with a little bit of shame, that I stand here and speak to this Bill. We will support the Government, but we would like to see our questions answered, and we may press some of them when we get to Committee.

8.28 pm

Lord Eatwell (Lab): My Lords, first, I declare an interest as a recent chairman of the Jersey Financial Services Commission and therefore a financial services regulator.

I begin by congratulating the noble Lord, Lord Altrincham, on his maiden speech and welcome him to the small club he sees around the Chamber of people who have an almost obsessive interest in the details of these financial matters. I hope he will continue to contribute to our proceedings on these matters. It is nice to grow the club a little.

I say to the Minister that I think that the very last sentence in the Bill has it wrong. It should say "This Act may be cited as the Critical Benchmarks (Inspired by Baroness Noakes) Act 2021." I congratulate the noble Baroness, Lady Noakes, who brought forward these issues so strongly in the discussions in Committee on what is now the Financial Services Act 2021, on seeing that the important points that she made at that time have been noted and have been taken up to a considerable extent.

This is a Bill with but two substantial clauses, both of which are eminently sensible in the context of the complexities associated with Libor transition. But one of them, Clause 2, may well cause collateral damage. I will focus my remarks on Clause 2, but will first comment briefly on Clause 1. This is an entirely sensible clarification of the interpretation of references to a benchmark in a contract where the FCA seeks to replace Libor. The clause provides legal certainty in a variety of circumstances and is thus to be welcomed. Let us now turn to Clause 2.

The Libor story has, from the outset, been a story of the professional creation of risk. First, there was the scandalous gaming of Libor, which created market risks, which have been widely debated; now, there is the replacement of Libor, which itself creates risks because new benchmarks are untried, their relationship to events and financial markets is as yet untested, and the insertion of new benchmarks into existing contracts will be problematic and will typically result in revaluation of those contracts, resulting in gains for some and losses for others. Then there is the issue of timing, raising by the noble Lord, Lord Sharkey. Further, in those cases in which it is impossible to replace Libor, the imposition of a synthetic Libor will potentially

result in asset revaluation, again precipitating gains and losses. This replacement issue was referred to by the noble Baroness, Lady Kramer, who asked about the mechanism for how synthetic Libor is to be created and questioned the cliff edge. These are all risks which have been created by the replacement of Libor.

It is not just a question of the creation of risk; it is also a story of the transfer of risk from professionals who create it to others. And not just to fellow professionals who may lose out in traded positions but to firms of all sizes—small, medium and large—to municipalities and to ordinary people, typically via their pension funds or mortgage contracts. This transfer of risk is a serious market inefficiency; the risk is imposed on someone who had nothing to do with its creation. Losses are suffered because of the actions of others.

That is why, as a financial services regulator for many years, I am allergic to the awarding of legal immunity to those who create the risk. The existence of legal immunity not only allows the risk creator to escape scot-free but creates a moral hazard, because the creator of risk suffers none of the adverse consequences that stem from his or her actions. Because of that, there is an obvious incentive to create even greater risks. Equally abhorrent, the legal immunity provided leaves no possibility of redress for those who have suffered losses because of where the risk has ended up. Legal immunity is, therefore, in the words of *1066 and All That*, "a Bad Thing", to be introduced only in extremis. Indeed, this case is in extremis, but it has other aspects that I wish to refer to.

Clause 2 of the Bill creates a legal immunity. It would grant the administrator of a critical benchmark immunity in circumstances where the administrator acts in accordance with requirements imposed by the FCA. The situations in which this is anticipated to happen are quite abnormal, because they arise from the peculiar circumstances created by the demise of Libor and the complexities involved.

As we have heard, legal immunity is provided in circumstances in which, in a very limited number of cases—the so-called tough legacy contracts—it is not practicable to replace Libor as the contract benchmark and the FCA has decided to require the administrator of the benchmark to use or change the benchmark in a specific way, particularly using synthetic Libor. In other words, immunity is provided to eliminate the possibility that the administrator of the benchmark might be subject to legal action as a result of complying with statutory requirements imposed upon it by the FCA.

By the way, in parenthesis I should add that I think it entirely correct that the Bill does not extend the safe harbour to acts taken by an administrator on his or her own discretion.

So far so good: we would not expect someone to suffer claims for damages for doing what their regulator has instructed them to do. But other people are suffering losses as a result—perhaps small firms, perhaps pension funds, perhaps individual non-professional investors. What about them? Who should be liable? The noble Lord, Lord Agnew, referred to these people collectively as bringing forward "unmerited and vexatious claims". How does he know they are unmerited and vexatious at this stage?

So, who is going to be liable? Since action has been dictated by the FCA, should the FCA be liable? Of course not, because as a regulator it already has legal immunity with respect to regulatory action, and that makes sense. The regulator is required to meet its statutory responsibilities, and it would be surely unreasonable for it to be subject to legal claims for doing what, by statute, it is required to do, so that would seem to be the end of the matter—hard luck on those who suffer losses. But I suggest that there are aspects of this case that make it rather different.

The transition from Libor, and the introduction of synthetic Libor, arise from the behaviour of those miscreants who, in 2012, were discovered to have gamed Libor. Those who may be suffering losses are doing so because of the ramifications of those illegal acts. Unfortunately, there is no prospect of redress from the miscreants, but the core issue remains: surely, it is unreasonable and unfair, in solving our problems, to shift risk on to retail customers. Why should they suffer loss as a result of the need to fix the system to prevent the repetition of illegal acts? I put it to the Minister that this is the sort of legislation that gives the financial services industry a bad name: it is always the retail customers who take the losses, not the professionals. How does he propose that those who suffer losses should be compensated—or is he happy to leave them to their fate?

I have worked as a financial services regulator for nearly 30 years. I thought myself unshockable, but I was shocked, as was the noble Baroness, Lady Kramer, by the revelations around the gaming of Libor. As the noble Lord, Lord Altrincham, said, Libor was the bedrock of the UK financial system. The noble Lord, Lord Moylan, referred to Libor as the meat and drink of financial services. I think all speakers recognised that serious injury was done to the reputation of UK financial services by those actions. This Bill is part of the effort to repair that injury. However, this cannot be done, it seems to me, when the Bill imposes unrecoverable losses on retail investors. I really feel that it is incumbent on the Minister to tell the House this evening how the Government intend, while offering legal immunity to the administrator, to offset this collateral damage.

8.39 pm

Lord Agnew of Oulton (Con): My Lords, I thank noble Lords for their detailed and collaborative contributions on this very technical Bill. I would particularly like to welcome and thank my noble friend Lord Altrincham for his excellent and personal maiden speech. I know that his experience in financial matters will be of great benefit to us all.

The Bill reinforces the provisions in the Financial Services Act 2021 that provide the FCA with powers to oversee the wind-down of a critical benchmark in a manner which protects consumers and minimises disruption in financial markets. In doing so, it provides key support to the Libor transition and market confidence.

I will try to address a number of the questions raised by noble Lords this evening, but I will write on the more technical ones on which I may not be able to come up with the answers immediately.

[LORD AGNEW OF OULTON]

I start with the noble Lord, Lord Sharkey, and his concern about the late running of this, so to speak. I accept his point that work could possibly have been done before the Financial Services Act 2021 received Royal Assent. The FCA feels strongly that it needs to follow an orderly and sequenced process to consult first on the framework for decisions and then on the decisions themselves, but I accept that the timing will be tight.

The noble Lord, Lord Sharkey, also asked why this year is taken as the cut-off. This date was selected back in 2017 after engagement with panel banks, so it has been in the works for quite a long time and there has been time for the industry to plan for it. We have had very close engagement with the US and the timings are aligned. It has now said that the new use of US dollar Libor rate will stop at the end of this year, following supervisory guidance from the US and UK and other international authorities.

The noble Lord, Lord Sharkey, also asked about the mechanisms for the synthetic rate to be smoothed. The FCA has confirmed that that is the approach. The synthetic methodology is based on a broad global consensus and it would cause significant market disruption to change course at this point. It is not clear that that would deliver better outcomes for markets or consumers. As discussed at the briefing yesterday, the smoothing has been put in place taking the five-year median rate, but I can write with more detail if the noble Lord would like, as I accept that this is an important issue.

The noble Lord, Lord Sharkey, said he was worried about congestion at the end of the year. We have been clear that the active transition is the main mechanism; we have seen a large transition away from Libor over the last few months. I take my noble friend Lord Blackwell's point that the latest data shows that some 55,000 contracts are still outstanding, but they are moving quickly. The FCA has taken on board market feedback on distinguishing between contracts that can be amended before the year end and those that cannot. Every step it is taking is to minimise disruption, in line with the objectives.

My noble friend Lady Noakes asked about the cost of funds fallbacks. This legislation provides certainty on how references to the Article 23A benchmark should be interpreted in contracts and other arrangements in which the FCA has exercised powers under the benchmarks regulation to require a change in the benchmark methodology. Where a contract or arrangement has a fallback that is triggered by the temporary or permanent unavailability of Libor, Article 23FA provides that the benchmark continues to be available and consequently that it does not cease to exist, be published or otherwise be made available. This means that the cost of funds fallbacks, which are generally triggered by the unavailability of the benchmark, will not be triggered.

My noble friends Lord Blackwell and Lady Noakes asked what happens after the proposed 10-year period. The legislative framework put in place in the Financial Services Act 2021 allows the FCA to support the orderly wind-down of the benchmark. Specifically, it allows the FCA to impose a synthetic methodology to provide for the continuity of a Libor setting for the benefit of tough legacy contracts for up to 10 years. The Government will continue to work closely with the FCA and the Bank of England to support an orderly wind-down of Libor and will continue to monitor the risks in this area, given its systemically important role in the UK economy.

My noble friend Lord Blackwell asked about the shorter term, after a year. The benchmark regulation provides that the FCA can review the decision to compel continued publication of a synthetic benchmark after a year. The FCA has been clear about the expected direction of travel with regard to the sterling synthetic Libor rate and does not intend that it will cease automatically after a year.

The noble Lord, Lord Sharkey, and the noble Baroness, Lady Kramer, are concerned about FCA accountability and, linking to that, parliamentary oversight. The FCA must operate within the framework of statutory duties and powers agreed by Parliament. The FCA is also fully accountable to Parliament for how it discharges its statutory functions. This direct accountability to Parliament reflects the FCA's statutory independence and the fact that it is solely responsible for everyday operational decisions, without government approval or direction, and so is primarily accountable for them. The legal framework ensures direct accountability of the FCA to Parliament, including through a requirement for it to produce annual reports and accounts which are laid before Parliament by the Treasury.

The FCA is subject to full audit by the NAO, which has the associated ability to launch value-for-money studies on the FCA. The FCA is subject to scrutiny from Select Committees. The Treasury is the FCA's sponsor in government; it is responsible for the statutory framework of financial services regulation and for the continued effective operation of the FCA as part of that framework. The mechanisms for the FCA can be directly accountable to the Treasury. This includes direct controls over appointments to the FCA board and powers under the Financial Services Act 2012 to commission reviews.

The noble Lord, Lord Sharkey, and my noble friend Lady Noakes asked about safe harbour. The responses to the Treasury consultation earlier this year identified the risks that parties may look to contest the continued publication of synthetic Libor by its administrator, or to seek damages against the administrator. This risk might be heightened if other avenues of litigation are closed off to parties by the Bill.

Where the administrator of an Article 23A benchmark is subject to legal challenge for complying with statutory requirements imposed by the FCA under the benchmarks regulation, it could impose a significant unreasonable and unmerited burden on the administrator of an Article 23A benchmark. If faced with too much legal risk, the administrator may seek to resign from administering the benchmark, which in turn risks causing disruption. Such action could serve to erode parties' confidence in using the benchmark, undermining the operation of the FCA's powers to oversee an orderly wind-down of it.

My noble friend Lady Noakes also asked about alternative benchmarks. The focus of this legislation is on providing legal certainty regarding the operation of

the FCA's powers to wind down this critical benchmark. Where contractual parties have acted in line with regulatory guidance to transition the contract to an alternative rate, the Government do not see that there is a need for further legislative clarity. The Government continue to encourage parties to contracts that reference Libor to transition those contracts to alternative benchmarks wherever possible, in accordance with regulatory guidance.

Several noble Lords, including my noble friend Lord Blackwell, asked about legal certainty. It is the Government's view that it is appropriate to provide legal certainty as to how references to Libor should be interpreted in contracts or other arrangements, once the switch to the synthetic rate occurs. This legislation comprehensively addresses the risk of contractual claims relating to the exercise of the FCA's powers to wind down a benchmark, as identified in response to the Treasury's consultation on this matter.

It is important to stress how narrow the contractual continuity provision is. It does not protect the parties to the contract from all legal challenge. This would result in parties to those contracts not being able to challenge any element of that contract, and would be too broad. It simply specifies that where a contract references Libor, that should be read as referring to synthetic Libor. The effect of that is that legal claims cannot be brought on the basis that synthetic Libor is not included in the contract.

As the home jurisdiction of Libor's administrator, the UK has a unique role to play in minimising financial stability risks and disruption to financial systems arising from the wind-down, both in the UK and globally. This plays to the comments made by several noble Lords in relation to London's reputation as a financial centre and the unfortunate events that surrounded the problems with Libor 12 or more years ago.

In the UK framework, the FCA will be able to provide for the continuation of Libor settings under a synthetic methodology. Subject to the legislative framework in other jurisdictions, any change of methodology imposed by the FCA would flow through to global users of Libor contracts continuing to reference the rate. By taking this approach, the UK has provided a global solution rather than an approach that would have been effective only in the UK.

My noble friend Lord Blackwell asked about the methodology. Noble Lords will appreciate that setting this methodology is a responsibility that Parliament has granted to the operationally independent FCA, within the parameters established by the recent Financial Services Act. However, the FCA has an overriding responsibility to act in the best interests of consumers in this country. It is also important to note that the FCA's approach is in line with the global consensus.

As we all acknowledge, and as I said in my opening remarks, Libor is mostly used by sophisticated financial operators, not retail investors. We estimate that there are only around 200,000 mortgages left on Libor, with that number estimated to fall to somewhere between 50,000 and 100,000 in the next few months. The synthetic Libor rate is a last resort and regulators have been encouraging markets to move to alternative rates for some time.

I remind noble Lords that the Financial Services Act 2021 allows the FCA to impose a synthetic methodology only if it considers it desirable to do so to protect consumers or protect and enhance the integrity of the UK's financial system. Furthermore, the synthetic rate seeks to provide a reasonable and fair approximation of Libor while removing a major factor in its volatility: the variable credit spread, which has often spiked in times of economic stress. Reducing volatility will benefit consumers who pay interest with reference to Libor.

I will write to the noble Lord, Lord Eatwell, on his specific points; I am afraid that I do not have that information to hand at the moment.

This Bill is vital to the protection of consumers and the integrity of UK markets. I would be happy to arrange another detailed technical session in a similar form to the two we have had so far, because I am aware of how technical this Bill is. I hope that we have noble Lords' support.

Lord Tunnicliffe (Lab): My Lords, may I raise a bureaucratic point before the Minister sits down? He intends to put letters in the public domain through the medium of the Library. It would be convenient if he could simultaneously copy them to everybody who has participated in the debate and registered interested parties like me.

Lord Agnew of Oulton (Con): I would be happy to do that. I am pleased to see the noble Lord, Lord Tunnicliffe, back here without Covid; we were worried that he might have had it. I will certainly do that.

Bill read a second time and committed to a Grand Committee.

House adjourned at 8.55 pm.

Grand Committee

Wednesday 13 October 2021

Arrangement of Business

Announcement

4.15 pm

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): My Lords, Members are encouraged to leave some distance between themselves and others and to wear a face covering when not speaking. If there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

UK Journalism (Communications and Digital Committee Report)

Motion to Take Note

4.15 pm

Moved by ***Lord Gilbert of Panteg***

That the Grand Committee takes note of the Report from the Communications and Digital Committee *Breaking News? The Future of UK Journalism* (1st Report, Session 2019-21, HL Paper 176).

Lord Gilbert of Panteg (Con): My Lords, I am pleased to introduce the debate on this report. I am grateful to the staff for their assistance in preparing the report. Our clerk was Alasdair Love and our policy analyst Theo Demolder. They and the committee were provided with great assistance by Rita Cohen. I would also like to thank Professor Jane Singer, who provided expert advice throughout the inquiry.

I am especially grateful to noble Lords who sit on the committee, many of whom are speaking today and all of whom made a huge contribution to this inquiry where, typically, despite starting out with a range of perspectives, after listening carefully to the evidence and discussing the issues, we ended up on common ground and with a real sense of the need for urgency in addressing the issues that we identified. I look forward to hearing from my noble friend the Minster and welcome him to the Dispatch Box for the first time responding to a report from the Communications and Digital Select Committee, and warmly congratulate him on his appointment. Today I will be able to cover only some of our main findings and I am sure other colleagues will fill in some of the gaps.

Print circulations of newspapers have been falling and news is increasingly consumed online, yet only 8% of people pay for news. Even when the growth in digital subscriptions is taken into account, the average national newspaper circulation fell by 57% between 2009 and 2019. For regional newspapers, the decline was 85%. These figures are stark. We heard of the closure of hundreds of newspapers, with many more forced to consolidate and lay off staff. And this is not just about the loss of long-established publications. HuffPost and BuzzFeed, not so long ago held up as the outlets of the future, have both dramatically cut their UK operations.

Of course, the onset of the Covid-19 pandemic deepened the challenges facing the media industry. But these long-term, structural threats will not go away. With so few people paying for online news, publishers are dependent on the online advertising market. The boom in online media inevitably means a tougher time for newspapers, having to compete to sell advertising space with an ever-growing number of content providers.

However, as the Competition and Markets Authority has proved, the online advertising market is opaque and unfair. In 2019, Facebook and Google's dominance allowed them to take 80% of the £14 billion spent on digital advertising in the UK. Even in the £1.8 billion "open display" market, in which content providers sell advertising space on their own websites, publishers receive only 65p of every £1 that advertisers spend. The rest goes to a range of intermediaries, which are owned overwhelmingly by Google. We asked Google if it could name any other market in which such clear conflicts of interest, from operating on the buyer side as well as the seller side, would be permitted. It could not. Put simply, publishers are finding that the game is stacked against them. That Google would behave as it has is to be expected. It is the slowness of the Government and regulators to act to stop it that is the cause of frustration.

Our committee first called for the CMA to conduct a market study in April 2018. This recommendation having initially been opposed, it took until July 2019 for the study to be launched and until July 2020 for it to conclude. In this report, we again recommended that the Government should set up the proposed Digital Markets Unit as a matter of urgency. The Government announced its establishment on the day our report was released—surely the least time it has ever taken for a Select Committee recommendation to be accepted.

The devil, though, is in the detail. The Digital Markets Unit currently operates as a shadow: it does not yet have the statutory powers it needs to act and it appears that it will not be fully operational until 2023 at the earliest. As one publisher told us, whereas Facebook's motto was

"Move fast and break things",

the Government's seems to be

"Move slowly and allow the platforms to break everything".

Among the Digital Markets Unit's responsibilities should be the enforcement of a mandatory bargaining code to govern the relationship between platforms and publishers. Facebook, Google and others profit from publishers' content in a variety of ways. Links to news stories provide an incentive for people to use the platforms' services, where they can show them advertising and collect data on their interests. However, publishers need the platforms much more than the platforms need the publishers, so they cannot afford to walk away: more than a third of publishers' traffic comes from Facebook and Google alone. Although the prospect of regulation has prompted platforms to pay some publishers for the use of some of their news in some countries, these schemes are highly limited and tend to favour the largest companies. As the CMA noted, publishers

"have very little choice but to accept the terms offered by these platforms, given their market power."

[Lord Gilbert of Panteg]

The platforms' opposition to the mandatory bargaining code in Australia offers a preview of how they will fight to prevent such a code being drawn up in the UK. Google threatened to withdraw its search engine from Australia if the Bill establishing the code passed. Facebook banned news from its service for four days. Although the platforms were able to water down the code, it provides a useful base on which our Government should build. Establishing a mandatory bargaining code is not about special pleading or pretending that the news industry can return to a bygone age. It is about fixing the problems to which the platforms' untrammelled market powers give rise. So I ask the Minister: do the Government rule out a bargaining code?

Although it is in orders of magnitude smaller, we need to give serious thought also to how the market power of the BBC affects smaller players. As well as being the most watched and most listened to, in the age of online news the BBC is now the most read source of news in the UK, competing with newspapers, including local newspapers, as never before. We recommended that the BBC website should include an aggregator section to drive traffic to smaller and local websites. Our inquiry was not about the BBC, nor media regulation, but the economic security of the news industry and the future of journalism. None the less, the BBC plays such a dominant role in the news landscape that it was an important part of our work, especially in relation to diversity and plurality, which I will now turn to.

There is a lack of data on diversity across the industry. But, from the statistics available, it is clear that there is underrepresentation of people from black and other minority ethnic backgrounds, and of disabled people. There is also great concern about retention and progression, an area where much greater data is needed. Will my noble friend the Minister give Ofcom the power it needs, and has asked for, to collect a wider range of data from PSBs to enable it to better to monitor diversity?

Many great journalists entered the profession without completing higher education. Now, though, across the industry 98% of early-career journalists come from the 50% of young people who go to university. Many must also comply with costly master's programmes and low-paid internships, further narrowing the pool of talent. The Government have taken some steps to make the apprenticeship levy more flexible, but, once again, witnesses we spoke to were critical of the levy, which is failing the industry and young people in this sector. We repeated our call for urgent reform of the levy if we are to have a news media that truly reflects and understands the public it serves.

It was clear to us that it is important that news organisations, in addition to be being representative of the country in terms of protected characteristics, hire people from a geographical range of backgrounds and, especially in the case of PSBs, from a range of perspectives, to avoid a homogeneity of mindset that gives rise to partiality of output.

It is not the job of news organisations to please politicians, but rather to be constantly challenging us, and we should be very wary about levelling accusations of bias when we hear something we do not like. However, BBC staff, who cannot be dismissed as ideologically driven, have criticised the BBC's liberal metropolitan outlook—which is not the same thing as political bias. We must take seriously warnings such as that of Roger Mosey, former head of BBC TV News, that the BBC appears to be "edging towards groupthink", and Sarah Sands' observation, when stepping down as editor of the "Today" programme, that the BBC

"can treat social conservatism with polite incomprehension".

For the most part, this is not journalists setting out to sway the audience one way or the other; it is born of a blindness to perspectives and experiences different from their own.

We welcomed Tim Davie's commitment to impartiality and his efforts to apply high levels of editorial standards to the use of social media by BBC presenters, but we felt that, to protect impartiality in the long run, Ofcom should be empowered to ensure that public service broadcasters monitor the accuracy and impartiality of their journalists' public social media posts, and take appropriate action where necessary.

More broadly, it has become harder over recent years to distinguish fact from opinion—or outright fiction—online. Dire warnings about a "post-truth age" and a "pandemic of fake news" are not always backed up by rigorous data. Nevertheless, it is clear that more needs to be done to equip people with the critical and technological skills they need to navigate online news. Media literacy means more than identifying "fake news"; it is about understanding journalistic processes and their value, how news is presented online and how it is funded. This is not only something to be taught in schools; we heard that older people can be among those most in need of support. There are many commendable initiatives in this area, but they lack co-ordination. There is a role for the Government to use their convening power to help guide Ofcom, the BBC, schemes run by the platforms and those in the third sector toward greater coherence.

We have a short debate today, and I will be brief in concluding. We covered a number of other areas, and made recommendations about the need for much greater co-ordination of the wide range of journalism funding schemes, especially the funding of innovation, and envisaged a convening role for government to ensure that these schemes are truly delivering greater plurality, while equipping journalists to stay ahead of, and to use, technology to maximise the reach of their content. We welcomed moves by the Charity Commission to recognise public interest journalism as a charitable purpose. We recognised the vital role of journalists, especially at a local level, in publicising the work of public bodies, especially the courts, and we welcomed the Government's commitment to improve journalists' access to court proceedings.

We looked at another aspect of the dominance of platforms—the significant control platforms have in determining how and whether users see news stories, and in censoring whomever and whatever they wish, based on their political sensibilities, their business interests, or seemingly sometimes simply on a whim, rather than bringing plurality. We were concerned that the growth in online news will mean more and more control for Silicon Valley elites over what we read—and, ultimately, how we think.

I look forward to hearing noble Lords' views on this and the many other recommendations in our report, and I hope that the report, and today's debate, will inform the House's thinking as we look forward to the upcoming media Bill and legislation to establish the Digital Markets Unit.

This year, as every year around the world, dozens of journalists have been killed doing their work and hundreds have been imprisoned. In Afghanistan, journalists have been rounded up and beaten today. So, when we call for urgent action to support journalism as the industry journalists work in goes through huge structural change, we are calling not for intervention to support a declining industry but for recognition that journalists are a pillar of our democracy and, in this rapidly changing, polarised world where a range of voices needs to be heard more than ever, there is something precious that we will miss in more ways than we can imagine if we do not act urgently. I beg to move.

4.30 pm

Lord McNally (LD): My Lords, when I was a lad growing up in the north-west, there was a programme on Granada Television called "All Our Yesterdays". Looking round the Room, I am reminded of that programme.

A noble Lord: Speak for yourself.

Lord McNally (LD): Since I am not a member of the committee chaired by the noble Lord, Lord Gilbert, I have the opportunity, without any self-interest, to pay tribute to him and to the other members of his committee for a job well done.

I can tell the noble Lord that, when I was leader of the Lib Dems in the first decade of this century, there were regular sorties, partly from down the Corridor, to try to wind up this committee, or make it a temporary committee. I say to the members of the committee and to noble Lords, "Cling on to this committee, because it has never been more needed than it is today and will be in the future".

There have always been tensions between journalists and politicians. The late Simon Hoggart put it best when he likened the relationship to that between a dog and a lamppost. But we have to remember that, 30 years ago, David Mellor warned journalists that they were drinking in the "last-chance saloon". Today, we have a former *Daily Telegraph* journalist in Downing Street, and the press, I suspect, feels more secure than ever from real regulation and accountability.

Only recently I was contacted by a lady whose daughter had been killed in a hit-and-run accident and who had been forced to suffer the tragedy of her loss but also the cruel insensitivity of the behaviour of the *Daily Mail*. She found that IPSO did not answer her complaint. I know the noble Lord, Lord Faulks, will be speaking later, but the truth is that IPSO does not fit the criteria that were set out in the Leveson report for a truly independent regulator.

There are those who would argue that Leveson is now in the past and that the new technologies make the old print media merely a sideshow. I am not sure that Leveson is now yesterday's news. It was the first time in decades that anything remotely approaching a workable framework had been passed by Parliament. We now have a statutory body, the Press Complaints Commission, which is a model of arm's-length independence, permitting no political interference. We have a recognised press regulator, Impress, which complies with all the Leveson criteria for independent and effective regulation and now has over 100 publishers signed up to the editorial code that it imposes. That structure protects the public from press abuse, protects journalists from being pressured into unethical and criminal behaviour and protects the whole concept of a free press from being pressured into a race to the bottom.

If the opportunity to build that groundwork around our media is refused by the big media owners, they cannot expect to be excluded from the provisions of the upcoming online safety Bill. My view is that we should split Ofcom into a technical and content oversight organisation, and allow no carve-out for print media from regulation by a revamped Ofcom. This makes sense as the line between print and online news becomes more and more blurred.

One other aspect of the report to which I draw attention is media literacy—the noble Lord, Lord Gilbert, referred to it in detail in the report. The famous quote after the extension of the franchise in 1867 that now

"We must educate our masters"

is more true than ever. The noble Lord, Lord Gilbert, also referred to the need for the BBC to mend its ways.

Perhaps, in that process, I might make another suggestion. Perhaps the print media could take a leaf out of their own financial pages. Often, when there is a story carried in the financial pages, you will see at the bottom, "The publishers of this newspaper have a financial interest in the takeover", or whatever it is. So perhaps when the *Times*, the *Mail* or the *Telegraph* run their almost-daily anti-BBC stories, we could have a little note to say, "Our billionaire, non-UK resident owners will become even richer if they can succeed in reducing the funding and reach of the BBC." It is just an idea.

In short—my five minutes is up—I think that this is a job well done by a very important committee and a useful primer for the online safety Bill to come.

4.36 pm

Lord Vaizey of Didcot (Con): My Lords, it is a great honour to speak in this debate as a member of my noble friend Lord Gilbert's committee, though I had very little input into this report and so can speak objectively about it. My noble friend Lord Gilbert began by praising our clerks and the people who work for the committee. Of course, he himself deserves a great deal of praise as a superb chair of our committee. He steers it with a deft hand at the tiller and it has been a pleasure to serve with him so far. Has that got me a lot of brownie points? Yes—good. Next time I apply to ask a question at an evidence session, I will be top of the list.

There needs to be a dose of realism about the future of UK journalism because a lot of the crisis in journalism has been brought about by journalists themselves—or, more accurately, by the proprietors. Let us not forget

[Lord Vaizey of Didcot]
that newspapers were established not as an act of altruism or charity but to make money. Eighteenth-century newspapers were vehicles to carry advertisements and the news was an aside. Like many other content industries, whether music, television or film, newspapers have struggled to adapt to changes in technology. Indeed, the disruption of technology has brought about new news providers because everyone will fill a vacuum—whether it is Tortoise, Politico, Axios or Sifted. There will always be an opportunity for us to get news.

The reason why we talk about newspapers and journalism and why we talk, as politicians and policymakers, about intervening is, to echo what my noble friend said, the huge importance, particularly in our democracy, of people having access to trusted sources of news and journalism. By the way, in my earlier remarks, I did not want to denigrate in any way the professional qualifications and training that many of our journalists have. That is why it is important that we debate this and that we have this report.

I also use this opportunity to echo, to a certain extent, what the noble Lord, Lord McNally, said. It is exhausting how often the BBC is attacked. We need to take a step back and realise just how extraordinarily lucky we are to have that institution in this country. There is no such thing as a perfect institution. I do not necessarily believe that it is the billionaire proprietors who are pushing this agenda; it is just easy, lazy journalism to always attack the BBC. We threaten its future at our peril, not the BBC's peril.

I congratulate the committee that took all the evidence and produced this report on its instant win with the establishment of the Digital Markets Unit. My noble friend Lord Gilbert was quite right to press the Government to bring in the legislation to make it work.

I want to focus only on one point and one recommendation in the report, because of the short time allotted. It is the point that my noble friend Lord Gilbert referred to about collaboration of the different organisations that seek to support local news and journalism. There is a lot of good will out there, but good will can often be misdirected or energy can be wasted. We have Facebook giving money, we have Google giving money and Ministers are constantly demanding that the BBC support regional news and give it a platform. But all these efforts could be much more effective if they were more co-ordinated.

It was remiss of me not to take yet another chance to welcome the new Minister to the Dispatch Box—I welcomed him earlier in Questions. This is a chance for him to show his mettle. He is dressed elegantly today because he took a Question on fashion, but he is also a man of action. I know that, having listened to the chairman of our committee, he will leave this debate, go back to his officials and say, "Action this day. We want to see Facebook, Google, the BBC and others in my office"—because Covid restrictions are at an end—"for a face-to-face meeting to discuss how we can put all their efforts together to make it more joined up and co-ordinated to provide financial support for regional news journalism." As I say, regional news has brought many of its problems on itself. If anyone tries to access a story in a local newspaper on their mobile it is a nightmare—a terrible experience. However, maybe we can help it at the other end by co-ordinating the efforts of the major platforms and of our much-loved, cherished BBC.

4.41 pm

Viscount Colville of Culross (CB): I declare an interest as a freelance TV series producer developing content for Netflix and the Smithsonian Channel.

I add my thanks to the noble Lord, Lord Gilbert, for his able chairing of the Communications and Digital Select Committee, on which I, too, have the honour to serve. This afternoon I will concentrate my remarks on the recommendations in this report to make the media financially sustainable and to support freelancers, who are the backbone of the creative industries and the media.

We heard during the inquiry about the financial pressures on so many media businesses as they face an onslaught on their revenue from tech giants. As the noble Lord, Lord Gilbert, said, the committee has reported on the huge concerns that these companies are using their monopoly control of the digital advertising supply chain to drain the lifeblood from media companies. I am pleased that the DMU has been set up to confront this digital ad monopoly and I, too, urge the Minister urgently to introduce legislation to ensure that it is given statutory powers.

Likewise, media revenues are suffering from underpayment or lack of payment for the use of their news content on tech platforms. The Government's response is that a code of conduct is being introduced. I urge the Minister to go much further and look at introducing a bargaining code. It must be fair to media companies both large and small, but, if our journalism is to be financially sustainable, it needs to be able to rely on an income stream for the use of its news content by the tech giants.

I also want to use this debate to draw attention to the plight of the people who supply the content: the journalists. They are the ones suffering as the media battles to reverse the downturn in its fortunes. Staff jobs have been cut to be replaced by freelancers. According to the ONS, the number of freelance journalists has doubled in the 10 years to 2019, and during the last two years that trend has accelerated as staff jobs have continued to be cut. Media companies such as the BBC and HuffPost have replaced employees with freelancers, while smaller companies now rely almost entirely on freelancers for copy.

However, not only are the rates for freelance copy falling like a stone, but freelancers are suffering from late payment, payment on publication and unfair kill fees. Freelancers have always suffered from kill fees when their content is not used. Sometimes this is because it is not of good enough quality, but often it is because the news cycle has moved on since the article was commissioned and it is no longer needed. As a result, the journalist can receive as little as 20% of the original fee negotiated.

An increasing problem, especially in the last few years, is the late payment of fees. I spoke to one journalist who had been commissioned to write a series of articles for a medium-sized media company.

The 30-days payment on their invoice was repeatedly missed. Each time the journalist called the company, they were told that it was being dealt with by the financial department and that the delay was just a logistical difficulty. After many hours of calls and emails, most of the payments were six months late and some were even nine months late. In desperation, the NUJ took the company to court for breach of contract on the freelancer's behalf. As a result, they were paid but knew that they would never receive another commission. This story is very familiar to freelancers, especially those working for medium-sized media and small online companies.

When this issue was raised in the report, the Government's response was that they should not interfere in contract law and that freelancers should negotiate protection for themselves. However, that is to ignore the massive imbalance between the companies and the sole-trader freelancers. It is David against Goliath. In the uncertain world of freelancing, all people have is their reputation, and once that is stained by an attempt to renegotiate a contract or a legal case to reclaim fees, they are tarred as "troublemakers" and work dries up pretty quickly. The report recommends that the Government should consult on legislation strengthening the rights of freelancers, and that the Small Business Commissioner should receive extra powers to address the growing problem of these unfair payment practices.

The Government's response has been a welcome consultation to look at the new powers for the Small Business Commissioner. I have spoken to the dynamic new holder of the post, Liz Barclay, who has been in situ for 100 days, but who reckons it will take three or four years for legislation to be enacted and these powers to take effect. In the meantime, she is campaigning to make late payers aware of the havoc they are creating. Currently, the Commission can deal only with businesses employing more than 50 people. In an industry with decreasing numbers of employees and increasing numbers of freelancers, this criterion needs to change so that much smaller companies come within her scope. I ask the new Minister to take this very seriously and pass on these concerns to his colleagues in BEIS. Give the Small Business Commissioner the powers to campaign against all bad payers and tilt the balance towards the Davids and away from the Goliaths.

At a time when we have heard so much about supporting the British worker, in the face of skills shortages it appears that, instead of getting higher pay, many of these British workers are struggling to make a living. Action needs to be taken now. Every day, British media companies are reducing news content and failing to cover council meetings and courts and to disseminate vital information to keep citizens informed so that they can play their part in our democracy. I urge the Minister to take these issues seriously and deal with them urgently.

4.47 pm

Lord Lipsey (Lab): My Lords, it is 20 years since I was a journalist, so perhaps you would spare me the rotten oranges this afternoon. I am very glad I am out of it, frankly, because there has been a revolution. The revolution has been caused by digital developments. If you can get most of your news for free from a telephone, are you going to go down to the local shop and buy a newspaper? That has happened, it is going on and this report summarises it well. The noble Lord, Lord Gilbert of Panteg, in his brilliant and magisterial introduction, made proposals to level the playing field with digital media. I will not repeat what he said because he said it better than I can.

I want to focus on two specific threats to the future of journalism that this report does not touch on. The first is the online safety Bill. The noble Lord, Lord Gilbert of Panteg's, committee said in a previous report that it was concerned about the exemption from regulation of what the Government call "citizen journalism". The trouble is that there is no clear definition of citizen journalism. If my next-door neighbour takes against the council's policy on traffic, does his research, argues his case, puts it out online—yes, that is journalism, and yes, it can be protected. However, if the next-door neighbour instead takes against my approach to transphobia and posts vile threats against my family, is that citizen journalism? Not so much.

My second concern is journalistic standards. To be a journalist you do not have to have a professional qualification, as you would to be a lawyer or a doctor. I just got rung up one day and asked if I fancied a job as a journalist. There is no register that you can be thrown off and forbidden to practise. This seems to me inadequate.

What should take the place of this free-for-all? The proposals of Lord Justice Leveson, referred to earlier by the noble Lord, Lord McNally, at least gave people abused by the press a proper system for complaining, backed in the last resort by a royal charter. The remedy was generally accepted, including by Parliament —and then the rats got at it. Leveson recommended protection from costs for newspapers that joined a regulator compliant with his recommendations. So what did the Government do? Though Parliament passed the legislation, the Government simply refused to implement the critical Section 40 that would bring those cost-sharing things into effect. As a result—and we will come back to this in a minute—nobody much has joined any regulator that is Leveson-compliant. Not surprisingly, politicians prefer sucking up to Rupert Murdoch to protecting the public.

Instead we have IPSO, whose distinguished chairman is here today. As a regulator, IPSO has been shredded by a new publication by the academics Steve Barnett and Gordon Ramsay, entitled *IPSO: Regulator or Complaints Handler?* It quotes the Media Standards Trust research showing that, of 38 Leveson recommendations, IPSO satisfies only 13 and does not satisfy 25.

There is a compliant regulator under the rules set by the Press Recognition Panel, which is Impress, but the big publications have ignored it. IPSO procedures are designed to be procedurally flawless and substantively useless. I complained recently about a bogus poll in the *Daily Express*, which used methods that would have shamed a junior cub reporter on a local paper. IPSO ruled that this completely bogus poll was okay. Successive chairs—I hope the noble Lord, Lord Faulks, is an exception—have flailed about in the IPSO quagmire,

[Lord Lipsey]
without success. We remember Sir Alan Moses, who became IPSO chair, breathing fire over its inadequacies, only to retire hurt.

If journalism is to flourish, good journalism needs to be protected and bad journalism punished. One way to punish bad journalism would be an effective complaints regulation system. IPSO is no such system and never will be. Bring back Leveson—or something even better.

4.52 pm

Lord Faulks (Non-Afl): My Lords, I join with others in congratulating the noble Lord, Lord Gilbert, and his committee on this excellent report. As well as the report, I also had the pleasure of reading much of the evidence that was given to the committee, which added a great deal of texture to the comments the report contained. Apart from as a consumer of journalism and a legislator, I hardly need to declare my interest as the chairman of IPSO, which has been much maligned already in this debate. It is of course tempting to enter a sturdy defence of IPSO into this debate, but I do not want to divert from the real issue, which is the future of journalism. Perhaps I will have the opportunity to convince the noble Lords, Lord McNally and Lord Lipsey, of the virtues of IPSO in the "last-chance saloon".

I think and trust that newspapers in the United Kingdom are better than they were when Leveson looked at the standards of the press. IPSO regulates 90% of national newspapers by circulation and almost all local newspapers. We have had 100,000 complaints in the last seven years. I do not consider that to indicate a failure by journalists or editors; most of the complaints are outside our jurisdiction or do not violate the editors' code. Rather, I would hope that this is an indication that consumers value regulation.

The product that a reader of conventional newspapers has is regulated and curated by editors, but newspapers, and thus journalists, are now painting on a much-reduced canvas. Most people consume their news via social media—an area untouched by Leveson. There is no regulation and the curation of content is largely by algorithm. The absurdities that can result from algorithms was well illustrated by Peter Wright, in his evidence to this committee, and by the noble Lord, Lord Hague, in his article in the *Times* yesterday. Do noble Lords think that algorithms have much to do with the search for truth in a democratic society, or are they designed for the benefit of advertisers?

The online safety Bill is full of good intentions. I endorse the recommendation that it should include a mandatory bargaining code, for the reasons that the noble Lord, Lord Gilbert, gave. It is pioneering legislation, and all parliamentarians should give it support. Whether it will deal with the alarming practices employed by, for example, Facebook, described by Frances Haugen in her evidence to Congress is, however, rather doubtful.

Diminishing circulation and advertising revenue have represented a major threat to newspapers, and thus to journalists. Covid has of course accelerated this trend, although, in my view, journalists have done well in the course of Covid, and IPSO intends this autumn to publish a paper describing the journalistic response to the pandemic.

In addition to the danger so well described in this report, I reiterate the problems that face local newspapers, for all the problems of access to news described by the noble Lord, Lord Vaizey. Nine hundred local media titles written by quality journalists find their way to 40.6 million consumers via print and digital channels, but the BBC—much unfairly maligned, I hasten to add—is the largest online publisher, driving away some commercial news producers. Owen Meredith, the chief executive of the NMA, put it rather crudely, perhaps, but forcefully in an article in the *Times* the other day headlined "Local media need protection from the predatory BBC".

This report makes a number of truly excellent suggestions. The future of journalism is of concern to all of us. I congratulate the committee of the noble Lord, Lord Gilbert, I very much congratulate the Minister on his appointment and I look forward to working with him and the committee in helping maintain the high standards of journalism that we have come to expect and will very much need in future.

4.57 pm

Lord Grade of Yarmouth (Con): I, too, add my congratulations to my former Whip, the noble Lord, Lord Parkinson; I am glad I did not impede his progress up the greasy pole here in your Lordships' Chamber. My entry into journalism was in 1960. I joined Hugh Cudlipp's fantastic *Daily Mirror* enterprise. I did six years as a trainee sports journalist, and when I left, we were selling 5.25 million copies every day. I left, and look what happened—it is rather sad.

My natural state is combative, and I read the report of my noble friend Lord Gilbert's committee ready to take up arms against some of its recommendations. I was terribly disappointed. I agree with every single word of the report; I agree with everything that has been said thus far; I am hoping that somebody will say something I disagree with in the remaining time.

I shall concentrate on the issues of copyright and dominant positions. Copyright means nothing to the new media internet giants. When I was at ITV the last time, I was at an internet conference, I was asked about Google, et cetera, and I described them as "parasites". I said that they feed off other people's investment; they make money out of the investments that other people make. I was immediately invited to lunch by the head of Google in Europe, who said to me, "Michael, what's your problem?" I said, "Well, you had 300 million hits with Susan Boyle on 'Britain's Got Talent'. Nobody asked me if you could use it. We have invested tens of millions of pounds in this show, and you've made a fortune out of it; we have got nothing out of it." "Well," he said, "if you want it taken down, just give me a call and we'll take it down." "Oh", I said , "so if I go to Harrods and steal a gold watch and they ring me up and say 'Can we have it back?' and I give it back, it's not a crime?" I said, "You're stealing other people's material."

That is compounded by the fact that they have been allowed to achieve what no one—not even my noble friend Lord Faulks—could argue is not a dominant position. I have spent many hours in competition arguments about defining the market and what is a

dominant position. This is the most dominant position that you could imagine. They abuse their market position by stealing other people's material and short-changing them by just giving them a tip when they steal their material, publish it and make money through advertising—so the advertising market needs looking at very quickly.

Regulation is desperately needed. In the history of broadcasting and the media, regulation and statutes always lag behind the way the market and technology move, but there is no time to lose. I urge the Government to read every line of this excellent report again and again and take action. I ask the Minister to give us his assurance that, when he goes back to the office, he will bang the desk.

5 pm

Lord Jones (Lab): My Lords, it is daunting to follow the noble Lords, Lord Lipsey and Lord Grade. I thank and congratulate the noble Lord, Lord Gilbert of Panteg, and his committee and staff for their comprehensive and deeply researched report.

The first paragraph of the summary stands out when it mentions

"the fundamental role that journalism should play in a healthy democracy".

Likewise, the detailed measurements concerning trust in paragraphs 51 and 71 stand out. It was heartening to read the detailed references to training. Surely we would agree that it is everything for the young ones. "Chwarae teg", as might be said in Panteg in the lovely land of Wales, our homeland.

The concepts of liberty and the journalistic profession are impossible to disentangle. Our liberty lies ultimately in the Commons Chamber, blessed by the secret ballot. There is a fail-safe across Parliament Square in the Supreme Court, an independent judiciary free of corruption and unafraid. So this is about liberty above all else. We need the fourth estate as never before, as its newly born rival, the ubiquitous and separate social media, appears to be devouring all before it.

In my grammar school days, I had a paper round. I read and delivered the long-lost titles of the 1940s, such as *Reynold's News*, the *Empire News*, the *Sunday Graphic* and the *News Chronicle*. Today, the situation locally is not very happy. We still need traditional journalism. Think of those unemployed country-house butlers no longer ironing the unruly pages of the tabloids and the *Times*. Think of no longer having Quentin Letts and his chuckling, rollicking Dickensian destructions, and the "Gotcha" red-tops. Think of the sober, many-paged *Guardian* security scoops and Martin Wolf's thoughtful, pink-paged *FT* assessments gone missing. Think of Ms Toynbee, Ms Turner and Ms Boniface—their brutal home truths and deep commitment lost. Think of Mr Rod Liddle's *Sunday Times* breakfast lambastings gone. Think of the *Telegraph*'s morning sports section no more—there was a brilliant Fury fight report on Monday. Perish the thought of all that disappearing.

Paragraph 19 steadfastly states:

"Journalism is integral to liberal democracy … it 'shines a light on wrong doing and acts as an essential check on the behaviour of individuals in positions of power'".

Surely a continuing, ever-more prosperous metropolitan elite will need, read and shelter these titles. But these journalistic delights do not come cheaply. The stringent *Economist*, with the anxious testiness of Bagehot, comes in at six quid, bar a penny, with the *Guardian* at £2.50. I would sum it up by saying that price matters in any struggle for survival.

We need journalists and their newsprint. How can the near-total sway of social media, Twitter and Facebook, Napster and Apple, and all the ubiquitous, influential and insistent rest not imperil journalism? Has power flowed irreversibly out of a discredited Westminster these last decades? Across the road, for example, there is 4 Millbank and its television studios and its political and programme editors. Is the besuited, still male, televised but somewhat Victorian Parliament losing out to ever more powerful social media? The changing balance of power affects governance and, ultimately, our liberty. Has the media in the ascendancy dealt an historic blow to an ailing Parliament? Can the mother of Parliaments recover her feet of clay, so prominently displayed daily to all?

5.06 pm

Baroness Buscombe (Con): It is always a pleasure to follow the noble Lord, Lord Jones. I join others in congratulating the Minister on his appointment and thank our committee chairman, my noble friend Lord Gilbert of Panteg, together with our officials, Alasdair Love and Theo Demolder, for guiding us through a very constructive process to produce this report.

Since the 1950s, there has not been a more important time to support our journalists and care about the future of journalism, for we now inhabit a world akin to McCarthyism in 1950s America, a vociferous campaign that ruined many lives and careers. George Orwell was extraordinarily prescient when writing *Nineteen Eighty-Four*—he just got the date wrong. I recall years ago thinking that the McCarthy witch hunts could never happen today and that *Nineteen Eighty-Four* was just depressing, dark literature. But much that has hitherto been integral to our culture has become offensive, and the acceptable is often now absurd. Our hard-fought-for and critical principle that is freedom of expression is being constantly attacked.

A viable future for good journalism to counter the so-called culture wars and fake news, much of it fuelled through social media, is essential. Perversely, a toxic cocktail of identity politics, culture wars and Covid has presented a real opportunity for journalism. Our collective experience through Covid to date has brought out the best in our vibrant press and radio, with journalists questioning Parliament's response to the crisis: the extraordinarily draconian measures; spending without context; the impact on our economy and jobs; and the road map. I thank Talk Radio, with Mike Graham, Julia Hartley-Brewer and their colleagues, Toby Young and lockdownsceptics.org, UnHerd, Spiked and some of the magazines, such the *Critic* and the *Spectator*, whose journalists and commentators have dug deep in search of the truth. Never defiant, they kept some of us sane; they were and are the necessary grit in the oyster. In contrast, the PSBs—public service broadcasters—have stuck to inane questions that are

[Baroness Buscombe]

frankly so easy for any politician to answer. The Government should welcome good, gritty journalism, from whatever source, which tests their policies, particularly when the Official Opposition are weak.

The Government's response to our report is positive in a number of ways, such as supporting our stance on the need for well-co-ordinated media literacy, also making the commitment to identify what more can be done to facilitate journalists' access to and reporting of court proceedings. This is vital for our local and regional news outlets. Court news sells papers, because people are genuinely interested in local crime and civil cases, for myriad obvious reasons. More than ever, people want to feel connected at a local level. Allowing journalists full online access to open court transcripts would greatly assist access to justice and accurate reporting and it would reduce costs. News businesses cannot afford to have bespoke court reporters hanging around our courts in the hope of witnessing a case that may be very much of interest to the public. I remember when practising as a barrister hanging around courts for hours on end only to see the case adjourned. The DCMS, working with the Ministry of Justice, could fix this with relative ease.

The news industry faces,

"continual and profound change in three interconnected aspects: the tools it uses to create and deliver information; the ways in which its audiences find, access, and use that information; and the strategies it employs to sustain itself economically."

Our witnesses were, on the whole, optimistic about the future, accepting the need to be audience focused and technology empowered. Given the diverse range of organisations delivering content, we cannot easily compare the challenges and opportunities for the broadsheets with citizen journalism, the BBC with community radio and the hyper-local and hyper-specialist media organisations, or the lot of freelancers with pampered Google employees.

That said, witnesses spoke of the success of media businesses, including platforms applying innovative approaches to reducing costs and taking advantage of emerging capabilities. Adam Thomas, director of the European Journalism Centre, was particularly upbeat about the future. He stated:

"The UK has a good solid platform of media infrastructure, solid well-known regulation and good funding compared to a lot of the rest of Europe, which puts it in a really strong position."

Notwithstanding the current dominance and behaviour of the tech giants, I, too, am optimistic for the future. As long as we focus on harnessing new technologies to support interoperability, that will encourage competition and drive innovation to support financial stability across the sector and find better ways in which to protect individuals from online harm. For me, technology is paramount, not poor, static regulation.

5.11 pm

Lord Birt (CB): May I, too, join the "when I was a lad" brigade? I should tell the noble Lord, Lord McNally, that when he and I were lads, I was actually a director on "All Our Yesterdays", briefly.

Like others, I warmly welcome the real focus that the committee of the noble Lord, Lord Gilbert, has brought to this critical issue, as all the contributions so far have made abundantly clear. Independent, challenging journalism is the sine qua non of a healthy functioning democracy, as the award last week of a Nobel Prize to courageous but endangered journalists in Russia and the Philippines underlined. In a scene reminiscent of "The Thick of It", the Kremlin congratulated Dmitry Muratov on his award, describing him as "brave". This is the very same Kremlin that had just expelled BBC journalist Sarah Rainsford, after 20 years of impeccable and expert reporting from Moscow.

Over centuries, the UK has enjoyed an unparalleled tradition of vigorous comment and challenge, beginning in our Parliament but extending well beyond to a lively press. Those on the receiving end may not always like it—it is not always scrupulous and fair—but that tradition guarantees that no part of our national life goes unscrutinised and unquestioned. That in turn guarantees, sometimes in a rough and chaotic way, that as a nation we will always expose and address problems of every kind that we, as a nation, will progress.

My first job out of university was as a journalist on "World in Action", the programme with the proudest tradition of investigative journalism on British television. By the time I left ITV, the network boasted three major and well-funded national current affairs programmes. None now exists, nor does any equivalent. I left ITV because I was invited to lead the creation of BBC News as a single entity. Previously, it had been organised in separate, unco-ordinated baronies.

In the 20 years since I retired from the BBC and from broadcasting, I have had the painful experience, as someone who was involved in journalism every day of his career, of watching from the sidelines the massive loss of revenues suffered by our vibrant national and regional newspapers, the substantial decline of income of the advertiser-funded PSBs and two brutal cuts to BBC revenues—soon, I greatly fear, to be followed by a third.

The internet has brought absolutely huge gains in disintermediation, immediacy and the ability to find out anything we want in a flash. But the impact has been to reduce, not to increase, the amount of journalism of quality. For journalism of quality is expensive; it needs both expertise and time—not just to uncover wrongdoing but to get under the skin of the complex issues that face all Governments and societies.

Of course serious journalism of quality still exists: Tim Shipman's must-read, careful and insightful chronicling of our national politics, the *FT*'s economic reporting and John Ware's and Peter Taylor's supremely authoritative unravelling of the dark side of the Troubles. But so much of our declining journalistic resource is now invested in simple reactive coverage of today's overt events, or in the repackaging, aggregation and regurgitation of other outlets' stories. Of the stock of current affairs programmes that existed when I departed the BBC 20 years ago, only a less well-resourced "Panorama" remains.

There are no easy answers to the questions posed this afternoon, but reducing the real funding of the BBC and privatising Channel 4 are not two of them. Let us avoid incrementalism; let us stand back and recognise the big picture. As the committee suggests,

digital players should not have a free ride. The noble Lord, Lord Grade, expressed that particularly well. They must contribute to the cost of creating original journalism and content. We must do everything we can to put a foot on the brake of the decline of UK PSBs. We must also do everything we can to ease the decline of our vital newspaper sector. As the PM would say, it is surely time to "Prenez un grip".

5.17 pm

Lord Inglewood (Non-Afl): My Lords, as other noble Lords have said, this is a good report from the Communications and Digital Committee under the distinguished leadership of the noble Lord, Lord Gilbert. Hence, this is an important debate. It is also an important debate because we are talking about an important topic, which is the framework in which our democracy works. This has been on the agenda of the Communications Committee since its early days, when I played a part in it, and regularly, rightly and forcefully, the committee comes back to it from time to time. I declare an interest as a trustee both of Full Fact and the Public Interest News Foundation, which are referred to in the report.

I am going to make my remarks from the perspective of local news. I was chairman of the CM Group, a Cumbria-based regional media company, for more than 10 years. It is now part of Newsquest. There is not only an important democratic aspect to news and local news, but an important community one because of the cohesion it can help bring to communities around the length and breadth of the country. We all know of some of the problems relating to that in the current world. I think it was CP Scott in his editorial to mark the centenary of the *Guardian*—some of your Lordships may have been sent a copy of it—who commented that newspapers are both institutions and businesses, but that it is important that a newspaper's role as an institution ultimately trumps its characteristic as a business.

In discussions such as this, we tend to look to the future perhaps more than we might. I think it was the noble Lord, Lord Vaizey, who commented that 200-odd years ago, when modern newspapers as we know them came into being, there was—in my words—rather a long-established ménage à trois between advertisers, journalists and publishers. Interestingly, in the original edition of the *Guardian*, the first item on the first page was an advertisement for an anonymous black dog, which has thereby gained some degree of immortality.

For about 200 years that was sustainable, but now, thanks principally to technology, it has all broken down. The crucial question is, what happened? In very simple terms, the money ran out. I believe that in this country—and across the world more widely, for that matter—we somehow need to establish a sustainable system that will work to deliver these things over the years and into the future, so that the money will not run out.

In the report, a number of very useful points are made about specific things. But while they are valuable by themselves, they do not actually give a full lead towards a bigger picture. The report comments on charities, and the Public Interest News Foundation has registered investigative journalism as a proper subject for charitable registration. But it is not appropriate for the rough and tumble of real politics. It has a role to play, but it is not the answer. Criticism is made of the system of apprenticeships that we now have in this country. I currently chair the Cumbria Local Enterprise Partnership, and for a time chaired a training company, and I believe that the criticisms, not merely in the context of journalism but more widely, are justified.

The noble Lord, Lord Faulks, talked about algorithms, and I am sure he is absolutely right. If consumer protection means anything, the confidence the public have and the need to know exactly how algorithms work is obviously crucial in this sector. Finally, as far as the relationship between platforms and publishers is concerned, it is clearly the case that the platforms have a dominant position, as the noble Lord, Lord Grade, said. This needs to be addressed.

It used not to be the case, but recently it seems that when there is a problem, the Government throw money at it. Journalists and media companies must not take the 39 pieces of silver, because it betrays their constitutional role. It seems to be one of the heresies of the modern world that the private sector is motivated principally—indeed often only—by greed. Clearly there are some extremely greedy people in the private sector, but we have to find a way whereby the private sector can deliver what we want to see, because we do not want the state to be directly involved. One of the interesting things about our country is that we seem to have a genius for devising ways of doing this. In public sector broadcasting, it is not only the BBC—there is Channel 4, ITV and Channel 5, all of which are working in a slightly constrained legal framework to enable media to be delivered to our fellow citizens. I suggest to the Minister—and I congratulate him on his new job, as a predecessor of his predecessor, the noble Lord, Lord Vaizey—that, if he could help lead on establishing a new settlement for media in this country which enables the fourth estate to play its constitutional role and at the same time remain solvent, he will have done a very great service.

As I said at the start, this is an important debate which goes way beyond the economic value of the sector. I am sure we shall come back to it, and it is right that we should.

5.23 pm

Baroness Wheatcroft (CB): My Lords, it gives me great pleasure to follow the noble Lord, Lord Inglewood. I fully support his closing remarks and would like to do anything I can to help him in that quest.

I must declare my interests, first as a career journalist and somebody who still pens the occasional article and, secondly, as the current—and, indeed, so far only—chairman of the *Financial Times* appointments and oversight committee. I was interested to hear the noble Lord, Lord Birt, refer to the *FT* and Martin Wolf in particular. As somebody who had never worked for that paper until recently, I assure noble Lords that I have been so impressed by the care that the journalists take in what they write.

But, like the noble Lord, Lord Lipsey, I am not sorry that I am not now embarking on a career in journalism, because it is a very different career. Too

[Baroness Wheatcroft]
many of the people who set off with grand ideas find themselves chained to a screen and never really allowed out, even to meet real people.

How different it is from those days when Lord Rees-Mogg—as he was then—never had anything to do with a keyboard and would phone in his copy to people who would take it down verbatim. Occasionally, of course, the odd typo slipped in. One went all the way through and, on the page in which the column appeared, Rees-Mogg informed the world that the Queen had just carried out her task with all the aplomb with which she "shot peasants". I looked it up online and found the photograph that proved that she did indeed do this—the caption said, "The Queen and Prince Philip celebrated their 60th wedding anniversary with a peasant shoot". If anyone is interested, it is in the *Waterford Whisperer*. I tell the story merely because it is evidence of fake news in the extreme, which is what we have to cope with.

Much has been said in this debate about the power of the platforms, and this excellent report, for which we owe our thanks to the noble Lord, Lord Gilbert, and his committee, puts a lot of stress on that. I support the proposals to try to curb that power, but I do not underestimate the difficulties there will be.

However, today I will concentrate on two issues. The first is the importance of media holding power to account, particularly politicians. We have seen the media doing that very well during the last year or so, over PPE contracts, for instance, and most recently the Pandora Papers. What was most interesting about that was that 160 news outlets—normally the most competitive of organisations—combined their efforts to make a point and release some really valuable information that they had worked on so hard for so long.

It is really important that those organisations have the power to continue to do that, and to do so at a national and local level. The Government's research has found that turnout in local elections is higher when there is good local media coverage. Luckily, the BBC is there to support local media. Since 2018, it has built up a team of 165 local democracy reporters, who make their work available over local news media. It is really important that that should continue.

It is also essential that the media functions not merely to convey the content of press releases but to question what is already being said. The process of education will help, and the report is very sound on that, but the process of educating people to be quite sceptical about what they read will take time. In the meantime, work such as that done by Full Fact, the charity of the noble Lord, Lord Inglewood, is very valuable, but so is the work of the BBC with its *Reality Check* website, which is essential reading for anybody who wants to know the truth. Certainly, its dissection of the Prime Minister's conference speech should be made widely available.

That takes me to my second point: the regulation of the BBC and beyond. Ofcom is a hugely powerful organisation with a wide reach. It does not regulate newspapers but does regulate just about every aspect of TV and radio, including the BBC. Since January this year, Ofcom has been awaiting a new chair. An acting chair was put in place at the beginning of the year, until 30 June, while the appointment process for a permanent chair was completed. This powerful media regulator is still without a permanent chair. It appears that the process to interview and appoint one has stalled. So, while I genuinely welcome the noble Lord to his new position as Minister, I also apologise for asking him whether he can he bring the House up to date on the process for appointing a chairman of Ofcom.

5.29 pm

Baroness Fox of Buckley (Non-Afl): My Lords, this report is packed full of useful insights into the challenges facing contemporary journalism. I am especially pleased to see that at last—if rather belatedly—the problem of lack of diversity has been expanded beyond representation to include the urgent need for diversity of opinion. The problem of groupthink for journalistic impartiality is well described in the report. I agree with Sir Robbie Gibb that too often journalists are stuck in echo chambers and therefore misread the mood of the country, as they did with Brexit, too often mistaking Twitter for public opinion.

I am glad that the report notes the problem of confirmation bias. However, identifying a problem does not solve it. I am not so convinced by the proposed solution of getting Ofcom to collect data on a larger number of demographic characteristics of staff, such as socioeconomic background, because it seems to me that that is just another version of representational identity head counting that misses the point.

I am more persuaded by the report's focus on the problem of an over-academicised journalistic profession. The tried and tested tradition of school leavers joining local newspapers as apprentices in the heart of communities, learning their trade by covering, for example, court cases and council meetings, would do more than valuably restore journalism's key role of holding all public bodies to account. It might also drag journalism out of its rarefied ivory tower—and it might save us from the cack-handed reportage of the London media venturing into red wall areas like anthropologists discovering new exotic tribes.

One key area I do have qualms about is the treatment of the public's mistrust of media institutions. I am squeamish about the seeming assumption that the problem here is one of the public's ignorance. The disproportionate emphasis in the report on media literacy as a vehicle for restoring trust implies that it is the public who need educating—as though the media were blameless.

This becomes clearer in the discussion on how to train citizens to detect misinformation. Surely it is more complicated than that—especially as the term "misinformation" has increasingly little to do with factual accuracy and is regularly weaponised to delegitimise opinions that journalists and politicians deem dangerous or offensive, or which simply do not fit into a narrow official narrative.

Although the report, and the Government's response, reassuringly stress the importance of a free press, I would say that media freedom has rarely confronted so many censorious trends. Those often come in the guise of fighting misinformation and fake news, and that is where we see the real threat to free media.

Ofcom's coronavirus guidance heavy-handedly instructed broadcasters not to feature stories that, first, undermined people's trust in the advice of mainstream sources, or, secondly, would deter audiences from following official rules. Surely, this veers close to state-endorsed suppression of dissent—as though the science were settled, and that was it. It turns the media into a behaviour-modification scheme.

As MP Steve Baker noted, Ofcom effectively labelled any kind of rational criticism as unscientific misinformation. This may explain a conformity of narrative, throughout the pandemic, from media outlets that differed from one another only in the levels of fear and anxiety they whipped up.

Meanwhile, the Government have encouraged big tech to become a "Truthfinder General" in recent months, in relation to alleged misinformation—at great cost to free speech and transparency. Ultimately, that denied access to a wide range of opinions and evidence, which were not made available to the public—or, indeed, to journalists.

Look at how those who tried to raise the possibility of a Wuhan lab leak had their social media accounts suspended, and how respected experts were lumped together with cranky 5G obsessives as agents of misinformation. Interviews and evidence were removed by Facebook. This in turn stopped journalists investigating what is now considered a crucial line of inquiry—but rather too late; the evidence has gone. Then there was the infamous removal of Talk Radio's channel by YouTube. When digital giants feel emboldened by government to shut down and censor MSM, there is surely no room for complacency about freedom of the press.

In this context, I am less than reassured by the constant references to the online safety Bill as a protector of media freedom—hardly, when the Bill would mandate, and therefore empower, big tech to remove so-called misinformation, all enforced by Ofcom. This is a recipe for censorship.

Finally, there are new threats to a free press on the horizon. The media itself can be a victim of cancel culture. For example, the strategy of the online Twitter mobs unleashed by the NGO Stop Funding Hunt—sorry, I mean Stop Funding Hate—is to bully a variety of businesses to cancel advertising in certain media outlets, usually tabloids, but more recently GB News. The idea is to punish financially editorial "wrongthink", and that is chilling. So I hope the committee will look into new threats to media freedom. I regret that, when it does that, one of the greatest threats it will have to consider is the forthcoming online safety Bill—unless some of us can stop it.

5.35 pm

Baroness Meyer (Con): My Lords, I too congratulate the Minister on his new appointment. It is a pleasure to follow the noble Baroness, Lady Fox of Buckley, because we are basically saying the same thing. There is much to be welcomed in this report and I had the privilege to sit on the committee in the early stages of its deliberations. It is a worthy successor to previous reports by the committee, which have illuminated the media landscape and made some excellent recommendations to the Government.

This latest report on the future of journalism in our country brings together two essential points. It describes in detail the multiple changes, online and in print, which journalism has gone through in the past 20 years, yet it also emphasises that, despite all the turbulence, journalism should remain underpinned by the same enduring principles of an open and democratic society. Of those principles, none is more important to the future of journalism than freedom of expression. Without it, healthy journalism cannot flourish, and without healthy journalism there cannot be a healthy democracy.

I am therefore pleased to learn that the committee intends to tackle freedom of expression online in a future report, but nowhere in this report does it define what it means by "freedom of expression". Indeed, the phrase, enshrining one of the most cherished freedoms, merits only one mention. This is a grave omission. It sits very awkwardly with the Nobel Peace Prize given last week to two journalists for their courage in defending freedom of expression in the Philippines and in Russia.

We mock and condemn the People's Republic of China for promoting President Xi's thought as the only acceptable way of thinking, but how is this different from those in our country who, in strident pursuit of the culture wars, would ban certain words and people from public discourse, who would censor history and dismiss scientific objectivity as the work of so-called "white privilege"? If journalism worthy of the name is to have any future at all, these forces cannot be allowed to prevail.

Nowadays, it is virtually impossible for journalists to avoid stepping on one of the many landmines laid by the monstrous regiment of culture warriors. Only last week, the *Times* reported the concerns of Tim Davie and of Michael Jermey, the director of ITV news and current affairs. Each referred to the culture wars and how they were making life incredibly difficult for impartial TV journalism.

It is a supreme irony that, as the demand for diversity gathers unstoppable momentum, plurality of speech and thought suffers from the onslaught of bigoted ideologues. This is the road to perdition—a road that led, in the last century, to dictatorships in Nazi Germany and Soviet Russia and that is already leading, in this century, to the dumbing down of British education, the rejection of common sense and the creation of a British version of President Xi's thought—all in brutal violation of our traditions, culture and history.

In its latest report, the committee is very good at shining a light on the trees of journalism—too good, because it has obscured the wood. Improvements in training and media literacy are all very well and worthy in themselves, but what purpose do they serve? What values inspire them? If the answer is not to strengthen freedom of expression, this report and others like it are not worth it.

5.40 pm

Baroness Grender (LD): My Lords, this has been a fascinating debate. I particularly applaud our committee chair, the noble Lord, Lord Gilbert and the staff he has already mentioned, for steering us through this inquiry—and, in the process, disappointing the noble Lord, Lord Grade, as he described earlier—which collided

[Baroness Grender]
with one of the most significant periods to be a journalist, particularly in news: namely, the global pandemic.

Our aim at the start of this inquiry was to ensure that we examined innovative and sustainable platforms for the future of journalism. We were viewing that future in the context of the changes and challenges, particularly in technology, which have threatened traditional print media. If anything, the pandemic at the beginning accelerated some of those challenges, but it also highlighted a demand—a basic democratic right—for accurate, trusted news, particularly in the midst of the tragic global meltdown. The problem has been particularly acute at local level, where newspapers have closed and whole communities no longer have access to reliable local news and information.

The current existential threat, particularly in an unfair advertising market, and our hopes that the DMU has the necessary powers to tackle that issue and introduce a media bargaining code, were clearly and eloquently explained by the noble Lord, Lord Gilbert, the noble Viscount, Lord Colville, and the noble Baroness, Lady Buscombe. I look forward to hearing the Minister's response to that specific query and I welcome him to his new role. I remind noble Lords, following the Australia experience, of the dangers in solutions that benefit only the larger publishers—a point I will develop later.

The difficult task in this report was to keep ensuring that we had set our sights on the innovations in the future and did not dwell too much on the grudges of the past—however tempting that may be, and as we have possibly heard once or twice today. In a world where social media has been the source of so much untrustworthy news, it was particularly important that people knew where to go and who to trust. They needed to know how to judge which information sources were trustworthy. My noble friend Lord McNally and the noble Lord, Lord Lipsey, gave us some of the answers to this vexed question. Clearly, one of those answers is to resolve the legacy of Leveson 1 and the failure to deliver on Leveson 2—something we as a committee could not examine, given the lack of consensus.

Until some of those fundamental issues of how to measure trust are solved, one area of evidence that was particularly interesting to me was the increasing range of organisations that provide online credibility ratings through either extensions or plug-ins—almost like nutrition labels. Companies such as NewsGuard, the Trust Project and the Journalism Trust Initiative are now often used by larger companies to make significant advertising spend decisions, thereby forcing traditional publishers to be more transparent. It is encouraging that, through this market solution, media outlets have had to provide information such as more detail about their journalists, about their correction policies and, above all, about who owns them.

If only the Government could extend that level of transparency to their own Public Service Broadcasting Advisory Panel, referenced in their response to our report but still to this day shrouded in mystery: it never reports and it never even reports when it meets. In fact, there is very little information about how it was selected in the first place. I wonder whether the Minister could enlighten us in his response.

New initiatives to create greater transparency and therefore trust are welcome, as is anything that puts greater control in the hands of the consumer—which is why it is so important that so many noble Lords have referenced digital literacy. I am only sorry that the Government's response to me, unlike the noble Baroness, Lady Buscombe, was so uninspiring in comparison with the CLEMI initiative in France that we recommended they strongly consider. The lack of co-ordination in this area remains disappointing, and I believe it is a missed opportunity.

Another missed opportunity from the Government's response is their refusal to play a greater role in co-ordinating some of the excellent initiatives such as the Nesta Future News Pilot Fund, the Facebook Journalism Project and the Google News Initiative, as the noble Lord, Lord Vaizey, described. He gave us an insight into how it is possible to be a broker and bring together and co-ordinate initiatives such as those. I urge the Government to reconsider their reply on the issue.

Another initiative which the Government, in their response to our report, warmly welcomed was the BBC's local democracy reporting scheme, as referred to by the noble Baroness, Lady Wheatcroft, which, as they say, is making a valuable and diverse contribution to the sustainability of the press sector. A recent colleague of mine, Kiro Evans, is shortly leaving the joys of political public relations to go back to his first love, reporting, thanks to this scheme. He, like so many other young reporters, will be starting out in journalism and connecting people and communities through this great initiative. He is young, he is talented, he is black, and I hope he goes all the way.

While our report applauds some of the blind testing initiatives in the sector to ensure strong diversity, when we scratched the surface and looked in the boardroom and among the columnists, as in so many other sectors, the diversity challenge still has simply not been met. That is why I also support a revisit of the YouGov request about diversity.

Given the criticism of the LDRS when internally reviewed by the BBC last year and the fact that the vast majority of the scheme's annual £8 million allocation goes to the UK's three biggest local news groups—Reach, Newsquest and National World—it did seem a little like sour grapes when the representative body of those groups, the News Media Association, in a quote referenced by the noble Lord, Lord Faulks, attacked the BBC for investing in 100 new digital community journalists while its members benefit directly from that licence money.

The noble Lord, Lord Inglewood, touched on an issue which I found particularly interesting and made me hopeful for the future: charitable status criteria. We heard evidence that the UK lacks the philanthropic journalism which is able to register under the Internal Revenue Service's tax code in the US. The Public Interest News Foundation was able to give us some insight into changes in France, Germany and Canada on this front. While I appreciate that, as the noble Lord explained, these remain baby steps, they are still worth examining and the Charity Commission's decision

that PINF is established for charitable purposes in recognition of public interest journalism is one to watch.

As Professor Steve Barnett put it in his written evidence, there is a need to support the

"growing culture of entrepreneurial journalism using digital media outlets, which are clearly capable of fulfilling some of the key informational, watchdog and investigative functions that local communities require".

Sadly indicative of the attitude of this Government to such entrepreneurialism in media was the use of the "All in, all together" advertising funds at the start of the pandemic—a laudable initiative to prop up an industry in trouble. What a shame, then, that—as the then Minister John Whittingdale explained to us—the vast majority of those funds were allocated to members of the NMA, which represents the large publishers. A healthy media economy must surely include both large and small publishers; national groups and local independents; legacy print titles and digital natives. By favouring one part of the industry over another, the Government will inevitably foster suspicion and mistrust.

If we are to foster innovation and growth in this sector, the Government need to have an open mind about the small independents. Indeed, in both devolved nations, the Cairncross recommendations to invest in local news are currently under consideration. The blanket "No" from this Government is a wasted opportunity and, to me, seems frankly short-sighted.

I will spend as much time on the subject of Twitter as do most people going about their normal lives—and as the evidence in our report showed that they do. That has already been disproportionate and way too long. I expect that most people do not spend any time on Twitter. We seem to obsess about it far too much in this place, and most of the population are, very sensibly, elsewhere and not paying any attention. They are very sensible people for that.

Finally, I worry about a level playing field regarding the BBC. I want to go back to the comments I made at the start. Trust has never been so important. Which institution is by far the most trusted for news and information, not just about the pandemic but about all information and knowledge as we go about our lives as active, democratic citizens? It remains the BBC. Undermining that precious gift and global showcase is an act of self-harm.

Like others, I welcome this report heartily and hope that it makes a significant contribution. I am sad to have recently left the committee. It was an absolute joy to serve on and I wish all colleagues on it much success in the future.

5.50 pm

Lord Bassam of Brighton (Lab): My Lords, I join others in congratulating the noble Lord, Lord Gilbert of Panteg, on producing an excellent and genuinely informative report. It has probably been beneficial that we have not got around to discussing it for close on a year; that year has been time well spent in understanding better how the media market and breaking news have changed as a result of the pandemic. I join others in observing that it has really put our media networks and journalists to the test. For the large part, they have come through with flying colours.

I also welcome the noble Lord, Lord Parkinson, to his new brief. It is a long way from Whitley Bay to Whitehall, but I am sure he will make that leap eminently well in his new-found berth.

A few years back, we welcomed the report of the Cairncross review. While we did not agree with 100% of its contents, we were pleased that it recognised a number of the significant challenges facing the journalism sector. We also, in that vein, welcome *Breaking News* for the way in which it has covered many of the contemporary issues. We recognise that some limited steps have now been taken by the Government since the publication of the review, particularly on media literacy. DCMS's response to this committee report shows that a number of additional projects are under way, albeit at different rates of progress.

We think that journalism, particularly its more modern and traditional strands, was already facing big challenges prior to the Covid pandemic. I suppose the committee and the Government recognise that the past 18 months or so have exacerbated those issues and sped up the transition to online consumption of news content.

Earlier this year, we watched with fascination as Australia passed legislation that could force tech giants to pay local media outlets a fairer fee when carrying their content—an issue that has been echoed in our discussions today. This, in turn, led to voluntary agreements being struck with local and regional outlets facing particularly significant challenges in the modern era. What work is DCMS doing to promote fairer agreements between publishers and platforms?

In its response to the committee, DCMS rather skipped over a number of the report's recommendations, stating that it was not, at that point, appropriate to pre-empt planned or ongoing consultation exercises. Now that some little time has passed, perhaps the Minister can provide us with updates and advise us better on some of the responses that the Government made then, because those issues are still current.

In recent months, we have seen a consultation on the future of Channel 4 framed as part of a wider strategic view of public sector broadcasting. Does the Minister feel that the time spent threatening Channel 4, a great British institution that has a strong news offering, could have been better spent addressing some of the points raised by the committee? Similarly, and in the same vein mentioned by the noble Lord, Lord Birt, the time that government Ministers seem to spend attacking the BBC and echoing some of the tabloid attacks on it could be better spent, too.

The committee recommended revisiting the apprenticeship levy as a means of encouraging more people into the journalistic trade. The Government have said that they are testing different approaches in this and similar sectors. Having heard today many comments from around the Committee, I think there is a very good case for doing this. We need to go back to the point where journalists come not just from those of us who have the benefit of a degree but from school and learning on the job. I look forward to hearing what the Minister has to say on that subject, because apprenticeships may well offer us a way forward in broadening the base of those who enter the noble art of journalism.

[Lord Bassam of Brighton]

The Government leaned heavily in their response on the draft online safety Bill. The wait for that legislation in a proper form appears to go on and on. We welcome the establishment of the pre-legislative scrutiny committee and await its report, but perhaps the Minister can confirm that the Government remain committed to getting legislation on to the statute book as soon as possible. Many issues raised today relate very much to that piece of legislation, and they are long overdue for a legislative response.

As with so many things in life, you do not always know what you have until it is gone. Historically, Britain has been a pioneer in the field of journalism. As the committee noted, journalism is an essential component in maintaining a healthy democracy. We cannot and in many ways should not try to halt the changes in the market for news, but, without interfering with the integrity and independence of UK journalism, I hope that the Minister can agree that the Government have a role to play in safeguarding journalism for the future. It has much changed during my lifetime as a public figure, and we have to accept that those changes will continue—and at pace. Government has a key role to play in ensuring that we have an active journalistic culture in this country, and one that does not dumb down our news content.

5.56 pm

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, it is a pleasure to respond to this debate, initiated by my noble friend Lord Gilbert of Panteg, on the report of your Lordships' committee into the future of journalism in the UK.

The committee's very thorough inquiry was a valuable contribution to the debate on a very important subject, as the noble Lord, Lord Inglewood, said. Today's debate has been equally valuable in its thoughtful consideration of the issues and the crucial role of journalism in our society. That is not surprising, given the breadth and depth of experience that noble Lords have brought to bear on the subject. As well as half a dozen past and present members of your Lordships' committee, we have heard—to mention just a few—from a former chairman of the BBC and ITV, a former director-general of the BBC, and journalists at all levels, with experience at, among others, the *Times*, the *Daily Mail*, the *Sunday Telegraph* and the *Economist*, as well as the current chairman of the Independent Press Standards Organisation. I suspect that the noble Lord, Lord Jones, is not the only Member of your Lordships' House whose experience in this area began with a newspaper round. I shall endeavour to address the points that all noble Lords have raised in the debate but, before I do, I thank my noble friend Lord Gilbert for his very helpful scene setting and his kind words of welcome.

A free and sustainable press is a key requirement of a healthy democracy—a point that has come across very forcefully in today's debate. As reflected in our manifesto commitment, local newspapers in particular are a vital pillar of our communities and of local democracy. They provide a valuable service, fostering democratic engagement, instilling a sense of pride and social cohesion, and holding those who provide public services at every level to account—a point made by the noble Baroness, Lady Wheatcroft, and others. This role is under threat, in the UK and overseas. As one journalist recently put it:

> "In many regions of democratic states what goes on in the courts, council chambers, planning committees, chambers of commerce, trade union branches, community centres, sports clubs, churches and schools now goes unreported because local newspapers have gone bust or shrunk to shadows of their former selves. Citizens of most UK towns and cities now have much less information about what's happening in their localities than their grandparents did."

As my noble friend Lord Gilbert eloquently set out, journalists around the world are facing very grave dangers as they carry out their vital function as a pillar of democracy—a point that, as the noble Lord, Lord Birt, pointed out, was powerfully underlined by the recent decision of the Nobel prize committee.

The crucial role of journalism at all levels has been further highlighted during the pandemic. As my noble friend Lady Buscombe noted, the press has performed a vital public service in providing trusted news and public health information over the past year and a half, as well as in countering disinformation and misinformation. But the pandemic has also exacerbated many of the industry's financial challenges, which pose an existential threat to its long-term survival.

As society has shifted online, the sector's income from traditional print-focused business models has collapsed. Revenues that they are generating online have not yet offset these losses, and government-commissioned research found that total news publisher revenue fell by 50% between 2007 and 2017. This decline was accompanied, over the same period, by a 25% fall in the number of titles and the number of journalists employed.

In response, news providers are seeking to innovate and adapt to changes in the market, while continuing to develop traditional journalistic skills and to produce high-quality content. It is therefore vital that we also consider all possible options in the interests of promoting and sustaining news journalism, so that future generations can be inspired, challenged and engaged by a free and vibrant press.

That is why the Government have made a concerted effort to support the sector in recent years. I welcome the noble Lord, Lord Bassam of Brighton, and others noting that. Using the Cairncross review as our template, we are seeking to address the market failure in the provision of public interest news. We have delivered a £2 million pilot innovation fund, which sought to explore new ways of sustaining the industry in this challenging landscape. We have zero-rated VAT on e-publications, including e-newspapers, and we have extended business rates relief on local newspaper office space until 2025. We have published our *Online Media Literacy Strategy*, which explores how information literacy can empower users to consider critically the content with which they engage online, as well as support users' understanding of the journalistic process—which, as the noble Lord, Lord McNally, and others rightly pointed out, is very important. We are establishing a new media literacy task force, which will bring together key parties to take collective action to address

key challenges in this area in a co-ordinated way. We will also be legislating for a new pro-competition regime, which will help to rebalance the relationship between publishers and platforms. I will return to this shortly.

In the shorter term, reflecting the financial impact of the pandemic and with a view to ensuring that the sector can continue to carry out its vital role in the provision of trusted news, we designated journalists as key workers during national lockdowns; we included essential print workers in the "reasonable excuse" scheme, enabling them to leave self-isolation for work purposes; we issued guidance to local authorities to ensure the continued delivery of newspapers; and we worked with adtech companies to ensure that the use of keyword blocklisting technology does not disproportionately limit news publishers' online advertising revenues for Covid-19 related stories. We also implemented a significant public information campaign, across both the national and local press, worth £35 million in its first phase, to ensure that authoritative information about the Government's response to the pandemic was distributed through reliable channels.

The noble Baronesses, Lady Wheatcroft and Lady Grender, mentioned the Local Democracy Reporting Service. That is independently run by the BBC, which I am pleased to say has committed to continuing the scheme until at least 2027. The BBC announced the creation of 15 new LDRS reporters, taking the total to 165, from July this year. Funds for this increase have come from a reallocation of resources from the BBC's £8 million per annum local news partnerships budget—but the Government would support any further efforts by the BBC to grow the scheme.

I turn to the particular challenges raised by society's shift towards digital consumption of media. As recognised in the report of your Lordships' committee and in the speech of my noble friend Lord Gilbert, online platforms have created new opportunities for journalism but have also challenged established funding models and disrupted the relationship between publishers and their readers.

Last year, the Government committed to establishing a new pro-competition regime for digital markets. At the heart of this regime will be a mandatory code of conduct designed to govern the relationships between powerful online platforms and the businesses that depend on them, promoting fair trading, open choices, trust and transparency. This will make an important contribution to the sustainability of the press. Noting the committee's calls for urgency on this matter, which we have also heard from the industry, the government consultation on the shape of the regime closed at the beginning of this month. A summary of responses will be published and taken into consideration as we prepare to legislate as soon as parliamentary time allows.

With regard to the question from my noble friend Lord Gilbert and the noble Viscount, Lord Colville of Culross, about incorporating a mandatory bargaining code in the regime, we have not ruled out any options. Our thinking here is informed by the responses to the consultation and by the work of the Digital Markets Unit and Ofcom, which together are looking at how a code introduced under the regime would govern the relationships between the platforms and publishers.

Turning from the economic to the social, the digital shift has also given rise to the spread of illegal content online. To tackle this, as a number of noble Lords mentioned, we are bringing forward the online safety Bill, which will give online platforms safety duties for user-generated content on their services. I am glad that my noble friend Lord Gilbert is among those on the Joint Committee giving this Bill pre-legislative scrutiny. I shall not pre-empt its work today other than to say that this legislation will safeguard access to journalistic content. News publishers' own websites are not in scope and below-the-line comments on those sites are also exempt. Additionally, the legislation will bring in strong protections for news publisher content and wider journalistic content when it is shared on social media platforms.

As my noble friend Lord Grade of Yarmouth highlighted, copyright is another means of ensuring that publishers are appropriately remunerated for the use of their content. We are monitoring the implementation of the copyright directive and its press publishers' rights in the EU with that point very much in mind.

The noble Lord, Lord Lipsey, took us back to the Leveson inquiry. Since that inquiry, the media landscape has changed significantly and there now exists a strengthened, independent, self-regulatory system for the press that ensures that it adheres to clear and appropriate standards. We believe that reopening the Leveson inquiry is no longer appropriate, proportionate or in the public interest. Indeed, the Conservative Party manifestos in 2017 and 2019 set out our intention to repeal Section 40 of the Crime and Courts Act 2013. We are exploring options as to how and when that repeal can be effected.

I turn briefly to the broadcasting sector. As Ofcom noted earlier this year,

"trusted and accurate national and regional news"

continues to be among the public's top priorities for our system of public service broadcasting. Notably, in the first week of the pandemic, the percentage of people who said that they trusted information from the public service channels was over 80%—we should rightly be proud of that. We expect public service broadcasters and their journalists to adhere to the highest standards while respecting their journalists' right to freedom of expression—noting too that public service broadcasters are operationally and editorially independent. Like your Lordships' committee, the Government welcome the initiatives taken by individual broadcasters in this regard such as the BBC's revised guidance for its employees on the use of social media. Public service broadcasting has a long and proud tradition in the UK, delivering trusted news, and it is vital that public confidence be maintained for fair and balanced reporting.

As noble Lords mentioned, the Government are undertaking a strategic review of public service broadcasting. The review, whose terms of reference can be found on GOV.UK, is looking at what a modern public service broadcasting system should contribute to economic, cultural and democratic life across the United Kingdom—which clearly includes accurate and impartial news and indeed current affairs programmes, as the noble Lord, Lord Birt, rightly underlined.

[Lord Parkinson of Whitley Bay]

The Government have also announced plans to legislate to make it a legal requirement for major online platforms to carry public service television, including news, and to ensure that it is easy to find. In doing so, these changes will give effect to a government commitment, and the recommendation of your Lordships' committee in its earlier report on public service broadcasting, to implement a new prominence framework in line with Ofcom's recommendations.

Noble Lords also raised a number of points regarding the workforce of the journalism industry. Your Lordships' report noted the importance of ensuring that people from traditionally underrepresented backgrounds who aspire to go into journalism are not put at a disadvantage, and that this is important in building confidence in our news media. Ofcom's latest diversity report on TV and radio, published last month, illustrates that there is still a lot of room for improvement and that greater progress is needed particularly in the retention and development of diverse talent. We also acknowledge that the BBC needs to improve its culture with a new emphasis on accuracy, impartiality and—as my noble friends Lady Meyer and Lord Gilbert and the noble Baroness, Lady Fox of Buckley, pointed out—diversity of opinion to ensure it does not succumb to groupthink and become detached both from criticism and the values of all parts of the nation that it serves.

While we do not propose to amend the statutory framework for diversity reporting in broadcasting as recommended by the committee, there are other levers that we can use to help to address such concerns, including through our support for apprenticeships. For example, we recognise the challenges of offering apprenticeships in sectors where more flexible working patterns are prevalent, such as in the press. In August, we launched a £7 million flexi-job apprenticeship fund, enabling apprentices to work across a range of projects and with different employers to gain the full skills and experience they need. As the noble Lord, Lord Bassam, rightly said, this is about broadening the base of an important industry.

I noted the points raised by the noble Viscount, Lord Colville of Culross, about the challenges facing freelancers. The Government have committed to strengthening the powers of the office of the Small Business Commissioner, who provides a vital free service to support small businesses with issues relating to payments and disputes. The recent consultation on the proposed new powers for that office closed in December and an analysis of those responses is under way. The Government will of course respond and set out their next steps, but I will ensure that the points that the noble Viscount raised are noted by colleagues in the Department for Business, Energy and Industrial Strategy.

My noble friend Lady Buscombe mentioned the importance of court reporting. The Government and the judiciary both recognise the important role that journalists play in ensuring our legal system is open and transparent and, indeed, that justice is not just done but seen to be done. That is why we have updated our guidance so that journalists, at the discretion of the court, may be permitted to record proceedings in court as an aide-memoire. We have published guidance for court and tribunal staff on how to facilitate court reporting and established a national media working group which, alongside regional such groups, brings together media representatives, court officials and staff from the Ministry of Justice to discuss ways to promote media access to our judicial processes.

The noble Baroness, Lady Wheatcroft, asked for an update on the appointment of a new chairman of Ofcom. As noble Lords know, the previous Secretary of State made the decision to re-run the process to appoint the Ofcom chairman, as permitted under the Governance Code for Public Appointments and following consultation with the Commissioner for Public Appointments. An announcement on the launch of a new campaign will be made as soon as possible. It will be fair and open and run in compliance with the Governance Code for Public Appointments. In line with the code, all candidates who feel they meet the selection criteria can submit an application, including those who have applied for the first competition.

For all of the challenges it faces, the long history and modern vibrancy of journalism in the UK should be a source of great pride. Its role in democracy has never been more important. That is why the Government will continue to support the industry to sustain itself and thrive through an unprecedented period of change, whether that is through our world-leading pro-competition regime for digital markets, our work to set the global standard for safety online while safeguarding access to journalistic content or our work to explore what a modern public service broadcasting system should contribute to economic, cultural and democratic life. My noble friends Lord Vaizey of Didcot and Lord Grade of Yarmouth asked for action this day and desk-banging. I hope that what I have set out today gives them and other noble Lords a sense of some of the actions that we are already undertaking as well as our appreciation of the work that still needs to be done. Today's debate and the report of your Lordships' committee have been an important and impressive contribution to that ongoing work, and I look forward to working with noble Lords in that endeavour.

6.14 pm

Lord Gilbert of Panteg (Con): My Lords, in the weeks leading up to the 2016 US presidential election, I was working for a bit in the United States. I have to say, I came back much more enthusiastic about the BBC and our news media than perhaps I have ever been. It is not just about our big national news titles; it is also about the local news titles which noble Lords have talked about eloquently today. The media is an important part of the fabric of our society, and local reporting is dying before our eyes.

This was a typically fascinating debate. Like the noble Baroness, Lady Grender, I am glad that the committee did not bring press regulation into scope. A number of noble Lords brought a couple of additional issues into consideration today. The noble Viscount, Lord Colville, was right to highlight the plight of freelance journalists, and my noble friend Lord Grade rightly highlighted the additional point about copyright, which is very important. I always want to highlight the work of the committee, and I draw your Lordships' attention—particularly that of my noble friend Lady Meyer and the noble Baroness, Lady Fox—to

our more recent report on freedom of expression online, which highlights a number of the issues to which they referred.

I conclude by thanking all noble Lords who contributed, particularly those from the Front Bench. The noble Baroness, Lady Grender, proposed this report in the first place, made a huge contribution and has had the opportunity today to reply to it. I thank her particularly for her contribution, the noble Lord, Lord Bassam, for his support for the work of the committee and this report in particular, and the Minister for a very fulsome response. On behalf of the committee, we look forward to working with him across our various briefs.

Motion agreed.

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): My Lords, we are not going to adjourn, but we will take a few minutes to bring the speakers for the next debate into the Room.

Building a Co-operative Union (Common Frameworks Scrutiny Committee Report)

Motion to Take Note

6.21 pm

Moved by ***Baroness Andrews***

That the Grand Committee takes note of the Report from the Common Frameworks Scrutiny Committee *Common Frameworks: building a cooperative Union* (1st Report, Session 2019–21, HL Paper 259).

Baroness Andrews (Lab): My Lords, on behalf of the committee, I say how much we welcome this opportunity to present our report and to update the House on the progress we have made since we published it. I thank the missing Ministers this evening—the noble Lord, Lord True, and Chloe Smith MP—who were extremely supportive and shared our journey to an extent. We welcome the noble Lord, Lord Greenhalgh, this afternoon and look forward to hearing what he says.

Part of the benefit of working closely with Ministers is that we benefited from working with their officials in the Cabinet Office as well. They were always, and continue to be, extremely helpful to us. We welcome the Government's response although, in a way inevitably I suppose, it was largely a statement of principle and support and there was a marked absence of hard, practical acceptance of the recommendations, but we hope that will improve too.

I start by thanking the committee and congratulating it on its stamina, not least over the past year. We have done a lot of things for the first time—we are a rather unusual committee—and it has been hard work. I am very pleased to say that, on Monday, the Liaison Committee agreed that we will extend our work until next summer. We really welcome that, because there is a lot still to be done. It is a real tribute to the work we do and to the need for Parliament to maintain its scrutiny over the common frameworks. It is also a tribute to the connections we have built up with the devolved Administrations across the UK.

I am blessed to chair a committee with such quality, insight and experience, often in high office, of what the journey to devolution has meant and its history. It is what gives our committee its unique weight and perspective and has enabled us to talk very frankly to the devolved Administrations, Ministers and stakeholders. Our expertise has already been poached; the Cabinet Office seized the noble Lord, Lord McInnes, and took him away from us. Although he has probably not gone to a better place, he has probably gone to serve a higher cause. In exchange, we got another hostage, the noble and learned Lord, Lord Keen of Elie, who brings intimate knowledge of the United Kingdom Internal Market Act. The only downside of meeting in person today—it is lovely to see the committee as we have not met in person as a committee before—is that we do not have the noble Lord, Lord Murphy, who has been a very important member and given us enormously wise advice.

I also thank our wonderful staff: Moriyo Aiyeola, who took over from Erik Tate, Tim Stacey, our absolutely splendid policy adviser, and Glenn Chapman and Breda Twomey, who keep us in order and make sure that we do not stray too far from our companion committees, the Constitution Committee and the Northern Ireland protocol committee, on which some of our members also serve.

My speech today is something of a common framework because there are lots of things that I know my colleagues will want to pick up in detail, and I look forward to hearing from them. I have to start with a rather blunt question to the Minister. I know that this is a new brief for him so we will be kind, as always, but we also have to ask some awkward questions. When he winds up, please can he tell us which Minister is now responsible for the common frameworks? Which department is now responsible for the common frameworks? No Cabinet Minister has yet been appointed to replace Chloe Smith. Does that mean that, from now on, there will be no Minister in the Cabinet Office responsible for co-ordinating and driving the common frameworks programme?

If the responsibility has moved to the Department for Levelling Up, Housing and Communities, we presume that the Secretary of State, Mr Gove, will be the man in charge, but can the Minister tell us who the responsible Minister will be? If this is the case, it would have been nice to have been told earlier than now. I speak for the devolved Administrations as well. So we need answers this afternoon as a matter of urgency and credibility but also plain courtesy, especially to the devolved Administrations. I hope I am not being too pessimistic about this but I think the department will have to make an effort to make sure that the common frameworks are not seen as another aspect of local government, having gone into the department which traditionally has been about local government.

This debate is timely in many ways and the issues we raised in March are more urgent than ever. We subtitled our report "Building a Cooperative Union" because our work suggests that is what the common frameworks can uniquely do, especially when the political environment seems to be hostile to that ambition. Some of our witnesses said, in very many different

[Baroness Andrews]

words, that government relations with the devolved Administrations had never been worse. Obviously, we are not offering a holistic solution in our report—that is not our job and we would be naive to try—but it offers a pragmatic prescription rooted in what works.

The content of what we do is often technical, sometimes dauntingly so, but the context is wholly political. Although we are forced to focus on process, as the frameworks themselves do, the function of the frameworks is no less than to guarantee safe and appropriate services across the UK, covering a host of issues: nutritional standards, carbon emissions, food and feed safety, blood products and transport systems. Every framework is different, every department behaves differently, but they determine huge areas of health and safety across the UK.

Since the common frameworks emerged in 2017 with a set of clear principles, 32 frameworks have been designated to replace the rules which had been established by the European Commission to guarantee a functioning internal market and to protect the common resources of the environment, which is why over half the frameworks are concerned with environmental issues.

Much of this constructive work was virtually invisible, which is why it is a challenge to explain what the common frameworks do, but we emphasised in our report that these frameworks could play a unique role in creating new opportunities for collaboration and consensus across the UK, through shared information, interests, policy and process. Above all, they were the way by which the common framework of the internal market could be maintained at the same time as managing divergence, which was not disruptive. In short, the common frameworks are a new asset, they have huge potential and they should not be underplayed.

Since we reported in March, there have been some setbacks and these have been largely external. But there has been some progress and this is to the credit, not least, of the work of the Cabinet Office officials and, I like to think, of our committee itself, in the way we have drawn attention to inconsistency, sloppiness in some cases, and things that could be done better, including transparency.

Of course, we have been dealing with delay. Every deadline set by the Government has proved to be widely ambitious and widely missed. The first deadline was Christmas 2020, and the second was the Easter just gone; now we are told that it is Easter next year—we shall see. The fact that our committee has been extended to next summer gives us some scope.

As for progress, when the committee reported in March, only seven of the 32 frameworks in development had reached provisional status. In July, we had better news: a further 21 frameworks had reached provisional status. However, while the UK, Welsh and Scottish Governments had signed them off, the Northern Ireland Executive had not. That has now, thankfully, changed, and the Northern Ireland Executive have approved the frameworks agreed by the four Administrations. This is most significant—and I am sure we will talk a lot about Ireland this afternoon—given that it is clear that common frameworks have the potential to be a positive force to reduce future tensions deriving from the protocol. To support this, we recommended that the Government should ensure that policy changes introduced with the protocol should be considered through the frameworks, in just the same way as divergent policy changes suggested by the other Administrations are so mediated. That would provide not just parity of process but a more predictable and transparent outcome.

The Government have accepted that in theory but, again, to what extent it will be applied in practice remains to be seen. That applies to our other recommendation that the significant number of frameworks that intersect with the protocol should include processes for reporting on the divergence that occurs and its effect. We have not seen any evidence of those reporting mechanisms being developed since we produced the report, but they are recommendations that do not ignore political realities; they are a pragmatic approach to a problem that we would like to contribute to solving. Perhaps the Minister could update us on the Government's thinking on those areas.

The second area that has obstructed progress is the interaction between the common frameworks and the United Kingdom Internal Market Act, which has continued to be a cause of friction between the UK Government and devolved Administrations. The Welsh Government believe that the Act unlawfully altered the devolution settlement, and they are pursuing legal action. The Bill was amended in Committee, thanks not least to one of the members of our committee, the noble and learned Lord, Lord Hope, and the Act now contains the power for the Secretary of State to create exemptions from the effects of the Act in areas agreed through a common framework. We recommended in our report that each framework should be updated to include a consistent and transparent process for agreeing areas where this very important power will be used. It is proving difficult to do that; it is not easy—and we look forward to the Minister, I hope, telling us that some progress has been made, because it is definitely adding to frustrations and delays.

I turn briefly to the internal challenges of the programme itself. Much of the insecurity and difficulties around the frameworks is due to the lack of transparency, and I know that my colleagues will want to pick that particular failure up. The lack of transparency inhibits success, and that should not be the case. We have proposed a simple solution that an open consultation should be included in the scheduled review that each framework is due to undergo, but that has not happened. I look forward to hearing what the Minister says about that.

We also acknowledge in our recommendations that frameworks are still at an early stage. That makes it difficult to make any judgments as to whether they will raise or lower standards, maintaining or diluting previous European Union standards. It is difficult to determine that since, rather than establishing minimum standards, the 11 frameworks that we have seen have largely included agreements on the process for the future agreements of standards rather than the standards themselves. Since we reported, I can give one example whereby preliminary documents on the radioactive substances framework include agreement on maintaining or exceeding European standards.

All this is taking place within the wider challenges of the future of the devolution settlement. I am delighted that the noble Lord, Lord Dunlop, is with us this afternoon, and very much look forward to his contribution. Indeed, we look forward to seeing his report being implemented in full, as we do the outcomes of the intergovernmental committee and the Minister's response on progress. Where we as a committee can speak with authority and unanimity is on the need for a clear commitment to ongoing parliamentary scrutiny.

In our report we recommended that the four Administrations should provide regular updates to their legislatures, and to public reporting as part of their planned reviews of the frameworks. Again, the Government are very much in favour of this in theory, but the commitments we have seen have been, frankly, lacklustre. The Welsh Government have no such inhibition in relation to the Senedd. The UK Government seem to fear making such a commitment as far as our Parliament is concerned.

In the context and in conclusion, I put on record the fact that our scrutiny committee is doing things for the first time and in different ways—not least because we are a unique and welcome point of contact between the Parliaments of the four countries. Our warm relationships and our continuing and frank exchanges have been mutually valid: they have set a tone and a precedent for what could and should happen going forward. The strength of devolution lies in the balance between common and individual interests and common frameworks both exemplify this and have the power to strengthen the wider and critical relationships. We hope most fervently that this is something that the Government, and Parliament as a whole, will want to invest in. I beg to move.

6.36 pm

Baroness Randerson (LD): My Lords, first, I declare an interest as chancellor of Cardiff University. I thank the noble Baroness, Lady Andrews, for her leadership on the committee, and the staff and committee colleagues. The committee brings together a unique breadth of knowledge and experience from all four quarters of the UK. We have members who have been Ministers in the UK Government and in the devolved Administrations —members who have been elected not only to this Parliament but to the devolved legislatures—and an impressive breadth of legal expertise. This report is six months old but is now more relevant than ever. Common frameworks do not make the headlines, but they can be an important part of the cement holding our union together. They recognise the autonomy of the four Administrations and acknowledge that there can be divergence based on mutual consent. However, to do that job properly they must be handled with full transparency, with full public consultation and parliamentary scrutiny, both here and in the devolved nations.

The committee has repeatedly questioned the restrictive approach to consultation on draft frameworks and we have been given a variety of reasons for this. At first we were told that there was a need for speed, as all common frameworks had to be done by Christmas 2020. That, clearly, no longer holds water. The Government's response to our report justifies limited consultation by saying that frameworks are really just about ways of working together rather than being about policy development. However, that is undermined by the rather haphazard approach to selecting appropriate consultees. For example, why is one farming union invited to give a response but not all of them? Broad consultation is an important way to increase transparency, the lack of which has been criticised in all the devolved legislatures as well as by the chairs of two committees from the other place.

Lack of transparency leads to lack of scrutiny, and the frameworks process is considerably less transparent and democratic than the EU processes it replaced, with a public debate involved in the European Parliament, for example. Overlaying on this rather obscure process the shock of the sudden emergence of the internal market Bill, and one can understand how that struck at any vestiges of confidence that the devolved Administrations felt in the UK Government's even-handedness. Our haphazard devolution process has not really moved on in essentials since it was established at the end of the last century when the Labour Party were in power across Britain. Nobody then envisaged the political diversity we now have.

Frameworks include processes for resolving disputes, but they are not robust because they rely on the UK Government representing England at one point in the process and then acting as the ultimate UK Court of Appeal. There is a dangerous power imbalance. For our lopsided union to survive, it needs urgent attention, and the Dunlop review needs to be acted upon forthwith. If there is so much distrust in the post-EU processes at this stage, then they will not withstand the pressures when the standards start to change—environmental standards, consumer protection and so on. Inevitably they will change; EU standards will be raised, or the UK might decide to diverge.

The internal market Act has entrenched the superior position of the UK Government, with very little space for the devolved Administrations to take account of concerns and different circumstances across the nations. There are very limited exclusions from the primacy of market access principles—much more limited than under EU law. This undermines devolved powers, so it is no wonder the devolved Administrations did not give their legislative consent and the Welsh Government took the process to the courts. Overlay on this the complexity of the situation in Northern Ireland, and the position is unsustainable.

The messages are clear, the evidence was clear from across the UK, and we are the messengers. The Government ignore this at their peril. Common frameworks are humble, even banal, but vital for the way in which the UK can operate co-operatively in future.

6.41 pm

Lord Thomas of Cwmgiedd (CB): My Lords, I, too, declare an interest as a chancellor of a Welsh university, Aberystwyth, and an interest as a member of the First Minister's advisory committee on the exit from the European Union. I also pay an enormous tribute to the stewardship and diligence that our chairman and the staff of this committee have brought to this task. If one looked at the title of this committee and the report, "Common Frameworks", you would think this

[Lord Thomas of Cwmgiedd]
was an entirely unimportant and wholly dull subject. It is a tribute to the chairman and staff that they have made it both fascinating and interesting. Let me try to explain why before I turn to the detail.

It was obvious when we departed from the European Union that, as the devolution settlements had been crafted during the period of devolution, there had to be something in place, given the commitment that there would be no fundamental change to the position on devolution. It is a tribute to us as a nation—and I speak as a unionist—that we have innovated through this rather dull-sounding subject, because common frameworks are a constitutional innovation of great importance, which have not really been properly studied as yet. They have provided us with a way, which is important in any non-unitary state—and ours is no longer a unitary state—of devising a means of allowing the constituent elements to have a degree of freedom to differentiate but also to have a means of holding the union together. That is their fundamental importance and the fundamental innovation of this subject.

It was a great pity that the process did not get under way properly, but I do not want to go back over that—there is little point. What is important is that we now look to the future. I would like to look to the future under two headings. First, I look at the grind that is involved, because developing new constitutional principles is hard work and requires attention to detail.

One of the outstanding achievements of the staff of the committee is to start to analyse the frameworks. One knows, when we pass legislation, that parliamentary counsel are assiduous in looking at their books, working out what has to go in and making certain our legislation, our statute book, remains one of the prizes of the way in which we do things; but none of that exists for common frameworks. Therefore, it has needed an analysis—an analysis of the approach of the frameworks to policy co-operation, operational co-operation, joint risk assessment, involvement of senior officials, the frequency of meetings, the presence of advisory boards and groups, reporting commitments and the very difficult subject of Northern Ireland. All this needs analysis to make certain that these frameworks have a consistent constitutional principle.

Secondly, we need to ensure that there is detailed consultation—again, hard work—and then there has to be scrutiny. I hope it is not too much of a shock to my colleagues that we really need, in the end, to distil the principles under which these will operate. That is the detailed work, but it is so important because it goes to the governance of the United Kingdom. I read with admiration the report of the noble Lord, Lord Dunlop, and I look forward to his contribution this afternoon, but it is hard to underestimate the importance of the frameworks in ensuring a strong union by getting right a co-operative effort to make certain policy is formulated on a common basis but, on the other hand, allowing a degree of diversity that benefits everyone and enables each of the separate nations to make their respective contributions.

One cannot underestimate the change that has occurred during the pandemic. I have been surprised, in Wales, to see the shift away from a firm belief in the union to a question over it. These common frameworks give us the opportunity to show the strength of the union and of devolution, but it requires hard work. That hard work will be to try—this is ultimately our biggest task—to make sure that people understand what is by its title apparently such a dull, yet is a highly important, subject.

6.47 pm

Lord Dunlop (Con): My Lords, it is a great pleasure to follow the noble and learned Lord, Lord Thomas. He is a vigorous champion for Wales, devolution and the union, and I very much agree with what he said. I also add my congratulations to the noble Baroness, Lady Andrews, and all her colleagues for producing such a lucid report, and I thank the committee for inviting me to give evidence. Their report was already written before I gave evidence, so I cannot claim any credit for contributing to its lucidity.

In a post-Brexit devolution world, the UK and devolved Governments depend on each other to be successful. Covid has clearly shown that. This requires processes and structures to facilitate how Governments across the UK work together and reach agreements—the co-operative union of the title of the committee's report. In my view, the need for co-operation is likely only to grow if devolution within England is extended. Despite significant devolution to Scotland, Wales and Northern Ireland, the UK remains one of the most centralised states in the OECD.

As the work of Professor Philip McCann of Sheffield University demonstrates, economies grow more strongly when they grow more evenly, and they grow more evenly where governance is less centralised. Dispersed power potentially makes life more difficult for Ministers and civil servants. They will have to contend with stronger voices from the UK's more peripheral regions when establishing national priorities and allocating resources. That is why negotiating successfully with and mediating between the demands of different tiers of government must be a core UK Government capability. This capability will certainly improve fast if devolution within the UK is extended.

Since the committee produced its report, there has been a reshuffle. Two of its most notable features in the context of this debate are: bringing together in one department responsibility for levelling up, English devolution and strengthening the union; and, formally recognising, for the first time, the role within Government of a Minister for Intergovernmental Relations. I may be naively optimistic, but to me this suggests a more joined-up approach. I certainly hope so.

I want to touch on two points in the committee's report. First, it rightly draws attention to the reform of the way intergovernmental relations are managed and disputes handled. This work is an important companion piece to common frameworks—a layer above, if you like—to deal with cross-cutting issues and to provide a means for dispute escalation. At the time of devolution in the late 1990s, insufficient attention was given to how Whitehall needed to adapt to the changes and to the glue holding together the United Kingdom. The draft package of reforms published by the Government in March was promising. It recognised that mechanisms for managing intergovernmental relations must be jointly

owned by the UK Government and devolved Administrations and underpinned by impartial support and evidence—something I certainly recommended in my report. Agreement on this package seems tantalisingly close, and I hope that when he comes to reply to the debate, the Minister can update us on progress.

Reformed processes and structures take us only so far, so my second and final point is that a genuinely co-operative union needs to be founded on a culture of constructive engagement. As a doyen of the dance floor, the new Minister for Intergovernmental Relations, Michael Gove, knows better than most that it takes two to tango. It is disappointing—to extend the metaphor—that the Scottish Government sometimes appear out of step and unco-operative: for example, when it comes to engaging with worthwhile UK-wide initiatives such as the Hendy connectivity review and the development of freeports. That is why the committee's report—this has been mentioned already—is right to highlight the importance of greater transparency and scrutiny of common frameworks and intergovernmental co-operation. Each can play an important part in encouraging, from all the parties, the right and better behaviours.

Here the UK Government need to show leadership by allowing light to be shone into what can often appear an opaque and closed world. Perhaps the Minister could also provide an update on progress in this area. The Government got off to a good start by publishing in March, alongside the draft package of IGR reforms, a first quarterly report on *Intergovernmental Relations*. By my reckoning there should have been two further reports since, but I am not sure there have been. If I am right, can the Minister explain why and say when the next report is expected?

I conclude by thanking the Common Frameworks Scrutiny Committee once again for its report, and I hope the Government will heed its constructive conclusions.

6.52 pm

Baroness Bryan of Partick (Lab): My Lords, it is quite intimidating to follow on from such a range of knowledgeable speakers. I join other noble Lords in thanking the committee members and the team they worked with for such an incisive report.

Although it is an excellent and well-constructed report that demonstrates the breadth of evidence provided to the committee, it does not paint a very satisfactory picture of where we have got to in the five years since the referendum on the EU. I am therefore pleased to hear about the extension to the committee's work. I echo the concern of the noble Baroness, Lady Andrews, about the failure to replace Chloe Smith. This might not have been a major issue in England but it made front-page news in the *Herald* on Monday morning—obviously another football to be kicked around.

Having considered the document, one thing is clear: even if the common frameworks are successful, they can be only a short-term arrangement for joint working between the four nations—there I have to disagree with the noble and learned Lord, Lord Thomas. There is an obvious need for a more transparent and accountable arrangement for dealing with devolved powers that have cross-territorial implications.

The report reminds us that the UK was in the European Union when devolution occurred and that had that not been the case, far more consideration would have been given both to the powers of each of the devolved Administrations and to how England would be represented in such an arrangement.

Not having a codified constitution may have some advantages. It allows changes to be introduced quickly when Governments have to respond to significant political pressure, but, on the other hand, quick fixes are not always the best. In the UK it has resulted in a piecemeal approach to devolving powers, leaving a patchwork of different arrangements in different parts of the UK. Now is the time to rethink those unnecessarily complicated arrangements as part of the adjustment to Brexit. This ought to have been an opportunity to involve the devolved Governments in planning how they would share governance over the repatriated powers. The most obvious solution to me is some form of federal arrangement.

The last-minute rush to get the deal through Parliament and to negotiate the EU-UK Trade and Cooperation Agreement obviously failed to take serious account of the implications for Northern Ireland, but it also left questions about Scotland and Wales. It is therefore not at all surprising that the original analysis that identified 154 potential areas for common frameworks could not be implemented. Even the much smaller number that are being taken forward are obviously presenting significant challenges.

The UK is already highly centralised, and even after 20 years, the Government still do not seem to understand the purpose of devolution. The report gives the example of this in the UK Government's decision not to involve the devolved Administrations in the development of the United Kingdom Internal Market Act. As the Government of the whole of the UK, this demonstrates a lack of respect and a failure to look beyond what is good for England—which, not surprisingly, further increases the lack of trust.

The common frameworks approach does not tackle a fundamental concern identified by the noble Baroness, Lady Randerson, that the Government are both a participant on behalf of England and the final arbiter in any dispute. Does the Minister understand and accept the concerns about the lack of transparency and trust that add to the sense that the Government have little interest or respect for democratic structures outside the Westminster bubble?

If the UK is to stay together, it must involve a change in relationships. However, there is little evidence that the Government understand this. Probably the only way to hold Scotland within the United Kingdom will be to establish a second Chamber where the voices of the nations and regions can be given parity of esteem and find out what they have in common rather than what divides them. Co-operation rather than competition is the key.

6.58 pm

Lord Hope of Craighead (CB): My Lords, I begin by paying my own very warm tribute to our chair, the noble Baroness, Lady Andrews, whose charm and good will has made membership of this committee so

[Lord Hope of Craighead]
very enjoyable. I join her in thanking all our clerks and policy advisers for their contribution to our work, which has been invaluable.

People sometimes ask, "What's in a name?" The answer I usually give is, "Quite a lot, actually". That is certainly so in the case of the common frameworks. It was not the most stimulating of names to give this project—indeed, it is rather dull, as has been suggested. The words themselves are accurate and meaningful enough to those who know what common frameworks actually are, but those who know what they mean are few and far between, and there is not much about them to excite interest among those in government who ought to know and do not. The contrast between them and the internal market Act 2020 could not be more striking. The words "internal market" were well chosen. They have an instant appeal and require no explanation. We have done our best at the start of the summary of our report to provide as succinct explanation of what is meant by common frameworks as can be devised. But our explanation occupies two sentences, some 40 words, and most other attempts that I have seen are a good deal longer.

The approach to the consequences of our departure from the EU that the internal market Act takes is so very different from that of common frameworks, and that is a source of real concern. One of the core strengths of the union to which all four nations in these islands belong is the respect that we give to our separate identities. Consultation, discussion and agreement wherever possible are the guiding principles. All four nations are involved in this process, and where divergence is acceptable to all, the common frameworks will allow for this, too. That point needs to be widely understood and respected.

The internal market Act, on the other hand, was designed by and for the centre. Its purpose was to ensure that there were no harmful barriers to trade between the different parts of the UK. But by elevating that principle above everything else, as the Act appeared to do, it appeared to ignore everything that the common frameworks were designed to achieve. Only at the last moment, by amendments to what are now Sections 10 and 18, was any recognition given to what the common frameworks are seeking to achieve. That was an unfortunate start for a vital step forward before the Bill was eventually enacted. As several of our witnesses made clear, the imbalance of power between the devolved Administrations and the UK Government which that Act creates is very obvious. Those sections give a discretion to the Secretary of State to exempt an agreed divergence from the internal market principles, but it is only a discretion, which may or may not be exercised.

That brings me to paragraph 102 of our report, where we recommend that

"the UK Government should work closely with the devolved administrations to develop a consistent and transparent process"

for the use of those discretionary powers. Their approach so far to the issue of divergence has tended to be fragmented, with different Ministers in different departments taking decisions on these cross-cutting issues without full consultation with all the interested parties or the full and frank sharing of information that needs to be shared. Paragraph 12 of the Government's response tells us that the process that they aim to set up is still unclear, and it is certainly not clear how far that process has gone.

In June of this year, the Institute for Government recommended that a central unit in the Cabinet Office should be set up to oversee the UK internal market, track divergence between the different parts of the union and consider its implications for trade, devolution and the preservation of the union. It is disturbing to read in paragraph 36 of the Government's response that the role of the Cabinet Office is to be reduced over time. Our point, which I bring to the Minister's attention, is that it is far too early for that to happen. There is still too much uncertainty about how this process will be carried out. Guidance from the centre remains crucial to its success, and it is likely to be so for a considerable time to come. I should be grateful if the Minister could say whether this point about the importance of guidance from the centre is really understood and appreciated.

7.03 pm

Baroness Crawley (Lab): My Lords, I am proud of our report. As a committee, we have worked extremely well together. Much of this is down to our excellent staff and, of course, our chair, my noble friend Lady Andrews. Her patience, intellectual rigour and wicked sense of humour have ensured that we have produced a report that honestly scrutinises the Government's work so far in co-ordinating key policy areas across the UK post Brexit. I say "work so far" because, in our conclusions, we have found the Government wanting on several fronts—despite welcome, regular updates from the Minister, Chloe Smith, at a time that has been challenging for her personally.

As my noble friend Lady Andrews said, we need to ensure that the common frameworks have not become orphaned in the latest reshuffle when it comes to ministerial oversight. Because common frameworks play such a vital role in the practical, day-to-day co-ordination of policy, as Members have said, in 32 areas of the UK's new internal market, our list of recommendations needs to be taken really seriously by government. Indeed, the Government's initial response to our report has been encouraging, but the delays in finalising common frameworks have now become very noticeable to stakeholders, to experts and to us in our job as scrutineers.

It is not as if our current post-Brexit economy and internal market are running so smoothly that complacency on common frameworks can be the order of the day. Many of us are bewildered about how quickly our modern, relatively well-oiled supply chains and labour market access—going back decades—have ground to a halt in the last few weeks. The Army being drafted in and competition law being suspended is not a good look for Team GB.

The committee believes that, as well as delays, there has been a lack of transparency in the development of common frameworks, with parliamentary scrutiny across the four nations being, at best, an afterthought and, at worst, an inconvenience. Stakeholder engagement has

been inadequate and, at times, bizarre, as the noble Baroness, Lady Randerson, highlighted. The quality of some departments' output has also been unacceptable to the committee, as our chair has said. The Cabinet Office, to which the noble and learned Lord, Lord Hope, has just referred, has taken a co-ordinating interest up to now, but sees future framework monitoring placed in individual government departments. That way lies either inaction or turf wars. We would far rather see in the future the four devolved Administrations issuing regular updates to their legislatures and publishing reviews of the frameworks.

A serious concern of the committee has been how the frameworks interact with the protocol on Ireland/Northern Ireland. Yet, until very recently, there has been a backlog of frameworks in front of the Northern Ireland Executive, and therefore a delay in the scrutinising work of the Northern Ireland Assembly. We have asked how the dynamic alignment with the EU in the protocol will work with common frameworks not only now but in the future. We have not had very satisfactory answers.

The noble Lord, Lord Frost, has been bringing the kettle to the boil, shall we say, on the future of the protocol. In September, speaking to the British-Irish Association, he said that

"we need to see substantial … change"

in three areas:

"movement of goods into Northern Ireland, the standards for goods within Northern Ireland, and the governance arrangements for regulating this".

Since then, we have had his Lisbon speech on the same theme but going much further. How does the Minister intend to deal with the effective management of common frameworks that intersect with the protocol in these coming uncertain months?

Before I close, I welcome the Dunlop report and am pleased to see the noble Lord, Lord Dunlop, in his place. We see common frameworks, in their capacity as voluntary agreements, as a great opportunity to strengthen relations across the devolved Administrations. Those relations certainly need strengthening if the union is to hold. The prospect of the House of Lords playing a new and useful role as a neutral forum for receiving the views of the devolved Administrations and bringing about closer interparliamentary co-operation is one we could all roll up our sleeves for.

7.09 pm

Lord Garnier (Con): My Lords, the noble Baroness, Lady Andrews, was characteristically generous to the staff of the Common Frameworks Scrutiny Committee—and rightly so—as well as to the members of the committee. But, if the truth be known, she has led us in an utterly unpartisan manner, melding the opinions of noble Lords from the Conservative, Labour and Liberal Democrat parties, as well as those of the noble and learned Lords from the Cross Benches, into a cohesive, collective view. Her introduction to the debate was both comprehensive and clear, and was one with which we can all, I am sure, agree.

We have the advantage that we all seem to enjoy each other's company—albeit remotely, as we have had to participate on screen rather than, as here, in person. It is also a pleasure to welcome my noble friend the Minister to his new role, and to see my noble friend Lord Dunlop in his place. Through his eponymous report and its recommendations, he has played a central part in the study of the union, the United Kingdom and all its constituent nations, and of course he also gave us some extremely valuable evidence—albeit, as he said, after the completion of this report. However, I have no doubt that others will follow.

I believe that in our committee we all share a desire to see the union of the United Kingdom of Great Britain and Northern Ireland flourish under the current dispensation. If any of us wants, for example, to see a closer political and economic tie between Northern Ireland and the Republic of Ireland, or greater self-determination for England, Scotland or Wales, we want those things achieved in a spirit of democratic and mutual respect, and not antagonism, still less enmity. We represent—in so far as this House can do that—each of the four countries of the union by birth and residence, and, if I may say so, we all bring a particular expertise and experience to the committee.

However, whether our focus is on Northern Ireland, Wales, Scotland or England, as well as on the United Kingdom as a whole, we all understand the delicacy of the current devolution settlement and the difficulties that the United Kingdom Government have in representing the interests of both the entire union and of England. Our committee is not a body of revolutionaries; we want to see the post-Brexit transfer of powers from the EU to the four UK Administrations achieved with efficiency, with competence and with consent.

The report we are debating, although the result of a good deal of hard work, is necessarily disappointing—not because of anything we have done but because of the external constraints under which we have been placed. One of them, lack of time, has been lifted, and we are to continue until next summer. Some may say that what we have been scrutinising is no more than the tedious process of moving regulations from one political institution, in Europe, to others here. I caution against that glib opinion: the name of our committee, and the work that we have done, may not excite Fleet Street's finest, or even Brexit's praetorian guard within Parliament, but, as with a number of institutions in this country, those with the fanciest titles often have the smallest influence. Go behind the name of this committee and read the report to see what others we observe, with grander names, have—or, more worryingly, have not—been doing.

Having listened to Ministers and officials giving evidence to us, it is my experience that, in the United Kingdom Government at the political level, there is a lack of real interest in the process and in the work required to ensure that the process works well. This must be got right if we are successfully and consensually to move powers from the EU's institutions to our own.

This committee was established in September 2020, over a year ago, yet we have been supplied with a very small number of common frameworks. The rate of progress in bringing them forward to us has been, frankly, lamentable, and the process of their development has been opaque. The surprise expressed by Ministers that we were, and remain, dissatisfied with departmental progress has been extraordinary. The detailed consequences of

[Lord Garnier]
Brexit, if not spoken about by government before the event—here I give them the benefit of the doubt—must at least have been known and thought about beforehand. Yet there we were in March, when our report was published, and here we are seven months later, with a woefully small number of these frameworks available for scrutiny.

Defra is the department with most to deal with, which is why I mention it, but when my right honourable friend the Secretary of State was giving evidence to us recently he could not tell us when the process would be completed. My impression, and this may not have been shared by other noble Lords on the committee, is that he really had no idea what the timetable for his department looked like. To be fair to him, he was not the only government Minister to give me that impression but, across government, I see a lack of political drive and leadership in this policy area. I entirely agree with the noble Baroness, Lady Andrews, in the direct questions that she posed to the Minister this afternoon and with the concerns expressed by the noble and learned Lord, Lord Thomas.

My other concern is that there is a lack of respect and understanding among the United Kingdom Government's political leadership for the policies and desires of the elected devolved Administrations. I fundamentally disagree with the aims of the SNP and I find the attitude and posturing of its leadership tiresome, but that is the party whose Ministers happen to be in government in Scotland. I am not a supporter of the Labour Government in Wales either but, like it or not—I do not—it is the duly elected Government of Wales. I am certainly no fan of Sinn Féin and have my reservations about aspects of the DUP's politics but, again, they are the parties in government within Northern Ireland.

My understanding is, from evidence that we had from witnesses from the DAs and other non-political interested parties from Scotland, Wales and Northern Ireland that, whereas officials in Whitehall maintain good business relationships with their counterparts in the DAs, there is no such equivalence at a political level. I dare say that this is caused to an extent by mutual political dislike or distrust, but the Westminster Government are the Government of the entire country whose Parliament legislated for the current dispensation and, although imperfect and replete with annoyances, it is the one we presently have. I, therefore, through the Minister, urge the Government to work harder to forge better relations with the DAs for the sake of the future of our United Kingdom.

7.17 pm

Baroness McIntosh of Pickering (Con): I want to follow my noble and learned friend and add my congratulations most warmly to the noble Baroness, Lady Andrews, the rest of the committee and her staff team for what has been an excellent report. I feel that I am here as an interloper. I am a non-practising member of the Faculty of Advocates, have followed common frameworks closely and, indeed, matters relating to Defra over the past few years. I should like to limit my remarks to two specific points.

I applaud common frameworks as a success story in intergovernmental relations to which the noble Baroness, Lady Andrews, referred. I welcome the fact that common frameworks exist where necessary for, among other reasons, ensuring the proper functioning of the United Kingdom's internal market. As the noble and learned Lord, Lord Hope, alluded to, I acknowledge that increasing tensions and policy divergence have been appearing, particularly through the operation of the internal market Act, the Trade Act, the Agriculture Act and, most recently—as a number of us have been advised by the Law Society of Scotland—the passage of the Environment Bill.

Briefly, without going into too much detail—the noble Lord, Lord Bruce, may reflect on this in his remarks when summing up the debate from his perspective—Amendment 80 was passed by the House to Clause 20 of the Environment Bill relating in particular to provisions on forest risk commodities and environmental principles. To cut a long story short—I am sure that I could spend all afternoon talking about this because it is technical—I understand that legislative consent has not been granted by the Scottish Parliament to the Bill as amended in Committee. While congratulating my noble friend the Minister on his new responsibilities, I invite him to use his good offices in his new role to liaise and work as closely as he can with the Minister for the Environment, our noble friend Lord Goldsmith, to find a resolution to this situation before that Bill is concluded.

I also add my congratulations to my noble friend Lord Dunlop on the excellent work in his report. It is a great tribute to him that the common frameworks and the work of the committee will build on the conclusions that he has drawn. That will also be a testament to the work of the department regarding the extent to which the union holds strong as we proceed over the coming months, particularly given the ongoing tensions on the Northern Ireland protocol, as discussed earlier in the Chamber.

The only other comment I wish to make, as my noble and learned friend highlighted, is that Defra has 14 of the common frameworks as itemised under the Bill, yet only one has a provisional framework. I note that the others have no document whatever. Having represented a rural part of north Yorkshire which is not a million miles from the Scottish border, I know that tensions will be mounting—the noble Baroness, Lady Ritchie, will follow this closely from the Northern Ireland perspective. If payments are to be made which could have a competitive impact on farming operations between different parts of the union, that bodes very badly indeed. Will my noble friend investigate why there has been such little progress in these very important common frameworks that relate to the work of Defra? Can he give us an idea of the timeframe? If he cannot, will he pursue this with our noble friend Lord Goldsmith, who I am sure will be able to report to him?

It is extremely important that common frameworks are seen to work as effectively as they were meant to do. I conclude by saying what a role the committee has in holding the Government's feet to the fire and making sure that all four nations of the union can proceed on an equal basis going forward—there might be divergences of policy, but these should be kept, at best, to the absolute minimum wherever possible.

7.21 pm

Baroness Ritchie of Downpatrick (Non-Afl): My Lords, it is a pleasure to follow the noble Baroness, Lady McIntosh of Pickering, and to commend our chair and staff of the Common Frameworks Scrutiny Committee. It was a pleasure to serve under the chairmanship of the noble Baroness, Lady Andrews. She was able, with our assistance but mostly through her dogged determination, to get at the Government's reasons for the delays in scrutinising the frameworks and having them ready for our further scrutiny, and the nature of the relationships between Whitehall/Westminster and the devolved Administrations. She also ensured that we arrived at a consensus report full of strong recommendations and capable of implementation by the Government. We also received a response to it from them.

Coming from Northern Ireland, I will focus on that area. Due to several political reasons, there have been delays—now there has been some speed in the last few weeks—in determining a scrutiny position from the Northern Ireland Executive on those frameworks. Part of the reason was down to the lack of devolution for some three years and the fact that it was suspended. Then we had Brexit and the differing views within the Northern Ireland Executive on it and the, shall we say, unwillingness of the DUP and Sinn Féin to work together in the joint offices of First and Deputy First Ministers. As a consequence of those political permutations, we ended up with delays; some would say "We approve them", but the other side would not. All that has simply manifested in delays in not only common frameworks but the general political process in Northern Ireland, which in turn has impacted communities and delivery for communities.

Our committee was quite clear in talking about the relationship between Northern Ireland and the common frameworks. We recommended that frameworks should include processes for reporting on divergence between GB and Northern Ireland, with results being

"forwarded to the EU for information".

Due to the fact that the Northern Ireland protocol contains a list of EU rules that Northern Ireland must continue to apply in the same way as the EU does, as divergence starts to take place in Britain, differences will begin to emerge between rules in Britain and Northern Ireland, which could negatively impact UK businesses.

I note this evening that the EU has brought forward some very important proposals that will deal with all those mitigations in the agri-food sector. I hope there is the ability and capacity to accept those within the Government, the parties and the wider community. I know that businesses in Northern Ireland want to get on with it and do the work that they are employed to do to deliver for all of us who live there.

All of this raises several questions I would like to pose to the Minister. Have any significant issues been identified through the frameworks and how efficient have those frameworks been in facilitating information exchange with the Northern Ireland Executive? As already referenced, our committee has yet to see a concrete commitment on reporting on divergence in areas where the protocol applies. We recommended that

"frameworks that include a major intersection with the Protocol"—

there are some 32 of them, because they deal with agri-food and the energy sector—

"should include processes for reporting on the divergence that occurs and its effects".

Do the Government have any examples of them setting up processes through frameworks to monitor the effects of the protocol? I will say this rather gently to the Government: my view is that the Government have simply obfuscated the situation with the EU. Whenever the EU has indicated, as it did this afternoon, that it is bringing forward new mitigation proposals, the Government have brought forward red lines. This begs the question: do the Government want a resolution to the challenges presented by the protocol? They impact on the common frameworks issues of divergence, general policy-making and devolution within the three nations and Northern Ireland as a region. The people of Northern Ireland—and that is a divided society—cannot any longer be used as a bargaining chip in the overall relationship process with the EU.

Only this week I became aware that some learned people have brought forward suggestions about the way forward on frameworks. I look to those viewpoints for potential solutions. As one authority on EU-UK-Irish relations has said:

"The UK government must have systems in place to effectively monitor changes to EU law applicable under the protocol and ensure that relevant information triggers discussions in the relevant common framework."

I ask the Minister: is this happening, or has it been considered and, if not, why not? That authority also states that the UK Government should be in a state of readiness to gather intelligence about future regulatory developments in Brussels. Is this work under way? That is vital, because I am also a member of the protocol sub-committee and all this legislation that impacts on Northern Ireland keeps coming to us on a weekly basis. In that regard, it also impacts on the common frameworks. There needs to be ongoing work and a stop put to the messiness we have seen over the last number of months.

7.29 pm

Baroness Redfern (Con): My Lords, it is a pleasure to follow the noble Baroness, Lady Ritchie, to welcome the Minister to his new role and to welcome the noble Lord, Lord Dunlop. I am pleased to have the opportunity to respond as a member of this Select Committee to the first report of Session 2019-21. It is chaired so ably by the noble Baroness, Lady Andrews. I acknowledge her detailed introduction and record my thanks to the committee staff, colleagues and advisers.

This Select Committee is unique in that it liaises with both the Cabinet Office and Whitehall, together with all the devolved Administrations. With our membership, importantly, drawn strategically from across the UK, it is in an excellent position to support the development of a strong focus and respect for all four devolved Administrations, with a clear aim to assist in building a co-operative union.

[Baroness Redfern]

During the committee's sittings, we have benefited from speaking not only with Ministers but with many academics drawn from all corners of the UK, as well as from listening to stakeholders and businesses who supplied a detailed wealth of written evidence. During Covid we have operated as a virtual committee, which has enabled us to link up so easily with those many witnesses, aiding our scrutiny work immensely.

It was envisaged that the frameworks would be agreed and in place by the end of the transition period, but regrettably this has been hampered by a reduction in the capacity of the devolved Administrations due to Brexit and then Covid-19. The process has also not been helped by the variable quality and clarity of the documents produced by individual departments for the committee to scrutinise. The setting of the timetable is a particularly challenging one, yet I stress the importance of scrutiny frameworks going forward so that they can be continually strengthened to aid future trade deals. This committee has strived for transparency throughout our deliberations, while also developing ongoing collaboration and consensus between the four Administrations with respect to the importance of adhering to a clear mechanism to resolve disputes.

Common frameworks strive to play a vital role in the UK's economic development, seeking to achieve higher standards across the UK in developing and achieving their full potential. One area in which this committee challenged was when a decision was taken for "no further action". The committee was of the opinion that a requirement was needed to record a more open response and that the Government should therefore publish a short justification for each policy area, producing a more transparent process than the EU and enabling an expansion of a detailed stakeholder consultation for each framework.

I support the idea that the Government should publish frameworks as and when they are agreed or amended and where new frameworks are developed following the publication of draft framework documents as early as possible in the process to allow for comments from stakeholders. There are, however, ongoing concerns surrounding the practical implications of the protocol on Ireland/Northern Ireland with the end of the transition period, and work must continue to prevent even more friction. The Government must also seek to minimise divergence within the scope of a common framework, deliver clear timescales for resolving cross-cutting issues and seek more clarity on the extent to which common frameworks will be either GB or UK-wide in scope.

I welcome the publication of the Dunlop report, in which the noble Lord, Lord Dunlop, emphasised the need for a new approach to UK intergovernmental relations. Promoting areas of shared interest, demonstrating mutual respect, seeking to resolve disputes with early interventions and supporting the four Administrations to pursue regular updates to their legislatures is the way forward. Reports must be acted upon. Finally, the committee felt it should have the flexibility to extend the process of scrutinising individual frameworks beyond 21 days if needed.

I am satisfied with the Government's endorsement, in that they will publish frameworks as and when agreed and when new frameworks are developed and that they will publish those draft framework documents as early as possible. Further, the Government have agreed to provide more information on the "no further action" classification process; again, I welcome this.

Frameworks must be in place to supply businesses and consumers certainty when buying and selling throughout the UK, as well as to deliver a strong union. Some work has been completed by this scrutiny committee, but there is much more to do. I am pleased that our remit has been extended, but the Government need to support greater parliamentary scrutiny to add vigour.

7.34 pm

Lord Bruce of Bennachie (LD): My Lords, I echo everything that has been said by every contributor to this debate about our chair, the noble Baroness, Lady Andrews. As the noble and learned Lord, Lord Garnier, says, she has welded a disparate team into a common purpose and has added to the dynamics of this process, which would not have happened had we not existed. Indeed, as has been hinted at, there was some element of drift and lack of engagement, and our committee has a vital role to ensure that that does not characterise the common frameworks as, I hope, they draw to their conclusion in reasonable time. I therefore also welcome the fact that we have been extended, because had we not been, I would wonder what would have happened to the process without our attention.

As has been said, common frameworks must seem dry, technical and esoteric, but at a time when the integrity of the United Kingdom is under intense pressure, I believe our committee has realised that that they are of immense importance—the noble and learned Lord, Lord Thomas, argued that cogently and effectively. They are not completed—they are far from that—and they have not been fully tested. However, the approach to the common frameworks has been welcomed by officials and Ministers both in the devolved Administrations and legislatures and in the UK Government.

When the committee began its work, relations between the UK Government and the devolved Administrations were at a very low ebb and got worse. When the UK internal market Bill was published with no notice or prior consultation and other legislation was being pushed through, the impression was given that the UK Government were using post-Brexit legislation to undermine the devolution settlements. However, the internal market Act and the trade treaties that flow from Brexit could strain devolution to breaking point if not handled sensitively.

The more we have considered common frameworks, the more I have been convinced that they encapsulate the approach that should characterise relationships between the UK Government and the devolved Administrations generally, not just with regard to the application of the frameworks. They are voluntary and they seek consensus, and although they are about the technicalities, not policy, it should be recognised that the practical applications that were previously carried out in the EU were done in an open and transparent process that has not been a feature of the way common frameworks have developed.

It has been acknowledged that UK Ministers wear two hats as English and UK Ministers, which means that they cannot be impartial in the final resolution, so some more balanced, open and fair mechanism will be required to resolve disputes if they escalate to that level. The committee has pointed that out and the evidence has been brought to us as we have proceeded. Mike Russell, then the Constitution Minister in the Scottish Government, told us that

"The relationships between Governments have been very poor and getting poorer"

and David Rees, chair of the External Affairs and Additional Legislation Committee of the Senedd, said that relations were in

"a state of suboptimal mutual hostility."

If the United Kingdom is to hold together, there needs to be a reset of intergovernmental relations, which is why our committee welcomed the report of the noble Lord, Lord Dunlop, and indeed the evidence he gave to us, which recommended the establishment of a co-operative union. That is what we need.

It may not be surprising that relations between the Scottish and UK Governments are strained, given that their commitments to the continuation of the United Kingdom are diametrically opposed. However, I contend that both are at fault and both need to tread more responsibly, carefully and constructively. The 2014 referendum produced a clear vote against independence and, today, opinion in Scotland continues to be deeply divided. Nobody would expect the SNP to give up its aspirations for independence, but nor should it ignore its responsibility at least to acknowledge that Scotland operates within a devolved arrangement and will do so for the foreseeable future. By the same token, the UK Government are entitled to present their responsibilities as they affect Scotland, but they need to seek consensus and agreement rather than provoke confrontation and resentment, which on occasions seems to have been the preferred option. That applies also to the very sensitive situation in Northern Ireland and to Wales, and indeed to the regions in England, which have their own agenda too. Reversing or overriding devolution settlements should not be an option any more than devolved Administrations refusing to accept the legitimacy of the United Kingdom Government.

The current friction over the application of the Northern Ireland protocol does not bode well. The Government negotiated and signed the agreement, and resiling from it will have serious consequences. If the temperature was lowered and trust restored, it should be possible to find ways in which to apply the protocol with a light touch, which may make trade between the GB and Northern Ireland affordable. Turning up the heat could make restrictions unbearable, disrupt trade further and threaten peace.

Tensions within the UK and between the UK and EU serve no one's real interests, although some may see a populist pay-off in provoking them. In the long run, politics exists to resolve tensions. Meanwhile, the Governments of Scotland and the UK sometimes seem to indulge in exacerbating them. I detect that the people of Scotland are getting a little weary of this, and I would welcome a more constructive approach by both Governments, drawing on the positive experience today of the common frameworks process. They are not dull—they are a model on which we can build.

7.41 pm

Baroness Wilcox of Newport (Lab): My Lords, this is my first time in the Moses Room, and it really is the House of Lords at its best. During this debate, I have heard wise and careful counsel from experienced colleagues from all areas of the UK and, indeed, all parties, ably led by my compatriot, the noble Baroness, Lady Andrews.

Common frameworks can be a model for co-operation between equals and for progress by agreement that can be applied elsewhere, and all three Governments of the nations have shown commitment towards the UK Government in principle and in practice. The time taken to appoint a UK Government Minister for frameworks has caused a delay in the programme, but I believe it is still anticipated that there will be publication of most frameworks for scrutiny by legislatures in the first half of November.

The committee has said that at least three major problems exist with the current framework approach. First, during much of their evolution, frameworks have been developed behind closed doors and with minimal stakeholder engagement or parliamentary scrutiny. The vast majority are unfinished and have still not been published, despite being operational. Secondly, their relationship with the protocol for Ireland/Northern Ireland needs to be clarified, as was so ably expressed by the noble Baroness, Lady Ritchie of Downpatrick. Thirdly, more information must be given to Parliament so that it can scrutinise effectively the operation of these important intergovernmental relations, which remain largely invisible. Wales has already developed a parliamentary scrutiny model for the Senedd.

The Common Frameworks Scrutiny Committee is central to the practical underpinning of the union as a whole. It is an antidote to the inflammatory and insensitive rhetoric that has surrounded devolution. This is the union in the service of the people for the people. The unnecessary delays and the fight provoked over the internal market by the Government, inspired largely by the Prime Minister's former special advisor Mr Cummings, and the embarrassment that caused together with the difficulties in resolving it did not auger well for the work of this committee.

In Wales, progress has been made on the processes underpinning the common frameworks, on the strict understanding that this is without prejudice to the position taken in ongoing litigation commenced by the Counsel General for Wales challenging the United Kingdom Internal Market Act by way of judicial review, on the basis that the Act has not modified legislative competence or the ability to make different provision for Wales in the manner it purports to do. The Welsh Government have a hearing in January which challenges the lawfulness of aspects of the Act. Basically, it undermines the devolution legislation, and they think it is unlawful constitutionally. The case will be heard in the Court of Appeal. The Act has been a significant distraction and undermining of the discussions on the frameworks, which were intended to be collaborative and consensual and, to some extent, largely have been positive. However, the Act undermines this progress.

[Baroness Wilcox of Newport]

There are still issues regarding excluding frameworks from its reach, but in Wales the Welsh Government go further and say that it is unlawful in this respect, and they are engaging in discussions on agreements on a without prejudice basis, as I said. I am struck by the way in which Wales is leading the way once again on this challenge and finding solutions to problems.

The report recommends that the four Administrations should provide regular updates to their legislatures and public reporting as part of the planned reviews. However, there is still no proper political commitment to note updates on the frameworks to the UK Parliament, which again stands in contrast to the Welsh Government, who have regularly updated the Senedd on each framework.

The report highlighted this need for greater transparency in the common frameworks process and raised concerns about insufficient stakeholder consultation, as noted by my noble friend Lady Bryan of Partick. In evidence, Viviane Gravey, a lecturer in European Politics at Queen's University Belfast, argued that the common frameworks process was less transparent than the EU process it replaced and that

"EU directives were debated publicly in the European Parliament and in the Council of Ministers, with stakeholders who could decide for themselves whether they felt they were affected, whether they wanted to speak about this topic and whether they wanted to influence it."

What action are the Government taking to ensure that the common frameworks process is much more transparent and fully engages with stakeholders?

Furthermore, the committee recommended that the UK Government should publish a short justification for each policy area where they have decided to take no further action. The Government responded:

"Work is underway to provide further details on the process and rationale in the upcoming 2021 'Frameworks Analysis' report."

When is this framework analysis report likely to be published?

The committee also recommended that the UK Government should make up for the lack of involvement of stakeholders in the initial development of common frameworks by revising them based on stakeholders' feedback. It also stated that parliamentary scrutiny of common frameworks will need to continue even after they have been finalised, to ensure that important policy decisions are made transparently. How will the Government ensure that Parliament is able to fully scrutinise the operation of individual frameworks in specific policy areas?

The committee notes in the report that

"relations between the four administrations of the UK are in a particularly poor state, and that UK intergovernmental relations need to be reset."

I again ask the Minister what tangible action has been taken since the report was published and since the Government last gave evidence to the committee?

I conclude with an extract of what my friend and colleague Mick Antoniw, the Consul General for Wales, said to the committee on 6 September:

"Anything that enables the four Governments to work better together in a more strategic way will be to the benefit of everyone. Whether that happens or not, as you say, is dependent on good will and trust, and whether this is a genuine process."

7.48 pm

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): I thank noble Lords for their expert and learned comments in this debate. I particularly thank the noble Baroness, Lady Andrews, for moving this important Motion. I also pay tribute to her and other members of the Common Frameworks Scrutiny Committee, many of whom are here today. I appreciate their continued work to scrutinise UK common frameworks and, in particular, their excellent report, *Common Frameworks: Building a Co-operative Union*, which was published earlier this year.

The CFSC has added huge value to the wider common frameworks programme, and I thank its members for working so co-operatively with the Government over the past year. I am pleased to hear that it has been successful in its bid to continue its valuable work into 2022. The Government look forward to continuing to work with the committee in the coming months.

In response to the questions asked by the noble Baronesses, Lady Andrews and Lady Bryan of Partick, about who is responsible for this within the Government, I can be clear that my honourable friend Neil O'Brien has taken over this role in my new department, the Department for Levelling Up, Housing and Communities —"Deluck" is the appropriate way of pronouncing the department's acronym, DLUHC. He is now the Minister for Levelling Up, The Union and Constitution. Of course that is now under the oversight and strategic responsibility of my right honourable friend Michael Gove, who leads the department. They will continue to be supported by the very excellent officials in the common frameworks directorate, who I know work closely with the committee.

Noble Lords will be aware that since 2017, the UK Government and devolved Administrations have been working jointly to develop the UK common frameworks. Common frameworks establish a common approach to policy areas previously governed by European Union law which intersect with areas of devolved competence. Central to every framework is the agreement between the UK Government and the devolved Administrations to work together to make better policy for citizens and businesses across the United Kingdom.

In the review of union capability published earlier this year, my noble friend Lord Dunlop set out that common frameworks prove that the United Kingdom Government and devolved Administrations

"can come together as partners in a common endeavour".

It is that spirit of common endeavour that should ensure that frameworks maintain consistent rules and regulations for all across the United Kingdom. Furthermore, common frameworks should support citizens to make the most of the opportunities afforded to the UK following our exit from the European Union, and allow trading partners peace of mind.

Common frameworks have previously been described by the Common Frameworks Scrutiny Committee as representing

"an example of best practice for positive cooperation across the UK and have an important role to play in an evolving devolution settlement and in strengthening the Union".

The UK Government consider strengthening the union as a key priority, as noble Lords will know. One of the central objectives of the newly formed Department for Levelling Up, Housing and Communities is to level up our towns and cities across the United Kingdom. The common frameworks programme has remained focused on upholding this by continuing to strengthen relations between the UK Government and devolved Administrations. The noble Baroness, Lady Andrews, rightly said in her article in PoliticsHome that

"the collaborative process of common frameworks can be held up as a model to build a stronger and cooperative union".

Representing joint and collaborative ways of working, common frameworks have been developed carefully, drawing on industry stakeholder expertise from across the United Kingdom to establish effective ways of working. Under guidance from constitutional teams in the UK Government and devolved Administrations, policy departments have ensured that they engage with those directly affected by a framework during its development.

As the noble Baroness, Lady Randerson, said, my honourable friend Chloe Smith set out previously that UK common frameworks are "ways of working" documents, as opposed to policy documents, so the nature of any stakeholder engagement may differ slightly from one framework to another. Common frameworks are also designed to be adaptable enough to endure as society, the regulatory environment, and the economy change. To enable such changes, the relevant Administrations will continue to review and monitor frameworks on a regular basis and engage with the relevant industry and parliamentary stakeholders as appropriate.

Of the 152 broad areas where powers returning from the EU have a devolved intersect, for 32 of these areas the UK Government and the devolved Administrations have agreed that it is necessary to develop a common framework. The remaining 120 policy areas where no framework has been deemed to be required will continue to be monitored, and new frameworks developed if the need arises. Decisions on whether frameworks are required have been made, and will continue to be made, in agreement with the devolved Administrations in line with the Joint Ministerial Committee (EU Negotiations) principles that have guided the frameworks programme.

The Government welcome the CFSC report *Common Frameworks: Building a Cooperative Union*, published in March and the important recommendations it sets out. My honourable friend Chloe Smith, in her former role as the Minister for the Constitution and Devolution, set out the Government's response comprehensively to the Common Frameworks Scrutiny Committee in May, and I am very pleased to have had the opportunity to hear the committee's thoughts in person today.

The CFSC has set out a number of recommendations regarding transparency with which the Government have either agreed or agreed in principle. The Government agree that transparency is a key priority for the programme, and I am happy to state that since the CFSC report was issued, four further provisional frameworks have been published to allow for parliamentary scrutiny and one full framework has been published following final ministerial clearances. The Government are keen to rapidly progress towards publishing the remaining frameworks, and at a quadrilateral meeting just prior to the UK ministerial reshuffle, the then Minister and her opposite numbers in the devolved Administrations agreed that on resolution of the remaining cross-cutting issues, Governments should progress towards sharing the remaining frameworks at pace with legislatures.

CFSC colleagues have mentioned the various cross-cutting issues, including the UK Internal Market Act and the Northern Ireland protocol, and the importance for all frameworks to clearly set out how they will interact, or be excluded from common frameworks. I agree that these are important issues, and I note that considerable work has been undertaken at pace to resolve such issues.

In recent months, work across the programme has continued at pace and with some notable successes, which demonstrate the continued value of working collaboratively across all four Administrations. As noble Lords will know, some of the greatest challenges in developing common frameworks have turned out to be the cross-cutting issues that affect many or all of the frameworks. These are: the ongoing review of intergovernmental relations; the Ireland-Northern Ireland protocol; the interaction between frameworks and trade deals and other international obligations; and the way in which common frameworks intersect with the UK Internal Market Act. In particular, fully understanding the implications of the latter two issues and how they should be addressed in common frameworks has been the subject of much work throughout 2021. Indeed, the CFSC report makes distinct recommendations on the importance of ensuring that the UK Government and the devolved Administrations agree a means of using powers within the UKIM Act to create exclusions in areas covered by a common framework.

I thank all noble Lords for their contributions today and will try as quickly as possible to respond to the many points raised. The noble Baronesses, Lady Andrews, Lady Randerson, Lady Crawley, and, indeed, Lady Wilcox of Newport, all raised the issue of transparency. Transparency across the common frameworks programme is a priority for the Government. It is for this reason that throughout the development of each framework, they undergo industry-specific stakeholder engagement and then later parliamentary scrutiny under the UK Government and devolved legislatures.

In response to the noble Baroness, Lady Randerson, I clarify that common frameworks are not developing policy itself; rather, they establish intergovernmental ways of working, which noble Lords will recognise may therefore require differing levels of engagement. Thus far, the Government have conducted early framework development stakeholder engagement across all frameworks, bar two lesser-developed frameworks, and expect to further engage with many of those stakeholders as frameworks are published, and as and when any significant developments take place.

In response to the noble Baroness, Lady Randerson, and my noble friend Lady Redfern, we agree that frameworks should be published upon receipt of appropriate ministerial clearances. Noble Lords will

[Lord Greenhalgh]
be aware that, as a four-nation programme, frameworks can be published only on joint agreement by all parties. As such, it would not be in keeping with the joint nature of the frameworks programme for the UK Government to publish anything unilaterally. To update noble Lords, prior to the recent ministerial reshuffle, Ministers from across the UK Government and devolved Administrations met and agreed to progress the frameworks programme at pace. Once the cross-cutting issues have been fully resolved, we will jointly publish the remaining frameworks.

The Government recognise the important role Parliament has in scrutinising UK common frameworks and welcome the CFSC recommendation that further scrutiny may be necessary once frameworks are implemented and future development takes place. It is important for me to clarify that, as frameworks cover a wide range of topic areas, each is being developed by a different UK government policy department jointly with its devolved Administration counterparts. As such, once a framework is fully implemented, any decision around future framework development, and therefore continued scrutiny, will be taken at departmental level.

In response to the noble Baroness, Lady Wilcox of Newport, the Government intend to share the remaining frameworks with the CFSC to enable parliamentary scrutiny by the end of 2021. I expect that those frameworks with lesser intersects and with various cross-cutting issues will be sent first. This will be possible once they have been agreed or amended, but I recognise the frustrations around the delayed publication of provisional frameworks. The rest will follow shortly afterwards.

The noble and learned Lord, Lord Hope of Craighead, raised two issues. Yes, there is an important role for the centre in co-ordinating things, but policy departments must also have a role, as they are the policy experts. In line with the recommendation that the Government should work closely with the devolved Administrations to develop a process for using these powers, government officials and their counterparts in the devolved Administrations are working closely to establish a process for making and evidencing such agreements. Ministers have also met to discuss progress and to chart a path forward. I also take this opportunity to extend my thanks to those in the devolved Administrations who have made great contributions to this work.

A number of noble Lords raised the Northern Ireland protocol; namely, the noble Baronesses, Lady Ritchie of Downpatrick and Lady Andrews. I can provide an update on progress in certain areas, such as divergence. Common frameworks provide the right forum for discussions about how to best accommodate policy divergence in a way that works for the whole United Kingdom. Where proposals for divergence arise, the framework's governance structures will ensure that views from all parties to the framework are taken into consideration.

In response to the noble Baroness, Lady Crawley, on reporting, the Government welcome the CFSC report's recommendation to include processes for reporting on divergence. Once implemented, the policy teams will review their common framework regularly to ensure that it is updated according to changes made to any of the cross-cutting issues that intersect with it, including the protocol. Departments will take over full ownership of the framework, which will involve monitoring and reviewing it periodically, and engaging with legislatures and stakeholders, including giving updates on any divergence that has occurred. The noble Baroness, Lady Andrews, asked a question on divergence, and I hope I have covered most of her points, as best as I can.

I reassure my noble friend Lord Dunlop that the recommendations in his review align with the Prime Minister's ambitions to strengthen the working of the union. We do not see these recommendations as distinct workstreams and many coincided with our existing thinking. We have made progress in implementing the vast majority of the recommendations, in some areas delivering above and beyond the scope. We incorporated many of the recommendations into the intergovernmental relations review. As the Prime Minister said in his letter to the First Ministers and Deputy First Minister of Northern Ireland on 7 September, due to the

"hard work of ministers and officials"

in all four Administrations,

"we are now in a position to conclude"

the IGR and

"provide a new structure for … engagement".

I will have to write to my noble friend on the specifics of transparency reporting.

In response to my noble friend Lady Redfern, the Government very much welcome the CFSC report's recommendation to publish justifications for policy areas where it has been decided that no further action is required. In the coming weeks, we expect to publish the fourth iteration of the annual frameworks analysis, which will include an explanation for each policy area where a common framework is not currently required.

In response to the noble Baroness, Lady Bryan of Partick, the EU exit resulted in returning powers in 152 areas where devolution also intersects. No framework is required in many areas as we believe that there is a low risk of divergence. Obviously, we will continue to review that position.

On the specific point raised by my noble friend Lady McIntosh on the progress on the Defra framework, Defra has provisionally agreed all 14 of its frameworks and one has been published for transparency. Defra frameworks have the biggest number of cross-cutting issues which are being worked through. As she will appreciate, that is quite a job of work to do.

There is broad agreement in this House that UK common frameworks are a helpful way to ensure the continued joint working across the United Kingdom by this Government and the devolved Administrations for the benefit of our businesses and, above all, our citizens. I look forward to continuing to work with this House and the noble Lords of the CFSC as we continue to deliver the common frameworks programme.

8.07 pm

Baroness Andrews (Lab): My Lords, I thank the Minister for his response. He will know now, I think, why the committee is so formidable—formidable to chair and formidable in its questioning. I am conscious

that a great number of questions were put to him this afternoon. I think there was quite a lot of good news in what he said, but we will have to read what he said carefully. It is of the utmost importance that we get the greatest clarity—and, frankly, the greatest enthusiasm—from the Government for the common frameworks.

The question raised by the noble and learned Lord, Lord Hope, is fundamental. The centre has a role here in making sure that the common frameworks are properly co-ordinated and driven in the right directions, in the right way and at the right speed, that they really work and make an optimum contribution to strengthening the union. We will watch very closely how the Minister's department is going to manage them, and the level of transparency. I have absolute confidence in officials, and we are very grateful that we at least have the name of the Minister; I am sure that we will want to talk to him as soon as he is properly in place.

Many of my colleagues raised the character of the frameworks, saying that they look dull, technical and impenetrable. I should say to the noble Baroness, Lady Bryan, and other noble Lords who have spoken that there is no such thing as an interloper in this debate: we welcome any interest shown by anybody from any part of the House, and well beyond. We have talked about the misleading nature of the frameworks. They are so much more than the sum of their parts, as they deal with huge constitutional issues and possibilities. The noble and learned Lord, Lord Thomas, spoke of them as constitutional innovations. They illuminate the lopsided nature of power in the UK, shining a new light on what is possible and necessary through devolution, and the risks of the state of the debate on devolution. These are huge historic themes, not small, technical adjustments. Since the issue has gone into the Department for Levelling Up, it will become confused with a whole range of other issues and imperatives.

Our imperative is to make sure that these frameworks, which were and may still be precarious—just as the existence of our committee might have been precarious—are maximised in their impact across the UK, for the benefit of the whole of the UK. We will hold Ministers' feet to the fire and we will want to see what progress is being made, that faith is being kept, that transparency and quality is improved, that timetables are kept, and that the impact on the ground for delivery is as it should be. If there is divergence, it must be managed transparently and constructively.

Everything that my noble friend said about the position of Wales is absolutely true. The internal market Act was totally disruptive, and there was a very serious chance that the whole process would lose credibility. It did not—not least because of this committee's work. That is the standard to which we will hold ourselves over the next year. We will be vigilant and pretty ruthless about what we expect in terms of behaviour from not just this department but all departments across government.

Motion agreed.

Committee adjourned at 8.11 pm.